

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2015102454, Shoreline Substantial Development (SSDP) and Conditional Use Permit (CUP)

LOCATIONS: 2705 and 2713 Hidden Cove Lane N.W., Olympia, WA 98502

TAX PARCEL NOS.: 360100006801 and 360100006802

APPLICANTS: Toy Kay
426 Lilly Road N.E. #316
Olympia, WA 98502

Mark and Barbara Furman
2713 Hidden Cove Lane N.W.
Olympia, WA 98502

REPRESENTATIVE: William E. Halbert
Insight Geologic, Inc.
1015-4th Avenue East
Olympia, WA 98506

PLANNER: Scott McCormick, MES, Associate Planner

SUMMARY OF REQUEST:

Approval of a Shoreline Substantial Development and Shoreline Conditional Use Permit to allow a marine bluff stabilization project adjacent to two single-family residences located at 2705 and 2713 Hidden Cove Lane N.W., Olympia.

SUMMARY OF DECISION: Request granted, subject to conditions.

DATE OF DECISION: December 17, 2015

PUBLIC HEARING:

After reviewing the Planning and Land Services Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the

request as follows:

The hearing was opened on December 7, 2015, at 10:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1"** - Department of Planning and Land Services Staff Report with Attachments
- EXHIBIT "2"** - Photographs taken November 25, 2015
- EXHIBIT "3"** - Cross Section, Site Map

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

SCOTT McCORMICK appeared, presented the Environmental Review Section Staff Report, and testified that the site is located in a one dwelling unit per five acre zone classification of the zoning code. The lots contain .45 acres each and are therefore legally nonconforming as to size. Both lots are improved with a single-family residential dwelling and an attached garage. A previous owner constructed one of the homes in 1941 and the other home was remodeled in 2010. The parcels are on the west shoreline of Cooper Point. In 2014 the west hillside slope failed between the two homes and the slide went down toward Puget Sound. The applicants request the permits to allow removal of the failed soil and to reestablish and support the slope. The project will require removal of about 1,000 cubic yards of material. According to the plan, they will install new vegetation on the slope. They will also install an engineered drainage system that will convey stormwater runoff to the shoreline. All departments recommend approval.

MARK FURMAN, applicant, appeared and testified that he had reviewed the 16 conditions of approval and will comply with all. He had no questions regarding staff's testimony or the Staff Report.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:20 a.m.

NOTE: A complete record of this hearing is available in the office of the Thurston County Resource Stewardship Department.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. A threshold Mitigated Determination of Nonsignificance (MDNS) was issued for the project on September 24, 2015, following review pursuant to the State Environmental Policy Act (SEPA). The MDNS became final on October 22, 2015, as no appeals were filed.
3. Written notice of the public hearing was sent to all property owners within 500 feet of the site on November 23, 2015, and notice was published in the official County newspaper, The Olympian, on November 27, 2015, at least ten (10) days prior to the hearing. Notice was posted on-site on November 27, 2015.
4. Toy Kay (trustee) has a possessory ownership interest in a rectangular, .45 acre parcel of waterfront property located at 2705 Hidden Cove Lane, Olympia, on the west side of Cooper Point in unincorporated Thurston County. Mark and Barbara Furman have a possessory ownership interest in a .45 acre parcel of waterfront property located at 2713 Hidden Cove Lane on the west side of Cooper Point in unincorporated Thurston County. Both parcels extend from the ordinary high watermark of Eld Inlet to the west side of Hidden Cove Lane and have a common property line.
5. Both lots are improved with a single-family residential home and attached garage and are located atop an approximately 25 foot high, west facing bluff descending to the shoreline. The slope of the bluff measures approximately 60 percent
6. In 2014 a slope failure occurred between the two homes near the top of the steep slope. According to the applicants' Geotechnical Subsurface Investigation (Exhibit 1K) the failure occurred after a drainage ditch on an adjacent parcel became blocked. The blockage redirected stormwater runoff from Hidden Cove Lane onto the applicants' lots and the bluff face. The excess stormwater apparently caused a shallow soil failure. Subsequent to the failure, the top of the slope measures approximately ten feet from the footing of the single-family home on the Kay property.
7. The property owners request a shoreline substantial development permit and a shoreline conditional use permit to allow a bluff stabilization project that will consist of removal of the failed soil and installation of appropriate soil supported by geogrid fabric. The project also includes the installation of a three inch, solid, PVC pipe that will discharge stormwater to the beach below the bulkhead at a tee defuser. Such

will prevent stormwater runoff from flowing over the top of the slope.

