



**OLYMPIA
HEARING EXAMINER
DECISION**

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May 6, 2014

Greetings,

**Subject: WEST BAY DRIVE SIDEWALK
Case# 13-0128**

The enclosed decision of the Olympia Hearings Examiner hereby issued on the above date may be of interest to you.

This is a final decision of the City of Olympia Hearing Examiner regarding a Shoreline Substantial Development Permit to construct sidewalks on West Bay Drive that fall within shoreline jurisdiction and located within landslide hazard areas and wetlands.

In general, any appeal of a final land use decision must be filed in court within twenty-one days. See Revised Code of Washington, Chapter 36.70, for more information relating to timeliness of any appeal and filing, service and other legal requirements applicable to such appeal. In particular, see RCW 36.70C.040.

Please contact the City of Olympia, Community Planning and Development Department, at 601 4th Avenue E or at PO Box 1967, Olympia, WA 98507-1967, by phone at 360-753-8314, or by e-mail at cpdinfo@ci.olympia.wa.us if you have any questions.

Sincerely,

CARI HORNBEIN
Senior Planner

Enclosure

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1 BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

2 IN RE:) HEARING NO. 13-0128
3 WEST BAY DRIVE SIDEWALKS,) FINDINGS OF FACT,
4) CONCLUSIONS OF LAW
5) AND DECISION

6 **APPLICANT:** City of Olympia Public Works
7 601 4th Avenue East
8 Olympia, Washington 98501

9 **SUMMARY OF REQUEST:**

10 A Shoreline Substantial Development Permit to construct sidewalks, retaining walls and
11 associated stormwater improvements along the west side of West Bay Drive from 1515 to 1115
12 West Bay Drive Northwest. These various improvements will require slope stabilization within
13 landside hazard areas and associated buffers.

14 **LOCATION OF PROPOSAL:**

15 The west side of West Bay Drive from 1515 to 1115 West Bay Drive Northwest.

16 **SUMMARY OF DECISION:**

17 The Shoreline Substantial Development Permit is **approved** subject to conditions.

18 **BACKGROUND**

19 West Bay Drive is an important arterial for vehicles and pedestrian traffic from the
20 downtown area to the neighborhoods west of Budd Inlet. Despite its popularity with pedestrians,
21 West Bay Drive currently has an unfortunate several-block gap in its sidewalk system that makes
22 pedestrian travel difficult and unsafe. The pending application seeks to complete the sidewalk
23 system by installing sidewalks and related improvements from 1115 to 1515 West Bay Drive
24 Northwest.

25 What would otherwise be a fairly straightforward project is complicated by two
significant issues:

1 1. The properties fall within shorelines jurisdiction due to their proximity to
2 Budd Inlet; and

3 2. Much of the proposed sidewalk is located within landslide hazard areas
4 and associated buffers, and within wetlands or wetland buffers.

5 Taking into consideration these two significant issues, the City Public Works
6 Department, working with the Planning Department, seeks approval of the project subject to a
7 variety of conditions intended to address all shorelines and critical areas impacts.

8 The public hearing commenced at 6:30 p.m., on Monday, April 28, 2014, in the Planning
9 Hearing Room in the City Hall. The City appeared through Cari Hornbein, Senior Planner. The
10 Applicant, the City Public Works Department, appeared through Jim Rioux. Appearing with Mr.
11 Rioux were seven other staff members or consultants who have assisted with the project
12 including Jessica Stone who assisted Mr. Rioux in the Department's presentation. Testimony
13 was received from Ms. Hornbein, Mr. Rioux and Ms. Stone. A verbatim recording was made of
14 the public hearing and all testimony was taken under oath. Documents considered at the time of
15 the hearing were the City Staff Report (Exhibit 1) including all attachments as well as the
16 following exhibits entered during the hearing:

17 Exhibit 2: Revised maps related to steep slopes.

18 Exhibit 3: April 26 memo from Mr. Rioux to Ms. Hornbein.

19 Exhibit 4: April 22 letter to Mr. Rioux regarding deviation from Engineering Design and
20 Development Standards (EDDS).

21 Exhibit 5: Staff's updated recommended conditions of approval

22 Exhibit 6: Slides from Power Point presentation.

23 Ms. Hornbein provided a brief history of the project, the reasons why a permit is
24 required, and the City's proposed conditions for approval of the permit. Ms. Hornbein noted that
25 due to the contours or Budd Inlet the north and south portions of the sidewalk project are close

1 enough to the inlet to fall within shorelines jurisdiction. She also noted that virtually the entire
2 project is located within critical areas (principally landslide hazard areas and buffers). There are
3 also two wetlands nearby but only one is affected by the project. There are several streams near
4 the project but none are affected.

