



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)	NO. 2022105125
)	
SSHI LLC dba D.R. Horton)	FINDINGS, CONCLUSIONS,
)	AND DECISION - REMAND
)	
For a Preliminary Plat and)	
Forest Land Conversion)	

SUMMARY OF DECISION

The request for a preliminary plat and forest land conversion to subdivide 36.22 acres into 182 single-family residential lots is **REMANDED** for further review.

SUMMARY OF RECORD

Request:

SSHI LLC doing business as D.R. Horton requested a preliminary plat to subdivide 36.22 acres into 182 single-family residential lots to be developed with a mixture of detached single-family residences and attached fee simple townhouse residences, and a forest land conversion to harvest approximately 160,000 board feet of timber. The subject property is addressed as 2402 Marvin Road SE within the Lacey Urban Growth Area of Thurston County.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on April 9, 2024. The record was held open through April 11, 2024 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with an additional two days scheduled for responses by the parties. No post-hearing public comment was submitted, and the record closed on April 11, 2024. No in-person site visit was conducted, but the Examiner viewed the property and its surroundings on Google Maps.

Testimony:

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

Brett Bures, Development Services Manager, Thurston County Community Planning & Economic Development Department

Arthur Saint, Civil Engineer, Thurston County Public Works Department

Dawn Peebles, Senior Environmental Health Specialist, Thurston County Public Health and Social Services Department

Jeff Pantier, PLS, Hatton Godat Pantier, Applicant Representative

Chloe McIntire, PE, Hatton Godat Pantier

Raelyn Hulquist, Entitlements Manager, DR Horton

Clint Lucas, Division Vice President, DR Horton

Curtis Wambach, Senior Biologist, EnviroVector

Kimberly Goetz

Becky Lindauer

Cathy Cook

Exhibits:

The following exhibits were admitted in the record through the virtual open record hearing process:

- Exhibit 1 Community Planning and Economic Development Report, including the following attachments:
- A. Master Application, submitted October 6, 2022
 - B. Forest Land Conversion Application and Map, submitted October 6, 2022
 - C. Division of Land Application, submitted October 6, 2022
 - D. SEPA Cover Letter, submitted October 6, 2022
 - E. SEPA Checklist, submitted October 6, 2022
 - F. Preliminary Plat Map, submitted July 11, 2023
 - G. Civil Plan Set, submitted July 11, 2023
 - H. Critical Areas Report, submitted July 11, 2023
 - I. Cultural Resources Survey, submitted July 11, 2023
 - J. Department of Archaeology and Historic Preservation Review Letter, submitted August 2, 2023
 - K. Oregon White Oak Habitat Management Plan, submitted July 11, 2023
 - L. Integrated Pest Management Plan, submitted July 11, 2023
 - M. Drainage Report, submitted July 11, 2023

- N. Arsenic and Lead Soil Sampling and Testing Report, dated May 24, 2023
- O. SEPA Mitigated Determination of Non-Significance, issued December 1, 2023
- P. Stormwater Pollution Prevention Plan (SWPPP), submitted July 11, 2023
- Q. Maintenance Plan, submitted July 11, 2023
- R. Traffic Impact Analysis, submitted July 11, 2023
- S. Public Works Preliminary Approval Letter, dated February 13, 2024
- T. Environmental Health Preliminary Approval Letter, dated October 20, 2023
- U. Squaxin Island Tribe Comments, dated December 11, 2023
- V. Bill Lindauer comment email, dated December 15, 2023
- W. Department of Ecology Comments, dated December 13, 2022
- X. Notice of Application, issued November 23, 2022
- Y. Affidavit of Public Notice Posting
- Z. Legal Notice, issued March 29, 2024
- AA. City of Lacey Comments, dated November 1, 2022
- Exhibit 2a Comment from Cathy Cook, received April 2, 2024
- Exhibit 2b Comment from Becky Lindauer, received April 8, 2024
- Exhibit 3 Groundwater Monitoring Report, by Reilly Group, dated August 16, 2022
- Exhibit 4 Updated Geotech Report, dated January 19, 2024 – Soil Characteristics And Slopes
- Exhibit 5 Sight Distance Analysis, Dan McKinney, dated April 5, 2024
- Exhibit 6 Prairie Plant Survey, dated June 11, 2022
- Exhibit 7 Mazama Pocket Gopher Screening Report, dated July 14, 2022
- Exhibit 8 Department of Ecology Letter, dated November 11, 2023
- Exhibit 9 Preliminary Landscape Plan, dated September 19, 2022
- Exhibit 10 Sleater Landing Decision, dated December 14, 2022
- Exhibit 11 Colored Plat Map, dated April 1, 2024 (Illustrative Only)
- Exhibit 12 2544 Marvin Road SE Plat, dated August 17, 2023
- Exhibit 13 The Enclave at Oaktree Landslide Hazard Analysis, dated March 7, 2023
- Exhibit 14 Written testimony from Kimberly Goetz, dated April 9, 2024
- Exhibit 15 Project Narrative

