



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. 2022105077 – Johnson Point/Hawks
)	Prairie Intersection Improvements
Thurston County Public Works)	
)	
For Approval of a Shoreline Substantial)	FINDINGS, CONCLUSIONS,
Development Permit)	AND DECISION
)	

SUMMARY OF DECISION

The requested shoreline substantial development permit to construct intersection improvements at the intersection of Johnson Point Road and Hawks Prairie Road is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Thurston County Public Works requested a shoreline substantial development permit to construct intersection improvements, including installation of a single-lane roundabout with pedestrian facilities, at the intersection of Johnson Point Road and Hawks Prairie Road in Olympia, Washington. Associated project activities would include – as needed – paving, grading, striping, utility work, curb and gutter, landscaping, sidewalks, ADA curb ramps, lighting, enhanced signage, drainage improvements, guardrail and guardrail end treatments, clearing and grubbing, and stormwater facilities. The project would occur within Thurston County right-of-way and Tax Parcel Numbers 11933230100, 11933230200, and 11933320100.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on June 13, 2023. The record was held open through June 15, 2023 to allow members of the public who had 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 June 15, 2023.

Testimony:

At the hearing the following individuals presented testimony under oath:

Sharon Lumbantobing, Senior Planner, Thurston County Community Planning
Elena Fernandez, Environmental Coordinator, Thurston County Public Works
Ryan Blaser, Civil Engineer, Thurston County Public Works

Exhibits:

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

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

- A. Notice of Public Hearing
- B. Project Narrative
- C. Master Application, received October 12, 2022
- D. JARPA Application and project narrative, received October 12, 2022
- E. JARPA cover sheet, received October 12, 2022
- F. Site Plans, received September 21, 2022
- G. Project Plan Set, received October 12, 2022
- H. NEPA Categorical Exclusion document signed by WSDOT Local Programs, issued September 2, 2021
- I. NEPA Categorical Exclusion checklist supplemental documentation, signed by WSDOT
- J. NEPA for SEPA adoption documentation, received October 28, 2021
- K. USACE Nationwide Permit verification letter, received October 12, 2022
- L. USACE Nationwide Permit #14, received October 12, 2022
- M. Notice of Application with Adjacent Property Owners list, dated October 21, 2022
- N. Wetland/Waterway Delineation Report, dated June 13, 2019
- O. Letter from the Washington Department of Ecology, dated October 28, 2021
- P. Project Site Photos
- Q. Septic Record Drawing
- R. Well and Septic Drawing
- S. Environmental Health approval memo, May 23, 2023
- T. Critical Area Review Permit (CARP) application
- U. Mitigation Plan, dated May 24, 2023

V. Final Communications Matrix

Exhibit 2 Memorandum from Thurston County Public Works re: distances from wetland, dated June 15, 2023

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

FINDINGS

1. Thurston County Public Works (Applicant) requested a shoreline substantial development permit (SSDP) to construct intersection improvements including installation of a single-lane roundabout with pedestrian facilities at the intersection of Johnson Point Road and Hawks Prairie Road in Olympia, Washington. Associated project activities would include – as needed – paving, grading, striping, utility work, curb and gutter, landscaping, sidewalks, ADA curb ramps, lighting, enhanced signage, drainage improvements, guardrail and guardrail end treatments, clearing and grubbing, and stormwater facilities. The project would occur within Thurston County right-of-way and Tax Parcel Numbers 11933230100, 11933230200, and 11933320100. *Exhibits 1, 1.B, 1.C, 1.D, 1.F, and 1.T.*
2. The SSDP application was received and determined to be complete on October 12, 2022. *Exhibit 1.M.*
3. The subject intersection is currently unsignalized, with a stop-controlled approach on Hawks Prairie Road. The intersection currently operates at level of service (LOS) D, but it is expected to deteriorate to LOS F based on forecasted traffic levels. The sight distance and lighting are poor at the intersection, and there is an increased rate of accidents at the intersection. The proposed improvements are designed to reduce traffic congestion, improve the level of service and overall traffic flow, and improve public safety. *Exhibit 1.D; Sharon Lumbantobing Testimony.*
4. The Transportation Element of the Thurston County Comprehensive Plan identifies as critical issues the need to maintain acceptable operating service levels and a safe transportation network, reduce automobile dependence and serve the needs of those who rely on public transportation, and minimize the environmental impacts associated with transportation systems. *Exhibit 1; Comprehensive Plan, page 5-2.* The Comprehensive Plan identifies the subject intersection as a Rural Strategy Corridor, in which intersection improvements and other strategies must be applied to mitigate congestion instead of road widening. *Comprehensive Plan, page 5-9 and Map T9.* In this case an intersection improvement is proposed, but the existing number of travel lanes would remain the same. *Exhibit 1.G.*
5. The project would include grading approximately 755 linear feet of new road prism, and would require the removal of 1805 cubic yards of material and the placement of approximately 425 cubic yards of fill. *Exhibit 1.D.*

