



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. 2022102059
)	
City of Olympia)	
)	
For Approval of a Special Use Permit,)	
Shoreline Substantial Development Permit, and)	FINDINGS, CONCLUSIONS,
Shoreline Conditional Use Permit)	AND DECISIONS
)	

SUMMARY OF DECISION

The requested special use, shoreline substantial development, and shoreline conditional use permits to construct a sewage lift station to replace the Old Port 1 Lift Station, install a retaining wall along the uphill side of the new lift station, and install sewer gravity mains, sewer force mains, and electrical conduit are **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

The City of Olympia requested a special use permit, shoreline substantial development permit, and shoreline conditional use permit to construct a sewage lift station to replace the Old Port 1 Lift Station, install a retaining wall along the uphill side of the replacement lift station, and install sewer gravity mains, sewer force mains, and electrical conduit between the replacement lift station and the existing Old Port 2 Lift Station. The work would occur within existing rights-of-way and easements, including within Old Port Drive NW, Anchor Lane NW, and Leeward Court NW. The replacement lift station site is addressed as 3110 Leeward Court NW, Olympia, Washington.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on February 28, 2023. The record was held open through March 2, 2023 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 March 2, 2023.

Testimony:

At the hearing the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Thurston County

Eric Mahugh, City of Olympia, Applicant

Dave Matz, RH2 Engineering, Project Manager

Alicia Pettibone, RH2 Engineering, Environmental Project Manager

Exhibits:

Through the virtual open record hearing process, the following exhibits were admitted into the record:

- Exhibit 1 Community Planning and Economic Development Staff Report including the following attachments:
- A. Notice of Public Hearing
 - B. Zoning map
 - C. Master Application, submitted May 5, 2022
 - D. Special Use Permit Application, submitted May 5, 2022
 - E. JARPA Application dated May 5, 2022
 - F. Project Site plans (undated)
 - G. Oldport 1 Lift Station Site Plans, submitted May 5, 2022
 - H. Project Narrative, dated April 2022, submitted May 5, 2022
 - I. Notice of Application, dated June 8, 2022 with adjacent property owners list, dated June 3, 2022
 - J. SEPA Determination of Non-Significance, dated September 21, 2022
 - K. SEPA Environmental Checklist, submitted May 5, 2022
 - L. Zero-rise certification from RH2, dated March 2, 2022
 - M. Floodplain Habitat Assessment from RH2, dated April 2022
 - N. Cultural Resources Monitoring and Inadvertent Discovery Plan, dated December 5, 2022
 - O. Landslide Hazard Geotechnical Report by RH2, dated April 22, 2022
 - P. Technical Memorandum by Shannon & Wilson, dated March 17, 2022
 - Q. Approval Memo from Lyndsey Smith, Environmental Health, dated September 26, 2022
 - R. Approval memo from Arthur Saint with Thurston County Public Works, dated October 19, 2022
 - S. Comment letter from Washington Department of Ecology, dated July 8, 2022

- T. Comment letter from the Nisqually Indian Tribe dated June 21, 2022
 - U. Email from Brad Beach, THPO with the Nisqually Tribe, dated July 13, 2022
 - V. Email from Shaun Dinublio, Archaeologist with the Squaxin Island Tribe, dated June 13, 2022
 - W. Emailed questions from Bruce Sutherland, dated July 5, 2022
 - X. Emailed answers to Mr. Sutherland from Dave Matz with RH2, dated July 12, 2022
 - Y. Project plan set (11 x 17) received February 1, 2023
- Exhibit 2 Comment letter from Barbara Benson, Angela J. Bowen Conservancy Foundation dated February 27, 2023

