



COUNTY COMMISSIONERS

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Gary Edwards
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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. 2020104703
)	
Washington State)	
Department of Fish and Wildlife)	Boston Harbor Boat Launch
)	
For Approval of a)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS,
)	AND DECISION
)	

SUMMARY OF DECISION

The requested shoreline substantial development permit to replace the existing Boston Harbor boat launch with a new boat launch, replace the existing restroom with a new restroom, and install parking lot improvements is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Washington State Department of Fish and Wildlife (WDFW, Applicant) requested a shoreline substantial development permit (SSDP) to replace the existing Boston Harbor boat launch with a new boat launch, replace the existing restroom on the south side of 73rd Avenue NE with a new restroom, and install parking lot improvements. The subject property is generally located at 305 73rd Avenue NE, Olympia, Washington and consists of tax parcel numbers 35903101400 and 35902801600.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on May 11, 2021. The record was held open through May 13, 2021 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comment was submitted and the record closed on May 13, 2021.

Testimony:

At the hearing the following individuals presented testimony under oath:

Findings, Conclusions, and Decision
Thurston County Hearing Examiner
WDFW Boston Harbor SSDP No. 2020104703

Richard Felsing, Associate Planner, Thurston County
Arthur Saint, Civil Engineer, Thurston County
Dawn Peebles, Environmental Health Specialist, Thurston County
Bridgette Glass, Environmental Planner, Washington Department of Fish and Wildlife
Lane Sater, Construction Manager, Washington Department of Fish and Wildlife
Edward Steinweg
Mitchell Sharman
Tom Sampson

Exhibits:

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

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

- A. Notice of Public Hearing
- B. Zoning/Site Map
- C. Cover Letter with Project Narrative, dated October 5, 2020
- D. Master Application, dated October 5, 2020
- E. JARPA Permit Application, dated October 5, 2020
- F. Site Plan Set, dated August 20, 2020, received October 5, 2020
- G. Notice of Application, dated April 2, 2021
- H. SEPA Determination of Non-Significance (DNS), Lisa Wood, Washington Department of Fish and Wildlife, dated July 29, 2020
- I. Habitat Assessment/Biological Opinion, Bridgette Glass, Washington Department of Fish and Wildlife
- J. Nisqually Indian Tribe Comment Letter, dated October 30, 2020
- K. Comment Memorandum from Amy Crass, Environmental Health Division, dated November 9, 2020
- L. Comment Memoranda from Arthur Saint, Public Works Department, dated November 23 and December 9, 2020

Exhibit 2 Comments received after publication of the legal notice:

- a. Comment from pegnkel@netzero.net, received May 4, 2021
- b. Comment from Steve Henricksen, received May 5, 2021
- c. Comment from Kirk Glock, received May 5, 2021
- d. Comment from Tom Sampson, received May 4, 2021
- e. Comment from Pat Johanson, received May 11, 2021

- Exhibit 3 Full Citations of SMPTR Policies, submitted by Mr. Felsing¹
- Exhibit 4 Approved hydraulic project approval (HPA), issued October 1, 2020
- Exhibit 5 United States Fish and Wildlife Services Concurrence, issued April 27, 2021
- Exhibit 6 County memo re: intervening area appearing as right-of-way, submitted by Mr. Felsing

Based upon the record developed at hearing, the following findings and conclusions are entered in support of the decision of the Hearing Examiner:

FINDINGS

1. Washington State Department of Fish and Wildlife (WDFW, Applicant) requested a shoreline substantial development permit (SSDP) to replace the existing Boston Harbor boat launch with a new boat launch, replace the existing restroom on the south side of 73rd Avenue NE with a new restroom, and install parking lot improvements. The subject property is generally located at 305 73rd Avenue NE, Olympia, Washington and consists of tax parcel numbers 35903101400 and 35902801600.² *Exhibits 1, 1.C, 1.D, 1.E, and 1.F.*
2. The SSDP application was submitted on October 5, 2020 and determined to be complete for purposes of commencing County review on October 27, 2020. *Exhibits 1.E and 1.G.*
3. The subject property is on the Puget Sound shoreline (Budd Inlet) and consists of parcels on the north and south sides of 73rd Avenue NE. The parcel to the north of 73rd Avenue NE (35902801600) is owned by Thurston County Parks, and the parcel to the south of 73rd Avenue NE (35903101400) is owned by WDFW.³ Surrounding land uses include the Boston Harbor Marina (immediately to the east) and single-family residences. *Exhibits 1.C, 1.E, and 6.*
4. The portion of the subject property north of 73rd Avenue NE contains a 205-foot long by 16-foot wide concrete plank boat launch and a small gravel parking area. The boat launch, which was developed prior to adoption of the County's zoning ordinance and shoreline master program, is in a deteriorated condition with exposed rebar in the concrete planks creating a safety hazard and erosion of the concrete footing wall on the

¹ Exhibits 3 and 6 were submitted by Mr. Felsing after close of the record as requested by the undersigned. Both were submitted timely and are admitted.

² The legal description of the subject parcels is as follows: Tax Parcel No. 35903101400: BOSTON HARBOR #1 L14-17 B31 & S10F VAC MAIN ST & 1/2 VAC ALLEY; and Tax parcel No. 35902801600: BOSTON HARBOR L 16 & 17 & L 20 & 21 BLK 28 & T.L.S. IN FRON. *Exhibit 1.*

³ In submitted aerial/parcel maps the Thurston County parcel consists of two pieces separated by a narrow strip of land at the shoreline. The intervening area is right-of-way that was dedicated to the public through the 1907 Boston Harbor plat, and it is under Thurston County jurisdiction. The right-of-way is discontinuous in that the segment to the west was previously vacated and incorporated into the adjacent private parcel. With respect to the subject property, the County does not consider vacation of the right-of-way to be necessary because both the parcel and the right-of-way are under County jurisdiction, and the right-of-way is in public use as a transportation facility consistent with the 1907 dedication. *Exhibits 1.B and 6.*

east side of the launch undermining its structural integrity. The Applicant proposes to replace the boat launch with a new one made of the same materials within the existing ramp's footprint, which would match the current grade. The existing concrete footing wall on the east side of the launch would be replaced with the new wall placed beneath the concrete planks to reduce the overall structural footprint, and a new footing wall would be added on the west side of the launch within the existing structural footprint to prevent fill material from entering Puget Sound through routine tidal processes. With respect to the small gravel parking area on the north side of 73rd Avenue NE, the Applicant proposes to pave the parking area, stripe it to create five parking stalls, and install an ADA-accessible loading ramp between the parking area and the launch. *Exhibits 1.C, 1.E, 1.F, and 1.I; Bridgette Glass Testimony.*

5. The portion of the subject property south of 73rd Avenue NE contains the primary parking lot for the boat launch facility, along with a restroom. The Applicant proposes to repave and stripe the parking lot and replace the aging restroom with one that is ADA-accessible. The restroom would utilize existing water, sewer, and electricity connections. The building area would be approximately 166 square feet, and the building height approximately 10 feet. A catch basin with sediment filter would be installed in the parking lot. *Exhibits 1.C, 1.E, and 1.F.*
6. There is high demand for the boat launch facility among anglers, boaters, and pedestrians, especially during salmon runs and the summer months. The parking lot improvements, which in the southern lot would include delineation of long, angled spaces for boat trailers, are expected to maximize the use of space and improve safety. The Applicant proposes to install improved signage, including signage designed to prevent trespassing on an adjacent residential parcel. *Exhibits 1.E, 1.F, 2a, and 2c; Lane Sater Testimony.*
7. The subject property shoreline is subject to the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR). The 200-foot shoreline jurisdiction includes the northern (boat launch) parcel and most of the parcel on the south side of 73rd Avenue NE. The SMPTR designates the project area as a Rural shoreline environment. Recreation uses and boating facilities (including boat ramps) are allowed in the Rural shoreline environment subject to the applicable regulations of the SMPTR. A shoreline substantial development permit is required for the development because it is within the regulated shoreline and the value exceeds the permit threshold of \$7,047.00. Project activities would occur both below and above the ordinary high water mark. *Exhibits 1, 1.E, and 1.F; Richard Felsing Testimony; Washington Administrative Code (WAC) 173-27-040; Washington State Register (WSR) 17-17-007; SMPTR Section Three, Chapters IV(D) and XIV(D).*
8. The subject property is zoned Residential LAMIRD One Dwelling Unit per Acre (RL 1/1). Boat launches are allowed in the RL 1/1 zone with a special use permit. In this case, the boat launch predates the zoning ordinance and is considered a legally nonconforming use. No SUP review is required for the instant project. *Exhibit 1; TCC 20.54, Table 1.*

