



COUNTY COMMISSIONERS

Carolina Mejia, District One  
Gary Edwards, District Two  
Tye Menser, District Three  
Wayne Fournier, District Four  
Emily Clouse, District Five

## HEARING EXAMINER

*Creating Solutions for Our Future*

### BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Application of	)	NO. 2022101893
	)	
<b>Steve Pryor</b>	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION
For Reasonable Use Exception	)	
_____	)	

### SUMMARY OF DECISION

The request for a reasonable use exception is **GRANTED** with conditions.

### SUMMARY OF RECORD

#### Request

Steve Pryor requested a reasonable use exception to construct a single-family residence, septic system, and driveway within a Category III wetland buffer. A portion of the improvements would also intrude into the standard stream buffer. The subject property is located at 2725 137th Lane SW, Tenino, Washington.

#### Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the application on November 28, 2023. The record was held open through November 30, 2023 to allow any members of the public having difficulty joining the virtual hearing because of technology reasons to submit written comments, with time scheduled for responses from the parties. No post-hearing public comments were submitted, and the record closed on November 30, 2023. No in-person site visit was conducted, but the undersigned viewed the subject property and its environs on Google Maps.

#### Testimony

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

Abbie Adams, Associate Planner, Thurston County Community Planning & Economic Development Department

Arthur Saint, Civil Engineer, Thurston County Public Works Department

Steve Pryor, 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, dated November 13, 2023
- B. Master Application, received April 26, 2022
- C. Reasonable Use Exception application, received May 3, 2022 and revised February 6, 2023
- D. Site plan, received May 3, 2022 and revised October 3, 2023
- E. Project Narrative, received May 3, 2022 and revised February 6, 2023
- F. Critical Areas Report, dated March 14, 2022
- G. Notice of Application for Reasonable Use Exception, dated May 11, 2022
- H. Comment email from Squaxin Island Tribe, dated May 19, 2022
- I. Comment letter from Nisqually Indian Tribe, dated May 12, 2022
- J. Comment memo from Thurston County Environmental Health, dated December 14, 2022
- K. Communications Matrix, received October 31, 2022 and February 6, 2023
- L. Applicant's response to Communications Matrix, received September 6, 2023
- M. Impervious Surface Worksheet, received October 3, 2023
- N. Site plan showing septic and drainfield locations, received September 6, 2023
- O. Applicant's request to end the monitoring earlier, dated September 25, 2023

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

**FINDINGS**

1. Steve Pryor (Applicant) requested a reasonable use exception (RUE) to construct a single-family residence, septic system, and driveway within a Category III wetland buffer. A portion of the improvements would also intrude into the standard stream buffer. The subject property is located at 2725 137th Lane SW, Tenino, Washington.<sup>1</sup> *Exhibits 1, 1.B, 1.C, and 1.D.*

---

<sup>1</sup> The staff report provides the following abbreviated legal description of the subject property: "9-16-2W SW NE & SE NW W165 F OF SW NE & SE NWLY SLY OF LN D AF: COM". *Exhibit 1.* It is also known as Tax Parcel Number 12609130100. *Exhibit 1.B.*

2. The RUE application was received on April 26, 2022 and deemed complete for purposes of commencing project review on May 5, 2022. *Exhibit 1.G.*
3. The subject property is 1.79 acres in area and is irregular in shape, with the western property line and 137th Lane SW to the east forming a point at the northern property extent. *Exhibit 1.D.*
4. 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.*
5. Based on evaluation by a professional wetland scientist, the subject property contains one regulated wetland (Wetland A) and one Type F stream. Wetland A is in the southeast corner of the subject property and has an on-site area of 8,430 square feet and a total area of 10,779 square feet. Wetland A is classified as Category III wetland with a habitat score of 7 (LHH), requiring a 260-foot standard buffer pursuant to TCC Table 24.30-1. The standard buffer may be administratively reduced to 195 feet if mitigation is provided, but a reduction to less than 195 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.F; TCC Table 24.30-1; TCC 24.01.035; TCC 24.30.050.*
6. The Type F (fish-bearing) stream runs through Wetland A across the southeast corner of the property for a distance of 1,187 feet; its width is stated in the critical areas report at six feet. Off-site, the stream flows northward to Beaver Creek, a salmonid stream, which at its nearest is approximately 885 feet to the east. Pursuant to TCC, the minimum buffer width applicable to the Type F stream is 150 feet. *Exhibit 1.F; Abbie Adams Testimony.*
7. The subject property is not known to contain species listed in the Washington Department of Fish and Wildlife Priority Habitats and Species database. *Exhibit 1.F.*
8. The wetland and stream buffers encompass virtually the entire parcel; it would not be possible to construct a single-family residence without a buffer reduction. Due to the unusual shape of the parcel and the extent of the easement for 137th Lane SW, which encumbers the parcel to a depth of 30 feet, administratively reducing the buffer to 195 feet as allowed by TCC 24.30.050 would not create sufficient area for a single-family residence and associated infrastructure. The only developable land would be at the point formed by 137th Lane SW and the western property line, and much of that would be occupied by road easement and building setbacks. Although the line on the site plan

