



COUNTY COMMISSIONERS

John Hutchings
District One

Gary Edwards
District Two

Tye Menser
District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2019105937
)	
Washington State)	
Department of Fish and Wildlife)	Luhr's Landing SSDP
)	
For Approval of a)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS, AND DECISION
_____)	

SUMMARY OF DECISION

The requested shoreline substantial development permit to make boat launch, parking, ADA access, stormwater, restroom, and habitat improvements at Luhr's Landing is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Washington State Department of Fish and Wildlife requested a shoreline substantial development permit (SSDP) to make boat launch, parking, ADA access, stormwater, restroom, and habitat improvements at Luhr's Landing, an existing public boat launch and water access area. The subject property is located at 4849 and 4949 D'Milluhr Road NE, Olympia, Washington.

Hearing Date:

The Thurston County Hearing Examiner held a virtual open record hearing on the request on August 11, 2020. In order to ensure public access to the virtual hearing process, the record was held open two business days (through August 13, 2020) to allow for public comment from members of the public may have had difficulty joining the virtual hearings, with additional time arranged for responses by the parties. One timely post-hearing public comment was submitted, and the record closed on August 17, 2020. Staff and the Applicant were provided with an opportunity to respond, with a deadline of August 17, 2020. Neither responded, and the record closed on August 17, 2020.

Testimony:

At the hearing, the following individuals presented testimony under oath:

- Scott McCormick, Associate Planner, Thurston County
- Arthur Saint, PE, Thurston County Public Works
- Christina Gourley, WDFW, Applicant Representative

Exhibits:

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

Exhibit 1 Community Planning and Economic Development Report including the following attachments:

- A. Notice of Public Hearing
- B. Zoning Map
- C. Master Application, received November 13, 2019
- D. JARPA Application, received November 13, 2019
- E. Narrative description (undated)
- F. Site Plans, received March 2020
- G. WDFW SEPA Determination (DNS), issued December 12, 2019
- H. Notice of Application dated January 16, 2020 with Adjacent Property Owners list, dated January 14, 2020
- I. Eelgrass delineation by KPFF Consulting Engineers dated July 13, 2018, received November 13, 2019
- J. Biological Assessment, dated June 30, 2019
- K. Arsenic and Lead lab results by Dragon Analytical Laboratory, date prepared August 9, 2018
- L. Approval memo from Dawn Peebles with TC Environmental Health, dated May 4, 2020
- M. Email from Eva Barber with WA Dept. of Ecology, dated February 10, 2020
- N. Letter from the WA Dept. of Ecology, dated February 10, 2020
- O. Email from Christina Gourley, dated February 7, 2020
- P. Email from Alex Young, dated February 7, 2020
- Q. Letter from the WA Dept. of Ecology, dated February 5, 2020
- R. Email from Dana Howard Botka dated January 29, 2020
- S. Email from Christina Gourley (WDFW), dated December 27, 2019

- T. Letter from the WA Dept. of Ecology, dated December 13, 2019
- U. Comments from the Nisqually Tribe, dated December 5, 2019
- V. Email from Adam Rorbaugh with WDFW, dated December 3, 2019
- W. Approval memo from Arthur Saint, PE, Thurston County Public Works, dated May 4, 2020¹

Exhibit 2 Post-hearing comment timely submitted by Tim Stecker, dated August 13

Based on the record developed at hearing, the following findings and conclusions are entered in support of the decision of the Hearing Examiner:

FINDINGS

1. Washington State Department of Fish and Wildlife (WDFW, Applicant) requested an SSDP to make boat launch, parking, ADA access, stormwater, restroom, and habitat improvements at Luhr’s Landing, an existing public boat launch and water access area. The subject property is located at 4849 and 4949 D’Milluhr Road NE, Olympia, Washington. *Exhibits 1, 1.C, 1.D, and 1.E.*
2. The subject property is 2.76 acres in area and is zoned Residential LAMIRD – One Dwelling Unit per Two Acres (RL 1/2). *Exhibits 1 and 1.B.* Development on site includes a concrete bulkhead and boat ramp, a parking lot, a vault toilet, a kiosk, and a building housing the Nisqually Reach Nature Center. The existing facilities are used for bird and wildlife viewing, boating, fishing, beach access, and activities organized by the nature center. Surrounding development is predominantly single-family residential. *Exhibits 1.D and 1.F.*
3. The subject property is on the western shoreline of Hogum Bay on the Nisqually River Delta in Puget Sound. The Shoreline Master Program for the Thurston Region (SMPTR) designates the project area as a Rural shoreline environment. Recreation uses and boating facilities, including boat ramps, are allowed in the Rural shoreline environment subject to the applicable regulations of the SMPTR. 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; Washington Administrative Code (WAC) 173-27-040; Washington State Register (WSR) 17-17-007; SMPTR Section Three, Chapters IV(D) and XIV(D).*
4. The Applicant proposes the following development activities within the shoreline:
 - Provide ADA-compliant vehicle and trailer parking, including near the vault toilet (three ADA-compliant spaces total).
 - Grade, pave, and stripe existing gravel parking areas (8,858 square feet of asphalt overlay). The parking would not extend closer to the beach than the current

