



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. 2013103814
)	
Patrick K. Kehoe)	
)	
For Approval of Shoreline Substantial)	
Development, Shoreline Conditional)	FINDINGS, CONCLUSIONS,
Use, and Critical Area Permits)	AND DECISION
_____)	

SUMMARY OF DECISION

The requested shoreline substantial development, shoreline conditional use, and critical area review permits to allow construction of a replacement retaining wall on a steep slope below the residence at 3122 Leeward Court NW in Olympia are **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Patrick Kehoe (Applicant) requested shoreline substantial development, shoreline conditional use, and critical area review permits to allow construction of a retaining wall on a steep slope below the residence at 3122 Leeward Court NW in Olympia. The project would replace an existing, failed retaining wall.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on July 21, 2014. At the conclusion of the hearing, the record was held open for additional information from the homeowners' association of the Oldport Community through July 28th, on which date the record closed. The information was timely submitted and admitted at Exhibit 4.

Testimony:

At the hearing the following individuals presented testimony under oath:

- Scott McCormick, Associate Planner, Resource Stewardship Department
- Brad Sangston, Environmental Health Division
- Patrick Kehoe, Applicant

Exhibits:

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

EXHIBIT 1 Resource Stewardship Department, Land Use and Environmental Review Section Report including the following attachments:

Attachment a	Notice of Public Hearing
Attachment b	Master/JARPA Application received August 12, 2013
Attachment c	Vicinity Map
Attachment d	Zoning Map
Attachment e	Site Plans
Attachment f	Photos by applicant
Attachment g	Topography maps
Attachment h	Soils Investigation Report by Bradley-Noble Geotechnical Services dated July 26, 2013
Attachment i	Structural Calculations – Soldier Pile Tie Back Retaining Wall engineering report dated January 28, 2013
Attachment j	Notice of Application dated March 25, 2014 with Adjacent Property Owners list
Attachment k	SEPA Determination of Non-Significance dated June 24, 2014 & Appeal deadline July 15, 2014
Attachment l	SEPA Environmental Checklist received April 22, 2014
Attachment m	Comment Letter from the Southwest Regional Office of the Washington Department of Ecology dated July 8, 2014
Attachment n	Email from Scott McCormick, Resource Stewardship to Patrick Kehoe dated April 21, 2014
Attachment o	Memorandum Brad Sangston, Thurston County Public Health and Social Services Department dated November 4, 2013
Attachment p	Memorandum from Kevin Chambers, TC Public Works dated August 30, 2013
Attachment q	Comment Letter from the Southwest Regional Office of the Washington Department of Ecology dated August 27, 2013

EXHIBIT 2 Photos of Public Hearing Notice Posting

EXHIBIT 3 Enlarged Site Plans

EXHIBIT 4 Correspondence from Oldport Community, Inc., dated July 21, 2014

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 Applicant¹ requested shoreline substantial development, shoreline conditional use permit, and critical area review permits to allow construction of a replacement retaining wall on the steep slope below the residence at 3122 Leeward Court NW in Olympia.² The project site is zoned Residential 4 Dwelling Units Per Acre (R-4) and is located in the Olympia Urban Growth Area. *Exhibit 1, pages 1-3; Exhibit 1, Attachments B, E, and N; Exhibit 4.*
2. The 0.3-acre subject property is Lot 32 of the Oldport Community subdivision; it contains a single-family residence. It is situated on the western shore of Budd Inlet in South Puget Sound. Its shorelands are designated Rural Shoreline Environment by the Shoreline Master Plan for the Thurston Region (SMPTR). The parcel contains a steep marine bluff which is classified as a geologic hazard area pursuant to the Thurston County critical areas ordinance (CAO).³ The slope stability map of the Coastal Zone Atlas of Washington shows that the bluff in question is unstable. *Exhibit 1, pages 3-4; Exhibit 1, Attachments C and D.*
3. The proposal would replace an aged, failing log retaining wall at the bottom of the steep slope below the subject property. The existing retaining wall is owned by the Oldport Community, which also owns five feet behind the wall. Surrounding parcels are developed with single-family residences. Old Port Drive NW, which provides shoreline access for Old Port Community residents, lies between the subject property and Budd Inlet. Areas waterward of the Applicant's parcel are developed with a community picnic area, parking, and a community dock nearby. The City of Olympia maintains a sewage pumping station at the southeast portion of the bank below the site. *Exhibit 1, pages 2-3; Exhibit 1, Attachment F.*
4. The Applicant submitted a professionally prepared geologic evaluation/soils investigation report and structural engineering calculations for the proposed retaining wall. According to the soils investigation report, in the 1920s there was a landslide in the area of the