5 The principal challenge to this project is the adjoining hillside to the west. Its proximity
6 and steep slopes will require four retaining walls (identified as Walls 1, 2, 3 and 4). These four
7 walls will require significant excavation, shoring and slope stabilization. In particular, Wall 2
8 will require careful attention to slope stabilization as there is a scarp at the top of the steep slope
9 and visible earth movement. The project calls for special attention to Wall 2 and to all of the
10 retaining walls to ensure slope stability during construction and thereafter.

11 Ms. Hornbein noted that the scope of the project exceeds the threshold for a shorelines
12 substantial development permit. As noted in the Staff Report, staff believes that, as conditioned,
13 the project fully complies with the Shoreline Master Program. Ms. Hornbein also noted that, as
14 conditioned, the project complies with the Unified Development Code, tree protection and
15 replacement standards, and EDDS.

16 Ms. Hornbein completed her testimony with an explanation of recent change to the
17 recommended conditions of approval. These changes, found on Exhibit 5, principally modify the
18 re-vegetation plans. Instead of immediately re-vegetating the slope cuts with permanent
19 vegetation, the project now calls for hydroseeding all disturbed areas for one or more seasons to
20 improve stability. Once the sites are shown to be stable a permanent re-vegetation plan will be
21 undertaken and trees, shrubs, etc. will be installed. The revised conditions of approval also
22 require shoring during construction to maintain slope stability. Finally, the conditions have been
23 revised to allow some weekend construction work in order to avoid blocking private businesses
24 during the week.

1 Following Ms. Hornbein's testimony Jim Rioux and Jessica Stone testified on behalf of
2 the Public Works Department. Mr. Rioux and Ms. Stone explained the background of this
3 project and how it arises from the City's "Parks and Pathways" program. This project has been
4 given high priority status because of the popularity of pedestrian travel along West Bay Drive
5 and the need to provide pedestrians with safer conditions. Once this project is completed
6 pedestrians will have continuous sidewalk access. The project also implements the West Bay
7 Drive Corridor Study and addresses the public concerns raised during that study.

8 Mr. Rioux explained that alignment of the new sidewalk was a challenging task and took
9 a great deal of time, with consideration given to the amount of right-of-way to be acquired,
10 future alignment of the roadway, and the best means of tying into existing sidewalks. As the
11 project design went along the design evolved to minimize critical areas impacts and the total
12 amount of slope cuts. The final sidewalk design and the four retaining walls represent the end
13 product of extensive design work to allow for an effective sidewalk while protecting critical
14 areas, especially unstable slopes.

15 Following Mr. Rioux's presentation Jessica Stone testified as to the recently proposed
16 changes to the re-vegetation plan. Ms. Stone explains that normally the desire is to replant the
17 disturbed site immediately but in this case it could lead to increased slope instability. The
18 revised plan calls for the disturbed areas to be hydroseeded and left untouched until they have
19 "healed". Once this has occurred, which could take one or two years, the disturbed areas will be
20 replanted with vegetation that will encourage slope stability. In the meantime all invasive plants,
21 including ivy and blackberries, will be removed to allow natural vegetation to recover.

22 Following Ms. Stone's presentation Mr. Rioux then explained a last minute adjustment to
23 the project involving stormwater. Due to recent adjustments in the total cost of this project (now
24 approaching \$900,000.00) it triggers heightened stormwater improvements. The nature and
25 scope of these improvements is not yet determined, nor is it known whether these improvements

1 will affect critical areas. Based upon these recent discoveries the Public Works and Planning
2 Departments recommend a final new condition requiring that a final drainage report be designed
3 and approved by the Lead Planner and the City Stormwater Engineer before construction.

4 Following Mr. Rioux's testimony I reminded the Planning and Public Works Departments
5 that the stormwater requirements might require impacts to critical areas, and that I could not
6 approve such impacts without a further hearing. I therefore advised the parties that I would
7 amend the final condition of approval to require that any stormwater changes impacting critical
8 areas come back for Hearing Examiner approval.

9 Following the presentation by the Public Works Department the hearing was then open
10 for public comment. There were no members of the public present who wished to speak, and no
11 public comment has been submitted to City Staff.

