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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. 2019101267
)	
Tom Schrader)	25th Ave NW Road Improvements
)	
For a Shoreline Substantial Development)	FINDINGS, CONCLUSIONS,
Permit)	AND DECISION
)	

SUMMARY OF DECISION

The request for approval of a shoreline substantial development permit to improve 25th Avenue NW to provide access to two proposed single-family residences and install utilities within the corridor is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

Tom Schrader (Applicant) requested approval of a shoreline substantial development permit (SSDP) to improve 25th Avenue NW to provide access to two proposed single-family residences, to be located on tax parcels 83002000400 and 83002100100, and to install utilities within the corridor. The proposed improvements would start at 25th Avenue NW’s intersection with Crestline Drive and end approximately 90 feet south of parcel 8300200400.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on July 28, 2020. The record was held open for two business days (through July 30, 2020) to allow for submission of written public comment by members of the public who attempted to join the virtual meeting but were unable to do so. Three post hearing public comments were timely submitted (Exhibits 5). Staff and the Applicant were given through August 3, 2020 to respond to any post hearing comment. Also at the close of the hearing, the record was held open through August 3 to allow the Applicant to consider and respond to Staff’s verbally proposed condition 11. On July 30th, an attorney acting on behalf of the Applicant requested a one week extension to allow consideration of and response to recommended condition 11; this request was granted, meaning the record was open through August 10, 2020

for the Applicant's response. On August 10th, counsel for the Applicant submitted a response to recommended condition 11. In the period between July 30th and August 10th, the Applicant also submitted a final comment for the record clarifying one aspect of the proposal.

Testimony

At the open record public hearing, the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Community Planning & Economic Development Dept.
Arthur Saint, P.E., Thurston County Public Works
Tom Schrader, Applicant
Erik Ainsworth, P.E., Applicant representative
James Laukonnen
Joseph Stengel
William Waugh
Richard Jackman

Exhibits

At the open record public hearing, the following exhibits were admitted in the record:

- Exhibit 1 Community Planning and Economic Development Section Report including the following attachments:
- A. Notice of Public Hearing
 - B. Zoning/Site Map
 - C. Master Application, received March 25, 2019
 - D. JARPA Permit Application, received March 25, 2019
 - E. Application Narrative, Erik Ainsworth, P.E., dated May 20, 2019
 - F. Applicant's Supplemental Information Letter, Erik Ainsworth, P.E, dated May 20, 2019
 - G. Plan Set, received on February 18, 2020
 - H. Geo Technical Consultation Report, Materials Testing and Consulting, Inc., dated February 26, 2019
 - I. Geo Technical Memorandum, Materials Testing and Consulting, Inc., dated November 16, 2019
 - J. Complete Application Letter, dated May 7, 2019
 - K. Notice of Application, dated May 9, 2019
 - L. Comment Memorandum from Amy Crass, Public Health and Social Services Department, May 30, 2019
 - M. Letter from Arthur Saint to Erik Ainsworth, Public Works Department, February 5, 2020
 - N. Comment Memorandum from Arthur Saint, Public Works Department, February

