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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
Case Number 38427-2-II  
Thurston Superior Court No. 08-2-01096-9

Larissa Via-Fourre and )  
Charles Via )  
Appellants )  
vs. )  
Thurston County and, )  
Mary Jo Stientjes and )  
and Harlan Claire Stientjes )  
Family Trust, )  
Respondents. )  
\_\_\_\_\_ )

Brief of Respondent

FILED  
COURT OF APPEALS  
DIVISION II  
09 APR 17 PM 12:29  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

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**Brief of Respondent-1**

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INTRODUCTION

2

THIS CASE IS THE APPELLANTS' EFFORT TO PROSECUTE,  
WITHOUT STANDING, AN IMPERMISSIBLE AND UNTIMELY  
COLLATERAL ATTACK ON AN ISSUED BUILDING PERMIT.

6

8 Respondents, in their opening Memorandum in the Superior Court,  
designated what were believed to be the two issues in this case as  
10 follows:

- 12 1. "Did the Appellants, Via and Via-Fourre, have standing  
to contest the Petitioner's building permit within the  
meaning of LUPA<sup>1</sup>?" (Answer: They did not.)
- 14 2. "Did the Appellants timely appeal the building permit  
awarded to the Petitioners on July 11, 2007?" (Answer:  
16 No.)

18 While the Brief of Appellants in this Court seems to indicate  
seven "Assignments of Error and Issues Pertaining Thereto", the  
20 issues before this Court continue as the two above issues.

22 In the Brief of the Appellants in the Superior Court at page 12,  
there is the admission by the Appellants, "this is a review of  
24 questions of law, as the real factual disputes between Via-  
Fourier, Thurston County and Stientjes are not before this  
26 court." The appellants herein do not present a transcript of the  
testimony before the Hearing Examiner; consequently, all facts  
28 found by the Hearing Examiner are binding on appeal. Presumably

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the only Appellate issues would be the Conclusions of Law reached  
2 by the Hearing Examiner. With that understanding, let us review  
the pertinent provisions of the Hearing Examiner's FINDINGS,  
4 CONCLUSIONS, AND DECISION attached hereto as Exhibit A and at  
Clerk's Papers (CP) 14, for findings of fact and conclusions  
6 relevant to this Appeal:

1. Finding of Fact: The building permit was applied for and  
8 issued on July 11, 2007. CP 18, H. E. Decision page 5.

2. Finding of Fact: "Development Services staff conducted a  
10 site visit in late July 2007 after receiving calls from the  
Appellants, who had raised concerns regarding whether the  
12 placement of the RV shed satisfied the marine bluff setback.  
. .After the initial site visit, Development Services staff  
14 determined that the marine bluff setback was satisfied." CP  
18, H. E. Decision page 5.

3. Finding of Fact and Conclusion of Law: The Hearing Examiner  
16 concluded that appellants failed to comply with the LUPA  
18 deadline for appealing the building permit. The LUPA  
deadline was August 1, 2007. "The appellants had actual  
20 notice of the building activity and therefore effective  
notice of building permit issuance, before the end of July  
22 2007 as evidenced by their calls to the Development Services  
Department." CP 22, H. E. Decision page 9.

4. Finding of Fact and Conclusion of Law: "In their arguments

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<sup>1</sup> Land Use Petition Act, RCW 36.70C et seq.

and other submittals, Appellants have made it clear (at the hearing, the hearing examiner asked this direct question) that their appeal of the November 19, 2007 decision is actually an appeal of the July 11, 2007 building permit." CP 23, H. E. Decision page 10.

5. Conclusion of Law: "The Washington Supreme Court has held that land-use decisions considered final for purposes of LUPA, due to expiration of the 21-day appeal period, may not be collaterally challenged through appeals of related, subsequent land use decisions." (Underlining added.) CP 23, H. E. Decision page 10.

6. Conclusion of Law: "The SWO (stop work order) resulted from Thurston County's review of the building permit that was issued on July 11, 2007. The lifting of the SWO reinstated the building permit that had been issued by Thurston County. The appeal period of the issuance of the building permit had lapsed and the SWO did not restart the appeal period for the issuance of the building permit." (Underlining added.) CP 23, H. E. Decision page 10.

7. Conclusion of Law: Because of the failure to file a timely appeal of the building permit, all other issues are moot." CP 23, H. E. Decision page 10.

2 The Appellants fail to address two essential issues in their  
Brief:

- 4 ● The Appellants admitted to the hearing examiner that their  
6 appeal of the November 19, 2007 decision is actually an  
8 appeal of the July 11, 2007 building permit (since  
10 Appellants realized their candid truthful admission was  
12 fatal to their case, the Appellants have been backpedaling  
14 to change their truthful admission without explaining their  
16 duplicity) CP 23, H. E. Decision page 10, and
- 18 ● The SWO (stop work order) resulted from Thurston County's  
20 review of the building permit that was issued on July 11,  
22 2007. The lifting of the SWO reinstated the building permit  
that had been issued by Thurston County on July 11, 2007.  
The appellants fail to cite any law to the contrary.
- The appeal period after the issuance of the building permit  
had lapsed and the SWO did not restart the appeal period for  
the issuance of the building permit. The appellants have  
not provided any legal authority that would be contrary to  
this conclusion of law by showing the building permit  
issuance date is somehow changed. CP 23, H. E. Decision page  
10.

2

CONFUSING ADVICE FROM THURSTON COUNTY

4 In their effort to gain an unmerited toehold in this matter  
and thwart the unfavorable ultimate decisions of Thurston  
6 County, the Hearing Examiner and the Superior Court, the  
Appellants rely upon the following bad advise and bad  
8 processing from Thurston County to try to fabricate a path  
around accepting responsibility for their own admissions,  
10 lack of standing, defaults and failures:

1. Thurston County issued a building permit to someone  
12 from Respondent's contractor's office<sup>2</sup> named Lois  
Anderson on July 11, 2007, to build a \$4500 vehicle  
14 shed based on an Application that clearly told them the  
property subject of the building permit was on Hogum  
16 Bay, a well known section of Puget Sound. See  
Application at Exhibit B attached hereto. Certainly  
18 Thurston County was put on notice that the building lot  
was on water or within 300 feet of water as they were  
20 told the name of the body of water was "Hogum Bay." If  
Thurston County wanted more information, it was  
22 incumbent on them to request the information prior to  
the issuance of the building permit. Thurston County

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<sup>2</sup> Contrary to their repeated inferences in Appellant's Brief, there is not a scintilla of evidence that indicates the Respondents were in any way participatory in or had knowledge of the contents of the Application for Building Permit until months after the completion of the building during the hearing before the Hearing Examiner.

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1  
2 did in fact issue the building permit with two site  
3 plans attached to the actual building permit showing  
4 that the building lot was on "Hogum Bay." See Exhibit  
5 C attached hereto and incorporated herein.

6 2. Thurston County issued an illegal Stop Work Order<sup>3</sup> on  
7 August 28, 2007 based on the Critical Areas Ordinance  
8 (CAO) leading the Appellants to think they had a second  
9 opportunity or collateral attack on Respondents  
10 building permit.<sup>4</sup>

11 3. During this convoluted and extended process, Thurston  
12 County at one time erroneously suggested a variance was  
13 an alternative for Respondents. Respondents initially  
14 took the bad advice and applied for a variance.  
15 Thurston County then reversed itself on November 19,  
16 2007 and said the Respondents were entitled to the  
17 building permit without a variance. The Respondents  
18 withdrew their application for a variance. The  
19 Appellants try to gain standing based upon an  
20 improvidently suggested and withdrawn interim process  
as they concluded it might give them standing and  
restart the clock for a collateral attack on the issued

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<sup>3</sup> Thurston County is not authorized to stop work relying on the CAO once the building permit is issued. If the building permit is improperly issued, they too have 21 days to appeal under LUPA. The Hearing Examiner's Findings show they had knowledge within the 21 days. Thurston County did the CAO review at that time and found Respondents in compliance. "Simply put, neither a grading permit, building permit nor any other ministerial permit may be withheld (sic) at the discretion of a local official to allow time to undertake a further study." *Mission Springs, infra, page 961.*

<sup>4</sup> The SWO was valid as to the misplaced vertical member but that was

building permit.

2 4. Thurston County erroneously told the Appellants on  
November 30, 2007 they could appeal the invalid and  
4 illegal SWO decision by Thurston County misleading the  
Appellants to believe they had standing in this matter  
6 and were timely.

8 All of the foregoing mistakes involving Thurston County are now  
used by Appellant's counsel to try to bootstrap around the  
10 Appellant's failure to timely file a LUPA appeal of a building  
permit, in a matter wherein they did not have standing.

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STATEMENT OF THE CASE

The Appellants continue to misstate the facts appropriate to frame  
18 the issues. A correct statement of the salient facts would be as  
follows:

20 1. Everyone agrees and the Hearing Examiner found the  
unreviewable fact that the building permit for the RV  
22 shed was issued by the Thurston County Development  
Services Department on July 11, 2007.

24 2. The appeal period for contesting that building permit

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immediately corrected and not an issue in this case.

**Brief of Respondent-11**

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under LUPA expired August 1, 2007. H. E. Decision page  
2 9. Everyone agrees this is a true statement of fact  
and law for a building permit issued July 11,2007.

4 3. Any attack on the building permit in a related or  
subsequent land-use decision would be an illegal and  
6 inappropriate collateral attack. H. E. Decision page  
10. Everyone agrees this is the law and that is why  
8 the Appellants are trying to change the unreviewable  
facts found by the Hearing Examiner.

10 4. The Hearing Examiner (H.E.) made a specific finding of  
fact that "Appellants have made it clear that their  
12 appeal of the November 19, 2007 decision is actually an  
appeal of the July 11, 2007 building permit." H. E.  
14 Decision page 10. This finding of fact is not  
reviewable with the current record as provided by the  
16 Appellants and appellate courts must accept the trial  
tribunal's finding of fact.

18 5. A land use petition is barred, and the court may not  
grant review, unless the petition is timely filed with  
20 the court and timely served... RCW 36.70C.040(2). H.  
E. Decision page 10. All agree.

22 6. The petition is timely if it is filed and served on all  
parties listed in subsection (2) of this section within  
24 21 days of the issuance of the land-use decision (the  
building permit.) RCW 36.70C.040(3). H. E. Decision

page 10.

2 7. The Washington Supreme Court has held that land-use  
4 decisions are considered final for purposes of LUPA,  
6 may not be collaterally challenged through the appeal  
8 of related, subsequent land-use decisions. *Habitat*  
10 *Watch vs Skagit County*, 155 Wn.2d 397 at 410-11, 120 P  
56 (2005), citing *Wenatchee Sportsmen Association vs*  
*Chelan County*, 141 Wn2d 169, 176, 4 P.3d 123 (2000).  
Page 10 of H.E. Decision.

12 8. A stop work order emanated from Thurston County on  
14 August 28, 2007. The stop work order was illegally  
16 issued under the Critical Area Ordinance (CAO) as those  
18 determinations must be made prior to the issuance of  
20 the building permit. The lifting of the illegal stop  
22 work order (on November 19, 2007) reaffirmed to those  
24 believing the building permit issued on July 11, 2007  
was suspended by the CAO stop work order, that said  
building permit of July 11, 2007 was back in full force  
and effect. As the CAO stop work order was illegally  
issued, any appeal rights or vesting of standing  
therefrom are illusory. The appeal period for the  
issuance of the building permit had lapsed  
approximately 4 months previous and the stop work order  
did not restart the appeal period for the issuance of

the building permit. Page 10 of H.E. Decision attached.

