

LAND AND WATER RESOURCES DEPARTMENT
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Appeal of Land & Water Resource Department decision that land disturbance within 300 feet of a navigable stream requires a shoreland erosion control permit

Owner: TMS Investments LLC • Tax Parcel: 0810-234-9850-5

1. The entire property which is the subject of the appeal is within the shoreland district as defined by DCO § 11.015(37).
2. Except as provided in DCO § 11.05(2)(a), any land disturbing activity, of any size, within the shoreland district requires a shoreland erosion control permit. DCO § 11.05(3).
3. The exceptions in DCO § 11.05(2)(a) do not apply to the subject property.
4. Land disturbing activity is defined by DCO § 11.015(19) as “any alteration or disturbance that may result in soil erosion, sedimentation, or change in runoff including, but not limited to, removal of ground cover, grading, excavating, or filling of land.”
5. In 2013 the Appellant requested an erosion control permit determination for the property in question. On January 24, 2014, a written determination was issued stating that a shoreland erosion control permit would be required for any land disturbing activity on the property.
6. On March 23, 2020, Land and Water Resources Department Inspector Jess Starks conducted an inspection of the property and determined that there had been land disturbing activity on the property without a shoreland erosion control permit. Photos were taken identifying the location and size of the land disturbing activity.
7. Ms. Starks used photography (aerial and on-site) along with on-site observation to estimate the area of land disturbing activity to be between 8,000 and 10,000 square feet.
8. The Appellant testified the disturbed area was no greater than 100 feet by 100 feet, which would be 10,000 square feet.
9. The evidence in the record establishes the following:
 - a. The Appellant engaged in land disturbing activity on the property requiring a shoreland erosion control permit.
 - b. The area of land disturbance exceeded 2,000 square feet requiring a shoreland erosion control permit prepared by a professional engineer as required by DCO § 11.05(2)(c), (4)(a) and (4)(c)14.