25, 2020

- O. Memorandum from Mark Biever, Community Planning and Economic Development Department, December 18, 2019
 - P. Emails from Kelli Root, Public Works Department, December 11, 2019 and February 27, 2020
 - Q. Approval Letter from Robert Smith, Community Planning and Economic Development Department for a related Critical Area Review Permit (project 2019101267, folder 19 103499 XD), December 31, 2019
 - R. Comment Letter from Jackie Wall with the Nisqually Indian Tribe, April 1, 2019
 - S. Comment Email from Rhonda Foster (via Delicia Durden), Squaxin Island Tribe, April 1, 2019
 - T. Comment Letter from the Washington State Department of Ecology, April 11, 2019
 - U. Public Comments received prior to issuance of Staff Report:
 - 1. James Laukkonen, dated May 23, 2019
 - 2. Lars Nashlund and Stephanie Sceva, dated May 28, 2019
 - 3. Richard and Michele Jackman, dated May 29, 2019
 - V. Applicant's Response to Public Comments, dated June 5, 2019
 - W. Photograph of Public Hearing Notice Sign, Posted March 2, 2020
- Exhibit 2 Public Comments Received After Publication of the Staff Report
- A. Mark Peterzell, Attorney at Law, dated July 24, 2020
 - B. Lars Nashlund and Stephanie Sceva, received July 27, 2020
 - C. James Laukkonen, received July 27, 2020
- Exhibit 3 Additional Applicant narrative, submitted 7.27.20
- Exhibit 4 Legal Notice of virtual hearing for July 28, 2020
- Exhibit 5 Post-Hearing written public comments:
- A. Margaret and Robert Clifford, received July 29, 2020
 - B. Kathy Gookin & Christopher Murray, received July 30, 2020
 - C. Margaret and Robert Clifford, received July 30, 2020
- Exhibit 6 Post-hearing clarification from Applicant, August 6, 2020
- Exhibit 7 Revised language for recommended condition 11, submitted by the Applicant August 10, 2020 (and attached email thread containing request for extension of post-hearing timeline)

Exhibit 8 Planning Staff response to Applicant's post-hearing submittal re: condition 11, submitted August 18, 2020¹

Exhibit 9 Engineered Drainage Report for the 25th Avenue Shared Access Widening, prepared by The Land Developer's Engineered Solution, dated February 12, 2020²

Based on the record developed through the open record hearing process, the Hearing Examiner enters the following findings and conclusions.

FINDINGS

1. The Applicant requested approval of a shoreline substantial development permit (SSDP) to improve 25th Avenue NW to provide access to two proposed single-family residences, to be located on tax parcels 83002000400 and 83002100100, and to install utilities within the corridor. The proposed improvements would start at 25th Avenue NW's intersection with Crestline Drive and end approximately 90 feet south of parcel 8300200400.³
Exhibits 1, 1.C, and 1.D.
2. The application was submitted on March 25, 2019 and determined to be complete for purposes of commencing County review on April 23, 2019. *Exhibits 1, 1.C, 1.D, and 1.J.*
3. On April 17, 2017, the Applicant received Hearing Examiner approval of reasonable use exceptions to construct single-family residences on parcels 83002000400 and 83002100100. The exceptions were needed because the parcels are on a marine bluff classified as a marine bluff hazard area and a landslide hazard area. The decisions included the following conditions which are relevant to the instant SSDP application:
 - F. ... All necessary shoreline substantial development and conditional use permits, SEPA environmental determination, floodplain permit, critical area review permit and/or reasonable use exceptions shall be obtained for all necessary road widening, retaining walls, storm water, and infrastructure improvements prior to ground disturbing activities and building permit issuance for a residence on the subject property.
 - O. 2) Vehicular access must be upgraded to a minimum width of 16-feet for the length of the access road from the project site to the end of the public County right-of-way, unless the County Engineer grants a variance from this standard

¹ The undersigned neglected to schedule a Planning Staff response to the Applicant's comments on condition 11. Prior to decision issuance, Planning Staff was asked if they had any response, and the resulting email thread was submitted and admitted consistent with Hearing Examiner Rule of Procedure 7.6(g).

² During deliberations after close of the record, the undersigned determined that the record needed to be supplemented with the engineered drainage report referenced in County Public Works comments. This was provided via the hearing clerk and admitted consistent with Hearing Examiner Rule of Procedure 7.6(g).

³ The project area is within the South Half of the Southwest Quarter of Section 3, Township 18 North, Range 2 West, W.M. *Exhibit 1.*

- S. Prior to issuance of any grading or building permits, the Applicant shall submit evidence of easement or other legal access rights to the use of, and for off-site improvement of, 25th Avenue NW.

Thurston County Hearing Examiner, Findings, Conclusions, and Decisions #2012103206 and #2012103208; Exhibit 1.

