



COUNTY COMMISSIONERS

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District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO.	2020106111
)		
Thurston County Public Works)		
)		
)	Boston Harbor Road NE	
)	Stormwater Improvements	
)		
For Approval of a Shoreline Substantial)	FINDINGS, CONCLUSIONS,	
Development Permit)	AND DECISION	
_____)		

SUMMARY OF DECISION

The requested shoreline substantial development permit to reconstruct the stormwater conveyance system along Boston Harbor Road NE and its outfall into Puget Sound is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Thurston County Public Works (Applicant) requested a shoreline substantial development permit to reconstruct the stormwater conveyance system along Boston Harbor Road NE and its outfall into Puget Sound. The project would be located on Boston Harbor Road NE between Boston Harbor Road NE Extension Road and 75th Way NE; 73rd Avenue from Boston Harbor Road NE to Harriman Lane; and an easement on assessor parcel numbers 35902203800 and 35902200200 (7325 Boston Harbor Road NE and 7329 Boston Harbor Road NE, respectively).

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on August 10, 2021. The record was held open through August 12, 2021 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comment was submitted, and the record closed on August 12, 2021.

Testimony:

At the hearing the following individuals presented testimony under oath:

*Findings, Conclusions and Decision
Thurston County Hearing Examiner
Boston Harbor Road NE Stormwater Improvements SSDP, No. 2020106111*

Sharon Lumbantobing, Senior Planner, Thurston County Community Planning
Dawn Peebles, Senior Environmental Health Specialist, Thurston County Public Health
Trevin Taylor, Senior Environmental Coordinator, Thurston County Public Works
Tim Wilson, Water Resources Manager, Thurston County Public Works
Nathan Ensley, Senior Water Resources Engineer, Thurston County Public Works
Doreen Gavin, Consulting Project Engineer, ABHL
David Hartley
Frank Swinkey
Neil Sexton
Nancy Connery

Exhibits:

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

- Exhibit 1 Community Planning & Economic Development Department Report including the following attachments:
- A. Notice of Public Hearing, dated July 30, 2021
 - B. Master Application and JARPA Application, received December 16, 2020
 - C. Project Narrative, dated December 16, 2020
 - D. Revised Site Plan Set, received June 22, 2021
 - E. Notice of Application, dated June 25, 2021
 - F. SEPA Determination of non-significance (DNS), issued by Thurston County Public Works October 24, 2020
 - G. Comments from the Washington State Department of Ecology, dated November 16, 2020, December 8, 2020, and July 29, 2021
 - H. Squaxin Island Tribe email, dated May 5, 2021
 - I. Comment memorandum from Amy Crass, Environmental Health Division, January 26, 2021
 - J. Comment memorandum from Tim Rupert, Flood Plain Manager, March 4, 2021
 - K. US Army Corps of Engineers Permit #3, dated March 29, 2017

- L. US Army Corps of Engineers Permit #33, dated March 29, 2017
 - M. Application for ESA 4(d) NMFS coverage, dated October 12, 2020
 - N. US Army Corps of Engineer approval letter, dated May 10, 2021
 - O. Hydraulic permit approval (HPA), Washington Department of Fish & Wildlife, dated March 22, 2021
 - P. Civil plans
 - Q. Additional site photos
 - R. Comment letter from David Hartley and Staff response, dated July 2, 2021
 - S. Revised notice of application and legal notice, dated July 9, 2021
 - T. Comment letter from Nancy Connery, dated July 26, 2021
 - U. Public Works responses to Planning, dated June 1, 2021
 - V. Squaxin Island Tribe comment, dated January 8, 2021
 - W. Comment letter from Kevin S. Foster-Keddie, dated July 15, 2021
 - X. Comment letter from Patrick Boyce and responses, dated July 6, 2021
 - Y. Comment letter from Patrick Boyce, dated July 16, 2021
 - Z. Comment from Nancy Connery, dated July 27, 2021
 - AA. Comment from David Hartley, PhD, PE, dated July 17, 2021
 - BB. Comment from David Hartley, PhD, PE, dated July 27, 2021
 - CC. Comment from David Monthie, dated July 28, 2021
- Exhibit 2 Comments received after publication of the Staff Report:
- A. Public comment from Neil Sexton & Audrey Forcier, received July 29, 2021
 - B. Public comment from Joyce Herschberger, received July 30, 2021
 - C. Public comment from Nancy and Mark Brown, received July 31, 2021
 - D. Staff response to comment from the Browns, dated August 4, 2021

