



COUNTY COMMISSIONERS

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 District One
 Sandra Romero
 District Two
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 District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
 FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2014102827
)	
Washington State)	
Department of Fish and Wildlife)	Skookumchuck Hatchery Culvert SSDP
)	
For Approval of a)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS, AND DECISION
_____)	

SUMMARY OF DECISION

The requested shoreline substantial development permit to allow removal and replacement of an existing culvert in Troller Creek with a larger fish-passable culvert within a Conservancy Shoreline Environment for the purpose of removing an existing barrier to fish passage and enhancing salmonid habitat is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Washington State Department of Fish and Wildlife (WDFW, Applicant) requested a shoreline substantial development permit to allow removal and replacement of an existing culvert in Troller Creek with a larger fish-passable culvert to enhance salmonid habitat. The project is proposed on the same parcel as the existing Skookumchuck Hatchery.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on January 20, 2015.

Testimony:

At the hearing the following individuals presented testimony under oath:

- Robert Smith, Senior Planner, Resource Stewardship Department
- Dawn Peebles, Environmental Health Division
- Chris Gourley, WDFW, Applicant Representative

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 Zoning/Site Map
 - Attachment c Master Application, received June 23, 2014
 - Attachment d JARPA Permit Application, received June 23, 2014
 - Attachment e Site Plan Set, dated June 6, 2014
 - Attachment f Complete Application Letter, dated November 6, 2014
 - Attachment g Notice of Application, dated November 7, 2014
 - Attachment h Determination of Non-Significance, issued by the Washington Department of Fish and Wildlife, dated June 2, 2014
 - Attachment i Comment Memorandum from Brad Sangston, Public Health and Social Services Department, dated August 15, 2014
 - Attachment j Comment Memorandum from Kevin Chambers, Public Works Department, dated July 15, 2014
 - Attachment k Comment letter from the Washington State Department of Ecology, dated July 24, 2014
- Exhibit 2 Color copy of photo of posted hearing notice, taken by County Staff

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 to allow removal and replacement of an existing culvert in Troller Creek with a larger fish-passable culvert in order to enhance salmonid habitat. The project is proposed on the same parcel as the existing Skookumchuck Hatchery at 10500 Skookumchuck Road SE in Tenino.¹ *Exhibit 1; Exhibit 1, Attachments B, C, and D.*
2. The 30-acre subject property is located along the Skookumchuck River in rural Thurston County bisected by Skookumchuck Road SE, with the river south of the road and the hatchery north of the road. Troller Creek flows through the hatchery portion of the

¹ The legal description of the subject property is a portion of the Northwest Quarter of the Northeast Quarter of Section 18, Township 15 North, Range 1 East, W.M.; known as tax parcel number 21518120200. *Exhibit 1.*

property before crossing under Skookumchuck Road and emptying into the river. Improvements on the site consist of fish holding and rearing ponds, hatchery buildings, a pollution abatement pond, a fish ladder, and surfaced driving and maneuvering areas. Surrounding land uses include commercial forestry and natural areas along the river.
Exhibit 1.

3. The Skookumchuck River is a shoreline of statewide significance subject to the policies and regulations of the Shoreline Master Program for the Thurston Region (SMPTR). The project is proposed within a designated Conservancy Shoreline Environment. The fair market value/cost of the project is estimated at \$620,000, triggering the requirement for a shoreline substantial development permit (SSDP). *Exhibit 1; Exhibit 1, Attachment D.*
4. The Comprehensive Plan land use designation and zoning designation are Rural Residential Resource – One Dwelling Unit Per Five Acres (RRR 1/5). *Exhibit 1.* Thurston County Code considers upland finfish hatcheries to be agriculture, and agriculture is a permitted use in the RRR 1/5 zone. The proposed culvert upgrade is an accessory use to the existing hatchery. *Exhibit 1; Thurston County Code (TCC) 20.09A.020(1); (TCC 20.04.030(3)(g)).*
5. In 2006, WDFW obtained a shoreline substantial development permit (#2006101443) to renovate the old hatchery. The Skookumchuck Hatchery processes Coho salmon and steelhead trout. Juvenile fish and eggs are shipped from the hatchery to other facilities. Fish return to the Skookumchuck hatchery through weirs and are attracted to the water flowing from the fish ladder just upstream of Skookumchuck Road. The existing culvert carries Troller Creek under the paved driving surface of Skookumchuck Road on hatchery grounds; the creek typically dries up during summers. Upstream, Troller Creek has a moderately incised channel with a bedrock bottom and many waterfalls in a short stretch. Downstream of the culvert is a small channel with a primarily bedrock substrate. The existing culvert acts as a barrier to fish passage. *Exhibit 1, Attachment D.*
6. The proposal would replace the existing culvert with an eight-foot, nine-inch by three-foot bottomless arched culvert, regrade the creek bottom within the culvert so that it is no longer perched above the creek bed, create additional salmonid habitat at the outfall of the culvert, and install restoration plantings of a native shrub mix at both ends of the culvert. Fish would be encouraged to enter the fish ladder to the hatchery during spawning by a removable picket barrier placed below the new culvert. Underground utilities would be relocated under the new culvert as needed in during construction. The project includes approximately 2,500 square feet of restoration planting with a native shrub mix at each end of the new culvert. *Exhibit 1, Attachment D.*
7. Troller Creek is a fish-bearing stream subject to regulations of Thurston County's critical areas ordinance (CAO, TCC 24). Replacement of culverts are allowed subject to the following general standards:

- A. The culvert was lawfully established;
- B. There is not another alternative available that has less adverse impact on the important habitat or other critical areas;
- C. The bridge or culvert is designed to avoid or, where that is not possible, minimize impacts to the important habitat and it is in compliance, to the greatest extent possible, with TCC 24.25.280
- D. In the case of culverts in a Type F or S stream, the culvert is made passable for fish in accordance with the WDFW Fish Passage Design at Road Culverts, 2003, as amended, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000, as amended;
- E. If the culvert involves a ditch, the ditch is not increased in width at the culvert site unless it is narrower at that point than the rest of the ditch and would otherwise impede the flow of water. In that case, it may be widened to the minimum extent the approval authority deems necessary; and
- F. Flood hazards are avoided and the proposal is consistent with Chapter 24.20 TCC and other applicable regulations.

TCC 24.25.130. Because the project is intended and designed to improve salmonid habitat, the proposal complies with the culvert replacement criteria of the CAO. *Exhibit I; Smith Testimony.*

- 8. The SMPTR considers hatcheries to be an aquacultural use, which is allowed in the Conservancy Shoreline Environment subject to compliance with use-specific policies and regulations. The subject property is not located in a proposed aquacultural district. The project location on hatchery grounds is normally off-limits to the general public; there would be no impact to public shoreline access. All proposed construction would be below existing grade; there would be no changes to views from upland areas. The habitat enhancement project would not change the existing site character. As proposed, construction would occur when Troller Creek is dry. Implementation of erosion control measures would prevent sediments from entering the creek and the Skookumchuck River. A hydraulic project approval (HPA) has already been approved, and the proposal has obtained notice of coverage under a nationwide permit from the US Army Corps of Engineers. *Exhibit I, Attachment D; Gourley Testimony.*
- 9. Consistent with the State Environmental Policy Act (SEPA), WDFW assumed lead agency status for review of the proposal's environmental impacts. Upon completion of review, WDFW issued a determination of non-significance (DNS) on June 2, 2014, which was not appealed and became final. *Exhibit I, Attachment H; Gourley Testimony.*
- 10. The proposal was reviewed by the Thurston County Public Health and Social Services Department for public health impacts. No issues of public health concern were identified and the County Health Department recommended approval. Similarly, Thurston County Public Works reviewed the proposal for compliance with County roads and drainage standards and recommended approval. *Exhibit I, Attachments i and j.*

11. Notice of the public hearing was sent to all property owners within 500 feet of the site and published in The Olympian on January 2, 2015. Notice of hearing was posted on-site on January 9, 2015. *Exhibit 1, Attachment a; Exhibit 2; Smith Testimony.*

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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 173-27, 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 Shoreline Master Program for the Thurston Region (SMPTR) designates the shoreline jurisdiction on the subject property as Conservancy shoreline environment. Fish hatcheries are addressed in the SMPTR Aquacultural Activities chapter, Section Three Chapter II, and are allowed subject to standards contained in the specific regulations of the chapter and a permit review process.

SMPTR Section Three, Chapter II, Part B. Policies

1. The Region should strengthen and diversify the local economy by encouraging aquacultural uses.
2. Aquacultural use of areas with high aquacultural potential should be encouraged.
3. Flexibility to experiment with new aquaculture techniques should be allowed.
4. Aquacultural enterprises should be operated in a manner that allows navigational access of shoreline owners and commercial traffic.
5. Aquacultural development should consider and minimize the detrimental impact it might have on views from upland property.
6. Proposed surface installations should be reviewed for conflicts with other uses in areas that are utilized for moorage, recreational boating, sport fishing, commercial fishing or commercial navigation. Such surface installations should incorporate features to reduce

use conflicts. Unlimited recreational boating should not be construed as normal public use.

7. Areas with high potential for aquacultural activities should be protected from degradation by other types of uses which may locate on the adjacent upland.
8. Proposed aquacultural activities should be reviewed for impacts on the existing plants, animals and physical characteristics of the shorelines.
9. Proposed uses located adjacent to existing aquaculture areas which are found to be incompatible should not be allowed.

SMPTR Section Three, Chapter II, Part C. General Regulations

1. Aquaculture development shall not cause extensive erosion or accretion along adjacent shorelines.
2. Aquacultural structures and activities that are not shoreline dependent (e.g., warehouses for storage of products, parking lots) shall be located to minimize the detrimental impact to the shoreline.
3. Proposed aquaculture processing plants shall provide adequate buffers to screen operations from adjacent residential uses.
4. Proposed residential and other developments in the vicinity of aquaculture operations shall install drainage and waste water treatment facilities to prevent any adverse water quality impacts to aquaculture operations.
5. Land clearing in the vicinity of aquaculture operations shall not result in offsite erosion, siltation or other reductions in water quality.
6. For nonaquacultural development or uses proposed within or adjacent to an Aquacultural District, or which may be adversely affected by the aquaculture operation, restrictive covenants shall be filed which will inform prospective buyers of the proximity of the Aquacultural District.
7. This regulation pertains to establishing an Aquacultural District.