2 9. The Respondents Via argue that the alleged incomplete  
4 Application for a Building Permit presented by the  
6 Applicant's contractor to Thurston County Development  
8 Services should somehow toll or revive the appeal  
10 period. The alleged incomplete building permit  
12 application is a red herring issue presented by the  
14 Appellants. The application, prepared by someone in  
16 the employ of the Respondent's contractor, without  
18 involvement by the Respondents, clearly stated the  
20 property was on "Hogum Bay", a well-known section of  
22 Puget Sound. See Exhibit B attached hereto. The  
24 building permit issued by Thurston County on July 11,  
2007 had two sheets showing the site plan acceptable to  
Thurston County, clearly showing that the property was  
on Hogum Bay with appropriate dimensions of the lot.  
See Exhibit C attached hereto. If Thurston County  
wanted more information from the building contractor,  
it was incumbent upon them to request that information  
prior to the issuance of the building permit. (When  
Appellants complained to the County and the Stop Work  
Order was issued, the County did the Critical Areas  
Ordinance review and Building Code review and  
Respondents were found in compliance and the SWO was  
lifted. CP 19-20, H. E. Decision page 6.)

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10. The record of the appeal before the Board of County  
2 Commissioners makes it obvious that one commissioner  
reviewed the record, another looked at the record  
4 partially, and the third didn't have time to look at  
the record, Verbatim Transcript of Recorded Proceedings  
6 before BOCC, page 3. The whole proceeding was like  
something out of an Abbott and Costello routine.  
8 Verbatim Transcript of Recorded Proceeding, pages 7-10.  
The dialogue amongst the commissioners should make it  
10 fairly obvious they did not have a grasp on either the  
facts or the law of the case. The Commissioners  
12 prohibited argument, asked no questions, and  
articulated nothing about the basis of their decision.  
14 Seemingly, their counsel prepared the decision without  
any of the Commissioners having any knowledge of the  
16 merits.

ARGUMENT

2

**Appellate Review Statutes:** The review by this Court of Appeals is  
4 the same as the Superior Court and defined by the following LUPA  
statutes:

6

• RCW 36.70C.130 Standards for granting relief.

8

(1) The superior court, acting without a jury, shall review  
the record and such supplemental evidence as is permitted  
under RCW 36.70C.120. The court may grant relief only if the  
party seeking relief has carried the burden of establishing  
that one of the standards set forth in (a) through (f) of this  
subsection has been met. The standards are:

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(a) The body or officer that made the land use decision  
engaged in unlawful procedure or failed to follow a  
prescribed process, unless the error was harmless;

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(b) The land use decision is an erroneous interpretation  
of the law, after allowing for such deference as is due  
the construction of a law by a local jurisdiction with  
expertise;

20

22

(c) The land use decision is not supported by evidence  
that is substantial when viewed in light of the whole  
record before the court;

24

(d) The land use decision is a clearly erroneous  
application of the law to the facts;

26

(e) The land use decision is outside the authority or  
jurisdiction of the body or officer making the decision;  
or

28

(f) The land use decision violates the constitutional  
rights of the party seeking relief.

30

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(2) In order to grant relief under this chapter, it is not  
necessary for the court to find that the local jurisdiction  
engaged in arbitrary and capricious conduct. A grant of relief by  
itself may not be deemed to establish liability for monetary  
damages or compensation.

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• RCW 36.70C.140 Decision of the court.

38

The court may affirm or reverse the land use decision under  
review or remand it for modification or further proceedings.

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If the decision is remanded for modification or further  
proceedings, the court may make such an order as it finds  
necessary to preserve the interests of the parties and the  
public, pending further proceedings or action by the local  
jurisdiction.

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2           **The Rights of the Respondents:** It may be helpful to lay out how  
4 LUPA protects the rights of a party with standing. When an owner  
6 applies for a building permit, the county has the right under the  
8 ordinance to make specific requests for information before viewing  
10 the Application as complete and ready for their action. TCC  
12 14.48.100. If the information presented is incomplete in any way  
14 important to the County, it is the responsibility of the County to  
16 perceive that deficiency and require that the Applicant satisfy  
18 the deficiency BEFORE they take affirmative or negative decisive  
20 action. TCC 14.48.100 and *Mission Springs*, infra. Once the  
22 county issues a building permit, the burden shifts, and the  
24 building permit is a legal property right of the owner, *Mission  
Springs*, infra, subject to appeal rights by the county or any  
other person with standing, within 21 days RCW 36.70C. Were it  
any other way, the owner could start the construction after the  
building permit appeal time expires and spend significant amounts  
of money only to have the county come forward later and say, "we  
made a clerical error and the building permit is revoked, sorry  
about all the money you wasted." (Such is the case with the  
Respondents as the construction of the vehicle shed was  
completed.)

24  
After issuance of the building permit, the County no longer has a  
26 right to revoke the building permit based on planning criteria

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except thru LUPA, *Chelan County v. Nykreim*, 146 Wn2d 904,52 P. 3d  
1 (2002). They can issue a stop work order but a stop work order  
only applies to deficiencies under the building code that can be  
4 remedied by complying with the building code.<sup>5</sup> The County has to  
file a timely appeal of planning issues under LUPA, just like an  
6 applicant would have to if the county denied the permit on  
planning issues, *Chelan County v. Nykreim*, 146 Wn2d 904,52 P. 3d  
8 1 (2002). The following is cited as legal authority cited by the  
Hearing Examiner for the propositions articulated:

- 10 1. *Habitat Watch v. Skagit County, supra*
- 12 2. *Wenatchee Sportsman's Association v. Chelan  
County, supra*
- 14 3. *Chelan County v. Nykreim*, 146 Wn2d 904,52 P. 3d  
1 (2002)

16 Specific attention should be paid to the following Court  
18 statements and rules of law gleaned from the cited cases, all of  
which have applicability to the case before this Court on this  
20 appeal:

- 22 ● A land-use decision becomes valid, even with alleged  
questionable lawfulness, if it is not challenged within the  
21-day period specified by RCW 36.70C.040 of LUPA.
- 24 ● The purpose of the 21-day time limitation for seeking  
judicial review of a land-use decision is to provide

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<sup>5</sup> Such a deficiency was included in the stop work order issued by Thurston County against the Appellants as the Appellant's contractor had placed one of the vertical members in the ground approximately 3 feet closer to the front property line than allowed. That deficiency

consistent, predictable, and timely judicial review of land-use decisions and to ensure administrative finality.<sup>6</sup>

- Under LUPA a land-use petition is barred unless it is timely filed, meaning within 21 days of the issuance of the land-use decision. Because RCW 36.70C.040(2) prevents a court from reviewing a petition that is untimely, approval of a land use becomes valid once the opportunity to challenge it passes. (This means the Applicants' building permit could not be challenged by anyone after August 1, 2007.) It is too late to challenge a land-use decision if not challenged within the 21 days. If there is no timely challenge to the decision, the decision is final. Any subsequent challenge would be viewed as an improper and illegal collateral attack.
- A building permit is a "project permit" or "project permit application" and therefore a land-use decision as used in RCW 36.70B.020(4).
- The Washington Supreme Court recognized a strong public policy supporting administrative finality in land-use decisions. In fact, that court has stated, "if there were not finality (in land-use decisions), no owner of land would ever be safe in proceeding with development of his

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was quickly corrected and Thurston County permitted the building to be completed.  
<sup>6</sup> **RCW 36.70C.010, Purpose.** The purpose of this chapter is to reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review. [1995 c 347 § 702.]

property." To make an exception to this policy would  
completely defeat the purpose and policy of the law in  
making a definite time limit. *Neighbors and Friends vs  
Miller*, 87 WnApp 361 (1997), *Deschenes vs King County*, 83  
Wn2d 714 (1974), *Skamania vs Gorge Commission*, 144 Wn2d 30  
(2001), *Samuels Furniture vs Department of Ecology*, 147 Wn2d  
440 (2002), and *Summit-Waller Association vs Pierce County*,  
77 WnApp 384, (1995).

- Following this policy of finality of land use decisions, the  
court held that an untimely petition under LUPA precluded  
collateral attack of the land-use decision and rendered the  
building permit valid.

**Standing:** Any party with standing can appeal, however, there are  
only two parties with standing on a building permit, the owner and  
the County. A building permit is a matter of legal right. If the  
owner meets the ordinance requirements and agrees to build the  
building in compliance with the building code they are entitled to  
a building permit. Public notice to friends, enemies and neighbors  
is not required for issuance of a building permit as they do not  
have standing or a right to notice.

Some confusion has resulted from two superficially conflicting  
definitions of "aggrieved person", one in the Thurston County Code  
and the other in the Revised Code of Washington. They are

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reconcilable as only the Revised Code of Washington defines  
2 "aggrieved person" for standing determinations. It is the  
Respondent's understanding that the Appellants assert they have  
4 standing in the lower proceeding because the Thurston County Code  
defines "aggrieved person" in the Thurston County Code at Section  
6 17.15.200 and provides:

8 "Aggrieved person" means one who is directly affected by the  
approval, denial or conditioning of a development permit  
10 reviewed under this chapter; but who is not the owner,  
agent, tenant, operator, lessor or other person with a  
12 financial interest in the property upon which the  
development permit is requested.

14  
The Revised Code of Washington under LUPA defines "standing" and  
16 as follows:

18 *RCW 36.70C.060 Standing.*

*Standing to bring a land use petition under this chapter is  
limited to the following persons:*

20 *(1) The applicant and the owner of property to which  
the land use decision is directed;*

22 *(2) Another person aggrieved or adversely affected by  
the land use decision, or who would be aggrieved or adversely  
24 affected by a reversal or modification of the land use  
decision. A person is aggrieved or adversely affected within  
26 the meaning of this section only when all of the following  
conditions are present:*

28 *(a) The land use decision has prejudiced or is likely  
to prejudice that person;*

30 *(b) That person's asserted interests are among those  
that the local jurisdiction was required to consider when it  
32 made the land use decision;*

34 *(c) A judgment in favor of that person would  
substantially eliminate or redress the prejudice to that  
36 person caused or likely to be caused by the land use  
decision; and*

38 *(d) The petitioner has exhausted his or her  
administrative remedies to the extent required by law.*

2 The two definitions are reconciled if you simply conclude that an  
"aggrieved person" under the Thurston County Code means the same  
4 as an "aggrieved person" under RCW 36.70C.060 (2). The Appellants  
do not meet the definition of being an aggrieved person,  
6 therefore, they do not have standing.

8 The Appellants asserted in the lower proceedings but not before  
the Court of Appeals that their protected interest is their  
10 already limited view that is partially blocked by the constructed  
vehicle shed. They have no legal right to the view; therefore,  
12 they have no asserted interest. They are not aggrieved persons.  
The Respondents own all view rights. The County has no authority  
14 as a local jurisdiction to affect the Respondents' view rights.  
Not only is the county not required to consider view rights of the  
16 Appellants; they have no jurisdiction or authority to act using  
that criterion. The Appellants do not own a view easement, a  
18 common-law property view right, or any other property right to an  
unobstructed view across the Respondent's property. *Asche v.*  
20 *Bloomquist, 132 W. App. 784 (2006).*

22 For the foregoing reasons, the Appellants do not have standing to  
participate in the underlying proceeding. The fact that Thurston  
24 County permitted the Appellants to participate in the underlying  
proceeding is error and standing does not rise from that error.

26  
Respondents assert that Appellants are only a party to this  
28 proceeding in Superior Court and the Court of Appeals so these

**Brief of Respondent-22**

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Courts can declare that Appellants had no standing to participate  
2 in any of the underlying Thurston County proceedings whether for  
the issuance of the building permit or before the Hearing  
4 Examiner.

6  
The Appellants cite the case of *Mission Springs v. City of*  
8 *Spokane, 134 Wn2d 947, 954 P.2d 250 (1998)*. This case derived  
from a factual circumstance from 1993. LUPA was passed in 1995  
10 and overruled would have changed the timeliness arguments  
attempted by Appellants. There is nothing in this case that  
12 indicates you can collaterally attack an issued building  
permit. The case does say:

- 14 ● A building permit is a valuable property right protected by  
law once it is issued. It is a vested legal right.
- 16 ● Unlawful interference with that vested right is actionable.
- "Simply put, neither a grading permit, building permit nor any  
18 other ministerial permit may be with held (sic) at the  
discretion of a local official to allow time to undertake a  
20 further study." *Mission Springs, supra, page 961*.
- There is nothing in the case that says you can back up before  
22 the building permit and reconsider its issuance. Such would be  
a collateral attack and equally as repugnant back in 1993 as  
24 now.
- In fact, Thurston County was satisfied with the relevant

**Brief of Respondent-23**

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ordinance criteria and issued the building permit. Even when  
2 challenged by the stop work order, Thurston County was again  
satisfied that the relevant ordinance criteria had been met.  
4 Only the Appellants are dissatisfied, hence, hearings before  
the Hearing Examiner, Board of County Commissioners, Superior  
6 Court, and now the Court of Appeals.