¹ When admitted during the hearing, the undersigned inadvertently identified this memo as Attachment U to the staff report, but the correct letter is W.

condition. There are existing trees along the parking area.

- Improve surface water runoff management by installing a new drainage system with two catch basins, which would convey runoff to Hogum Bay at a localized outfall. A biofiltration swale along the north side of the trailer parking area would provide water quality treatment.
- Replace the existing vault toilet with an ADA-compliant pre-cast concrete vault toilet. The new vault toilet would be twelve feet, three inches high as measured to the top of the vent pipe.
- Place large woody debris and beach nourishment materials (including spawning gravels for foraging fish) in areas to the north of the boat ramp. Large woody debris placement is intended to help dissipate wave energy, preserve the eroding shoreline, and help preserve the proposed beach nourishment.
- Install coir lifts to stabilize the soils supporting the parking area.
- Install new articulated concrete mats around the existing boat ramp for erosion protection and reduced maintenance requirements.
- Remove 27 remnant piles from a previously removed pier to increase available habitat for eelgrass and fish.

Exhibits 1.E, 1.F, 1.J, and 1.O; Christina Gourley Testimony.

5. The Applicant proposes construction practices that would minimize environmental impacts. The equipment needed to place the articulated concrete mats would be operated from the boat launch instead of from the beach. Pile removal would be conducted at low tide with a vibratory hammer, with removed piles placed on a barge. The beach nourishment would be comprised of washed sand and gravel that is free of contaminants. *Exhibit 1.J.*
6. The Applicant had a Biological Assessment prepared for the project, which evaluated potential impacts to species of wildlife listed under the Endangered Species Act and designated critical habitat. For the species evaluated, including the marbled murrelet, the streaked horned lark, the Puget Sound Chinook salmon, the Puget Sound steelhead, the Coastal-Puget Sound bull trout, the southern resident killer whale, the humpback whale, and the Mazama pocket gopher, the conclusion of the assessment was that the project may affect but would not likely adversely affect, or would have no effect, on the species evaluated. For three designated critical habitats – Puget Sound Chinook salmon critical habitat, the Puget Sound steelhead critical habitat, and the Puget Sound bull trout critical habitat – the project is expected to have temporary impacts. The impacts would be associated with placement of large woody debris (temporary increase in sedimentation), removal of pilings (temporary increase in turbidity), and placement of articulated concrete mats around the boat ramp (loss of some nearshore benthic habitat). However, these temporary impacts would be offset by habitat benefits resulting from the completed project, including the expansion of benthic habitat into the area formerly occupied by pilings. *Exhibit 1.J.* In addition, the energy dissipation provided by the articulated

concrete mats would “help stabilize the adjacent substrate, reduce scour and allow smaller gradations of sediment to accrete allowing macroinvertebrate communities to establish more readily.” *Exhibit 1.J, page 4.*

