



COUNTY COMMISSIONERS

Cathy Wolfe  
 District One  
 Sandra Romero  
 District Two  
 Bud Blake  
 District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
 FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. 2015100513
	)	
<b>Thurston County</b>	)	
<b>Public Works Department</b>	)	<b>Raccoon Valley Road Drainage SSDP</b>
	)	
For Approval of a	)	
Shoreline Substantial Development Permit	)	FINDINGS, CONCLUSIONS, AND DECISION
	)	
	)	

**SUMMARY OF DECISION**

The requested shoreline substantial development permit to capture stormwater runoff from the existing Raccoon Valley Road cul-de-sac, install an Ecology approved treatment device, and deliver the treated runoff to an energy dissipater outfall in the Rural shoreline environment adjacent to Lake St. Clair 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 capture stormwater runoff from the existing Raccoon Valley Road cul-de-sac, installing an Ecology approved treatment device, and delivering the runoff to an energy dissipater outfall at the lake within a Rural shoreline environment adjacent to Lake St. Clair.

**Hearing Date:**

The Thurston County Hearing Examiner held an open record hearing on the request on September 8, 2015.

**Testimony:**

At the hearing the following individuals presented testimony under oath:

- Tony Kantas, Associate Planner, Resource Stewardship Department
- Brad Sangston, Environmental Health Division
- Steve Johnson, Thurston County Public Works, Applicant Representative

Roger Giebelhaus, Thurston County Public Works, Applicant Representative  
Wesley Goss

**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      Vicinity Map
  - Attachment C      Master Application, received January 22, 2015
  - Attachment D      JARPA Permit Application, received January 22, 2015
  - Attachment E      Site Plan (4 Pages)
  - Attachment F      Notice of Application, dated April 7, 2015
  - Attachment G      Determination of Non-Significance, dated August 11, 2015
  - Attachment H      March 5, 2015 Comment Memorandum from Kevin Chambers, Public Works Department
  - Attachment I      July 16, 2015 Comment Memorandum from Thurston County Health Department
  - Attachment J      February 19, 2015 Comment Letter from the Washington State Department of Ecology
  - Attachment K      April 15, 2015 Comment Letter from the Nisqually Tribe
  - Attachment L      June 30, 2015 Comment Email from Nisqually Tribe
  - Attachment M      Public Comment Letters in Response to Notice of Application (8 Comment Letters and Emails)
  - Attachment N      Cultural Resources Assessment, dated June 22, 2015
- Exhibit 2      Color copy of photos of the site, taken by County Staff
- Exhibit 3      Comments from Wesley and Marie Goss, September 1, 2015

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 capture stormwater runoff from the existing Raccoon Valley Road cul-de-sac, treat it with a Department of Ecology-approved treatment device, and deliver the runoff to an energy dissipater outfall adjacent to Lake St. Clair. The underlying property is 2.68 acres located at 5124 Raccoon Valley Road SE developed with a single-family residence and appurtenances.<sup>1</sup> Surrounding shoreline parcels also contain single-family residential uses. *Exhibits 1 and 2; Exhibit 1, Attachments C, D, and E.*
2. Raccoon Valley Road is a public County right-of-way. The existing catch basin at the end of the cul-de-sac is insufficient to handle stormwater volumes generated during high rain events by the approximately 1.1 acres that drain to the cul-de-sac, resulting in frequent flooding, erosion of a driveway on an adjacent residential parcel, flooding the garage on the subject parcel, and release of untreated overflow runoff into Lake St. Clair. *Exhibits 1 and 3; Kantas Testimony; Johnson Testimony; Goss Testimony.*
3. The proposal would pipe stormwater through 12-inch pipe underground from the catchbasin in the cul-de-sac for approximately 230 feet to Lake St. Clair, with three intermediate catchbasins between sections of pipe. The pipe and catchbasins would be buried three to five feet below the surface with Ecology blocks positioned to keep the pipe in place and prevent crushing. The stormwater would be directed through Department of Ecology-approved filtration/treatment systems before discharging 12 feet above the maximum recoded elevation of the lake onto sod with a turf reinforcement mat on top. A trash rack is proposed at the open end of the pipe to exclude animals. No in-water work is proposed. The location for the proposed improvements was based on topography and on the location of the lake in relation to the cul-de-sac, as well as to minimize impacts to surrounding parcels. The proposed utility facility would be regularly maintained by Public Works. *Exhibits 1 and 1.E; Johnson Testimony.*
4. The project would not increase the area tributary to the cul-de-sac and would result in no increase to the volume of stormwater runoff directed into the lake. By capturing and treating runoff that currently drains untreated into the lake, the proposal would improve lake water quality.<sup>2</sup> *Exhibit 1; Johnson Testimony.*
5. The property subject to the application is located in rural Thurston County and has a McAllister Geologically Sensitive Area One Dwelling Unit Per Five Acres (MGSA)