8. The applicants' parcels are located within the Rural Residential Resource-One Dwelling per Five Acres (RRR 1/5) zone classification. Their lots have supported single-family residential homes for many years. A previous owner of the Kay parcel constructed the existing home in 1941. An older, smaller home existed on the Furmans' parcel until its remodeling in 2010. Both lots are within the Rural Shoreline Environment of the Shoreline Master Program for the Thurston Region (SMPTR). Said environment authorizes single-family residential development. The bluff stabilization project will require grading of approximately 1,000 cubic yards. Such amount exceeds the 250 cubic yard maximum limit for an exemption from the substantial development permit requirement. Furthermore, the project is not a normal appurtenance to a single-family residence, has a fair market value of more than \$6,416.00, and for that reason requires a substantial development permit. Finally, the SMPTR does not list a bluff stabilization project as a use, and the project is therefore an unclassified use. Section 173-27-030(4) of the Washington Administrative Code (WAC) provides that unclassified uses may be approved subject to acquisition of a conditional use permit. The applicants have therefore properly requested both a substantial development permit and conditional use permit.
9. Section 24.15.150 of the Thurston County Code (TCC), a portion of the Critical Areas Ordinance, addresses slope stabilization of geologic hazard areas. Said section authorizes stabilization of a steep slope marine bluff where necessary to protect lawfully established, existing structures threatened by unstable or failing slopes when such structures cannot be relocated to an area less impacted by a geologic hazard area or other critical area. Due to the location of both houses within close proximity of the slope failure and the inability to relocate the structures, the applicants satisfy the criteria for slope stabilization. Furthermore, the proposed method of restoration that includes engineered drainage, engineered soils, geogrid fabric, and native plantings constitutes a combination of bioengineering and hard armoring (a semi-structural approach). The project does not contemplate use of either toxic materials or retaining walls. However, the project requires a significant amount of excavation and filling with different soils, and therefore triggers the need for the shoreline permits.
10. The project satisfies applicable policies of the Landfilling Element of the SMPTR. The project will not significantly damage existing ecological values or natural resources, and since it will occur upland, it will not affect local currents. The building permit process will assure that the applicants will install and maintain suitable safeguards for erosion control. Conditions of approval require soil disturbing work during periods of dry weather, and the engineered storm drainage system will satisfy County and State standards. Conditions require that soil and rock materials brought to the site not contain contaminants and pollutants. Policy 4 of the Landfilling Element provides priority for landfills protecting water dependent

uses. The landfill proposes to protect two single-family residential homes that are not water dependent uses. However, the landfill will prevent the homes from eventually sliding onto the shoreline. Furthermore, said policy does not prohibit landfills that protect non-water dependent uses. The design of the project shows that it will not impact either water or beach. Conditions of approval will ensure no reduction of water quality or destruction of habitat along the beach.

11. The project satisfies the General Regulations for Landfilling set forth in the SMPTR. Some of said criteria are not applicable, and some mirror the criteria previously addressed in the Landfilling Policies. The applicants propose no solid waste for the landfill, and as previously found, will import clean, earth materials. Sufficient earth material coverage will ensure the success of the replanting. The applicants have designed the project to minimize erosion and sedimentation, and conditions require replanting the slope with native vegetation. No fill will be placed within a stream or within a 100 year flood plain and no beach feeding will occur. The plan shows no fill placed within surface waters, and the project maintains required distances from septic drainfields. Landfilling is permitted within the RRR1/5 classification and the Rural Shoreline Environment.
12. The project satisfies the review criteria for a substantial development permit set forth in WAC 173-27-150. As previously found, the project is consistent with the policies and procedures of the SMPTR and also complies with the provisions of the WAC. The project is likewise consistent with the policies and procedures of the State Shoreline Management Act (SMA) that authorize alterations of the shoreline for residential development. Finally, conditions of approval hereinafter assure consistency of the project with the SMA and the SMPTR.
13. Prior to obtaining a conditional use permit the applicants must show that the request satisfies the criteria set forth in WAC 173-27-160. Findings on each criteria are hereby made as follows:
 - A. As previously found the proposed use is consistent with the policies of the SMA and the SMPTR.
 - B. The proposed use will not interfere with normal public use of public shorelines. No portion of the project will occur on the beach, and restabilization of the bank will ensure that soils and debris do not impact the beach.
 - C. The proposed landfill and design of the project is compatible with single-family uses in the area and with uses planned for the area pursuant to the Comprehensive Plan and the SMPTR. Both contemplate residential development.
 - D. The landfill will cause no significant adverse impacts to the Rural Shoreline

Environment. Erosion along the bank and on the parcels in particular should decrease as a result of the project.

