



COUNTY COMMISSIONERS

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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2020102055
)	
Washington State)	
Department of Fish and Wildlife)	Nisqually Access Redevelopment
)	
For Approval of a)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS, AND DECISION
)	
)	

SUMMARY OF DECISION

The requested shoreline substantial development permit to redevelop the Nisqually River access site located at 11642 and 11648 6th Avenue SE including parking, ADA access, stormwater, restroom, and landscaping improvements is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Washington State Department of Fish and Wildlife (WDFW, Applicant) requested a shoreline substantial development permit (SSDP) to redevelop the Nisqually river access site located at 11642 and 11648 6th Avenue SE, Olympia, Washington. The project would include: replacing an existing vault toilet with a new CRX toilet; removing existing asphalt; paving parking areas; striping parking stalls, including three ADA parking stalls; installing wheel stops in front of the parking stalls to control vehicular access within the shoreline; installing ADA and other signage; replacing existing and installing new fencing; replacing the siding on an existing shelter; installing four benches; removing 14 mature cottonwood trees and installing 42 replacement trees; and installing stormwater improvements including two grass filter strips.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on May 10, 2022. The record was held open through May 12, 2022 to allow members of the public who experienced access or technology barriers to 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 May 12, 2022. No in-person site visit was conducted, but the Examiner viewed the property on Google Maps.

Testimony:

At the hearing the following individuals presented testimony under oath

Heather Tschaekofske, Associate Planner, Thurston County

Dawn Peebles, Environmental Health Specialist, Thurston County

Tim Rupert, Floodplain Manager, Thurston County

Doug Wiedemeier, Planner, WDFW

Peter Stoessel, Capital and Asset Management Program, Environmental Engineer II, WDFW

Exhibits:

Through the virtual open record hearing process, 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, issued April 20, 2022
 - B. Zoning Map
 - C. Master Application, received May 27, 2020
 - D. JARPA Application, received May 27, 2020
 - E. Narrative description (undated), submitted January 2022
 - F. Site Plans, finals plans, dated March 2022
 - G. WDFW SEPA Checklist and Determination of Non-Significance screenshot, issued March 23, 2020
 - H. Notice of Application with adjacent property owners list, issued December 23, 2020
 - I. No rise certification prepared by WDFW, dated March 3, 2022
 - J. Habitat Assessment (Bi-Op), revised March 2022
 - K. Arsenic and Lead lab results by Dragon Analytical Laboratory, date prepared April 23, 2020
 - L. Approval memo from Dawn Peebles, Thurston County Environmental Health, dated October 6, 2020
 - M. Approval memo from Arthur Saint, Thurston County Public Works, dated February 1, 2022
 - N. Letter from the Washington Department of Ecology to WDFW regarding Determination of Non-Significance, dated March 18, 2020
 - O. Letter from the Washington Department of Ecology, dated July 9, 2020

- P. Letter from Department of Archaeology and Historic Preservation, dated February 18, 2020
- Q. Letter from WDFW to Washington Department of Ecology, dated March 23, 2020
- R. Comments from the Nisqually Indian Tribe, dated June 30, 2020
- S. WDFW Inadvertent Discovery Plan
- T. Critical Area Determination letter, dated April 25, 2022

Based on the record developed through the virtual hearing process 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 a shoreline substantial development permit (SSDP) to redevelop the Nisqually River access site located at 11642 and 11648 6th Avenue SE, Olympia, Washington.¹ The project would occupy portions of two WDFW-owned parcels and adjacent Thurston County right-of-way to the south. *Exhibits 1, 1.C, and 1.D.*
2. The SSDP application was submitted on May 27, 2020 and determined to be complete for purposes of commencing County review on June 25, 2020. *Exhibit 1.H.*
3. The site is currently developed with a concrete vault toilet, a paved fishing area with railings, gravel trails, and a gravel parking area. The redevelopment project is needed because the site is in poor condition, with the facilities no longer ADA accessible due to cracks in the asphalt. Parking is uncontrolled, with no delineation of parking stalls or barriers to prevent drivers from reaching the river's edge. Consequently, visitors park on sand bars below the ordinary high water mark during busy periods. *Exhibit 1.J, page 19.* The parking area is subject to scour during floods, rendering portions unusable. *Exhibit 1.J, page 21.* The cottonwood trees are unsafe due to falling limbs, and their roots contribute to the cracks in the asphalt. *Exhibits 1, 1.D, 1.E, and 1.J; Doug Wiedemeier Testimony.*
4. The subject property is on the Nisqually River shoreline, which is listed on the DNR Forest Practices Water Typing Mapper as Type S, a shoreline of the state. The Shoreline Master Program for the Thurston Region (SMPTR) designates the project area as a Rural shoreline environment. Low to medium-intensity recreation uses and associated parking facilities are allowed in the Rural 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, which extends 200 feet from the ordinary high water mark, and because the value of the project exceeds the current permit threshold of \$7047.00. No in-water work is proposed. *Exhibits 1, 1.D, 1.F, and 1.J;*