9. Most of the vegetation along the sides of the boat launch consists of grass or blackberry grown over rip rap. There is a Pacific madrone tree adjacent to the launch, which would be retained but trimmed to accommodate installation of the loading platform. With respect to the southern parcel, there is a row of existing trees along the southern boundary of the parking lot. The Applicant proposes to replace these with new landscaping, as the existing trees are blocking neighboring solar panels and creating maintenance issues. *Exhibits 1.F and 1.I; Lane Sater Testimony.*
10. Impacts associated with work below the high tide line (i.e., demolition and removal of existing concrete planks, establishment of correct grade for subsurface materials, and installation of new pre-cast planks) would be minimized by timing the work to occur in the dry, during low tide. No underwater noise would result from the project. *Exhibit 1.I.*
11. The concrete wall footings at the upper portion of the ramp would be constructed in forms to prevent concrete from leaching into Puget Sound. A coffer dam or similar structure would be installed to isolate the work area if tides are expected to reach the area during construction. *Exhibit 1.I.*
12. Fueling of vehicles and machinery would occur upland of the shoreline area, and equipment would be inspected for leaks daily. Spill kits would be present at the project site in the unlikely event of a spill or leak. *Exhibit 1.I.*
13. The Applicant prepared a Biological Evaluation (BE) for the project, which considered potential impacts to threatened and endangered species of wildlife and designed critical habitat within the project action area. The conclusion of the BE was that the project would have no effect on the marbled murrelet, yellow-billed cuckoo, streaked horned lark, bull trout, bocaccio, or pocket gopher, and no effect on bocaccio critical habitat or southern resident killer whale critical habitat. The project may affect, but is not likely to adversely affect, the Puget Sound Chinook and southern resident killer whale, and Puget Sound Chinook habitat. Puget Sound Chinook are not expected to be within the work area due to timing of project to occur in low tide conditions and at the time of year when juveniles are less likely to be present. Killer whales are not expected to be within the work area due to low tide conditions, and their food source (salmon) would be protected. *Exhibit 1.I.* The United States Fish and Wildlife Service concurs with the conclusions of the Biological Evaluation. *Exhibit 5.*
14. Hydraulic project approval (HPA) was granted for the project on October 1, 2020. The HPA specifies a work window of July 15 through October 15 provided a beach survey does not detect surf smelt eggs, and contains several conditions addressing sediment and erosion control, spill prevention, and site cleanup. *Exhibit 4.*
15. The restroom would be connected to the Boston Harbor public water and sewer systems. The Thurston County Environmental Health Division reviewed the SSDP application and did not identify any issues of public health concern, but provided a cautionary recommendation that the Applicant take care to prevent travel over an existing septic vault beneath the site. *Exhibit 1.K; Dawn Peebles Testimony.* In response to this

recommendation, an Applicant representative testified that he believes the existing restroom is not connected to a septic system, but rather is connected to the sewer. The vault in question is located in a driveway/site entrance, so it would be difficult to avoid driving over it. The Applicant's construction manager stated that he will look at the facility's load rating so they can assess what risk might exist. The Applicant is aware of the requirement to provide restroom facilities that comply with all applicable provisions of the Sanitary Code. *Lane Sater Testimony.*

