



## COUNTY COMMISSIONERS

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District One

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District Two

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District Three

## HEARING EXAMINER

*Creating Solutions for Our Future*

### BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Application of	)	NO. 2018106848
	)	
<b>Frank Lionel and Tracy Marie Farr,</b>	)	
<b>Co-Trustees of the Farr Family Trust</b>	)	<b>Farr Release of Moratorium</b>
	)	
For Approval of a	)	
Release of Development Moratorium	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION
	)	

### SUMMARY OF DECISION

The requested release of development moratorium at 5515 Puget Road NE is **GRANTED**.

### SUMMARY OF RECORD

#### **Request:**

Frank Lionel and Tracy Marie Farr, Co-Trustees of the Farr Family Trust (Applicant), requested a release of development moratorium, enacted for logging without a County permit, to allow a future large lot subdivision at 5515 Puget Road NE, Olympia, Washington.

#### **Hearing Date:**

The Thurston County Hearing Examiner held a virtual open record hearing on the request on September 22, 2020. In order to ensure public access to the virtual hearing process, the record was held open two business days (through September 24, 2020) to allow written public comment from members of the public who may have had difficulty joining the virtual hearings, with additional time arranged for responses by the parties. No post-hearing public comment was submitted, and the record closed on September 24, 2020.

#### **Testimony:**

At the hearing, the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Thurston County

Arthur Saint, Civil Engineer, Thurston County

Dawn Peebles, Environmental Health Specialist, Thurston County

Kim Pawlawski, Land Planner, Bracy and Thomas Land Survey, Applicant Representative

**Exhibits:**

The following exhibits were admitted in the record:

- Exhibit 1      Community Planning & Economic Development Dept. (CPED) Staff Report including the following attachments:
- Attachment a    Notice of Public Hearing
  - Attachment b    Vicinity / Zoning Map
  - Attachment c    Master Application, received December 18, 2018
  - Attachment d    Release of Moratorium for a Development Project Application, dated December 18, 2018
  - Attachment dd   Addendum to Release of Moratorium application from Bracey and Thomas, dated September 4, 2019
  - Attachment e    Mitigated Determination of Non-Significance, issued February 7, 2020, with Environmental Checklist, received December 18, 2018
  - Attachment f    Notice of Application, dated February 28, 2019, with adjacent property owners list, dated February 25, 2019
  - Attachment g    Large Lot Subdivision Map
  - Attachment h    Wetland Delineation Report by Land Services NW, dated October 15, 2019
  - Attachment hh   Wetland Assessment for Release of Moratorium by Brian Combs, Pacifica Restoration Co., dated August 30, 2019
  - Attachment i    Comment letter from the Nisqually Tribe, dated March 4, 2019
  - Attachment j    Email from Joe Staley (jdsforest@comcase.net to Scott McCormick regarding tree planting information.
  - Attachment k    Tree planting aerial photos (undated)
  - Attachment l    Forest Management Plan by Northwind Forest Consultants LLC, dated February 16, 2015

Based on the record developed at hearing, the following findings and conclusions are entered in support of the decision of the Hearing Examiner:

### FINDINGS

1. The Applicant requested a release of development moratorium, imposed as a result of logging without a County permit, to allow a future large lot subdivision at 5515 Puget Road NE, Olympia, Washington. *Exhibits 1, 1.C, 1.D, and 1.DD.*
2. The application was submitted on December 18, 2018 and determined to be complete for purposes of commencing County review on January 15, 2019. *Exhibit 1.F.*
3. The subject property is 15.04 acres in area and is zoned Rural Residential/Resource - One Dwelling Unit per Five Acres (RRR 1/5). The subject property contains two single-family residences and associated outbuildings. The purpose of the requested release of development moratorium is to allow the Applicant to divide the parcel into two lots, each containing a single-family residence, to allow sale of one parcel to generate funds to pay for the current owner's medical expenses. Each residence is already served by a septic system and no additional construction is proposed. A large lot subdivision application has been submitted and is currently under County review. *Exhibits 1, 1.D, 1.DD, and 1.G; Kim Pawlawski Testimony.*
4. The Applicant obtained approval of a Class III Forest Practices Application from the Washington State Department of Natural Resources (DNR) on December 24, 2013. The DNR renewed the application for an additional three years effective December 25, 2016. *Exhibit 1.M.* The Applicant harvested timber from the northeast portion of the subject property pursuant to the DNR approval and has finished replanting the harvest area. The northern portion of the harvest area was replanted in 2015 and the southern portion was replanted in 2019 in accordance with DNR standards. The 2019 planting consisted of 600 Douglas fir seedlings within the two-acre harvest area. *Exhibits 1, 1.HH, 1.J, 1.K, and 1.L.*
5. Although the Applicant obtained DNR approval to harvest timber from the subject property, the Applicant did not first obtain a forest practices permit from the County pursuant to Thurston County Code (TCC) Chapter 17.25. The Applicant moved forward with the harvest without the permit due to a time-sensitive need to generate funds for the owner's medical expenses. The consequence of this was a six-year development moratorium pursuant to TCC 17.25.700.C. Activities disallowed by the moratorium include subdivision approvals. *Exhibits 1, 1.D, and 1.DD; TCC 17.25.200; TCC 17.25.700.*
6. The subject property contains four wetlands (identified as Wetlands A through D). Wetlands A, C, and D are classified as Category III wetlands and Wetland B is classified as a Category IV wetland pursuant to the definitions contained in the Thurston County