After considering the testimony and exhibits submitted through the open record hearing process, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The City of Olympia (City, Applicant) requested a special use permit, shoreline substantial development permit, and shoreline conditional use permit to construct a sewage lift station to replace the Old Port 1 Lift Station (OPLS1). The project includes installing a retaining wall along the uphill side of the replacement lift station and installing sewer gravity mains, sewer force mains, and electrical conduit between the replacement lift station and the existing Old Port 2 Lift Station (OPLS2). The work would occur within existing rights-of-way and easements, including within Old Port Drive NW, Anchor Lane NW, and Leeward Court NW. The replacement lift station site is addressed as 3110 Leeward Court NW, Olympia, Washington.¹ *Exhibits 1, 1.D, 1.E, 1.F, 1.G, and 1.H.*
2. The applications were submitted on May 5, 2022. The County issued a notice of application for the project on June 8, 2022. *Exhibits 1.C, 1.D, 1.E, and 1.I.*
3. The subject property is within the Olympia Urban Growth Area and is zoned Residential Four Dwelling Units Per Acre (R-4). The purpose of the R-4 zone is “to accommodate residential development in areas sensitive to stormwater runoff in a manner and at a density (up to four units per acre) that avoids stormwater related problems (e.g., flooding and degradation of environmentally critical areas).” *Thurston County Code (TCC) 23.04.020.B.3.* Utility Facilities are allowed in the R-4 zone with approval of a special use permit. *Exhibits 1 and 1.B; TCC 23.04.040, Table 4.01.* The use-specific standards that are applicable to utilities include, in relevant part, that the project proponent demonstrate a need for the utility in the proposed location, that plans demonstrate

¹ The legal description of the subject property is a portion of Section 3 Township 18 Range 2W; 2W Plat OLDPORT LT 24 017031 known as Tax Parcel No. 65950002400; Plat OLDPORT BLA-1111 TR C Document 011/188 known as tax parcel no. 65950004000; Plat WEST OLYMPIA BLA-970688 BLK 37 TR B Document 3098747 (INCLUDES TR 168 FIRST CLASS TIDELANDS SEE BLA) known as parcel no. 83003700100. *Exhibits 1 and 1.E.*

compatibility with surrounding properties, that there be no equipment causing noise or other disturbances beyond the property line, that there be no outdoor storage of motor vehicles, and that the site be screened or landscaped. *TCC 23.04.060.24.*

4. County Planning Staff evaluated the project against the Thurston County Comprehensive Plan and the Olympia Joint Plan and determined that it complies with applicable policies. *Exhibit 1.*
5. The subject property is located on the west shore of Budd Inlet of Puget Sound. *Exhibits 1 and 1.F.* OPLS1 is located at the toe of a steep marine bluff facing Budd Inlet, approximately 30 feet from the ordinary high water mark and near a private dock. There are residences on top of the bluff. *Exhibits 1, 1.E, and 1.G; Scott McCormick Testimony.*
6. The Shoreline Master Program for the Thurston Region (SMPTR) designates the subject property shoreline as Rural. Utilities are allowed in the Rural environment, subject to the applicable policies and regulations of the SMPTR. *Exhibit 1; SMPTR Section Three, Chapter XX.*
7. The SMPTR does not contain a use category that is applicable to the retaining wall; the closest category is “shoreline protection,” which includes structures such as bulkheads.² Pursuant to Washington Administrative Code (WAC) 173-27-160, an unclassified use may be authorized with a shoreline conditional use permit. *WAC 174-27-160; WAC 173-27-030(4); Exhibit 1.*
8. A shoreline substantial development permit (SSDP) is required for the development because it is within the regulated shoreline (all upland areas within 200 of from the ordinary high water mark) and the value exceeds the permit threshold of \$7,047.00.³ No in-water work is proposed. *Exhibits 1, 1.E, and 1.F; WAC 173-27-040; WSR 17-17-007; SMPTR Section Three, Chapters XII and XIV(D).*
9. OPLS1 was built in the early 1970s. OPLS1 pumps domestic sewage through approximately 600 linear feet of four-inch asbestos cement force main to OPLS2, located approximately 500 linear feet from and approximately 90 feet higher in elevation than OPLS1. The force main and existing underground communication lines are routed up a narrow, vegetated ravine located southwest of OPLS1, while the existing underground power lines follow residential streets and the access road to the site. *Exhibit 1.E.*
10. At its current location, OPLS1 is vulnerable to the effects of rising sea levels and debris from slope instability. There have been shallow landslides in the near vicinity of

² The SMPTR defines “shoreline protection” as “action taken to reduce adverse impacts caused by current, flood wake or wave action. ...” *SMPTR, Section 3, Chapter XVIII, Section A.*

³ The permit threshold was increased to \$8,504.00 effective July 1, 2022, after the subject application was submitted. *Washington State Register (WSR) 22-11-036.* The cost or value of the project also exceeds the current higher threshold.