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

FINDINGS

1. SSHI LLC doing business as D.R. Horton (Applicant) requested a preliminary plat to subdivide 36.22 acres into 182 single-family residential lots to be developed with a mixture of detached and townhouse residences, and a forest land conversion to harvest approximately 160,000 board feet of timber. The subject property is located at 2402 Marvin Road SE within the Lacey Urban Growth Area of Thurston County.¹ *Exhibits 1.A, 1.B, 1.C, and 1.F.*
2. The subject property is undeveloped. Surrounding land uses include the McAllister Meadows subdivision to the north, an American Legion post to the west, a church and a single-family residence to the southwest, and single-family residences to the south and east. *Exhibit 1.G.*
3. The subject property is within the Lacey Urban Growth Area (UGA) and is underlain by two zoning designations. The northern half of the subject property (18.64 acres, or 11.95 acres net of undevelopable critical areas) is zoned Low Density Residential (LD 3-6). The southern half of the subject property (17.58 acres) is zoned Moderate Density Residential (MD 6-12). *Exhibits 1 and 1.G.* Detached single-family residences and townhouses are permitted uses in both zones, provided the density requirements of each zone are satisfied. *Thurston County Code (TCC) 21.61.030.* For the LD 3-6 zoned portion of the property, the minimum required density is three dwelling units per acre and the maximum allowed density is six dwelling units per acre. *TCC 21.13.010 and .020.* Thirty-eight of the proposed lots would be within the LD 3-6 zone, for a density of 3.18 dwelling units per acre based on net area. All of these lots would be developed with detached single-family residences. For the MD 6-12 zone, the minimum required density is six dwelling units per acre and the maximum density is twelve dwelling units per acre. *TCC 21.15.020.* One hundred and forty-four of the proposed lots would be within the MD 6-12 zone, for a density of 8.19 dwelling units per acre. Fifty-one of the lots would be developed with townhouses, and the remainder would be developed with detached residences. The overall project density would be 6.11 dwelling units per acre. *Exhibits 1.F, 1.G, 11, and 15.*
4. The project would be developed in up to three phases. As described in the project narrative, Division 1 would include 59 single-family detached lots and 24 townhouse lots in the northern portion of the property, Division 2 would include 27 single-family detached lots and 27 townhouse lots in the central portion of the property, and Division 3 would include 45 single-family detached lots in the southern portion of the property. *Exhibits 11 and 15.* It is possible that Divisions 2 and 3 would be simultaneously built. *Jeff Pantier Testimony.*

¹ The legal description of the subject property is: portions of Sections 23 and 26, Township 18 North, Range 1 West, W.M.; also known as Tax Parcel Numbers 1182340100, 11826110000, and 11826110300. *Exhibits 1 and 1.G.*

5. The dimensional standards for lots within the LD 3-6 zone include a minimum lot area of 4,500 square feet and a minimum lot width of 40 feet where alleys are utilized, or a minimum lot area of 5,000 square feet and a minimum lot width of 50 feet where alleys are not utilized. *TCC 21.15.050*. Within the MD 6-12 zone, the minimum required lot area is 3,000 square feet and the minimum lot width is 30 feet where alleys are utilized, or a minimum lot area of 4,000 square feet and a minimum lot width of 40 feet where alleys are not utilized. *TCC 21.15.050*. For townhouses in both zones, the minimum lot area is 1,600 square feet and the minimum lot width is 20 feet. *TCC 21.61.040.C*.
6. Because no alleys are proposed for access to the residences, the larger dimensional standards of the zones apply. All single-family detached lots in the LD 3-6 zone would be at least 50 feet wide and 5,000 square feet in area, and all single-family detached lots in the MD 6-12 zone would be a minimum of 40 feet wide and 4,000 square feet in area. The townhouse lots would be a minimum of 24 feet wide and 2,400 square feet in area, exceeding the minimum requirements established in *TCC 21.61.040.C*. *Exhibit 1.F*.
7. The proposed townhouses would be grouped in buildings of four units, with the exception of Lots 104, 105, and 106, which would be developed as a triplex. Townhouse developments of more than four units are subject to the design review requirements of *TCC 21.70*. The design review process would occur prior to building permit issuance. *TCC 21.61.050; Exhibit 1.F; Brett Bures Testimony*.
8. Access to the subdivision would be from Marvin Road SE to the west, with the subdivision entrance aligning with existing Terri Court SE, and from Olivia Street SE to the north. The internal street system would stub at exterior property lines in three places to allow for future street connections to parcels to the southwest and southeast. *Exhibits 1.F and 12*.
9. Frontage improvements would be provided along Marvin Road SE to arterial street standards, including curb, gutter, sidewalk and planter strip. A 19-foot width of right-of-way would be dedicated along the property frontage. *Exhibit 1.G*.
10. Access to all lots within the plat would be from an internal network of public streets designed to City of Lacey standards. No lots would take direct access from Marvin Road SE. All internal streets would be improved with sidewalks and planter strips. *Exhibit 1.G*.
11. Based on the trip generation rates contained in the Institute of Transportation Engineer's publication *Trip Generation*, 11th Edition, the proposed subdivision is expected to add 152 PM peak hour trips to the local street system. This traffic would not cause the level of service (LOS) of any of the studied intersections (including Marvin/Steilacoom, Union Mills /Pacific, Marvin/Pacific, Marvin/Union Mills, Marvin/22nd, Marvin/25th, and Marvin/Mullen) to fall below the applicable LOS standard. All intersections, including the new access from Marvin Road, would operate at LOS D or better. *Exhibit 1R*.

