



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. 2022105785
)	
Alycia and Kevin Warbington)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For a Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

The request for a reasonable use exception to allow construction of a single-family residence, well, septic system, and driveway within Category III wetland buffers on property addressed as 8900 Adams Lane NW, Olympia, Washington is **GRANTED** with conditions.

SUMMARY OF RECORD

Request

Alycia and Kevin Warbington requested a reasonable use exception to construct a single-family residence, well, septic system, and driveway within Category III wetland buffers. The subject property is located at 8900 Adams Lane NW, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the application on September 12, 2023. The record was held open through September 14, 2023 to allow members of the public who had technology problems joining the virtual hearing to submit post-hearing written comments, with time scheduled for responses from the parties. No post-hearing public comments were submitted, and the record closed on September 14, 2023.¹

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

¹ The Hearing Clerk notified the undersigned that the Hannapels submitted additional written comment after close of the record; however, these were not admitted, because the Hannapels testified at hearing and did not have technology problems, and thus unfortunately they were not eligible to submit additional comments.

Testimony

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

Sharon Lumbantobing, Senior Planner, Thurston County Community Planning & Economic Development Department

Arthur Saint, Civil Engineer, Thurston County Public Works Department

Alex Callender, Land Services Northwest, Applicants' Representative

Dennis Hannapel

Sarah Hannapel

Exhibits

The following exhibits were admitted in the record:

Exhibit 1 Community Planning and Economic Development Report including the following attachments:

- A. Notice of Public Hearing, dated August 28, 2023
- B. Master Application, dated December 27, 2022
- C. Reasonable Use Exception Application, dated December 27, 2022
- D. Site plan, dated December 27, 2022 and revised May 5, 2023
- E. Wetland Delineation Report, dated December 27, 2022, and revised May 5, 2023
- F. Wetland Mitigation Plan, dated December 27, 2022, and revised May 5, 2023
- G. Impacts and Mitigation, dated December 27, 2022
- H. Notice of Application for Reasonable Use Exception, dated January 6, 2023
- I. Comment letter from the Squaxin Island Tribe, dated January 9, 2023
- J. Comment letter from the Nisqually Indian Tribe, dated January 10, 2023
- K. Environmental Health approval letter, dated January 12, 2023
- L. Public comment from Fritz and Barb Mondau and Chris and Laura Mondau, dated January 26, 2023
- M. Public comment from Sarah and Dennis Hannapel, dated January 13, 2023
- N. Public comment from Sarah and Dennis Hannapel, dated January 19, 2023
- O. Public comment from Sarah and Dennis Hannapel, dated January 25, 2023
- P. Consultant Alex Callendar, Land Services Northwest reply to Hannapels, dated April 11, 2023
- Q. Consultant Alex Callendar, Land Services Northwest reply to Mondaus, dated April 11, 2023

- R. Public comment from Sarah and Dennis Hannapel (letter to Alex Callendar), dated May 5, 2023
- S. Sarah and Dennis Hannapel easement title papers
- T. Public comment from Heidi Robbins Brown, request for notice email, dated January 11, 2023
- U. Communications Matrix, dated January 31, 2023
- V. Communications Matrix, dated May 5, 2023
- W. Communications Matrix, dated August 10, 2023
- X. Planting Plan, Figure 2 of the mitigation report in attachment F
- Y. Deed of Easement, dated January 10, 2006
- Z. Public comment letter from Sarah and Dennis Hannapel, dated May 16, 2023
- AA. Clearing photos 1 from Sarah and Dennis Hannapel
- BB. Clearing photos 2 from Sarah and Dennis Hannapel
- CC. Sarah and Dennis Hannapel comment on easement, dated August 28, 2023
- DD. Revised Figure 2 for mitigation plan

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

FINDINGS

1. Alycia and Kevin Warbington (Applicants) requested a reasonable use exception (RUE) to construct a single-family residence, well, septic system, and driveway within Category III wetland buffers. The subject property is located at 8900 Adams Lane NW, Olympia, Washington. *Exhibits 1, 1.B, 1.C, and 1.D.*
2. The RUE application was received on December 27, 2022 and deemed complete for purposes of commencing project review on January 3, 2023. *Exhibit 1.H.*
3. The subject property is 7.43 acres in area and is undeveloped. The property is irregular in shape, with street frontage on Adams Lane NW to the west and a narrow, pipestem frontage on 90th Avenue NW to the north. *Google Maps site view.* There is an intervening parcel (Hannapel property) between the Applicants' Adams Lane NW and 90th Avenue NW frontages over which the subject parcel has a recorded access and utility easement. The 30-foot wide easement is just north of the subject property's Adams Lane NW frontage. The easement extends 80 feet east into the parcel along the shared property line. *Exhibits 1, 1.D, 1.S, and 1.Y.*
4. The subject property is in a forested condition. The plat that created the subject property created a 68-foot wide native vegetation buffer along the subject parcel's Adams Lane NW frontage. *Exhibits 1, 1.D, and 1.P; Alex Callender Testimony.*

