



COUNTY COMMISSIONERS

John Hutchings  
District One

Gary Edwards  
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. 2016104394
	)	
<b>Washington State</b>	)	
<b>Department of Fish and Wildlife</b>	)	<b>Lake Saint Clair Boat Launch</b>
	)	
For Approval of a	)	
Shoreline Substantial Development Permit	)	FINDINGS, CONCLUSIONS, AND DECISION
	)	
	)	

**SUMMARY OF DECISION**

The requested shoreline substantial development permit to redevelop two adjacent Lake Saint Clair access points with improvements that would include replacing the existing boat launches, paving and striping parking areas, replacing existing toilets, and adding fencing, a paved fishing pad, a stairway and crosswalk, and mitigation plantings, 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 redevelop two adjacent Lake Saint Clair access points, which are located on the west and east sides of the same peninsula. The improvements would include replacing the existing boat launches, paving and striping parking areas, replacing existing toilets, and adding fencing, a paved fishing pad, a stairway and crosswalk, and mitigation plantings. The access points are identified as tax parcel numbers 21831440500 (west) and 58350500300 (east), and are located at 5438 SE Rehklau Road SE.

**Hearing Date:**

The Thurston County Hearing Examiner held an open record hearing on the request on May 15, 2017.

**Testimony:**

At the hearing the following individuals presented testimony under oath:

Tony Kantas, Associate Planner, Resource Stewardship Department

Dawn Peebles, Thurston County Environmental Health  
Christina Gourley, WDFW, Applicant Representative  
John Hansen, WDFW, Project Manager

**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        Master Application, received September 7, 2016
- Attachment c        JARPA Permit Application, received September 7, 2016
- Attachment d        Site Plan Set, received September 7, 2016 (13 Pages)
- Attachment e        Notice of Application, dated April 18, 2017
- Attachment f        Determination of Non Significance, dated August 1, 2016, Issued  
                         by the Washington Department of Fish and Wildlife
- Attachment g        Comment Memorandum from Kyle Overton, Public Health and  
                         Social Services Department, dated January 3, 2017
- Attachment h        Comment Memorandum from Arthur Saint, Public Works  
                         Department, dated March 17, 2017
- Attachment i        Comment letter from the Washington State Department of  
                         Ecology, dated September 28, 2016
- Attachment j        Hydrologic and Hydraulic Analysis, dated October 26, 2016

EXHIBIT 2        Site Photographs (8)

EXHIBIT 3        Public comment, including email from John Burtsche dated May 14, 2017  
                         and email from Ronald Coleman dated May 10, 2017

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 (SSDP) to redevelop two adjacent Lake Saint Clair access points located on the west and east sides of the same peninsula. The improvements would include replacing the existing boat launches, paving

and striping parking areas, replacing existing toilets, and adding fencing, a paved fishing pad, a stairway and crosswalk, and mitigation plantings. The access points are identified as tax parcel numbers 21831440500 (west) and 58350500300 (east), and are addressed as 5438 SE Rehklau Road SE. *Exhibit 1, 2, and Exhibit 1, Attachments B, C, and D.*

2. The Shoreline Master Program for the Thurston Region (SMPTR) designates the subject shoreline as Rural. *Exhibit 1.* Recreation uses, including fishing and boat ramps, are allowed in the Rural environment subject to the standards contained in the SMPTR. *Exhibit 1; SMPTR, Section 3, Chapter XIV(A).* The project requires an SSDP because the value exceeds the permit threshold of \$6416.00. *Exhibit 1, Attachment C; WAC 173-27-040; WSR 12-16-035.*
3. The subject parcels are zoned McAllister Geologically Sensitive Area (MGSA). Boat launches are allowed in the MGSA zone subject to Hearing Examiner approval of a special use permit (TCC 20.54, Table 1). However, because the boat launch/public lake access use of the sites predates the County's adoption of the zoning ordinance, the County considers the proposed improvements to be exempt from a land use permit requirement. *Exhibit 1.* The sites are heavily used, with anglers and other users visiting year round. *Exhibit 1, Attachment C.* Surrounding land uses are single-family residential. *Exhibit 1.*
4. The east access currently includes a small gravel boat launch and a gravel parking area. The gravel boat launch is in poor condition. The west access includes a concrete boat launch, a larger gravel parking area, and two fiberglass vault toilets. The existing shore fishing area consists of uneven grass and gravel. The Applicant proposes the following improvements on the sites:
  - Replace the boat ramps with pre-cast concrete ramps with scour-resistant articulated concrete matting on all sides.
  - Grade, pave, and add an ADA accessible parking stall to the east access parking area.
  - Install a new fence on the northern property line of the east parcel.
  - Regrade, pave, stripe, and add wheel stops to the west access parking area, and designate accessible car and trailer stalls.
  - Replace the existing fiberglass vault toilets at the west access with ADA accessible double pre-cast vault toilet.
  - Provide an ADA-compliant paved fishing pad with curb along the lake edge where fishing currently occurs.
  - Install a stairway near the south end of the west site that would connect with a crosswalk (across Rehklau Road) that would link the sites together.
  - Repair fences.
  - Install mitigation plantings of approximately 1,700 square feet on the west side between the new toilets and the lake.

