

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2016101827, Beaver Creek Road Bridge

SEQUENCE NO.: 16-104783 XC

LOCATION: Point at which Beaver Creek Road S.W. crosses over Beaver Creek.

APPLICANT: Thurston County Public Works Department
Attn: Roger Giebelhaus
9605 Tilley Road S.W.
Olympia, WA 98512

REPRESENTATIVE: Thurston County Public Works Department
Attn: Matt Unzelman
9605 Tilley Road S.W.
Olympia, WA 98512

PLANNER: Robert Smith, Senior Planner

SUMMARY OF REQUEST:

Shoreline Substantial Development Permit to allow construction of a bridge to carry Beaver Creek Road S.W. over Beaver Creek. The bridge will consist of a 20 foot wide, 40 foot long, prefabricated metal structure and will replace a failing, eight foot diameter culvert. Beaver Creek is a water body within the jurisdiction of the Shoreline Master Program for the Thurston Region and is designated as a Conservancy Shoreline.

SUMMARY OF DECISION: Request granted, subject to conditions.

DATE OF DECISION: October 25, 2016

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 October 20, 2016, 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" - Resource Stewardship Department Staff Report**
- Attachment "a" - Notice of Public Hearing**
- Attachment "b" - Zoning/Site Map**
- Attachment "c" - Master Application**
- Attachment "d" - JARPA Permit Application**
- Attachment "e" - Site Plan/Bridge Layout**
- Attachment "f" - Notice of Application**
- Attachment "g" - Determination of NonSignificance**
- Attachment "h" - Email from Applicant Including Comments from U.S. FWS**
- Attachment "i" - Email from DFW**
- Attachment. "j" - Memorandum from PH SSD**
- Attachment "k" - Email from County Long Range Planning Manager**
- Attachment "l" - Emergency Shoreline Exemption Approval**
- Attachment "m" - Critical Area Review Permit Approval**
- Attachment "n" - DOE Letters**
- Attachment "o" - Letter from Nisqually Indian Tribe**
- Attachment "p" - Public Notice Photograph**
- Attachment "q" - Email from Mark and Carol Wilmes dated October 3, 2016**
- Attachment "r" - Email from Matt Unzelman to Robert Smith dated October 4, 2016**
- Attachment "s" - Draft Hydraulic Project Approval**

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.

ROBERT SMITH appeared, presented the Resource Stewardship Department Staff Report, and introduced Attachment (p), a photograph of the notice sign and Attachment (q), an email that had a question regarding the project. The question concerned access across the road during construction of the new bridge over the creek. The existing culvert that carries the creek under the road is now failing and Public Works previously installed a metal plate on top of the culvert. The new bridge will consist of prefabricated metal and will measure 20 feet by 40 feet. The road provides the only access to about 13 homes on the east side of the creek, and it is important to keep the road open. The County has already issued an Emergency Exemption from the regulations that will allow construction of the bridge, but such has not occurred as yet. The Shoreline Master Program addresses roads and bridges within the shoreline and the request satisfies all policies and standards.

Beaver Creek Road is a local road, not a major arterial. The bridge crosses the creek at a perpendicular angle and thus uses the shortest route. Conditions of approval pertain to protection of habitat. DFW recommended the conditions protecting the spotted frog.

DIANA PEEBLES, Environmental Health, appeared and testified that she had reviewed the project and supports its approval.

ROGER GIEBELHAUS, Public Works, appeared and testified that he agrees with the Staff Report and has no concerns with conditions of approval. He is aware of the necessity for a substantial development permit, but the bridge replacement is an emergency. The culvert is failing internally and he hoped to have the bridge in place by now. He replied to the email and advised that one lane will always remain open during construction. They need to acquire an HPA, which at this time has not been issued. However, he introduced a draft of the approved HPA as Attachment (s).

MATT UNZELMAN, Public Works, appeared and testified that the delay is because they advertised the project for bids as a Public Works contract. They received three bids, but under the Public Works contract, only registered contractors can submit bids. They rejected all the bids and will re-advertise the project as a vendor contract. This will take three weeks and then the Board must approve the contract. They will have missed the fish window for this year and now must wait until next year to do the construction. He is unsure when the culvert was installed, but believes it was in the 1940s or 1950s. The creek bank is 12 to 15 feet wide. The culvert was in constant contact with the water and the top has rusted out. The bottom had previously rusted out and was gone. They must now wait to do the construction until the next fish window.

