



COUNTY COMMISSIONERS

Carolina Mejia-Barahona
District One

Gary Edwards
District Two

Tye Menser
District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2022100558 Hicks RUE
)	
)	
Tim Lynch, Adam Laneer Design)	FINDINGS, CONCLUSIONS,
)	AND DECISIONS
)	
For Reasonable Use Exception and)	
<u>Forest Land Conversion</u>)	

SUMMARY OF DECISIONS

The requests for a reasonable use exception to authorize preexisting development and to construct a new single-family residence and septic system within a wetland buffer, riparian habitat area, and frequently flooded area, and for an associated Class IV forest land conversion permit, are **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

Tim Lynch of Adam Laneer Design, on behalf of property owners David and Ashley Hicks, requested a reasonable use exception to construct a single-family residence and septic system within a wetland buffer, riparian habitat area, and frequently flooded area, and an associated Class IV Forest Land Conversion Permit to remove 2,900 board feet of timber from 0.25 acre for the proposed residential development. The Applicant also sought reasonable use exception approval to allow an existing accessory structure and driveway within the critical area buffers. The subject property is located at 9034 Sherman Valley Road SW, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the application on May 23, 2023. The record was held open through May 25, 2023 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comments were submitted, and the record closed on May 25, 2023.

No in-person site visit was conducted, but the Examiner viewed the subject property and environs on Google Maps.

Testimony

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

Heather Tschaekofske, Associate Planner/Biologist, Thurston County
Todd Mason, Public Works Development Review Manager, Thurston County
David Hicks, Owner
Adam Laneer, Adam Laneer Design, Applicant

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 May 4, 2023
 - B. Zoning/Site Map
 - C. Master Application, received February 8, 2022
 - D. Reasonable Use Exception Application, received February 8, 2022
 - E. Project Description, received February 8, 2022
 - F. Site Plan, revised February 21, 2023
 - G. Stream and Wetland Inventory Critical Areas Report, revised July 5, 2022
 - H. Addendum to Stream and Wetland Inventory Critical Areas Report, September 29, 2022
 - I. Mitigation Plan, revised July 5, 2022
 - J. Letter of Map Amendment, FEMA, dated April 1, 2021
 - K. Topo survey, flood elevations, dated March 29, 2021
 - L. Notice of Application, dated February 18, 2022 and January 6, 2023
 - M. Comment Memorandum from Lyndsey Smith, Thurston County Public Health and Social Services Department, dated January 26, 2023
 - N. Comment letter from Brad Beach, Nisqually Indian Tribe, dated March 1, 2022 and March 8, 2023
 - O. Comment emails from Shaun Dinubilo, Squaxin Island Tribe, dated February 24, 2022 and March 13, 2023
 - P. Department of Archaeology and Historic Preservation concurrence letter, September 9, 2022
 - Q. Master and Forest Conversion Application, received December 19, 2022

- R. Environmental Checklist, received December 19, 2022
- S. Logging site plan, received December 19, 2022
- T. Mitigated Determination of Non-Significance, issued April 5, 2023