SMPTR Section Two, Chapter V. REGIONAL CRITERIA

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.

Conclusions Based on Findings

1. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. Replacing a culvert that acts as a barrier to fish passage is a reasonable and appropriate use within the Conservancy Shoreline Environment. The proposed culvert would enhance salmonid habitat. Installed at or below grade, it would not adversely affect views of or from the site. The project was reviewed by the County's Health Department and no impacts to public health were identified. Conditions would ensure that the project is developed with minimal impact to the shoreline and surrounding properties. *Findings 1, 2, 3, 5, and 6.*

2. As conditioned, the replacement culvert would comply with applicable regulations in the Washington Administrative Code. No new above-grade improvements 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 1, 3, and 6.*
3. The proposal is consistent with the applicable policies and regulations of the Shoreline Master Program for the Thurston Region, the Thurston County Comprehensive Plan, and the Thurston County critical areas ordinance. The project was designed to remediate historic damage to salmonid habitat inadvertently resulting from road construction; it is intended to restore fish passage in Troller Creek to facilitate effective hatchery operations. Construction would be performed in the dry. There are no publicly accessible shorelines on-site and the proposal would not impact public access. No industrial activity is proposed. There would be no impact to navigation. Approximately 2,500 square feet of native plantings would be installed at either end of the new culvert to mitigate impacts to and enhance riparian habitat. 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. *Findings 1, 2, 5, 6, 8, and 9.*

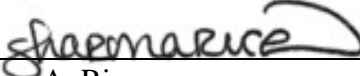
DECISION

Based upon the preceding findings and conclusions, the requested shoreline substantial development permit to allow removal and replacement of an existing culvert in Troller Creek with a larger fish-passable culvert within a Conservancy Shoreline Environment for the purpose of removing an existing barrier to fish passage and enhance salmonid habitat is **GRANTED** subject to the following conditions:

1. 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).
2. Prior to or in conjunction with the issuance of any building permits, all applicable regulations and requirements of the Thurston County Public Health and Social Services department, Public Works Department, Fire Marshall, and Thurston County Resource Stewardship Department shall be met.
3. The Applicant must have a spill control kit on site at all times.
4. All on-site construction activities shall fully comply with noise limitations outlined in WAC 173-60.
5. All activities shall fully comply with the Thurston County Stormwater Drainage Design and Erosion Control Manual (TCC 15.05) throughout all phases of the proposed project.

6. 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.
7. Erosion control measures must be in place prior to any clearing, excavation, grading or construction and must be approved by the Resource Stewardship Department. These measures must be effective to prevent soil from being carried into surface water by stormwater runoff. Sand, silt, and soil will damage aquatic habitat and are considered pollutants
8. All removed debris and waste materials resulting from this project must be disposed of at an approved site. Property owners, developers, and contractors are encouraged to recycle all possible left over construction, demolition, and land clearing (CDL) materials and reduce waste generated. Please visit <http://1800recycle.wa.gov> to find facilities that recycle construction, demolition, and land clearing materials in your area.
9. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, the Washington State Department of Ecology must be notified (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300).

Decided February 3, 2015 by



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR APPEAL TO BOARD
AFTER HEARING EXAMINER RECONSIDERATION

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 after reconsideration, you may file an appeal. The appeal process is described in A below. Unless appealed, decisions of the Hearing Examiner after reconsideration become final on the 11th day after the date of the reconsideration decision. **The Board of Thurston County Commissioners renders decisions within 60 days following a notice of appeal unless the Board, the applicant, and the appellant mutually agree to a longer period.

An appeal of a SEPA decision must be filed in Superior Court pursuant to the Land Use Petition Act, RCW Chapter 36.70C. An appeal of a decision relating to SEPA shall be done in accordance with RCW 43.21C.075 and TCC 17.09.160 (T).

A. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS

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 **ten (10) days** of the date of the Hearing Examiner's decision on a reconsideration request.
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.

B. STANDING All appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the appeal should be granted.

C. FILING FEES AND DEADLINE If you wish to appeal this determination, please do so in writing on the back of this form accompanied by a non-refundable fee of **\$866.00**. Any 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 above. **Postmarks are not acceptable.** If your application fee as well as completed application form is not filed by this time, you will be unable to appeal this determination. This deadline may not be extended.

** *Shoreline Permit decisions are not final until a 30-day appeal period to the state has elapsed following the date the County decision becomes final.*



Project No. _____ Appeal Sequence No. _____
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APPEAL OF HEARING EXAMINER DECISION AFTER RECONSIDERATION

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 _____, 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.

 APPELLANT NAME PRINTED

 SIGNATURE OF APPELLANT

Address _____

 Phone _____

Please do not write below - for Staff Use Only:

Fee of \$846.00 Received: Initial _____ Receipt No. _____ Filed with the Resource Stewardship Department this _____ day of
 _____, 20____.