12. Pursuant to TCC Table 21T-13, each single-family unit must provide a minimum of two off-street vehicle parking stalls. *TCC Title 21, Table 21T-13*. The proposed dwelling units would have garages for parking. Compliance with the parking standard would be confirmed at building permit issuance. *Exhibit 15*.
13. Pursuant to TCC 21.80.055(1)(b), proposed subdivision lots that are smaller than 50% of the size of the contiguous residential lots are defined as an incompatible use. When the shared property line is at least 20 feet in length, incompatibility is required to be screened by a 30-foot wide vegetated buffer planted with predominantly native and drought tolerant species that provides a very dense sight barrier and physical buffer to significantly separate conflicting uses. A combination of trees, shrubs, berms, fences, and related design features may be selected, provided that the result is sight-obscuring from adjoining properties. Retaining mature vegetation is preferred. *TCC 21.80.055*.
14. For the proposed development, there are several areas where the incompatible use buffer would apply: the west side of Lot 182, the south side of Lots 159 through 182, the east side of Lot 159, the south side of Lots 46 and 47, and the east side of Lots 39 through 46. The Applicant proposes to provide the standard 30-foot incompatible use buffer on the south side of Lots 46 and 47, but in all other areas proposes a reduced buffer in combination with an eight-foot tall fence. The proposed incompatible use buffer along the west side of Lot 182, which abuts a single-family residential parcel of 0.94 acres (2636 Marvin Road SE), would be 13 feet wide.² In all other locations where the requirement applies, the proposed buffer would be 20 feet wide.³ The preliminary landscaping plan depicts a mix of trees, shrubs, and groundcover in all locations where the incompatible use buffer is required except that no trees or shrubs are depicted along west side of Lot 182 or the east side of Lot 159. As described at hearing, the proposed eight-foot fences would be installed just inside the property boundaries with the aesthetic side facing out, and would be owned and maintained by the project's homeowners association. *Exhibits 1.F and 9; Testimony of Clint Lucas and Jeff Pantier; Google Maps site view*.
15. At hearing, the Applicant submitted a preliminary plat map for a project currently in development on the adjacent property between the southern portion of the subject property and Marvin Road, called the 2544 Marvin Road SE Plat, which appears to be proposed on property currently developed with the American Legion Post. The plat map, prepared by Patrick Harron Associates, is dated August 2023. The status of this adjacent proposal was not clearly established in the record. The adjacent plat's internal road system would apparently connect to the western stub of the southmost road in the instant plat near Lot 182. It is not clearly established in the record, but it appears that the existing single-family residential parcel at 2636 Marvin Road SE is not included in the

² The undersigned takes notice of publicly available Thurston County Parcel Viewer data for Parcel 11826120101.

³ Of note, the 20-foot wide incompatible use buffer required for Lots 39 through 46 is depicted as applied to the entire eastern property line including the portion abutting a large parcel identified on the plat map as Tract C of the McAllister Park Division 1 subdivision. As this property is not developed with single-family residential lots, it is not clear why the buffer would apply to proposed Lots 31 through 38. Even if Tract C were capable of being subdivided into larger residential lots in a future phase of development, proposed Lots 31 through 38 would not be incompatible with the property's current condition.

2544 Marvin Road SE Plat, which would mean that the west side boundary of proposed Lot 182 would still abut a residential parcel of 0.94 acres and thus be subject to the incompatible use buffer. *Exhibit 12; Google Maps site view; Thurston County Parcel Viewer data for Parcel 11826120101.*

16. Although TCC 21.80.055.3(g) specifies that the retention of existing native vegetation within the incompatible use buffer is preferred over the removal and replacement of vegetation, the ability to retain existing trees and vegetation is limited by site slopes and the amount of grading required for the project, particularly along the eastern property line. Retaining walls would be constructed along the east side of the lots, with 2:1 slopes created between the walls and the east property boundary. *Exhibits 1.G and 9; Chloe McIntyre Testimony.*
17. Based on review of the preliminary plat map, the Hearing Examiner notes the following with respect to the proposed reduced incompatible use buffers:
 - The reduced buffers on the west side of Lot 182 and the east side of Lot 159 could not be increased without eliminating one lot along the southern edge of the subdivision. Each of Lots 159 through 182 would be exactly 40 feet wide – the minimum for the zone, so the lot widths could not be adjusted to create more space. *Exhibit 1.F.*
 - It does not appear that the reduced buffer behind Lots 39 through 46 could be increased without eliminating lots. Each lot would have the exact width and depth needed to meet the minimum lot area requirement of the zone. Reducing the lot depths along the row would cause all lots to be noncompliant unless lots were eliminated. It does not appear that the extension of Olivia Street could reasonably be moved to the west to allow additional lot depth, as that would cause an offset street alignment and potentially cause lots on the opposite side of the street to be noncompliant with respect to area. *Exhibit 1.F.*
 - It does not appear that the reduced buffer behind Lots 159 through 182 could be increased without eliminating lots. Each lot would have the exact width and depth needed to meet the minimum lot area requirement of the zone. Reducing the lot depths along the row would cause all lots to be noncompliant unless lots were eliminated. Shifting the streets would cause compliance issues with successive rows of lots. The layout proposed is logical given site constraints. *Exhibit 1.F.*
18. Although the incompatible use buffer is required adjacent to Lots 159 through 182, Lot 46, and Lots 39 through 47 (which totals 33 lots), there is no analysis of the requirement as applied to the proposal in the staff report. *Exhibit 1.* At hearing, Staff noted that TCC 21.80.060 allows examiner to approve modification to landscaping if identified criteria are satisfied. No analysis of the project's compliance with the criteria in TCC 21.80.060.B was provided. *Brett Bures Testimony.*
19. While the project narrative mentions provision of an incompatible use buffer in various tracts, there is no analysis or discussion of the reduced width or how the proposed buffer, which differs from that required by code, satisfies TCC 21.80.055. *Exhibit 15.* In support of the request for a reduced incompatible use buffer, at hearing the Applicant argued that

the eight-foot fence exceeds code requirements and would be sight-obscuring consistent with the intent of the buffer requirement, that a similar reduced buffer in combination with eight-foot fence was approved for previous projects, and that the reduced buffer width is warranted due to the amount of critical area preservation on site. *Exhibit 10; Jeff Pantier Testimony; Duana Kolouskova Argument.*