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

FINDINGS

1. Tim Lynch of Adam Laneer Design (Applicant), on behalf of property owners David and Ashley Hicks, requested a reasonable use exception (RUE) to construct a single-family residence and septic system within a wetland buffer, riparian habitat area, and frequently flooded area. Also requested was an associated Class IV forest lands conversion permit to remove 2,900 board feet of timber from 0.25 acres for the proposed residential development. The Applicant also sought RUE approval to formally allow an existing accessory structure and driveway to remain placed within critical area buffers. The subject property is located at 9034 Sherman Valley Road SW, Olympia, Washington.¹ *Exhibits 1, 1.C, 1.D, 1.E, 1.F, 1.Q, and 1.S; Heather Tschaekofske Testimony.*
2. The RUE application was received on February 8, 2022 and determined to be complete for the purpose of commencing project review on February 14, 2022. The forest land conversion application was received on December 19, 2022 and determined to be complete on January 3, 2023. *Exhibits 1.C, 1.D, 1.L, and 1.Q.*
3. The subject property and all surrounding properties are zoned Long Term Forestry (LTF). Primary permitted uses in the LTF zone include forestry and related uses, agriculture, single-family residences, chemical storage, low-intensity recreation uses, private airstrips and heliports, and watershed management facilities. Although the maximum residential density in the LTF zone is one dwelling unit per 20 acres, the subject property was determined to be a legal lot of record in 2002. *Exhibit 1; Thurston County Code (TCC) 20.08D.020.*
4. The subject property is 9.82 acres in area and is developed with a driveway, well, and 700 square foot accessory structure. Access to the property is from a private lane off Sherman Valley Road. Surrounding land uses are single-family residential. *Exhibit 1; Heather Tschaekofske Testimony.*
5. Waddell Creek, a Type S stream, crosses the western portion of the subject property. Waddell Creek is designated a Shoreline of the State pursuant to the state Shoreline Management Act, and development within its shoreline is subject to the requirements of the Shoreline Master Program for the Thurston Region (SMPTR) and the Thurston County Critical Areas Ordinance (CAO). *Exhibit 1.*

¹ The legal description of the subject property is: Section 17 Township 17 Range 3W SE NE LESS 21.59 ACRES; also known as parcel 13717140000. *Exhibit 1.*

6. The SMPTR designates the Waddell Creek shoreline within the subject property as a Conservancy environment. Single-family residential development is allowed in the Conservancy environment, subject to development standards that require a minimum 40,000 square feet of dry land area, a 100-foot setback from the ordinary high water mark (OHWM), a maximum impervious surface coverage of 30%, and a maximum building height of 35 feet. *Exhibit 1; SMPTR Section Three (XVI)(C)(5) and (D)(4)*. The proposed development would comply with these standards. The building setback would be at least 150 feet from the top of bank, which is the ordinary high water mark within the project area. *Exhibits 1, 1.F, and 1.G; Heather Tschaekofske Testimony*.
7. The subject property is partially within a FEMA 100-year flood zone. The Applicant obtained a letter of map amendment (LOMA) from FEMA on April 1, 2021, which designated the flood elevation as 385.7 feet. With the LOMA, the flood zone encompasses the western and southwestern portions of the property, where no development exists or is proposed. *Exhibits 1, 1.F, 1.J, and 1.K*.
8. For Type S streams, the Thurston County critical areas ordinance (CAO) requires a freshwater riparian habitat area of 250 feet in width measured from the OHWM. *TCC 24.25.020*. The riparian habitat area must be retained in its existing condition unless explicitly authorized by the CAO. *TCC 24.25.015*. On the subject property, the regulated riparian habitat area encompasses the northern, western, and central portions of the parcel. *Exhibit 1.F*.
9. There are two wetlands on the subject property that contain sufficient area to be regulated under the CAO. Wetland A (0.18 acres) is located in the southeast portion of the subject property, and Wetland B (0.36 acres) is located in the southwest portion of the property and is connected to Waddell Creek. Both wetlands are classified as Category IV wetlands with habitat scores of 8, requiring a standard buffer width of 280 feet. The CAO allows for administrative reduction of the standard buffer to 210 feet when mitigation is provided pursuant to *TCC 24.30.050*. *Exhibits 1 and 1.G; TCC 24.30.045*. In this case the wetland buffers encompass the southern and central portions of the property. The combined wetland and freshwater riparian habitat buffers encompass the entire parcel except for a small area along the eastern edge containing a portion of the existing driveway. Given the extent of the riparian habitat buffer, reducing the wetland buffers to 210 feet would only unencumber additional driveway; it would not create enough area for residential development considering the need for continued access to the site. *Exhibits 1 and 1.F*.
10. The proposed residence would be 2,400 square feet in area and would be set back approximately 192 feet from Wetland B, 240 feet from Wetland A, and at least 150 feet from Waddell Creek. The proposed septic drainfield would be placed to the north of the residence, approximately 210 feet from Waddell Creek and outside of the wetland buffers. The total clearing required for this new development would be approximately one-quarter of an acre, and all tree removal would be at least 150 feet from the stream bank. The existing structure on site, which was constructed in 2014 by a prior owner,

would be used as a detached garage. The existing structure is set back approximately 235 feet from Waddell Creek and approximately 175 feet from Wetlands A and B. The existing driveway is set back approximately 250 feet from Waddell Creek, 60 feet from Wetland A, and 175 feet from Wetland B. Because the County does not consider the existing structure and driveway to be legally nonconforming, the Applicant requested that the RUE decision address this development. *Testimony of Heather Tschaekofske, Adam Laneer, and David Hicks; Exhibits 1, 1.F, and 1.G.*

