



COUNTY COMMISSIONERS

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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2016103897
)	
Pacific Northwest Bulkhead)	Coor Bank Stabilization
)	
For approval of)	
Shoreline Substantial Development and)	FINDINGS, CONCLUSIONS,
Shoreline Conditional Use Permits)	AND DECISION
_____)	

SUMMARY OF DECISION

The requested shoreline substantial development and shoreline conditional use permits to approve construction of tiered retaining walls at 405 46th Avenue NE are **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Pacific Northwest Bulkhead (Applicant), on behalf of property owner Marissa Coor, requested after-the-fact approval of shoreline substantial development and shoreline conditional use permits for a series of tiered retaining walls that were constructed in September 2016 pursuant to emergency authorization. The subject property is located on Budd Inlet of Puget Sound, at 405 46th Avenue NE, Olympia, Washington.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on September 26, 2017.

Testimony:

At the hearing the following individuals presented testimony under oath:

- Leah Davis, Associate Planner, Thurston County
- Dawn Peebles, Thurston County Environmental Health Division
- Marissa Coor, Property owner

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:
- A. Master application, received August 9, 2016
 - B. JARPA application, received August 9, 2016
 - C. Site plan (revised), received December 16, 2016
 - D. Structural calculations by MC2, dated August 9, 2016
 - E. Emergency approval letter, dated August 30, 2016
 - F. Post-construction engineering report by MC2, dated October 10, 2016
 - G. Notice of Application, dated January 4, 2017
 - H. Aerial photo of Coor property showing coastal landforms (bulkhead)
 - I. Comment memorandum from Kyle Overton, Environmental Health, dated December 19, 2016
 - J. Comment letter from Nisqually Indian Tribe, dated August 26, 2016
 - K. Comment letter from Washington State Department of Ecology, dated January 24, 2017
 - L. WA Coastal Atlas photos (2) showing before/after construction
 - M. Revegetation plan, dated July 19, 2017
 - N. Legal notice
- Exhibit 2 Photo of posted hearing notice
- Exhibit 3 Email from Tracey Kosenski to Leah Davis, showing site photos before and after revegetation, dated September 19, 2017
- Exhibit 4 Comment memorandum from Kyle Overton, Environmental Health, dated December 19, 2016 (to replace Exhibit 1.I)

Based on the record developed at hearing, the following findings and conclusions are entered:

FINDINGS

1. The Applicant requested after-the-fact approval of shoreline substantial development and shoreline conditional use permits for a series of tiered retaining walls that were constructed in September 2016 pursuant to emergency authorization. The subject property is located on Budd Inlet of Puget Sound, at 405 46th Avenue NE, Olympia, Washington. *Exhibit 1, pages 1-2; Exhibit 1.B, 1.E, and 1.L.*
2. The subject shoreline is designated as “Conservancy” by the Shoreline Master Program of the Thurston Region (SMPTR). *Exhibit 1, page 1; Leah Davis Testimony.* Shoreline protection structures are allowed in the Conservancy designation with approval of a shoreline permit. *SMPTR, Section Three, Chapter XVIII, C(1) and D.* The project constitutes “substantial development” and requires a shoreline substantial development permit because its value exceeds the permit exemption threshold. *Exhibit 1.B; WAC 173-27-040.*
3. The subject property is developed with a single-family residence which was built in the 1970s and a bulkhead that was likely constructed at approximately the same time as the residence. *Leah Davis Testimony.*
4. A small landslide occurred on the subject property in March 2016. Adjacent parcels were not affected. The landslide exposed the footings of an attached deck, posing a threat to the residence. *Exhibit 1, pages 2 and 3; Exhibit 1.F; Leah Davis Testimony.* On August 30, 2016, Thurston County granted emergency approval to construct a series of terraced rock retaining walls above the existing bulkhead to stabilize the subject property. The County did not consider nonstructural solutions to be an option due to the topography of the site, the proximity of the residence to the slope, and the nature of the slide. *Exhibit 1.E; Exhibit 1, page 2.*
5. The construction is complete and the site has been revegetated pursuant to an approved plan. Planning Staff does not believe further monitoring of the vegetation is required due to the species planted. *Exhibit 1.M; Exhibit 3; Leah Davis Testimony.*
6. The five rock walls range from three to eight feet tall and were backfilled with quarry spalls. Due to the height of the walls, an after-the-fact County building permit is required. *Exhibit 1.F; Exhibit 1, page 9.*
7. There are no wetlands, marshes, or swamps associated with the marine waters at the subject property. *Exhibit 1, page 4.*
8. The completed construction does not impede the flow of ground or surface waters. *Exhibit 1, page 3.*