OPLS1 within the past several years. In 2014, a slope sloughing event damaged the OPLS1 infrastructure, raising concerns that the aging force main might be compromised in the event of a larger slide. The proposed replacement lift station would be placed in a less vulnerable location within a grass median in the roadway approximately 40 feet northwest of the existing location, at a higher elevation and set back 15 feet from the toe of the slope. *Exhibits 1, 1.E, 1.F, 1.G, 1.H, 1.O, and 1.P; Scott McCormick Testimony.*

11. The proposed replacement lift station would consist of a pre-packaged steel structure with an underground pump station chamber (dry well) and a wet well. The above-grade components would include a metal grated platform, an electrical control shelter, and a 6.5-foot tall concrete retaining wall. Following construction of the new lift station, the existing OPLS1 would be decommissioned, the wet well filled, and the above-grade components removed. The footprint of the new lift station would be approximately 200 square feet, while the footprint of the existing OPLS1 is approximately 105 square feet. *Exhibits 1.E, 1.G, and 1.H.*
12. The project would include a total of approximately 800 linear feet of eight-inch diameter sewer gravity main and four-inch diameter sewer force main between the existing OPLS2 and the new OPLS1 (see Exhibit 1.F for graphic depiction of route). In addition, approximately 1,000 linear feet of electrical conduit would be installed roughly parallel to the new sewer main following the same alignment. Construction of the sewer mains and electrical conduit would be conducted primarily through open-cut trench excavation methods. Horizontal directional drilling would be used for an approximate 100-foot segment within a steeply sloped area between Leeward Court NW and Anchor Lane NW. *Exhibits 1.E, 1.F, 1.H, and 1.O.*
13. The tallest structure associated with the project would be a 15-foot tall equipment shelter to protect the electrical components of the lift station. This height would be below the elevation of the viewshed for residences within the surrounding neighborhood, which are on top of the marine bluff. The new sewer mains would be installed underground. *Exhibits 1 and 1.H.*
14. After development is complete, the project is expected to generate no more than three vehicle trips per week. The facility would not generate noise in excess of current conditions. *Exhibit 1.H.*
15. Construction of the replacement lift station would require removal of no more than 200 square feet of vegetation, consisting of roadside grasses and herbaceous weeds. Disturbed areas would be reseeded following construction. *Exhibit 1.H.*
16. The proposal would not impact existing access to the shoreline along Old Port Drive NW. *Exhibit 1.H.*
17. The proposed sewer main and electrical lines would follow existing utility and transportation corridors and would be installed underground. The route would be the minimum needed given the site topography and the location of easements. None of the

project components would be installed within or over water. *Exhibits 1, 1.G, and 1.H.*

18. Erosion control measures would be implemented during construction to prevent sediments from reaching Puget Sound. These measures would likely include construction fencing, inlet protection, and straw wattles. Disturbed areas would be revegetated. *Exhibits 1, 1.E, and 1.H.*
19. There would be no discharge of waste material from the facility. *Exhibit 1.H.*
20. The proposed project design includes several safeguards intended to ensure that no long-term damage would be caused to the shoreline environment should an accident occur. These would include:
 - The pump station rim elevation would be above the future sea level rise and floodplain elevation of 17 feet; the current pump station has a rim elevation of 14 feet. All sewer manholes below 17 feet in elevation would have watertight locking lids to prevent sewage overflow.
 - The proposed retaining wall along the west side of the lift station would provide protection in the event of landslide. The lift station setback of 15 feet from the slope would also provide protection. This is an improvement over current conditions as the existing lift station has no setback from the slope.
 - The facility would be equipped with an alarm system to notify the City of high sewage levels so that they may be addressed prior to overflow. There would be 5,900 gallons of storage above the level triggering an alarm, thereby providing at least two and up to eight hours of response time.
 - The facility would be designed to allow for emergency bypass pumping if required.
 - A generator and automatic transfer switch would allow for continued operation during a power outage.

Exhibits 1 and 1.G; Dave Matz Testimony.

21. The project area contains critical areas that are regulated under the Thurston County critical areas ordinance (CAO), including a geologic hazard area (associated with the marine bluff) and the 100-year floodplain of Puget Sound. The proposed utility use is allowed in both critical areas, provided the reporting and other applicable standards of the CAO are satisfied. *Exhibit 1; TCC Table 24.15-1; TCC Table 24.20-1.*
22. The Applicant submitted geotechnical engineering studies in support of the project. The project area includes slopes ranging from 15% to more than 50% and which meet the criteria for a landslide hazard area as defined in TCC 24.03.010. *Exhibits 1.O and 1.P.* The conclusion of the studies was that the project would not change the landslide or erosion risk at the project site or adjacent parcels. Excavations for the force main and lift station would occur in dense consolidated soil and would be backfilled with similar weight materials such that no change in load on any slopes would occur. The trenches would be constructed to facilitate drainage and would not result in any change in soil