*Exhibit 1, Attachments C and D.*

5. In order to minimize impacts to the lake, the project would include construction best management practices such as straw wattles, straw bales, turbidity curtains, and silt fencing. A turbidity curtain would be placed as each existing ramp is demolished and new one installed to keep fish out of the area and to reduce turbidity impacts. The use of pre-cast concrete for the ramps would ensure concrete is not poured into the lake. *Exhibit 1, Attachment C.*
6. The Applicant proposes to remove invasive species from the sites, including ivy from the east access and yellow flag iris from the water at the west access. Approximately 1,700 square feet of native plantings would be added at the west site. *Exhibit 1, Attachments C and D; Christina Gourley Testimony.*
7. The Applicant would be required to obtain all applicable state and federal permits prior to commencement of grading/construction. The joint aquatic resources permit application (JARPA) submitted for the instant County review was submitted to appropriate agencies for review of applicable state and federal permits. *Exhibit 1.*
8. A hydrologic and hydraulic analysis of the project concluded that the project would have no impact on flow and channel migration, no impact on 100-year flood elevations, floodway elevations and floodway widths, and no reduction in floodplain conveyance either on-site or on adjacent properties during the 100-year flood event. *Exhibit 1, Attachment J.*
9. The application was reviewed by the both the Thurston County Public Health/Social Services and Thurston County Public Works Departments. No issues of public health concern were identified and the County Health Department recommended approval of the project. Public Works determined that the preliminary requirements contained in the Thurston County Road Standards and the Drainage Design and Erosion Control Manual have been satisfied, and recommended approval subject to conditions. The conditions, which detail the County's road and drainage requirements, were incorporated into the recommended conditions of SSDP approval. *Exhibit 1, Attachments G and H; Exhibit 1.*
10. Consistent with the State Environmental Policy Act (SEPA), WDFW assumed lead agency status for review of the proposal's environmental impacts. Upon completion of review, WDFW issued a determination of non-significance (DNS) on August 1, 2016, which was not appealed and became final. *Exhibit 1, Attachment F.*
11. Notice of the public hearing was sent to all owners of property within 500 feet of the site on May 3, 2017, and was published in The Olympian and posted on-site on May 5, 2017. *Exhibit 1, Attachment A; Exhibit 1.*
12. Public comment was generally in favor of the project, but concern was expressed regarding existing speeding on Rehklau Road and on the lake, and that the improvements, by attracting more users, would exacerbate the problem. A suggestion was made that the speed limit on Rehklau Road be reduced to 25 miles per hour, and that the speed limit on

the lake be signed as “no wake.” *Exhibit 3.*

## 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 boat launches and lake access point projects such as the subject proposal are covered in the “Recreation” 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. Priorities for recreational development of shorelines should relate directly to densities and unique characteristics of the population served. Priorities for acquisition should consider need and special opportunities as well as access by public transit.
2. All recreational development projects should be considered on the basis of their compatibility with the environment.
3. Access to recreational locations such as fishing streams and hunting areas should be planned to prevent concentration of use pressures.
4. The linkage of shoreline parks and public access points through provisions for linear open spaces should be encouraged. Such open space could include hiking paths, bicycle paths and/or scenic drives located as close to the water's edge as feasible.
5. Recreational developments should be designed to preserve, enhance or create scenic views and vistas. Favorable consideration should be given to those projects that complement their environment.
6. Where possible, parking areas should be located inland, away from the immediate edge of the water, and recreational beaches, and should be linked with the shoreline by walkways.

7. Recreational development should comply with all applicable city, county, state, and federal regulations.
8. Facilities for intensive recreational activities should be permitted only where sewage disposal and pest control can be accomplished to meet public health standards without altering the environment adversely.
9. Development of public fishing piers, underwater fishing reefs, and access to public waters and tidelands should be encouraged as part of an overall recreation plan or development.
10. Where appropriate, nonintensive, recreational use should be encouraged on flood plains that are subject to recurring flooding.
11. Artificial marine life habitats should be encouraged in order to provide increased aquatic life for recreation. Such habitats should be constructed in areas of low habitat diversity.