16. The Thurston County Public Works Department reviewed the application and submitted that due to the proposed area of new or replaced impervious surfaces, compliance with Core Requirements 1 – 11 of the Drainage Design and Erosion Control Manual would be required. Public Works Staff requested that the Applicant submit a Drainage Scoping Report for review. *Exhibit 1.L.*
17. WDFW 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 July 29, 2020. *Exhibits 1 and 1.H.*
18. Notice of the public hearing was mailed to all property owners within 500 feet of the site on April 26, 2021 and published in The Olympian on April 30, 2021. *Exhibit 1.A.*
19. The issues raised in public comment on the proposal included: concern that the proposed work window of July 15 to September 30 coincides with peak public demand for use of the boat launch; the effects of additional lighting; water quality impacts associated with paving the northern parking area; fencing/screening; signage; and the potential for underground utilities in the project area, including a sewer treatment plant outfall. *Exhibit 2; Testimony of Edward Steinweg, Mitchell Sharman, and Tom Sampson.*
20. With respect to project timing, the proposed work window is consistent with the HPA, and is designed to protect forage fish species and juvenile salmon. The Applicant is familiar with the timing concerns forwarded in public comment because all improvements to WDFW recreation facilities must be timed to avoid impacts to endangered species, which typically requires work to be done during peak demand for recreational facilities. However, safety issues prevent use of the site while construction is occurring. Due to delays in obtaining final review and approval from NOAA and the US Army Corps, it is likely that construction has been pushed into the 2022 work window. *Exhibit 4; Testimony of Bridgette Glass and Lane Sater.*
21. With respect to stormwater runoff, the direction of stormwater flow within the northern parking area is such that it would pass through 50 feet of vegetated buffer, which would provide filtering prior to entering Puget Sound. *Bridgette Glass Testimony; Exhibit 1.F.* Public Works Staff noted that underground utilities and the potential for impacts to/from a sewer treatment plant outfall would be reviewed during construction drawing/civil engineering review by Public Works prior to construction permit issuance. *Arthur Saint Testimony.* During construction, straw wattles would be placed along the north edge of the parking area to control erosion. *Exhibits 1.I and 1.F.*

22. The Applicant does not propose any additional lighting. The restroom lighting would be motion sensor activated. *Bridgette Glass Testimony*.
23. There is a single-family residence immediately west of the small northern parking area and boat launch. The Applicant agreed to enhance the fencing between the properties (such as by adding privacy slats) to better delineate where public access is allowed (and thus minimize trespass onto the adjacent parcel) and to provide screening. *Exhibits 2e and 1.F; Lane Sater Testimony*.
24. Planning Staff evaluated the project for compliance with the applicable policies and regulations of the Shoreline Master Program for the Thurston Region and recommended approval subject to conditions. The recommended conditions incorporate the requirements identified by the Environmental Health and Public Works Departments and address erosion control, disposal of construction debris, spill containment, and construction noise. *Exhibits 1 and 3; Richard Felsing Testimony*. The Applicant representatives waived objection to the recommended conditions of approval. *Testimony of Bridgette Glass and Lane Sater*.

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline substantial development permits pursuant to RCW Chapter 36.70, WAC 173-27, and Section One, Part V of the Shoreline Master Program for the Thurston Region.

Criteria for Review

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

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

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

A. Shoreline Management Act

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

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and

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

B. Applicable regulations from the Washington Administrative Code

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

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

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

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

C. Shoreline Master Program for the Thurston Region

The proposal is governed by the policies and regulations contained in the “Recreation” and “Boating Facilities” chapters of the SMPTR.

SMPTR Section Three, Chapter XIV, Part B. Recreation Policies

1. Priorities for recreational development of shorelines should relate directly to densities and unique characteristics of the population served. Priorities for acquisition should consider need and special opportunities as well as access by public transit.
2. All recreational development projects should be considered on the basis of their compatibility with the environment.
3. Access to recreational locations such as fishing streams and hunting areas should be planned to prevent concentration of use pressures.