7. The subject property is located in an area identified by the Department of Ecology (DOE) as being potentially contaminated by heavy metals from emissions from the former Asarco smelter in Tacoma. As recommended by the DOE, the Applicant had the site soils tested for the presence of lead and arsenic. The DOE reviewed the results and concluded that the amounts detected were below the levels requiring remediation under state law. *Exhibits 1.K, 1.N, and 1.Q.*
8. Intact cultural resources have been identified on the Applicant’s property, but not within the areas of proposed ground disturbing activities. In order to ensure that the project does not adversely affect cultural resources, and consistent with the request submitted by the Nisqually Indian Tribe, the Applicant has agreed to have an archaeological monitor present on the site during project implementation. If artifacts are observed during construction, work would stop and the relevant agencies would be notified. *Exhibits 1, 1.U, and 1.V; Christina Gourley Testimony.*
9. The Thurston County Environmental Health Division reviewed the application and did not identify issues of public health concern. Environmental Health recommended approval of the application subject to a condition that the Applicant obtain approval of a tank placement permit for the vault toilet prior to building permit issuance. *Exhibit 1.L.*
10. The Thurston County Public Works Department reviewed the application and determined that it demonstrates compliance with the preliminary requirements of the Thurston County Road Standards and the Drainage Design and Erosion Control Manual. Public Works Staff recommended approval of the application subject to conditions. The recommended conditions address County road, drainage, and utility requirements. *Exhibit 1.W.*
11. WDFW acted as lead agency for review of the proposal's environmental impacts pursuant to the State Environmental Policy Act. Upon completion of review, WDFW issued a determination of non-significance (DNS) on December 12, 2019. *Exhibit 1.G.*
12. Notice of the public hearing was mailed to all property owners within 500 feet of the site on July 24, 2020 and published in The Olympian on July 31, 2020. *Exhibits 1 and 1.A.*
13. Public comment on the application included issues of concern with respect to trespassing from the site onto adjacent residential properties, a request for signage to delineate the boundary between public and private areas, and littering and illegal activities on the site. *Exhibits 1.P and 1.R.* Timely post-hearing public comment expressed parallel concerns, stating: “Of late we have seen a significant increase in negative interaction with visitors and local residents including trash, drug paraphernalia, late night noise, trespassing (local homes and private beach) speeding, property damage/tagging. My request is to please consider the local residents and the effect of the increased traffic to and from the launch

and its usage. Signage is key both for ingress and egress from the launch as well as defining private residential areas and beach. Increased monitoring as well will be essential.” *Exhibit 2*. In response to public comment, the Applicant representative testified that WDFW intends to work with the neighboring property owner outside of the hearing process to address signage issues; she encouraged those observing illegal activities on site to call the police, as well as WDFW. *Christina Gourley Testimony*. Planning Staff concurred in the recommendation for neighbors to call law enforcement if they witness illegal activities. *Scott McCormick Testimony*.

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.

- a. 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.
- b. 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 proposal is governed by the policies and regulations contained in the “Recreation” and “Boating Facilities” chapters of the SMPTR.

SMPTR Section Three, Chapter XIV, Part B. Recreation 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. Recreation 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

4. Rural Environment. Low to medium intensity recreational uses shall be permitted on Rural Environment shorelines, subject to the general regulations and the following specific regulations:
 - a. A recreational facility of 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) feet only if they provide access for handicap or for 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 Three, Chapter IV, Part B. Boating Policies (marinas and launching ramps)

1. Evidence of substantial demand must be demonstrated prior to allowance of new marina or boat launching facilities.
2. Shallow water embayments with poor flushing action should not be utilized for marinas or boat launching facilities.
3. Marinas and launching ramps should be located to minimize the need for continual dredging, filling, beach feeding, and other river, lake, harbor, and channel maintenance activities.
4. Fuel handling and storage procedures that minimize accidental spillage and provide satisfactory means for handling those spills that do occur should be required.
5. Solid and liquid wastes and untreated effluents should not be allowed to enter any bodies of water or to be discharged onto the land.

6. Where wet moorage is offered, pump-out and holding or treatment facilities should be provided by marinas for sewage contained on boats to protect water quality.
7. In locating marinas, the adverse effects of construction and operation of the facility upon fish and shellfish should be minimized.
8. Marinas and boat launching facilities should be located in areas where parking and access to the facility can be accommodated without causing adverse impacts upon the adjacent properties.
9. Landscaping should be utilized to moderate the visual impact of parking areas, marinas and boat launching facilities.
10. Illumination should be designed and constructed to minimize off-site light and glare.
11. Proposed marinas should provide for as many compatible shoreline dependent recreational uses as possible according to the size and extent of the facilities.

SMPTR Section Three, Chapter IV, Part C. Boating Regulations (marinas and launching ramps)

1. Marinas shall conform to the commercial and parking use regulations of this program.
2. Marinas and launch ramps shall be located in areas where there is adequate water mixing and flushing and shall be designed not to retard or negatively influence flushing characteristics.
3. Marinas and launch ramps shall be located on stable shorelines where water depths are adequate to eliminate or minimize the need for offshore or foreshore channel construction dredging, maintenance dredging, spoil disposal, filling, beach feeding and other river, lake, harbor and channel maintenance activities.
4. All boating facilities, including marinas and boat yards, shall utilize effective measures to prevent the release of oil, chemicals, or other hazardous materials onto or into the water. Such measures may include, but are not limited to, dikes, catch basins or settling ponds, interceptor drains, and planted buffers.
5. For marinas offering wet moorage, pump-out and holding or treatment facilities shall be provided to handle sewage contained on boats.
6. Marinas and their accessory facilities shall be located, designed, constructed and operated to minimize adverse effects on fish and shellfish.
7. In sensitive areas, such as near certified shellfish beds, the applicant shall be required to demonstrate that the maximum protection of shore features, water quality, and existing uses will be provided.
8. Perimeters of parking areas shall be landscaped. The permit application shall identify the size, type and location of landscaping.
9. Marinas shall make available public access opportunities, such access will not endanger public health and safety. If it is not physically feasible to develop public access, the project may be exempted from the requirement.
10. Accessory uses at marinas shall be limited to those uses that are shoreline dependent and of necessity to marina operation.