- E. The public interest will suffer no substantial detrimental effect.
- F. Subsection 2 requires consideration of the cumulative impacts of additional requests for like actions in the area. Should additional slides occur along the bank that threaten existing homes, a soil remediation project such as the present proposal will have no adverse impacts on the area, will not cause the shoreline to become inconsistent with policies of the SMA, and will not produce substantial adverse effects to the shoreline environment.

CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the request for a shoreline substantial development permit and shoreline conditional use permit satisfies all criteria set forth in the SMPTR and WAC, and therefore should be approved subject to the following conditions:
 1. 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 storm water management system shall conform to the current Thurston County Drainage Design & Erosion Control Manual and Title 15.05 Thurston County Code.
 2. No equipment shall be driven over onsite septic system components or water lines without approval by Thurston County Environmental Health.
 3. A minimum of four inches of organic, weed-free compost shall be installed to support new native plantings, control weeds and retain soil moisture.
 4. The recommendations contained in the project Subsurface Investigation Report by Insight Geologic, Inc. dated March 20, 2015 (Attachment k) as updated by engineered plans (Attachments f and g) shall be implemented as drawn and described in these plans, unless otherwise approved by Thurston County.
 5. A Washington State licensed Engineering Geologist or Civil Engineer shall be on site during site construction activities to ensure all work is done according to the approved plans and Subsurface Investigation Report (Attachments f, g and k).

6. The requested Shoreline Substantial Development Permit and Conditional Use Permit, once approved and conditioned herein shall satisfy the requirement for a Critical Area Review Permit per TCC, Title 24, Table 24.15-1 - Restricted Uses and Activities in Geologic Hazard Areas and Associated Buffers.
7. The submitted Irrevocable Assignment of Savings (Attachments i and j) shall be maintained until the plantings have survived for three years with a minimum plant survival rate of 85%.
8. The applicants shall provide annual reports of plant survival and replacement with the goal of achieving 85% minimum plant survival by year three. Annual reports shall be submitted to Thurston County Resource Stewardship by December 31st of each year and at the end of year 2018, the applicants may request a final inspection and to have the irrevocable assignment of savings released if at least 85% of the new plantings have survived.
9. Prior to construction a complete set of construction drawings and the final drainage and erosion control plan shall be submitted to Thurston County for review and acceptance.
10. Prior to construction, the applicant shall receive a Thurston County Public Works Grading & Construction Permit for the proposed slope remediation work and related earth disturbing activities.
11. All development shall be in substantial compliance with drawings and site plan submitted and made part of this staff report.
12. Proper erosion and sediment control practices shall be used on the construction site and adjacent areas to prevent upland sediments from entering the stream / wetland. 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.
13. During construction, exposed soils shall not be left unprotected from erosion for more than twenty-four (24) hours without covering exposed slopes with straw, Jute cloth, burlap mesh, plastic sheeting or other similarly effective erosion control that will prevent silt laden storm water from reaching Puget Sound surface waters.

14. 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.
15. Landfills shall consist of clean materials including such earth materials as clay, top soil, sand, gravel and rock.
16. 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.
17. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
18. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

The request for approval of a shoreline substantial development permit and shoreline conditional use permit to authorize a marine bluff stabilization project at 2705 and 2713 Hidden Cove Lane N.W., Olympia, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 17th day of December, 2015.



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 17th day of December, 2015, to the following:

APPLICANTS:

Toy Kay
426 Lilly Road N.E. #316
Olympia, WA 98502

Mark and Barbara Furman
2713 Hidden Cove Lane N.W.
Olympia, WA 98502

REPRESENTATIVE:

William E. Halbert
Insight Geologic, Inc.
1015-4th Avenue East
Olympia, WA 98506

OTHERS:

Jerry Locke
1811 Kempton Street S.E.
Olympia, WA 98501

THURSTON COUNTY

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.



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 \$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___.