4. The linkage of shoreline parks and public access points through provisions for linear open spaces should be encouraged. Such open space could include hiking paths, bicycle paths and/or scenic drives located as close to the water's edge as feasible.
5. Recreational developments should be designed to preserve, enhance or create scenic views and vistas. Favorable consideration should be given to those projects that complement their environment.
6. Where possible, parking areas should be located inland, away from the immediate edge of the water, and recreational beaches, and should be linked with the shoreline by walkways.
7. Recreational development should comply with all applicable city, county, state, and federal regulations.
8. Facilities for intensive recreational activities should be permitted only where sewage disposal and pest control can be accomplished to meet public health standards without altering the environment adversely.
9. Development of public fishing piers, underwater fishing reefs, and access to public waters and tidelands should be encouraged as part of an overall recreation plan or development.
10. Where appropriate, nonintensive, recreational use should be encouraged on flood plains that are subject to recurring flooding.
11. Artificial marine life habitats should be encouraged in order to provide increased aquatic life for recreation. Such habitats should be constructed in areas of low habitat diversity.

SMPTR Section Three, Chapter XIV, Part C. Recreation General Regulations

1. Public access points on lakes must provide parking space appropriate for the intended use.
2. Recreation facilities or structures which are not compatible with the environmental designation in which they are proposed are prohibited.
3. Events and temporary uses in the public interest may be approved by the Administrator in any environment, provided that such uses will not damage the wetland environment.
4. Recreational developments must provide facilities for nonmotorized access, such as pedestrian, bicycle and/or equestrian path links to the shoreline.
5. Sewage disposal and pest control must meet public health standards; waste must not be allowed to enter the water.

6. The following regulations shall apply to artificial aquatic life habitats:
 - a. Habitats shall minimize interference with surface navigation.
 - b. Habitats shall be constructed of long-lasting, nonpolluting materials, and moored so as to remain in their original location even under adverse current or wave action.
 - c. Habitats may not be installed on publicly-owned submerged land without written permission of the administering governmental agency.
7. Public or private recreation areas which cater to the use of all-terrain or off-road vehicles as the primary recreational activity shall not be allowed in the shoreline areas.
- ...

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

4. Rural Environment. Low to medium intensity recreational uses shall be permitted on Rural Environment shorelines, subject to the general regulations and the following specific regulations:
 - a. A recreational facility of structure which changes or detracts from the character of the Rural Environment (by building design or intensity of use) shall be prohibited.
 - b. Roads, parking and vehicular camping facilities, including restrooms, shall not be located within fifty (50) feet of the ordinary high-water mark of any shoreline with the exception of access to boat launching facilities. Parking facilities and roadways may be within fifty (50) feet only if they provide access for handicap or for scenic viewpoints. Maintenance or upgrading of existing roads, parking and/or vehicle camping facilities including restrooms is permitted provided the area devoted to these facilities is not enlarged. Pedestrian and hiking trail access shall be provided to link upland facilities with the shoreline.

SMPTR Section Three, Chapter IV, Part B. Boating Policies (marinas and launching ramps)

1. Evidence of substantial demand must be demonstrated prior to allowance of new marina or boat launching facilities.
2. Shallow water embayments with poor flushing action should not be utilized for marinas or boat launching facilities.
3. Marinas and launching ramps should be located to minimize the need for continual dredging, filling, beach feeding, and other river, lake, harbor, and channel maintenance activities.
4. Fuel handling and storage procedures that minimize accidental spillage and provide satisfactory means for handling those spills that do occur should be required.
5. Solid and liquid wastes and untreated effluents should not be allowed to enter any bodies of water or to be discharged onto the land.
6. Where wet moorage is offered, pump-out and holding or treatment facilities should be

provided by marinas for sewage contained on boats to protect water quality.

7. In locating marinas, the adverse effects of construction and operation of the facility upon fish and shellfish should be minimized.
8. Marinas and boat launching facilities should be located in areas where parking and access to the facility can be accommodated without causing adverse impacts upon the adjacent properties.
9. Landscaping should be utilized to moderate the visual impact of parking areas, marinas and boat launching facilities.
10. Illumination should be designed and constructed to minimize off-site light and glare.
11. Proposed marinas should provide for as many compatible shoreline dependent recreational uses as possible according to the size and extent of the facilities.