11. The proposed site design represents the least impact to critical areas. Although there are previously cleared areas on site that were considered for residential development, these areas are lower in elevation than the area selected and would not have been feasible for septic system placement. Development in the previously cleared areas would have encroached into the FEMA flood zone and/or would have encroached further into the stream and wetland buffers. *Exhibits 1 and 1.G; Heather Tschaekofske Testimony.*
12. The total area of critical area impact, including past development, proposed new development, and associated clearing, would be 40,951 square feet. To compensate for the impact, the Applicant proposes to remove invasive species and plant 150 native trees and 200 shrubs within two areas totaling 40,951 square feet. Mitigation Area 1 (26,527 square feet) would be southwest of the existing structure, between the structure and Waddell Creek and Wetland B, in an area currently consisting of open grass and abandoned garden. The plantings in this area would enhance infiltration and maintain wetland water quality and would create habitat connectivity between forested areas and the wetlands. Mitigation Area 2 (14,424 square feet) would be west of the proposed residence and septic system, largely between the proposed development and Waddell Creek, with a small portion on the opposite side of the creek, in areas that are currently treeless or impacted by old roads/trails.² The plantings in this area would create shade and future large woody debris along the stream corridor. A small berm is proposed along the southwest edge of Mitigation Area 2 to provide additional retention of surface water runoff. Overall, critical area functions would be restored to previous or enhanced conditions. *Exhibit 1.I; Heather Tschaekofske Testimony.*
13. The Thurston County Environmental Health Division has approved the proposed septic system design. Environmental Health recommended approval of the project, subject to conditions that an existing gray water system serving the existing structure be discontinued, and that the septic design be revised to indicate connection of the gray water outlet to the proposed septic system. *Exhibit 1.M.*
14. Thurston County Public Works has reviewed the proposal and determined that it can meet the requirements of the Drainage Design and Erosion Control Manual. No issues of concern with respect to drainage or access were identified during the review process. Access to the parcel is via private land and no new roads are proposed. *Todd Mason Testimony; Exhibit 1.F.*

² The areas stated in this finding are based on the text of the mitigation plan; the site plan appears to have the numbers switched. *Exhibits 1.F and 1.I.*

15. The segment of Waddell Creek that is adjacent to the subject property provides suitable habitat for chum, coho, steelhead, and coastal cutthroat. The project is not expected to adversely affect these species as long as erosion and stormwater control measures and the proposed mitigation plan are implemented on the site. These requirements are addressed in Staff's recommended conditions of approval. *Exhibits 1 and 1.G.*
16. The Applicant commissioned a professionally prepared cultural resource assessment of the subject property, which did not identify any cultural resources on site. The Washington Department of Archaeology and Historic Preservation concurred with the assessment and recommended that an inadvertent discovery plan be followed during ground disturbing activities. This recommendation was incorporated into Planning Staff's recommended conditions of project approval. *Exhibits 1 and 1.P.*
17. Thurston County Community Planning and Economic Development Department (CPED) acted as lead agency for environmental review of the forest land conversion application under the State Environmental Policy Act; the construction of a single-family residence and accessory structures is exempt from review. CPED Staff issued a mitigated determination of non-significance (MDNS) on April 5, 2023. The mitigation measures address cultural resources protection, stream and wetland buffer identification and protection during timber clearing, buffer mitigation, erosion control, debris disposal, and compliance with Public Health requirements relating to the septic system. These mitigation measures were incorporated into the recommended conditions of project approval. *Exhibits 1 and 1.T; TCC 17.09.055; Washington Administrative Code (WAC) 197-11-800.*
18. Notice of the open record hearing was mailed to owners of property within 500 feet of the subject property on May 4, 2023 and was published in *The Olympian* on May 12, 2023. There was no public comment on the proposal. *Exhibits 1 and 1.A.*
19. Having reviewed all materials and considered all testimony, Planning Staff indicated no change to the recommended conditions of approval in the staff report if RUE approval is granted. *Exhibit 1; Heather Tschaekofske Testimony.* The Applicant waived objection to the recommended conditions. *Testimony of David Hicks and Adam Laneer.*

