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COMMUNITY PLANNING AND ECONOMIC DEVELOPMENT

Creating Solutions for Our Future

Joshua Cumming, Director

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	Project No. 2018101127
)	
Skookum Swan Seafoods)	
)	
For Approval of a)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS, AND DECISION
_____)	

SUMMARY OF DECISION

The requested shoreline substantial development permit to develop a commercial intertidal geoduck aquaculture operation on 0.58 acres of leased tidelands at 9340 Maple Beach Lane NW is **GRANTED** with conditions.

SUMMARY OF RECORD

Request:

Skookum Swan Seafoods (Applicant) requested approval of a shoreline substantial development permit (SSDP) to develop a commercial intertidal geoduck aquaculture operation on 0.58 acres of leased tidelands at 9340 Maple Beach Lane NW. The subject property, which is on Puget Sound, is designated as a Conservancy shoreline environment by the Shoreline Master Program for the Thurston Region.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on August 28, 2018.

Testimony:

At the hearing the following individuals presented testimony under oath:

- Tony Kantas, Senior Planner, Thurston County
- Dawn Peebles, Thurston County Environmental Health Division
- Meg Amos, Marine Surveys & Assessments, Applicant representative
- Buck Clark, Skookum Swan Seafoods, Applicant

Exhibits:

At the hearing the following exhibits were admitted into the record:

EXHIBIT 1 Community Planning & Economic Development Department Report including the following exhibits:

- Attachment a Notice of Hearing
- Attachment b Master Application, submitted on March 8, 2018
- Attachment c JARPA Application, submitted on March 8, 2018
- Attachment d Vicinity Map – 2015 Aerial
- Attachment e Site Plan (2 Pages)
- Attachment f Notice of Application (3 Pages)
- Attachment g Mitigated Determination of Non-Significance, issued on July 26, 2018
- Attachment h Memor from Thurston County Health Department, dated July 13, 2018
- Attachment i Comment Letter from Steve & Merrilee Kenyon, dated April 24, 2018
- Attachment j Habitat Assessment, dated June 20, 2018
- Attachment k Army Corp of Engineers Application
- Attachment l Washington Sea Grant Final Report

EXHIBIT 2 2015 aerial photo of site

EXHIBIT 3 Site photos (5)

EXHIBIT 4 USACOE Nationwide Permit 48 authorization letter, dated June 22, 2018

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

FINDINGS

1. The Applicant requested approval of an SSDP to develop a commercial intertidal geoduck aquaculture operation on 0.58 acres of leased tidelands at 9340 Maple Beach Lane NW.¹ The subject property, which is on Puget Sound, is designated as a

¹ The legal description of the subject property is a portion of Section 3, Township 19 North, Range 2 W, Tidelands of Tax Parcel Number 12903210300. *Exhibit 1.*

Conservancy shoreline environment by the Shoreline Master Program for the Thurston Region. *Exhibits 1, 1.B, and 1.C.*

2. The subject property is zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5). Primary permitted uses in the RRR 1/5 zone include single and two-family residences, agriculture, home occupations, and farm housing. *Thurston County Code (TCC) 20.09A.020.* The zoning ordinance defines "agriculture" as including raising, harvesting, and processing clams. *TCC 20.03.040(3).* Consequently, the proposed use is allowed in the RRR 1/5 zone. *Exhibit 1.*
3. The upland portion of the subject property is developed with a single-family residence. Surrounding land uses include single-family residences and shellfish aquaculture. There is a geoduck aquaculture operation on the parcel immediately south of the subject property, and another that is located three parcels to the south of the subject property. *Exhibits 1 and 2.*
4. The project site is subject to the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR). *SMPTR, Section 4, Definitions.* The SMPTR allows aquaculture in the Conservancy shoreline environment. The proposed geoduck aquaculture operation requires the installation of equipment on the tidelands that constitutes a "structure" and is considered "development" for the purposes of the SMPTR. Non-exempt development in the shoreline jurisdiction that exceeds \$7,047.00 in fair market value requires a shoreline substantial development permit (SSDP). *SMPTR, Section 1.II.A; Exhibit 1; Washington State Register (WSR) 17-17-007.*
5. The proposed geoduck culture area is the portion of the tidelands between -4.5 feet MLLW to +3.6 feet MLLW. The geoducks would be planted in 12- to 16-inch lengths of four-inch diameter PVC pipe or mesh tube, placed on end and pushed into substrate, leaving approximately three to five inches exposed above the ground surface. The tubes would be placed at a density of approximately one per square foot, and each would be covered by a mesh cap secured by a UV-resistant rubber band. Area netting might be used to ensure that the tubes remain on site during extreme weather. All access would be to the aquaculture operation would be by barge. A porta potty would be provided on the barge for aquaculture employees. *Exhibit 1.C; Buck Clark Testimony.*
6. The proposed planting area would require no site preparation. No native materials would be removed, and there would be no redirection of upland runoff. *Exhibits 1.C and 1.J.*
7. Once the area is planted, maintenance activities would include site inspections and removal of loose tubes, nets and fasteners. Mesh caps would be removed from the tubes approximately six to 12 months after planting, and the tubes would be removed approximately 24 months after planting.² *Exhibit 1.C.*