¹ Patrick Kehoe, Applicant, owns the majority of the property on which the project would be built; the Oldport Community owns the remaining project area. Mr. Kehoe signed the application on behalf of the community as its Treasurer, and additional approval from the president of the community association was submitted in the record by letter. *Exhibit 4.*

² The legal description of the subject property is a portion of Section 03, Township 18 North, Range 2 West, Plat OLDPORT LT 32 Document 017/031; also known as Tax Parcel Number 65950003200. *Exhibit 1, page 2.*

³ Geologic hazard areas are defined by the CAO as "areas that because of their susceptibility to erosion, landsliding, earthquake, volcanic lahar, liquefaction or other geological events, are not suited to siting commercial, residential or industrial development consistent with public health or safety concerns. *TCC 24.03.010.*

proposed retaining wall. Evidence of the mass slide as well as human caused soil disturbance is found in the loose, unconsolidated soils in the upper 10 feet of the slope. The Applicant's consultant recommended that a soldier pile type retaining structure would be best suited given the slope's potential instability. *Exhibit 1, pages 3, 5; Exhibit 1, Attachments H and I.*

5. The proposal would build a soldier pile tie back retaining wall on the slope below the existing house in the location of the failing log wall. The new wall would be anchored to a depth of 30 to 40 feet in dense, undisturbed soils. A portion of the proposed work would occur on land owned by the Oldport Community waterward of Lots 31 and 32, and the rest of the improvements would be constructed on the Applicant's parcel (Lot 32). The proposed retaining wall would be approximately 140 feet long and up to 15 feet tall, depending on conditions discovered in the field. The area behind the new, taller wall would be excavated to a depth of one to two feet and then backfilled with three- to six-inch clean gabion rock, leaving the angle of the created slope at not more than 40 degrees. Approximately 1,500 cubic yards of grading and filling are proposed. Earth disturbing work would be done during dry weather to minimize potential erosion. All of the work would occur within 200 feet of the ordinary high water mark for Budd Inlet, approximately 50 feet from the shoreline at its nearest point. No in-water work is proposed. Disturbed areas would be planted with native species after construction is completed. The Applicant retained a licensed engineering geologist to evaluate the existing steep slope and to provide design recommendations for the replacement wall. According to the geologist, slope stability should be improved with proper installation of the proposed soldier pile retaining wall, including drainage improvements from the rip rap at the base of the wall. *Exhibit 1, page 2; Exhibit 1, Attachments B, E, H, and N; Kehoe Testimony.*
6. Pursuant to the SMPTR Residential Development chapter, a retaining wall not associated with a residential structure is not a normal residential appurtenance. The project's fair market value (cost) is estimated at approximately \$200,000.00, requiring approval of a shoreline substantial development permit (SSDP). Because the retaining wall is not identified as a use in the SMPTR, a shoreline conditional use permit is required. *Exhibit 1, page 4; Exhibit 1, Attachment B; WAC 173-27-040(2)(a); WAC 173-27-160(3).*
7. Projects that may impact a critical area are reviewed through a critical area review permit (CARP) per TCC Title 24, Chapter 24.40. Typically, the critical area permit is issued administratively; however, when the CARP is for a project that requires a higher level of process for other permits, all required permits are reviewed together. *Exhibit 1, page 4; McCormick Testimony.*
8. The applications and supporting materials were reviewed by the Thurston County Health Department Environmental Health Division (EHD). EHD Staff indicated that no domestic water sources or septic systems adjacent to the project area would be adversely affected. EHD Staff recommended project approval. *Exhibit 1, Attachment O.*