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<sup>1</sup> The legal description of the subject property is a portion of Section 31, Township 18 North, Range 1 East, W.M.; also known as Tax Parcel Number 21831310400. *Exhibit 1.*

<sup>2</sup> Statements and implications in the unsigned letter at Attachment M indicating that the proposal would increase runoff volumes to the lake are in error. There is no available information about the source of this unsigned comment letter, which apparently disseminated misinformation to surrounding property owners.

zoning designation. Resource Stewardship Staff indicated that all existing improvements on the subject property are in compliance with MGSA development standards. *Exhibit 1.*

6. Land within 200 feet of the Lake St. Clair ordinary high water mark is subject to the jurisdiction of the Washington Shoreline Management Act as implemented through the Shoreline Master Program for the Thurston Region (SMPTR).<sup>3</sup> Shorelands on the subject property are designated as Rural shoreline environment. The SMPTR classifies stormwater conveyance and treatment as “Utilities” uses, which are allowed in the Rural shoreline environment subject to specific regulations of the chapter and a permit review process. With an anticipated cost of \$100,000 or more, the proposal requires a shoreline substantial development permit (SSDP). *Exhibits 1 and 1.D.*
7. Review of an SSDP involves consideration of whether the proposal complies with the applicable goals, policies, and regulations of the SMPTR, which in the instant case includes the Utilities chapter. The following information from the proposal addresses applicable utilities policies. Because the proposed stormwater infrastructure would be installed underground, the project would not obstruct any scenic views. Trenching for the installation of the pipeline would follow the natural contour of the property. Disturbed areas would be required to be revegetated once construction is complete. Implementation of erosion control techniques during construction would prevent sediments from reaching Lake St. Clair. All construction would occur within the Raccoon Valley Road right-of-way or a utility easement through private property. No in-water or over-water work is proposed. This proposal is not considered a major transmission facility and does not include a sewage outfall. *Exhibits 1, 1.D, and 1.E.*
8. The following information from the proposal addresses applicable general regulations of the SMPTR. The location of the proposed utility project was selected based on the existing tributary and topography conditions; it is considered the best location to prevent future flooding of the area and to treat the stormwater that is already sheetflowing into Lake St. Clair. The proposal represents the minimum development of the shoreline necessary to prevent future flooding of private properties and discharge of untreated stormwater into Lake St. Clair. No wetlands would be affected. Erosion control techniques would prevent sediments from reaching Lake St. Clair, including revegetation of all disturbed areas after construction. Because the improvements are primarily underground with an outfall on private property, the project would not result in aesthetic impact to the surrounding properties. By providing treatment for existing untreated stormwater entering the lake, the project would improve water quality. Best management practices implemented in design, construction, and maintenance would prevent damage to adjacent properties or the environment. The project is not a hydroelectric facility and is not located on the Nisqually River. *Exhibits 1, 1.D, and 1.E.*

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<sup>3</sup> The JARPA indicates in several places that wetlands may be affected. In testimony, it was clarified that there are no water bodies aside from Lake St. Clair itself that would be affected; it is possible that Lake St. Clair was at some point characterized as a wetland. *Johnson Testimony.*