20. The northern portion of the subject property contains 2.61 acres of a 4.58-acre Category III wetland. Due to the wetland's habitat score of 4, the minimum buffer required by the Thurston County critical areas ordinance (CAO) is 140 feet. The Applicant proposes to preserve the wetland and buffer within proposed Tract A. Although the preliminary plat map calls out a 25% buffer reduction on the east side of the wetland for storm drainage Tract D, no development of the area is proposed; the civil plans depict that the drainage pond would be constructed outside of the wetland buffer. The extent to which construction might affect the buffer was not made clear in the project materials, and the Applicant did not address the buffer reduction criteria of TCC 24.30.310, if applicable. *Exhibits I.H and I.F.* An Applicant representative testified that an earlier iteration of the proposal had considered proposing a 25% buffer reduction and that some of the graphics still showed that reduced buffer's extent, but that the project as finally designed and under consideration in these proceedings does not propose or rely on any reduction of the wetland buffer width. *Jeff Pantier Testimony.*
21. The subject property does not contain any landslide hazard slopes. The steepest slope on site is 12% in grade. *Exhibit 13.*
22. The subject property has been screened for Mazama pocket gophers, a threatened species under the Endangered Species Act that is protected by the CAO. No Mazama pocket gopher mounds were detected during the screening, which was conducted consistent with County protocols. Further, the wetland and densely forested areas of the site are not known to be pocket gopher habitat. *Exhibit 7.*
23. The subject property contains three major vegetation types. The northwestern portion of the property consists of an Oregon white oak woodland, which is designated an important habitat by the CAO. A small number of individual Oregon white oak trees are located outside of the woodland along the western property line and in the northcentral portion of the property. Individual oaks are protected by the CAO when within one-half mile of an oak woodland. *TCC 24.25.065.B.4.* The eastern and southern portions of the subject property consist of a Douglas fir dominated forest, with no Oregon white oaks. The central and western portions of the property consist of European lawn grasses, scotch broom, Himalayan blackberry, and associated lawn herbs. *Exhibit I.K.*
24. A total of 209 Oregon white oak trees have been identified on site. The Applicant proposes to preserve the Oregon white oak woodland within proposed Tract B. The individual Oregon white oaks onsite outside of the woodland would also be preserved except for one isolated tree with a 1.25-inch diameter in the central portion of the site. *Exhibit I.K; Curtis Wambach Testimony.* As mitigation for removal of one small, isolated oak, which does not have measurable habitat value, the Applicant would enhance

the oak woodland by removing non-native invasive weeds, trash, and debris from the understory. The enhancement would improve the habitat value of the woodland by allowing for oak sapling and native understory plant growth. *Exhibit 1.H; Curtis Wambach Testimony*. The undersigned notes that it was not made clear whether or how many trees - potentially including oaks - would have to be removed in the 19-foot wide portion of the property that would be dedicated for frontage improvements on Marvin Road in order to achieve required entering sight distance.

25. The subject property also contains a Douglas fir tree with (as of the July 2023 date of the critical area report) an active red-tailed hawk nest. *See Exhibit 1.K, Figure 2*. Although the red-tailed hawk is not a state-listed priority species, it is protected under the Migratory Bird Treaty Act, which has permitting requirements for removal of an active nest. In this case the Applicant proposes to retain the tree, which is on the west property line, in an area roughly corresponding to the northwest corner of Lot 80. While protection of the tree is not indicated on the submitted landscaping plan, Applicant representatives testified that it would be preserved. *Exhibits 1.H, 1.K, and 9; Curtis Wambach Testimony*.
26. The proposal includes an application for forest land conversion, stating an intention to harvest approximately 160,000 board feet from 28 acres of the subject property. The oak woodland, wetland, and buffer (which also includes some oak trees) would be excluded from the harvest area. *Exhibit 1.B*. The criteria for forest land conversion require that at least 5% of the property being subdivided be preserved or planted with new trees and dedicated as a separate tract. The County may waive the dedication requirement if an equivalent means of retaining or planting trees is provided in the development proposal. *TCC 17.25.400.D.5.a*. To meet the tree tract requirement the Applicant proposes to retain trees within Tract B (0.93 acres), which corresponds to the oak woodland, and Tract A (7.08 acres), which corresponds to the wetland and buffer. Tracts A and B, which combined contain 375 trees, would constitute 22% of the site area and thus exceed the minimum tree tract requirement. *Exhibit 1.F*.
27. In addition to the tree tract requirement, the forest land conversion ordinance requires a tree plan identifying safeguards to be employed to protect retained trees, the landscaping or planting of all common areas within the subdivision, the retention or planting of new trees on individual lots at a rate of one tree for every 4,000 square feet of lot area, and the installation of street trees. *TCC 17.25.400.D.5.c, -f, -g, and -h*. The Applicant submitted a landscaping plan (based on a previous iteration of the plat) depicting the installation of street trees and the landscaping of open space and stormwater tracts. The submitted landscape plan indicates that no trees are required to be planted on the lots, based on an interpretation of TCC 17.25.400 that the trees retained within the tree tracts would count towards that requirement. *Exhibit 9*. Planning Staff's recommended conditions of preliminary plat approval include a requirement to plant trees on individual lots consistent with the ordinance. *Exhibit 1*.
28. Pursuant to TCC 18.47.040.B, the minimum usable open space requirement within the Lacey UGA is 10% of the total site area. Up to half of the open space may be satisfied

by wetlands, buffers, and tree tracts. The open space may also include stormwater facilities designed for active or passive recreation. In this case, the usable open space requirement is 3.62 acres, half of which may be satisfied by the wetland and tree tracts, which total 8.01 acres. Active recreation opportunities would be provided on site through a playground in proposed Tract E (0.19 acre), and through the two proposed storm ponds (Tracts C and D, totaling 3.29 acres) that would be landscaped with lawn grass. The total open space provided (including the previously identified tracts along with the incompatible use buffers) would be 12.63 acres. *Exhibits 1, 1.F, and 9; Jeff Pantier Testimony.*