¹ Lots 1 and 2 of Valley Acres Ranchettes No. 3; Tax parcel numbers 81270000100 and 81270000200. *Exhibit 1.*

Washington Administrative Code (WAC) 173-27-040; Washington State Register (WSR) 17-17-007; SMPTR Section Three, Chapters XII and XIV(D).

5. The subject property is zoned Residential LAMIRD Two Dwelling Units per Acre (RL 2/1). The Community Planning and Economic Development Department interprets the existing river access for the public, which came into being some decades ago after the Applicant obtained the property in approximately 1969, to be an allowed use in the RL 2/1 zone. *Exhibits 1 and 1.B.*
6. Surrounding land uses include an active two-track railroad trestle to the east, undeveloped land to the north across the Nisqually River, and residential lots to the west and south. There is existing perimeter vegetation. *Exhibits 1, 1.D, and 1.F.*
7. The proposal includes: replacing an existing vault toilet with a new CRX toilet; removing existing asphalt; paving parking areas; striping parking stalls, including three ADA parking stalls; installing wheel stops in front of the parking stalls to control vehicular access within the shoreline; installing ADA and other signage; replacing existing and installing new fencing; replacing the siding on an existing shelter; installing four benches; removing 14 mature cottonwood trees and installing 42 replacement trees; and installing stormwater improvements including two grass filter strips. The proposed improvements would delineate 25 parking stalls, ensure that parking is confined to paved areas (through wheel stops, landscaping, and “no unauthorized vehicles beyond this point” signage), remove the cottonwood trees, and improve access for all visitors. A connection to an existing off-site river trail would be retained. With the proposed site redevelopment, more than half of the parking stalls would be set back at least 50 feet from the river, and there would be landscaping between the parking areas and the river. One existing parking area in the northwest corner of the site adjacent to the river would be converted into a tree planting area. The proposed replacement trees would provide additional screening, particularly along the western property line. The project would not impact railroad access. The only structures proposed are the replacement vault toilet and benches. *Exhibits 1.C, 1.D, 1.E, and 1.F; Heather Tschaekofske Testimony.*
8. With respect to floodplain impacts, under current conditions gravel and asphalt are released into the river during flood events. The proposed improvements would stabilize the site by paving the gravel areas, and would do so without increasing the amount of material within the floodway. The Applicant submitted an engineering “no rise” certification consistent with Thurston County requirements, certifying that the project would not impact the 100-year flood elevations, floodway elevations, or floodway widths of the river. The County Floodplain Manager concurred with the analysis. Initially, the plans showed fill within the shoreline area, but the County and WDFW worked together to eliminate the proposed fill. *Exhibits 1.I and 1.J; Tim Rupert Testimony.*
9. The subject property contains several critical areas that are regulated pursuant to the Thurston County critical areas ordinance (CAO), including a critical aquifer recharge area, a geologic hazard area (the mapped hazard is associated with the existing retaining wall on the property), a volcanic hazard area, a frequently flooded area (FEMA flood

zone A, and a flood of record area), a fish and wildlife conservation area (riparian habitat), and wetlands. Planning Staff reviewed the project against the requirements of the CAO, and issued a critical area determination on April 25, 2022 which included conditions of approval to ensure the project is compliant with the CAO. Conditions imposed in the critical area determination prohibit fill within the flood hazard area and require the Applicant to record on the property title an acknowledgment of the volcanic hazard area, implement erosion control measures, remove construction debris from the shoreline, prevent the release of oil and other deleterious materials during construction, and implement an inadvertent discovery plan with respect to cultural resources. *Exhibit 1.T.*