² The application materials disclosed that tubes would remain in place for 24 to 48 months after planting, but the conditions of the mitigated determination of non-significance require removal after 24 months. *Exhibits 1.C and 1.G.*

8. The expected grow-out period for the geoducks is approximately four years, after which time they would be harvested either by beach during low tides or using divers at higher tides. Harvest would involve use of a motorized, low-pressure water pump mounted on a vessel moored off shore. Water intake lines on the pumps would be fitted with mesh screens to prevent intake of marine organisms. There is not eelgrass in the project area, but if eelgrass were to establish itself, the vessel would not be anchored in the eelgrass, and measures would be taken to ensure that hoses are not dragged through eelgrass. *Exhibit 1.C.*
9. Harvest activities would disturb sediment in the area, but the impact would be localized and limited in duration. *Exhibit 1.J.*
10. The Habitat Assessment prepared for the project did not identify potential adverse water quality impacts as a result of the use. The research summarized in the Habitat Assessment suggests that filter-feeding shellfish can decrease water turbidity by removing phytoplankton. *Exhibit 1.J.*
11. There are several species of wildlife that are listed as threatened or endangered by the federal Endangered Species Act that may occur or have critical habitat in the project area, including: bull trout, Chinook salmon, chum salmon, steelhead, rockfish, leatherback sea turtles, green sturgeon, marbled murrelets, and southern resident killer whales. *Exhibit 1.J.* The conclusion of the Habitat Assessment prepared for the project (Exhibit 1.J) was that the project "may affect, but is not likely to adversely affect" these ESA-listed species and their critical habitat. The potential effects would not contribute to an increased risk of extinction or reduce the value of their habitat, and would not result in a "take" of the species. *Exhibit 1.J.*
12. On June 22, 2018, the US Army Corps of Engineers reviewed the application and determined that the project is authorized under 2017 Nationwide Permit 48 (NWP 48, *Commercial Shellfish Aquaculture Activities*). This authorization was expressly issued subject to compliance with the terms of the NWP 48 permit and with the measures contained in programmatic Biological Opinions issued by the National Marine Fisheries Service and US Fish and Wildlife Service. Compliance with these measures would satisfy the requirements of the Endangered Species Act. The Applicant has designed the project to comply with NWP 48 permit and the associated Biological Opinions. After the SSDP receives approval, the Applicant would apply for and expect to obtain a State Department of Health aquaculture farm license and Washington Department of Fish and Wildlife farm registration. *Exhibits 4 and 1.J; Meg Amos Testimony.*
13. The project site provides suitable habitat for forage fish spawning. Surf smelt sand lance spawning have been documented on site. These fish are an important food source for salmon, bald eagles, and other species. The sand lance spawning habitat is in the upper third of the intertidal zone, between MHHW and approximately +5 MLLW. On the subject property, the aquaculture area would begin at +3.6 MLLW, a distance of at least 60 feet from +5 MLLW. One of the Corps of Engineers' programmatic conditions for the

use is that a spawn survey be conducted prior to bed preparation, maintenance, or harvest activities in or adjacent to potential sand lance or surf smelt spawning habitat, if these activities occur outside the approved work window (March 2 - October 14). In this case, only harvest activities have potential to occur outside the approved work window, but these activities would be conducted by boat. *Exhibits 1.C, 1.E, 1.J, and 1.K.*