29. The subject property is within Category I, II, and III aquifer recharge areas, designations which do not prohibit residential development, but which require the project to include best management practices designed to protect groundwater. *Exhibit 1.T; TCC 24.10.020; TCC 24.10.030; TCC 24.10.195.* The Applicant has prepared an integrated pest management plan (IPMP) that provides a process for pest management that would minimize the application of chemicals within the subdivision. *Exhibit 1.L.* County Environmental Health Staff recommended that the plan be revised to also address landscape practices occurring during the development phase. *Exhibit 1.T.*
30. The subject property is located within the North Thurston Public Schools service area (School District). Students from the subdivision at all grade levels would be bussed to school from bus stop locations to be coordinated with the School District. All of the streets installed with the project would include sidewalks on both sides, allowing safe walking to the designated bus stops. *Jeff Pantier and Raelyn Hulquist Testimony.* Impacts to school capacity from the additional students who would reside in the plat would be mitigated through payment of impact fees pursuant to TCC 25.08.030. *TCC 25.08.030.*
31. Intercity Transit provides public bus service along Marvin Road. There is an existing bus stop at the north end of the site, at the proposed plat entrance across from Terri Court. *Exhibit 1.E.*
32. The lots within the subdivision would be connected to the City of Lacey water and sewer systems, which have capacity to serve the subdivision. *Exhibit 1.T.*
33. The proposed stormwater management system would be designed consistent with the 2022 Thurston County Drainage Design and Erosion Control Manual. Stormwater runoff would be infiltrated on site within infiltration treatment ponds to be developed within Tracts C and D and an infiltration trench. Water quality treatment would be provided through use of pre-settling basins and 24-inch amended treatment liners within the infiltration ponds. The amount of runoff from the subject property is expected to be reduced as compared to existing conditions. For storms exceeding the 100-year level, the ponds would overflow to the wetland, consistent with existing conditions. *Exhibits 1.G and 1.M; Chloe McIntyre Testimony.*

34. The Applicant has developed a Construction Stormwater Pollution Prevention Plan (SWPPP) to address erosion and sediment control to comply with Department of Ecology requirements. *Exhibits 1.M, 1.P, and 1.W.*
35. The Thurston County Public Works Department reviewed the project for compliance with the 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 project, subject to conditions. The recommended conditions address, among other things, right-of-way dedication for road improvements and payment of mitigation fees. *Exhibits 1.S.*
36. The Thurston County Environmental Health Division reviewed the project for compliance with the Thurston County Sanitary Code and recommended approval, subject to conditions. The recommended conditions require existing wells and any septic systems onsite to be decommissioned/abandoned in accordance with applicable standards, City of Lacey water and sewer to be extended through the site, and the IPMP to be revised and approved. *Exhibit 1.T.*
37. The Applicant commissioned an archaeological survey of the subject property, which found no cultural resources. The Washington Department of Archaeology and Historic Preservation (DAHP) concurred with the survey results. DAHP recommended that a standard inadvertent discovery plan be followed during all ground disturbing activities. *Exhibit 1.J.*
38. Thurston County acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). The County issued a mitigated determination of non-significance (MDNS) on December 1, 2023. The MDNS contains conditions requiring the Applicant to pay \$104,957.84 in traffic mitigation to the City of Lacey, construct street frontage improvements, use only clean fill, test potentially contaminated materials, test the soil on site for arsenic and lead contamination from the Asarco smelter, control erosion, and comply with Department of Ecology water quality requirements. The MDNS was not appealed and became final on December 22, 2023. *Exhibit 1.O.*
39. The Applicant conducted the soil sampling specified in the MDNS in May of 2023. The average soil concentrations of arsenic and lead were below state cleanup levels, and no individual sample exceeded the maximum allowable concentration for arsenic or lead. The Department of Ecology reviewed these results and confirmed that no soil remediation is required. *Exhibit 8.*
40. Notice of the open record hearing on the applications was mailed to property owners within 300 feet of the subject property on March 20, 2024 and published in *The Olympian* and posted on site on March 29, 2024. *Exhibits 1.Z and 1.Y.*
41. Public comment on the application included the following concerns: that the project would adversely impact the wetland and its inhabitants, including great horned owls

identified in the area by one commenter and bats asserted to be present in another comment; that the new access from Marvin Road would flood due to its close proximity to the wetland on site, and that the flooding would divert project traffic through the neighborhood to the north; that there is inadequate sight distance at the proposed plat entrance; a request to retain existing vegetation in the perimeter buffer rather than remove and replace it; a request for assurance that perimeter fence installation would be accomplished in a manner that would not open existing neighbor backyards and result in unsafe conditions for pets and children on neighboring parcels; questions regarding maintenance, location, and design of perimeter fence; and concern that proposed grading might damage adjacent fences and landscaping, and would result in adverse erosion impacts. There was also objection to the proposed project density. *Exhibits 2A, 2B, 1.V, and 14; Testimony of Cathy Cook, Becky Lindauer, and Kimberly Goetz.*