- hydrology. The area of horizontal directional drilling would be backfilled with low permeability groat and would not load or modify the hydrology of the slope. Stormwater would be managed during construction, and construction activities would be monitored for vibration and other potential slope impacts. *Exhibit 1.O.*
23. The Applicant submitted an engineering “no rise” certification consistent with Thurston County requirements, certifying that the project would not impact the 100-year flood elevation of Puget Sound. *Exhibit 1.L.*
 24. The Applicant prepared a floodplain habitat assessment for the project, which considered potential impacts to threatened and endangered species of wildlife and designed critical habitat within the project action area. The result of the evaluation was that the project would have “no effect” on species including Puget Sound steelhead, southern resident killer whale, bull trout, streaked horned lark, yellow-billed cuckoo, Taylor’s checkerspot, and Puget Sound Chinook, and would “not likely to adversely affect” marbled murrelet. The project area does not contain any marbled murrelet nesting sites or suitable nesting habitat, and construction noise associated with the project is not expected to disturb the marbled murrelet. With respect to critical habitat, the project would have no effect on southern resident killer whale, marbled murrelet, and Puget Sound Chinook critical habitat. The project would have “no adverse effect” on essential fish habitat. Again, no in-water work is proposed. *Exhibit 1.M.*
 25. There are two small Category III wetlands adjacent to the west side of Leeward Court NW. The project would not impact these wetlands or their functional buffers (i.e., buffers not already impacted by roadway). With respect to the sewer main extension between Leeward Court NW and Anchor Lane NW, just south of the wetlands and outside the shoreline jurisdictional boundary, this would occur using horizontal directional drilling beneath the wetland buffers. The drilling depth would be up to 15 feet below existing grade and existing vegetation would not be removed. *Exhibit 1.H.*
 26. The project is within an area with high potential for the presence of pre-contact archaeological resources. To ensure protection of these resources, the Applicant submitted a Cultural Resources Monitoring and Inadvertent Discovery Plan. Implementation of the plan would require an archaeological monitor to periodically examine the substrate castings from excavation, stop excavation when appropriate to examine soils and sediments, and take notes and photographs of the excavation activity. If cultural resources are uncovered, work in the immediate area would stop and the Washington Department of Archaeology and Historic Preservation, the Nisqually Indian Tribe, and the Squaxin Island Tribe would be contacted. *Exhibit 1.N.*
 27. The Thurston County Environmental Health Division reviewed the application for compliance with the Sanitary Code and did not identify any issues of concern. Environmental Health recommended approval of the application. *Exhibit 1.Q.*
 28. 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.R.*

29. Thurston County acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA) and issued a determination of non-significance (DNS) on September 21, 2022. The DNS was not appealed and became final on October 12, 2022. *Exhibits 1 and 1.J.*
30. Notice of the public hearing was mailed to all property owners within 300 feet of the site on February 13, 2023 and published in The Olympian on February 17, 2023. *Exhibits 1 and 1.A.*
31. Public comment on the application included a request from the Angela J. Bowen Conservancy Foundation, the owner of one of the underlying parcels, that any disturbed areas be planted with native species such as ferns or salal instead of the invasive ivy currently present. *Exhibit 2.* The Applicant submitted that most work on the parcel would be within gravel areas, but native species would be used for revegetation in all disturbed areas. *Dave Matz Testimony.*
32. Having heard all testimony, County Planning Staff maintained their recommendation that, if permit approvals are granted, the conditions in the staff report should be imposed. *Scott McCormick Testimony; Exhibit 1.* Applicant representatives waived objection to the recommended conditions of approval. *Testimony of Dave Matz and Erick Mahugh.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for special use permits within the Olympia Urban Growth Area of Thurston County pursuant to under Sections 2.06.010 and 23.48.020 of the Thurston County Code.

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline permits pursuant to RCW Chapter 36.70, WAC 173-27, TCC 19.04.010, and Section One, Part V of the Shoreline Master Program for the Thurston region. Pursuant to WAC 173-27-200, decisions to approve a Shoreline Conditional Use Permit must be submitted to the Department of Ecology for a final decision to approve, approve with conditions, or disapprove the permit.