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. The Thurston County responsible official issued a threshold Determination of NonSignificance (DNS) following review of the project pursuant to the State Environmental Policy Act (SEPA) on July 26, 2016 (Attachment j). The DNS was not appealed and is final.

3. Written notice of the public hearing was sent to all property owners within 500 feet of the site and notice was published in The Olympian on October 10, 2016 at least ten days prior to the hearing. The site was posted September 30, 2016.
4. The applicant, Thurston County Public Works Department, has responsibility for constructing and maintaining public roads in unincorporated areas of Thurston County. Beaver Creek Road S.W. is a local, public road that provides access for parcels located east of Interstate 5 and south of Maytown Road. Near its terminus, Beaver Creek Road crosses Beaver Creek in an east to west orientation. The road provides sole access for 13 parcels on the east side of the creek.
5. In the 1940s or 1950s the Public Works Department installed a culvert to carry Beaver Creek below Beaver Creek Road. The culvert consisted of a metal bottom and metal travel surface to accommodate vehicular traffic. During the winter of 2015/2016 the culvert began to collapse, and an inspection revealed that the culvert had completely rusted through. Public Works installed an emergency repair that consisted of placing metal plates over the culvert area that allowed residents to continue using the road. As a permanent solution the applicant proposes to install a 20 foot wide, 40 foot long, prefabricated metal bridge over Beaver Creek and to remove the remnants of the existing culvert. To do so the applicant needs to obtain a shoreline substantial development permit.
6. Beaver Creek is a water body within the jurisdiction of the Shoreline Master Program for the Thurston Region (SMP). The SMP designates Beaver Creek as a Conservancy Shoreline. Zoning of parcels in the area is limited to Rural Residential Resource One Dwelling Unit Per Five Acres (RRR 1/5). The road crossing of Beaver Creek is located within critical areas regulated by the Thurston County Critical Areas Ordinance set forth in Chapter 24 of the Thurston County Code (TCC). Critical areas include a 100-year floodplain, a Type S stream, and potential habitat for the Mazama pocket gopher and Oregon spotted frog. Since Beaver Creek is a fish bearing stream, the applicant must install the bridge during the fish window as determined by the State of Washington Department of Fish and Wildlife (DFW). Because of the emergency nature of the repair, Thurston County issued a shoreline exemption for the project that authorized construction of the bridge prior to obtaining a substantial development permit. However, even with the exemption the applicant cannot complete the construction prior to expiration of the fish construction window on October 31. Therefore, installation of the new bridge must wait until the fish window reopens in 2017.
7. The applicant has designed the bridge such that it will extend above the 100-year floodplain and therefore will not impede flood waters. A County biologist reviewed the bridge location and concluded that the area does not provide habitat for any prairie species to include the Mazama pocket gopher. DFW and the U.S. Fish and Wildlife Service both conclude that installation of the bridge will not impact potential Oregon spotted frog habitat, assuming that the applicant uses appropriate

construction methods. The applicant has addressed all critical area concerns.

8. The SMP authorizes bridges within a Conservancy Shoreline subject to acquisition of a substantial development permit. Applicable shoreline regulations for road and railroad design and construction are found in Section Three, Chapter XVII of the SMP. Many of such criteria are not applicable since Beaver Creek Road is an existing road and the bridge will replace an existing culvert. Furthermore, Beaver Creek Road is a local road and not a major highway, freeway, or railroad.
9. Construction techniques will assure compliance with all applicable SMP criteria as the project will include removal of the old culvert along with associated fill. Furthermore, the new bridge will be installed above the 100-year floodplain. Such will enable Beaver Creek to function more naturally and allow passage of its flood waters. The applicant must remove construction debris and waste materials from the site and will construct a ground level bridge that will not impact any scenic views. The 20 foot width will ensure that pedestrians and bicyclists can cross the bridge safely.
10. The project satisfies applicable criteria set forth in Section Three, Chapter XVII, Part C of the SMP, the general regulations for road and bridge construction. Again, the applicant will remove all construction debris and waste materials from the site and Beaver Creek Road is a local road. The applicant proposes no filling as part of bridge construction, but will remove existing fill supporting the culvert. Conditions of approval require utilization of erosion control best management practices. Beaver Creek Road is an existing public roadway that does not parallel the shoreline, but crosses Beaver Creek at a perpendicular angle. Finally, the applicant will utilize proper stormwater control practices.
11. Section Two, Chapter V of the SMP sets forth Regional Criteria, several of which apply to the project. The applicant has shown that the project complies with all such applicable Regional Criteria. While the road provides access to the creek, abutting parcels are privately owned, and therefore the public has no access thereto. The project cannot provide new or improved access to the creek. As previously found, the applicant must utilize erosion control construction techniques to prevent sediments from affecting Beaver Creek. The project does not include industrial activities. Criteria (G) discourages public development that would degrade shoreline qualities. As previously found, Beaver Creek Road has existed for many years, provides sole access to 13 properties, and the project will replace a failing culvert. Removal of a rusted culvert and supporting fill should enhance the quality of the shoreline. The Thurston County Public Health and Social Services Department has reviewed the matter for public health issues and has found none. The Health Department recommends approval.

