



COUNTY COMMISSIONERS

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## HEARING EXAMINER

*Creating Solutions for Our Future*

### BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Application of	)	Project No.	2020104385
	)		
	)		
<b>Capital Land Trust</b>	)	<b>Inspiring Kids Preserve</b>	
	)		
	)	FINDINGS, CONCLUSIONS,	
For Reasonable Use Exception, Special	)	AND DECISIONS	
Use Permit, and Forest Land Conversion	)		
	)		

### SUMMARY OF DECISIONS

The request for approval of reasonable use exception, special use, and forest land conversion permits to develop a nature preserve on property addressed as 4849 and 5323 Johnson Point Road NE is **GRANTED** subject to conditions.

### SUMMARY OF RECORD

#### Request

Laurence Reeves of Capitol Land Trust requested a special use permit, reasonable use exception, and forest land conversion approvals to develop a nature preserve on property addressed as 4849 and 5323 Johnson Point Road NE, Olympia, Washington. The nature preserve would provide outdoor learning for school groups and would also be open to the public.

#### Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the application on March 11, 2024. The record was held open through March 13, 2024 to allow any members of the public unable to participate in the virtual hearing due to technology problems to submit written comments, with time scheduled for responses from the parties. No post-hearing public comment from people who were unable to participate due to technological problems was submitted, and the record closed on March 13, 2024.<sup>1</sup>

<sup>1</sup> Two members of the public submitted post-hearing comments and asked that they be added to the record; however, neither individual missed the hearing due to technology problems, and their comments may not be admitted.

## Testimony

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

Heather Tschaekofske, Associate Planner/Biologist, Thurston County Community Planning & Economic Development Department

Arthur Saint, Civil Engineer, Thurston County Public Works Department

Dave Winter, Executive Director, Capital Land Trust

Bob Droll, Landscape Architect

Ryan Kahlo, Senior Ecologist, DCG Watershed

Nathan Paull

Tom Terry

## Exhibits

At the open record public hearing, the following exhibits were admitted into the record:

- Exhibit 1 Community Planning and Economic Development Report including the following attachments:
- A. Notice of Public Hearing, issued February 8, 2024
  - B. Master Application, revised and submitted October 9, 2023
  - C. Special Use Application and narrative, revised and submitted October 9, 2023
  - D. Reasonable Use Exception application and narrative, and site development options, revised and submitted October 9, 2023
  - E. Site Plans, submitted October 9, 2023
  - F. Project Narrative, submitted October 9, 2023
  - G. Critical Areas Report; revised and submitted October 24, 2023
  - H. Notice of Application and Mitigated Determination of Non-Significance, dated March 25, 2022
  - I. SEPA Environmental Checklist, revised and submitted October 9, 2023.
  - J. Master Application and Forest Land Conversion, submitted September 18, 2020
  - K. Logging Site plan, submitted September 18, 2020
  - L. Earthwork Services, Technical Letter, dated July 22, 2020
  - M. Geotechnical Engineering Services Technical Memorandum from Landau Associates, dated July 28, 2020
  - N. Drainage & Erosion Control Plans, dated June 3, 2020
  - O. Ecology Comment letters, dated October 20, 2020, and April 14, 2022
  - P. Department of Archaeology & Historic Preservation (DAHP) comment, dated October 16, 2020, email and concurrence letter, dated December 19, 2023

- Q. Comment Letter from Nisqually Indian Tribe, dated October 15, 2020, email March 30, 2022, and concurrence letter, dated February 8, 2023
- R. Comment emails from Squaxin Island Tribe, dated October 8, 2020, December 20, 2021, March 30, 2022, and concurrence email, dated January 2, 2024
- S. Comment Memorandum from Arthur Saint, Thurston County Public Works, November 24, 2020, with associated Stormwater Scoping Report, dated November 24, 2020
- T. Comment Memorandum from Dawn Peebles, Thurston County Public Health and Social Services Department, dated January 5, 2024
- U. Critical Area Review Permit approval letter, dated January 30, 2024
- V. Communications Matrix Applicant responses, submitted October 9, 2023
- W. Final Mitigated Determination of Non-Significance letter, dated December 7, 2023
- X. Public comment from Sandra Bahr, dated January 2, 2024, and County response to Bahr public comment, dated January 3, 2024
- Y. Applicant response to Bahr public comment, dated January 12, 2024
- Z. Public comment from Ross Calvert, dated April 9, 2022, and Applicant response to Calvert comment, dated December 6, 2023
- AA. Short plat/PRRD recorded map, dated January 10, 2000
- BB. Inadvertent Discovery Plan for Inspiring Kids Preserve
- CC. Zoning map
- DD. Revised Notice Rescheduling Public Hearing, issued February 21, 2024
- Exhibit 2 Department of Ecology Soil Sampling letter, dated August 18, 2022
- Exhibit 3 Public Comment:
  - A. Donna and Jerry Louthain, February 15, 2024
  - B. Darrell F. Howe, February 15, 2024
  - C. Thomas A. Terry, February 19, 2024
  - D. Mary Ellen Psaltis, February 20, 2024
  - E. Lara Tukarski, Pacific Education Institute, February 21, 2024
  - F. Joyce Mackiewicz, North Thurston Public Schools, February 16, 2024
  - G. Paris McClusky, February 21, 2024
  - H. Jason Callahan, February 22, 2024
  - I. Don Kraege, February 23, 2024
  - J. Pat and Donna DeRoberts, February 23, 2024
  - K. Bill Robinson, February 23, 2024