E. Staff response to comment from Ms. Herschberger, dated August 9, 2021

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

FINDINGS

1. Thurston County Public Works (Applicant) requested a shoreline substantial development permit (SSDP) to reconstruct the stormwater conveyance system along Boston Harbor Road NE and its outfall into Puget Sound. The project would be located on Boston Harbor Road NE between Boston Harbor Road NE Extension Road and 75th Way NE; 73rd Avenue from Boston Harbor Road NE to Harriman Lane; and an easement on assessor parcel numbers 35902203800 and 35902200200 (7325 Boston Harbor Road NE and 7329 Boston Harbor Road NE, respectively). *Exhibits 1, 1.B, 1.C, 1.D, and 1.U.*
2. The SSDP application was submitted on December 16, 2020 and determined to be complete on June 22, 2021. Notice of the application was issued on June 25, 2021. *Exhibits 1.B and 1.E.*
3. The stormwater improvements would be largely constructed within road right-of-way, with the outfall and conveyance system between Boston Harbor Road NE and the outfall constructed within an easement crossing two residential parcels. *Exhibit 1.D; Testimony of Sharon Lumbantobing and Trevin Taylor.*
4. The project area and surrounding parcels are zoned Residential LAMIRD (Limited Area of More Intensive Rural Development), one dwelling unit per acre (RL 1/1). The neighborhood is developed with single-family residences. The Puget Sound shoreline is on the north side of the project area. *Exhibit 1.*
5. The purposes of the project include reducing or eliminating flooding caused by undersized driveway culverts (the County has documented instances of significant flooding in 2007 and in 2010, which resulted in road closure and damage to private property); preventing the transport of sediment and pollutants into Puget Sound; and decreasing erosion, hazards, and other impacts of the current aging outfall structure. The existing stormwater conveyance system is substandard under current Thurston County drainage standards, and the proposed improvements are designed to meet current standards. The proposed improvements would be located within the same alignment as the existing system. *Exhibits 1.B, 1.C, 1.U, 1.X, and 1.Y.*
6. The proposed improvements include the following:
 - Grade approximately 3,400 linear feet of roadway ditches to meet current stormwater and road standards. Current road standards require a 4H (horizontal) to 1V (vertical) slope from the roadway to the ditch invert, resulting in larger ditches than are currently present. On 73rd Avenue, a parallel system of shallow ditches, catch basins and tightline pipe are proposed to move erosive surface flows into a closed

conveyance network. At present, high runoff velocities due to steep slopes are downcutting the ditches and mobilizing sediment for transport and discharge into Puget Sound. *Exhibits 1, 1.B, and 1.C; Doreen Gavin Testimony.*

- Replace 1,300 linear feet of private driveway culverts with new tight-line pipe. Hydrologic modeling indicated that some of the existing culverts cannot convey the 100-year peak flow. *Exhibits 1.B, 1.C, and 2E.*
- Replace approximately 200 linear feet of outfall pipe. *Exhibits 1.B and 1.C.*
- Replace the existing outfall structure, which is a point source that generates erosion and delivers sediment into Boston Harbor. The existing structure includes an open vault with a seven-foot drop onto large rocks. The open vault collects trash and debris from the adjoining properties and roadway. The new vault would be enclosed and buried, improving public safety and preventing trash from accumulating. A series of three catch basins would intercept water, sediment, and pollution prior to entering the vault, and the water would exit the vault via two 24-inch culverts. During peak 100-year storm events, the velocity of stormwater exiting the culverts would be less than three feet per second, which is a reduction of two feet per second as compared to current conditions. The reduced velocity would significantly reduce beach erosion. Duckbill valves would be placed at the outlets to prevent fish from entering the stormwater system. Construction of the outfall structure would require 44 cubic yards of fill, to backfill the new outfall culverts. *Exhibits 1, 1.B, 1.C, 1.D, 1.O, 1.P, and 1.U.*
- Repair existing concrete retaining walls/bulkheads in the area of proposed outfall culverts. *Exhibits 1, 1.B, and 1.Q.*
- Construct a concrete headwall to support the outfall, which would not expand the structural footprint. *Exhibit 1.U.*
- Repave the roadways as needed after installation of conveyance system. *Exhibits 1 and 1.B.*
- Mitigate impacts of shoreline fill by removing 44 cubic yards of concrete and steel debris from the beachfront at Frye Cove Park. *Exhibit 1; Trevin Taylor Testimony.*