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 satisfies all criteria set forth in the Shoreline Master Program for the Thurston Region as well as the Thurston County Critical Areas Ordinance and therefore should be approved subject to the following conditions:
 1. The project shall be installed as proposed and conditioned.
 2. Erosion and storm water control best management practices meeting Thurston County standards; Chapter 15.05 shall be employed during all phases of the project. Proper erosion and sediment control practices shall be used on the construction site and adjacent areas to prevent upland sediments from entering the shoreline environment. All areas disturbed or newly created by construction activities shall be seeded, vegetated, or given some other equivalent type of protection against erosion.
 3. The Applicant shall allow trained Oregon spotted frog technicians or biologists (Washington State Department of Fish and Wildlife, US Fish and Wildlife, or other) to survey the project area for the presence of the frog prior to, during, and immediately after dewatering.
 4. Pumps to be used for dewatering of the work site shall be fitted with fish screens. All efforts shall be made to minimize impacts to the aquatic environment and those organisms living in it.
 5. Dewatering of the stream shall occur after July 15 and before the return of heavy rains (typically in late October).
 6. If possible, only place the coffer dam (or other structure to impede water flow of creek water into the project footprint) at the upstream end of the project.
 7. Shocking, netting, use of a minnow trap or other physical, environmental, or chemical means of removing organisms from the stream is prohibited prior to dewatering.
 8. No construction equipment is allowed in the stream or on the immediate bank area. Equipment shall be positioned as far as

possible from the stream channel. Foot/personnel traffic in the stream channel shall be limited as much as possible.

9. Woody debris shall not be removed from the stream channel, unless it will cause issues for the bridge.
10. Adding coarse organic substrate (gravel coble) to the stream channel shall be avoided, if possible.
11. The use of herbicide and/or pesticide treatments in the stream or associated wetlands is prohibited.
12. After construction, disturbed upland soils shall be revegetated with native plant species. Conifers or other tall perennial plants shall not be used at this project site.
13. A final elevation certificate is required to be submitted when the bridge girder is set.
14. 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].
15. The applicant shall remove construction debris to an approved site (landfill or recycling center) outside of the shoreline area.
16. The Mazama pocket gopher and Oregon spotted frog are listed under the federal Endangered Species Act. It is the responsibility of the Applicant to be aware of any species listing under the federal Endangered Species Act and comply with applicable federal regulations. Approval of this and other County permits may be superseded by federal law. Endangered species cannot be harmed at any time, even after permit issuance. If any are found during construction, the applicant must contact the U. S. Fish and Wildlife Services.
17. All other applicable state and federal permits / exemptions must be obtained prior to the start of project work.
18. 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.

19. 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 a shoreline substantial development permit to allow replacement of a failing, eight foot diameter culvert across Beaver Creek with a 20 foot wide, 40 foot long, prefabricated metal bridge on Beaver Creek Road S.W. is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 25th day of October, 2016.



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 25th day of October, 2016, to the following:

APPLICANT: Thurston County Public Works Department
Attn: Roger Giebelhaus
9605 Tilley Road S.W.
Olympia, WA 98512

REPRESENTATIVE: Thurston County Public Works Department
Attn: Matt Unzelman
9605 Tilley Road S.W.
Olympia, WA 98512

OTHERS:

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 \$651.00 for Reconsideration or \$866.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Resource Stewardship Department this _____ day of _____, 20___.