(Exhibit 1.D) marked “195’ Reduced Wetland Buffer” suggests that there is ample room on site for a residence that is more than 195 feet from the wetland, the line was not measured from the nearest portion of the wetland to the residence and it does not correctly identify the potential administratively reduced buffer location.<sup>2</sup> *Exhibit 1.D.*

9. The Applicant proposes to construct a 1,872 square foot single-family residence in the northwest portion of the property, as far from the wetland as possible considering the irregular shape of the property and required property line setbacks. *Exhibits 1.D and 1.E; Abbie Adams Testimony.* The residence would be set back approximately 160 feet from the wetland at its nearest point and 220 feet from the stream at its closest point (as measured from the outer edge of the deck).<sup>3</sup> The residence would have an eight-foot wide covered deck on its east side (adding 416 square feet to the building footprint), and an eight-foot-wide uncovered deck (352 square feet) on its south side. The total area occupied by the residence and attached covered decks would be 2,640 square feet. *Exhibit 1.D.*
10. The proposed residence would be served by an individual on-site well, which would be placed at the northern tip of the property outside of all critical area buffers. *Exhibit 1.D.*
11. The proposed septic tank would also be placed to the north of the residence, within the 260-foot wetland buffer but more than 195 feet from the wetland edge. The septic drainfield would be placed in the southwest corner of the property, approximately 140 feet from the edge of the stream and approximately 120 feet from the edge of the wetland.<sup>4</sup> Thurston County Environmental Health Division Staff reviewed the proposal and did not identify any issues of concern. Environmental Health has approved a septic design for the subject property. *Exhibits 1.J and 1.N.*
12. Access to the residence would be from a previously constructed driveway, which the Applicant testified was in place at the time he purchased the property in 2019 and to which the Applicant has added gravel. The driveway has a footprint of 4,442 square feet.<sup>5</sup> The driveway intrudes into both the wetland and stream buffer; approximately 1,000 square feet of the graveled driveway is within the stream buffer and nearly all of the driveway is within the wetland buffer. It is not clear from the record whether the driveway was lawful when constructed. The distance from the wetland edge to the

---

<sup>2</sup> The correct location from which to measure the 25% reduction/195-foot setback line would be wetland flag A2. Using the scale in the legend of the site plan, a 195-foot radius from wetland flag A2 (near the northern extent of the wetland) appears to show the 195-foot setback line would run through the proposed residence from roughly the southwest corner to the northeast corner. *Exhibit 1.D.*

<sup>3</sup> Please note that these distances were not depicted on the map and so are a rough estimate based on the map scale. *Exhibit 1.D.*

<sup>4</sup> Please note that these distances were not depicted on the map and so are a rough estimate based on the map scale. *Exhibit 1.D.*

<sup>5</sup> The Staff Report indicates that the driveway is 7,018 square feet, but the 4,442 square feet indicated on the Impervious Surface Worksheet (Exhibit 1.M) appears more consistent with the dimensions and scale shown on the Site Plan (Exhibit 1.D).

graveled surface is approximately 75 feet at its narrowest point. *Exhibits 1.D and 1.M; Steve Pryor Testimony.*