8 AGGRIEVED PERSON: Appellants do not respond to the Respondents'  
assertion that the definition of "aggrieved person" in the county  
10 ordinance is the same as and supplemented by the state law  
requiring that they have a legal property interest. In the past  
12 they have advocated that their interest was their "view." Nothing  
is presented in their Brief to support that their view is a  
14 protected interest. They do not argue that they have view rights  
under common law or specific covenant and their failure to argue  
16 this point is a fatal admission of their lack of a protected  
interest.

- 18 • The Appellants now say their "interests in their property  
were injured" but there is no identification or proof of what  
20 interest that might be. It certainly was not found by the  
Hearing Examiner. In their current Brief, they come up with a  
22 bald assertion that their "beach access easement" could in  
some unknown way be potentially damaged. There is not an  
24 iota of evidence to validate that assertion. In fact, the  
Respondent's geotechnical evidence proved otherwise. See

**Brief of Respondent-24**

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Exhibit D attached hereto and incorporated herein.

2       • Repeatedly the Appellants reference a withdrawn variance  
4       request and somehow imply their rights derive from that  
6       variance request. A variance application was suggested by  
8       Thurston County to Stientjes after the illegal SWO, however,  
10      after the County looked into this more fully, they concluded  
12      Stientjes was entitled to the building permit without a  
14      variance, and the variance request was withdrawn. It has no  
16      legal significance except to show the County eventually did  
18      the review under the Critical Areas Ordinance and concluded  
20      Stientjes was in compliance. Nothing about this process  
22      vested any rights in a third person such as the Appellants.

14

**UNTIMELY APPEAL/INCOMPLETE SITE PLAN:** The Appellants recognize  
16      that the date of issuance of the building permit by Thurston  
18      County is fatal to their case. Consequently, they now come up  
20      with a spurious argument suggesting an "incomplete site plan"  
22      defense. The summary of their new argument is that if there was  
24      any information that could have been requested by Thurston County  
26      (or a private citizen) in the processing of the application for the  
28      building permit, the building permit is "invalid" and subject to  
30      collateral attack. Consider the following:

24       • An application for a building permit may or may not require  
26       a site plan and that decision is made to the satisfaction of

**Brief of Respondent-25**

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the development services department. Thurston County issued  
2 the Building Permit with site plans satisfactory to them  
attached acknowledging the adjacent water. See Exhibit C  
4 attached. The Appellants reference in their Brief at pages  
28 and 34, *TCC 14.48.100*, as the ordinance that requires a  
6 site plan. That Thurston County Code section is attached to  
this Brief as Exhibit E, to illustrate to the Court the  
8 complexity and absurdity of the requirements that would be  
imposed on an applicant if the Appellant's position were  
10 adopted. Development Services has the right to request in  
writing any items on the list that they believe they need to  
12 make a determination of the validity of a building permit  
application. They have the discretion to make intelligent  
14 decisions. Every item is not required and is not intended  
to be produced. As should be obvious, it is unlikely anyone  
16 could ever perform and produce each and every requirement to  
a level of perfection. The satisfaction of Development  
18 Services under all the circumstances of an application is  
within the discretion of the department and exercised  
20 minute-by-minute and day-by-day. To suggest that one size  
fits all or all requirements are necessary is an  
22 impossibility and absurdity suggested by the Appellants.  
A simple project requires much less. A complex project  
24 requires much more. Whether simple or complex, satisfaction  
is in the eye of the Development Services Department. Once

they are satisfied, issue the building permit, and the  
2 appeal period passes, all suggested issues are moot, as was  
the conclusion of the Hearing Examiner.

- 4 • The Respondents cite Section 105.4 of the International  
Residential Code. Somehow the Respondents seem to want to  
6 morph "to suspend or revoke" language of the International  
Residential Code into their meaningless "invalid or valid"  
8 language. As the Hearing Examiner pointed out:

- o "The SWO resulted from Thurston County's review of the  
10 building permit that was issued on July 11, 2007. The  
lifting of the SWO reinstated the building permit that  
12 had been issued by Thurston County. The appeal period  
of the issuance of the building permit had lapsed and  
14 the SWO did not restart the appeal."

16 The stop work order from which the Appellants are trying to gain  
a time foothold is really a suspension of the July 11, 2007  
18 building permit. Once the stop work order is removed, the  
continuity of the building permit relates back to July 11, 2007,  
20 without invalidation or revocation, and it cannot be the basis  
for a collateral attack.

22  
The Appellants also argue that the International Residential  
24 Code, a building code adopted by reference in many jurisdictions,  
supercedes or overrules LUPA, a law specifically drafted and  
26 passed in the State of Washington. This assertion is false and  
presented by Appellants without authority. Section 105.4 of the  
28 IRC, is directed at building code violations such as the  
misplaced vertical member of Respondent's vehicle shed that was

**Brief of Respondent-27**

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immediately corrected. Appellants italicize "of any other ordinance of the jurisdiction" from the quoted IRC section, at page 27 of their Brief, as if to suggest that the County Ordinances gain some additional strength over their own authority, because of this reference. No cases are cited for this unusual proposition nor are the ordinances identified.

A BUILDING PERMIT IS A LAND-USE DECISION: Appellants assert that an application for building permit is not a land-use decision and offer some convoluted argument. The Washington Supreme Court has directly held to the contrary in *James v. Kitsap County*, 154 Wn.2d 574, at 584 (2005):

We have previously held that building permits are "land use decisions" subject to the procedural requirements of LUPA. In *Chelan County v. Nykreim*, we examined whether approval of a boundary line adjustment (BLA) application issued by a county officer was a "land use decision" under LUPA. 146 Wn.2d 904 , 52 P.3d 1 (2002). In that case, Nykreim filed an application for a BLA with the Chelan County Planning Department, which was approved by the administrator of that department. More than a year after Nykreim's application was approved, Chelan County filed a complaint in superior court for declaratory judgment challenging the Chelan County provision on which Nykreim's BLA was approved.

We found Chelan County's action time barred and held that LUPA applies to both ministerial and quasi-judicial land use decisions. At the time the application was approved by the administrator of the Chelan County Planning Department, no clearly defined procedures existed for consideration and review of BLA decisions. Additionally, the administrator who granted Nykreim's BLA application was the Chelan County officer with the highest authority to make the final determination on the application. In concluding that ministerial determinations, like the officer's approval of Nykreim's BLA, are "land use decisions," we specifically

2 noted that building permits are ministerial decisions which  
are subject to judicial review under LUPA, relying on  
4 *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169 ,  
4 P.3d 123 (2000). Chelan County did not challenge Nykreim's  
6 BLA within 21 days and was barred from bringing an action  
under LUPA.

8 In *Wenatchee Sportsmen*, we determined whether "a party's  
failure to timely appeal a county's approval of a site-  
10 specific rezone bar[s] it from challenging the validity of  
the rezone in a later [action]." 141 Wn.2d at 175 . In 1996,  
12 Chelan County rezoned property contrary to its interim urban  
growth area regulation (IUGA), allowing residential  
14 subdivisions outside designated urban growth areas. Although  
Chelan County's rezone was in violation of the GMA, it was  
16 not challenged until the Wenatchee Sportsmen Association  
filed a LUPA petition challenging the approval of a 1998  
18 plat application, arguing that residential development  
outside of the IUGA violated the GMA.

20 We determined that Wenatchee Sportsmen Association's  
challenge to the legality of Chelan County's rezone was  
barred under LUPA because the decision was not challenged  
22 within 21 days. We found that "[b]ecause RCW 36.70C.040 (2)  
prevents a court from reviewing a petition that is untimely,  
24 approval of the rezone became valid once the opportunity to  
challenge it passed" and that "[i]f there is no challenge to  
26 the decision, the decision is valid, the statutory bar  
against untimely petitions must be given effect, and the  
28 issue of whether the [rezone] is compatible with the IUGA is  
no longer reviewable." *Wenatchee Sportsmen Ass'n* , 141 Wn.2d  
30 at 181 -82.

32 Furthermore, after the enactment of LUPA, we have not  
reviewed the validity of conditions imposed on the issuance  
of a permit separate from the review provided in chapter  
34 36.70C RCW. For instance, in *Isla Verde International*  
*Holdings, Inc. v. City of Camas* , 146 Wn.2d 740 , 49 P.3d  
36 867 (2002), we reviewed an action brought by a developer  
under LUPA, challenging a permit condition as invalid  
38 because it was a tax, fee, or charge prohibited by RCW  
82.02.020 . Although *Isla Verde* did not involve impact fees,  
40 but a permit condition requiring a 30 percent open space set  
aside, we concluded this condition was a "tax, fee, or  
42 charge" under RCW 82.02.020 and was invalid because it did  
not fall within an exception to that provision. We  
44 specifically stated that "[r]eview is under the LUPA,  
chapter 36.70C RCW," and found the condition invalid. *Isla*  
46 *Verde* , 146 Wn.2d at 751 , 770-71.

Consistent with our holdings in *Isla Verde*, *Nykreim*,  
and *Wenatchee Sportsmen*, we find that the imposition of  
impact fees as a condition on the issuance of a building  
permit is a land use decision and is not reviewable unless a  
party timely challenges that decision within 21 days of its  
issuance. . . . Under *Nykreim*, building permits are  
ministerial decisions subject to judicial review under LUPA,  
and we find that the imposition of impact fees as a  
condition on the issuance of a building permit is as well.

**FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES/INTERLOCUTORY**

**PROCEDURAL DECISIONS:**

The Appellants argue the principle of  
administrative law of deference. Seemingly they are arguing that  
neither the Superior Court nor the Court of Appeals should rule on  
this appeal because a Board of County Commissioners has already  
decided the legal issues and they are experts in the law.

Respondents certainly disagree. The appeal to the Courts is  
established by statute and court rule. The administrative law  
principle of deference is designed for complex scientific and  
specialty areas. Certainly a Superior Court and Court of Appeals  
are more versed in the law than 99.99% of the boards of county  
commissioners. A better example of deference would be the  
Appellants saluting the decisions of Thurston County Development  
Services Department, the Hearing Examiner and the Superior Court  
that say Respondents are entitled to the building permit.

Appellants also assert and argue that the LUPA appeal of the Board  
of County Commissioners decision is a failure of the Respondents

to exhaust administrative remedies. They suggest the BOCC  
2 decision is administrative and not quasi-judicial and comparable  
to an interlocutory procedural decision made in a trial venue,  
4 therefore not appealable. The levels of due process specified in  
the Thurston County Code and LUPA are as follows:

- 6 1. Thurston County Development Services-Administrative  
8 (Thurston County Code 14.48.010)
2. Hearing Examiner-Trial (Thurston County Code 2.06)
- 10 3. Board of County Commissioners-Appellate in a quasi judicial  
forum (Thurston County Code 2.06.070)
- 12 4. Superior Court-Appellate in a judicial forum (LUPA)
- 14 5. Court of Appeals-Appellate in a judicial forum (LUPA and  
Appellate Statutes and Rules)

16 Respondents assert that the only level for "failure to exhaust  
administrative remedies" is at the administrative Thurston County  
18 Development Services level. Appellants seem to assert that at  
every appellate/judicial level, a remand order is not appealable  
20 as it is a failure to exhaust an administrative remedy. It seems  
to be a bald assertion without citation of authority. The BOCC is  
22 in the appellate hierarchy, TCC 2.06.70, two levels past the  
administrative level. Respondents are required under LUPA to  
24 timely appeal that land use decision of the BOCC or it would be a  
final determination that the Appellant's appeal was timely.