6. The subject intersection is near Woodland Creek, a Type S stream that flows into Henderson Inlet of Puget Sound. Development within the Woodland Creek shoreline is regulated under the Shoreline Management Act, and the Shoreline Master Program for the Thurston Region (SMPTR) designates the shoreline as a Conservancy environment. “Transportation thoroughfares” are allowed in the Conservancy environment, subject to the policies and regulations contained in the Road and Railroad Design and Construction chapter of the SMPTR (Section Three, Chapter XVII). The project requires an SSDP because it would occur within 200 feet of the regulated shoreline and its value exceeds the permit threshold of \$8,504.00. *Exhibits 1, 1.F, and 1.N; Washington Administrative Code (WAC) 173-27-040.*
7. There are two wetlands in the vicinity of the project area. Wetland A (51.5 acres) is a saltwater tidal fringe (estuarine) wetland that is associated with Woodland Creek. Wetland A and Woodland Creek are to the south and east of the proposed intersection improvements. Wetland B (200 square feet) is a palustrine emergent depressional wetland that is located within a ditch adjacent to the north side of Johnson Point Road where it intersects with Hawks Prairie Road NE. *Exhibits 1.N and 1.G.*
8. Wetland A is classified as a Category I wetland requiring a 220-foot buffer under the Thurston County critical areas ordinance (CAO). Woodland Creek, a Type S stream requires a riparian habitat area (i.e., buffer) of 250 feet. Wetland B is not regulated by Thurston County, because it is less than 1,000 square feet in area and because it is part of an intentionally created drainage ditch that was excavated from an upland area. However, Wetland B is subject to regulation by the United States Army Corps of Engineers (USACE). *Exhibit 1.N; TCC 24.25.020; Thurston County Code (TCC) 24.03.010; TCC 24.30.015.*
9. The majority of the proposed road improvements would occur within the existing road prism. The distance between the southern edge of the improvements and the edge of Wetland A (which also represents the ordinary high water mark of Woodland Creek within the project area) would be 17 feet at the closest point. The CAO, at TCC 24.25.290 and TCC 24.30.270, allows minor road expansion within stream and wetland buffers, respectively, when: the capacity of the road is not increased; the project is designed to minimize impacts; and the expansion does not extend beyond the outer edge of existing roadside ditches, or into areas predominately covered with native vegetation, and does not extend more than 10 feet beyond the existing roadbed. In this case, the project would not increase road capacity, the project design shifts the roundabout to the north to avoid wetland impacts, and there would not be southward expansion of the road corridor. No in-water work is proposed. *Exhibits 1, 1.G, and 1.U; Ryan Blaser Testimony.*
10. Wetland B would be filled to construct the proposed improvements. As mitigation for this impact, the Applicant proposes to enhance 0.24 acre of Wetland A buffer on the south side of the proposed improvements by removing densely growing invasive plant species (e.g., Himalayan blackberry, scotch broom) and replanting the areas with native plant species; proposed plantings include sword fern, salmonberry, alder, Douglas fir, red

cedar, and snowberry. The mitigation would benefit the wetland by increasing the native plant community by 4,000%. *Exhibits 1.G and 1.U; Elena Fernandez Testimony.*