10. The Applicant prepared a floodplain habitat assessment for the project, which considered potential impacts to threatened and endangered species of wildlife and to those species' critical habitat within the project action area. The evaluation concluded that the project would have "no effect" or was "not likely to adversely affect" listed species of wildlife or habitat. The bases for this conclusion include that no work would occur below the ordinary high water mark, no cut or fill is proposed, no loss of flood storage or floodplain connectivity would occur, and because removed cottonwood trees would be replaced at a 3:1 ratio with western red cedar and big leaf maple trees. The parking lot improvements would reduce sediment delivery to the river, and the stream substrate is expected to improve over time. Impervious surfaces on the site would be reduced from 21,162 square feet to 17,327 square feet. *Exhibit 1.J.*
11. Thurston County Environmental Health Division (EHD) Staff reviewed the application for compliance with the County's Sanitary Code. EHD Staff recommended approval subject to conditions requiring that the Applicant obtain approval of an on-site septic tank placement application (with placement of the new toilet at least 50 feet from the water) and follow Department of Ecology recommendations regarding possible soil contamination. As proposed, the new toilet would be at least 50 feet from the retaining wall delineating the river's edge in that area. This is an improvement over existing conditions, as the existing toilet intrudes up to 10 feet into the required setback. Consistent with SMPTR regulations, no waste would be allowed to enter the water. *Exhibits 1, 1.F, 1.K, and 1.L; Dawn Peebles Testimony.*
12. The Thurston County Public Works Department reviewed the application and determined that the preliminary requirements set forth in Thurston County Road Standards and the Drainage Design and Erosion Control Manual have been satisfied. Public Works recommended approval subject to conditions. *Exhibit 1.M.*
13. Based on WDFW site evaluation and comments by the Washington Department of Archaeology and Historic Preservation, the project is not expected to impact cultural resources provided WDFW implement an inadvertent discovery plan. WDFW has prepared and submitted an inadvertent discovery plan, which specifies the procedures to be followed if cultural resources or human remains are discovered during development. Planning Staff's recommended conditions of SSDP approval require implementation of the inadvertent discovery plan. *Exhibits 1, 1.G, 1.P, and 1.S.*

14. WDFW acted as lead agency for review of the environmental impacts of the proposal as required by the State Environmental Policy Act (SEPA) and issued a determination of non-significance (DNS) on March 3, 2020. The DNS became final on March 23, 2020. *Exhibits 1 and 1.G.*
15. Washington Department of Ecology submitted comments on the DNS on March 18, 2020, raising concern that the area may have been contaminated from the old Asarco smelter plant in north Tacoma. Recommendations were provided for soil testing and water quality analysis following the 2012 Tacoma Smelter Plume Guidance. *Exhibit 1.N.* WDFW submitted samples to a professional land for soil analysis; the results of this testing showed toxicity levels to be within allowed limits. *Exhibits 1, 1.K, and 1.Q; Doug Wiedemeier Testimony.*
16. Notice of the virtual public hearing was mailed to all owners of property within 500 feet of the site on April 20, 2022 and published in The Olympian on April 29, 2022. *Exhibits 1 and 1.A.* There was no public comment on the application prior to or at the hearing
17. Having reviewed the complete record, Planning Staff maintained their recommendation for approval subject to the conditions in the staff report. *Exhibit 1; Heather Tschaekofske Testimony.* Applicant representatives waived objection to the recommended conditions. *Testimony of Doug Wiedemeier and Peter Stoessel.*

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 “Parking and Loading” and “Recreation” chapters of the SMPTR.

SMPTR Section Three, Chapter XII, Part B. Parking and Loading Policies

1. Parking should be provided to allow access to any use of shoreline-related activities.
2. Parking areas should not adversely impact the visual qualities of the shorelines.

3. 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. Where feasible, the walkways should be designed and constructed to accommodate handicap access.

SMPTR Section Three, Chapter XII, Part C. Parking and Loading Regulations

1. Parking in shoreline areas must serve a shoreline use.
2. Upland parking facilities within the jurisdiction of this Master Program shall be designed and landscaped to minimize adverse impacts upon adjacent shorelines and abutting properties. The landscaping shall consist of appropriate materials and vegetation, to be planted within one year after completion of construction and provide an effective screening three (3) years after planting.
3. Upland parking facilities within the jurisdiction of this Master Program for shoreline activities shall provide safe and convenient pedestrian circulation within the parking area and to the shorelines.
4. Parking facilities shall not be permitted over water.
5. Parking areas serving individual buildings on the shoreline shall be located landward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened or in cases when an alternate orientation would have less adverse impact on the shoreline.