9. In response to applicable SMPTR regional criteria, the application materials contain the following information. Because the shoreline on the subject parcel is comprised solely of private property, it is not feasible to include public access as part of the project. The proposal does not constitute an industrial activity as defined by the SMPTR. The utility project would not impact any aesthetic, scenic, or historic qualities of Lake St. Clair and would improve the ecology of the shoreline. *Exhibits 1, 1.D, and 1.E.*
10. The application was reviewed by the Development Review Section of the Thurston County Public Works Department. Reviewing Staff noted that a Department of Ecology Construction Stormwater General permit may be required for the project and that it is the Applicant's responsibility to comply with state water quality requirements. *Exhibit 1.H.*
11. The Environmental Health Division of the Thurston County Public Health and Social Services Department reviewed the application for compliance with sanitary code requirements. In the comments submitted in the record, EHD Staff noted that the proposed stormwater conveyance facility would be placed very near the on-site septic system serving the subject property. EHD Staff recommended that permit approval be conditioned to require that the Applicant and/or agents not use either the primary or reserve drainfield areas as a staging area for materials and that care must be taken not to damage the on-site components or reserve area during construction. Staff also noted that the pressure sewer transport line and water line may be encountered during construction and would be required to be repaired if damaged. Staff also noted that no stockpiling of materials on neighboring parcels should be allowed to cover any on-site sewage system serving residences on those properties and that a spill control kit must be kept on-site during construction. *Exhibit 1.I; Sangston Testimony.*
12. The location of the proposed utility line has changed since the date of the EHD comments at Attachment I and the project is no longer expected to encounter and potentially damage the pressure sewer transport and water lines. *Sangston Testimony; Johnson Testimony.*
13. The Washington State Department of Ecology (DOE) submitted a comment letter identifying state requirements for toxics clean up and protection of water resources. DOE did not request conditions or oppose approval. *Exhibit 1.J.*
14. The Nisqually Indian Tribe submitted comments requesting a Cultural Resource Survey to be completed by a qualified archaeologist. The Applicant submitted a professionally prepared cultural resources assessment for the subject property. The Nisqually Tribe representative reviewed and accepted the assessment and indicated that the Tribe had no further concerns. *Exhibits 1.K, 1.L, and 1.N.*
15. Consistent with the State Environmental Policy Act (SEPA), Thurston County Public Works Department assumed lead agency status for review of the proposal's environmental impacts. Upon completion of review, the Responsible Official issued a determination of non-significance (DNS) on August 11, 2015, which was not appealed and became final on September 1, 2015. *Exhibit 1, Attachment G; Kantas Testimony.*

16. Notice of the public hearing was sent to all property owners within 500 feet of the site and was published in The Olympian on August 28, 2015. Notice of hearing was posted on-site the same day. *Exhibits 1 and 1.A; Kantas Testimony.*
17. In response to public notice, the County received eight public comments expressing concerns. The comments primarily focused on existing high water levels in Lake St. Clair and the public's concern that the proposal would increase stormwater discharge into the lake, thereby increasing lake levels and impacting waterfront property owners. Concerns also included impacts to water quality in the lake as a result of leaks from construction equipment or from the increased runoff from pollution generating surfaces. Several comments requested that the County address high lake levels that are resulting in property damage. *Exhibit 1.M.*
18. The owners of one affected parcel that has regularly experienced stormwater runoff eroding or blocking access to their driveway during high rain events submitted comments and testimony at hearing. These property owners concurred that the project would be addressing existing runoff already discharging to the lake across their driveway and urged approval of the project both to protect their interests and also to improve the lake's water quality by providing treatment to runoff discharging into the lake. *Exhibit 3; Goss Testimony.*
19. In response to the concerns expressed in public comment, County Public Works Staff reiterated that the project was designed to capture and treat stormwater runoff that already enters Lake St. Clair. No runoff from other impervious surfaces would be directed into the catchbasin at the end of the Raccoon Valley Road cul-de-sac as a result of the proposal. The proposed facilities have been slightly oversized in order to make sure they capture runoff from large rain events. The instant project would have no effect on the water level of the lake. *Giebelhaus Testimony; Johnson Testimony.*

## 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 designates the shoreline jurisdiction on the subject property as Rural. Public stormwater management projects such as the subject proposal are covered in the “Utilities” chapter, Section Three, Chapter XIV, and are allowed subject to standards contained in the specific regulations of the chapter and a permit review

process.

SMPTR Section Three, Chapter XIV, Part B. Policies

1. Wherever utilities must be placed in a shoreline area, the locations should be chosen so as not to obstruct or destroy scenic views. Utilities should be placed underground, or designed to do minimal damage to the aesthetic qualities of the shoreline area.
2. Where construction connected with utility placement occurs on shorelines, banks should be restored to their pre-project configuration, replanted with native species and maintained until the new vegetation is established.
3. Sewage treatment, water reclamation, desalinization and power plants should be designed and located so as not to interfere with, and to be compatible with recreational, residential or other public uses of the water and shorelands.
4. Sewage outfalls to waterbodies should be avoided in preference to recycling or land disposal of sewage wastes. Where no alternative to outfalls into water exist, location of such outfalls should be part of the appropriate regional plan for solutions to sewage management problems.
5. Utility rights-of-way should be used for public access to and along waterbodies where feasible.
6. If utilities must be located over the water, they should be placed on bridge-like structures rather than fill, and said structures should provide clearance for all marine vessels normally using the area.
7. New major transmission facilities should follow existing utility corridors unless prohibited by the environmental designation and regulations.