4. As part of the instant SSDP application, the Applicant proposes the following road and utility improvements:
- Widen 25th Avenue NW to 20 feet of asphalt for a distance of 40 feet from the intersection of Crestline Drive;
 - Widen the remainder of the street to the southern project boundary to a minimum of 12 feet of asphalt in most areas;
 - Install natural gas, sewer force main, and water service lines. The utilities would be installed underground with boring machines where practicable; otherwise they would be installed in small open trenches;
 - Install a 20- by 50-foot turnout in the northern elbow of 25th Avenue NW (starting 246 feet from Crestline Drive NW);
 - Install sheet flow dispersion for the turnout;
 - Install a 20- by 50-foot turnout in front of 1638 25th Avenue NW (parcel no. 83002000400);⁴
 - Install a stormwater catch basin and conveyance. Two-foot-wide bioretention swales with underdrains are proposed along portions of the road; and
 - Route the stormwater through existing and proposed stormwater pipe down to Puget Sound. The portions of the conveyance system that include the outfalls to Puget Sound cross the subject residential parcels and were reviewed during the reasonable use exception process.

Exhibits 1.D, 1.E, 1.G, 1.M, and 9.

5. The project area is on a marine bluff above Budd Inlet of Puget Sound, a shoreline that is regulated by the Shoreline Master Program for the Thurston Region (SMPTR). The SMPTR designates the project area as a Rural shoreline environment. *Exhibit 1.* Roads and utility lines such as those proposed are allowed in the Rural environment, subject to the applicable regulations of the SMPTR. *SMPTR Section Three, Chapters XVII(D) and XX(D).* A shoreline substantial development permit is required for the development because it is within the regulated shoreline and its value exceeds the permit threshold of \$7047.00. *Exhibits 1 and 1.D; WAC 173-27-040; WSR 17-17-007.*

⁴ Exhibit 1.E describes the turnout as being in front of 1730 25th Avenue NW, but the later-dated plans entered into the record as Exhibit 1.G depict the turnout as being in front of 1638 25th Avenue NW, which is the southernmost of the two parcels proposed for residential development. *Exhibit 1.G.*

6. The County Public Works Department administratively approved variances from minimum road standards allowing the road width as proposed, including allowing two small sections to be retained in their current width (minimum of eight feet). The Fire Department determined the proposed access to be sufficient so long as the residences contain fire sprinklers. *Arthur Saint Testimony; Exhibits 1 and 1.M.*
7. The Applicant obtained administrative critical area review permit (CARP) approval for the proposed road improvements on December 31, 2020. In the course of CARP review, the County considered geotechnical reports submitted by an Applicant geotechnical consultant, which was also reviewed by County Engineering Staff. The proposed improvements, which would expand the road in an inward and uphill direction to avoid the slope crests, would maintain existing grades upslope of the roadway, and would include drainage features to catch water from the roadway as well as existing natural drainage in the slope face. These drainage features would discharge beyond the base of the slope using appropriate energy reducing features to prevent scour, and they are expected to preserve if not improve overall slope stability. *Exhibits 1.H, 1.I, 1.O, 1.Q, and 9.*
8. The existing portion of 25th Avenue NW involved in accessing the subject parcels is paved with approximately eight- to 12-foot wide pavement. In order to provide access to two more residences, County standards require it to be widened to 12 feet. The Applicant's engineered drainage plan (Exhibit 9) is based on the assumption that the entire length of the road to reach the two parcels would be widened to 12 feet; however, as noted previously, after submittal of the report, the Applicant requested and County Public Works administratively approved a variance request allowing portions of the pavement to remain eight feet wide, in order to minimize disturbance to the slope and impact to private property. The plans in the drainage report calculated total new impervious surface on a uniformly 12-foot wide road; thus, the currently proposed additional impervious surface area is less than shown in the engineered drainage report. This reduction in width would also serve to reduce stormwater runoff from the new road. The project is comprised of two segments: the smaller upper portion and the larger lower portion. Stormwater runoff from the upper portion of the project would disperse naturally through existing forested vegetation to be retained. Stormwater from the larger, lower portion would flow into a roadside bioretention area with an underdrain that would direct stormwater to existing discharges to the Puget Sound. The total new impervious coverage would be less than 5,000 square feet. Thus, the project is required to comply with, and the drainage report addresses, Stormwater Management Minimum Requirements 1 through 5. County Public Works Department Staff reviewed and accepted the engineered drainage plan as satisfying the County's requirements for preliminary review, design, and provision of water quality treatment and conveyance. Prior to construction, a final drainage and erosion control design would need to be submitted for review and approval. *Exhibits 1, 1.N, and 9; Arthur Saint Testimony.*
9. The Applicant has not yet demonstrated, per the conditions of the RUEs, an easement or other legal access rights to use and improve 25th Avenue NW. The platted alley shown on project maps has been statutorily vacated, and most of the southern extent of the