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 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 would improve public access to the shoreline for recreational purposes at an existing facility while not adversely affecting the ecology of the shoreline. The proposed improvements would result in a long-term benefit to the shoreline. The conditions of approval address stormwater management, erosion control, disposal of construction debris, spill containment, notice of volcanic hazard, cultural resources, and maintenance of plantings. *Findings 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 17.*
2. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. No structures exceeding 35 feet above average grade are proposed. *Findings 7 and 17.*
3. As conditioned, the proposal is consistent with the policies and regulations of the Shoreline Master Program for the Thurston Region.
 - A. With respect to the parking and loading policies, the parking improvements are proposed to improve existing shoreline access for fishing and wildlife viewing. The proposed landscaping would ensure that there is no adverse impact on the visual

- quality of the shoreline. The project has been designed to prevent vehicular access to the river's edge and ensure ADA accessibility. *Findings 3, 7, 10, and 12.*
- B. With respect to the parking and loading regulations, the parking improvements would serve an existing shoreline recreational use, and would be designed and landscaped to minimize impacts. The conditions of approval address maintenance of plantings. The improved parking would provide safe and convenient pedestrian circulation, including ADA accessibility. No parking would be provided over water. The parking is not associated with a building. *Findings 3, 7, 10, and 12.*
- C. With respect to the applicable recreation policies, the shoreline access is an existing use not requiring land acquisition. The redevelopment project is compatible with the environment as conditioned through the critical area review process. The site provides access to a fishing stream, and an off-site trail connection. The redeveloped site would complement the environment. As described previously, the parking would be located away from the immediate edge of the water. The project has been reviewed for compliance with the County's critical areas regulations, road standards, drainage standards, and sanitary code; state environmental regulations; and the federal Endangered Species Act. The conditions of approval are designed to address the applicable provisions within these regulations. The recreational use of the site is not intensive and would be served by a code-compliant sewage disposal system. The proposed vault toilet would be set back 50 feet from the shoreline, an improvement over current conditions. *Findings 3, 4, 7, 9, 10, 11, 12, 14, and 17.*
- D. With respect to the applicable recreation regulations, the project would be compatible with the Rural environmental designation, would provide for nonmotorized access to the shoreline, and would meet public health standards for sewage disposal. Consistent with the recreation regulations specific to the Rural shoreline environment, the redeveloped site would not change or detract from the character of the shoreline; although paving of parking areas is proposed, impervious surfaces would decrease as a result of the proposal and overall environmental quality would be improved. With respect to the 50-foot setback, the project is to upgrade an existing parking area, some of which is within 50 feet of the shoreline. The upgrades include replacing some existing parking near the shoreline with landscaping and installing features to prevent access to the water's edge. The facilities would be ADA-accessible. The replacement toilet would be set back at least 50 feet from the ordinary high water mark. *Findings 3, 4, 7, 9, 10, 11, 12, 14, and 17.*
- E. With respect to the applicable regional criteria, the project is to redevelop an existing shoreline access point, and the redevelopment would enhance the characteristics of the shoreline. The conditions of approval, which incorporate the conditions of the environmental review process, would ensure the protection of water quality during development. Based on the habitat assessment that was conducted for the site, the project is not expected to adversely affect aquatic habitat. No in-water work is proposed. This application by WDFW, a government unit, is being reviewed under the same policies and regulations as would be applied to a private project. The

Applicant has met its burden of proof that the applicable criteria have been satisfied. The project would eliminate poor quality shoreline conditions by controlling parking and installing stormwater and landscaping improvements. Public health would be protected through the increased setback of the replacement vault toilet and through compliance with Environmental Health requirements. *Findings 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17.*

DECISION

Based upon the preceding findings and conclusions, the requested shoreline substantial development permit to redevelop the Nisqually river access site located at 11642 and 11648 6th Avenue SE is **GRANTED** subject to the following conditions:

1. 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).
2. No physical work shall be initiated until the Applicant obtains all required State and Federal permits and approvals.
3. 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).
4. Land disturbance and site preparation shall be limited to the project area, and adequate provisions for erosion control shall be implemented. Best management practices shall be employed, and there shall be no additional disturbance of vegetation or trees within the critical area without approval from Thurston County Community Planning and Economic Development.
5. The Applicant shall remove construction debris and any other debris related to project to an approved site (landfill or recycling center) outside of the shoreline area to avoid degradation of state waters.
6. 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.
7. Per TCC 24.17.030(D): For all new permitted uses and structures approved under this title, recordation on the title with the Thurston County Auditor that:
 - 1) Acknowledges that the development is within a Case 1 lahar volcanic hazard area for Mount Rainier, and is subject to debris flows and other hazards that potentially endangers property and life; and

- 2) The owner and all future owners take complete responsibility for development and occupation of the residence or structure and hold Thurston County and its employees harmless for any damage suffered because of volcanic hazards; and
- 3) Acknowledges that evacuation is the sole responsibility of the owner or occupant and that information on potential evacuation routes and holding areas is available from local emergency management agencies.