- L. Naki Stevens, February 23, 2024
- M. Kathleen Wallace, February 25, 2024
- N. Barbara Morson, February 25, 2024
- O. Edie Harding, February 25, 2024
- P. April Scharer and Dennis Brown, February 27, 2024
- Q. Samantha Ritche, February 28, 2024
- R. Robert Campbell and Laurie Shannon, March 4, 2024
- S. Cleve Pinnix, March 4, 2024
- T. Eric Eler, March 5, 2024

Exhibit 4 Army Corps of Engineers permit, dated November 3, 2023

Exhibit 5 Proposed revision of Condition No. 4, received March 12, 2024

Based on the record developed through the open record hearing process, the Hearing Examiner enters the following findings and conclusions.

#### FINDINGS

1. Laurence Reeves of Capitol Land Trust (Applicant) requested special use permit (SUP), reasonable use exception (RUE), and forest land conversion approvals to develop a nature preserve on property addressed as 4849 and 5323 Johnson Point Road NE, Olympia, Washington.<sup>2</sup> The nature preserve would provide outdoor learning for school groups and would also be open to the public. *Exhibits I, I.B, I.C, I.D, I.E, I.F, and I.J.*
2. The subject property consists of eight tax parcels totaling 108 acres in area. Surrounding land uses include single-family residential uses on large parcels and undeveloped forested parcels. *Exhibit I.*
3. The Applicant is a nonprofit organization with a mission to conserve land and provide environmental education opportunities. Due to restrictions associated with grants used to purchase some of the subject property, the Applicant is limited to development consistent with that mission. *Exhibit I.D.* The facilities to be developed in conjunction with the proposed nature preserve would include: a seven-stall paved parking area for public use to be located near Johnson Point Road; a 13-foot wide paved driveway with crushed rock passing shoulder extending from the public parking area to the outdoor learning portion of the use, shown as the “hub” on the project plans; and within the hub, a paved bus drop-off and parking area for two buses, 16 paved parking stalls (including two accessible stalls), a 16-foot tall, 1,040 square foot open-air pavilion, and a 300 square foot portable toilet and storage building. Electricity would be extended to the pavilion. An ADA-accessible loop trail would extend north from the hub to

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<sup>2</sup> The subject property is a portion of Sections 28 and 29, Township 19 North, Range 1 West, W.M.; also known as Tax parcel numbers 11929110500, 11928220800, 11928230100, 11929140000, 11928230200, 11929440200, 11928320500, and 11928320000. *Exhibits I and I.B.*

provide nature viewing opportunities for those with disabilities. *Exhibits 1.E and 1.F.* As described in the forest land conversion application, the proposal would include the harvest of approximately 31,000 board feet (MBF) of timber from 1.7 acres of the subject property, coinciding with the driveway, parking, and hub areas. *Exhibits 1.J and 1.K.*

4. The Applicant is partnering with North Thurston Public Schools to provide an outdoor learning experience for elementary school students on site. The School District would like to provide this experience to all 1,200 of its third grade students but this is not currently feasible due to bus access limitations. Third graders from three schools have already visited the site for outdoor education, but students had to be dropped off and picked up on Johnson Point Road at a location below the crest of a hill, where the speed limit is 50 miles per hour. The proposed new access and on-site bus loading area would provide safe access for school groups and the public. *Exhibits 1.G and 1.V.*
5. In addition to North Thurston Public Schools, the site would be available to other community organizations for outdoor education. Additionally, the site would be open to the public daily from 8:00 am to dusk. *Exhibit 1.G; Bob Droll Testimony.*
6. The subject property is on the east shore of Henderson Inlet of Puget Sound, which is regulated pursuant to Washington Shoreline Management Act as implemented by the Shoreline Master Program for the Thurston Region (SMPTR) as a shoreline of the state. The SMPTR designates the shoreline within the subject property as Conservancy shoreline environment. *Exhibit 1.* No development is proposed within 200 feet of the shoreline and as a result, no shoreline permits are required for the project. *Exhibits 1 and 1.E.*
7. The subject property is zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5). *Exhibits 1 and 1.CC.* The purpose of the RRR 1/5 zone is described in Thurston County Code (TCC) 20.09A.010 as follows:

The purpose of this chapter is to encourage residential development that maintains the county's rural character; provides opportunities for compatible agricultural, forestry and other rural land uses; is sensitive to the site's physical characteristics; provides greater opportunities for protecting sensitive environmental areas and creating open space corridors; enables efficient road and utility systems; and does not create demands for urban level services.