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, and for forest lands conversions pursuant to TCC 17.25.600.E and TCC 20.60.020.

Criteria for Review

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.

Forest Lands Conversion

Pursuant to TCC 17.25.500.C, all forest lands conversions, other than those located within the north county urban growth area, shall comply with all of 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

Reasonable Use Exception

- 1. No other reasonable use of the property as a whole is permitted by the critical areas ordinance. Based on the uses allowed in the LTF zone, the area of the parcel, and the

character of surrounding development, single-family residential use is the only reasonable use of the property. *Findings 3 and 4.*

2. No reasonable use with less impact on the critical area or buffer is possible. The site is highly constrained, such that it would not be possible to establish a reasonable residential use and associated infrastructure without intruding into a critical area or buffer. The proposed residence, which is reasonable in scale relative to the overall area of the site, would be placed outside the 100-year floodplain in an area that maximizes setbacks from the stream and wetlands while ensuring continued use of the driveway. The existing structure would serve as a detached garage, which is a reasonable appurtenance to a residence. The existing structure is set back a significant distance from all critical areas on site and is nearly code-compliant with respect to the distance from the creek. The location of the septic drainfield similarly maximizes setbacks from critical areas; the setback from the creek would be 210 feet. *Findings 7, 8, 9, 10, and 11.*
3. As conditioned, the requested residential development would not result in damage to other property and would not threaten the public health, safety, or welfare on or off the development site, or increase public safety risks on or off the subject property. All development would be outside of the 100-year floodplain. The conditions of approval incorporate the recommendations of the Environmental Health Department and the mitigation measures identified in the MDNS, and address subjects including erosion control and the protection of cultural resources. *Findings 8, 13, 14, 16, and 17.*
4. The proposed reasonable use is limited to the minimum encroachment necessary to prevent denial of all reasonable use of the property. As described in Conclusion 2, it would not be possible to establish reasonable residential use of the property without encroachment into a critical area or buffer. No direct impacts to the wetlands or stream are proposed. The proposed site design and building scale represent the minimum encroachment into the buffers necessary for reasonable use. *Findings 7, 8, 9, 10, and 11.*
5. With conditions of approval, the proposed reasonable use would result in minimal alteration of the critical area. The conditions of approval require implementation of the mitigation plan, which would enhance the critical area buffers between the critical areas and the proposed and existing development. The proposed mitigation would ensure that critical areas functions are restored or improved. *Finding 12.*
6. As conditioned, the proposal ensures no net loss of critical area functions and values. Impacts from both the existing and proposed development would be mitigated with enhancement plantings at a 1:1 ratio. *Finding 12.*
7. The proposal would not result in unmitigated adverse impacts to species of concern. *Finding 15.*
8. The location and scale of existing development on surrounding properties is not the sole basis for granting the reasonable use exception. The RUE is necessary, and is granted,

because of the extent of critical areas on the parcel. The scale of existing development within the vicinity was not considered. *Findings 7, 8, and 9.*

Forest Lands Conversion

9. With approval of the RUE, compliance with the mitigation of the MDNS, and implementation of the critical areas mitigation plan, the proposed forest lands conversion would be consistent with the Thurston County CAO, the Shoreline Master Program for the Thurston Region, the Drainage Design and Erosion Control Manual, and the Minimum Design Standards for streets. *Findings 12, 14, and 17.*