11. Marinas shall provide at least one method of boat launching, where feasible.
12. Restroom facilities must be provided at marinas and boat launching facilities.

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

2. Suburban and Rural Environments. Marinas, boat ramps, piers, docks, boathouses, mooring buoys, recreational floats and marine railways are permitted subject to the Policies and General Regulations.

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. The proposed improvements to the boat launch facility - which would improve accessibility, protect against erosion, provide for stormwater management, and improve beach habitat - are reasonable and appropriate within the rural shoreline environment. They would protect against adverse impacts to public health and wildlife. The proposal is consistent with policies prioritizing uses that result in long-term benefits, protect the ecology of the shoreline, increase public access to shorelines, and increase recreational opportunities. The conditions of approval address disposal of construction debris, spill containment, protection of archaeological resources, and Environmental Health requirements. *Findings 4, 5, 6, 7, 8, 9, 10, and 11.*
2. The proposal complies with applicable regulations in the Washington Administrative Code. No structure would exceed 35 feet above average grade. *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 recreation policies and regulations, the proposal is to improve an existing boat launch facility. The improvements would be compatible with the environment, and existing views would be preserved. The parking would remain in its current location but would be paved and striped. Regulatory considerations were incorporated into the project design and are also addressed in the conditions of approval. Habitat features would be added to the shoreline. Sewage disposal associated with the vault toilet would be consistent with the Thurston County Sanitary Code. Non-polluting materials would be used in the beach nourishment. The project would not change the character of the environment. With respect to the boating facilities policies and regulations, the proposal is to improve an existing boat launch and not to establish a new one. The proposal does not involve fuel storage. Wastes and untreated effluents would not be allowed to enter the water. There is existing vegetation around the parking area, which would moderate the visual impact. The boat launch improvements would not require dredging. The stormwater facilities would provide for water quality treatment. A vault toilet would be provided. With respect to the regional criteria, the project would enhance the characteristics of the shoreline and protect water quality and aquatic habitat. Existing poor quality conditions would be improved on the site. Public health would be protected. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 13.*

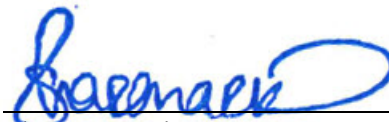
DECISION

Based on the preceding findings and conclusions, the requested shoreline substantial development permit for boat launch, parking, ADA access, stormwater, restroom, and habitat improvements at Luhr's Landing is **GRANTED** subject to the following conditions:

1. No physical work shall be initiated until the applicant obtains all required State and Federal permits and approvals, including a Hydraulic Project Approval (HPA) from the Washington State Department of Fish and Wildlife (WDFW).

2. All construction shall be in substantial compliance with the plans included in the project JARPA application and shall comply with all applicable general policies and use regulations of the Shoreline Master Program for the Thurston Region (SMPTR).
3. The Applicant shall remove construction debris and other debris related to mitigation to an approved site (landfill or recycling center) outside of the shoreline area to avoid degradation of state waters.
4. During construction, all releases of oils, hydraulic fluids, fuels and other deleterious materials must be contained and removed in a manner that will prevent their discharge to waters and soils of the state. The cleanup of spills shall take precedence over all other work at the site. Spill prevention and response material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.
5. If archaeological artifacts are observed during construction, all work shall be immediately halted. The State Department of Archaeology and Historic Preservation, the Thurston County Community Planning and Economic Development Department and affected Tribes shall be contacted to assess the situation prior to resumption of work.
6. An archaeological monitor shall be present during project implementation.
7. A tank placement permit application must be submitted for the proposed vault toilet. The application must be reviewed and receive approval from Environmental Health prior to the release of the building permit.
8. All project activities shall comply with the requirements outlined in the May 4, 2020 memorandum from Thurston County Public Works in the record at Exhibit 1.W.

Decided August 26, 2020 by



Sharon A. Rice
Thurston County Hearing Examiner

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

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

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

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

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

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

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

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the 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___.