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

1. Public access points on lakes must provide parking space appropriate for the intended use.
2. Recreation facilities or structures which are not compatible with the environmental designation in which they are proposed are prohibited.
3. Events and temporary uses in the public interest may be approved by the Administrator in any environment, provided that such uses will not damage the wetland environment.
4. Recreational developments must provide facilities for nonmotorized access, such as pedestrian, bicycle and/or equestrian path links to the shoreline.
5. Sewage disposal and pest control must meet public health standards; waste must not be allowed to enter the water.
6. The following regulations shall apply to artificial aquatic life habitats:
  - a. Habitats shall minimize interference with surface navigation.
  - b. Habitats shall be constructed of long-lasting, nonpolluting materials, and moored so as to remain in their original location even under adverse current or wave action.
  - c. Habitats may not be installed on publicly-owned submerged land without written permission of the administering governmental agency.
7. Public or private recreation areas which cater to the use of all-terrain or off-road vehicles as the primary recreational activity shall not be allowed in the shoreline areas.
8. All stair towers meeting one of the following conditions must be designed by a licensed civil engineer:

- a. The location proposed is mapped as "Unstable" or "Intermediate Stability" in the Washington Coastal Zone Atlas prepared by the state Department of Ecology.
  - b. All stair towers 24 feet in height or taller.
  - c. Other instances where the building official determines that site conditions dictate the preparation of plans by a licensed civil engineer.
9. Stair towers shall be designed to minimize obstructing the views enjoyed by adjoining residences.

SMPTR Section Three, Chapter XIV, Part D. Environmental Designations and Regulations

3. Rural Environment. Low to medium intensity recreational uses shall be permitted on Rural Environment shorelines, subject to the general regulations and following specific regulation:
- a. A recreational facility or structure which changes or detracts from the character of the Rural Environment (by building design or intensity of use) shall be prohibited.
  - b. Roads, parking and vehicular camping facilities, including restrooms, shall not be located within fifty (50) feet of the ordinary high-water mark of any shoreline with the exception of access to boat launching facilities. Parking facilities and roadways may be within fifty (50) only if they provide access for handicap or scenic viewpoints. Maintenance or upgrading of existing roads, parking and/or vehicle camping facilities including restrooms is permitted provided the area devoted to these facilities is not enlarged. Pedestrian and hiking trail access shall be provided to link upland facilities with the shoreline.

SMPTR Section Two, Chapter V. REGIONAL CRITERIA

The Shoreline Master Program for the Thurston Region contains regional criteria that apply to the proposal. All development within the jurisdiction of this Master Program shall demonstrate compliance with the following criteria:

- A. Public access to shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existed prior to establishment of public access.
- B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.
- C. Future water-dependent or water-related industrial uses shall be channeled into shoreline areas already so utilized or into those shoreline areas which lend themselves to suitable industrial development. Where industry is now located in shoreline areas that are more



suited to other uses, it is the policy of this Master Program to minimize expansion of such industry.

- D. Residential development shall be undertaken in a manner that will maintain existing public access to the publicly-owned shorelines and not interfere with the public use of water areas fronting such shorelines, nor shall it adversely affect aquatic habitat.
- E. Governmental units shall be bound by the same requirements as private interests.
- F. Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a Permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180 (1), the person requesting the review shall have the burden of proof.
- G. Shorelines of this Region which are notable for their aesthetic, scenic, historic or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.
- H. Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health.

### **Conclusions Based on Findings**

1. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. Replacing the existing boat launches, restrooms, and parking with new ADA-compliant facilities that make the public recreation areas accessible to more members of the public is a reasonable and appropriate use of the shoreline and is consistent with state policy. The project would incorporate measures to protect water quality during demolition and construction. Invasive species would be removed and replaced with native species. There would be no impact on floodplain elevations. *Findings 4, 5, 6, 7, and 8.*
2. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. While existing restrooms would be replaced, no additional above-grade buildings would be installed. A condition of approval would ensure compliance with the requirements of WAC 173-27-190. *Finding 4.*
3. As conditioned, the proposal is consistent with the applicable policies and regulations of the Shoreline Master Program for the Thurston Region. The project would upgrade existing recreational sites. The project would provide a new linkage between the sites through the new stairway and crosswalk. There would be no impact on scenic views. The conditions of approval would ensure compliance with applicable regulations. The existing parking areas would be paved and striped, and would include accessible parking stalls. Appropriate to the use, designated boat trailer stalls would be provided. Improved

pedestrian access would be provided. Sewage disposal has been reviewed and approved by the Public Health Department. Based on historic use of the sites, the proposal would not change or detract from the environment. Water quality would be preserved during construction. With respect to the issues identified during public comment, the Hearing Examiner does not have jurisdiction to set speed limits. *Findings 2, 3, 4, 5, 6, 7, 8, 9, 10, and 12.*