existing roadbed lies east of the alley, crossing private property. The County considers the portion of 25th Avenue NW extending east from Crestline Drive and south 180 feet to parcel number 83002100200 (Poplack property) to be “County road by prescriptive use.” *Exhibit 1.P (February 27, 2020 email)*. With respect to the roadway south of that point, the County considers itself to have “no claim to the right-of-way as originally platted and no claim to the road as constructed.” *Exhibit 1.P (December 11, 2019 email)*. The Poplack property is north of both parcels proposed for residential development, and the proposed improvements (including road widening) would cross the Poplack property as well as other properties whose owners are not party to the SSDP application. Although the Applicant has been negotiating an easement with the Poplacks, negotiations are not complete and as of the hearing date the Applicant does not have permission to construct the proposed improvements at this time. No evidence was submitted that the Applicant has obtained easements from any other affected property owner. *Exhibits 1.G, 1.U, 2a, 2b, 2c, and 3 (diagram of residences)*.

10. County departments reviewed the proposal for compliance with their respective areas of review. Staff from the Thurston County Public Health and Social Services Environmental Health Division reviewed the project for compliance with the County Sanitary Code, noted that the residences would be served by City water and sewer, and recommended approval after determining that the materials showed compliance with all health requirements appeared feasible. *Exhibit 1.L*. Public Works Staff reviewed the proposal for compliance with the County’s stormwater regulations and road standards, and having determined that all applicable provisions could be met, recommended approval subject to compliance with a condition requiring a construction stormwater permit from Department of Ecology, if required by that state agency. *Exhibit 1.N; Arthur Saint Testimony*.
11. Written notice of the public hearing was sent to all owners of property within 300 feet of the site on July 13, 2020 and published in The Olympian on July 17, 2020. *Exhibits 1 and 4*.
12. Comments were submitted from several neighbors, including timely post-hearing comment as allowed at hearing, asserting that the Applicant lacks legal access to the two parcels. In addition, concern was raised that the proposed widening within the east-west portion of the road would require the removal of mature trees and diminish the value of an adjacent as-yet undeveloped lot and slope stability impacts, that storm drainage improvements would not be adequate and the project could result in damage to existing residences or wells serving them, and that the reduced street width would not be sufficient to serve current and future residences. At least one neighbor also expressed that they like the road the way it is, with its current number of residences and users. Some expressed concern about construction impacts from both the road/utilities project and residential construction, noting there would not be sufficient area for parking on the subject properties of all construction equipment, and that guests of future residents would also lack adequate parking area. Some expressed general support for the project on the understanding it would improve the safety of the road over the existing condition.

Exhibits 1.U, 2a, 2b, 2c, 5a, and 5c; Testimony of James Laukonnen, Joseph Stengel, and Richard Jackman.