12 As previously noted, the City recommends approval of the requested Shoreline
13 Substantial Development Permit subject to several conditions which have been recently modified
14 as set forth in Exhibit 5. As will be noted more fully in the Findings of Fact and Conclusions of
15 Law, the application complies with requirements of the Shoreline Management Act, local
16 shorelines regulations, the Unified Development Code, the Tree Protection and Replacement
17 Standards, and EDDS and should be approved.

18 Accordingly, I make the following:

19 **FINDINGS OF FACT**

20 1. The Applicant, the Olympia Public Works Department requests a Shoreline
21 Substantial Development Permit to construct sidewalks, retaining walls and associated
22 stormwater improvements along the west side of West Bay Drive from 1515 to 1115 West Bay
23 Drive Northwest.

1 2. The Findings of Fact contained in the foregoing Background section are
2 incorporated herein by reference and adopted by the Hearing Examiner as his own Findings of
3 Fact.

4 3. Pursuant to the State Environmental Policy Act, the City as lead agency, issued a
5 Determination of Nonsignificance (DNS) on March 21, 2014. No comments or appeal were
6 filed.

7 4. Notification of the public hearing was mailed to the parties of record, property
8 owners within 300 feet and recognized neighborhood associations, posted on the site and
9 published in The Olympian in conformance with Olympia Municipal Code 18.78.020.

10 5. City Staff recommends approval of the Shoreline Substantial Development Permit
11 subject to conditions. The City's proposed conditions of approval have been modified as set
12 forth in Exhibit 5.

13 6. The Staff Report, at pages 2 and 3, contains Findings related to the site and
14 project description. The Hearing Examiner has reviewed those Findings and adopts them as his
15 own Findings of Fact.

16 7. The Staff Report, at pages 3 and 4, contains Findings related to the project
17 description and its impacts to critical areas. The Hearing Examiner has reviewed those Findings
18 and adopts them as his own Findings of Fact.

19 8. The Staff Report, at page 4 notes that the City received one comment letter from
20 the Department of Ecology during the public comment period, a copy of which is attached to the
21 Staff Report. Apart from this comment letter the City has not received any other written public
22 comment.
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1 9. The Staff Report, at pages 5 through 8, contains Findings related to the Shoreline
2 Master Program (SMP). The Hearing Examiner has reviewed those Findings and adopts them as
3 his own Findings of Fact.

4 10. The Staff Report, at pages 8 through 10, contains Findings related to the Olympia
5 Unified Development Code, OMC Title 18. Some of these Findings have been modified by
6 subsequent communications between the Planning and Public Works Departments as contained
7 in Exhibits 3 and 4 related to slope stability and re-vegetation. The Hearing Examiner has
8 reviewed those Findings as modified by Exhibits 3 and 4 and adopts the modified Findings as his
9 own Findings of Fact.
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11 11. The proposed project is subject to tree preservation requirements of OMC 16.60.
12 The Applicant has submitted a Level 5 Tree Plan. The Tree Plan and other re-vegetation plans
13 have been subsequently modified as noted in the testimony of Jessica Stone, described earlier in
14 the Background section. The Hearing Examiner has revised those Findings as modified by Ms.
15 Stone's testimony, and adopts them as his own Findings of Fact.

16 12. The Staff Report, at pages 11 and 12, contains Findings related to the Engineering
17 Design and Development Standards (EDDS). These proposed Findings have been modified by
18 the information contained in Exhibits 3 and 4. The Hearing Examiner has reviewed those
19 Findings, as modified, and adopts them as his own Findings of Fact.
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21 13. The estimated cost of the project has increased and will trigger enhanced
22 stormwater management. A drainage report consistent with this requirement has not yet been
23 prepared. It is not yet known whether these enhanced stormwater requirements will impact
24 critical areas. The City recommends that as an additional condition of approval a final drainage
25 report will be prepared and submitted to the Lead Planner and City Stormwater Engineer.

1 Construction shall not begin until the final drainage report and project design is approved by the
2 Lead Planner and the City Stormwater Engineer.