*TCC 20.09A.010.* Primary permitted uses in the RRR 1/5 zone include single-family and two-family residences, agriculture, and home occupations. "Academic schools" are allowed in the RRR 1/5 upon special use permit review and approval. *TCC 20.54, Table 1; Exhibit 1.* The Thurston County Comprehensive Plan contains policies to protect and restore natural resources, provide for public access to natural resource lands, and provide for parks and open space. *Exhibit 1.*
8. A portion of the subject property is the resource use parcel (Lot 2) of Short Plat No. SS990774TC (SSUB990774), Auditor's file number 3273901, which was recorded on January 10, 2000. The short plat was developed pursuant to the Planned Rural Residential Development (PRRD) regulations of TCC 20.30A. *Exhibits 1 and 1.AA.* Allowed uses within PRRD resource use parcels include agriculture/forestry, passive recreation, natural areas such as critical areas and

buffers, subdivision water, sewage system, and stormwater facilities, and one single-family residence. *TCC 20.30A.040.3.*

9. The zoning ordinance's standards related to academic schools, in relevant part, limit student density to no more than 100 students per acre of ground and require portions of the site which abut upon a residential use to be screened in a manner so as to reduce the noise generated by activities on the school grounds. *Exhibit 1; TCC 20.54.070.1.*
10. Substantial screening would be provided between the use and surrounding residential uses. The hub would be approximately 300 feet from Johnson Point Road (the nearest exterior property boundary), approximately 900 feet from the southern property boundary, and approximately 1,500 feet from the northern property boundary. The proposed loop trail would be approximately 300 feet from the nearest property boundary. Except for the driveway and parking areas, these setbacks - which are largely encumbered by critical areas - would be maintained in a forested condition. *Exhibits 1.E and 1.K.*
11. All proposed structures would far exceed the minimum zoning setbacks, which in the RRR 1/5 zone are 20 feet from the front property line and five feet from the rear and side property lines. The hub's pavilion and storage buildings would be hundreds of feet from the nearest property lines (both exterior property lines and internal parcel boundaries). *Exhibits 1 and 1.E.*
12. The proposed development would not exceed the maximum hard surface coverage of the RRR 1/5 zone, which is 10% for lots 2.5 acres in area or greater. In this case, the parcel on which most hard surfaces are proposed is 29.33 acres and the hard surface coverage would be approximately three percent. The hard surface coverage considering the total property area would be less than one percent. *Exhibits 1 and 1.E.*
13. The site would only be staffed when school groups are present. *Dave Winter Testimony.* When groups are present, the number of staff on site might range from three to 10. *Exhibit 1.I.* The project is expected to generate approximately 15 to 25 vehicular trips per day that a group activity is scheduled and fewer on days when no group activities are scheduled. *Exhibits 1 and 1.I.*
14. The zoning ordinance does not establish a parking requirement that is specific to nature preserve use. Planning Staff submitted that the most similar use in the ordinance is "places of assembly without fixed seating", which require one space per four occupants. Assuming two busloads of students plus facility staff, 25 parking spaces would be required for the use. In this case 26 spaces are proposed including the bus parking spaces. *Exhibits 1 and 1.E; TCC 20.44.030.* No overflow parking is proposed. It is intended that event capacity would be limited based on parking supply. No parking lot lighting is proposed. *Bob Droll Testimony.*
15. There are several wetlands within the project vicinity, including eight Category III wetlands (Wetlands B, C, E, H, I, J, M, and P) and six Category IV wetlands (Wetlands A, D, F, G, K, and L), and one Type Ns (non-fish bearing) stream (Stream A). Stream A is an ephemeral stream that is the outlet for Wetland A. The wetland buffers required by the Thurston County critical areas ordinance (CAO) range from 220 to 240 feet depending on wetland habitat score. The required stream buffer is 100 feet. The combined wetlands, stream, and buffers encumber roughly the eastern third of the property, including virtually all of the property's Johnson Point Road frontage. *Exhibits 1.E and 1.G.*

16. Project impacts to critical areas would include a six-foot wide ADA-accessible trail with crushed gravel surface, which would permanently impact 11,499 square feet of buffer, and the driveway and parking areas, which would permanently impact 39,717 square feet of buffer and 707 square feet of wetland (consisting of Wetland P and the northernmost tip of Wetland M). Tree removal and grading necessary for construction would impact an additional 18,296 square feet of buffer, which would be re-vegetated but would experience loss of habitat for a time. Finally, 20,163 square feet of wetland would be indirectly impacted due to loss of buffer. *Exhibits 1.G and 1.V.*
17. There is no feasible access to the site that would reduce impacts to critical areas. The proposed centrally located access point and activity hub is at a flat portion of Johnson Point Road, where there is adequate sight distance to accommodate vehicles safely entering and exiting the site. The north end of the site is somewhat less constrained, but access at that location would have limited sight distance because it would be at the crest of a hill. At the south end of the site, sight distance is limited by a horizontal curve, and development at that location would have wetland buffer impacts. Due to the long, linear configuration of some of the wetlands and their location parallel to Johnson Point Road, there are limited gaps between wetlands within which access could be established. The proposed access and hub placements avoid the larger wetlands and concentrate proposed impacts into the minimum footprint on the site. Further, the central location would maintain significant setbacks from neighboring residential properties and reduce the walking distance for visitors to points of interest. *1.E, 1.G, and 1.V; Bob Droll Testimony.*
18. The extent of critical area impact has been reduced since the project was first proposed, in that initially contemplated features including permanent restrooms, septic system, and viewing platforms have been removed. The driveway and parking area shown on current plans cannot be reduced as the proposed configurations represent the minimum needed for bus ingress, egress, and parking. Although the entrance from Johnson Point Road would be two lanes wide, most of the driveway would be one lane wide. *Exhibits 1.E, 1.G, and 1.V.*
19. The Applicant proposes to mitigate the impacts of the project through wetland and buffer enhancement according to the following ratios per Table 9 of the critical area report:

Table 9. Project impacts and proposed mitigation.