9. The Thurston County Environmental Health Division reviewed the application and determined that it satisfies the requirements of the Thurston County Sanitary Code, and recommended approval. *Exhibit 4.*
10. Notice of the public hearing was mailed to property owners within 500 feet of the site on September 12, 2017, published in The Olympian on September 15, 2017, and posted on-site on September 14, 2017. *Exhibit 1.N; Exhibit 1, page 2; Exhibit 2.* There was no public comment on the application.

CONCLUSIONS

Jurisdiction:

The hearing examiner is granted jurisdiction to hear and decide applications for shoreline substantial development permits and shoreline conditional use permits pursuant to RCW Chapter 36.70, WAC 173-27, and Section One, Part V of the Shoreline Master Program for the Thurston region.

Criteria for Review:

Shoreline Substantial Development Permit (WAC 173-27-150)

To be approved by the hearing examiner, the proposed shoreline substantial development permit must be consistent with:

- A. The policies and procedures of the Shoreline Management Act;
- B. The provisions of applicable regulations; and
- C. The Shoreline Master Program for the Thurston Region.

A. Shoreline Management Act

Chapter 90.58 RCW of 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 with 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 that (in the following order): 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 the state’s natural shorelines 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 that 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 shorelands on the subject property as Conservancy. The policies and regulations that are applicable to the retaining walls are contained in the "Shoreline Protection" chapter (Section Three, Chapter XVIII) of the SMPTR.

SMPTR Section Three, Chapter XVIII, Part B. Policies.

1. Structural solutions to reduce shoreline damage should be allowed only after it has been demonstrated that nonstructural solutions would be unable to prevent further damage.
2. Shoreline protection devices should not be allowed for the purpose of creating new land, except that within the north basin of Capitol Lake, shoreline protection structures may be allowed in conjunction with permitted fill activities that enhance and increase public access.
3. Shoreline protection structures should allow passage of ground and surface waters into the main water body, such as a weep hole.
4. The use of riprap structures is a preferred shoreline protection structure.
5. Shoreline protection activities should consider the ecological system of sizeable

reaches of rivers, lakes or marine shorelines. This consideration should be given to factors such as off-site erosion, accretion or flood damage that might occur as a result of shoreline protection structures or activities. All uses and activities should be developed in a coordinated manner among affected property owners and public agencies.

6. Erosion, littoral drift, and accretions are primary components of the dynamic geohydraulic process that has created much of the unique and scenic shoreline. Therefore, shoreline protective structures should be located, designed and maintained in a manner which protects the integrity of these natural processes.
7. Shoreline protection structures should be allowed to prevent damage to agricultural lands, public roads and bridges, existing structures and areas of unique public interest.
8. Shoreline stabilization projects should be located landward of natural wetlands, marshes, and swamps of associated fresh and marine waters.
9. Substantial stream channel modification, realignment and straightening should be discouraged as a means of shoreline protection.
10. Junk and solid waste materials should not be permitted for shoreline protection.
11. Existing natural features such as snags, stumps, or uprooted trees which support fish and other aquatic systems should not be removed unless they significantly intrude on navigation, reduce flow, or threaten agricultural land or existing structures and facilities. These activities may also require a Hydraulics Permit pursuant to WAC 220.
12. Breakwaters should be floating structures anchored in place and should not impede longshore sand and gravel transport unless such impedance is found to be beneficial to the natural system.

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

1. A shoreline permit or an exemption from the Administrator shall be required prior to all new construction of protective structures.
2. Vegetation shall be maintained on all streambanks except where removal is necessary for a permitted activity. If feasible, vegetation shall be re-established in areas where it has been removed for a permitted activity. In such instances, vegetation shall be re-established as soon as possible following its removal.
3. Techniques utilizing totally or in part vegetative bank stabilization methods shall be preferred over structural methods (such as concrete revetments or extensive riprap) unless the shoreline administrator determines that such methods will not provide adequate protection. This is not intended to preclude a combination of structural and

vegetative methods.