42. Flooding of the access from Marvin Road is not anticipated because groundwater monitoring within the road footprint did not indicate inundation and because the road would be elevated seven feet over existing grade. *Chloe McIntyre Testimony; Exhibits 1.G and 3.* The proposed road corridor could not be moved consistent with arterial access spacing requirements and Oregon white oak protection requirements. County Staff noted that due to the various elevations of the features, if the plat access road were to flood, Marvin Road would be fully flooded as well, and this is not expected to happen. Regarding the potential for redirection of project traffic through the plat to the north, Staff noted that there would be a road connection to the south that would be a more direct route to Marvin Road once built. *Arthur Saint Testimony.*
43. The Applicant submitted a sight distance analysis, prepared by a transportation engineer, for the proposed site entrance from Marvin Road. The conclusion of the analysis was that there is adequate stopping sight distance in both directions and adequate entering sight distance to the north of the driveway, but inadequate entering sight distance to the south of the driveway due to obstructing vegetation within the right-of-way. With removal of the obstructing vegetation during construction of required frontage improvements, the entering sight distance would be adequate. *Exhibit 5.*
44. Addressing potential wildlife impacts and the request for perimeter tree retention, Applicant witnesses submitted that the great horned owl is not a state priority species and is not protected by County or federal regulations that apply. The project would retain a large portion of undisturbed wetland and buffer, would retain all but one small oak, and would enhance existing oak woodlands, improving habitat functions on site. Applicant engineering consultants indicated that the minimum amount of existing vegetation disruption is the project goal but that it would not be possible to retain any trees in the incompatible use buffer where there are slopes due to the required grading. The Applicant intends to follow all adopted regulations with respect to the protection of migratory birds and would coordinate site activities to avoid impacts during nesting windows. *Testimony of Curtis Wambach and Chloe McIntyre; Duana Kolouskova Argument.* County Staff further noted that the critical areas report provided by the Applicant was accepted by the County biologist. *Brett Bures Testimony.*

45. In response to neighbor concerns about offsite backyard security during construction, Applicant witnesses testified that the builder would coordinate with property owners to the south prior to removal of any fences or trees by directly contacting neighbors. At a minimum, temporary fencing would be set up to ensure neighboring yards remain enclosed during fence installation, which typically takes two days. The proposal is for an eight-foot tall cedar fence that would be built just within the subject property boundaries. Approximately 1.5 to two feet of level ground would be retained inside the fence before the land slopes down at a 2:1 grade to the proposed rear yards. The aesthetic side of the cedar fence would face out, and the perimeter fence would be maintained by the project's homeowners association. *Testimony of Clint Lucas and Jeff Pantier.*
46. In final comments in support of the reduced incompatible use buffer proposed, Applicant representatives noted that the proposed eight-foot cedar fence would be completely sight obscuring and would provide privacy for people on both sides of the fence in excess of the minimum code requirements. The need for the reduction in incompatible use buffer width is the result of the complexities of the property with respect to the need to balance preservation of critical areas, the variable topography, and the required minimum density for development. The proposal would retain the site's critical areas undisturbed. The proposed reduced buffers satisfy the intent of the incompatible use buffer provisions. *Jeff Pantier Testimony; Duana Kolouskova Argument.*

CONCLUSIONS

Jurisdiction:

The Examiner is granted jurisdiction to hear and decide preliminary plats of lands within unincorporated Thurston County pursuant to TCC 2.06.010.A, TCC 18.10.030, and TCC 21.60.050.B. Pursuant to TCC 20.60.020(3), TCC 17.225.400.E(3), and TCC 20.60 Table 2, the Hearing Examiner is granted jurisdiction to hear and decide applications for Type III forest land conversion applications.

Criteria for Review:

Preliminary Plat Criteria

Pursuant to TCC 18.12.090.B, preliminary plat approval may be granted if the following criteria are shown to be satisfied:

1. Appropriate provisions are made for the public health, safety, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
2. The public use and interest will be served by the platting of such subdivision and dedication. If the hearing examiner finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the hearing examiner shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as

a condition of subdivision approval. Dedications shall be clearly shown on the final plat. The county shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

Forestland Conversion Criteria

Pursuant to TCC 17.25.400.D, forest lands conversions within the north county urban growth area shall comply with all of the applicable provisions of the following:

1. Title 24 of the Thurston County Code otherwise known as the Thurston County Critical Areas Ordinance and Chapter 17.15 of the Thurston County Code, 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;
5. Residential Subdivisions. Applications for residential subdivisions submitted to the resource stewardship department after September 29, 1997 are subject to the following:
 - a. Except in the R ½ and RLI 2-4 districts (Olympia Urban Growth Area, TCC 23.04), at least five percent of the property being subdivided must be preserved or planted with new trees and dedicated as a separate tract(s). Critical areas and their required buffers may be applied toward this five-percent requirement, but only the portion that contains trees to be preserved. The director may waive the dedication requirement if some other equivalent means of retention or replanting is provided by the development proposal. In the R ½ and RLI 2-4 districts, tree tracts shall comply with Sections 23.04.080(J)(5) and (6), respectively.
 - b. Any part of a tree tract located outside of critical areas and their associated buffers shall count toward open space required for the development by TCC 18.47 Open Space Standards, and 20.32 Open Space, consistent with the provisions of those chapters.
 - c. The plan shall identify what site development safeguards shall be employed to protect trees and ground cover proposed to be retained with the development of the site.
 - d. Where sites proposed for subdivision do not contain healthy trees that can be incorporated in the project and remain windfirm following development, the tree tract shall be planted with trees. The trees to be planted shall be of a type and spacing that, upon maturity, will provide a canopy spanning at least seventy-five percent of the tract. At the time of planting, evergreen trees shall be at least four feet tall and deciduous trees shall be at least one and one-half-inch caliper.
 - e. Where disturbed, critical area buffers may be planted with trees as necessary to improve the buffers for slope stability, wildlife habitat, wetland improvement, screening, etc.