Only a portion of the roadside ditch and culvert work would fall within the 200-foot shoreline jurisdictional boundary, which generally includes the area north of 73rd Avenue to a point partway between 74th Way and 75th Way. *Exhibit 1.D (see Sheets 2 and 3A).*

7. Development within the Puget Sound shoreline is regulated shoreline under the Shoreline Management Act, and within the project area the Shoreline Master Program for the Thurston Region (SMPTR) designates the portion of the shoreline that is landward of the ordinary high water mark (OHWM) as a Rural shoreline environment and the portion that is waterward of the OHWM as a Conservancy shoreline environment. Utilities, including stormwater conveyance systems, can be allowed in these environments subject to the policies and regulations contained in the Utilities chapter of the SMPTR (Section Three, Chapter XX). The project requires an SSDP because a portion would occur within 200 feet of a regulated shoreline, the value of which exceeds the permit threshold of

\$7047.00. *Exhibits 1, 1.B, and 1.D (see Sheets 3A and 5); Washington Administrative Code (WAC) 173-27-040; Washington State Register (WSR) 17-17-007.*

8. The US Army Corps of Engineers (USACOE) reviewed the outfall portion of the project and determined that it is authorized under Nationwide Permits 3 and 33. In addition to complying with the conditions of the nationwide permits, the USACOE identified additional special conditions for the project to ensure compliance with the Endangered Species Act, including: obtaining appropriate permits if there will be a “take” a listed species; limiting the work to the time period of July 15 through October 15¹; and ensuring that there are no forage fish in the project area prior to construction, through preparation of a forage fish survey by an approved biologist. *Exhibits 1.K, 1.L, and 1.N.*
9. The Washington Department of Fish and Wildlife granted hydraulic project approval (HPA) for the outfall replacement on March 11, 2021. The approval requires the Applicant to remove 260 square feet of existing rock that is waterward of the mean higher high water (MHHW) mark as specified in a proposed mitigation plan, to offset the 260 square feet waterward of the MHHW mark that would be impacted by the new construction. The approval includes several construction requirements, including: isolating the work area with an inflatable cofferdam; staging construction so that contaminants are prevented from entering the water; and removing debris from the shoreline after the project is complete. Consistent with the USACOE approval, work will be allowed between July 15 through October 15 if an approved biologist does not detect surf smelt eggs during a beach survey. *Exhibit 1.O.*
10. A portion of the project would occur within an area regulated pursuant to the County’s critical areas ordinance (CAO) as a frequently flooded area. The CAO allows the maintenance or repair of stormwater conveyance or detention/treatment facilities in frequently flooded areas. *Exhibit 1; Thurston County Code (TCC) 24.20.150.* Per the County floodplain manager’s recommended conditions of SSDP approval, the project would require floodplain approval, including a no rise analysis for the proposed 44 cubic yards of fill. *Exhibit 1.* However, the project is not expected to result in a floodplain rise because stormwater capacity would be increased as a result of the project. *Trevin Taylor Testimony.*
11. The Thurston County Environmental Health Division reviewed the proposal against the requirements of the Thurston County Sanitary Code and did not identify any issues of concern. Environmental Health recommended approval of the SSDP. *Exhibit 1.I.*
12. The Washington Department of Ecology (DOE) Water Quality/Watershed Resources Unit commented that a Construction Stormwater General Permit might be required for the project due to the potential for construction stormwater to enter Boston Harbor, and identified additional water quality studies that might be required as part of the permitting

¹ Most of the stormwater system improvements described in the SSDP application would not be subject to the limited work window. The work window applies to the outfall portion of the project. *Testimony of Trevin Taylor and Doreen Gavin.*

process. The DOE also commented that: grading and filling must only use clean fill; that all removed debris must be disposed of at an approved site; that testing must be conducted of soil or groundwater if contamination is suspected; and that erosion control measures must be implemented prior to any clearing, grading, or construction. County Planning Staff incorporated the DOE's comments into the recommended conditions of SSDP approval. *Exhibits 1 and 1.G.*