13. Roof runoff would be managed through use of a dispersion trench, to be installed approximately 75 feet west of the wetland edge. Driveway runoff would sheet flow from the driveway edge towards. The Public Works Department approved a similar stormwater plan for the property that was submitted in 2021. *Exhibit 1.D; Arthur Saint Testimony.*
14. Although the subject property is currently vacant, past unpermitted development activities occurred within the critical areas and buffers, including ground clearing, installation of gravel, placement of mobile structures (including an RV and shipping containers), and wholesale excavation of the stream into a ditch. The total impacted area was 7,045 square feet of wetland, 13,817 square feet of wetland buffer<sup>6</sup>, and 2,155 square feet of streambed. The Applicant submitted a mitigation plan that purports to have been developed to address both the code violations and the RUE request. The mitigation plan calls for the following: removing mobile structures; restoring wetland vegetation; removing 4,930 square feet of gravel from the buffer (gravel located within the driveway footprint shown on the site plan would remain); restoring and enhancing 8,730 square feet of buffer with plantings; installing 28 cedar trees within the outer portion of the buffer to provide a screen between the wetland and the land use (these are shown as being located between the driveway and the wetland); installing 10 check dams in the ditched stream to catch sediment, create channel diversity, and restore wetland hydrology; and obtaining a RUE to authorize development of the site.<sup>7</sup> Consistent with the requirements of TCC 24.35.017, the mitigation plan provides for five years of monitoring, with periodic field visits to “evaluate plant growth and establishment, condition of habitat quality, and wildlife usage in the enhancement area.” Success is defined in the mitigation plan as follows:

#### *6.3.2.3 Success Criteria*

Success of plant establishment within the restoration areas will be evaluated on the basis of both percent survival and percent cover of installed species. Planting

---

<sup>6</sup> This area of wetland buffer impact is greater than indicated in the text of the staff report, and the mitigation table is somewhat ambiguous. However, the text of the wetland report makes it clear that the 10,506 square feet of gravel and the additional 3,311 square feet of clearing are separate impacts, not overlapping. *Exhibit 1.F, pages 18 and 21, Figure 5 and 6.*

<sup>7</sup> Of some note, the text of the mitigation plan calls for planting 28 cedar trees, expressly stating: “Twenty-eight (28) western red cedar trees would be installed at the edge of the wetland to create a visual screen between the wetland and the land use. Western red cedar acidifies soils inhibiting germination of non-native invasive weeds, provides large woody debris to the wetland, stream, and buffer area, shades out nonnative invasive weeds, and provides habitat for wildlife species.” *Exhibit 1.F, page 19.* However, at Table 8, Wetland Buffer Mitigation Planting Plan, the report indicates that 19 western hemlocks and 20 Douglas firs were purchased and/or planted, and no cedars are indicated. In the record, there is no discussion of whether those species provide the same ecological services, or whether the increase of 11 trees of other species would make up the ecological difference if any. In his testimony, the Applicant testified that some cedars were planted along the driveway, but he was unable to clarify how many of which species were planted where, and he did not speak to any distinction in functions between tree species. He stated that all planted trees were doing well. *Steve Pryor Testimony.*

success will be based on at least an eighty (80) percent survival rate following each monitoring event. Successful plant establishment will also be met if there is at least a sixty (60) percent aerial cover of a combination of planted species and equivalent recruitment of native woody species by the end of the third (3rd) to fifth (5th)-year monitoring period.

*Exhibit 1.F, page 26; TCC 24.35.017.B(6).*

15. The mitigation plan acknowledges that residential construction has potential to impact the critical areas. The plan includes several construction-related mitigation measures, including: no stockpiling of soils in wetlands or buffers; no fueling of machinery within 100 feet of wetlands; and implementing erosion and sediment control best management practices. *Exhibit 1.F.*
16. The County Planner Biologist accepted the Applicant's mitigation plan as providing adequate mitigation for both the RUE-supported residential development of the property and the Applicant's previous code violations. County Staff submitted that the mitigation plan demonstrates that the project is capable of ensuring no net loss of critical area functions and values. *Exhibit 1; Abbie Adams Testimony.*
17. Consistent with the mitigation plan, the Applicant has removed the mobile structures and gravel and completed the critical area restoration work. While the timing was unclear in the record, the plantings were installed and, following site inspection by the County biologist, and the County considers the critical areas to be restored to prior conditions.<sup>8</sup> At Section 6.3.2.1, the mitigation plan states: "The monitoring program will be performed for a period of five (5) years. A baseline assessment will be conducted at the end of the construction phase. This information will be used as a baseline to compare subsequent monitoring events." *Exhibit 1.F, page 26.* However, no formal monitoring called for in the Applicant's mitigation plan has occurred to date. The Applicant testified that the wetland consultant stopped returning calls and did not return to the site. *Steve Pryor Testimony.*
18. The monitoring plan states that "if objectives are met at an earlier date, the applicant may request to end the monitoring phase earlier." *Exhibit 1.F, page 26.* In a letter submitted at hearing, the Applicant requested to be excused from the remainder of the monitoring requirements. He testified that he is concerned that the five-year monitoring period (of which less than two years have passed, and again, no monitoring has occurred) would impede his intended sale of the property prior to residential construction. He submitted that further monitoring should not be required because the objectives of the monitoring have been met, in that the check dams have been successful in catching sediment and