14. The aesthetic impact of the PVC tubes would be limited in duration. With the conditions of the mitigated determination of non-significance (MDNS), the tubes would be in place no more than 24 months of the entire culture cycle. They would be visible during low tides during daylight hours from mid-March to mid-September and are not expected to be visible during daylight hours the remaining months of the year. Aesthetics associated with debris (loose tubes) would be addressed by the conditions of the MDNS, which require the Applicant to patrol the tidelands for geoduck debris and to remove such debris, regardless of source. *Exhibits 1.C and 1.G.*
15. The project would not conflict with recreation or navigation. During the period of time that the tubes are in place, they would only extend a few inches above the substrate. During high tide, the water above the tubes could be used recreationally. There are no public boat docks in the vicinity that would attract boaters to the project area. No evidence was presented to suggest that the project would interfere with commercial boat traffic or navigation. *Exhibit 1.*
16. The residence on the subject property is served by a single-family well and an individual on-site sewage system. The Thurston County Environmental Health Division reviewed the proposal and determined that it would meet the requirements of the Thurston County Sanitary Code, noting that sanitation facilities for workers would be located on the boat and that there would be no vegetation removal, placement of fill, or release of environmental contaminants. Environmental Health recommended as a condition of approval that any upland access to the tidelands be done in a such as manner as to prevent vehicle or equipment travel or parking over the existing on-site sewage disposal system components or near the well. *Exhibit 1.H.*
17. Thurston County acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). The County determined that, with mitigation and compliance with applicable county, state, and federal laws, the project would not have a probable, significant adverse effect on the environment, and issued an MDNS on July 26, 2018. The MDNS was not appealed and become final on August 16, 2018. *Exhibits 1 and 1.G.*
18. The MDNS contains 16 mitigating measures which require: compliance with the Washington State Geoduck Growers Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture; installation of unobtrusive signage notifying of contact person for operation; labeling of gear with contact information; inspection of the project area at least twice per month, with documentation and reporting of entangled fish and wildlife and removal of debris; removal of tubes within two years of installation and netting within 2.5 years of installation; weekly patrols of tidelands to collect debris when gear is

present, plus patrols to collect debris the day following severe storms; recording of all gear placed on site and removed during farming practices or patrols; use of gear that blends visually with the environment; maintenance of a minimum distance of 150 feet from the shoreline for washing, storing, fueling, or maintaining land vehicles; minimization of glare for temporary lighting (permanent lighting not allowed); minimization of noise through use of fully enclosed and insulated motors with approved muffled exhaust systems; use of UV-resistant fasteners to secure screens placed on tubes; stopping work if archaeological resources are observed; using only washed gravel for shellfish bed preparation; and waiting for all required state and federal approvals prior to commencing work. *Exhibit 1, Attachment G.*

19. Notice of the open record hearing was mailed to owners of properties within 500 feet of the subject property on August 14, 2018. Notice of hearing was also published in *The Olympian* on August 17, 2018 and posted on site on August 17, 2018 in accordance with County Code requirements. *Exhibits 1 and 1.A.* There was no public comment on the application.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide substantial shoreline development applications pursuant to TCC 2.06.010(C), RCW Chapter 36.70, WAC 173-27, and Section One, Part V of the Thurston County Shoreline Master Program.

Criteria for Review

Shoreline Substantial Development Permit

Pursuant to WAC 173-27-150, in order to be approved by the Hearing Examiner, an SSDP application must demonstrate compliance with the following:

1. The policies and procedures of the Shoreline Management Act;
2. The provisions of applicable regulations; and
3. 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 that (in the following order of preference): 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 173-27-150

- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

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

SMPTR Section Two, V, Regional Criteria

- A. Public access to the shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existing 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

- D. Residential development shall be undertaken in a manner that will maintain existing public access....
- E. Governmental units shall be bound by the same requirements as private interests.
- F. Applicants for permits shall have the burden of proving 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 of use of shorelines shall be closely analyzed for their effect on the public health.

