



COUNTY COMMISSIONERS

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## HEARING EXAMINER

*Creating Solutions for Our Future*

### BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Application of	)	NO. 2023103076
	)	
<b>James Walterscheidt</b>	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION
For a Reasonable Use Exception	)	
_____	)	

### SUMMARY OF DECISION

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

### SUMMARY OF RECORD

#### **Request:**

James Walterscheidt requested a reasonable use exception to construct a 2,500 square foot detached garage/shop and 400 square foot driveway on land designated as prairie habitat and prairie habitat buffer. The subject property is located at 7505 Little Stone Lane SW, Olympia, Washington.

#### **Hearing Date:**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the application on January 9, 2024. The record was held open through January 11, 2024 to allow members of the public to submit written comments, with time scheduled for responses from the parties. Although no post-hearing public comment was submitted, during the comment period the Hearing Examiner accepted a post-hearing submittal from the Applicant responding to questions raised during the hearing and a response from County Staff. The record closed on January 11, 2024.

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

**Testimony:**

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

Heather Tschaekofske, Associate Planner/Biologist, Thurston County Community Planning and Economic Development Department

James Walterscheidt, Applicant

**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
  - B. Master Application, received July 3, 2023
  - C. Reasonable Use Exception Application, received July 3, 2023
  - D. Project Narrative, date received October 10, 2023
  - E. Site Plan, revised October 10, 2023
  - F. Site Photos (7), undated/photographer unidentified
  - G. Prairie Mitigation Plan, West Fork Environmental, dated October 2, 2023 and submitted October 10, 2023
  - H. Plant List, submitted October 10, 2023
  - I. Notice of Application, dated October 13, 2023
  - J. Comment letter from Brad Beach, Nisqually Indian Tribe, dated October 24, 2023
  - K. Comment Memorandum from Lisa Christensen, Thurston County Environmental Health Division, dated October 17, 2023
  - L. 2022 Thurston County Community Planning Field Screening Guidelines for Prairie Habitat
  - M. CPED Prairie Screening Data Sheet, dated June 22, 2023
- Exhibit 2 Email from Heidi Barnett, West Fork Environmental re: Addendum to Prairie Mitigation Plan, dated January 10, 2024
- Exhibit 3 Email from Heather Tschaekofske (Staff Response to Addendum to Prairie Mitigation Plan), dated January 10, 2024

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

### FINDINGS

1. James Walterscheidt (Applicant) requested a reasonable use exception (RUE) to construct a 2,500 square foot detached garage/shop and 400 square foot driveway on land designated as prairie habitat and prairie habitat buffer. The subject property is located at 7505 Little Stone Lane SW, Olympia, Washington. *Exhibits 1, 1.B, 1.C, 1.D, and 1.E.*
2. The RUE application was received on July 3, 2023 and deemed complete for purposes of commencing project review on October 10, 2023. *Exhibit 1.I.*
3. The subject property is a triangular, 1.36-acre parcel that is developed with a single-family residence, driveway, detached garage, septic system, well, and two storage sheds. The residence and garage are located in the northcentral portion of the parcel, and the septic system and drainfield are located southwest of the residence. To the southeast of the residence is an area that was graded and covered with gravel in late 2022 to serve as a building pad for the proposed shop building. *Exhibits 1, 1.E, and 1.G.*
4. The Applicant restores vintage cars and hauls the cars to shows, and the proposed garage/shop would provide storage for an RV, a vintage truck, a car trailer, and a car lift. *Exhibits 1.C and 1.G; Jim Walterscheidt Testimony.*
5. Surrounding land uses consist of single-family residences on lots with mowed pasture/grassland and maintained lawns. *Exhibits 1 and 1.D; Google Maps site view.*
6. 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.*
7. The subject property was screened for prairie habitat in June 2023, consistent with the 2022 Thurston County Community Planning Field Screening Guidelines for Prairie Habitat (Exhibit 1.L). *Exhibits 1.G, 1.M, and 1.L.* Eight species of prairie vegetation were detected on site, in quantities and locations sufficient to meet Thurston County’s criteria for prairie habitat in the southeast portion of the property. Because prairie species were detected at the southern and eastern ends of the cleared gravel pad, the former