DECISIONS

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

- A. Prior to or in conjunction with the issuance of any building permit, all applicable regulations and requirements of the Thurston County Public Health and Social Services Department, Public Works Department, Fire Marshal and Thurston County Community Planning and Economic Development Department shall be met.
- B. The Applicant is responsible for compliance with other jurisdictional permitting requirements.
- C. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the Applicant's responsibility to obtain this permit if required.
- D. The reduced wetland and stream buffer shall be verified and flagged by the Applicant's wetland biologist and/or surveyor prior to permit issuance. There shall be no timber harvest within the reduced wetland and stream buffer, per the approved stream and wetland inventory report dated September 29, 2022 by EcoAssets Environmental LLC.
- E. The proposed timber clearing unit 1 shall be fenced with orange construction fencing prior to permit issuance. The construction fencing shall be maintained throughout the logging and home construction process until final occupancy approval.
- F. 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.
- G. All activities onsite shall fully comply with noise limitations outlined in WAC 173-60.
- H. All activities shall be in substantial compliance with the submitted plans, and the SEPA MDNS (22-116501 XA) issued April 5, 2023.

- I. The Applicant shall complete all buffer mitigation and monitoring identified in the Mitigation Plan, EcoAssets Environmental LLC, dated September 29, 2022, and revised July 5, 2022, prior to final building permit issuance. A surety will be required in place of mitigation completion prior to final building permit issuance, per TCC 24.70.
- J. Critical Area signs shall be installed along the reduced buffer edge, subject to standards of TCC 24.60.
- K. Best management practices (BMPs) such as completing work during the dry season and maintaining proper working order of equipment, as well as temporary erosion and sediment control (TESC) methods including silt fencing and/or coir logs, shall be implemented. All disturbed areas will be promptly backfilled and reseeded following installation, and TESC measures will remain in place until site conditions are restored.
- L. The Applicant 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 Tribes and the Washington State Department of Archaeology and Historic Preservation.
- M. Per request by the Washington State Department of Archaeology and Historic Preservation, an inadvertent discovery plan is required to be submitted for CPED review and approval and to be posted on site prior to earth disturbing work and during all phases of site development.
- N. The Applicant shall submit a building permit for converting the existing structure to garage use. All garage inspections and approvals shall be obtained prior to certificate of occupancy issuance for the primary residential structure.
- O. Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface water or storm drains that lead to waters of the State. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants. To the extent possible, land-disturbing activities associated with the project should be performed during dry weather to reduce opportunities for erosion to occur.
- P. 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 Thurston County Environmental Health prior to filling. All removed debris resulting from this project must be disposed of at an approved site. Contact Thurston County Environmental Health for proper management of these materials.
- Q. If contamination is suspected, discovered, or occurs during the proposed SEPA action, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator for the Southwest

Regional Office (SWRO) at (360) 407-6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Thomas Middleton with the SWRO, Toxics Cleanup Program at the phone number provided above.

- R. The proposed project is subject to compliance with the following policies and regulations, including any applicable mitigation requirements: Thurston County Comprehensive Plan, Zoning Ordinance (TCC 20), Critical Areas Ordinance (TCC 24), Stormwater Drainage Design and Erosion Control Manual (TCC 15.05), Uniform Building Code (TCC 14), State Environmental Policy Act (SEPA) Ordinance (TCC 17.09.).
- S. All development on the site shall be in substantial compliance with the approved reasonable use exception and forest conversion applications, as conditioned herein. Any alteration to the proposal shall require approval of a new or amended reasonable use exception and/or forest conversion. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
- T. Conditions of Public Health approval:
 - a. The Applicant shall immediately cease use of the plumbing and existing “gray water” system serving the garage/outbuilding until such time as Environmental Health Division approval is granted.
 - b. The on-site septic system design must be revised to show connection of the gray water outlet from the garage/outbuilding to the proposed septic system, and/or the gray water system shall be properly abandoned with any required permits.
 - c. Logging near or over the proposed septic drainfield areas should be done with extreme caution and with input from the licensed on-site sewage system designer. Logging activities can result in damage to the drainfield area that could affect the current septic system proposal.

DECIDED June 6, 2023.



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.

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 **\$821.00** for a Request for Reconsideration or **\$1,112.00** 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 ☐ \$821.00 for Reconsideration or \$1,112.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.