5. Although Totten Inlet of Puget Sound is west of the subject property (on the opposite side of Adams Lane NW), the subject property is outside of the 200-foot jurisdiction of the Shoreline Management Act. *Exhibit 1.E.*
6. Surrounding parcels to the north and west along Adams Lane NW are developed with residential uses. *Exhibits 1 and 1.E.*
7. The subject property is within the rural portion of the County and is zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5). *Exhibit 1.* The purpose of the RRR 1/5 zone is “to encourage residential development that maintains the county’s rural character; provides opportunities for compatible agricultural, forestry and other rural land uses; is sensitive to the site’s physical characteristics; provides greater opportunities for protecting sensitive environmental areas and creating open space corridors; enables efficient road and utility systems; and does not create demands for urban level services.” *Thurston County Code (TCC) 20.09A.010.* Primary permitted uses in the RRR 1/5 zone include single-family and two-family residences, agriculture, accessory farm housing, and home occupations. *Exhibit 1; TCC 20.09A.020.*
8. Based on evaluation by a qualified professional wetland scientist, the subject property contains three regulated wetlands (Wetlands A, B, and C).² Wetland A is in the southeast portion of the subject property and extends offsite to the south and east. The onsite area of Wetland A is 0.992 acres. Wetlands B and C are smaller wetlands in the western portion of the subject property, along the property’s Adams Lane NW frontage; B and C are located approximately 150 feet apart. Each wetland is classified as Category III wetland with a habitat score of 6 (LHM), requiring a 220-foot standard buffer pursuant to TCC Table 24.30-1. The standard buffer may be administratively reduced to 165 feet if mitigation is provided, but a reduction to less than 165 feet requires approval of a RUE. Structures requiring a permit must be set back 15 feet from the wetland buffer edge unless it is demonstrated that the construction will not encroach into the protected area. *Exhibits 1.D and 1.E; TCC Table 24.30-1; TCC 24.01.035; TCC 24.30.050.*
9. The wetland buffers overlap and encumber the entire parcel except for the northern extent of the pipestem access to 90th Avenue NW. Administratively reducing the buffers to 165 feet would reduce the buffer overlap but would not create sufficient developable land for a residence, driveway, and septic system. The entire Adams Lane NW frontage and the adjacent access easement would still be encumbered by wetland or wetland buffer. Consequently, a RUE is necessary to develop the property. *Exhibits 1.D, 1.E, and 1.F.*
10. Placed in the least densely forested portion of the site as far from wetlands as possible, the proposed single-family residence would have a footprint of 2,500 square feet. The Applicants propose a four-foot construction setback around the perimeter of the

² Although both the staff report and the critical areas report at Exhibit 1.E mention a stream, there is no stream on-site and no off-site stream is located such that any portion of regulatory buffer extends into the proposed development envelope. *Alex Callender Testimony.*

residence, instead of the standard 15 feet, for a total cleared area of 3,265 square feet. The residence would be placed roughly equidistant between Wetlands A and C in the central portion of the property, which would maximize the buffer available to each wetland. Access to the residence would be from Adams Lane NW, and the west end of the driveway would be installed within a portion of the access easement over the adjacent parcel. The access easement is the closest and most direct point of access to the proposed homesite while avoiding direct impacts to Wetland C. The total area of the driveway, including the on-site and off-site portions, would be 2,629 square feet.³ The septic drainfields, totaling 2,732 square feet in area, would be placed to the south of the residence within the Wetland A buffer, downgradient from the wetland; the septic drainfields would not encroach into the buffers of Wetlands B or C. The proposed well would be placed to the west of the residence. The total area of proposed wetland buffer impact would be 8,626 square feet. As proposed the Wetland A buffer would be reduced to a minimum of 76 feet in the area of the septic drainfields; its buffer width would be 131 feet adjacent to the residence, which would also be downgradient of the wetland. The Wetland C buffer would be reduced to a minimum of 28 feet, eight inches in width in the area of the driveway; the distance from Wetland C to the residence would be 123 feet. The Wetland B buffer would not be impacted. Total proposed impervious surface coverage would be 5,111 square feet, or 1.579% of the site area, which is well under the maximum of 10% allowed by TCC 20.09A.050(6)(b) for development within the RRR 1/5 zone. *Exhibits 1.D, 1.F, 1.G, and 1.DD; Alex Callender Testimony.*