13. The Thurston County Public Works Department acted as lead agency for review of the environmental impacts of the proposal pursuant to the State Environmental Policy Act (SEPA) and issued a determination of non-significance (DNS) on October 24, 2020. The DNS was not appealed. *Exhibits 1 and 1.F.*
14. A revised notice of application and notice of public hearing was mailed to property owners within 500 feet of the site on July 9, 2021 and published in The Olympian on July 30, 2021. *Exhibits 1, 1.A, and 1.S.*
15. In public comment on the application, several residents objected to the proposed redevelopment of the roadside ditches, as this would require removal of private landscaping improvements (including irrigation) and mature vegetation that has been allowed by the County to be developed along the street frontage over decades during which the ditches were not actively maintained by the County. Several comments questioned the need to impose the County's current ditch standards if the existing ditches are functional. Some commented that they have not observed flooding in the ditches. One area resident, who is a licensed civil engineer, submitted that the County should have considered alternatives that would have allowed preservation of more of the existing landscaping. Several residents argued that the County should have conducted better public engagement prior to committing to the proposed course of action. *Exhibits 1.R, 1.X, 1.Y, 1.BB, 1.CC, 2B, and 2C; Testimony of David Hartley, Frank Swinkey, Neil Sexton, and Nancy Connery.*
16. County drainage standards require that the stormwater conveyance system be designed to accommodate the 100-year storm event without flowing across the roadway. The County's consulting engineer with the firm AHBL conducted hydraulic modeling of the current Boston Harbor drainage system and found that it lacks capacity to accommodate peak flows. This was also demonstrated by the flooding that occurred in 2007 and 2010, of which photographs were provided in the record. Based on AHBL's modeling, three project alternatives to correct the deficiency were developed and considered by the County, from which the County selected the current option. *Exhibit 1.Y; Doreen Gavin Testimony.*
17. The County Engineer has approved deviations from the road standards, allowing for narrower ditch widths to minimize impacts to neighbors while maintaining public safety; however, the extent of deviations that may be approved is constrained by the County's need to maintain consistency with federal road standards. *Testimony of Tim Wilson and Trevin Taylor.*

18. The Applicant conducted pre-application public outreach that was consistent with other Public Works projects, although the outreach was in fact complicated by the pandemic. There was postcard outreach, information posted on the County’s website, a zoom meeting conducted last summer, and some individual meetings with property owners. *Testimony of Tim Wilson and Trevin Taylor.*
19. At the conclusion of the hearing, having heard all testimony and considered all public comment, Community Planning and Economic Development Department Staff maintained its recommendation for approval subject to the conditions outlined in the staff report. *Exhibit 1; Sharon Lumbantobing Testimony.* The Public Works Department did not raise objections to the recommended conditions of approval. *Testimony of Tim Wilson and Trevin Taylor.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide applications for shoreline substantial development permits pursuant to TCC 2.06.010.C and Section One, Part V of the Shoreline Master Program for the Thurston Region.

Criteria for Review

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

To be approved by the Hearing Examiner, the proposed shoreline substantial development permit must be consistent with:

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

A. Shoreline Management Act

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Act. The Thurston County Shoreline Master Program (SMPTR) provides goals, policies, and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses (in the following order of preference) that: recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of

natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

B. Applicable regulations from the Washington Administrative Code

WAC 173-27-140 Review criteria for all development.

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

C. Shoreline Master Program for the Thurston Region

The Shoreline Master Program for the Thurston Region (SMPTR) designates the shoreline jurisdiction on the subject property as Rural Conservancy. Stormwater improvements such as those proposed are subject to the policies and regulations contained in the "Utilities" chapter of the SMPTR (Section Three, Chapter XC).