**Brief of Respondent-31**

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Holder v. City of Vancouver 136 Wn. App. 104 (2006). As it was "a  
2 final determination by a local jurisdiction's body or officer  
with the highest level of authority to make the determination,  
4 including those with authority to hear appeals", **RCW 36.70C.020**,  
and that appeal invalidated the correct decision of the Hearing  
6 Examiner, the Respondents had a right and obligation to appeal  
the BOCC to the Superior Court under LUPA. The Respondents had  
8 two choices at that time, either accept the reversal of the  
Hearing Examiner or appeal under LUPA. This scenario had nothing  
10 to do with exhaustion of administrative remedies.

12

14 **SHORELINE MANAGEMENT ACT**: The Thurston County Shoreline Master  
Plan does not provide any relief to the Appellants. The  
16 Appellants have never quoted a law that has been violated. The  
Shoreline Management Act as previously quoted by Appellants deals  
18 with policies, not legal requirements.

20 Appellants have pointed out some of the policies that have  
applicability to master plans. Appellants have quoted a "policy"  
22 that "should" be planned, but quote Policy 10 on page 24 of their  
Brief of Appellants in the Superior Court Appeal that states  
24 "this policy is not intended to prohibit the development of  
individual shoreline lots simply because it may minimize or  
26 eliminate views from upland properties."

**Brief of Respondent-32**

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2 There are other applicable exceptions to the Shoreline Management  
Act. A "substantial development" excludes any development costing  
4 less than \$5,000 (RCW 90.58.030 (e)). A single-family residence  
for an owner's own use is a further exemption (RCW  
6 90.58.030(e)(6)).

8 **FUTUREWISE**: The Washington Supreme Court issued a decision on July  
31, 2008 entitled *Futurewise v. Western Washington Growth*  
10 *Management Hearings Board, 80396-0*. The decision seems to stand  
for several propositions:

- 12 1. Counties and cities that left protection of critical areas  
along shorelines to their critical area regulations adopted  
14 under the Growth Management Act, did so in error. Critical  
area ordinances are to be under Shoreline Master Plans, and  
16 not the Growth Management Act.
2. Only the SMA governs critical areas within the jurisdiction  
18 of the SMA.
3. Thurston County's critical area ordinance is inappropriately  
20 under the Growth Management Act.
  - a. TCC 17.15.100 Purpose--Statement of policy for  
22 critical areas.

24 It is the policy of Thurston County to accomplish the  
following, along with the purpose statements within  
each of the critical area categories:

26 K. To implement the policies and guidelines of the  
Washington State Growth Management Act;

28

1. The Legislature's intent was that the SMA, not the GMA,  
should cover shorelines.

The effect of the foregoing is to invalidate the critical area ordinance (CAO) of Thurston County, the ordinance argued by the Appellants to have been violated by the Respondents. With the invalidity of the Thurston County CAO, the Appellants lose any additional grounds they were arguing if they got past the standing and lack of timeliness issues in this appeal.

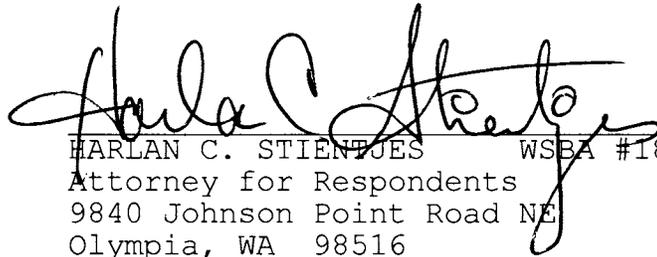
The Appellants argue that this was a plurality decision and therefore of less value. It is still a majority opinion of the Washington Supreme Court and cannot be ignored. The Court of Appeals could certainly come to the same conclusion that the majority did on the Washington Supreme Court.

CONCLUSION

2 The Appellants continue to change their allegations and assertions  
in an effort to delay and overturn a just result adverse to their  
4 liking. The Respondents request that this Court affirm the  
Thurston County Department of Development Services, the Hearing  
6 Examiner and the Superior Court by overturning the decision of the  
Board of County Commissioners of Thurston County and reinstating  
8 the ruling of the Hearing Examiner.

10 **DATED** this April 15, 2009.

12  
14  
16  
18  
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22



HARLAN C. STIENTJES WSPA #18647  
Attorney for Respondents  
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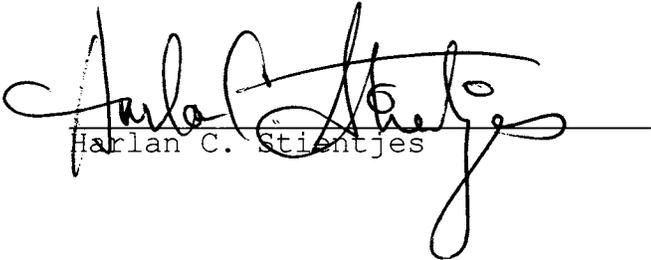
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and accurate copy of the above-stated document was mailed by first class mail, postage prepaid this 15th day of April 2009 to the following parties as required by rule.

Jeff Fancher  
Development Services Attorney  
2000 Lakeridge Drive SW, Building 1  
Olympia, WA 98502

Paul J. Hirsch  
Attorney  
P.O. Box 771  
Manchester, WA 98353-0771



Harlan C. Stientjes

# Exhibit A.



COUNTY COMMISSIONERS

Cathy Wolfe  
District One  
Diane Oberquell  
District Two  
Robert N. Macleod  
District Three

## HEARING EXAMINER

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### BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Appeal of ) No. 2007103972  
)  
**Laressa Via-Fourre and** )  
**Charles Via** )  
) FINDINGS, CONCLUSIONS,  
) AND DECISION  
Of an Administrative Decision )

#### SUMMARY OF DECISION

Laressa Via-Fourre and Charles Via appealed a November 19, 2007 administrative decision by the Thurston County Development Services Department. The administrative decision had the following effects:

- 1) It lifted a Stop Work Order issued against building permit #07-108849 which was issued on July 11, 2007, for construction of a recreational vehicle shed on property at 9840 Johnson Point Road, Olympia, Washington; and
- 2) It determined that an administrative variance from Thurston County Code (TCC) 17.15.620(B)(2)(b) (which regulates the required setback for residential appurtenances from the ordinary high water mark on properties containing marine bluff hazard areas) would not be required before a property owner could proceed according to the building permit.

The appeal is **DENIED** for lack of timeliness.

#### SUMMARY OF RECORD

##### Background:

On November 30, 2007, Laressa Via-Fourre and Charles Via (Appellants) appealed a November 19, 2007 administrative decision by the Thurston County Development Services Department. The administrative decision had the following effects: 1) it lifted a Stop Work Order issued against building permit #07-108849 which was issued on July 11, 2007, for construction of a recreational vehicle shed on property at 9840 Johnson Point Road, Olympia, Washington; and 2) it determined that an administrative variance from Thurston County Code (TCC)

17.15.620(B)(2)(b) (which regulates the required setback for residential appurtenances from the ordinary high water mark on properties containing marine bluff hazard areas) would not be required before a property owner could proceed according to the building permit. The subject property is at 9840 Johnson Point Road, Olympia, Washington.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the appeal on February 4, 2008.

Testimony:

At the open record hearing the following individuals presented testimony under oath:

Scott Longanecker, Associate Planner, Thurston County Development Services  
Kevin Hughes, Thurston County Roads and Transportation Services  
Mike Kain, Thurston County Planning Manager  
Laressa Via-Fourre, Appellant  
Charles Via, Appellant  
Harlan Steintjes, Applicant  
Mary Jo Steintjes, Applicant  
Gareth M. Johnson, Bracy and Thomas, Inc.  
Jeff Pantier, Hatton Godat Pantier

Attorney Representation:

Jeffrey Fancher, Deputy Prosecuting Attorney, for the Thurston County Development Services Department  
Paul Hirsch, for Appellants  
Harlan Stientjes<sup>1</sup> for the Applicants

Exhibits:

At the open record hearing the following exhibits were admitted as part of the official record:

EXHIBIT 1 Development Services Planning and Environmental Section Staff Report, dated February 4, 2007, with the following Attachments:

Attachment a	Notice of Public Hearing
Attachment b	Appeal application packet, received November 30, 2007
Attachment c	Pre-Hearing Order, dated December 18, 2007
Attachment d	Appellants' Motion for Reimposition of Stop Work Order with Exhibits A – G
Attachment e	Copy of revised site plan submitted by Mr. Steintjes and approved on November 19, 2007
Attachment f	Reduced size copy of survey map by Bracy & Thomas

---

<sup>1</sup> Mr. Steintjes acted both as an applicant witness, providing testimony, and as an applicant attorney, providing legal argument.

Attachment g	TCC 17.15, Figure 5 (Marine Bluff Hazard Area) Example
Attachment h	Surveyed profile of subject property, modified by Planning Staff sketch
Attachment i	Construction drawings of RV shed (3 pages)
Attachment j	Letter from Laressa Via-Fourre, dated December 5, 2007
Attachment k	Letter from Laressa Via-Fourre, dated December 3, 2007
Attachment l	Letter from Laressa Via-Fourre and Charles Via, dated November 26, 2007 with attached, undated photos
Attachment m	Letter from Laressa Via-Fourre and Charles Via, dated August 24, 2007
Attachment n	Letter from Thurston County Development Services to Harlan and Jo Steintjes, dated November 19, 2007
Attachment o	Decision letter from Thurston County Development Services to Harlan and Jo Steintjes, dated October 16, 2007
Attachment p	Geotechnical Evaluation by Mr. David Strong PE, dated September 5, 2007
Attachment q	Memo from Jim Goode, Thurston County Environmental Health, dated January 9, 2008
Attachment r	Memo from Kevin Hughes, TC Development Review dated January 23, 2008
Attachment s	Abbreviated Drainage and Erosion Control Plan submitted by Mr. Steintjes on September 13, 2007
Attachment t	Photos by Staff
Attachment u	Letter from Thurston County Development Services to Harlan Steintjes, dated September 6, 2007
Attachment v	Letter from Thurston County Development Services to Harlan Steintjes, dated September 14, 2007
Attachment w	Proposed changes to Thurston County Code, TCC 17.15.620 (not yet adopted)

EXHIBIT 2 Survey and letter from Gareth Johnson, prepared by Bracy & Thomas, Inc., December 17, 2007

EXHIBIT 3 RV Storage Shed Building Permit No. 07-108849 BA, issued July 11, 2007

EXHIBIT 4 Applicant's Final Memorandum, February 13, 2008<sup>2</sup>

EXHIBIT 5 Appellants' Final Argument, February 15, 2008

**PRE-HEARING SUBMITTALS:**

A. Appellants' List of Witnesses, Exhibits, and Documents, dated January 18, 2008:

---

<sup>2</sup> The Applicant offered a declaration by Mary Jo Stientjes, Applicant, as an attachment to the final legal memorandum requested by the Hearing Examiner. The declaration is untimely testimony and as such is not admitted in evidence.