Impact Type	Impact Area	Required Mitigation Ratio (Enhancement)	Mitigation Ratio Applied
Direct Wetland	707 SF	8:1 Wetland (5,656 SF)	8:1 Wetland (5,656 SF)
Indirect Wetland	20,163 SF	4:1 Wetland (80,652 SF)	4:1 Wetland (76,193 SF mitigates for 19,048 SF of indirect wetland impacts)
			28:1 Buffer (31,241 SF mitigates for remaining 1,115 SF of indirect impacts) <sup>1</sup>
Direct Buffer	50,856 SF	1:1 Buffer (50,856 SF)	1:1 (50,856 SF mitigates for all direct buffer impacts)
Buffer Conversion	18,296 SF	1:1 Buffer (18,296 SF)	1:1 (18,296 SF mitigates for all buffer conversion)
<b>Total</b>	<b>70,219</b>	<b>155,460 SF</b> <b>(86,308 wetland; 69,152 buffer)</b>	<b>182,424 SF</b> <b>(81,849 SF wetland; 100,393 SF buffer)</b>

<sup>1</sup> 31,241 SF of buffer enhancement will be applied as mitigation for 1,115 SF of indirect wetland impacts that cannot be mitigated through wetland enhancement due to a lack of sufficient degraded wetland area on-site. This represents a ratio of 28:1 for buffer enhancement to indirect wetland impacts.

*Exhibit 1.G, p. 21.* As noted in the table, wetland buffer enhancement would be provided at a 28:1 ratio for the portion of indirect wetland impacts that cannot be mitigated through wetland enhancement because the site lacks the needed quantity of degraded wetland to allow standard mitigation could be performed on site. The proposed mitigation, which would meet or exceed the ratios required by the CAO (see Table 24.30-3) and the Department of Ecology, would ensure that the project does not result in a net loss of critical area and buffer functions. The mitigation would improve water quality functions by increasing the amount of dense, rigid vegetation to slow surface water flow and to filter and capture nutrients and sediments. It would improve hydrology by adding trees, shrubs, and groundcover to help attenuate flood flows, and it would improve habitat functions by increasing vegetative density and structural diversity and by improving cover and forage opportunities. Four native trees species, six native shrub species, and three native groundcover species are proposed. Invasive weeds would be removed from the mitigation planting areas. The mitigation plantings would be monitored for 10 years. *Exhibit 1.G; Ryan Kahlo Testimony.*

20. The CAO allows development within the outer 25% of wetland buffers with mitigation through the administrative critical areas review permit process. The CAO also provides for administrative approval of trails within wetland buffers. *TCC 24.30.050; TCC 24.30.260.* The County issued an administrative critical area review permit for the trail and the portion of the other work occurring within the outer 25% of the buffer on January 30, 2024. The conditions of the administrative decision require, among other things: implementation of erosion control measures on site; implementation of the buffer restoration; performance of the enhancement and monitoring program described in the Applicant's critical area report; maintenance and monitoring of the mitigation/ enhancement program for 10 years; and installation of critical area signs. Compliance with these conditions was incorporated into the recommended conditions of RUE approval. The instant RUE is requested to authorize the portion of the project within wetlands and within the inner 75% of the wetland buffers. *Exhibits 1 and 1.U.*