9. Thurston County Public Works Development Review Services reviewed the project for compliance with Thurston County road standards and drainage design requirements, and determined that with conditions all could be met. Public Works recommended approval. *Exhibit 1, Attachment P.*
10. Washington State Department of Ecology submitted comments noting the appropriate steps to take in the event contaminated soils are discovered during site excavation. Ecology did not oppose the proposal or express other concerns regarding environmental protection. *Exhibit 1, Attachment M.*
11. Pursuant to the State Environmental Policy Act, Thurston County acted as lead agency for review of environmental impacts of the proposal. The County issued a determination of non-significance (DNS) on June 24, 2014. As stated in the DNS, the County's review and threshold determination were based on information included in (but not limited to) the following documents:
 - Applications submitted August 12, 2013
 - Environmental Checklist submitted April 21, 2014
 - Site Plans
 - Thurston County Public Works SEPA comments
 - Thurston County Health Department recommendation
 - Washington State Department of Ecology comments

No appeals were filed and the DNS became final on July 15, 2014. The Staff report refers to the threshold determination as a mitigated determination of non-significance (MDNS) and states that there are 11 required mitigation measures. The environmental threshold determination document in the record identifies itself as a DNS with 11 notes. Notes to a DNS do not have the same legal effect as required mitigation measures to an MDNS. Additionally, some of the notes are not clearly applicable to the instant application, e.g., note 2 (which references a wetland and associated buffer). This discrepancy was not addressed at hearing; however the requirements in the clearly applicable notes were recommended as conditions of permit approval, achieving the intended environmental protection. *Exhibit 1, pages 5, 11-13; Exhibit 1, Attachment K.*

12. Notice of the public hearing was posted on-site on July 10, 2014. Notice of hearing was sent to all property owners within 500 feet of the site and published in The Olympian on July 11, 2014. *Exhibit 1, page 5; Exhibit 1, Attachment A; Exhibit 2.* There was no public comment on the application. *McCormick Testimony.*
13. Upon review of evidence submitted by the Applicant, Resource Stewardship Staff recommended approval of the permits with conditions. *McCormick Testimony; Exhibit 1, pages 10-12.* The Applicant waived objection to the recommended conditions of approval. *Kehoe 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 SMPTR's Residential Development chapter allows landfilling in the Rural Shoreline Environment subject to policies, general regulations, and specific Rural Environment Guidelines. The applicable policies and general regulations regarding landfilling are listed in the SMPTR section IX.

Policies - IX. Landfilling, pg. 75

1. Shoreline fills or cuts should be designed and located so that significant damage to existing ecological values or natural resources, or alteration of local currents will not occur which create a hazard or a risk of significant injury to life, adjacent property and natural resource systems.
2. All fills should be accomplished with suitable safeguards for erosion control.
3. Fill material should be of such quality that it will not cause water quality degradation beyond the limits of adopted water quality standards defined by the Department of Ecology.
4. Priority should be given to landfills for water-dependent uses.
5. The size of landfills should be limited by the consideration of such factors as total water surface reduction, navigation restriction, impediment to water flow and circulation, reduction of water quality and destruction of habitat.

General Regulations - IX. Landfilling, pgs. 76 - 77

1. Disposal of solid wastes is not considered landfilling for the purposes of this section.
2. Landfills shall consist of clean materials including such earth materials as clay, sand, and gravel, and also may include oyster or clam shells. In addition, concrete may be included in fill material if it is not liable to pollute ground water and is approved by

the Administrator. Organic debris, such as wood and other vegetative material shall not be used as fill material.

3. Landfills, except for beach feeding, shall be designed, constructed, and maintained to prevent, minimize and control all material movement, erosion, and sedimentation from the affected area.
4. Landfill areas shall be covered with sufficient earth material to support indigenous vegetative ground cover and replanted with vegetation to blend with the surrounding environment.
5. Prior to issuance of any permit for landfilling in or along a stream, it must be demonstrated that the fill will not cause any detrimental change in flood elevations, or restrict stream flow or velocity. No fill which adversely affects the capability of a stream to carry 100-year flood flows will be allowed.
6. Artificial beach maintenance may be allowed by Substantial Development Permit in any environment, notwithstanding other regulations of this section. Provided, such maintenance shall be by "beach feeding" only, with both the quality and quantity of material to be approved by the Administrator. Habitat protection is a primary concern for any beach feeding operation and must be a consideration in permit approval.
7. Landfill which will interfere with public rights of navigation and rights corollary thereto shall not be permitted unless there is an overriding public interest.
8. Landfill placed for the purpose of providing land to ensure required distances for septic tank drain fields is prohibited.
9. Permits for landfilling shall be granted only if the project proposed is consistent with the zoning of the jurisdiction in which the operation would be located.