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

1. Applicants for permits to locate utility lines in the shoreline jurisdictional area shall submit a location plan with their application which shows existing utility routes in the vicinity of the proposed utility line. The proposed utility lines shall follow existing utility, natural drainage or transportation routes where feasible.
2. All utility facilities shall be located on lots or routes no larger than necessary.
3. The approved projects shall identify a method of reclamation which provides for revegetation and protection of wetland areas from erosion. As a minimum, this shall include the restoration of the affected area to pre-development elevation, replanted with native or pre-existing species and provisions for maintenance care for the newly planted or seeded vegetation until it is established.



4. Utility services accessory to individual projects shall be regulated by the specific use regulations for the activity in addition to the standards of this section and shall not require separate Substantial Development Permits for utility service installations.
5. Where feasible, utilities shall be placed underground unless such undergrounding would be economically or technically prohibitive or significantly detrimental to the environment.
6. Utility facilities shall be designed for minimal environmental and aesthetic impact and shall be coordinated with local comprehensive plans.
7. Underwater utilities shall be located at a depth sufficient to prevent interference between the utility and other shoreline use activities.
8. All utility facilities must provide safeguards to ensure that no long-term damage will be caused to the adjacent or downstream environment should an accident occur involving the utility.
9. No discharge of waste material which could result in decertification of aquacultural areas or products or cause lowering of water quality ratings is permitted.
10. No new hydroelectric generating facilities are allowed on the Nisqually River pursuant to the recommendations of the Nisqually River Management Plan.

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. Providing treatment for runoff entering waters of the state is a reasonable and appropriate use within the Rural shoreline environment. Minimal above-grade improvements are proposed, consisting only of the grated outfall that would discharge onto sod with a turf reinforcement mat. No adverse effects to views of or from the site are anticipated. The project was reviewed by the County's Health Department; any potential impacts to public health would be adequately addressed through application of the recommended conditions of approval. Other conditions would ensure that the project is developed with minimal impact to the shoreline and surrounding properties. *Findings 1, 2, 3, 4, 6, 7, 8, 9, and 11.*
2. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. No above-grade structures are proposed, and all improvements would be at grade or underground. 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 proposed capture, treatment, and release of stormwater runoff currently entering Lake St. Clair untreated would reduce property damage and improve water quality and shoreline ecology at the discharge site. Discharge would be onto sod protected by a turf reinforcement mat. All improvements would be at or below grade level, resulting in no impacts to views of or from the shoreline. Public access to the shoreline on the private subject property is not appropriate. There would be

no change in use and no alteration to the character of the shoreline area. No additional impervious surfaces would drain to the Raccoon Valley Road cul-de-sac as a result of the proposal, meaning no more stormwater would drain to the lake after construction than occurs in the pre-project condition. Erosion control measures would be implemented prior to construction commencement to protect the lake from sediment-laden runoff. No industrial activities are proposed. The County Health Department reviewed the proposal and recommended approval subject to conditions which have been incorporated. A SEPA determination of non-significance was issued and not appealed. The record demonstrates compliance with all applicable policies and regulations of the SMPTR. *Findings 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 15, 17, 18, and 19.*

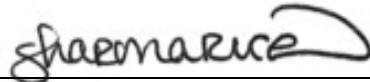
### DECISION

Based upon the preceding findings and conclusions, the requested shoreline substantial development permit to capture stormwater runoff from the existing Raccoon Valley Road cul-de-sac, install an Ecology approved treatment device, and deliver the treated runoff to an energy dissipater outfall within a Rural shoreline environment adjacent to Lake St. Clair is **GRANTED** subject to the following conditions:

1. 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.
2. All on-site construction activities shall fully comply with noise limitations outlined in WAC 173-60.
3. 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.
4. 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.
5. 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.
6. 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).

7. Due to close proximity to the on-site sewage system on the property, care must be taken not to damage the on-site components or reserve area during construction. The primary and reserve area shall not be used as a staging area of materials. Any damage to the pressure sewer transport line and water line during construction must be repaired.
8. Care must be taken to ensure that stockpile of materials on neighboring properties do not cover any on-site sewage system serving residences on those properties.
9. The Applicant must have a spill control kit on site at all times as indicated on the Environmental Checklist.
10. 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 September 22, 2015 by



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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 **\$651.00** for a Request for Reconsideration or **\$866.00** 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.



<b>Project No.</b> _____ <b>Appeal Sequence No.:</b> _____
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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  \$652.00 for Reconsideration or \$870.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_

Filed with the Resource Stewardship Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.