21. On November 3, 2023, the US Army Corps of Engineers verified that the proposed wetland fill is authorized by Nationwide Permit 42 – Recreational Facilities, provided the Applicant performs the work outside of the marbled murrelet nesting season and comply with all other applicable terms and conditions of the nationwide permit. *Exhibit 4.*
22. The subject property is in an area affected by emissions from the former Asarco smelter in Ruston, Washington. As recommended by the Department of Ecology, the Applicant conducted soil sampling to determine whether arsenic and lead levels require cleanup under state standards. No sample exceeded the maximum allowable concentration for either substance, and the DOE determined that no soil remediation is necessary for the subject property. *Exhibit 2.*
23. The subject property is located in an area determined to be of high risk for containing archaeological materials. As requested by the Washington Department of Archaeology and Historic Preservation (DAHP), the Applicant had an archaeological survey and assessment conducted for the site. The survey did not identify any cultural resources. DAHP concurred with the result of the survey and recommended that an inadvertent discovery plan be followed during ground disturbing activities. The Applicant has submitted an inadvertent discovery plan, and Planning Staff recommended adherence to the plan as a condition of permit approval. *Exhibits 1, 1.P, and 1.BB.*
24. No work would occur within a FEMA flood zone. *Exhibit 1.U.*
25. The Applicant proposes to use full dispersion to manage stormwater runoff from most new impervious surfaces, with dispersion into at least 100 feet of native vegetation. With full dispersion, no water quality treatment is required. Two small areas of the site would drain into the existing drainage ditch adjacent to Johnson Point Road. The runoff from those areas would not meet thresholds for requiring flow control or water quality treatment. *Exhibit 1.N.*
26. The Applicant does not propose any structures requiring an approved potable water supply. An existing well located at the south end of the property, which serves the adjacent residential parcel, would not be affected by the project. *Exhibits 1.E and 1.T.*
27. The Applicant does not propose any structures requiring wastewater treatment. The Applicant proposes to use portable restroom facilities for visitors. An existing septic system drainfield that encroaches onto the southern portion of the subject property would not be affected by the project. *Exhibits 1.T and 1.V.*
28. No solid waste storage would occur on site. *Exhibit 1.V.*
29. The Environmental Health Division of the Thurston County Public Health and Social Services Department reviewed the proposal and determined that it meets the requirements of the Thurston County Sanitary Code, recommending only that a drainfield easement be recorded for the encroaching septic drainfield. Environmental Health did not identify any other issues of concern. *Exhibit 1.T.*

30. The Thurston County Public Works Department reviewed the proposal for compliance with Thurston County Road Standards and the Drainage Design and Erosion Control Manual and determined that the preliminary requirements have been satisfied. Public Works recommended approval of the application with conditions. At the hearing, Public Works staff clarified that the recommended conditions relating to utilities were informational only, as the Applicant is not proposing utilities. Public Works staff did not object to the Applicant's request to have condition number 8 relating to utilities be stricken from the recommended conditions of approval. *Exhibit 1.S; Testimony of Arthur Saint and Bob Droll.*
31. There are no state or federal endangered, threatened, or species of concern documented within the project area. No streams or mature forest that could support listed species of wildlife would be impacted by the project. *Exhibit 1.G.*
32. Thurston County acted as lead agency for review of the project pursuant to the State Environmental Policy Act (SEPA) and issued a combined notice of application and SEPA mitigated determination of non-significance (MDNS) on March 25, 2022 pursuant to the optional DNS process of WAC 197-11-355. The final MDNS was issued on December 7, 2023 and contained conditions addressing inadvertent discovery of cultural resources, erosion and stormwater control, hazardous materials, solid waste management, wetland jurisdiction, and soil sampling. *Exhibits 1.H and 1.W.*
33. Notice of the March 11, 2024 open record hearing was mailed to property owners within 500 feet of the site on February 21, 2024 and published in *The Olympian* on February 29, 2024.<sup>3</sup> Public comment was largely in favor of the proposal, although concern was raised regarding site security during evening hours, to ensure the site does not attract drug usage, vagrancy, vandalism, and similar problems. *Exhibit 1.Z; Exhibits 1.X and 3.A through 3.R; Testimony of Nathan Paull and Tom Terry.*
34. With respect to security, two gates are proposed. The first (outer) gate would be near the site entrance from Johnson Point Road. The second (inner) gate would be just beyond the first parking lot and would control access to the hub area. The second gate would only be open for planned events. At present, the Applicant proposes to keep the first gate open at all times, which would provide access to the small parking area. If in the future there are security problems, the Applicant would employ staff to close the gate outside of scheduled events. *Exhibit 1.E; Testimony of Bob Droll and Dave Winter.* The Applicant proposes to use a system of trail stewards to help monitor activities on site. *Bob Droll Testimony.*
35. Having heard all testimony and considered all public comment, County Staff recommended approval subject to the conditions in the staff report. *Exhibit 1; Heather Tschaekofske Testimony.* Applicant representatives questioned recommended conditions requiring soil testing, which has already occurred, and establishing applicable utility standards for water and sewer, because none are proposed. Otherwise, the Applicant waived objection to the recommended conditions. *Testimony of Bob Droll and Dave Winter.*

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<sup>3</sup> This was a rescheduled hearing date. The originally scheduled hearing date was February 27, 2024. *Exhibits 1.A and 1.DD.*

## CONCLUSIONS

### Jurisdiction

**The Hearing Examiner is granted jurisdiction to hear and decide applications for reasonable use exceptions pursuant to TCC 2.06.010(F) and TCC 24.45.030, special use permits pursuant to TCC 2.06.010 and 20.54.015(2), and forest land conversions pursuant to TCC 17.25.600.E.3 and TCC 20.60 Table 2.**

### Criteria for Review

#### Reasonable Use Exception

Pursuant to TCC 24.45.030, the Hearing Examiner shall grant the reasonable use exception if:

- A. No other reasonable use of the property as a whole is permitted by this title; and
- B. No reasonable use with less impact on the critical area or buffer is possible. At a minimum, the alternatives reviewed shall include a change in use, reduction in the size of the use, a change in the timing of the activity, a revision in the project design. This may include a variance for yard and setback standards required pursuant to Titles 20, 21, 22, and 23 TCC; and
- C. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety, or welfare on or off the development proposal site, or increase public safety risks on or off the subject property; and
- D. The proposed reasonable use is limited to the minimum encroachment into the critical area and/or buffer necessary to prevent the denial of all reasonable use of the property; and
- E. The proposed reasonable use shall result in minimal alteration of the critical area including but not limited to impacts on vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions; and
- F. A proposal for a reasonable use exception shall ensure no net loss of critical area functions and values. The proposal shall include a mitigation plan consistent with this title and best available science. Mitigation measures shall address unavoidable impacts and shall occur on-site first, or if necessary, off-site; and
- G. The reasonable use shall not result in the unmitigated adverse impacts to species of concern; and
- H. The location and scale of existing development on surrounding properties shall not be the sole basis for granting or determining a reasonable use exception.

