



COUNTY COMMISSIONERS

John Hutchings  
District One

Gary Edwards  
District Two

Bud Blake  
District Three

## HEARING EXAMINER

*Creating Solutions for Our Future*

### BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Application of	)	NO. 2017104930
	)	
<b>Thurston County Public Works Department</b>	)	<b>Mullen Road Improvements</b>
	)	
For Approval of a	)	FINDINGS, CONCLUSIONS,
Shoreline Substantial Development Permit	)	AND DECISION
	)	

### SUMMARY OF DECISION

The requested shoreline substantial development permit to improve a 0.9-mile section of Mullen Road within the Rural shoreline environments associated with Woodland Creek and Pattison Lake is **GRANTED** subject to conditions.

### SUMMARY OF RECORD

#### **Request:**

Thurston County Public Works Department (Applicant) requested a shoreline substantial development permit to improve a 0.9-mile section of Mullen Road. Portions of the work would be within 200 feet of Pattison Lake and Woodland Creek, which areas are regulated pursuant to the Shoreline Master Program for the Thurston Region.

#### **Hearing Date:**

The Thurston County Hearing Examiner held an open record hearing on the request on April 24, 2018.

#### **Testimony:**

At the hearing the following individuals presented testimony under oath:

Tony Kantas, Associate Planner, Thurston County  
Steve Johnson, Thurston County Public Works  
Matt Unzelman, Thurston County Public Works  
Trevin Taylor, Thurston County Public Works

Jeanne Kinney, Thurston County Public Works  
Rick Yale, Pattison Lake Townhome Association  
Curtis Heinold  
Lynn Heinold  
Angela Danielson

**Exhibits:**

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

- Exhibit 1 Community Planning and Economic Development Department Land Use and Environmental Review Section Report, including the following attachments:
- A. Notice of Public Hearing
  - B. Master application, received September 8, 2017
  - C. JARPA permit application, received September 8, 2017
  - D. Forestland conversion application, dated September 8, 2017
  - E. Notice of Application, dated March 15, 2018
  - F. Mitigated Determination of Non-Significance, issued October 18, 2017
  - G. Vicinity map of Mullen Road project
  - H. Map of shoreline environments
  - I. Right-of-way plan (7 pages), submitted September 8, 2017
  - J. Soil disturbance plan (1 page)
  - K. Wetland buffer impacts project map (3 pages)
  - L. Removal plan (9 pages)
  - M. Comment letters from the Washington State Department of Ecology, dated November 20, 2017 and October 4, 2017
  - N. Comment letters from the Nisqually Indian Tribe, dated March 29, 2018, October 24, 2017, and September 14, 2017
  - O. Comment memorandum from Thurston County Health Department, dated March 9, 2018
  - P. Comment letter from the State of Washington Department of Archaeology and Historic Preservation, dated September 26, 2018
  - Q. Letter from U.S. Department of Fish and Wildlife, dated September 9, 2016
  - R. Critical areas report, dated August 2017
  - S. Biological assessment, dated February 19, 2016

Exhibit 2 Two photos of Mullen Road

- Exhibit 3 Public comments from Roland and Virginia Lanoue, dated April 23, 2018, and from William and Julia Mitchell, dated April 12, 2018
- Exhibit 4 Memo from Trevin Taylor to Matt Unzelman with printout from Washington Department of Fish and Wildlife APPS system, dated April 23, 2018
- Exhibit 5 Letter from Nancy Easley on behalf of Pattison Lake Townhome Association, dated March 2, 2016

Based upon the record developed at hearing, the following findings and conclusions are entered.