- f. All common areas in residential subdivisions shall be landscaped or planted with new trees.
- g. The retention of existing trees or the planting of new trees on individual residential lots shall be required at a rate of one tree for every four thousand square feet of lot area.
- h. Street trees shall be installed per the applicable street development standards as stated in Chapter 15.04 of the Thurston County Code.
- i. A bond or other such method of financial security in an amount equal to one hundred twenty-five percent of the cost to purchase and install the required trees, based upon a contractor's estimate accepted by the county, shall be provided to the county to secure the successful establishment of newly planted trees. The county shall draw upon this surety as needed to replace any trees that die, upon failure of the developer or other responsible party to do so within the time period specified by the county. The developer shall not be required to replant trees which die or suffer severe degradation as a result of a water purveyors failure to supply adequate water, acts of vandalism or other actions of unrelated third parties acting beyond the developer's control. Such financial security shall be effective for a two-year period following completion of the planting.

Additional Applicable Provision

TCC 21.80.055 Incompatible uses. (emphasis added)

- 1. An incompatible use is defined as:
 - a. A commercial or industrial zoning district or use adjacent to: (1) a residential lot of two acres or less, or (2) a residential zoning district with a density of one unit per two acres or greater.
 - b. A proposed residential subdivision lot that is less than fifty percent of the square footage of an existing contiguous residential lot.
- 2. Applicability.
 - a. This section applies where the common property line is at least twenty feet in length and where a new proposed use is adjacent to an incompatible use as described in section 1.
 - b. Individual single-family residences, existing, legal non-conforming uses and properties separated by a public road are exempt from the requirements of Section 21.80.055. Development in the Hawks Prairie Business District (Chapter 21.37) and Business Park District (Chapter 21.41) are also exempt from the requirements of Section 21.80.055.
 - c. A variance to reduce the buffer width may be permitted pursuant to TCC 21.90.
- 3. Screening between incompatible uses—Screening shall consist of a thirty-foot wide buffer containing the following:
 - a. A vegetated buffer of predominantly native and drought tolerant species that will provide a very dense sight barrier and physical buffer to significantly separate conflicting uses and land use districts.

- b. Plant materials and ground cover shall be selected and maintained so that the thirty-foot buffer will be fully vegetated within three years.
 - c. A combination of trees, shrubs, earthen berms, and related plant materials or design features may be selected, provided that the resultant effect is sight-obscuring from adjoining properties. In addition, fences and walls may be incorporated into the landscaping buffer.
 - d. A minimum of one tree per twenty-five linear feet shall be planted. Trees shall be a minimum one inch in caliper measured six inches above the base at the time of planting.
 - e. Shrubs must be capable of growing to a minimum of five feet in height, within three years. Shrubs shall be planted on eight-foot centers at minimum.
 - f. Ground cover shall consist of bark, mulch, native grasses and/or native understory vegetation such as salal, Oregon grape, kinnikinnick, Sword fern, etc.
 - g. Retention and salvage of existing native vegetation and trees is preferred over removal and replacement of vegetation.
4. The thirty-foot buffer required by this section may be used for the following so long as the design standards of subsection 3 can be met.
- a. Storm water treatment facilities.
 - b. Open space.
 - c. Tree tracts.
 - d. Critical area protection.
 - e. Required landscaping.
5. In the event of a conflict between the standards for individual uses and other general requirements of this chapter, the more stringent shall apply. Determination of the appropriate standards shall be made by the department.

TCC 21.80.060 Alternative landscaping option. (emphasis added)

- A. The applicant may request a modification of the landscaping requirements set forth in Sections 21.80.030 and 21.80.040 of this chapter.
- B. The department and/or hearing examiner may approve a modification of the landscaping requirements of this chapter only if:
 - 1. The proposed landscaping implements portions of an urban forestry program or plan duly adopted by the county;
 - 2. The proposed landscaping represents an equal result that could have been achieved by strictly following the requirements of this chapter; and
 - 3. The proposed landscaping complies with the stated purpose of this chapter.
- C. Natural vegetation or stands of trees existing prior to development of the site may be acceptable to meet all or part of the landscaping requirements.

TCC 21.90 Variances

TCC 21.90.010 When granted.

If because of special circumstances applicable to subject property due to size, shape, topography, location or surroundings, the strict application of this title is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity and under identical zone classification, the hearing examiner may grant a variance in accordance with the provisions for variances in Chapter 20.52 TCC and Chapter 21.81 of this title.

TCC 20.52.010 Variances—General.

The hearing examiner shall have the authority to grant a variance from the requirements of this title, after considering the matter at a public hearing duly called, giving notice to adjoining property owners as provided in this chapter.

TCC 20.52.020 Findings—Variances.

Before any variance can be granted, the hearing examiner shall make findings of fact setting forth and showing that the following circumstances exist:

1. That the granting of the proposed variance will not result in the allowance of a use which is not classified as a permitted or special use in the district wherein the use would be located;
2. That special conditions and circumstances exist which are peculiar to the land, such as size, shape, topography or location, not applicable to other lands in the same district and that literal interpretation of the provisions of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;
3. That the special conditions and circumstances are not the result of the actions of the applicant;
4. That granting of the variance requested will not confer a special privilege to the property that is denied other lands in the same district;
5. That the granting of the variance will not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity and district in which the property is situated;
6. That the reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land;
7. That the granting of the variance will be in harmony with the general purpose and intent of this title and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

TCC 20.52.030 Variances—Limitation of review by hearing examiner.

The fact that property may be utilized more profitably shall not be an element of consideration in any review of a variance request.