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.

Critical Area Review Permit

TCC 24.40.010 states that a critical area review permit is required for all development permits for properties that may be impacting critical areas and associated buffers. TCC 24.40.050 provides the following review criteria to review a critical area review permit:

1. The critical area review permit is consistent with the requirements, purposes, and intent of this title, and other requirements of the Thurston County Code; and
2. The requested development activity is consistent with the goals and policies of the Thurston County Comprehensive Plan; and
3. The requested development activity results in no net loss of the functions and values of critical areas as defined in this title. If the approval authority determines that it is necessary, the proposal shall include a mitigation plan consistent with this title and credible scientific evidence as determined by the director. Mitigation measures shall address any impacts and shall occur on-site first, or if necessary, off-site.

Conclusions Based on Findings

A. Shoreline Substantial Development Permit

1. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. Replacing a failed retaining wall in order to prevent future

mass wasting of an unstable marine bluff and to protect existing upslope residential parcels is a reasonable and appropriate use within the Rural Shoreline Environment. The project was reviewed by the County's Health Department and no impacts to public health were identified. The retaining wall would protect existing shoreline access for the members and guests of the Oldport Community. Placed at the base of the existing bluff, it would not adversely affect scenic views. Conditions would ensure that the project is developed with minimal impact to the shoreline and surrounding properties. *Findings 2, 3, 4, 5, 6, 8, 9, and 10.*

2. As conditioned, the retaining wall complies with applicable regulations in the Washington Administrative Code. No new above-grade buildings would be installed. There would be no significant impacts to views or to the character of the area. A condition of approval would ensure compliance with the requirements of WAC 173-27-190. *Findings 5 and 6.*
3. The proposal is consistent with the applicable policies and regulations of the Shoreline Master Program for the Thurston Region and the goals and policies of the Thurston County Comprehensive Plan. The project was designed to avoid damage to natural resources. It is intended to protect the marine bluff from land slide, which would protect ecological resources as well as the upslope residences. Conditions of approval would ensure that proper erosion control measures consistent with the Thurston County Storm Drainage and Erosion Control Manual are implemented during construction and throughout the life of the project. Fill material (soil and rock) brought to the site must be free of contaminants and pollutants. Proper storm water improvements would limit potential sediment dispersion to the nearby shoreline. There would be no impact to navigation. Disturbed areas would be planted with native vegetation after construction is completed. No in-water work is proposed; all improvements would be setback approximately 50 feet from the shoreline. *Findings 2, 3, 5, 6, 8, 9, and 11.*

B. Shoreline Conditional Use Permit

4. As concluded in the above SSDP conclusions, the proposal is consistent with the policies of RCW 90.58.020 and the SMPTR. It would result in no adverse impact to public shoreline access or the shoreline environment. The proposed use is compatible with surrounding uses in that it would protect the existing homes and community uses on and near the site. Erosion should be decreased and slope stability increased as a result of the project, benefiting the public interest in terms of life, health and safety. As conditioned, there should be no water quality impacts. The project creates little new impervious surface. The proposed use is not prohibited. *Findings 2, 3, 5, 6, 8, 9, and 10.*
5. Projects of this nature should not be common, and should only be necessary when repairing or preventing landslides. Additional similar proposals would not cause a cumulative adverse impact to the shoreline, but would instead improve marine bluff stability. Given that privately funded projects to protect individual residential lots from mass wasting events are expensive and relatively uncommon, cumulative impacts, if any, should be limited. *Findings 4 and 5.*