### FINDINGS

1. The Applicant requested a shoreline substantial development permit (SSDP) to improve a 0.9-mile section of Mullen Road. Proposed improvements include widening the road for installation of sidewalks and bicycle lanes, replacement of a culvert carrying Woodland Creek, use of low impact development (LID) methods for stormwater collection and treatment, addition of street illumination, and installation of a roundabout at Carpenter Road. Utilities would be relocated in conjunction with the project. Portions of the work would be within 200 feet of Pattison Lake and Woodland Creek. Located in the Lacey Urban Growth Area, the subject property consists of County right-of-way from the Lacey city limits to a point approximately 500 feet east of the Carpenter Road intersection.<sup>1</sup> *Exhibits 1.B, 1.C, 1.G, 1.I, 1.J, and 1.S; Matt Unzelman Testimony.*
2. The application was filed on September 8, 2017 and deemed complete on October 24, 2017. *Exhibits 1.B, 1.C, and 1.E.*
3. The transportation element of the Thurston County Comprehensive Plan identifies as “critical issues” the maintenance of acceptable operating service levels and a safe transportation network, and the avoidance of environmental impacts associated with transportation systems. *Exhibit 1, page 5.*
4. Mullen Road is an east-west arterial road that provides a connection between Ruddell Road and Marvin Road. The traffic volume exceeds 7,000 vehicles per day. It consists of two 10- to 11-foot wide travel lanes with three- to five-foot wide shoulders on each side. There are no stormwater treatment facilities. The road is substandard according to current safety and environmental standards. *Exhibits 1 (page 2), 1.R, 1.S, and 2; Matt Unzelman Testimony.*
5. The primary purpose of the project is to improve pedestrian safety, particularly for students walking to and from school. Mullen Road provides access to three schools, including two elementary schools and one high school, and the road is heavily used by

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<sup>1</sup> The legal description of the subject property is a portion of Section 34, Township 18 North, Range 1 West, W.M. *Exhibit 1.*

children despite the inadequate shoulder widths. *Exhibits 1.C, 1.R, and 1.S; Matt Unzelman Testimony.*

6. After the project is complete, the Mullen Road street section would consist of two 11-foot wide travel lanes, five-foot wide paved bicycle lanes, and nine-foot wide sidewalks. The sidewalk width is designed to comply with City of Lacey design guidelines (applicable due to Lacey Urban Growth Area location), which require street lights to be set back at least three feet from the curb but also require a five-foot unobstructed width for compliance with the standards of the Americans with Disabilities Act (ADA). The proposed improvements would connect to improvements completed by the City of Lacey on the portion of Mullen Road under its jurisdiction west of the project area. *Exhibit 1.S; Matt Unzelman Testimony.*
7. Pattison Lake is on the south side of Mullen Road. The Shoreline Master Program for the Thurston Region (SMPTR) designates the Pattison Lake shoreline as a Rural shoreline environment. *Exhibits 1 (page 2) and 1.H.*
8. Woodland Creek passes beneath Mullen Road, connecting Pattison Lake to the south with Hicks Lake to the north. There are wetlands associated with Woodland Creek on the north side of the road, including a Category I wetland requiring a minimum buffer of 280 feet and a Category II wetland requiring a minimum buffer of 180 feet. The SMPTR designates the Woodland Creek shoreline in the project area as a Rural shoreline environment. *Exhibits 1 (page 2) and 1.R; Thurston County Code (TCC) 24.30.045.*
9. Transportation thoroughfares are allowed in the Rural shoreline environment subject to the standards contained in the SMPTR. *Exhibit 1, page 7; SMPTR, Section 3, Chapter XVII.* The project requires an SSDP because portions would occur within 200 feet of a regulated shoreline, and the value exceeds the permit threshold of \$7047.00. *Exhibits 1 (page 5) and 1.C; WAC 173-27-040; WSR 17-17-007.*
10. Both wetland buffers would be affected by the proposed road widening and installation of stormwater facilities. Stormwater level spreaders would be used to disperse water along the base of the roadway prism, which would require excavation of a two-foot wide trench and maintenance of a two-foot wide setback that is clear of vegetation, although woody vegetation would overhang. The trench would be filled with gravel to create an infiltration facility that would sheet flow into the surrounding vegetation during heavy rain events. *Exhibit 1.R.*
11. With the stormwater improvements proposed, existing “stormceptor” facilities at Mullen and Rumac would be disconnected, as requested by the Pattison Lake Townhome Association. *Exhibit 5; Matt Unzelman Testimony.*
12. The culvert replacement portion of the road improvement project would impact the buffer of the Category II wetland and the Woodland Creek buffer, which overlap. While the

existing culvert is 56 feet long and three feet in diameter, the proposed culvert would be 100 feet long and ten feet wide.<sup>2</sup> *Exhibits 1.C, 1.R, and 4.*