SMPTR Section Three, II, Aquacultural Activities

A. Scope and Definition

Aquaculture involves the culture and farming of food fish, shellfish, and other aquatic plants and animals in lakes, streams, inlets, bays and estuaries. Aquacultural practices include the hatching, cultivating, planting, feeding, raising, harvesting and processing of aquatic plants and animals, and the maintenance and construction of necessary equipment, buildings and growing areas. Methods of aquaculture include but are not limited to fish hatcheries, fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas.

B. Policies

1. The Region should strengthen and diversify the local economy by encouraging aquacultural uses.
2. Aquacultural use of areas with high aquacultural potential should be encouraged.
3. Flexibility to experiment with new aquaculture techniques should be allowed.
4. Aquacultural enterprises should be operated in a manner that allows navigational access of shoreline owners and commercial traffic.
5. Aquacultural development should consider and minimize the detrimental impact it might have on views from upland property.
6. Proposed surface installations should be reviewed for conflicts with other uses in areas that are utilized for moorage, recreational boating, sport fishing, commercial fishing or commercial navigation. Such surface installations should incorporate features to reduce use conflicts. Unlimited recreational boating should not be construed as normal public use.
7. Areas with high potential for aquacultural activities should be protected from degradation by other types of uses which may locate on the adjacent upland.

8. Proposed aquacultural activities should be reviewed for impacts on the existing plants, animals and physical characteristics of the shorelines.
9. Proposed uses located adjacent to existing aquaculture areas which are found to be incompatible should not be allowed.

C. General Regulations

1. Aquaculture development shall not cause extensive erosion or accretion along adjacent shorelines.
2. Aquacultural structures and activities that are not shoreline dependent (e.g., warehouses for storage of products, parking lots) shall be located to minimize the detrimental impact to the shoreline.
3. Proposed aquaculture processing plants shall provide adequate buffers to screen operations from adjacent residential uses.
4. Proposed residential and other developments in the vicinity of aquaculture operations shall install drainage and waste water treatment facilities to prevent any adverse water quality impacts to aquaculture operations.
5. Land clearing in the vicinity of aquaculture operations shall not result in offsite erosion, siltation or other reductions in water quality.

Conclusions Based on Findings

1. As conditioned, the project would comply with the policies and procedures of the Shoreline Management Act (SMA). As the Shoreline Hearings Board has acknowledged, the Washington State Legislature has identified aquaculture as an activity of statewide interest that is a preferred, water-dependent use of the shoreline, which when properly managed can result in long-term over short-term benefits and protect the ecology of the shoreline. Aquaculture is allowed outright in the underlying zoning district and in the Conservancy shoreline environment upon review for compliance with applicable provisions in the Shoreline Master Program for the Thurston Region. With the conditions contained in the MDNS and in this decision, and those required by other agencies with jurisdiction, the proposal would be consistent with the policies of the SMA and would be a reasonable and appropriate use of the shoreline. *Findings 2, 4, 12, 13, 14, 15, 16, 17, and 18; WAC 173-27-241(3)(b); Cruver v. San Juan County and Webb, SHB No. 202 (1976); Penn Cover Seafarms v. Island County, SHB No. 84-4(1984); Marnin and Cook v. Mason County and Ecology, SHB No. 07-021 (Modified Findings, Conclusions, and Order, February 6, 2008).*
2. As conditioned, the project would comply with applicable shoreline regulations. A condition of approval is included to ensure that project activities do not commence until 21 days after filing or until after all review proceedings have terminated. No residence would have its view obstructed by the proposal, as no structure taller than 35 feet would be built. *Findings 3 and 5.*
3. As conditioned, the proposed aquaculture activities would comply with all applicable policies and regulations of the SMPTR.