---

<sup>8</sup> The accurate timing of the completed plantings is unclear in the record. The wetland report was revised several times, resulting in a recent date, but the report states that the field work was conducted on May 14, 2021, which matches the dates on the wetland data sheets. The Applicant states that they completed the planting and stream check dams by April 1, 2021 (Exhibit 1.E), which is before the field work date and seems unlikely. While the staff report repeats the April 1, 2021 date, at hearing the Planner testified that planting was completed in April of 2022. *Exhibits 1, 1.E, and 1.F; Abbie Adams Testimony.*

restoring wetland hydrology, and with the restored hydrology, the wetland plants should revegetate the wetland.<sup>9</sup> He asserted that “mother nature has taken over” and that the plantings are well established, submitting photographs purportedly depicting the good progress of the plantings.<sup>10</sup> *Exhibit 1.O; Steve Pryor Testimony.*

19. Pursuant to TCC 24.35.017.B(6)(a), monitoring is to be for a time appropriate to the nature of the project and the complexity of the mitigation project, with the majority of monitoring programs lasting a minimum of five years. However, “deviation from this schedule may be allowed based upon project specific conditions.” *TCC 4.35.017.B(6)(b).* In response to the Applicant’s request to be excused from the remainder of the monitoring plan, County Planning Staff recommended that the monitoring continue until residential construction is completed. *Abbie Adams Testimony.*
20. Consistent with the comments of the Nisqually Indian Tribe and the Squaxin Island Tribe, Planning Staff recommended as a condition of approval that the Applicants stop work stop and notify the Washington Department of Archaeology and Historic Preservation and affected tribes if archaeological materials are discovered during construction. *Exhibits 1, 1.H, and 1.I.*
21. Notice of the open record hearing was mailed to property owners within 500 feet of the site on November 13, 2023 and published in *The Olympian* on November 17, 2023. *Exhibit 1.A.* No public comment was submitted on the proposal. *Exhibit 1.*

## 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

---

<sup>9</sup> It should be noted that no professional assessment concluding that the monitoring objectives have been satisfied is found in the record. *See Steve Pryor Testimony.*

<sup>10</sup> The undersigned acknowledges that the photographs show vegetation, but concludes they are not adequate to clearly demonstrate that the plantings called for in the mitigation plan are in fact well enough established that no further monitoring is needed. *Exhibit 1.O.*

- 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 aside from residential development is permitted by the critical areas ordinance. Considering the RRR 1/5 zoning designation, the relatively small size and unusual shape of the property, the intent of the zone to encourage residential development that maintains the County's rural character, and the previous clearing that occurred, single-family residential use is the only obviously reasonable use of the property. *Findings 3, 4, and 14.*
2. As conditioned, no reasonable use with less impact on the critical area or buffer is possible. The proposed residence would be reasonable in scale, and the residence and associated utilities would be located as far from the critical areas as possible. The residence would be served by the existing driveway, avoiding the need for new driveway clearing. The conditions of approval require the Applicant to demarcate the construction setback prior to construction (after first revising the site plan to correct the buffer width), implement erosion control measures on site during construction, and demarcate the buffer edges with critical area signs. *Findings 5, 6, 8, 9, 10, 11, 12, and 15.*
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. The conditions of approval include a stop work and notification requirement if cultural resources are discovered during construction. *Findings 11, 13, and 20.*