SMPTTR Section Three, Chapter IV, Part C. Boating Regulations (marinas and launching ramps)

1. Marinas shall conform to the commercial and parking use regulations of this program.
2. Marinas and launch ramps shall be located in areas where there is adequate water mixing and flushing and shall be designed not to retard or negatively influence flushing characteristics.
3. Marinas and launch ramps shall be located on stable shorelines where water depths are adequate to eliminate or minimize the need for offshore or foreshore channel construction dredging, maintenance dredging, spoil disposal, filling, beach feeding and other river, lake, harbor and channel maintenance activities.
4. All boating facilities, including marinas and boat yards, shall utilize effective measures to prevent the release of oil, chemicals, or other hazardous materials onto or into the water. Such measures may include, but are not limited to, dikes, catch basins or settling ponds, interceptor drains, and planted buffers.
5. For marinas offering wet moorage, pump-out and holding or treatment facilities shall be provided to handle sewage contained on boats.
6. Marinas and their accessory facilities shall be located, designed, constructed and operated to minimize adverse effects on fish and shellfish.
7. In sensitive areas, such as near certified shellfish beds, the applicant shall be required to demonstrate that the maximum protection of shore features, water quality, and existing uses will be provided.
8. Perimeters of parking areas shall be landscaped. The permit application shall identify the size, type and location of landscaping.

9. Marinas shall make available public access opportunities, such access will not endanger public health and safety. If it is not physically feasible to develop public access, the project may be exempted from the requirement.
10. Accessory uses at marinas shall be limited to those uses that are shoreline dependent and of necessity to marina operation.
11. Marinas shall provide at least one method of boat launching, where feasible.
12. Restroom facilities must be provided at marinas and boat launching facilities.

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

2. Suburban and Rural Environments. Marinas, boat ramps, piers, docks, boathouses, mooring buoys, recreational floats and marine railways are permitted subject to the Policies and General Regulations.

SMPTR Section Two, Chapter V. REGIONAL CRITERIA

The Shoreline Master Program for the Thurston Region contains regional criteria that apply to the proposal. All development within the jurisdiction of this Master Program shall demonstrate compliance with the following criteria:

- A. Public access to shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existed prior to establishment of public access.
- B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.
- C. Future water-dependent or water-related industrial uses shall be channeled into shoreline areas already so utilized or into those shoreline areas which lend themselves to suitable industrial development. Where industry is now located in shoreline areas that are more suited to other uses, it is the policy of this Master Program to minimize expansion of such industry.
- D. Residential development shall be undertaken in a manner that will maintain existing public access to the publicly-owned shorelines and not interfere with the public use of water areas fronting such shorelines, nor shall it adversely affect aquatic habitat.
- E. Governmental units shall be bound by the same requirements as private interests.
- F. Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a Permit is granted.

In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180 (1), the person requesting the review shall have the burden of proof.

- G. Shorelines of this Region which are notable for their aesthetic, scenic, historic or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.
- H. Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health.

Conclusions Based on Findings

1. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. The proposed improvements would improve public access to the shoreline while not affecting the existing character or ecology of the shoreline. The conditions of approval address stormwater management, erosion control, disposal of construction debris, spill containment, and construction noise. *Findings 4, 5, 6, 9, 10, 11, 12, 13, 14, 16, 17, 20, 21, and 24.*
2. The proposal complies with applicable regulations in the Washington Administrative Code. No structure would exceed 35 feet above average grade. *Finding 5.*
3. As conditioned, the proposal is consistent with the policies and regulations of the Shoreline Master Program for the Thurston Region. Because the boat launch is an existing use that would not be expanded by the project, several of the policies and regulations are not applicable. *Findings 4, 5, 6, 9, 10, 11, 12, 13, 14, 16, 17, 20, 21, and 24.*
4. With respect to the applicable recreation policies, the project would be compatible with the environment, would not affect existing linkages between access points, would preserve existing views, would maintain existing inland parking areas, would comply with applicable regulations, would provide for sewage disposal meeting public health standards, and would preserve access to public waters. There is no way to improve the site without impacting either endangered species or human use of the site, and the Applicant is required by law to avoid impacts to endangered species; recreation use must be temporarily interrupted in order to be greatly improved going forward. *Findings 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, and 20.*
5. With respect to the applicable recreation regulations, the project would be compatible with the Rural environmental designation, would allow for nonmotorized access to the shoreline (including an ADA-accessible loading ramp), and would provide for sewage disposal consistent with public health standards. Waste would not be allowed to enter the water. *Findings 4, 7, and 15.*