#### Special Use Permit

The Hearing Examiner may approve an application for a special use permit only if the following general standards set forth in TCC 20.54.040 are satisfied:

- A. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan, and all applicable federal, state, regional, and Thurston County laws or plans.
- B. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.

- C. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
1. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effects may occur.
  2. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

#### Forest Land Conversion

Pursuant to TCC 17.25.500.C, a forest land conversion in the rural area shall comply with the applicable provisions of the following:

1. Thurston County Critical Areas Ordinance (Title 24 TCC) and Chapter 17.15 TCC, otherwise known as the Thurston County Agricultural Activities Critical Areas Ordinance;
2. Chapter 19.04 of the Thurston County Code, otherwise known as the Thurston County Shoreline Master Program;
3. Chapter 15.05 of the Thurston County Code, otherwise known as the Drainage Design and Erosion Control Manual for Thurston County;
4. Chapter 15.04 of the Thurston County Code, otherwise known as the Minimum Design Standards for Urban and Rural Street Construction in New Developments.

#### Conclusions Based on Findings

1. As conditioned, the proposal satisfies the criteria for reasonable use exception.
  - A. Given the Applicant's mission, the existing use of the site for environmental education, the resource use restriction of the PRRD, and the environmental education opportunities provided by the site's extensive critical areas and waterfront location, the proposed use is the only reasonable use of the property. *Findings 1, 3, 4, 5, 6, 7, 8, and 15.*
  - B. No reasonable use with less impact on the critical area or buffer is possible. Because nearly all of the subject property's street frontage is encumbered by wetland or wetland buffer, it would not be possible to establish the use without critical area impact. The Applicant evaluated multiple access points, and the proposed access point would meet safety requirements while avoiding the larger wetlands. The driveway and parking areas are the minimum size needed for school bus ingress and egress and compliance with the County's parking standards. The drive aisle would be only one lane wide, and no overflow parking is proposed. *Findings 14, 15, 17, and 18.*

- C. As conditioned, the use would not result in damage to other property and would not threaten the public health, safety, or welfare on or off the site, or increase public safety risks on or off the project site. The proposal reduces traffic safety risks associated with the use by bringing bus loading and unloading to the interior of the site instead of along Johnson Point Road. No public health risks were identified during review of the proposal, as portable toilets would be used instead of an on-site septic system, no potable water is required, no solid waste would be stored on site, and the soils have been sampled for contaminants and found to be compliant with state requirements. The conditions of approval require implementation of an Inadvertent Discovery Plan to ensure that any cultural resources discovered during site development are protected. As the owner of privately owned yet publicly accessible nature preserve land, the Applicant is entitled to use its discretion to manage site access to maximally allow site engagement while disallowing criminal activities on site. *Findings 4, 22, 23, 26, 27, 28, 29, 32, and 35.*
  - D. For the reasons described in Conclusion 1.B, the proposal represents the minimum encroachment into the critical area and buffer needed to prevent denial of all reasonable use of the property.
  - E. The proposal would result in minimal alteration of the critical area. Direct wetland impacts would be limited to 707 square feet and would be mitigated at an 8:1 ratio. Indirect impacts would be mitigated at a 4:1 ratio to the extent that there is degraded wetland on site to enhance, with the remainder mitigated through buffer enhancement at a 28:1 ratio. *Finding 19.*
  - F. As conditioned to require implementation of the mitigation plan, including monitoring for 10 years, the proposal would ensure that there is no net loss of critical area functions and values. *Findings 19, 20, and 35.*
  - G. The use would not result in unmitigated adverse impacts to species of concern. *Finding 31.*
  - H. The proposed use is unique and not comparable to surrounding development. The location and scale of existing development in the vicinity was only considered in this decision to the extent that the proposal was designed to minimize if not eliminate any impact to surrounding uses. *Findings 1, 2, 3, 4, and 5.*
2. As conditioned, the proposal satisfies the criteria for a special use permit.
- A. As conditioned and with approval of the reasonable use exception as described above, the proposal is consistent with applicable laws and plans, including the Thurston County Comprehensive Plan, the Zoning Ordinance, the Drainage Design and Erosion Control Manual, the Thurston County Sanitary Code, the Critical Areas Ordinance, the State Environmental Policy Act, and the requirements identified by the US Army Corps of Engineers, the Washington Department of Ecology, and the Washington Department of Archaeology and Historic Preservation. *Findings 7, 9, 10, 11, 12, 14, 15, 16, 19, 20, 21, 22, 23, 29, 30, 31, 32, and 35.*