11. As mitigation for the requested 8,626 square feet of wetland buffer impacts, the Applicants propose to enhance 8,626 square feet of wetland buffer with native plantings, including 5,997 square feet adjacent to the west side of Wetland A (between the wetland and the residence and septic drainfields) and 2,629 square feet adjacent to the north, east, and south sides of Wetland C (between all proposed development and the wetland, including the reduced 28-foot buffer adjacent to the driveway). A total of 220 trees and shrubs would be planted within the two mitigation zones. Any invasive species would be removed during the planting process. The proposed mitigation is expected to improve several wetland buffer functions as compared to the baseline condition, including those relating to screening, aesthetics, nutrient uptake, structure and diversity, surface roughness, and temperature attenuation. The Applicants' qualified professional consultant submitted that there would be no net loss of critical area functions and values as a result of the project. *Exhibit 1.F; Alex Callender Testimony.*
12. In addition to mitigating impacts through buffer enhancement, the Applicants propose to follow the recommended performance standards in TCC Table 24.30-2, which address lights, noise, toxic runoff, stormwater runoff, change in water regime, pets and human disturbance, dust, and disruption of wildlife corridors. With respect to stormwater, the Applicants propose to use an infiltration trench for runoff from the driveway to maintain

³ The Hannapels asked for more explicit information about the proposed access across the off-site easement, including dimensions and exact location, and asked that any intrusion be minimized. *Testimony of Dennis Hannapel and Sarah Hannapel.* The Applicants' consultant indicated that while the proposal is based on a 15-foot wide driveway, its exact dimensions and location have not been designed yet, as the Applicants await the decision on the instant application before going to that additional expense. *Alex Callender Testimony.*

water quality and wetland hydrology. The native vegetation easement would absorb runoff from the residence. *Exhibit 1.F; Alex Callender Testimony.*

13. Washington Department of Fish and Wildlife Priority Habitats and Species mapping does not indicate any threatened or endangered species within the project vicinity; however, two priority species might be present in the area – the little brown bat and the big brown bat. No specific areas containing these species were found on the subject property. *Exhibit 1.E.*
14. The Thurston County Environmental Health Division has reviewed the proposal and did not identify any issues of concern. Thurston County Environmental Health Division approved a septic design and well site for the subject property, and the RUE site plan depicts these features in the approved locations. *Exhibit 1.K.*
15. Consistent with the comments of the Nisqually Indian Tribe, Planning Staff recommended as a condition of approval that the Applicants stop work stop and notify the County, the Washington Department of Archaeology and Historic Preservation, and affected tribes if archaeological materials are discovered during construction. However, Planning Staff did not recommend that the Applicants be required to perform a cultural resources survey because the project is categorically exempt from review under the State Environmental Policy Act (SEPA).⁴ *Exhibits 1 and 1.J; Sharon Lumbantobing Testimony; Washington Administrative Code (WAC) 197-11-800; TCC 17.09.055(B).*
16. Notice of the open record hearing was mailed to property owners within 500 feet of the site on August 28, 2023 and published in *The Olympian* on September 1, 2023. *Exhibits 1 and 1.A.*
17. The owners of the neighboring property containing the access easement submitted public comment on the proposal, objecting to use of the easement. The neighbors contended that they had been told when they bought their property that the easement was intended to be used only if no other access to the subject property were possible.⁵ They submitted that the easement is not needed for access, because a driveway could be installed along the subject property's frontage between Wetlands B and C. The neighbors argued that use of the Applicants' own property for the driveway would be more appropriate because the Applicants' parcel is larger than theirs, and because use of the easement across their property would not avoid the need to install a new culvert across the Adams Lane NW roadside drainage ditch.⁶ The neighbors testified that if the RUE is approved with access by the easement, they intend to request oversight of construction and mutually acceptable

⁴ Historic and cultural preservation is an element of the environment under SEPA per WAC 197-11-444. *WAC 197-11-444(2)(b)(vi).*

⁵ Of note, the easement documents provided in the record do not contain this or any other restriction on the Grantees' (Applicants') use of the recorded easement.