4. Protective structures shall be allowed only when evidence is presented that one of the following conditions exist:
 1. Erosion or an active feeder bluff is threatening agricultural land, public roads or bridges, existing structures or areas of unique public interest.
 2. It is necessary to the operation and location of shoreline dependent and related activities consistent with the Master Program.
 3. The request is for the repair or replacement of an existing protection device.
 4. The request is to increase and enhance public access within the north basin of Capitol Lake.
5. Protective structures shall be placed as close to the existing bank as feasible and parallel to the natural shoreline. When they are proposed between two adjacent existing structures, the Administrator may allow it to extend out to form a straight line with the protective structure on each side. This shall only be allowed where no adverse impact will occur.
6. Riprap structures shall be preferred to concrete revetments.
7. Protective structures shall allow for the passage of surface and ground waters. Ponding and/or soil saturation is not permitted to occur.
8. The height of structures shall not be more than that necessary to accomplish the protection needed.
9. Use of beach material for backfill is prohibited.
10. Shoreline protection structures shall not be allowed for the purpose of creating new land.
11. When feasible, steps shall not extend waterward of a proposed protective structure.
12. Breakwaters must be floating structures and will only be allowed for the protection of uses authorized by this Program.
13. Breakwaters must be designed and certified by a licensed engineer to withstand the storm forces which will be encountered.

SMPTR Section Two, Chapter V. Regional 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.

Shoreline Conditional Use Permit criteria (WAC 173-27-160)

The Washington Administrative Code (WAC) contains criteria for review of shoreline conditional use permit applications.

- 1. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

- a. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
 - b. That the proposed use will not interfere with the normal public use of public shorelines;
 - c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
 - d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
 - e. That the public interest suffers no substantial detrimental effect.
2. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

Conclusions Based on Findings:

Shoreline Substantial Development Permit

1. The project is consistent with the policies and procedures of the Shoreline Management Act. Given the location of the retaining wall above the existing bulkhead on a residential lot, the completed construction would not affect shoreline ecological function or public access to the shoreline. The project area has already been replanted. *Findings 1, 3, 4, and 5.*
2. The project complies with applicable regulations in the Washington Administrative Code. The work was completed pursuant to emergency authorization. The walls are not more than 35 feet above grade and would not obstruct views. *Findings 4, 5, and 6.*
3. As conditioned, the project is consistent with the applicable policies and regulations of the Shoreline Master Program for the Thurston Region. A structural solution was needed to prevent erosion damage. The retaining walls did not create new land, and they do not impede passage of water. Riprap was used. The retaining walls do not affect the larger ecological system or geohydraulic processes due to their location above the existing bulkhead. The retaining walls were constructed to protect an existing residence from threat of erosion and landslide. There are no wetlands, marshes, or swamps in the project area. Neither junk nor solid waste materials were used, and beach material was not used for backfill. The height of the walls is not excessive, but it does trigger building permit requirements. Compliance with these is a condition of this decision. The record shows no adverse impact on public health. *Findings 1, 2, 3, 4, 5, 6, 7, 8, and 9.*

Shoreline Conditional Use Permit

1. As concluded in the above SSDP conclusions, the proposal is consistent with the policies of RCW 90.58.020 and the SMPTR. The use would not interfere with normal public use of the shoreline. The use is compatible with existing authorized uses, particularly the existing residential use that is intended to be protected by the structures. No significant adverse effects to the shoreline environment are anticipated, as the walls were built above an existing bulkhead. There is no evidence of detrimental effect to the public interest. Additional similar requests for retaining walls to repair localized landslides within the shoreline jurisdiction, constructed upland of existing bulkheads, would not result in negative cumulative impacts. *Findings 3, 4, 5, 7, 8, and 9.*

DECISION

Based on the preceding findings and conclusions, the requested shoreline substantial development and shoreline conditional use permits to approve construction of tiered retaining walls at 405 46th Avenue NE are **GRANTED** subject to the following conditions:

1. A Thurston County building permit is required.
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.

Decided October 9, 2017 by



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$669.00** for a Request for Reconsideration or **\$890.00** 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 \$669.00 for Reconsideration or \$890.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Resource Stewardship Department this _____ day of _____, 20___.