3 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

4 **CONCLUSIONS OF LAW**

- 5 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.
- 6 2. Any Conclusions of Law contained in the foregoing Background section or
7 foregoing Findings section are incorporated herein by reference and adopted by the Hearing
8 Examiner.
- 9 3. The requirements of SEPA have been met.
- 10 4. A Shoreline Substantial Development Permit is required for the proposed use of
11 the site.
- 12 5. The proposed development is subject to the policies and regulations for road
13 design and construction in Section XVII of the Shoreline Master Program and for utilities in
14 Section XX of the SMP.
- 15 6. The project is further subject to the critical areas ordinance, OMC 18.32; the Tree
16 Protection and Replacement Standards, OMC 16.60; and the Engineering Design and
17 Development Standards, Chapter 4.
- 18 7. The project, as conditioned, complies with the regional criteria of the SMP.
- 19 8. The project, as conditioned, complies with the policies, general regulations and
20 environmental designations and regulations for road design and construction under the SMP.
- 21 9. The project, as conditioned, complies with the policies, general regulations and
22 environmental designations and regulations for utilities under the SMP.
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- 1 a. Construction activity shall be immediately suspended;
- 2 b. The contractor shall immediately notify the Washington State Department
- 3 of Ecology; and
- 4 c. Contaminated materials shall be properly handled, characterized, and
- 5 disposed of consistent with applicable regulations.
- 6 3. Should historic and/or archaeological materials be encountered during
- 7 construction all of the following shall apply:
- 8 a. Construction shall be immediately suspended;
- 9 b. The contractor shall immediately contact the City of Olympia Historic
- 10 Preservation Officer;
- 11 c. A qualified professional archaeologist shall be retained by the Applicant to
- 12 document and assess the discovery;
- 13 d. If the discovery involves potential Native American resources, the
- 14 Applicant shall contact the Washington State Department of Archaeology and Historic
- 15 Preservation (DHAP) and the affected tribe for additional consultation; and
- 16 e. In no case shall additional excavation be undertaken until a protocol has
- 17 been agreed upon by the above-mentioned parties.
- 18 4. To minimize impacts to disturbed slopes following construction, and to ensure
- 19 long term plant establishment, use the following sequence for hillside restoration:
- 20 a. Hydroseed all disturbed landslide hazard areas during and/or following
- 21 construction;
- 22 b. The following spring, assess the condition of hydroseeded areas for erosion
- 23 or slope instability. If sound, finalize the planting plan for review and approval by the
- 24 c. The following spring, assess the condition of hydroseeded areas for erosion
- 25 or slope instability. If sound, finalize the planting plan for review and approval by the

1 Urban Forester and Lead Planner and install plants. Include the following on the final
2 planting plan:

- 3 (1) Areas where natural vegetation has regrown;
4 (2) Planting grids showing spacing of trees and shrubs, with notes that
5 spacing may vary depending on existing vegetation; and

6 c. If hydroseeded areas are not sound, repair, reseed, and monitor until the
7 following spring. Finalize the planting plan as noted in b. above and install plants.

8 5. To ensure successful plan establishment, all areas to be replanted (including
9 Wetland A mitigation areas) shall be subject to the monitoring and maintenance provisions in the
10 March 21, 2014 Level V Tree Plan or as updated.

11 6. The recommended mitigation measures in the March 21, 2014 Geotechnical
12 Report shall be used prior to and during construction, except that the test cuts to monitor slope
13 creep prior to construction are not required provided that temporary shoring as described in the
14 April 26, 2014 memorandum from Jim Rioux is used. In addition, the slopes above all retaining
15 walls shall be monitored for downslope movement for a minimum period of five years. The
16 frequency of inspections for each wall shall be recommended by a geotechnical engineer.

17 7. Because of the proximity to nearby residences, construction activity shall be
18 limited to the work hours between 7 a.m. and 6 p.m., Monday - Friday, with the exception of
19 occasional weekend work to restore driveways associated with private businesses. These hours
20 may be shortened to 8 a.m. - 5 p.m., Monday - Friday if complaints of noise impacts are received
21 from adjacent residences.

22 8. A final drainage report will be prepared and submitted to the Lead Planner and
23 City Stormwater Engineer. Construction shall not begin until the final drainage report and
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1 project design is approved by the Lead Planner and City Stormwater Engineer, provided,
2 however, that in the event the final project design causes additional impact to critical areas, the
3 final drainage report must first be approved by the City Hearing Examiner.
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5 CONSTRUCTION PURSUANT TO THIS PERMIT SHALL NOT BEGIN AND IS NOT
6 AUTHORIZED UNTIL TWENTY-ONE DAYS FROM THE DATE OF FILING AS DEFINED
7 IN RCW 90.58.140(6) AND WAC 173-27-130, OR UNTIL ALL REVIEW PROCEEDINGS
8 INITIATED WITHIN TWENTY-ONE DAYS FROM THE DATE OF SUCH FILING HAVE
9 TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a)(b)(c).
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11 DATED this 2 day of May, 2014.

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15 Mark C. Scheibmeir
16 City of Olympia Hearing Examiner
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