



Notice of Hearing Examiner Decision

03/05/2021

To: Interested Parties and Parties of Record

RE: Project Name: Washington Boulevard Stabilization (for Safe Passage of Traffic)
 Applicant: Kitsap County Public Works Roads Division
 614 Division Street, MS 26
 Port Orchard, WA 98366
 Application: Shoreline Substantial Development Permit (SSDP)
 Permit Number: 20-02754

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit # 20-02754: Washington Boulevard Stabilization** (for Safe Passage of Traffic) – Shoreline Substantial Development Permit (**SSDP**), **subject to the conditions outlined in this Notice and included Decision.**

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: Owner/Applicant: Kitsap County Public Works
Project Representative: Tim Beachy, tbeachy@co.kitsap.wa.us
Consultants: Phil Struck, phil@struckenv.com
Geologist: Aspect Consulting, aholmson@aspectconsulting.com
Health District
Public Works
Parks

Navy
DSE
Kitsap Transit
North Kitsap Fire District
North Kitsap School District
Puget Sound Energy
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Shoreline Review
Interested Parties: None

**KITSAP COUNTY HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Shoreline Substantial Development Permit
Washington Boulevard Slope Stabilization Project
Permit File No. 20-02754**

March 3, 2021

1. FINDINGS OF FACT

1.1 Proposal. Kitsap County Public Works Roads Division requests a Shoreline Substantial Development Permit to repair approximately 500 linear feet of Washington Boulevard. Work includes installing a slope stabilization drainage and dewatering system to reduce landslide hazards. The existing gravel road will be paved, and stormwater conveyance infrastructure upgraded. The roadway footprint will not be expanded.

A temporary 10-foot wide construction access road will be built within a portion of shoreline, wetland, and stream buffers. A five-foot width of the temporary access road will be restored with native vegetation following construction. The remaining five-foot width will be surfaced with crushed rock and used as an access path for periodic maintenance. The slope dewatering system will be installed from the lower part of the slope below the roadway, on a portion of four undeveloped parcels Kitsap County is acquiring. A fifth property that includes an abandoned residence has been acquired, and the residence will be removed. The County will retain the five parcels.

Applicant/Property Owner: Kitsap County Public Works Roads Division, 614 Division Street, MS 26, Port Orchard, WA.

Location: 26314 Washington Blvd. NE, Kingston, WA. Assessor Parcel Nos. 4325-000-008-0101, 4325-000-009-0001, 4325-000-010-0008, 4325-000-011-0007, and 4325-000-012-0006.¹

1.2 Hearing. An open record public hearing was held February 11, 2021. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and Applicant calling in. Access information was provided to the public to allow citizens to join via either a video link or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open through February 18.² No comment was received.

¹ Exhibit 19 (Revised Staff Report) includes the legal description.

² Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

At the hearing, DCD, through Mr. Heacock, Sr. Environmental Planner, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant, through Mr. Beachy from Public Works, Mr. Holmson (geotechnical engineer with Aspect Consulting), and Mr. Struck (principal scientist with Aspect Consulting), further described the project. No member of the public indicated a wish to speak.

Mr. Beachy emphasized that the proposal addresses ongoing landslide/slope instability issues and continued road movement associated with heavy rainfalls. Mr. Holmson and Mr. Struck described the utility drainage piping to dewater the slope. The work will stabilize the bluff and access road. The area serves as a feeder bluff for Puget Sound. To preserve this function, the project uses dewatering utility piping with narrow diameters (about an inch to inch and a half), and the project will support on-site wetland and intermittent stream hydrology. The permanent impact area is about 1,300 square feet, which constitutes the gravel path to be used to maintain the underdrain system. Project mitigation includes removal of an existing boarded up residence, and replanting the area at a 3:1 mitigation ratio. County purchase of 2.2 acres for open space provides a further ecological benefit. No in-water work is proposed.

1.3 Administrative Record. The Examiner admitted Exhibits 1-21, which included the Revised Staff Report, application materials, documentation of agency consultation, public notice documents, and a DCD Power Point presentation.

1.4 Notice. Hearing and application notice was provided consistent with KCC requirements.³

1.5 SEPA. DCD issued an unappealed Determination of Non-Significance.⁴ SEPA mitigation conditions have been imposed.⁵

Comments:

The SEPA comment period previously occurred concurrent with the Notice of Application dated November 13, 2020. The subject property contains a small, Category IV wetland and a Type N seasonal stream. The Washington State Department of Fish and Wildlife (WDFW), the Suquamish Tribe and the Port Gamble S'Klallam tribe reviewed the application and conducted a joint site visit. The project proposes buffer restoration on the adjacent County-owned property from an associated minor buffer encroachment.

Conditions:

1. No in- water work is proposed; a Hydraulic Project Approval has not been required from the Washington Department of Fish and Wildlife but may be required should work be revised.