11. The USACE reviewed the proposed wetland fill and determined that it is authorized under Nationwide Permit 14 – Linear Transportation Projects. In addition to complying with the conditions of the nationwide permit, the USACE identified additional special conditions for the project to ensure compliance with the Endangered Species Act, including: obtaining appropriate permits if there will be a “take” a listed species; limiting the work window for any removal of invasive plant species and planting of new vegetation below the ordinary high water mark to the time period of July 1 through October 31; and implementing the proposed planting schedule. An as-built report and drawings would be required within six months of project completion to ensure a net increase in aquatic resource functions. *Exhibits 1.K and 1.L.*
12. Stormwater runoff from the intersection currently flows into a storm drainage system. Because 14,812 square feet of new impervious surfaces would be constructed, new stormwater facilities would be installed to collect and treat the additional runoff. The center of the roundabout is proposed to have a pervious surface to reduce the total impervious surfaces associated with the project. *Exhibit 1.D.*
13. The Washington Department of Ecology commented on the project, identifying solid waste management, toxics cleanup, and water quality requirements applicable to the project. These requirements include: installing erosion control measures prior to clearing, grading, or construction; using only clean fill; disposing of removed debris at an approved site; testing any media suspected of contamination; and obtaining a Construction Stormwater General Permit (if required). Planning Staff’s recommended conditions of project approval incorporated these Ecology requirements. *Exhibits 1 and 1.Q.*
14. One of the parcels affected by the project – Parcel 11933230100 – contains a single-family well and on-site septic system. The project would extend into the 100-foot sanitary control radius for the well and the new right-of-way line would be set back approximately 20 to 25 feet from the septic system components. Thurston County Environmental Health reviewed the project against the requirements of the Thurston County Sanitary Code and recommended approval subject to conditions requiring the following: that all stormwater be directed away from the well; that no stormwater infiltration occur within 100 feet of the well; that there be no staging or stockpiling of materials on or near the septic system components or well; that all setbacks from the well and septic system comply with Sanitary Code and Revised Code of Washington requirements; and that spill kits be kept on site during construction for any equipment leaks or spills. *Exhibit 1.S.*
15. The Washington State Department of Transportation approved a categorical exclusion for the project under the National Environmental Policy Act (NEPA). The approval included a determination that there would be “no effect” on species regulated under the Endangered Species Act and “no adverse effect” on essential fish habitat. *Exhibits 1.H*

and I.

16. The Thurston County Public Works Department acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). On September 20, 2021, Public Works adopted the NEPA environmental documentation for SEPA and issued a determination of non-significance (DNS). *Exhibit 1.J.*
17. Notice of the open record hearing was mailed to property owners within 500 feet of the site on May 26, 2023 and published in The Olympian on June 2, 2023. *Exhibits 1 and 1.A.* Although at least one member of the public attended the hearing to observe, there was no public comment submitted.
18. Having heard all testimony, Planning Staff maintained their recommendation for imposing the conditions in the staff report if the SSDP was granted. *Exhibit 1; Sharon Lumbantobing Testimony.* At hearing, an Applicant representative agreed to supplement the record with additional detail about minimum setbacks of the proposed improvements from the various critical areas, which information was timely submitted and added to the record. *Exhibit 2; Ryan Blaser Testimony.* The Applicant waived objection to the recommended conditions. *Testimony of Elena Fernandez and Ryan Blaser.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has 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.¹

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

¹ Although the staff report includes the critical area review permit (CARP) application as an attachment and provides analysis of the CARP criteria, implying that the CARP is consolidated with the SSDP and decided by the hearing examiner, the critical areas ordinance identifies the Director as the approval authority for CARPs in all circumstances, and further states that CARPs are not consolidated with associated Type III permits heard by the hearing examiner. *TCC 24.40.020; TCC 24.05.025; TCC 24.05.030; TCC 24.05.050; TCC Table 24.05-1.* The instant decision does not extend to consideration of CARP approval; such review must be conducted by the Director or Director's designee.