⁶ This last comment was likely in response to a statement made by the Applicants' consultant that seemed to suggest there is an established crossing within the easement.

timing. *Exhibits 1.O, 1.R, and 1.CC; Testimony of Dennis Hannapel and Sarah Hannapel.*

18. With respect to the comments regarding use of the easement, the Applicants' wetland consultant argued that the proposed site design is most consistent with the RUE criteria because placing the driveway further south (within the subject property) would result in impacts to the Wetland B buffer, and thus increase impacts to critical areas. As proposed, the Wetland B buffer would not be impacted by the project. The Applicants' consultant also submitted that an access point created onsite between Wetlands B and C would result in greater impact to the native vegetation buffer, which contains larger trees between Wetlands B and C, the ecological functions and values of which could less easily (or less quickly) be replaced by mitigation. The site plan as proposed limits the project's impacts to two of the three wetland buffers. *Alex Callender Testimony; Exhibit 1.P.* Addressing the only immediately available alternative to direct access to Adams Lane NW, the Applicants' consultant testified that use of the pipestem connecting to 90th Avenue NW is not feasible due to stormwater flows across the pipestem and the presence of wetlands and buffers in the area. He also noted that the access suggested by the neighbors would also be closer to Wetland A, thus not maximally reducing impacts to that feature. *Alex Callender Testimony.* Speaking to the comment expressing concern that the project could result in changes to discharge paths/volumes that could negatively impact the stability of the marine bluff on parcels across Adams Lane NW, the Applicants' consultant testified that the project would not disturb the 68-foot deep vegetation easement along the subject parcel's frontage, and that existing vegetation together with proposed mitigation plantings would adequately address the minimal additional runoff generated by the project's limited proposed impervious surfaces. He stated that maintenance of the roadside drainage ditch is in everyone's interest, including the Applicants, but that in his opinion tasking the Applicants with any additional maintenance obligations through the instant permit decision is not warranted by the impacts anticipated from the proposal. *Alex Callender Testimony.*
19. County Staff testified that the Applicants' right of access via the easement is a private legal matter over which the County does not have jurisdiction, and that if the proposed access meets code requirements, the County would not require the Applicant to use an alternate route. *Testimony of Sharon Lumbantobing and Arthur Saint.*
20. Another neighbor who owns property across Adams Lane NW from the subject property also commented, expressing concern about the potential for off-site stormwater impacts from the proposed development of the parcel. This commenter indicated that the residences on the west side of Adams Lane NW, which are downgradient of the subject property, are on a marine bluff above Puget Sound that is prone to sloughing, and the owners of these properties are concerned about stormwater management and maintenance of the roadside drainage ditch along Adams Lane NW, which intercepts upland runoff. *Exhibit 1.L.* In response to this comment the Applicants' consultant described the proposed wetland buffer mitigation, which, by increasing the roughness of the landscape, would attenuate flood pulse and increase percolation of water on site, and also noted that the proposed stormwater improvements would be designed to ensure that increased

stormwater is not discharged offsite. The project area is approximately 280 feet from the bluff. *Exhibits 1.E and 1.Q; Alex Callender Testimony.*

21. Having heard and considered all public comment and reviewed all submitted materials, County Staff maintained their recommendation that the conditions in the staff report should be imposed if approval is granted. *Exhibit 1; Testimony of Sharon Lumbantobing and Arthur Saint.* The Applicants waived objection to the recommended conditions. *Alex Callender Testimony.*

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.

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.