³ Exhibits 11, 14, and 15; KCC 21.04.080, .210.

⁴ Exhibit 13.

⁵ Exhibit 19 (Revised Staff Report), pp. 3-4; Exhibit 13.

2. The proposal will be conditioned for restoration from unavoidable wetland and stream impacts per KCC 19.200 and 19.300 and will also follow guidelines for stormwater control per KCC Title 12.
3. A revegetation plan and monitoring plan has been prepared and is a condition of approval.

1.6 Agency Comment. The proposal was circulated within the County. As long as requirements are met, there were no agency objections to approval.

1.7 Comprehensive Plan and Zoning Designations. The Comprehensive Plan and zoning designations are Rural Residential (RR).⁶ Surrounding properties are zoned RR and Urban Restricted, and include residential development to the north, south and west; to the east is Puget Sound. The shoreline designation is Rural Conservancy and adjacent to Urban Conservancy located upland.⁷

1.8 Site Physical Characteristics. Site topography is hummocky, unstable shoreline slopes within and down-gradient of the Washington Boulevard roadway on the base of a steep shoreline bluff. The properties slope west to east into Puget Sound. Vegetation is a mix of red alder, Douglas fir and big leaf maple trees with salmonberry, sword fern and invasive English ivy understory. The project's upland portion will be just above the ordinary high water mark. The intake pipes will be buried under tidal and subtidal sediments consisting of sand, gravel, cobble, rocks and shell. Substrate through the proposed extension is sand with some shell material. Red and green macroalgae are at the deeper extents, with dense eelgrass.

1.9 Access. NE 4th Street onto Washington Boulevard NE, a partially paved County maintained right-of-way. Two ten-foot wide gravel trails will provide access for the tracked drill rig to install the dewatering facility. The trails will later be reduced to five feet for maintenance access.

1.10 Utility and Public Services.

- **Water:** PUD Water District #1
- **Power:** Puget Sound Energy
- **Sewer:** Kitsap County Public Works
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire and Rescue
- **Schools:** North Kitsap School District

1.11 Shoreline Substantial Development Permit. The development is within the 200-foot shoreline jurisdiction, so development is guided by the Kitsap County Shoreline Master Program (KCC Title 22). This project requires a substantial development permit.⁸

⁶ Exhibit 19 (Revised Staff Report), p. 5.

⁷ Exhibit 19 (Revised Staff Report), p. 7.

⁸ KCC 22.600.185(A)(2).

1.12 Geotechnical and Environmental. Aspect Consulting prepared a geotechnical report.⁹ There will be no increase in pollutant generating impervious surfaces. The project avoids work below the ordinary high water mark of wetlands, streams, or marine shorelines. Work will occur within the buffers of a Category IV wetland, an intermittent Type N stream, and the marine shoreline.

4,601 square feet of temporary buffer impact and 1,379 square feet of permanent buffer impact is expected due to the five-foot wide permanent gravel access paths required for system maintenance. The paths will be infrequently used, with little impact on ecological processes or functions. To mitigate for temporary and permanent buffer impacts, an existing abandoned house and driveway (4,200 square feet) within the shoreline buffer zone adjacent to the site will be removed and the site restored with native vegetation. Kitsap County will also acquire and permanently protect about two acres of shoreline property. All permanent facilities and mitigation will be on County owned property.

1.13 Shoreline Policies. Utilities are permitted uses in the Rural Conservancy and Urban Conservancy Environments.¹⁰ Applications must identify the need for location in the shoreline, alternative locations, location of other facilities, construction methods and measures to control erosion/turbidity during construction, restoration plans, possibility of locating the facility within existing right-of-way, and include a geotechnical report for areas within geologically hazardous areas. These criteria were met, as the Staff Report details.

This stabilization project does not have an alternative location, there are no other such drainage facilities in the area, and the Applicant has detailed the construction approach and restoration plans. Turbidity is not anticipated to exceed existing stream flows from the landslide debris field and general slide area. Temporary silt and erosion control Best Management Practices (BMP's) will be used during trail construction. The drain pipes will direct subsurface water into pebble/cobble splash pads above the ordinary high water line. Once the drain boring work is complete, the trails will be partially removed and the disturbed areas replanted. Mitigation enhances and protects the wetland, stream, and marine shoreline, as the Staff Report, pp. 12-13, hearing testimony (from Mr. Heacock and the Applicant representatives), and Exhibit 10 (Wetland Delineation Report, Buffer Mitigation Plan, and Habitat Management Plan) details. A code consistent geotechnical report (KCC 19.400.415, 19.700.725) was prepared.¹¹

More generally, the project follows Ch. 22.400 KCC, General Regulations. The project is consistent with water quality and quantity, cultural resources, views, bulk/dimension, public access, and flood hazard reduction standards.¹² A No Net Loss Analysis is provided with the Final Mitigation Plan, which details that the project does not result in a net loss of shoreline ecological functions. The project work is outside shorelines of statewide significance.¹³

⁹ Exhibit 5.