SMPTR Section Three, Chapter XX, Part 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]

SMPTR Section Three, Chapter XC, Part C. 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]

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. [N/A]
- 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. [N/A]
- 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. [N/A]
- 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 upgrade for the existing stormwater facility is a “reasonable and appropriate use” that is: protective of public health and safety by preventing flooding, ensuring that applicable road and drainage standards are satisfied, and enclosing the outfall vault; protective of the land by reducing erosion; and protective of wildlife by preventing sediment and pollutants from entering Puget Sound. The project would result in long-term benefits to shoreline ecology and function. Due to the project location within the existing utility corridor, the character of the shoreline would be preserved. Consistent with the priorities of the Act, the improvements would control pollution and prevent damage to the natural environment. The project has been approved by USACOE and WDFW, both of which evaluated the project for potential impacts to wildlife. The water quality conditions recommended by the DOE have been incorporated into this decision. *Findings 5, 6, 8, 9, 10, 11, 12, 13, 16, 17, and 19.*
2. As conditioned, the use complies with applicable regulations in the Washington Administrative Code. No structures of more than 35 feet above grade are proposed, and views would not be obstructed. *Exhibit 6.*
3. As conditioned, the proposal is consistent with the applicable Utilities policies and regulations of the SMPTR. The stormwater improvements would be placed within existing road and utility corridors and would not obstruct scenic views. The route would be no longer than necessary. The project would not affect public access to the shoreline; establishing public access within the outfall portion of the utility corridor would not be feasible because it crosses private property. The project would include measures to prevent sediments from reaching Boston Harbor and to prevent beach erosion at the outfall. The project has been designed to fit within the existing facility footprint to the extent possible for minimal environmental and aesthetic impact. While the ditch reconstruction may result in loss of vegetation in front of some homes, this impact must be balanced against the environmental and public safety benefits of the project and the County’s duty to manage its facilities consistent with public safety. The resulting new ditches would be as narrow as possible while remaining compliant with relevant standards. The project would prevent damage to the adjacent and downstream environment through flood prevention, use of catch basins to intercept sediment prior to discharge into Puget Sound, and reduction in flow velocities. It is designed to prevent the discharge of waste material. Compliance with the DOE’s requirements would further address potential water quality concerns. No evidence was submitted that an aquacultural area would be adversely affected by the project. *Findings 3, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, and 19.*
4. As conditioned, the proposal is consistent with the applicable regional criteria. No new public access to the shoreline is proposed. The project has been closely analyzed for its effect on the aquatic environment by agencies with expertise. The Applicant, as a governmental unit, has been subject to the same review requirements as private applicants, including review by state and federal agencies, review by the County floodplain manager, and review by the County Planning and Environmental Health

departments. The Applicant has met its burden of proving that the SSDP criteria are satisfied. Because the project involves replacing stormwater facilities within the same utility corridor, existing shoreline qualities would not be degraded by the project. A poor-quality shoreline condition that causes both environmental degradation and a threat to public safety would be eliminated by the new outfall. The project was analyzed for its effect on public health and no adverse impacts were identified. *Findings 3, 5, 6, 8, 9, 10, 11, 12, 13, and 19.*

5. It is unfortunate in the extreme that affected members of the public remain so dissatisfied with the notice and public outreach conducted with this project; however, the Public Works Department satisfied the minimum notice requirements established by County Code. Hopefully, outreach for future projects can be handled in a manner that builds on what was learned from this process. *Findings 13, 14, and 18.*

DECISION

Based on the preceding findings and conclusions, the requested shoreline substantial development permit is **GRANTED** subject to the following conditions:

Flood Plain

1. Flood approval for all projects that are in the flood zone is required, including the 44 cubic yards of fill within the flood zone which will require a zero rise analysis.
2. The proposed support wall for the outfall would need to be permitted as required by applicable regulations.

Building Department

3. A building permit and engineered constructions plans are required for the head wall.

Planning Department

4. All construction shall be in substantial compliance with the plans included in the submitted JARPA application.
5. 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 the Thurston County Planning & Economic Development Department shall be met.

Washington Department of Ecology Water Quality/Watershed Resources Unit (Greg Benge (360) 690-4787)

6. Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface water or stormdrains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants.

Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48 RCW, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, and is subject to enforcement action.

Section A #10 of the SEPA checklist does not reflect the need for coverage under the Construction Stormwater General Permit (CSWGP), which may be required for the proposed project. If site disturbance is over one acre or the project reasonably expects to cause a violation of any water quality standards, and stormwater discharges to surface Waters of the State, a CSWGP is required. The project's close proximity to Boston Harbor presents an increased likelihood that construction stormwater will enter Waters of the State.