4. The proposal appears to reflect the minimum encroachment necessary to prevent denial of all reasonable use of the property. It would not be possible to establish residential use on site without encroaching into critical area buffers. The scale of the proposed residence is reasonable, and it is proposed to be sited to maximize the width of the wetland buffer and avoid impacts to the stream buffer. Encroachments into the stream buffer would be limited to a portion of the existing driveway, stormwater dispersion trench, and the septic drainfield. The encroachment of the septic drainfield would be both minimal and as far from the stream as possible. *Findings 5, 6, 8, 9, 11, and 12.*
5. As conditioned, the proposal would result in minimal alteration of the critical area. The critical areas were previously altered, and restoration work has occurred. The mitigation plan in the record at Exhibit 1.F was submitted to address both the previously unpermitted damage to the stream, wetland, and buffers and the potential impacts of future residential construction. Addressing the Applicant's request to be excused from the remainder of the monitoring period, with respect, his argument that the objectives of the mitigation have been satisfied is not persuasive. The assertion was not supported by qualified professional analysis. No periodic monitoring reports have been submitted, and the photographs submitted are not adequate to demonstrate that 80% survival of the plantings nor 60% aerial cover by the required species had been accomplished as of the hearing, much less will remain successful at the end of the third, fourth, or fifth monitoring periods per the plan. Most significantly, the objectives of the monitoring plan included establishing a baseline at the end of the construction phase against which mitigation success would be monitored for five years. Prior to residential construction, such plan cannot have completed its objectives, much less have ensured residential construction results in no additional impacts to the reduced buffers. Consistent with Planning Staff's testimony and the Applicant's mitigation plan, the installed mitigation plantings and check dams must be monitored by a qualified professional at least through completion of residential construction and for at least one monitoring period after construction, to ensure that the plantings - and buffer functions - are not damaged by construction activities. The conditions imposed in the instant decision will allow the Applicant (or successor in interest) to submit a new written request to Planning Staff after residential construction is complete, so long as such a request is supported by analysis from a qualified professional that deviation from the monitoring period specified by TCC 24.35.017.B(6) is warranted based on site inspection. Conditions of approval will also require the 15-foot construction setback to be marked with construction fencing prior to building permit issuance. *Findings 8, 9, 11, 12, 14, 15, 16, 17, 18, and 19.*
6. As conditioned to require ongoing monitoring through at least one monitoring period following the completion of residential construction, the proposal can satisfy the criteria that requires ensuring no net loss of critical area functions and values. *Findings 14, 15, 16, 17, 18, and 19.*
7. With the completed critical area restoration work and ongoing monitoring through at least one monitoring period following the completion of residential construction, the use would not result in unmitigated adverse impacts to species of concern. *Findings 7, 14, 15, 16, 17, 18, and 19.*

8. This decision is not based on the location and scale of existing development. Approval of the RUE is based on the Applicant's inability to make reasonable use of the parcel without intrusion into the wetland and stream buffer. *Finding 8.*

### **DECISION**

Based on the preceding findings and conclusions, the request for a reasonable use exception is **GRANTED** subject to the following conditions applicable to Applicant, successors in interest, and agents thereof:

1. The project shall be in compliance with and follow the recommendations and maintenance plan as proposed in the enhancement plan dated March 14, 2023 (Exhibit 1.F), including the requirement to provide ongoing monitoring of plantings, although this approval does expressly contemplate allowing the Applicant or successor in interest to submit a new written request to be excused from the monitoring plan to Planning Staff at the conclusion of the first monitoring period after residential construction is complete, so long as the request is supported by analysis from a qualified professional supporting the conclusion that deviation from the monitoring period specified by TCC 24.35.017.B(6) is warranted based on satisfaction of the mitigation objectives.
2. Prior to building permit issuance, erosion control shall be installed and inspected by Thurston Community Planning and Economic Development staff. Erosion and storm water controls, i.e. silt fencing and/or straw waddles must be installed landward of the reduced buffer such that uncontrolled storm water cannot reach the adjacent wetlands.
3. Prior to building permit issuance, the Applicant shall (1) revise the site plan to depict the correct width of the reduced buffer as authorized by this decision and (2) delineate the construction limits by placing orange construction fencing 15 feet outside of the reduced wetland buffer.
4. Prior to final occupancy approval, permanent critical area signs shall be installed along the boundary of the wetland buffer per TCC 24.60 and be inspected by Community Planning and Economic staff for review and approval. Photos can be submitted in lieu of a site visit by staff.
5. The Applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of critical areas and their buffers.
6. Erosion and stormwater control best practices meeting Thurston County standards established in 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 the shoreline environment. All areas disturbed or newly created by construction activities shall be seeded, vegetated, or given some other equivalent type of protection against erosion.

7. 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.
8. 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 State Department of Archaeology and Historic Preservation.
9. All development on the site shall be in substantial compliance with the approved Reasonable Use Exception application, 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. 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.

**DECIDED** December 14, 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**

<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).
---

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\_\_\_\_.