critical areas ordinance (TCC Title 24). All four wetlands require a standard buffer width of 220 feet. *Exhibit 1.H.*

7. While no trees were harvested from the wetlands, trees were harvested from the buffers of Wetlands A and B. Since harvest, trees have been replanted and remnant native shrubs and trees have regenerated within the full extent of the affected buffer. County Staff submitted that no additional plantings are needed to mitigate the buffer impact; the plantings already conducted exceed the minimum amount required to mitigate the impacts. *Exhibit 1.HH; Scott McCormick Testimony.*
8. The Thurston County Environmental Health Division (EHD) reviewed the requested moratorium release in conjunction with the related subdivision application to ensure that there have not been impacts to any septic systems or wells as a result of the harvest; none were found. EHD recommended approval of the application. *Dawn Peebles Testimony.*
9. Thurston County acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA) and issued a mitigated determination of non-significance (MDNS) on February 7, 2020. The MDNS contains conditions requiring compliance with the Stormwater Management Manual for Western Washington, the Thurston County critical areas ordinance, and all other applicable ordinances, and specifying procedures for soil or groundwater contamination and for discovery of archaeological resources. The MDNS was not appealed and became final on February 28, 2020. *Exhibits 1 and 1.E.*
10. Notice of the public hearing was mailed to all property owners within 500 feet of the site on September 9, 2020 and published in The Olympian on September 11, 2020. *Exhibit 1.A.* The Nisqually Indian Tribe requested to be notified of inadvertent discoveries of archeological resources. *Exhibit 1.I.* There was no other public comment on the proposal, either before the hearing or during the post-hearing public comment period.

## **CONCLUSIONS**

### **Jurisdiction**

The Hearing Examiner has jurisdiction to authorize, conditionally authorize, or deny a release a forest practices development moratorium pursuant to TCC 17.25.700(F).

### **Criteria for Review**

The Hearing Examiner may authorize release of a forest practices development moratorium if the following findings set forth in TCC 17.25.700(G) can be made:

1. The person requesting the release did not attempt to avoid the county review or restrictions of a conversion forest practices application;
2. Critical areas and their buffers, and shoreline area as set forth in Title 24, Chapters 17.15 and 19.04, respectively, of the Thurston County Code were not damaged in the forest practice operation, or that any such damage is repairable with restoration; and

3. Corrective action can be undertaken to provide for compliance with applicable conversion standards established by this chapter.

### **Conclusions Based on Findings**

1. The Applicant had time-sensitive special circumstances resulting in the delayed County application, and through compliance with the DNR permitting requirements and subsequent replanting activities, has shown no avoidance of forest practices requirements. *Findings 4 and 5.*
2. Affected wetland buffers were repaired through replanting activities and natural restoration of native vegetation. *Findings 4, 6 and 7.*
3. Corrective action has been completed. *Findings 4 and 7.*

### **DECISION**

Based on the preceding findings and conclusions, the requested release of development moratorium at 5515 Puget Road NE is **GRANTED**.

Decided October 6, 2020 by



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Sharon A. Rice  
Thurston County Hearing Examiner



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

<b>NOTE:</b> 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).
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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 **\$750.00** for a Request for Reconsideration or **\$1,041.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex 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 ☐ \$750.00 for Reconsideration or \$1,041.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.