Conclusions Based on Findings:

1. The incompatible use buffer provisions expressly establish that a reduction in buffer width may be permitted through a variance pursuant to TCC Chapter 21.90. *TCC 21.80.055(2)(c)*. Pursuant to TCC 21.90.010, the hearing examiner may grant a variance in accordance with the provisions of TCC Chapters 20.52 and 21.81. TCC 20.52.020 establishes seven criteria for variance approval. In TCC Chapter 21.81, the Lacey UGA zoning ordinance establishes application requirements and review procedures that identify such a variance as a Type III permit subject to notice of application and public hearing.
2. Without providing any analysis relevant to the proposal, Planning Staff submitted that the Hearing Examiner has authority to modify the incompatible use buffer pursuant to TCC 21.80.060. The Applicant correctly pointed out that in at least two previous decisions, the Examiner had approved a reduction of the incompatible use buffer without a variance: *Sleater Landing, No. 2021101836*, issued December 14, 2022 and *Emerson Crossing Plat, No. 2016106141* issued August 7, 2018. Both decisions relied on the authority in TCC 21.80.060 for buffer width reduction.
3. The Examiner declines to adopt this interpretation of the procedures established in code for the following reasons.
 - a) The plain language of the two regulations cannot be read to allow a reduction in the width of the incompatible use buffer through authority in TCC 21.80.060 without rendering TCC 21.80.055(2)(c) meaningless. The process called out in the incompatible use buffer provisions is a Type III variance, subject to application, notice, and public hearing per TCC Chapter 21.81, in which the Applicant bears the burden of proving compliance with seven criteria for approval established in TCC 20.52.020.

In contrast, TCC 21.80.060.A allows a “modification” of “landscaping” standards established in TCC 21.80.030 (which requires Type I landscaping for specific uses) and 21.80.040 (which requires retention of significant trees). TCC 21.80.060.B authorizes the Department or the Examiner to approve modification of landscaping standards⁴ and does not call out a particular level of process, making no reference to TCC 21.81.

Significantly, an incompatible use buffer is not “landscaping”; it is a buffer intended to screen incompatibility as defined in code.
 - b) The two prior Hearing Examiner decisions cited by the Applicant can be distinguished from the instant project on several grounds. In both previous decisions, the reduced incompatible use buffer width affected only two lots, while in the instant case at least 33 lots are implicated. The potential for impacts to surrounding properties is greater in this case. Further, in both cited decisions, Planning Staff

⁴ Neither the Staff nor Applicant addressed the three criteria for modification of landscaping established in TCC 21.80.060.B in the record submitted.

analyzed the request to reduce the incompatible use buffer and provided a recommendation to approve the reduction based on the *de minimus* nature of the potential impact to adjoining properties from the reductions. In the instant case, no analysis and no recommendation based on evidence of impact/lack of impact were provided by Staff.

Notably, since issuance of Sleater Landing in 2022, there have been two subsequent decisions issued by the Examiner in which reduction in incompatible use buffer width was addressed through variance. Most recently, in the *Sienna I Plat and Variance, No. 2022103527* issued December 29, 2023, the applicant applied for a Type III variance together with the plat to reduce the incompatible use buffer width to eight feet; through the course of the hearing, that applicant modified the request to reduce the buffer width to 15 feet in width, which variance was approved. Prior to that, the *Deskins Grand Mound Plat No. 2021106455* issued December 11, 2023 was remanded after hearing for redesign including the requirement to apply for a variance to reduce the incompatible use buffer width, which the Applicant did before the project was approved.

At least one project within the Lacey UGA has addressed the 30-foot incompatible use buffer width on a property constrained by critical areas through provision of the outer 20 feet of buffer width in a common landscaping tract and the inner 10 feet of buffer width in an easement across the rear yards of the proposed lots. *Manor House Preliminary Plat/PRD/Forest Land Conversion, No. 2020102143* was issued May 9, 2022. It is possible that a similar proposal could be approvable for the rear lot lines in the instant proposal because it would leave each lot with 90 feet of useable depth; however, it does not appear this solution could be implemented along the side lot lines for Lots 159 and 182 without rendering those two lots unbuildable.

4. To the extent that the instant interpretation of the applicable regulations renders the previous decisions in Sleater Landing and Emerson Crossing erroneous, those decisions are final and cannot now be overturned. Again, the reduced buffer widths in each case only affected the widths of two lots, unlike the 1,343 linear feet of project perimeter at issue in the present case, and the record in each case supported the conclusion that the buffer reductions would have minimal impacts to adjoining properties. To the extent that this Applicant relied on prior erroneous decisions by the undersigned, the (regretful) undersigned is required to point out (as was stated at hearing) that hearing examiner decisions do not carry precedential value and an Examiner cannot, even through repeated erroneous interpretation, alter adopted code requirements.

DECISION

Based on the preceding findings and conclusions, the requested preliminary plat and forest land conversion permits are **REMANDED** for further required review and process as follows:

1. Revision of the preliminary plat map and all plans to provide a 30-foot incompatible use buffer along the rear lot lines of proposed Lots 39 through 46 and 159 through 182

together with a proposal on how to address the buffer along the sides of Lots 159 and 182; and/or

2. Submittal of a complete application for variance from incompatible use buffer width for some or all of the affected lots, to be reviewed by Planning Staff and noticed for a public hearing. Such a public hearing could be consolidated with a reconvened hearing in the instant preliminary plat and forest land conversion applications to address any required changes to the plans and layout reviewed in the instant proceedings. Scheduling of the variance and reconvened plat/forest land conversion hearing shall be given priority in the hearing examiner calendar. A decision would issue following the hearing that would address all three applications.
3. At the Applicant's option, rather than submitting a revised materials or variance application, the Applicant may treat this decision as a denial of the preliminary plat and forest land conversion applications for purposes of appeal.

Decided April 26, 2024 by



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$861.00** for a Request for Reconsideration or **\$1,174.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center at 3000 Pacific Ave SE, Suite 100 no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable**. If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____
Appeal Sequence No.: _____

☐ Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

☐ Check here for: **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
on this _____ day of _____, 20____, as an APPELLANT in the matter of a Hearing Examiner's decision
rendered on _____, 20____, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED _____

SIGNATURE OF APPELLANT _____

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of ☐ \$861.00 for Reconsideration or \$1,174.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.