13. Road expansion projects are allowed within Category I and II wetlands with approval of a critical areas permit and compliance with the standards of TCC 24.30.270. *Exhibit 1, pages 3-4.* The required critical areas permit would be decided administratively by Planning Staff after SSDP issuance, if approved. *Tony Kantas Testimony.*
14. The Applicant designed the project to avoid wetland impacts and to minimize impacts to wetland buffers. The original street design included two travel lanes plus a center turn lane, bicycle lanes, sidewalks, and planter strips on both sides of the road. The Applicant eliminated the center turn lane and planter strips to narrow the project footprint by 17 feet. In addition, the Applicant used retaining walls instead of side slopes to eliminate the need for 1,400 cubic yards of fill in the buffers. *Exhibit 1.R.*
15. The placement of the stormwater water facilities within the wetland buffers is unavoidable. While most of the project stormwater facilities would be on the opposite side of Mullen Road or underneath the sidewalks, these features would not be adequate to accommodate and treat all possible runoff. *Exhibit 1.R.*
16. The project would impact approximately 5,540 square feet of Category II wetland buffer. These impacts would be mitigated by revegetating disturbed areas with native plants (2,258 square feet), and through the purchase and enhancement of an additional 5,938 square feet of land by removing invasive species and planting native trees and shrubs. This mitigation ratio would exceed the 1:1 ratio required by the critical areas ordinance at TCC 24.30.080. *Exhibits 1.K and 1.R.*
17. The project would impact approximately 13,755 square feet of Category I wetland buffer. These impacts would be mitigated by revegetating approximately 21,000 square feet of disturbed and adjacent buffer areas. This mitigation ratio exceeds the 1:1 ratio required by the critical areas ordinance at TCC 24.30.080. *Exhibits 1.K and 1.R.*
18. The Applicant applied for Hydraulic Project Approval from the Washington Department of Fish and Wildlife (WDFW) on December 19, 2017. On January 17, 2018, WDFW rejected the application as unnecessary, declining jurisdiction over Woodland Creek based on the lack of historic fish presence in the stream. *Exhibit 4.*
19. The project area contains small and discontinuous patches of habitat that are potentially suitable for the Yelm pocket gopher, a subspecies of the Mazama pocket gopher. The Yelm pocket gopher is listed as a threatened species under the Endangered Species Act. The U.S. Fish and Wildlife Service reviewed the proposal and determined that the project

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<sup>2</sup> The original plans called for a 15-foot wide box culvert to provide for fish passage. However, prior to the hearing the Applicant revised the plans to provide for a smaller culvert after the Washington State Department of Fish and Wildlife determined that the project was not within its jurisdiction due to lack of historic fish presence in Woodland Creek. *Exhibits 1.C and 4; Steve Johnson Testimony.*

would not result in a take of the species in violation of the Act, and that no related indirect or cumulative effects are likely to occur later in time. *Exhibit 1.Q.*