- B. As conditioned, the proposal is consistent with the purpose and intent of the RRR 1/5 zone and with applicable bulk standards. The proposal provides for extensive enhancement and long-term protection of critical areas on site consistent with the purpose of the zone and with the resource use restriction of the PRRD. The hard surface coverage would be substantially less than allowed in the zone, and the building setbacks would far exceed the minimum required in the zone. There would be natural screening between the development area and surrounding residences. *Findings 7, 8, 9, 10, 11, and 12.*
- C. As conditioned, the use is appropriate for the location in which it is proposed. The site is relatively large and contains environmental features that are compatible with environmental education. The activity hub would be centrally located and screened by existing vegetation so as to minimize the potential for impacts to adjacent properties. With the modest scale of development proposed, the daytime usage of the site, and the proposed wetland preservation and enhancement, the use would not have substantial or undue adverse effects on neighborhood character or the natural environment. The use would not generate significant traffic, particularly since students would arrive by school bus and the site would not otherwise be staffed. Access from Johnson Point Road would be provided at a safe location. Arsenic and lead levels in the site soils comply with state standards. Compliance with the conditions recommended by Planning, Public Works, and Environmental Health staff would further ensure that there are not adverse effects to public health, safety, and welfare. Because the use does not require utilities and would not have a significant traffic impact, it would not impose an undue burden on any improvements, facilities, utilities, or services existing or planned to serve the area. *Findings 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 24, 29, 30, 31, and 32.*
3. As conditioned, the proposal satisfies the criteria for forest land conversion. With implementation of the wetland and buffer enhancement plan and with approval of the reasonable use exception as described above, the proposal is consistent with the critical areas ordinance. The Shoreline Master Program is inapplicable as no development is proposed within shoreline jurisdiction. The conditions of the Public Works Department address stormwater and road requirements. *Findings 6, 15, 16, 19, 20, 25, and 30.*

### DECISIONS

Based on the preceding findings and conclusions, the requests for reasonable use exception, special use permit, and forest land conversion are **GRANTED** subject to the following conditions:

#### **A. Community Planning and Economic Development Conditions:**

1. The project must comply with all other Local, State, and Federal regulations and acquire all applicable permits prior to any work. The property owner is responsible for obtaining permits and approvals from other agencies, as they apply.
2. The project shall be implemented in substantial conformance with the plans as submitted.
3. Land disturbance and site preparation shall be limited to the project area, and adequate provisions

for erosion control shall be implemented. Best management practices shall be employed, and there shall be no additional disturbance of vegetation or trees within the critical area without approval from Thurston County Community Planning and Economic Development. Construction fencing and erosion control shall be placed outside the buffer alongside proposed development areas. This fencing and erosion control shall be inspected prior to building or construction permit issuance.

4. The Applicant shall complete all buffer restoration and mitigation enhancement as proposed within the DCG/Watershed critical area report dated October 24, 2023 prior to final building permit or construction permit inspection. A surety will be required in place of mitigation completion prior to final building permit inspection, per TCC 24.70.
5. Mitigation/enhancement shall be maintained and monitored for ten years per TCC 24.35.017(B.6.).
6. Critical area signs shall be installed along the buffer edge, subject to standards of TCC 24.60. Sign locations shall be installed prior to final building permit inspection. Alternative signage can be proposed by the Applicant that aligns with the nature preserve educational usage.
7. The Applicant and subsequent property owners must comply with all requirements of state and/or federal law to avoid disturbance and alteration of artifacts, remains, or other cultural resources on site during development. In the event of inadvertent disturbance or alteration, the Applicant must immediately stop work and contact the Tribe and the State Department of Archaeology and Historic Preservation.
8. The project shall require posting, and adherence to, an Inadvertent Discovery Plan prior to and during all ground disturbing activities on site (Exhibit 1.BB). The Applicant is responsible for compliance with any other requirements that may result from outside agency and tribal reviews regarding cultural resources on site.
9. Non-exempt signs per TCC 20.40 shall require a permit. The proposed 30 square foot monument sign requires a sign building permit.
10. Outdoor lighting shall be designed and shall function in a manner that shields direct light from adjoining streets and properties.
11. All activities shall be in substantial compliance with the submitted plans, and the SEPA Mitigated Determination of Non-Significance (20-111037 XA) findings and conditions issued on March 25, 2022 (Exhibits 1.H and 1.W).
12. During construction, all releases of oils, hydraulic fluids, fuels, other petroleum products, paints, solvents, and other deleterious materials must be contained and removed in a manner that will prevent their discharge to waters and soils of the state. The cleanup of spills should take precedence over other work on the site.
13. Solid Waste Management. All grading and filling of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required from the local

jurisdictional health department. All debris must be disposed of at an approved site. Contact the local jurisdictional health department for proper management guidance. Derek Rockett (360) 407-6287.