13. In response to public comment, the Applicant submitted that the parcels are inaccessible (landlocked) without the requested permit. He asserted that the proposed improvements are designed and intended to improve the safety of the road, which is currently one lane wide, unlit, and lacking places to pass and turn around. The administratively approved variances from the road width requirements were intended to minimize impacts to affected properties. *Testimony of Tom Schrader and Erik Ainsworth.* The purchaser of one of the two parcels to be served by the road, Dr. Waugh, further emphasized the unsafe nature of the existing roadway, and cited Revised Code of Washington 8.24.010 in support of allowing access.⁵ *William Waugh Testimony.*
14. In light of neighbor concerns and consistent with the County's longstanding position that the platted alley was statutorily vacated, Planning Staff added a condition at the hearing to those recommended in the staff report. Staff's verbally recommended condition 11 stated: "The Applicant shall obtain all necessary easements to cross private property prior to any construction activities and prior to building permit issuance." With this and the other 10 recommended conditions, Staff recommended approval. *Exhibit 1; Scott McCormick Testimony.*
15. While otherwise waiving objection to the recommended conditions, the Applicant requested a few additional days to consider the verbiage of recommended condition 11. *Tom Schrader Testimony.* The record was held open through August 3, 2020 for the Applicant to comment or submit proposed revised language. After the hearing, the Applicant requested a one week extension, through August 10th, for comment on the condition, based the availability of Applicant's legal counsel to review and comment. This request was granted. On August 10, 2020, counsel for the Applicant requested the following alternate language be imposed as condition 11.

Prior to issuance of development permits for road construction, the Applicant shall provide Thurston County with proof of either (1) the Applicant's right of legal access for ingress, egress, and necessary utilities (in the form of an easement agreement or court order) or (2) the written consent of the underlying property owners [prior] to the issuance of construction permits which will allow ingress, egress, and all necessary utilities consistent with the historic use of 25th Ave NW

⁵ RCW 8.24.010 Condemnation authorized—Private way of necessity defined: An owner, or one entitled to the beneficial use, of land which is so situate with respect to the land of another that it is necessary for its proper use and enjoyment to have and maintain a private way of necessity or to construct and maintain any drain, flume or ditch, on, across, over or through the land of such other, for agricultural, domestic or sanitary purposes, may condemn and take lands of such other sufficient in area for the construction and maintenance of such private way of necessity, or for the construction and maintenance of such drain, flume or ditch, as the case may be. The term "private way of necessity," as used in this chapter, shall mean and include a right-of-way on, across, over or through the land of another for means of ingress and egress, and the construction and maintenance thereon of roads, logging roads, flumes, canals, ditches, tunnels, tramways and other structures upon, over and through which timber, stone, minerals or other valuable materials and products may be transported and carried.

for the construction of two single-family residences. This condition shall be applicable to properties containing the portion of 25th Ave NW for which the Applicant has proposed improvements beyond the existing improved County 25TH AVE NW right-of-way as described in the Staff Report for the Project and Att. “p” thereto.

Exhibits 7 and 8.

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline permits pursuant to RCW Chapter 36.70, WAC 173-27, TCC 19.04.010, and Section One, Part V of the Shoreline Master Program for the Thurston region.

Criteria for Review

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 (SMPTR) designates the subject shoreline as Rural. The policies and regulations that are applicable to the proposal are contained in the Road and Railroad Design and Construction and Utilities chapters of the SMPTR.

SMPTR Section Three, Chapter XVII. Road and Railroad Design and Construction.

B. Policies

1. Major highways, freeways and railways should be located away from shorelands, except in port and industrial areas, so that shoreland roads may be reserved for slow-moving local or recreational traffic. [N/A]
2. Road and railroad locations should be planned to fit the topography and utilize existing corridors so that minimum alterations of natural conditions will be necessary. This is especially important on flood plains.
3. Roads and railroads should be designed, constructed, and maintained to minimize erosion and to permit natural movement of ground water and flood waters to the extent practical.
4. All debris, overburden, and other waste materials from construction should be disposed of in such a way as to prevent their entry by erosion from drainage, high water, or other means into any surface water body.
5. Scenic corridors containing public roadways should have provision for safe pedestrian and other nonmotorized travel. Also, provisions should be made for viewpoints, rest areas, and picnic facilities in appropriate areas. [N/A]
6. Railroad beds should be screened with trees in scenic areas. [N/A]