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

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses (in the following order of preference) that: recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

B. Applicable regulations from the Washington Administrative Code
WAC 173-27-140 Review criteria for all development.

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

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

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

C. Shoreline Master Program for the Thurston Region

The proposed road improvements are subject to the policies and regulations contained in the "Road and Railroad Design and Construction" chapter of the SMPTR (Section Three, Chapter XVII).

SMPTR Section Three, Chapter XVII, Part B. Policies

1. Major highways, freeways and railways should be located away from shorelands, except in port and industrial areas, so that shoreland roads may be reserved for slow-moving local or recreational traffic.
2. Road and railroad locations should be planned to fit the topography and utilize existing corridors so that minimum alterations of natural conditions will be necessary. This is especially important on flood plains.
3. Roads and railroads should be designed, constructed, and maintained to minimize erosion and to permit natural movement of ground water and flood waters to the extent practical.
4. All debris, overburden, and other waste materials from construction should be disposed of in such a way as to prevent their entry by erosion from drainage, high water, or other means into any surface water body.
5. Scenic corridors containing public roadways should have provision for safe pedestrian and other nonmotorized travel. Also, provisions should be made for viewpoints, rest areas, and picnic facilities in appropriate areas.
6. Railroad beds should be screened with trees in scenic areas. [N/A]

SMPTR Section Three, Chapter XVII, Part C. General Regulations

1. Excess construction materials shall be removed from the shoreline area.
2. Major roads and railroads shall cross shoreline areas by the shortest, most direct route feasible, unless such route would cause significant environmental damage.
3. Filling of tidelands, shorelands and marshes for road or railroad rights-of-way shall be prohibited unless no viable alternative exists.
4. All excavation materials and soils exposed to erosion by all phases of road, bridge and culvert work shall be stabilized and protected by seeding, mulching or other effective means, both during and after construction.
5. All debris, overburden and other waste materials from road and railroad construction, if permitted on shorelines, shall be disposed of in such a way as to minimize their entry by erosion from drainage into any water body.
6. Private roads shall follow natural contours where possible. Natural benches, ridge tops and flat slopes are preferred locations. Erodible cuts and filled slopes shall be protected by planting or seeding with appropriate ground cover or matting immediately following construction. [N/A]
7. Where permitted to parallel shorelines, roads or railroads shall be setback a sufficient distance from the ordinary high-water line to leave a usable shoreline area.

8. Storm water runoff shall be controlled to reduce suspended solids before entering any surface water body.

SMPTR Section Two, Chapter V. REGIONAL CRITERIA

- A. Public access to shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existed prior to establishment of public access. [N/A]
- B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.
- C. Future water-dependent or water-related industrial uses shall be channeled into shoreline areas already so utilized or into those shoreline areas which lend themselves to suitable industrial development. Where industry is now located in shoreline areas that are more suited to other uses, it is the policy of this Master Program to minimize expansion of such industry. [N/A]
- D. Residential development shall be undertaken in a manner that will maintain existing public access to the publicly-owned shorelines and not interfere with the public use of water areas fronting such shorelines, nor shall it adversely affect aquatic habitat. [N/A]
- E. Governmental units shall be bound by the same requirements as private interests.
- F. Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a Permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180 (1), the person requesting the review shall have the burden of proof.
- G. Shorelines of this Region which are notable for their aesthetic, scenic, historic or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.
- H. Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health.