C. *Critical Area Review*

6. The established purpose of the County's critical areas ordinance includes (among other items): minimize loss of life, injury, and property damage due to natural hazards including landslides; recognize and address cumulative adverse impacts that could exacerbate flooding and landslide hazards; protect critical areas, associated buffers designed to protect the functions of critical areas, and their functions and values while allowing reasonable use of property; and carry out the goals and policies of the Thurston County Comprehensive Plan. As conditioned, the project would increase the stability of an unstable marine bluff, protecting the residences above the slope as well as the community uses of the shoreline area below, all of which uses are consistent with the underlying zoning and comprehensive plan land use designations for the property. Conditioned to ensure the following, the project would result in no adverse impact to the slope: proper erosion control measures would be implemented during construction; the wall would be provided with drainage consistent with County drainage standards; and any disturbed areas would be planted with native vegetation to protect the future stability of the slope. *Findings 2, 3, 4, 5, 7, 8, 9, 10, and 11.*

DECISION

Based upon the preceding findings and conclusions, the requested shoreline substantial development, shoreline conditional use, and critical area review permits to allow construction of a proposed retaining wall replacement on a steep slope below the residence at 3122 Leeward Court NW in Olympia are **GRANTED** subject to the following conditions:

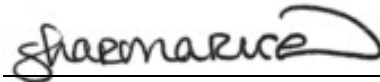
1. Prior to construction, the Applicant shall apply for and receive a Thurston County Building Permit and Construction / Grading Permit for the proposed retaining walls, storm water features and related earth disturbing activities.
2. Storm water runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact the existing drainage or other properties. The stormwater management system shall conform to the current Thurston County Drainage Design & Erosion Control Manual and Title 15.05 Thurston County Code.
3. Proper erosion and sediment control practices shall be 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 shall be seeded, vegetated, or given some other equivalent type of protection against erosion. Erosion control shall be maintained until the site has been fully revegetated and surface soils are sufficiently stabilized by the retaining wall system and vegetation.
4. Prior to construction a complete set of construction drawings and the final drainage and erosion control report shall be submitted to Thurston County Public Works for review and acceptance.
5. Prior to construction a pre-construction conference shall be scheduled with County Staff.

6. All development shall be in substantial compliance with drawings and site plan submitted and made part of this staff report.
7. Landfills shall consist of clean materials including such earth materials as clay, top soil, sand, gravel and rock. No solid waste, hazardous materials, organic debris, or other such materials shall be mixed in the backfill.
8. 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.
9. Washington State Water Quality Laws, Chapter 90.48 RCW Water Pollution Control and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, define quality of state waters. Any discharge of sediment-laden runoff or of other pollutants to waters of the state is in violation of these state laws and may be subject to enforcement action.
10. If contamination is suspected, discovered, or occurs during construction, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office (SWRO) at (360) 407-6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Thomas Middleton with the SWRO, Toxic Cleanup Program at the phone number given above.
11. Clearing limits and/or any easements or required buffers should be identified and marked in the field, prior to the start of any clearing, grading, or construction. Some suggested methods are staking and flagging or high visibility fencing.
12. Provision should be made to minimize the tracking of sediment by construction vehicles onto paved public roads. If sediment is deposited, it should be cleaned every day by shoveling or sweeping. Water cleaning should only be done after the area has been shoveled out or swept.
13. Proper disposal of construction debris must be on land in such a manner that debris cannot enter water of the state (e.g., wetland and their buffers) and stormdrains draining to waters of the state or cause water quality degradation of state waters.
14. The plants used in the project revegetation shall be native species suited to the site. No invasive species such as English ivy, shall be used in the project.
15. Installation of landscaping related to the retaining wall project shall be completed within 60 days of completion of the retaining walls. Within 14 days of the completion of landscaping, the applicant shall submit a report of the completed landscaping to Thurston County Resource Stewardship. This report shall contain a written description of the

numbers, sizes and species of plants installed and photos of the completed landscaping.

16. Note: A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the Applicant's responsibility to obtain this permit if required.
17. Construction 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 August 11, 2014 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 **\$638.00** for a Request for Reconsideration or **\$846.00** 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. _____ 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 \$638.00 for Reconsideration or \$846.00 for Appeal. Received (check box): Initial _____ Receipt No. _____

Filed with the Resource Stewardship Department this _____ day of _____, 20___.