1. Survey entitled "Exhibit Map for Laressa Via," Gareth M. Johnson, PLS, Bracy & Thomas, Inc. Land Surveyors (*Made Exhibit 2 at hearing*), dated December 10, 2007
  2. Letter from Gareth M. Johnson, PLS (*Made Exhibit 3 at hearing*), dated December 17, 2007
  3. Letter from Richard R. Larson, Larson and Associates Land Surveyors & Engineers, Inc., dated January 17, 2008
  4. Figure 5, TCC 17.15 Critical Areas Figures
  5. Shoreline Master Program – Thurston Region Map, zoning map with legend, supplied by Thurston County, showing subject property
  6. Coastal Zone Atlas – Zone Stability Map, showing subject property
  7. Landslide Hazard Area Map, 2006, provided by Thurston Regional Planning Council, showing subject property
  8. Photographs (2) of marine bluff at Stientjes property
  9. Photograph of Appellants' view before RV barn built
  10. Photographic overview of Stientjes property
  11. Photograph of RV barn in question
  12. December 2007 emails of Thurston County employees Richard Dawson and Kevin Hughes
  13. Letter Applicant, dated September 6, 2007,
  14. Letter to Applicant, dated September 14, 2007
  15. Letter to Applicant, dated October 16, 2007
  16. Letter to Applicant, November 19, 2007, with "Revised Site Plan 9-15-07" and 2006 aerial photo with annotated measurements, other enclosures omitted
- B. Applicant Motion in Limine and Notice of Hearing, dated January 24, 2008
- C. Applicant Disclosure of Witnesses and Exhibits, dated January 24, 2008, including attachments:
- |           |  |
|-----------|--|
| Exhibit g | Photos titled "Neighbor Shed" and "Via Shed"; untitled photo   |
| Exhibit k | Thurston County Assessor Records for parcels 56550105401 Fourre, 56550105400 Stientjes, 56550105303 Costello |
- D. Appellants' Motion to Supplement List of Witnesses and Exhibits, dated January 31, 2008, including attachments:
1. January 29, 2008 Letter to Harlan Claire Stientjes Family Trust and Mary Jo Stientjes from Jeff Raley, Thurston County Development Services Compliance Officer
  2. Photo of Stientjes Residence Deck
- E. Applicant Memorandum and Argument, dated January 31, 2008
- F. Appellant's Memorandum, dated February 4, 2008

Based upon the record developed at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions on the appeal:

### FINDINGS

1. On November 30, 2007, Appellants appealed a November 19, 2007 administrative decision by the Thurston County Development Services Department lifting a stop work order in effect against building permit #07-108849. The building permit had been issued on July 11, 2007, for construction of a recreational vehicle shed on property at 9840 Johnson Point Road, Olympia, Washington.<sup>3</sup> The November 19, 2007 administrative decision lifting the stop work order was based on Thurston County Development Services Department's (Development Services) determination that an administrative variance from Thurston County Code (TCC) 17.15.620(B)(2)(b) would not be required for the project authorized by the building permit to proceed. TCC 17.15.620(B)(2)(b) establishes the required minimum setback for residential appurtenances from the ordinary high water mark on properties containing marine bluff hazard areas. *Exhibit 1, Attachment b, Appeal packet; Exhibit 1, page 2.*
2. The single-family residence of Harlan and Mary Jo Stientjes (Applicant) was built in the early 1970s prior to adoption of the Thurston County Critical Areas Ordinance (CAO). There is no dispute that the residence is located within the marine bluff hazard area setback required by TCC 17.15.620. Because the residence was built prior to adoption of the CAO, it is considered a legally non-conforming structure. *Exhibit 4, page 7; Exhibit 1, Attachment u.*
3. The Applicant submitted a building permit application for permission to build a shed to cover a recreational vehicle (RV) on July 11, 2007. The RV shed was proposed to be located landward of the Applicant's residence. Thurston County Permit Assistance Center Staff approved the site plan and issued the building permit on the same day, without routing the application to the Planning and Environmental Section of the Development Services. The submitted application materials indicated that the subject property was on Hogam Bay but did not include topographical information or reference to the marine bluff on-site. Because of the missing information, the same-day approval was based on insufficient information. *Exhibit 1, page 2; Exhibit 4, page 2; Testimony of Mr. Longanecker.*
4. The Appellants own and live in the residence at 9838 Johnson Point Road, immediately west (landward) of the Applicant's property. Development Services staff conducted a site visit in late July 2007 after receiving calls from the Appellants, who had raised concerns regarding whether the placement of the RV shed satisfied the marine bluff setback required pursuant to TCC 17.15.620. After the initial site visit, Development Services staff determined that the marine bluff setback was satisfied. *Exhibit 1, page 2.*

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<sup>3</sup> The legal description of the subject property is a portion of Section 33, Township 20 north, Range 1 West, W.M., also known as Assessor's Parcel No. 56550105400. *Exhibit 1, page 2.*

5. Appellants again contacted the Development Services about whether the RV shed satisfied the required 20-foot setback along the eastern property boundary. Appellants also informed staff about landslide activity that had occurred in 2005. The staff determined that the County's Geodata imaging, which dated from 2003, pre-dated the 2005 landslide activity that the Appellants mentioned. When staff visited the site on August 28 and 29, 2007, measurements were taken that revealed that the RV shed was being constructed within the required 20-foot setback along the eastern boundary.<sup>4</sup> *Exhibit 1, page 3.*
6. During the August 28 and 29, 2007 site visits, Development Services staff measured the distance between the RV shed and the top of the marine bluff. According to the measurements, the shed was set back 155 feet from the top of the marine bluff. Topographical information from Thurston County Geodata indicated that the bluff was approximately 100 feet tall. According to staff's analysis, a 100-foot-tall bluff would necessitate a minimum 200-foot setback from the top of the bluff pursuant to TCC 17.15.620. Staff decided additional information was necessary to determine whether the location of the shed was consistent with the required setback from the ordinary high water mark, and posted a stop work order (SWO) on-site on August 28, 2007. The staff required additional information from the Applicant regarding the alleged front yard setback and the potential intrusion into the marine bluff hazard area setback. *Exhibit 1, page 3; Testimony of Mr. Longanecker.*
7. The Applicant was notified by Thurston County by letter dated September 6, 2007 of his options regarding the SWO. They included: 1) obtaining a survey accurately identifying the proper marine buffer location; 2) assuming some minor encroachment into the marine buffer setback and requesting an administrative variance from the buffer standard; or 3) withdrawing the building permit application. *Exhibit 1, Attachment u.* In response, the Applicant submitted a letter from a professional engineering firm. The opinion of the engineer was that the horizontal distance from ordinary high water mark (OHWM) to the top of the bluff was 130 feet, and that the proposed construction site was greater than 260 feet from the OHWM. Because a licensed surveyor or engineer did not stamp the letter and no survey map was attached, Development Services determined that the letter was not sufficient evidence of compliance with the required marine bluff setback. *Exhibit 1, page 3; Exhibit 1, Attachment d, exhibit B.*
8. Subsequent to Development Services not accepting the unstamped letter, the Applicant applied for an administrative variance from the required minimum 200-foot marine bluff setback, which was denied. *Exhibit 1, Attachment o.* The Applicant appealed the variance denial. While processing the Applicant's appeal, Development Services became aware of more recent (2006) Geodata mapping which showed the subject property after the 2005 landslide activity. Based on review of the 2006 Geodata mapping and discussion with Geodata personnel regarding accuracy of Geodata mapping,

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<sup>4</sup> One support post was located 16 feet from the eastern boundary and the other was located 18 feet from the eastern boundary. *Exhibit 1, page 3; Exhibit 1, Attachment t.*

Development Services determined that the proposed shed location did in fact satisfy the marine bluff hazard area setback requirement. As a result the stop work order was lifted by letter dated November 19, 2007. The Applicant withdrew the appeal of the denied variance. *Exhibit 1, page 4; Exhibit 1, Attachment n.*

9. Appellant's November 30, 2007 "Appeal of Administrative Decision" form and attachments allege the following errors in the November 19, 2007 administrative decision lifting the stop work order and determining that no variance from the marine bluff setback was required<sup>5</sup>:
- a. Violation of Thurston County Sanitary Code Section 18: Applicant failed to identify and protect a reserve drainfield area in case the existing drainfield fails (and Appellants allege RV shed location is the only potential reserve drainfield on the subject property);
  - b. Violation of 17.15.410 critical areas ordinance, geological hazard area regulations (Appellants allege landslide activity on the Applicant's marine bluff);
  - c. Failure to provide geotechnical report allegedly required pursuant to 17.15.635(E)(5)(b);
  - d. Failure to provide revegetation and erosion control plans allegedly required pursuant to 17.15.635(G);
  - e. Failure to provide a peer reviewed grading plan allegedly required pursuant to 17.15.635(C)(1);
  - f. Failure to utilize best available science;
  - g. Failure to require a survey to establish the marine bluff hazard area setback;
  - h. Failure to require a certified soil scientist assessment; and
  - i. Failure to comply with Applicant's deed, which Appellants allege requires "all buildings ... to be of neat architectural design."

*Exhibit 1, Attachment b.*

10. In subsequent memoranda prepared for the appeal hearing, Appellants alleged the following additional errors in the November 19, 2007 administrative decision:
- a. That the project should have been reviewed for compliance with regulations and policies of the Shoreline Master Program for the Thurston Region (SMPTR), specifically policies that require protection of waterfront views;
  - b. That the County used incorrect methods to determine the marine bluff hazard area setback required pursuant to TCC 17.15.620(B)(2)(b);
  - c. That additional alleged land use violations regarding a deck currently exist on the subject property, which allegedly pursuant to TCC 17.15.43(I) prevents the hearing examiner from upholding the November 19, 2007 administrative decision;
  - d. That the County's determination that no administrative variance from the marine bluff setback was required was in error; and

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<sup>5</sup> Of the check boxes at the top of the appeal form, only the box for "17.15.410 Critical Areas" was checked. The box for "19.12.010 Shoreline Program" was not checked. *Exhibit 1, Attachment b.*

- e. That the building permit should have been reviewed as a Type II permit, pursuant to 14.48.080(B), subjecting it to review pursuant to 20.60.020(2).

*Pre-Hearing Submission F, Appellants' February 4, 2008 memorandum; Exhibit 5.*

11. Appellants also requested that the hearing examiner reimpose the stop work order. *Exhibit 1, Attachment b.*
12. The parties offered extensive argument on: whether the County used proper methods to determine the location of the required marine bluff hazard area setback; whether view protection policies of the Shoreline Management Act as established in the Shoreline Master Program for the Thurston Region (SMPTR) apply; and whether the marine bluff on the subject property is stable from a geotechnical perspective. *Comments of Mr. Hirsch; Comments of Mr. Stientjes; Exhibit 4; Exhibit 5; Pre-Hearing Submission F, Appellants' February 4, 2008 memorandum; Pre-Hearing Submission E, Applicant Memorandum and Argument, dated January 31, 2008.*
13. Written notice of the public hearing was mailed to the parties and published in The Olympian and The Nisqually Valley News on January 25, 2008. The County received no public comments on the appeal. *Exhibit 1, page 9; Exhibit 1, Attachment a; Testimony of Mr. Longanecker.*

## **CONCLUSIONS**

### **Jurisdiction**

The Hearing Examiner is authorized to decide appeals of administrative determinations pursuant to Thurston County Code Sections 2.06.010(H) and 17.15.410(A).

### **Criteria for Decision**

The Board of Commissioners authorized the Hearing Examiner to hear appeals of administrative decisions made pursuant to the Critical Areas Ordinance. However, there are no criteria in the Thurston County Code for deciding whether such appeals should be granted. The Code states:

- A. Any aggrieved person may appeal an administrative decision made under this title, including a decision by the health officer, to the hearing examiner. Such appeals are governed by TCC Section 20.60.060. Appeals of the location of a critical area boundary or of a wetland rating shall be supported by technical evidence.
- B. Appeals shall be supported by technical evidence. Substantial weight shall be given to the special reports prepared for the specific project, unless the appellant can provide evidence which has been prepared by a qualified professional equivalent to the one who prepared the original report.
- C. Any decision to require a special report pursuant to this chapter may be appealed within fourteen days of the mailing of written notification that a special report is required.

*TCC 17.15.410.*

### Other Applicable Law

*Land Use Petition Act (LUPA), Revised Code of Washington (RCW) 36.70C*

The purpose of [LUPA] is to reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review. *RCW 36.70C.010*.

For the purposes of LUPA, “land use decision” means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on: (a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used ... (emphasis added). *RCW 36.70C.020(1)(a)*.

[LUPA] ... shall be the exclusive means of judicial review of land use decisions. *RCW 36.70C.030*.

A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served ... . *RCW 36.70C.040(2)*.

The petition is timely if it is filed and served on all parties listed in subsection (2) of this section within twenty-one days of the issuance of the land use decision. *RCW 36.70C.040(3)*.