Construction Stormwater General Permit:

The following construction activities require coverage under the Construction Stormwater General Permit:

1. Clearing, grading and/or excavation that results in the disturbance of one or more acres and discharges stormwater to surface waters of the State; and
2. Clearing, grading and/or excavation on sites smaller than one acre that are part of a larger common plan of development or sale, if the common plan of development or sale will ultimately disturb one acre or more and discharge stormwater to surface waters of the State.
 - a) This includes forest practices (including, but not limited to, class IV conversions) that are part of a construction activity that will result in the disturbance of one or more acres, and discharge to surface waters of the State; and
3. Any size construction activity discharging stormwater to waters of the State that Ecology:
 - a) Determines to be a significant contributor of pollutants to waters of the State of Washington.
 - b) Reasonably expects to cause a violation of any water quality standard.

If there are known soil/ground water contaminants present on-site, additional information (including, but not limited to: temporary erosion and sediment control plans; stormwater pollution prevention plan; list of known contaminants with concentrations and depths found; a site map depicting the sample location(s); and additional studies/reports regarding contaminant(s)) will be required to be submitted. For additional information on contaminated construction sites, please contact Carol Serdar at Carol.Serdar@ecy.wa.gov, or by phone at (360) 742-9751.

Additionally, sites that discharge to segments of waterbodies listed as impaired by the State of Washington under Section 303(d) of the Clean Water Act for turbidity, fine sediment, high pH, or phosphorous, or to waterbodies covered by a TMDL may need to meet additional sampling and record keeping requirements. See condition S8 of

the Construction Stormwater General Permit for a description of these requirements. To see if your site discharges to a TMDL or 303(d)-listed waterbody, use Ecology's Water Quality Atlas at: <https://fortress.wa.gov/ecy/waterqualityatlas/StartPage.aspx>.

The Applicant may apply online or obtain an application from Ecology's website at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/> - Application. Construction site operators must apply for a permit at least 60 days prior to discharging stormwater from construction activities and must submit it on or before the date of the first public notice.

7. The Applicant shall install erosion control measures prior to any clearing, excavation, grading, or construction activity. Erosion control measures must be approved by the Development Review section of Thurston County Public Works prior to construction and be consistent with the Drainage Design and Erosion Control Manual for Thurston County.
8. All on-site construction activities shall fully comply with noise limitations outlined in WAC 173-60.
9. 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.
10. All grading and filling of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required from the local jurisdictional health department prior to filling. All removed debris resulting from this project must be disposed of at an approved site. Contact the local jurisdictional health department for proper management of these materials. Washington State Department of Ecology, Solid Waste Management: Derek Rockett (360) 407-6287
11. If contamination is suspected, discovered, or occurs during the proposed SEPA action, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator for the Southwest Regional Office (SWRO) at (360) 407-6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Thomas Middleton with the SWRO, Toxics Cleanup Program at (360) 407-7263.
12. The Applicant must comply with all other applicable local, state, and federal regulations and obtain the necessary permits prior to beginning construction activities. This includes the US Army Corps of Engineers, Washington State Department of Ecology, Washington State Department of Fish and Wildlife and

11. If contamination is suspected, discovered, or occurs during the proposed SEPA action, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator for the Southwest Regional Office (SWRO) at (360) 407-6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Thomas Middleton with the SWRO, Toxics Cleanup Program at (360) 407-7263.
12. The Applicant must comply with all other applicable local, state, and federal regulations and obtain the necessary permits prior to beginning construction activities. This includes the US Army Corps of Engineers, Washington State Department of Ecology, Washington State Department of Fish and Wildlife and Washington State Department of Natural Resources. It is the sole responsibility of the Applicant to contact other agencies and secure any permits required for this project.
13. 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).

Decided August 26, 2020 by



Sharon A. Rice
Thurston County Hearing Examiner

The decision was first issued on August 26, 2021 with a typo indicating 2020. On August 31, 2021, this one scrivener error in decision issuance date was corrected without any amendment to appeal timelines.

Findings, Conclusions, and Decision

Thurston County Hearing Examiner

Boston Harbor Road NE Stormwater Improvements SSDP, No. 2020106111

Page 16 of 16

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 **\$777.00** for a Request for Reconsideration or **\$1,054.00** 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 \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.