A critical area affidavit shall be recorded on the title with the Thurston County Auditor, which includes the above criteria.

8. The Applicant must comply with all requirements of state and/or federal law to avoid disturbance and alteration of artifacts, remains, or other cultural resources on site during development. In the event of inadvertent disturbance or alteration, the Applicant must immediately stop work and contact the Tribe and the State Department of Archaeology and Historic Preservation.
9. The WDFW Inadvertent Discovery Plan shall be in place during all phases of project construction.
10. Maintenance and Monitoring After Planting: WDFW habitat program will visit the site every 10 days and water new plantings as needed using a water tank. Any plants that die will be replaced within the first three (3) years of plant maintenance.
11. Prior to approval and release of any building permits, an on-site septic tank placement application must be submitted for the proposed vault toilet. The application must be reviewed and receive permit approval from our office. It should be noted a vault toilet is required to be located a minimum of 50- ft from surface water.

Conditions of Approval Specific to the Public Works Department:

Roads

12. The proposed roadway in concept and design shall conform to the Road Standards.
13. A construction permit shall be acquired from the Thurston County Public Works – Development Review Section prior to any construction.

Traffic Control Devices

14. All traffic control devices shall be designed, located, manufactured, and installed in accordance with the Road Standards, Manual of Uniform Traffic Control Devices and applicable WSDOT Standards & Specifications. A sign and striping plan shall be incorporated into the construction drawings for the project. Please contact Thurston County Public Works – Development Review Section Staff to obtain the most current Thurston County guidelines.
15. County forces may remove any traffic control device constructed within the County right-of-way not approved by this division and any liability incurred by the County due to non-conformance by the Applicant shall be transferred to the Applicant.

Drainage

16. The stormwater management system shall conform to the Drainage Design & Erosion Control Manual.
17. All drainage facilities outside of the County right-of-way shall remain private and be maintained by the developer, owner and/or the property owners association.
18. Stormwater runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact any existing drainage or other properties.

Utilities

19. The proposed water and sewer system shall be designed in accordance with the standards and specification of the respective utility purveyor. All water and sewer plans are subject to review and acceptance by the respective utility purveyor.

General Conditions

20. No work shall take place until a construction permit has been issued by Thurston County Public Works – Development Review Section.
21. The proposed grading or site work shall conform to Appendix J of the International Building Code, Title 14.37 of the Thurston County Code and Drainage Design & Erosion Control Manual.
22. When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section at 360-867-2051 for a final inspection.
23. This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant. One permit that may be required is a Construction Stormwater Permit from the Washington State Department of Ecology. Information on when a permit is required and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. Any additional permits and/or approvals shall be the responsibility of the Applicant.

Project Specific Conditions

24. Once the planning department has issued the official approval, submit a complete set of construction drawings and the final drainage and erosion control report to Thurston County Public Works – Development Review Section for review and acceptance.
25. PRIOR to construction, the Applicant shall:
 - a. Pay outstanding construction review and inspection fees*
 - b. Receive erosion and sediment control permit

- c. Have the erosion and sediment control inspected and accepted
- d. Receive a construction permit
- e. Schedule a pre-construction conference with county staff.

* The current fee schedule can be found online at <http://www.co.thurston.wa.us/permitting/fees/fees-home.html> or contact Ruthie Padilla with the Thurston County Public Works – Development Review Section by phone at 360-867-2050, or by e-mail at ruthie.moyer@co.thurston.wa.us.

General Information:

Final Review

26. Prior to receiving final approval from this department, the following items shall be required:
 - a. Completion of all roads and drainage facilities.
 - b. Final inspection and completion of all punch list items.
 - c. Record drawings submitted for review and acceptance. The record drawings shall include street names and block numbers approved by Addressing Official.
 - d. Receive and accept Engineer’s Construction Inspection Report Form (Appendix I-C, Volume I of the Drainage Design and Erosion Control Manual).
 - e. Receive and accept Maintenance Agreement Form (Appendix I-E, Volume I of the Drainage Design and Erosion Control Manual).
 - f. Completion of required signing and striping.
 - g. Payment of any required permitting fees.

Decided June 2, 2022 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 **\$804.00** for a Request for Reconsideration or **\$1,093.00** 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 \$804.00 for Reconsideration or \$1,093.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.