14. Construction activities shall be limited to the hours of 7:00 am to 7:00 pm to minimize associated noise. All activities on-site shall fully comply with noise limitations outlined in WAC 173-60.
15. Provisions shall be made to minimize the tracking of sediment by construction vehicles onto paved public roads. If sediment is deposited, it should be cleaned every day by shoveling or sweeping. Water cleaning should only be done after the area has been shoveled out or swept.

**B. Public Health Conditions:**

1. Environmental Health strongly recommends a drainfield easement be filed with the Thurston County Auditor's Office for the drainfield encroaching on Tax Parcel 11928320000.

**C. Public Works Conditions:**

**Roads**

1. The proposed roadway in concept and design shall conform to the Road Standards.
2. A construction permit shall be acquired from the Thurston County Public Works – Development Review Section prior to any construction.

**Traffic Control Devices**

3. All traffic control devices shall be designed, located, manufactured, and installed in accordance with the Road Standards, Manual of Uniform Traffic Control Devices and applicable WSDOT Standards & Specifications. A sign and striping plan shall be incorporated into the construction drawings for the project. Please contact Thurston County Public Works – Development Review Section Staff to obtain the most current Thurston County guidelines.
1. County forces may remove any traffic control device constructed within the County right-of-way not approved by this division and any liability incurred by the County due to non-conformance by the Applicant shall be transferred to the Applicant.

**Drainage**

2. The stormwater management system shall conform to the Drainage Design & Erosion Control Manual.
3. All drainage facilities outside of the County right-of-way shall remain private and be maintained by the developer, owner and/or the property owners association.
4. Stormwater runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact any existing drainage or other properties.

**Utilities**

5. Utility work within the Thurston County right-of-way shall conform to the Road Standards and Chapter 13.56 Thurston County Code. These standards do not address specific utility design



requirements but rather only items such as restoration of the County right-of-way and traffic control.

- a. Placement of utilities within the County right-of-way will require a Franchise Agreement with Thurston County pursuant to Title 13.56 TCC. This agreement shall be executed with Thurston County prior to final approval.
- b. Please note all utilities placed parallel to and within the pavement structure are required to rebuild a minimum of half the road, to include grinding and replacement of a minimum of 0.20 feet of asphalt concrete pavement.

#### Traffic

6. Per Thurston County Resolution 14820, traffic impact fees shall be paid prior to issuing any building permits associated with this project.

#### General Conditions:

7. No work shall take place until a construction permit has been issued by Thurston County Public Works – Development Review Section.
8. The proposed grading or site work shall conform to Appendix J of the International Building Code, Title 14.37 of the Thurston County Code and Drainage Design & Erosion Control Manual.
9. When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section at 360-867-2051 for a final inspection.
10. This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant. One permit that may be required is a Construction Stormwater Permit from the Washington State Department of Ecology. Information on when a permit is required, and the application can be found at:  
<http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. Any additional permits and/or approvals shall be the responsibility of the Applicant.

#### Project Specific Conditions:

11. Once the planning department has issued the official approval, submit two complete full size sets of construction drawings, the final drainage and erosion control report and all applicable checklists along with an electronic copy to Thurston County Public Works – Development Review Section for review and acceptance. The Final Drainage Report shall address all comment in the Stormwater Scoping Report Response dated 11-24-20 which can be found at:  
<https://weblink.co.thurston.wa.us/dspublic/0/doc/14040747/Page1.aspx>.
12. Prior to construction, the Applicant shall:
  - a. Pay outstanding construction review and inspection fees\*
  - b. Receive erosion and sediment control permit
  - c. Have the erosion and sediment control inspected and accepted
  - d. Receive a construction permit

e. Schedule a pre-construction conference with county staff.

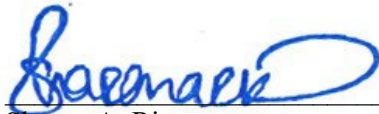
\* The current fee schedule can be found online at <http://www.co.thurston.wa.us/permitting/fees/fees-home.html> or contact Ruthie Padilla with the Thurston County Public Works – Development Review Section by phone at 360-867-2050, or by e-mail at [ruthie.moyer@co.thurston.wa.us](mailto:ruthie.moyer@co.thurston.wa.us).

General Information:

Final Review

13. Prior to receiving final approval from this department, the following items shall be required:
- a. Completion of all roads and drainage facilities.
  - b. Final inspection and completion of all punch list items.
  - c. Record drawings submitted for review and acceptance. The record drawings shall include street names and block numbers approved by Addressing Official.
  - d. Receive and accept Engineer's Construction Inspection Report Form (Appendix I-C, Volume I of the Drainage Design and Erosion Control Manual).
  - e. Receive and accept Maintenance Agreement Form (Appendix I-E, Volume I of the Drainage Design and Erosion Control Manual).
  - f. Execute an agreement with financial security for the maintenance and operation of the drainage facilities in accordance with Thurston County Code 15.05.040 if required.
  - g. Completion of required signing and striping.
  - h. Payment of any required permitting fees.

**DECIDED** April 2, 2024.



Sharon A. Rice  
Thurston County Hearing Examiner

NOTE: Pursuant to TCC 22.62.020(C)10, affected property owners may request a change in valuation for property tax purposes.