### Applicable Washington Case Law

Washington courts have ruled that “[b]uilding permits are subject to judicial review under LUPA.” *Chelan County v. Nykreim*, 146 Wn.2d 904, 929 (2002); see also *Asche v. Bloomquist*, 132 Wn. App. 784, 790-91 (2006); *RCW 36.70C.020(1)(a)*.

LUPA’s 21-day deadline is strictly enforced. Even illegal decisions under local land use codes must be challenged under LUPA in a timely, appropriate manner. *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 407 (2005).

### Conclusions Based on Findings

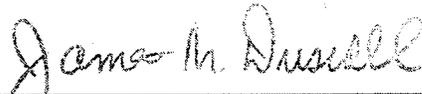
1. Consistent with LUPA, as applied by Washington courts, building permits are land use decisions that are subject to the requirements for prompt action found in the Revised Code of Washington at RCW 36.70C.040(3). LUPA is the exclusive remedy for challenges to land use actions in Washington. Appellants failed to comply with the LUPA deadline for appealing the building permit. *Habitat Watch v. Skagit County*, above, at 407. The LUPA appeal deadline for the building permit #07-108849, issued on July 11, 2007, was 21 days, or August 1, 2007. Appellants had actual notice of the building activity, and therefore effective notice of building permit issuance, before the end of July 2007 as evidenced by their calls to the Development Services Department, which resulted in Development Services staff action issuing the stop work order. *Finding No. 4*.

2. In their arguments and other submittals, Appellants have made it clear that their appeal of the November 19, 2007 decision is actually an appeal of the July 11, 2007 building permit. *Findings Nos. 9 and 10*. The Washington Supreme Court has held that land use decisions considered final for purposes of LUPA, due to expiration of the 21-day appeal period, may not be collaterally challenged through appeals of related, subsequent land use decisions. *Habitat Watch v. Skagit County, above, at 410-11, citing Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169, 176 (2000)*.
3. The SWO resulted from Thurston County's review of the building permit that was issued on July 11, 2007. The lifting of the SWO reinstated the building permit that had been issued by Thurston County. The appeal period of the issuance of the building permit had lapsed and the SWO did not restart the appeal period for the issuance of the building permit.
4. Because of the failure to file a timely appeal of the building permit, all other issues are moot. The hearing examiner is barred from considering the merits of the Appellants' arguments. As Washington courts have confirmed, even illegal decisions under local land use codes must be challenged under LUPA in a timely, appropriate manner. *Habitat Watch v. Skagit County, at 407*. Thus, even if a timely appeal would have resulted in overturning the building permit, failure to comply with the LUPA deadline bars all complaints against the validity of the permit.
5. The hearing examiner lacks jurisdiction to reimpose stop work orders.

#### **DECISION**

Based on the above findings and conclusions, the appeal of the November 19, 2007 administrative decision is in fact an appeal of the July 11, 2007 building permit issuance. Having been filed on November 30, 2007, Appellants' appeal is not timely and is therefore **DENIED**.

Dated this 4<sup>th</sup> day of March 2008.

  
\_\_\_\_\_  
James M. Driscoll  
Thurston County Hearing Examiner



Tax Parcel: 56550185400  
**Thurston County Development Services**  
 2000 Lakeridge Dr. SW  
 Olympia, WA 98502  
 (360) 786-5490 / 360-754-2939 (Fax)  
 Email: [permit@co.thurston.wa.us](mailto:permit@co.thurston.wa.us)  
[www.co.thurston.wa.us/permitting/](http://www.co.thurston.wa.us/permitting/)

**Project Application**  
**Residential Permit**

<b>STAFF USE ONLY</b>		<b>THURSTON COUNTY</b> <b>RECEIVED</b>  <b>JUL 11 2007</b>  <b>DEVELOPMENT SERVICES</b>
Project Number <u>2007102848</u>	Intake By: <u>OK</u>	
Folder Sequence Number(s) BS <u>07108848</u>	Fee Paid \$ <u>249.19</u>	
BA <u>07108849</u>	Receipt # <u>60015</u>	
HD	Related Projects	

Property Tax Parcel 56550185400 Lot # \_\_\_\_\_ Subdivision Name \_\_\_\_\_  
 Property Address: 9840 Johnson Pt Road City OLY Zip 98511  
 Directions to Property North to Johnson Pt Rd almost to way end, look for address on RHS  
 Property Access Issues (locked gates; code required)

**TYPE OF PROJECT**

Single Family Home     Garage/Shop     Reroof     Grading \_\_\_\_\_ cu yds  
 Manufactured Home     Barn     Housing Animals     Deck     Encroachment Permit  
 Family Member Unit     Carport     Site Plan Review     Septic System Application\*  
 Project Description \_\_\_\_\_  
**WORK TYPE:**  
 New     Addition     Remodel     Repair     Demo     Exempt     Renewal

Owner/Applicant     Applicant Only

Name: Lois Anderson    Company Name: YACHT PLACE COURT INC  
 Mailing Address: 14809 118th Way SE    City: Yelm    State: WA    Zip: 98597  
 Phone #: 360-400-0331    Cell Phone #: \_\_\_\_\_    Fax #: 360-400-2466  
 E-Mail Address: \_\_\_\_\_  
 Signature: Lois Anderson    Date: 7-11-07  
 (As owner, or agent on owner's behalf, I hereby affirm and certify that the information provided is accurate and grant employees of Thurston County access to the property and structures for review and inspection of this project.)

**OWNER:**(if different than Applicant)  
 Name: Mark S. Strickles    Company Name: \_\_\_\_\_  
 Mailing Address: 9840 Johnson Pt Rd    City: OLY    State: WA    Zip: 98501  
 Phone #: 360-357-8855    Cell Phone #: \_\_\_\_\_    Fax #: \_\_\_\_\_  
 E-Mail Address: \_\_\_\_\_

**CONTRACTOR:**  
 Name: Don Alessie    Company Name: YACHT PLACE COURT INC  
 License #: YOCNPPC 051 R2    Expire Date: 10-30-07  
 Mailing Address: 14809 118th Way SE    City: Yelm    State: WA    Zip: 98597  
 Phone #: 360-400-0331    Cell Phone #: \_\_\_\_\_    Fax #: 360-400-2264  
 E-Mail Address: \_\_\_\_\_

**ARCHITECT:**  
 Name: Duncan & Assoc    Company Name: \_\_\_\_\_  
 Mailing Address: P.O. Box 55242    City: Sea    State: WA    Zip: 98135  
 Phone #: \_\_\_\_\_    Cell Phone #: \_\_\_\_\_    Fax #: \_\_\_\_\_  
 E-Mail Address: \_\_\_\_\_

**ENGINEER:**  
 Name: N/A    Company Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_    City: \_\_\_\_\_    State: \_\_\_\_\_    Zip: \_\_\_\_\_  
 Phone #: \_\_\_\_\_    Cell Phone #: \_\_\_\_\_    Fax #: \_\_\_\_\_  
 E-Mail Address: \_\_\_\_\_

**SEPTIC DESIGNER:**  
 Name: N/A    Company Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_    City: \_\_\_\_\_    State: \_\_\_\_\_    Zip: \_\_\_\_\_  
 Phone #: \_\_\_\_\_    Cell Phone #: \_\_\_\_\_    Fax #: \_\_\_\_\_  
 E-Mail Address: \_\_\_\_\_

Exhibit B.

Thurston County Development Services  
 Project Application  
 Residential Permit  
 Page 2 of 2

Property Tax Parcel # 06550103400

<b>CONSTRUCTION:</b> <input type="checkbox"/> Preapproved Plan		<b>PROVIDE ALL INFORMATION AS SQUARE FEET</b>			
Main Floor Sq Ft		# of Bedrooms		Garage Sq Ft	
2 <sup>nd</sup> Floor Sq Ft		Unfinished Sp Sq Ft		Pole Bldg Sq Ft	<del>576</del>
3 <sup>rd</sup> Floor Sq Ft		Deck Sq Ft		Metal Bldg Sq Ft	
Basement Sq Ft		Covered Poreh Sq Ft		Carport Sq Ft	576
Total Sq Ft		Interior Remodel	Valuation:	\$	
Heat Source:	<input type="checkbox"/> Natural Gas	<input type="checkbox"/> Electric	<input type="checkbox"/> Propane	<input type="checkbox"/> Forced Air	<input type="checkbox"/> Zone <input type="checkbox"/> Heat Pump

**MOBILE HOME PLACEMENT:**

Mobile Home Tax # \_\_\_\_\_ Year \_\_\_\_\_ Make/Model \_\_\_\_\_ Dimensions \_\_\_\_\_ X \_\_\_\_\_  
 Installer's Name \_\_\_\_\_ Wans License # \_\_\_\_\_ Exp Date \_\_\_\_\_  
 Mobile Home Park Name (if applicable) \_\_\_\_\_ # of Bedrooms \_\_\_\_\_  
 Mobile Home Serial Number \_\_\_\_\_ Tax Certificate # (used m.h.) \_\_\_\_\_  
 Mobile Home Transporter \_\_\_\_\_ DOT # \_\_\_\_\_

**PROPERTY INFORMATION:**

**WATER SUPPLY:**  Existing  Proposed  
 Single Family well  Two Party  Group A  Group B  
 Name of Community Water System: \_\_\_\_\_ ID# \_\_\_\_\_

**SEWAGE DISPOSAL:**  Existing  Proposed  Not Applicable  
 Septic System\*  Sewer  Step Sewer  
 Sewage Treatment Plant (Circle one) Boston Harbor Carivon Beach Grandmound Tamoshan

**ACCESS:**  
 Existing  Proposed  Private Driveway  Shared Driveway  
 Private Road \_\_\_\_\_ (list name of road, if \_\_\_\_\_  
 Public Road \_\_\_\_\_ (list name of road, if \_\_\_\_\_

Has property been surveyed for this Project?  Yes  No  
 Property corners and property lines are marked on site?  Yes  No  
 Water on or w/in 300' of the property:  None  Salt  River/Creek  Lake/Pond  Wetland  Ditch  
 Name of body of water: Chocoma Bay  
 Has the property ever flooded?  No  Do not know  Yes, when? \_\_\_\_\_  
 (If yes, show area on site plan)  
 Slopes greater than 50%?  No  Yes

If your project includes plumbing or mechanical fixtures, include the number in the appropriate boxes below:

Gas Furnace	Toilet	Propane Tank > 500 gal
Gas Hot Water	Sink	
Heat Pump	Bathub	
Oil Furnace	Shower	
Woodstove/Insert	Dishwasher	
Gas Fireplace/Insert	Laundry Tray	
Electric Furnace	Clothes Washer	
Gas Wall Heater	Urinal	
Ventilation Fan	Floor Drain	
Commercial Hood & Duct	Other	
Gas Range	Hot Water Tank	
Gas Piping	Backflow Prevention Device	
Brs. Conn. Absorb <= 10	Lawn Sprinkler on Meter	
Brs. Conn. Absorb >= 10	Water Pipe alteration repair	
Ventilation and Exhaust		

\* **APPEAL:** Any person aggrieved by a decision, an inspection, or a notice made by the Health Officer shall have the right to appeal the matter as specified in Article 1 of the Thurston Sanitary Code.