20. The Thurston County Environmental Health Division of the Public Health and Social Services Department reviewed the proposal and determined that it satisfies the requirements of the Thurston County Sanitary Code. *Exhibit 1.O.*
21. Washington State Department of Ecology submitted comments describing requirements/procedures with respect to toxics cleanup, solid waste handling, and water quality protection. Ecology did not oppose the proposal or express project-specific concerns regarding environmental protection. *Exhibit 1.M.*
22. The Washington State Department of Archaeology and Historic Preservation (DAHP) reviewed the proposal and commented that because the project was reviewed in 2015 under Section 106 of the National Historic Preservation Act, no additional review is required. DAHP had no further comments on the project. *Exhibit 1.P.*
23. The Nisqually Indian Tribe reviewed the proposal and did not have comments but requested that the Tribe be informed if there are discoveries of archaeological resources or human burials during construction. *Exhibit 1.N.*
24. Thurston County Public Works acted as lead agency for review of the project under the State Environmental Policy Act. Public Works issued a mitigated determination of non-significance (MDNS) on October 18, 2017, which became final on November 20, 2017 when it was not appealed. The mitigation measures specified in the MDNS include: wetland buffer and riparian plantings and removal of invasive species; construction of the culvert to current fish passage standards; notification of the U.S. Fish and Wildlife Service if Mazama pocket gophers or their mounds are observed during construction; and use of stormwater best management practices to comply with the Clean Water Act. *Exhibits 1 (page 3) and 1.F.*
25. Notice of the public hearing was mailed to owners of property within 300 feet of the site on April 10, 2018, published in The Olympian on April 13, 2018, and posted on-site on April 14, 2018. *Exhibits 1 (page 3) and 1.A.*
26. One of the issues raised in public comment on the application was the future location of utility poles. The Pattison Lake Townhome Association requested the use of underground wiring or that the poles and transmission lines be moved to the opposite side of the street from Pattison Lake. *Rick Yale Testimony; Exhibit 5.* Applicant representatives testified that the pole locations have not been determined and encouraged homeowners to contact Puget Sound Energy (PSE). The Applicant submitted that PSE wants to maintain above-ground transmission lines through the project corridor, and that the County does not have authority to require PSE to underground the lines. *Matt Unzelman Testimony.*

27. Another issue raised in public comment on the application was traffic speed and whether the widened road would result in higher traffic volumes and speeds. The Pattison Lake Townhome Association requested that the speed limit be reduced. *Exhibits 3 and 5*. The current speed limit on Mullen Road is 35 miles per hour, which speed limit was established based on traffic studies. The County does not intend to reduce the speed limit but agreed to install additional speed limit signs in conjunction with the project. The road capacity would not increase as a result of the project, because the road would remain a two-lane road. *Matt Unzelman Testimony*.
28. The Pattison Lake Townhome Association requested a berm and landscaping for safety and noise attenuation between Mullen Road and Pattison Lake properties. *Rick Yale Testimony; Exhibit 5*. The County submitted that plans for these features are still in development. The right-of-way acquisition and construction agreement processes are just now commencing. Property owners would have the chance to negotiate for specific outcomes on their parcels through the land acquisition process. *Matt Unzelman Testimony*.
29. Concern was expressed regarding slope stability for residences upslope of the proposed improvements. *Lynn Heinold Testimony*. The Applicant hired a geotechnical engineer to make recommendations and provide technical advice on this aspect of the project. Retaining walls would be used to stabilize the slopes. *Matt Unzelman Testimony*.
30. While several issues of concern were raised in public comment on the application, there was also public comment in support, with comments welcoming safety improvements for pedestrians. *Exhibit 3; Tony Kantas 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.

- (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. Road improvements such as those proposed are allowed in the Rural environment subject to the policies and regulations contained in the “Road and Railroad Design and Construction” chapter (Section Three,



Chapter XVII).

SMPTR Section Three, Chapter XVII, Part 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.
6. Railroad beds should be screened with trees in scenic areas. [N/A]

SMPTR Section Three, Chapter XVII, Part 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.
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. [N/A]
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. [N/A]
8. Storm water runoff shall be controlled to reduce suspended solids before entering any surface water body.