presence of prairie species within the gravel area was inferred. The prairie habitat includes the gravel area and areas immediately adjacent to the south and southeast. The area, along with the 50-foot buffer required by TCC 24.25.075.D, covers the entire southeast portion of the property, with the encumbered area extending almost to the existing development footprint in the central portion of the property. *Exhibit 1.G.*

8. Although prairie vegetation is present on the property, no prairie species listed as Washington Natural Heritage Program rare plants were detected during the site visits. However, some species detected on site, while not rare, provide nectar for the endangered Taylor's checkerspot species of butterfly and/or other butterfly species of conservation concern. *Exhibit 1.M; see also Exhibit 1.L.* The Taylor's checkerspot is listed in the Washington Department of Fish and Wildlife database of Priority Habitat and Species as a species with record(s) of occurrence in the vicinity of the subject property, although the specific location is not identified). Otherwise, no threatened or endangered species of wildlife have been identified on the subject property. *Exhibit 1.G.*
9. In order to reduce impacts to prairie habitat, the Applicant proposes to shift the proposed building footprint slightly west (so that a portion is outside of the delineated habitat area and the remainder is on the previously graded building pad). As depicted on the submitted site plan, the building would be 70.29 feet from the edge of the existing driveway. As mitigation for the proposed impacts, the Applicant proposes to restore the remainder of the previously graded building pad (1,743 square feet) and enhance 1,157 square feet of undisturbed area immediately to the southeast, for total mitigation of 2,900 square feet. This represents a 1:1 ratio of mitigation to impact based on the 2,500 square foot shop and 400 square feet of new driveway area. Native species of prairie plants would be used for the restoration and enhancement, including Idaho fescue, long-stolen sedge, crown brodiaea, slender cinquefoil, western buttercup, Oregon sunshine, spring gold, farewell to spring, and common camas. The selected plants would increase the number of species on site providing a nectar source for the Taylor's checkerspot butterfly to ensure no net loss of habitat functions and values. *Exhibits 1.G, 1.H, and 1.E.*
10. The mitigation plantings would be maintained and monitored consistent with the submitted Prairie Mitigation Plan and the addendum to that plan that was submitted after the hearing. A five-year monitoring plan is proposed, with monitoring provided by a qualified biologist with reports submitted to Thurston County. The mitigation goal is for the enhancement/restoration area to meet Thurston County criteria for prairie habitat at the end of the five-year period. The plan addendum identifies maintenance actions related to mowing and watering. Thurston County's Staff biologist accepted the Prairie Mitigation Plan with the submitted addendum as satisfying County requirements. *Exhibits 1.G, 2, and 3; Heather Tschaekofske Testimony.*
11. Although prairie habitat has not been delineated in the southwest corner of the subject property, the shop could not be constructed in that area because of the presence of septic system components. The unencumbered strip of land immediately west of the residence,

at 38 feet wide, is too narrow for the proposed 50-foot square building and required building setbacks. The proposed location in the southeast corner of the property is closer to the existing driveway and is a location in which the Applicant has historically parked vehicles. *Exhibits 1.G and 1.E.*