C. General Regulations

1. Excess construction materials shall be removed from the shoreline area.

2. Major roads and railroads shall cross shoreline areas by the shortest, most direct route feasible, unless such route would cause significant environmental damage. [N/A]
3. Filling of tidelands, shorelands and marshes for road or railroad rights-of-way shall be prohibited unless no viable alternative exists.
4. All excavation materials and soils exposed to erosion by all phases of road, bridge and culvert work shall be stabilized and protected by seeding, mulching or other effective means, both during and after construction.
5. All debris, overburden and other waste materials from road and railroad construction, if permitted on shorelines, shall be disposed of in such a way as to minimize their entry by erosion from drainage into any water body.
6. Private roads shall follow natural contours where possible. Natural benches, ridge tops and flat slopes are preferred locations. Erodible cuts and filled slopes shall be protected by planting or seeding with appropriate ground cover or matting immediately following construction.
7. Where permitted to parallel shorelines, roads or railroads shall be setback a sufficient distance from the ordinary high-water line to leave a usable shoreline area.
8. Storm water runoff shall be controlled to reduce suspended solids before entering any surface water body.

D. Environmental Designations and Regulations

1. Urban, Suburban, Rural and Conservancy Environments. The following roads and railroads are permitted:
 - a. Local public or private access roads to serve uses permitted in the Urban, Suburban, Rural and Conservancy Environment.
 - b. Transportation thoroughfares including major arterials, highways and railways.

SMPTR Section Three, Chapter XX. Utilities.

B. Policies

1. Wherever utilities must be placed in a shoreline area, the locations should be chosen so as not to obstruct or destroy scenic views. Utilities should be placed underground, or designed to do minimal damage to the aesthetic qualities of the shoreline area.
2. Where construction connected with utility placement occurs on shorelines, banks should be restored to their pre-project configuration, replanted with native species and maintained until the new vegetation is established.
3. Sewage treatment, water reclamation, desalinization and power plants should be designed and located so as not to interfere with, and to be compatible with recreational, residential or other public uses of the water and shorelands. [N/A]
4. Sewage outfalls to waterbodies should be avoided in preference to recycling or land disposal of sewage wastes. Where no alternative to outfalls into water exist, location of such outfalls should be part of the appropriate regional plan for solutions to sewage management problems. [N/A]

5. Utility rights-of-way should be used for public access to and along waterbodies where feasible.
6. If utilities must be located over the water, they should be placed on bridge-like structures rather than fill, and said structures should provide clearance for all marine vessels normally using the area. [N/A]
7. New major transmission facilities should follow existing utility corridors unless prohibited by the environmental designation and regulations. [N/A]

General Regulations

1. Applicants for permits to locate utility lines in the shoreline jurisdictional area shall submit a location plan with their application which shows existing utility routes in the vicinity of the proposed utility line. The proposed utility lines shall follow existing utility, natural drainage or transportation routes where feasible.
2. All utility facilities shall be located on lots or routes no larger than necessary.
3. The approved projects shall identify a method of reclamation which provides for revegetation and protection of wetland areas from erosion. As a minimum, this shall include the restoration of the affected area to pre-development elevation, replanted with native or pre-existing species and provisions for maintenance care for the newly planted or seeded vegetation until it is established.
4. Utility services accessory to individual projects shall be regulated by the specific use regulations for the activity in addition to the standards of this section and shall not require separate Substantial Development Permits for utility service installations.
5. Where feasible, utilities shall be placed underground unless such undergrounding would be economically or technically prohibitive or significantly detrimental to the environment.
6. Utility facilities shall be designed for minimal environmental and aesthetic impact and shall be coordinated with local comprehensive plans.
7. Underwater utilities shall be located at a depth sufficient to prevent interference between the utility and other shoreline use activities. [N/A]
8. All utility facilities must provide safeguards to ensure that no long-term damage will be caused to the adjacent or downstream environment should an accident occur involving the utility.
9. No discharge of waste material which could result in decertification of aquacultural areas or products or cause lowering of water quality ratings is permitted.
10. No new hydroelectric generating facilities are allowed on the Nisqually River pursuant to the recommendations of the Nisqually River Management Plan. [N/A]

D. Environmental Designations and Regulations

1. Urban and Rural Environments. The following utility facilities are allowed in the Urban and Rural Environments:
 - a. Utility lines.

- b. Control, collection or distribution facilities including, but not limited to, telephone exchanges, sewage treatment plants, water reservoirs, electrical substations and gas metering stations.
- c. Power generating facilities except on the Nisqually River and transmission lines.