## 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:**

#### ***A. Shoreline Substantial Development Permit***

1. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. The proposed use, which would improve the safety and environmental features of a preexisting arterial street, is a reasonable and appropriate use. With the mitigation plantings proposed, it would not affect the character or ecology of the shoreline, nor would it have public health impacts. The project would be consistent with control of pollution, as stormwater treatment facilities would be installed for the first time. *Findings 1, 4, 5, 6, 10, 14, 16, 17, 20, 21, 24, and 29.*

2. As conditioned, the use complies with applicable regulations in the Washington Administrative Code. The road improvements would not obstruct views; to the extent that utility poles can be considered to obstruct views, there are overriding considerations of public interest in play. The conditions of approval address the minimum 21-day wait time for construction specified in WAC 173-27-190.
3. The proposal is consistent with the applicable policies and regulations of the Shoreline Master Program for the Thurston Region. The proposed road improvements follow the existing road corridor. The project was designed to minimize alteration of wetland buffers. The conditions of this decision address erosion control and removal of construction debris. The improved road would provide for safe pedestrian and cyclist travel, where currently substandard conditions exist on a road heavily traveled by pedestrians. No new shoreline crossing is proposed, and there would be no filling of tidelands, shorelands, or marshes. Exposed soils would be stabilized and protected by seeding. Stormwater runoff would be controlled. *Findings 1, 4, 6, 10, 14, 15, 16, 17, and 24.*

### **DECISION**

Based upon the preceding findings and conclusions, the requested shoreline substantial development permit to improve a 0.9-mile section of Mullen Road, with portions of the road improvements falling within the Rural Environments of Woodland Creek and Pattison Lake is **GRANTED** subject to the following conditions:

1. The project shall be installed as proposed and conditioned, except that in lieu of the 15-foot wide culvert depicted in the September 8, 2017 application materials (at Exhibits 1.C and 1.I), the Applicant may substitute the 10-foot wide culvert described in Exhibit 4.
2. Erosion and storm water control best management practices meeting Thurston County standards in Chapter 15.05 shall be employed during all phases of the project. Proper erosion and sediment control practices shall be used on the construction site and adjacent areas to prevent upland sediments from entering the shoreline environment. All areas disturbed or newly created by construction activities shall be seeded, vegetated, or given some other equivalent type of protection against erosion.
3. No construction equipment is allowed in the stream or on the immediate bank area. Equipment shall be positioned as far as possible from the stream channel. Foot/personnel traffic in the stream channel shall be limited as much as possible.
4. The use of herbicide and/or pesticide treatments in the stream or associated wetlands is prohibited.
5. After construction, disturbed upland soils shall be revegetated with native plant species.
6. 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 by contacting the Environmental Report Tracking System Coordinator at the Southwest Regional Office at 360-407-6300.

7. The Applicant shall remove construction debris to an approved site (landfill or recycling center) outside of the shoreline area.
8. The Applicant shall comply with all mitigation outlined in the Critical Areas Report, dated August 2017.
9. The Applicant shall comply with all conditions of the mitigated determination of non-significance (MDNS), dated October 18, 2017.
10. The Mazama pocket gopher is listed under the federal Endangered Species Act. It is the responsibility of the Applicant to be aware of any species listing under the federal Endangered Species Act and comply with applicable federal regulations. Approval of this and other County permits may be superseded by federal law. Endangered species cannot be harmed at any time, even after permit issuance. If any are found during construction, the Applicant must contact the US Fish and Wildlife Services.
11. All other applicable state and federal permits/exemptions must be obtained prior to the start of project work.

Decided May 8, 2018.



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Sharon A. Rice  
Thurston County Hearing Examiner

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

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

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

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

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

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

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

**C. STANDING** All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

**D. FILING FEES AND DEADLINE** If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$688.00** for a Request for Reconsideration or **\$921.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

\* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. \_\_\_\_\_  
Appeal Sequence No.: \_\_\_\_\_

☐ Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

☐ Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_  
on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision  
rendered on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance \_\_\_\_\_
2. Platting and Subdivision Ordinance \_\_\_\_\_
3. Comprehensive Plan \_\_\_\_\_
4. Critical Areas Ordinance \_\_\_\_\_
5. Shoreline Master Program \_\_\_\_\_
6. Other: \_\_\_\_\_

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

### STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED \_\_\_\_\_

SIGNATURE OF APPELLANT \_\_\_\_\_

Address \_\_\_\_\_  
Phone \_\_\_\_\_

Please do not write below - for Staff Use Only:

Fee of ☐ \$688.00 for Reconsideration or \$921.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.