12. Consistent with the comments of the Nisqually Indian Tribe, Planning Staff recommended a condition requiring the Applicant to stop work and notify the Tribe and the state Department of Archaeology and Historic Preservation if cultural resources are inadvertently disturbed during construction. *Exhibits 1 and 1.J.*
13. The Thurston County Environmental Health Division reviewed the proposal and did not identify any issues of concern. Environmental Health recommended approval of the RUE. *Exhibit 1.K.*
14. The proposed development is categorically exempt from review under the State Environmental Policy Act. *Washington Administrative Code (WAC) 197-11-800; TCC 17.09.055.B.*
15. Notice of the open record hearing was mailed to property owners within 500 feet of the site on December 20, 2023 and published in The Olympian on December 29, 2023. *Exhibits 1 and 1.A.* There was no public comment on the application prior to or during the virtual open record hearing process. *Exhibit 1.*
16. Having heard all testimony, Planning Staff maintained their recommendation that the conditions identified in the staff report should be imposed if reasonable use exception approval is granted. *Exhibit 1; Heather Tschaekofske Testimony.* The Applicant waived objection to the recommended conditions. *Jim Walterscheidt 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 reasonable use aside from residential use of the property as a whole is permitted by the critical areas ordinance. Considering the RRR 1/5 zoning designation, the size and current use of the parcel, the intent of the zone to encourage residential development that maintains the County's rural character, and the character of surrounding development, single-family residential use including appurtenances typical to the rural area, such as the proposed shop, is the only reasonable use of the property. *Findings 3, 4, 5, and 6.*
2. As conditioned, no reasonable use with less impact on the critical area or buffer is possible. The size of building proposed is reasonable considering the Applicant's storage requirements and the site size. The building location is constrained due to the relatively unusual shape of the parcel, the location of the residence and other existing improvements, the presence of septic components in the southwest portion of the property, and the presence of prairie habitat in the southeast portion of the property. The Applicant has shifted the building footprint west to minimize impacts to prairie habitat. *Findings 3, 4, 7, 9, 11, and 16.*
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 conditions of approval address erosion control, removal of construction debris, and inadvertent discovery of cultural resources. No public health issues were identified during the review process. *Findings 12, 13, and 16.*

4. For the reasons described in Conclusion 2, the proposal is the minimum encroachment necessary to prevent denial of all reasonable use of the property. *Findings 3, 4, 7, 9, and 11.*
5. As conditioned, the proposal would result in minimal alteration of the critical area. The driveway and garage would be placed in a previously disturbed portion of the property. Disturbed areas outside of the building footprint would be restored. *Findings 3, 11, and 16.*
6. As conditioned to require implementation of the prairie mitigation plan and its addendum, the proposal would ensure no net loss of critical area functions and values. *Findings 9, 10, and 16.*
7. As conditioned, the use would not result in unmitigated adverse impacts to species of concern. The conditions of approval require implementation of the prairie mitigation plan and its addendum. Species of plants providing nectar for the endangered Taylor's checkerspot would be planted within the restoration and enhancement areas. *Findings 8, 9, 10, and 16.*
8. This decision is not based solely 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 prairie habitat. *Findings 3, 7, and 11.*

### **DECISION**

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

1. The Applicant shall complete mitigation consistent with the approved plan and addendum prior to final building permit inspection or shall submit a surety in place of mitigation completion prior to final building permit inspection, per TCC 24.70. Maintenance and monitoring shall be completed per the approved mitigation plan by West Fork Environmental dated October 2, 2023 and addendum dated January 10, 2024.
2. A critical area affidavit shall be signed and recorded with the Thurston County Auditor's office prior to final building inspection for the proposed garage.
3. 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.

4. 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.
5. 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.
6. The Applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of critical areas and their buffers.
7. 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 Tribe and the State Department of Archaeology and Historic Preservation.
8. 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.
9. 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 the State Environmental Policy Act (SEPA) Ordinance (TCC 17.09).
10. 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** January 16, 2024.



Sharon A. Rice  
Thurston County Hearing Examiner



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

<b>NOTE:</b> THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).
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If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.\* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

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

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

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

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

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

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

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

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



Project No. \_\_\_\_\_  
Appeal Sequence No.: \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

### **STANDING**

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

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED \_\_\_\_\_

SIGNATURE OF APPELLANT \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Please do not write below - for Staff Use Only:

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