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.

Conclusions Based on Findings

- 1. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. Provided the Applicant is able to establish legal access, the proposed road and utility improvements are a reasonable and appropriate use of the shoreline, as they are intended to serve an approved residential use and would remedy

dangerous road conditions. Compliance with applicable stormwater and erosion control requirements would protect the ecology of the shoreline. *Findings 4, 7, 8, 9, 10, 11, 12, 13, 14, and 15.*

2. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. No above-ground structure is proposed. *Finding 4.*
3. As conditioned, the proposal is consistent with the applicable policies and regulations of the Shoreline Master Program for the Thurston Region. With respect to the road construction policies and regulations, the improvements would follow an existing - or previously existing - road corridor. The administratively approved reduced roadway width would minimize impacts to the natural topography and reduce easement encroachment into abutting private properties. Erosion and stormwater control measures would be implemented consistent with County requirements. The conditions of approval address disposal of construction waste materials. With respect to the utilities policies and regulations, the utilities would be installed underground adjacent to the proposed road. The conditions of approval address revegetation of disturbed areas. There would not be an aesthetic impact associated with the underground utilities. Waste material would not be discharged to Puget Sound, only treated stormwater. *Findings 4, 6, 7, 8, 10, 12, 13, 14, and 15.*
4. As conditioned, the proposal is consistent with the applicable regional criteria. No adverse impacts to aquatic habitat or to the public health have been identified. Stormwater runoff from the improved roadway would be managed and treated prior to release into Puget Sound consistent with adopted State and County requirements. *Findings 4 and 8.*

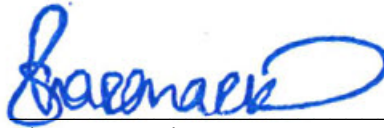
DECISION

Based on the preceding findings and conclusions, the request for approval of a shoreline substantial development permit to improve 25th Avenue NW to provide access to two proposed single-family residences and install utilities within the corridor is **GRANTED**, subject to the following conditions:

1. 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.
2. All on-site construction activities shall fully comply with noise limitations outlined in WAC 173-60.
3. Design and construction shall adhere to recommendations in the Geo Technical Consultation Report (Materials Testing and Consulting, Inc., dated February 26, 2019).
4. 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.

5. A revegetation plan using native plants shall be submitted prior to building permit issuance on the two proposed single-family residences. Plantings shall be installed prior to final occupancy approval unless the Applicant posts a bond or irrevocable assignment of savings in the amount of 125% of the cost of the plantings and installation (fair market value). The purpose of the revegetation plan is to restore any areas impacted by road construction.
6. 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.
7. The project shall not include retaining walls associated with the road and utility improvements nor stormwater outfall within the 100-year floodplain of Puget Sound as the reviewed application did not include those features. These features would require separate shoreline permits and technical reports.
8. 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.
9. 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).
10. The Applicant shall stop work and contact the proper authorities, including Nisqually Tribe Preservation Officer, Brad Beach (360) 456-5221, if during excavation there are discoveries of archaeological artifacts or human burials.
11. Prior to issuance of development permits for the proposed construction, the Applicant shall provide Thurston County with proof of either (1) the Applicant's right of legal access for ingress, egress, and necessary utilities (in the form of an easement agreement or court order) or (2) the written consent of the underlying property owners which will allow ingress, egress, and all necessary utilities consistent with the historic use of 25th Ave NW for the construction of two single-family residences on the subject parcels. This condition shall be applicable to properties containing the portion of 25th Ave NW for which the Applicant has proposed improvements beyond the existing improved County 25th Avenue NW right-of-way as described in Exhibits 1 and 1.P.

DECIDED August 19, 2020.



Sharon A. Rice
Thurston County Hearing Examiner

NOTE: Pursuant to TCC 22.62.020(C)10, affected property owners may request a change in valuation for property tax purposes.

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 **\$750.00** for a Request for Reconsideration or **\$1,041.00** 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 \$750.00 for Reconsideration or \$1,041.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.