**Thurston County Development Services  
BUILDING PERMIT**

**07 108849 BA**

Permit Type: Residential  
 Sub Type: Accessory Structure  
 Site Address: 9840 JOHNSON POINT RD NE OLYMPIA  
 Assessor Property ID: 56550105400  
 Applicant: RON MORSE SR/YOUR PLACE CONSTRUCTION  
 Owner: HARLAN CLAIRE STIENTJES FAMILY TRUST  
 Registered contractor: RON MORSE SR/YOUR PLACE CONSTRUCTION

**Exhibit C.**

**Inspection Line  
(360) 786-5489  
(to schedule an  
inspection)**

Issue Date: 7/11/07  
 By: [Signature]

*11-21-07*  
**CONCRETE**

**INSPECTIONS REQUIRED**

	111 - Footing/Posthole	122 - Sewer
	112 - Foundation Wall	118 - Groundwork Plumbing
	116 - Under Floor	136 - Groundwork Mechanical
	130 - Roof Sheathing	136 - LPG Test (Ext)
	124 - Strap/Hold Down	164 - LPG Tank Set
	131 - Shear/Wall Nailing	333 - Fire Sprinkler Underground
	146 - Framing	333 - Fire Sprinkler System
<b>ROUGH IN</b>	132 - Plumbing	333 - Fire Alarm
	136 - Mechanical	170 - Special Inspection
	136 - Gas Test (Int)	
<b>INSULATION</b>	148 - Floor	148 - Walls
	110 - Slab	148 - Ceiling
<b>WALLBOARD</b>	152 - Nailing	152 - Interior Shear/Braced Wall
	160 - Building	160 - Woodstove/Fireplace
<b>FINAL</b>	160 - Plumbing	160 - Smoke Detector
	160 - Mechanical	

**THIS STRUCTURE MAY NOT BE USED OR OCCUPIED UNTIL ALL FINAL INSPECTIONS  
ARE COMPLETED. IRC Sec. 110 / IBC Sec. 110**

DO NOT PROCEED BEYOND EACH STAGE OR COVER WORK UNTIL APPROVALS ARE GIVEN.  
 CALL FOR INSPECTION AT LEAST 24 HOURS IN ADVANCE  
 THIS CARD SHALL BE MAINTAINED AVAILABLE BY THE PERMIT HOLDER UNTIL FINAL APPROVAL HAS BEEN GRANTED.  
 Contractors are required to be registered with WA State per RCW 18.27.  
 To verify registration call 902-5226

**PERMIT EXPIRES 180 DAYS FROM THE LAST APPROVED INSPECTION**  
 Refer to the reverse side of this card for important information about the inspection process

# Thurston County Development Services

## Residential Permit # 07108849

Property Tax #: 56550105400  
Site Address: 9840 JOHNSON POINT RD NE  
City: OLYMPIA  
Subdivision: Lot #:  
Sub Type: Accessory Structure  
Work Proposed: New Construction  
Permit Description: New detached carport

Plans Approved By: Tim Rubert  
Issued Date: 07/11/07  
Issued By: Deborah King  
Expire Date: 01/07/08

**Applicant:** RON MORSE SR/YOUR PLACE CONSTRUCTION Phone: (360) 400-0330  
**Address:** 14809 119 WAY SE YELM, WA 98597 / YOURPC\*006CN  
**Owner:** HARLAN CLAIRE STIENTJES FAMILY TRUST  
**Address:** 9840 JOHNSON POINT RD NE OLYMPIA, WA 98516  
**Registered contractor:** RON MORSE SR/YOUR PLACE CONSTRUCTION Phone: (360) 400-0330  
**Address:** 14809 119 WAY SE YELM, WA 98597 / YOURPC\*006CN  
**Architect:** Than Sutan Phone: (253) 862-1255  
**Address:** P.O. BOX 55042 SEATTLE WA 98155

**Info**

Zoning:	RR 1/1 - Rural Residential	Water Supply Type:	Group A	Sewage System Type:	Septic System
Construction Value (Auto Calc.):	9273.60	Carports:	576	Accessory Structure Type:	Carport
Occupancy Classification (Dominant):	U	Construction Type:	Wood	Total Floor Area:	0
Engineering Required:	No	Minimum Front Yard Setback:	20 ft	Minimum Side Yard Setback:	6 ft
Minimum Rear Yard Setback:	10 ft	Shoreline Buffer Width required:	50 ft		

### Project Conditions

- Erosion Control shall be provided in accordance with the current Drainage Design & Erosion Control Manual
- The Project shall manage Stormwater in accordance with the current Drainage Design & Erosion Control Manual

### Final Conditions

- A pumper slip, showing that the septic tank has been pumped, must be submitted, reviewed and found to be satisfactory prior final building approval.

Access Issues: none

Directions: From Olympia: north on Johnson Point Rd to right on private easement road to site

**PROPERTY OWNERS ARE RESPONSIBLE FOR DETERMINING AND MARKING ALL PROPERTY LINE LOCATIONS AND RELATED EASEMENTS.**

I certify that I am exempt from the requirements of state contractor's registration under RCW 18.27.090

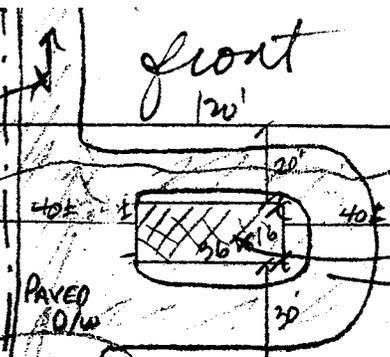
The information furnished by me is true and correct to the best of my knowledge and all work will conform to applicable Thurston County Code. I grant employees of Thurston County access to the above property and structures for review and inspection. I will call 786-5489 for applicable inspections listed on the reverse side of this form. I will read all comments on the approved Plans. I will refer to the checklist for all numbers noted on the approved plans. Failure to note any code requirements is not a waiver of that requirement.

Owner/Agent/Builder: Bois Anderson

Date: 7-11-07

To JOHNSON PT. RD

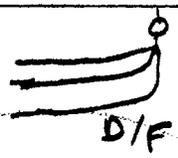
front 120'



PROPOSED CARPORT

Gutterless Downspout & Splash Blocks

HOUSE

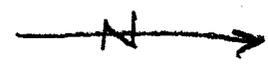


HARLAN STIEGLER  
 9840 JOHNSON RD  
 OLYMPIA, WA 98510

TP# 56550105400

Min Setbacks  
 front 20 ft  
 sides 6 ft  
 Shoreline 50 ft

10' BEACH ACCESS



SCALE: 1" = 50'

only

APPROVED AS NOTED  
 THURSTON COUNTY  
 DEVELOPMENT SERVICES  
 By *[Signature]*  
 Date 7/11/07  
 Site Plan

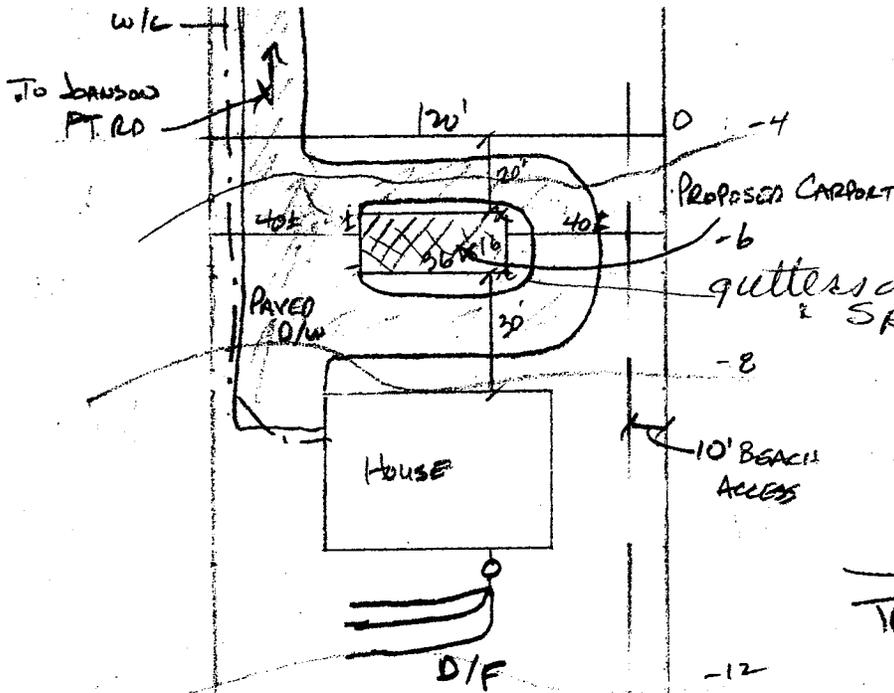
66'

66'

120'

Hoburn Bay

Directions: North on JOHNSON RD  
 to ALMOST VERY END. LOOK FOR  
 ADDRESS ON RHS



HARLAN STIENTJES  
 9840 JOHNSON PT RD  
 OLYMPIA, WA 98510

TP# 56550105400

N →  
 SCALE: 1" = 50'

ACCEPTED AS NOTED  
 TOLLISON COUNTY ROADS  
 AND TRANSPORTATION SYS.  
 DEVELOPMENT REVIEW SECTION

*Art St*

7-11-7

SECTION 2, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020

HOBUM  
 GARY

DIRECTIONS: NORTH ON JOHNSON PT RD  
 TO ALMOST VERY END LOOK FOR  
 ADDRESS ON RHS

## EXHIBIT D

## Exhibit D.

### 14.48.100 Contents of application.

For an application to be deemed complete for purposes of beginning the formal project review and starting the review be provided. (sic) During project review, additional clock, the following basic submittal information shall information or studies may be requested in writing by the development services department if needed to address particular aspects of the project or site. (sic) While the project review clock will formally stop during the time that the additional information is being assembled, department review of other aspects of the project will continue. The development services department has the authority to defer certain application requirements listed below to subsequent phases of the project.

A. Nonresidential and Multifamily Residential Permits (Type I and II Applications). Submittals shall be required to show compliance with the codes referenced in Chapters 14.20, 14.32, 14.34 and 14.35. The number of sets and size of plans required for each submittal requirement shall be as stated on the Nonresidential Construction Drawing Submittal Form. Each application for a nonresidential and multifamily residential permit shall contain the following in a clear, accurate and intelligible form:

1. An application form provided by the development services department containing all of the information requested on the form, including a single applicant contact to receive all determinations and notices;
2. Architectural drawings and specifications, including the following shown on the plans:
  - a. Building classification,
  - b. Occupancy classification,
  - c. Separated or non-separated occupancy,
  - d. Occupant load at each exit access,
  - e. Height and area calculations,
  - f. Rated wall locations,
  - g. Construction type,
  - h. Barrier free requirements showing compliance with WAC 51-30,
  - i. Washington State Energy Code envelope requirements,
  - j. Floor plan,
  - k. Foundation plan,
  - l. Elevation views,
  - m. Exterior wall envelope,
  - n. Details and typical sections,
  - o. Exits, and
  - p. Detailed requirements based on use and occupancy;
3. For buildings that exceed four thousand square feet of usable floor space or are

not of conventional construction, drawings and structural calculations prepared by an architect or engineer licensed to practice in the State of Washington shall be submitted, and shall include;

- a. Structural designers contact information,
  - b. Date design was completed,
  - c. Scope of design,
  - d. Referenced codes(s) or standards(s),
  - e. Design conditions,
  - f. Analysis/design calculations,
  - g. Annotated construction drawings,
  - h. Structural details,
  - i. Material specifications;
4. Structural drawings, which may be included in the architectural drawings or submitted on separate sheets;
  5. Soils and geology report showing compliance with International Building Code Appendix J;
  6. Plumbing drawing riser diagrams, which may be included in the architectural drawings or submitted on separate sheets;
  7. Mechanical drawings showing compliance with the Washington State Energy Code and Ventilation and Indoor Air Quality Code;
  8. Sprinkler and fire alarm plans, where required;
  9. Electrical drawings showing compliance with the Washington State Energy Code lighting budget, fixture layout and switching requirements;
  10. A narrative summary of all uses and activities proposed to occur on-site, including hours of operation. For nonresidential developments, provide a statement which indicates whether hazardous materials, as defined in Section 17.15.200 of the Critical Areas Ordinance, will be used, stored or disposed of on-site, or as a result of site activities;
  11. Full size copies and two eleven inch by seventeen inch reduced copy of a site plan drawing or drawings (folded, not rolled) at a scale of not less than one inch for each two hundred feet, which shall include or show:
    - a. The location and height of all existing and proposed structures, including, but not limited to, mobile homes, houses, sheds, garages, barns, fences, culverts, bridges, storage tanks, signs, and exterior lighting,
    - b. The boundaries, including dimensions, of the property proposed to be developed,
    - c. Setback distances from all property lines (or road access easements) to all proposed and existing buildings,
    - d. The location of all existing and proposed easements,
    - e. The location of any area protected by covenant on the project site for water supply sources,
    - f. The location of all existing and proposed public and on-site utility structures and lines, such as on-site septic tanks, drain fields and reserve areas, water lines, and wells (including those within one hundred feet of the project site, depending on the applicant's ability to gain access to adjacent properties and based on existing Washington State Department of Ecology and Thurston County well log records).\*