- A. Addressing regional criteria, the project would not hinder existing, or create new, public access to shorelines, as the site is comprised of privately owned tidelands. The spatial separation between the culture area and forage fish spawning area, and the use of screens on water pumps, would be protective of the aquatic environment. The aesthetic qualities of the shoreline would be preserved. No evidence in the record suggests the proposal would result in any adverse effects to public health. The Environmental Health Division reviewed the proposal and determined that Thurston County Sanitary Code requirements would be satisfied. *Findings 1, 5, 8, 10, 11, 13, 14, 15, 16, and 18.*
- B. Approval of the requested permit would support the SMPTR's stated policy of encouraging aquacultural uses for the sake of strengthening the local economy. The record demonstrates that the site is an area with high aquaculture potential. The project would not interfere with navigation of shoreline owners or commercial traffic, and the water above the tubes would be usable during high tide. As proposed and conditioned, the project would minimize visual impacts to surrounding properties because the Applicant would be required to clean up escaped gear and debris on a regular basis, and because the tubes would not be visible most of the time. The use would be protected from potential upland impacts through a condition of approval prohibiting driving, parking, and equipment staging over septic system components. The project has been reviewed for potential impacts to protected species and habitats, and has been determined to be not likely have an adverse effect. There is no eelgrass in the project area. Geoduck planting would occur at a lower elevation than is used for forage fish spawning. No material would be removed from the shoreline, and sediments disturbed during harvest would settle relatively close to their point of origin. These features, along with the conditions of approval, would minimize impacts to plants, animals, and the physical characteristics of the shoreline. *Findings 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18.*
- C. As conditioned, the project is consistent with the shoreline regulations. No evidence in the record shows extensive erosion or accretion along the shoreline would occur. No processing plant, residential development, or land clearing is proposed. *Findings 6 and 9.*

DECISION

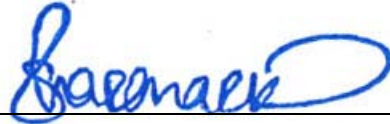
Based upon the preceding findings and conclusions, the request for a shoreline substantial development permit to develop a commercial intertidal geoduck aquaculture operation on 0.58 acres of leased tidelands at 9340 Maple Beach Lane NW (Tax Parcel Number 12903210300) is **GRANTED** subject to the following conditions:

1. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.

2. All work conducted as a result of the issuance of this permit shall comply with all conditions of the mitigated determination of non-significance dated July 26, 2018 (Exhibit 1.G).
3. Aquaculture preparation, planting, maintenance, and harvesting shall be in compliance with the most current version of the Washington State Geoduck Growers Environmental Codes of Practice for Pacific Coast Shellfish Aquaculture except as otherwise conditioned or required by Thurston County Community Planning and Economic Development or any other required government permits.
4. Bed preparation must commence within two years, and all tubes and netting must be installed within five years of the effective date of this permit. The effective date is the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed.
5. No physical work on the aquaculture beds shall be initiated until all required State and Federal permits and approvals have been granted and evidence of such approvals has been submitted to the County Community Planning and Economic Development Department.
6. The Operator shall ensure that all anti-predator nets and tubes are secured in place to prevent them from escaping from the project area.
7. Physical activities on the beach pursuant to this permit shall not begin and are not authorized until 21 days from the date of filing of the Hearing Examiner decision with the Department of Ecology as required in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of filings have been terminated, except as provided in RCW 90.58.140(5)(a) and (b).
8. There shall be no removal of shrubbery or fallen trees located in the buffer of the toe of the marine bluff or on the beach during placement of the bed.
9. All activities related to the proposed geoduck bed shall be in substantial compliance with the site plan submitted and made part of this staff report, including modifications as required by this approval. Any expansion or alteration of this use will require approval of a new or amended shoreline substantial development permit.
10. If access to the beach for planting geoduck tubes, netting, pumps or any other equipment will be over the upland portion of this property, it will need to be done so as to prevent any vehicle or equipment travel or parking of any portion of the septic system or system components or near the well. Staging of equipment and materials for this project also should not be done on any portion of the septic system or system components.
11. Any revision to the shoreline permit must be in compliance with WAC 173-27-100.

12. Prior to commencement of the geoduck operation, the applicant shall receive the U.S. Army Corps of Engineers NWP 48 Permit or the US Army Corps Individual Permit.
13. 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.

Decided September 12, 2018.



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 Community Planning & Economic Development 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 **\$688.00** for a Request for Reconsideration or **\$921.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development 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 \$688.00 for Reconsideration or \$921.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____ 20___.