### **DECISION**

Based upon the preceding findings and conclusions, the requested shoreline substantial development permit to redevelop two adjacent Lake Saint Clair access points with the improvements detailed herein is **GRANTED** subject to the following conditions:

1. The proposed roadway in concept and design shall conform to the Road Standards.
2. A construction permit shall be acquired from the Thurston County Public Works – Development Review Section prior to any construction.
3. All traffic control devices shall be designed, located, manufactured, and installed in accordance with the Road Standards, Manual of Uniform Traffic Control Devices and applicable WSDOT Standards & Specifications. A sign and striping plan shall be incorporated into the construction drawings for the project. Please contact Thurston County Public Works – Development Review Section Staff to obtain the most current Thurston County guidelines.
4. County forces may remove any traffic control device constructed within the County right-of-way not approved by this division and any liability incurred by the County due to nonconformance by the applicant shall be transferred to the applicant.
5. The storm water management system shall conform to the Drainage Design & Erosion Control Manual.
6. All drainage facilities outside of the County right-of-way shall remain private and be maintained by the developer, owner and/or the property owners association.
7. 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 any existing drainage or other properties.
8. The proposed water and sewer system shall be designed in accordance with the standards and specification of the respective utility purveyor. All water and sewer plans are subject to review and acceptance by the respective utility purveyor.
9. Proposed utility work within the Thurston County Right of Way shall conform to the Road Standards and Chapter 13.56 Thurston County Code. These standards do not address specific city design requirements but rather only items such as restoration of the County right of way and traffic control.

- a. Placement of utilities within the County right of way will require a Franchise Agreement with Thurston County pursuant to Title 13.56 TCC. This agreement shall be executed with Thurston County prior to final approval.
  - b. Please note all utilities placed parallel to and within the pavement structure are required to rebuild a minimum of half the road, to include grinding and replacement of a minimum of 0.20' of asphalt concrete pavement.
10. No work shall take place until a construction permit has been issued by Thurston County Public Works – Development Review Section.
  11. The proposed grading or site work shall conform to Appendix J of the International Building Code, Title 14.37 of the Thurston County Code and Drainage Design & Erosion Control Manual.
  12. When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section at 786-5214 for a final inspection.
  13. This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant. One permit that may be required is a Construction Stormwater Permit from the Washington State Department of Ecology. Information on when a permit is required and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. Any additional permits and/or approvals shall be the responsibility of the Applicant.
  14. Once the planning department has issued the official approval, a construction permit application shall be submitted along with a complete set of construction drawings and the final drainage and erosion control report to Thurston County Public Works – Development Review Section for review and acceptance.
  15. PRIOR to construction, the applicant shall:
    - a. Pay outstanding construction review and inspection fees\*
    - b. Receive erosion and sediment control permit
    - c. Have the erosion and sediment control inspected and accepted
    - d. Receive a construction permit
    - e. Schedule a pre-construction conference with county staff.
 \* The current fee schedule can be found online at <http://www.co.thurston.wa.us/permitting/fees/docs/Roads-Development-Review-Fees-20090301.pdf> or contact Ruthie Padilla with the Thurston County Public Works – Development Review Section by phone at 754-3355, ext. 6595, or by email at [padillr@co.thurston.wa.us](mailto:padillr@co.thurston.wa.us).

16. Prior to receiving final approval from this department, the following items shall be required:
  - a. Completion of all roads and drainage facilities.
  - b. Final inspection and completion of all punch list items.
  - c. Record drawings submitted for review and acceptance. The record drawings shall include street names and block numbers approved by Addressing Official.
  - d. Receive and accept Engineer's Construction Inspection Report Form (Appendix IC, Volume I of the Drainage Design and Erosion Control Manual).
  - e. Receive and accept Maintenance Agreement Form (Appendix I-E, Volume I of the Drainage Design and Erosion Control Manual).
  - f. Payment of any required permitting fees.
17. 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.
18. All on-site construction activities shall fully comply with noise limitations outlined in WAC 173-60.
19. 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.
20. 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.
21. Erosion control measures must be in place prior to any clearing, excavation, grading or construction and must be approved by the Resource Stewardship Department. These measures must be effective to prevent soil from being carried into surface water by stormwater runoff. Sand, silt, and soil will damage aquatic habitat and are considered pollutants.
22. The proposed silt curtain to contain sediments generated by replacement of the boat ramps shall be in place and properly functioning prior to start of work.
23. 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.
24. 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).

25. All other applicable state and federal permits must be obtained prior to the start of project work.
26. Construction pursuant to this 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 May 30, 2017.



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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 **\$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\_\_\_.