¹⁰ SMC 22.600.185(A)(2).

¹¹ Exhibit 5.

¹² See KCC 22.400.125, .130, .135, .140, .145, .150, and Ch. KCC 22.400 (.110, .115., .120, and .155).

¹³ KCC 22.300.145.

The project follows the County's SMP goal for utilities, which is to "[p]lan, locate and design ... essential utilities facilities in shoreline areas where they have the least possible adverse effects on shoreline ecological functions and/or processes and existing of planned water-dependent uses."¹⁴

1.14 Staff Report. The Staff Report findings are factually supported and the Report is incorporated. The Report's proposed conditions ensure KCC consistency, address impacts, and should be imposed without substantive revision.

2. CONCLUSIONS OF LAW

2.1 The Hearing Examiner reviews SSDP applications.¹⁵ An SSDP is "granted only when the applicant can demonstrate that the proposed development is consistent with the policies and procedures of the Act and this program, as well as criteria in WAC 173-27-150."¹⁶

2.2 The utility drainage project addresses an ongoing slope instability challenge and public safety hazard in the least impactful way practicable, with no net loss of shoreline ecological functions. The Project has been sensitively designed and is supported by technical analysis prepared by qualified professionals. The proposal is consistent with the County's shoreline regulations and policies, with WAC 173-27-150, and with the Shoreline Management Act, Ch. 90.58 RCW. The SSDP should be approved.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Shoreline Substantial Development Permit, provided these conditions are adhered to:

1. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.

2. The information provided demonstrates this proposal is a Small Project as defined in KCC Title 12, and as such will require a Site Development Activity Permit (SDAP) from Development Services and Engineering, demonstrating how the project meets Minimum Requirements #1-5, as outlined in the Kitsap County Stormwater Design Manual.

3. Stormwater quantity control, and erosion and sedimentation control, shall be designed in accordance with KCC Title 12 Stormwater Drainage effective at the time the Shoreline Substantial Development Permit application was deemed complete, July 6, 2020. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County ordinances in effect at the time of SDAP application.

¹⁴ KCC 22.300.140, Goal; *see* Exhibit 19 (Staff Report), pp. 10-11.

¹⁵ KCC 21.04.080 and .100(#12); KCC 22.500.100(B)(2); KCC 22.500.105(E).

¹⁶ KCC 22.500.100(B)(3).

4. All work shall be in compliance with the approved plans and the conditions established for SDAP #19-03860, once issued, and any addendums thereto.

5. The Washington State Department of Fish and Wildlife may require a Hydraulic Project Approval for the work required at the proposed outfall.

6. If any work is to be done below the ordinary high water mark, a Hydraulic Project Approval permit is required from the Washington Department of Fish and Wildlife.

7. Project work shall be subject to the conditions of the Washington Department of Fish and Wildlife Hydraulics Project Approval (HPA), should an HPA be determined to be necessary.

8. Shoreline construction activities shall be conducted in a manner such that private properties adjacent to the project area are not impacted.

9. All recommendations of the April 2018 Geotechnical Report, Final Alternatives Analysis, by Aspect Consulting (Exhibit 5, as prepared for Kitsap County Public Works Department) must be followed.

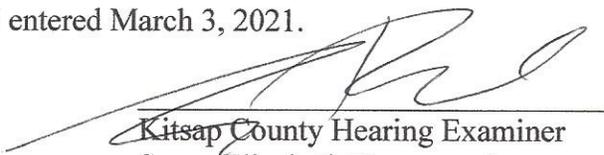
10. Upon final permit issuance, all construction for the project must commence within two years and be complete within five years. A one-time one-year extension is available but only if requested on or before ninety days of original permit expiration. No exceptions are allowed unless provided for by law.

11. Mitigation shall conform to the Technical Memorandum SMP Compliance Evaluation and Mitigation Plan, prepared by Struck Environmental, and dated January 2021, shall guide all construction activities.

12. All traffic control devices on public and private roads shall comply with the Manual on Uniform Traffic Control Devices as amended by the Washington Administrative Code. This is in accordance with 23 Code of Federal Regulations (CFR), Part 655.

Absent a timely appeal or grant of reconsideration, this Decision is final.¹⁷

DECISION entered March 3, 2021.


Kitsap County Hearing Examiner
Susan Elizabeth Drummond

¹⁷ Ch. 90.58 RCW, RCW 90.58.180 (providing requirements for appeal within 21-days to Shorelines Hearings Board); HE Rule 2.12.1.