Criteria for Review

Special Use Permit

The Hearing Examiner may approve an application for a special use permit only if the following general standards set forth in TCC 23.48.030 are satisfied:

- A. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Olympia Joint Plan, and all applicable federal, state, regional, and Thurston County laws or plans.

- B. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.
- C. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
 - 1. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effects may occur.
 - 2. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

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 “Utilities” chapter of the SMPTR.

SMPTR Section Three, Chapter XX, Part B. Utilities 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.

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.
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.
7. New major transmission facilities should follow existing utility corridors unless prohibited by the environmental designation and regulations.

SMPTR Section Three, Chapter XX, Part C. Utilities 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.
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.

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

...

4. Urban and Rural Environments. The following utility facilities are allowed in the Urban and Rural Environments:
- a. Utility lines.
 - b. Control, collection or distribution facilities including, but not limited to, telephone exchanges, sewage treatment plants, water reservoirs, electrical substations and gas metering stations.
 - c. Power generating facilities except on the Nisqually River and transmission lines.

SMPTR Section Two, Chapter V. REGIONAL CRITERIA

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.

Shoreline Conditional Use Permit (WAC 173-27-160)

1. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
 - A. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
 - B. That the proposed use will not interfere with the normal public use of public shorelines;
 - C. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
 - D. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
 - E. That the public interest suffers no substantial detrimental effect.
2. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
3. Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.
4. Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

Conclusions Based on Findings

Special Use Permit

1. As conditioned, and with approval of the shoreline permits, the proposed use at the proposed location would comply with all applicable laws and plans, including the state Shoreline Management Act, the Thurston County Sanitary Code, the Drainage Design and Erosion Control Manual, the Comprehensive Plan, the State Environmental Policy Act, and the Thurston County critical areas ordinance. *Findings 3, 4, 6, 7, 8, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 32.*

2. The proposal would comply with purpose and intent of the R-4 zone, and with the development standards applicable to utility facilities. The proposal is for a replacement lift station, the need for which has been demonstrated based on environmental considerations including floodplain elevation and slope stability, as well as the age of the existing facility. The replacement lift station would be compatible with surrounding properties in that it would not differ significantly from the existing lift station with respect to aesthetics and other impacts. No nuisances would be created by the project. There would be no outdoor storage of vehicles. The marine bluff would screen the facility from view of residences in the neighborhood. *Findings 1, 3, 5, 10, 11, 13, 14, and 15.*
3. The proposed use is appropriate in the location for which it is proposed. As conditioned, there would not be substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property, or other matters affecting the public health, safety, and welfare. OPSL1 is an existing feature of the neighborhood, and the replacement lift station would be only a short distance from the original site at a location better protected from sea rise and landslide hazard. Based on geotechnical evaluation, the project would not destabilize the marine bluff. With respect to services, the use would result in a sewer system improvement; it would not impose a burden on any improvements, facilities, utilities, or services existing or planned to serve the area. *Findings 1, 5, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, and 32.*

Shoreline Substantial Development Permit

4. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. The proposal is a “reasonable and appropriate use” that supports the adjacent residential neighborhood and, with proposed environmental safeguards, is protective of public health and the shoreline environment. There would be no effect on the character of the shoreline, which is developed in the project area. The improvements would have a long-term benefit by mitigating the potential impacts of sea level rise and protecting the utility from slope issues that could arise from changing climate patterns. The conditions of approval address stormwater management, erosion control, and protection of cultural resources. *Findings 1, 5, 9, 10, 11, 17, 18, 19, 20, and 26.*
5. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. No structures exceeding 35 feet above average grade are proposed. *Finding 13.*
6. 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 utilities policies, the proposal would not obstruct any scenic views. The sewer mains would be placed underground within existing road and utility corridors. There would be no sewage outfall to Puget Sound. *Findings 13, 17, and 19.*

- B. With respect to the utilities regulations, the sewer mains would be placed underground within existing road and utility corridors, on routes no longer than necessary. The project would avoid wetland impacts. Disturbed areas would be restored to protect against erosion. Aesthetic impacts would be minimized through the small scale of the lift station structure and its location below the viewshed of surrounding residences. Environmental impacts would be minimized through the proposed construction techniques. The facility would include safeguards to ensure that there is no long term damage to the shoreline environment should an accident occur. *Findings 5, 11, 12, 13, 17, 18, 20, and 25.*
- D. With respect to the applicable regional criteria, the project would not affect shoreline access. Water quality would be protected through erosion control measures; no in-water work is proposed. The project would not affect the existing quality of the shoreline. The Thurston County Environmental Health Division did not identify any issues of concern with respect to public health. *Findings 16, 17, 18, and 27.*