6. With respect to the applicable boating facilities policies, the project would incorporate procedures to minimize accidental spill of fuels and to handle spills that occur, would prevent wastes from entering Puget Sound, would utilize landscaping and other screening to moderate the visual impact of the use on adjacent properties, and would minimize off-site light and glare. *Findings 11, 12, 14, 15, 21, 22, and 23.*
7. With respect to the applicable boating facilities regulations, the project would include measures to prevent the release of hazardous materials into the water, and would include replacement parking lot landscaping. The Applicant has demonstrated maximum protection of shore features, water quality, and existing uses through the proposed construction techniques, project timing, and other measures described in the Biological Evaluation and HPA. Additional protection would be provided through compliance with the Drainage Design and Erosion Control Manual. Sensitive species of wildlife would not likely be adversely affected by the project. The facility includes a restroom as required by the regulations, and the project would make both ramp and restroom facilities accessible to more people than the existing facilities are. *Findings 5, 9, 10, 11, 12, 13, 14, and 16.*
8. With respect to the applicable regional criteria, the project would provide for safer public access while preserving the preexisting characteristics of the shoreline, would be protective of water quality and the aquatic environment, and, through replacement of aging structures and the addition of accessibility features, would eliminate poor quality conditions. The project has been reviewed for effects on public health and the Environmental Health Division recommended approval. *Findings 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 20, and 21.*

DECISION

Based on the preceding findings and conclusions, the requested shoreline substantial development permit to replace the existing Boston Harbor boat launch with a new boat launch, replace the existing restroom with a new restroom, and install parking lot improvements is **GRANTED** subject to the following conditions:

1. Prior to or in conjunction with the issuance of any building permits, all applicable regulations and requirements of the Thurston County Public Health and Social Services department, Public Works Department, Fire Marshall, and Thurston County Resource Stewardship Department shall be met.
2. Prior to issuance of building permits, the Applicant shall obtain approval of any revised site map, to the satisfaction of County Public Works.
3. The Applicant shall submit a Drainage Scoping Report if requested, and shall meet Core Requirements #1-11, to the satisfaction of Thurston County Public Works. All activities shall fully comply with the Thurston County Stormwater Drainage Design and Erosion Control Manual (TCC 15.05) throughout all phases of the proposed project.

4. A Construction Stormwater Permit from 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.
5. The Applicant shall install erosion control measures prior to any clearing, excavation, grading, or construction activity. Erosion control measures must be approved by the Development Review section of Thurston County Public Works prior to construction.
6. All on-site construction activities shall fully comply with noise limitations outlined in WAC 173-60.
7. All removed debris and waste materials resulting from this project must be disposed of at an approved site. Property owners, developers, and contractors are encouraged to recycle all possible left over construction, demolition, and land clearing (CDL) materials and reduce waste generated. Please visit <http://1800recycle.wa.gov> to find facilities that recycle construction, demolition, and land clearing materials in your area.
8. If contamination is known or suspected during construction, testing of potentially contaminated soil or fill media must be performed. If soil or groundwater contamination is readily visible, or is revealed by testing, Washington State Department of Ecology must be notified (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300).

Decided May 25, 2021.



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 **\$777.00** for a Request for Reconsideration or **\$1,054.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

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



Project No. _____
Appeal Sequence No.: _____

☐ Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

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

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

☐ Check here for: **APPEAL OF HEARING EXAMINER DECISION**

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

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

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

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

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

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

STANDING

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

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED _____

SIGNATURE OF APPELLANT _____

Address _____

Phone _____

Please do not write below - for Staff Use Only:

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