Conclusions Based on Findings

1. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. The intersection project is a “reasonable and appropriate use” that is protective of public health and wildlife. The project is consistent with the Comprehensive Plan, and with the existing character of the shoreline. Shoreline

conditions would improve with implementation of the proposed mitigation plan. Pollution would be controlled through implementation of erosion control measures during construction and through development of new stormwater facilities. The project has been approved by the USACE, which evaluated the project for potential impacts to wildlife. The conditions identified by the DOE and the Thurston County Environmental Health Division have been incorporated into this decision. The conditions of this decision also prohibit use of herbicide and pesticide treatments within the creek and associated wetlands. *Findings 1, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, and 15.*

2. As conditioned, the use complies with applicable regulations in the Washington Administrative Code. No views would be obstructed by installation of a roundabout. *Finding 1.*
3. As conditioned, the proposal is consistent with the applicable roads policies and regulations of the SMPTR. The project is for an improvement at an existing intersection; no new roads are proposed. The existing corridor would be utilized to the extent possible; the expansion of the road prism would be away from the regulated shoreline. Debris would be disposed of outside of the shoreline. As proposed and conditioned, erosion control measures would be implemented on site, and new stormwater facilities would be constructed to manage runoff from the additional impervious surfaces. *Findings 1, 4, 6, 7, 8, 9, 12, and 13.*
4. As conditioned, the proposal is consistent with the applicable regional criteria. The project has been closely analyzed for its effect on the aquatic environment by agencies with expertise. The Applicant, as a governmental unit, has been subject to the same review requirements as private applicants, including review by state and federal agencies, and review by the County Planning and Environmental Health Departments. The Applicant has met its burden of proving that the SSDP criteria are satisfied. The project would improve poor quality shoreline conditions by replacing invasive species with native species within the proposed mitigation area. The project was analyzed for its effect on public health and identified conditions have been incorporated into this decision. *Findings 10, 11, 13, 14, 15, and 16.*

DECISION

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

Land Use Planning Department:

1. The Applicant shall comply with all mitigation outlined in the Mitigation Report dated May 24, 2023 in the record at Exhibits 1.K and 1.U.
2. No construction equipment is allowed in the creek or on the immediate bank area. Equipment shall be positioned as far as possible from the creek.
3. The use of herbicide and/or pesticide treatments in the creek or associated wetlands is prohibited.

4. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, the Washington State Department of Ecology must be notified at the Southwest Regional Office.
5. The Applicant shall remove construction debris to an approved site (landfill or recycling center) outside of the shoreline area.
6. All other applicable state and federal permits/exemptions must be obtained prior to the start of project work.
7. 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).
8. 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.
9. 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.
10. 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.
11. Solid Waste Management: Derek Rockett (360) 407-6287
All grading and filling of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required from the local jurisdictional health department prior to filling. All removed debris resulting from this project must be disposed of at an approved site. Contact the local jurisdictional health department for proper management of these materials.
12. Toxics Cleanup: Thomas Middleton (360) 407-7263
If contamination is suspected, discovered, or occurs during the proposed SEPA action, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator for the Southwest

Regional Office SWRO) at (360) 407- 6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Thomas Middleton with the SWRO, Toxics Cleanup Program at (360) 407-7263.

13. Water Quality/ Watershed Resources Unit: Greg Bengt (360) 690-4787
- 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 considered to be pollutants. Any discharge of sediment - laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48 RCW, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington and is subject to enforcement action.

Construction Stormwater General Permit:

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

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

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

Additionally, sites that discharge to segments of waterbodies listed as impaired by the State of Washington under Section 303(d) of the Clean Water Act for turbidity, fine sediment, high pH, or phosphorous, or to waterbodies covered by a TMDL may need to

meet additional sampling and record keeping requirements. See condition S8 of the Construction Stormwater General Permit for a description of these requirements. To see if your site discharges to a TMDL or 303(d)- listed waterbody, use Ecology's Water Quality Atlas at: <https://fortress.wa.gov/ecy/waterqualityatlas/StartPage.aspx>.

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

Environmental Health Recommendation:

14. All stormwater must be directed away from the existing single-family well located on parcel 11933230100, and there shall be no stormwater infiltration within 100 feet of the well.
15. There shall be no staging or stockpiling of materials on or near the septic system components or well located on parcel 11933230100.
16. All required setbacks to the existing well and septic system located on parcel 11933230100 shall be met as identified in Article III and IV of the Thurston County Sanitary Code and Chapter 173-160 WAC.
17. Spill kits must be kept on-site during construction activities to handle any minor equipment leaks or accidental spills.

Decided June 30, 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____.