Conclusions Based on Findings

1. No other reasonable use of the property as a whole is permitted by the critical areas ordinance. Considering the RRR 1/5 zoning designation, the size and shape of the property, the intent of the zone to encourage residential development that maintains the County's rural character, the character of surrounding development, and the plat requirement to retain native vegetation, single-family residential use is the only reasonable use of the property. *Findings 3, 4, 6, and 7.*
2. As conditioned, no reasonable use with less impact on the critical area or buffer is possible. The proposed residence is reasonable in scale. Credible evidence was presented that the proposed driveway and residence location represents the least wetland buffer impact, in that impacts to Wetland B would be avoided entirely and impacts to Wetland A would be minimized to the extent possible. Based on this conclusion and the assumption that the easement documentation submitted into the record is valid (the Hearing Examiner does not have jurisdiction to interpret the easement), the Hearing Examiner has no authority to require the Applicants to establish site access at an alternate location. The conditions of approval require the Applicants to implement erosion and stormwater control measures on site during construction and demarcate the buffer edges with critical area signs. *Findings 8, 9, 10, 18, 19, and 21.*
3. As conditioned, the proposal 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. The proposed septic design has been approved by Environmental Health. Stormwater would be managed on site consistent with County requirements, as ensured through the building permit process. The conditions of approval require erosion and stormwater control during construction and incorporate the inadvertent discovery plan request of the Nisqually Indian Tribe. *Findings 12, 14, 15, 20, and 21.*
4. The proposal is the minimum encroachment necessary to prevent denial of all reasonable use of the property. Due to the number of wetlands and the extent of buffer overlap, it would not be possible to establish a residence, driveway, and septic system without encroaching into a wetland buffer. The modest scale of the proposed residence is reasonable. As sited, the proposed location of both the residence and access maximizes the width of the wetland buffers while minimizing the length of the access driveway. In the instant proposal, impacts to the Wetland B buffer would be avoided entirely. *Findings 8, 9, 10, 18, and 21.*
5. As conditioned, the proposal would result in minimal alteration of the critical area. No direct impacts to any wetland are proposed. Buffer impacts would be mitigated through plantings within the reduced buffer area and through implementation of the performance standards required by TCC Table 24.30-2. Erosion control measures would be implemented during construction, and the buffer boundary would be marked prior to building permit approval. *Findings 11 and 12.*

6. As conditioned to require the plantings specified in the mitigation plan, the proposal would ensure no net loss of critical area functions and values. *Findings 11, 12, and 21.*
7. The use would not result in unmitigated adverse impacts to known species of concern. *Finding 13.*
8. This decision is not based solely on the location and scale of existing development. Approval of the RUE is based on the Applicants' inability to make reasonable use of the parcel without intrusion into the overlapping wetland buffers. *Findings 8 and 9.*

DECISION

Based on the preceding findings and conclusions, the request for a reasonable use exception as described herein is **GRANTED** subject to the following conditions:

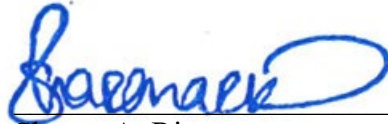
1. It is the Applicants' responsibility to obtain legal access to their property through the easement on the neighboring parcel.
2. If more than 5,000 board feet of timber are to be removed, the property owner shall submit a forest land conversion permit to the County for review and approval before any grading or clearing takes place.
3. The reduction from the required 15-foot construction setback to the requested four-foot construction setback, as shown on the site plan, is approved.
4. Prior to building permit issuance, either proposed mitigation plantings per the mitigation plan (submitted by Land Services Northwest and dated December 22, 2022) shall be installed or a bond or irrevocable assignment of savings in the amount of 125% of the cost of mitigation plantings shall be submitted and shall be retained by Thurston County until the plantings are installed (TCC 24.70).
5. Prior to building permit issuance, the Applicants shall record with the Thurston County Auditor a critical area and buffer notice and a site plan showing the critical areas and associated buffers, indicating that the property is within a critical area and setting out the mitigating conditions imposed upon the subject property.
6. Prior to building permit issuance, permanent critical area signs shall be installed along the boundary of the critical area buffer per TCC 24.60. The Applicants shall contact Community Planning and Economic Development Staff for a site inspection upon completion of the wetland buffer fencing and signage or submit photos to the assigned planner.
7. Erosion and stormwater control best management practices (BMPs) meeting Thurston County standards; TCC Chapter 15.05 shall be employed during all phases of the project. Proper erosion and sediment control practices shall be used on the construction site and adjacent areas to prevent upland sediments from entering waters of the state. All areas

disturbed or newly created by construction activities shall be seeded, vegetated, or given some other equivalent type of protection against erosion.

8. 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 Applicants' responsibility to obtain this permit if required.
9. All development on the site shall be in substantial compliance with the approved reasonable use exception, as conditioned. Any alteration to the proposal will require approval of a new or amended reasonable use exception. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
10. The Applicants shall remove all construction related debris to an approved site (landfill or recycling center) outside of critical areas and their buffers.
11. If archaeological artifacts are observed during any phase of the project, all work shall be immediately halted. The State Department of Archaeology and Historic Preservation, the Thurston County Community Planning & Economic Development Department (CPED), and affected Tribes shall be contacted to assess the situation prior to resumption of work. An Inadvertent Discovery Plan shall be implemented for the project.
12. 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.
13. 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), and State Environmental Policy Act (SEPA) Ordinance (TCC 17.09).

14. 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 reseeded following installation, and TESC measures will remain in place until site conditions are restored.

DECIDED September 28, 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____.