Shoreline Conditional Use Permit

7. The proposed retaining wall is consistent with the policies of the Shoreline Management Act and the Master Program. The retaining wall is a protection measure for allowed sewer infrastructure, which is necessitated by the history of slope instability in the area. Damage to the infrastructure could result in environmental harm; consequently, the retaining wall is consistent with policies that are protective of public health and the aquatic environment. *Findings 10 and 20.*
8. The retaining wall would not interfere with normal public use of the shoreline. The project area provides private shoreline access. The retaining wall would be set back from the shoreline, adjacent to the access road. *Findings 1, 5, 10, and 11.*
9. The retaining wall, as a component of a utility project designed to serve the neighborhood, would be compatible with permitted residential uses. As previously described, the project meets the criteria for special use approval. *Findings 3, 5, and 9.*
10. The retaining wall would not cause significant adverse effects to the Rural shoreline environment. The project was reviewed against the requirements of the CAO and SEPA and, as conditioned, would comply with all applicable provisions of both regulations. *Findings 21, 22, 23, 24, and 29.*
11. As conditioned, the public interest would suffer no substantial detrimental effect. The conditions of approval require implementation of the Cultural Resources Monitoring and Inadvertent Discovery Plan. *Finding 26.*
12. Potential cumulative impacts have been considered, and no evidence was submitted that approval of additional similar projects would produce substantial adverse effects to the shoreline. The overall project would create minimal new impervious surfaces and would involve no in-water work. *Findings 11, 15, and 17.*

DECISIONS

Based on the preceding findings and conclusions, the requested special use, shoreline substantial development, and shoreline conditional use permits are **GRANTED** subject to the following conditions:

Community Planning and Economic Development Conditions:

1. 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 storm drains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitat and are pollutants.
2. 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.
3. All grading or ad filling of land must utilize only clean fill.
4. Revegetation of disturbed areas shall be completed prior to final project approval.
5. The Applicant shall implement the Cultural Resources Monitoring and Inadvertent Discovery Plan (Exhibit 1.N) during construction. In the case of inadvertent discovery of archaeological resources or human burial, the Applicant and/or contractor must immediately stop work and contact the Washington Department of Archaeology and Historic Preservation at (360)586-3067 as well as the Squaxin Island and Nisqually Tribes.
6. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the Applicant's responsibility to obtain this permit if required.
7. All development shall be in substantial compliance with the approved site plan. Any expansion or alteration this use will require approval of a new or amended special use permit. Community Planning and Economic Development will determine if any proposed amendment is substantial enough to require hearing Examiner approval.

Public Works Conditions:

Roads

8. The proposed roadway in concept and design shall conform to the Road Standards and the City of Olympia standards and development guidelines.
9. A permit shall be acquired from the Thurston County Public Works – Development Review Section prior to any construction.

Traffic Control Devices

10. 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.
11. 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

12. The stormwater management system shall conform to the Drainage Design & Erosion Control Manual.
13. 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.
14. 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

15. For work in the County Right-of-Way a utility permit shall be attained from the Thurston County Public Works Development Review Section.
16. Proposed utility work within the Thurston County Right-of-Way shall conform to the Road Standards and Chapter 13.56 Thurston County Code. These standards do not address specific utility design requirements but rather only items such as restoration of the County Right-of-Way and traffic control.
 - a. Please note all utilities placed parallel to and within the pavement structure are required to rebuild a minimum of half the road, to include grinding and replacement of a minimum of 0.20 feet of asphalt concrete pavement.

General Conditions:

17. No work shall take place until a permit has been issued by Thurston County Public Works – Development Review Section.
18. Development within the City of Olympia urban growth boundary, requiring review by both Thurston County and the corresponding city jurisdiction, shall be designed to the more stringent standards of the two jurisdictions.

19. 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.
20. When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section at 360-867-2051 for a final inspection.
21. 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

22. Once the planning department has issued the official approval, submit a complete set of construction drawings and any reports to Thurston County Public Works – Development Review Section for review and acceptance.

23. 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 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

24. 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.

25. 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 March 15, 2023 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 **\$821.00** for a Request for Reconsideration or **\$1,112.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center at 3000 Pacific Ave SE, Suite 100 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 ☐ \$821.00 for Reconsideration or \$1,112.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.