- See also subsections (B)(18), (19) and (20) of this section,
- g. The location of any springs used as a public water supply source (including those within two hundred feet of the project site, depending on the applicant's ability to gain access to adjacent properties and based on existing Washington State Department of Ecology records),
  - h. Existing location and name of drainage/surface water on-site,
  - i. Proposed storm water drainage facilities type and location,
  - j. All means, existing and proposed, of vehicular and pedestrian ingress and egress to and from the site, including disabled parking and access provisions, and the size and location of sidewalks, driveways, streets, internal circulation roads, and fire access roads, including existing and proposed road names and existing county and state right-of-way,
  - k. Existing adjacent/neighbor accesses to public road,
  - l. The location and size of all parking and outside storage areas,
  - m. The location of all loading spaces, including, but not limited to, loading platforms and loading docks,
  - n. A north arrow, map scale, date, site address and directions to the site;
  - o. The location of any existing critical areas or buffers affecting the site, both on-site and on adjacent properties, including, but not limited to, shorelines, wet lands, streams, steep slopes and special habitats. Off-site information obtained from available county mapping is sufficient,
  - p. If the project site is within a shoreline designation or has critical areas on-site, all existing vegetation proposed to remain and all proposed landscaping, including location and type,
  - q. If the project site abuts existing residential development or a residential zone, all existing vegetation proposed to remain and all proposed landscaping, including location and type, for those areas within the project site between the building footprint and those property lines that abut the adjacent residential areas,
  - r. Topographic information showing two-foot contours for the entire subject parcel or parcels and a minimum of fifty feet onto adjacent parcels, based on available county maps. The topographic information may be generalized to the smallest, even numbered, contour interval that is legible in areas of steep slopes where two-foot contour lines would otherwise be illegible to read, and
  - s. Vicinity sketch, at a scale of not less than three inches to the mile, indicating the boundary lines and names of adjacent developments, streets and boundary lines of adjacent parcels, and the relationship of the proposed development to major roads and highways;
12. Written estimate of daily trips to and from the site for the proposed use. Specifically list trucks and other traffic;
  13. Description of proposed grading, including a written estimate of both cut and fill quantities in cubic yards and a map showing the location of cut and fill areas;
  14. The number of square feet covered by each existing and proposed building, total square feet in graveled, paved or covered surfaces, whether covered by buildings, driveways, parking lots or any other structure, and the total number of square feet in the entire subject parcel or parcels;
  15. For multifamily residential developments, the proposed number of dwelling

units in the development, including the density calculation method used in deriving the total number of units for the project;

16. Applicable fees;

17. Environmental documents, such as SEPA Checklist or Critical Areas Administrative Review Form, if applicable;

18. A complete and approvable application for a Certificate of Water Availability;

19. If an on-site sewage disposal system is proposed, a complete On-site Sewage System Application (OSSA);

20. If connection to a sanitary sewer system is proposed, a written confirmation from the utility purveyor that the connection is authorized.

\* If the applicant is denied information by adjacent property owners relative to water supply sources, the applicant shall document their efforts to gather this information and submit that documentation along with the project application. If the applicant questions the accuracy of information gathered from adjacent property owners relative to the location of water supply sources, the applicant shall raise those questions in their project application for further follow-up investigation by the county.

B. Residential and Grading Permits (Type I and II Applications). Residential permit submittals shall be required to show compliance with the codes referenced in Chapters 14.20, 14.32, 14.34 and 14.35. Grading permit submittals shall be required to show compliance with Appendix J of the International Building Code. The number of sets and size of plans required for each submittal requirement shall be as stated on the Residential Project Submittal Standards Form. Each application for a private residence, its accessory structures and grading permit shall contain the following in a clear, accurate and intelligible form, except that grading permit applications do not need to include the information in subsections (B)(2), (3), (9), (10) and (11) of this section;

1. An application form provided by the development services department containing all of the information requested on the form, including a single applicant contact to receive all determinations and notices;

2. Construction plans and documents, including the following:

a. Plans drawn to scale showing clearly all the work to be done and the name of the applicant. The plans may be blueprints or originals drawn on a good grade of plain white paper,

b. Floor plan,

c. Foundation plan,

d. Elevation views,

e. Construction details and cross section,

f. For structures that do not comply with the International Residential Code, alternative provisions shall be submitted per R301.1.1. Plans prepared using alternative provisions will include the information described in subsections (A)(2)(a) through (n) of this section and the following:

i. Structural designers contact information,

ii. Date design was completed,

iii. Scope of design,

iv. Extent of design,

- v. Referenced codes(s) or standards(s),
  - vi. Design conditions,
  - vii. Analysis/design calculations,
  - viii. Annotated construction drawings,
  - ix. Structural details,
  - x. Material specifications,
3. Information showing compliance with the Washington State Energy Code and Ventilation and Indoor Air Quality Code for residential homes and for other structures when heated, including the following:
- a. Building envelope requirements,
  - b. Heat source/unit efficiency and outdoor air requirements, and
  - c. Washington State Energy Code Checklist to show prescriptive compliance or compliance calculations. Computer modeling is optional;
4. Site plan, which shall include or show:
- a. The location of all existing and proposed structures and the height of all proposed structures, including, but not limited to, mobile homes, houses, sheds, garages, barns, fences, culverts, bridges and storage tanks,
  - b. The boundaries, including dimensions, of the property proposed to be developed,
  - c. Setback distances from all property lines (or road access easements) to all proposed buildings,
  - d. The location of all existing and proposed easements,
  - e. The location of any area protected by covenant on the project site for water supply sources,
  - f. The location of all existing and proposed public and on-site utility structures and lines, such as on-site septic tanks, drainfields and reserve areas, water lines, and wells (including those within one hundred feet of the project site, depending on the applicant's ability to gain access to adjacent properties and based on existing Washington State Department of Ecology and Thurston County well log records).<sup>\*</sup> See also subsections (C)(9), (10) and (11) of this section,
  - g. The location of any springs used as a public water supply source (including those within two hundred feet of the project site, depending on the applicant's ability to gain access to adjacent properties and based on existing Washington State Department of Ecology records),
  - h. Existing location and name of drainage/surface water on-site,
  - i. All means, existing and proposed, of vehicular and pedestrian ingress and egress to and from the site, including the size and location of sidewalks (within urban areas), driveways, streets, and fire access roads, including existing and proposed road names and existing county and state right-of-way,
  - j. A north arrow, map scale, date, site address and directions to the site,
  - k. The location of any existing critical areas or buffers affecting the site, both on-site and on adjacent properties, including, but not limited to, shorelines, wetlands, streams, steep slopes and special habitats. Off-site information obtained from available county mapping is sufficient,
  - l. If the project site is within a shoreline designation or has critical areas on-site, all existing vegetation proposed to remain and all proposed landscaping, including

location and type,

m. Topographic information for the entire subject parcel or parcels and a minimum of fifty feet onto adjacent parcels, based on available county two-foot contour maps. The topographic information may be generalized to the smallest, even-numbered, contour interval that is legible in areas of steep slopes where two-foot contour lines would otherwise be illegible to read, and

n. Vicinity sketch, at a scale of not less than three inches to the mile, indicating the boundary lines and names of adjacent developments, streets and boundary lines of adjacent parcels, and the relationship of the proposed development to major roads and highways;

5. Description of proposed grading, including a written estimate of both cut and fill quantities in cubic yards and a map showing the location of cut and fill areas;

6. If the property is within a shoreline designation or within the McAllister geologically sensitive area zoning district, the number of square feet covered by each existing and proposed building, total square feet in graveled, paved or covered surfaces, whether covered by buildings, driveways, parking lots or any other structure, and the total number of square feet in the entire subject parcel or parcels;

7. Applicable fees;

8. Environmental documents, such as SEPA Checklist or Critical Areas Administrative Review Form, if applicable;

9. A complete and approvable application for a Certificate of Water Availability;

10. If an on-site sewage disposal system is proposed, a complete On-site Sewage System Application (OSSA);

11. If connection to a sanitary sewer system is proposed, a written confirmation from the utility purveyor that the connection is authorized.

**Bradley-Noble Geotechnical Services**

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Phone 360-357-7883 • FAX 360-867-9307

5 September 2007

Mr. Harlan C. Stientjes Esq.  
Suite 102  
303 Cleveland Avenue  
Olympia, Washington 98501-3309

**Subject:** Geotechnical evaluation of your proposed construction of a pole supported roof system to cover your RV at your property, 9840 Johnson Point Road NE, Thurston County Tax Parcel 56550105400, Thurston County Building Permit Number 07-108849 BA.

Dear Mr. Stientjes:

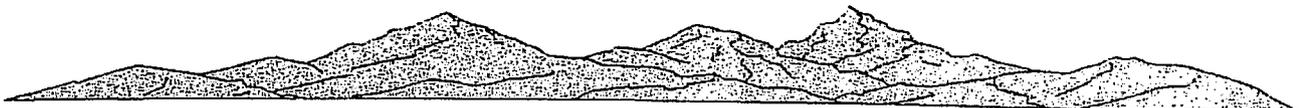
I met with you on the morning of 1 September in order to develop an opinion on the proposed construction of a RV cover near your west property line as having any influence on the marine bluff at your property. We had met with you previously at this site as part of your pre-purchase inspection of the property. At that time, we discussed site geology and its control of the erosion rate and retreat of the bluff landward. During our recent visit, we did not observe any indication of recent mass wasting. Our opinion is still the same that the residence will not be at any risk for probably the next 500 years from erosion and landward retreat of the bluff.

The new pole supported cover roof for your RV will be constructed west of the existing residence in an area previously used for the parking of this vehicle. As part of the site preparation work, a low vertical cut face on the west side of the location of the cover has been constructed. This slope will need to be stabilized with a erosion control wall. With the height of the wall less than four feet, you will be exempt from needing an engineer wall. We suggest either a segmented block or wood-lagged post type of wall backfilled with free draining material. The post supporting the roof are not to be used to resist lateral soil loading.

Site soils exposed in the area of development are typical of near-surface soils in this area. The upper few feet are coarsely laminated silts associated with fluvial/lacustrine deposition onto the outwash plain of the Yashon lobe of the Cordilleran glacier as it

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retreated northward during the Fraser glaciation in late Wisconsinan time. The silts are comprised of "rock flour" derived from the grinding of rock by glacial movement. Under the silts is Vashon subglacial till. Based on soil exposures in the bluff face, the thickness of these soils varies from 30 to 40 feet in this area. Subglacial till is a mixture of silt, sand, and small gravels. It was deposited at the base of the advancing ice sheet. The grain size distribution and loading by the ice sheet, thought to have been from one-half to one mile thick in this area have created a soil that has many engineering properties similar to those of lean concrete. This soil unit offer good support for the type of construction proposed for the RV cover, both in bearing capacity and high passive soil pressure.

Cropping out in the lower areas of the bluff, are Vashon advance outwash (Clovis Sands) and non-glacial and non-marine sediments older than Vashon age till. These soils are also overconsolidated due to loading by the Vashon ice mass.

We understand that you will be retaining the services of a surveyor to determine if the RV cover is in fact inside the 2:1 line. With the RV cover upslope of your residence, your residence would be at risk of loss before the RV cover would be from erosional processes active on the bluff.

Based on our site visit, understanding of the proposed construction, and understanding of the area geology and erosional process active on the bluff face, we have no concerns about the proposed construction of a pole supported roof system for a RV cover based on geotechnical considerations. We consider that this type of structure is of low value. We would support your proposal for a reduction in setback requirements for this project. If it is determined that you do not meet the 2:1 setback requirement for this project.

If you have any additional geotechnical questions for this project, please contact us at our Olympia office.

Cordially,

BRADLEY-NOBLE GEOTECHNICAL SERVICES



David C. Strong, L.E.G.



DAVID C. STRONG