



COUNTY COMMISSIONERS

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Gary Edwards

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District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2012103208
)	
)	North Parcel
Thomas and Tiffany Schrader)	(Tax Parcel No. 83002100100)
)	
For a Reasonable Use Exception)	FINDINGS, CONCLUSIONS
)	AND DECISION

SUMMARY OF DECISION

The request for a reasonable use exception to construct a single-family residence and attached garage on property designated as landslide hazard area and marine bluff hazard area is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

Thomas and Tiffany Schrader (Applicant) requested a reasonable use exception (RUE) to construct a single-family residence and attached garage at 1730 - 25th Avenue NW (Tax Parcel No. 83002100100), a shoreline parcel which is designated as a landslide hazard area and a marine bluff hazard area.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the request on March 20, 2017. The proceedings were comprised of a consolidated hearing on two requests for reasonable use exception (north parcel and south parcel) because the parcels are very near to one another (separated by one lot) and are burdened with similar critical areas constraints, the materials have substantial overlap, and nearly identical testimony would have been required to be presented twice if conducted as two separate hearings. The Applicant agreed to extend the time for decision issuance by five business days.

Testimony

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

Scott McCormick, MES, Resource Stewardship Department, Associate Planner
Dawn Peebles, Thurston County Environmental Health
Arthur Saint, Thurston County Public Works
Thomas Schrader, Applicant
Erik Ainsworth, CE, Applicant representative
James Brisbine, Associated Earth Sciences, Applicant representative
Glenn Wells, architect, on behalf of Applicant
Jim Simmons
Gregory Moe
James Laukkonen
Spence Weigand
Gabe Harrison

Exhibits

At the open record public hearing, the following exhibits were admitted into the record:

EXHIBIT 1	Land Use and Environmental Review Section Report with the following Attachments:
Attachment a	Notice of Public Hearing
Attachment b	Zoning Map
Attachment c	Master Application, received July 23, 2012
Attachment d	Reasonable Use Exception Application, received July 23, 2012
Attachment d-1	Reasonable Use Exception Application, Updated application received March 9, 2017
Attachment e	Notice of Application dated December 4, 2012, with adjacent property owner list dated November 29, 2012
Attachment f	Vicinity Map with 2-foot contours
Attachment g	Site plan dated October 28, 2015
Attachment g-1	Site plan received July 23, 2012
Attachment h	Profile view by the Land Developers Engineered Solution
Attachment h-1	Profile view, Hand drawn dated March 19, 2012

Attachment i	Revegetation Plan by Hatton Godat Pantier dated October 28, 2015
Attachment j	Survey by Bracy and Thomas with hand drawn annotations indicating location of property received July 23, 2012
Attachment k	Washington State Coastal Zone Atlas slope stability map of vicinity
Attachment l	Soils Investigation Report by Bradley-Noble Geotechnical Services, received June 1, 2016
Attachment m	Residence Engineered Abbreviated Drainage Plan by the Land Developer's Engineered Solution received February 27, 2013
Attachment n	Third-Party Geotechnical Review and Assessment by Associated Earth Sciences Inc. dated September 9, 2014
Attachment n-1	Slope Stability Analysis by Associated Earth Sciences Inc. dated May 21, 2015
Attachment o	Arborist Report by Washington Forestry Consultants Inc. dated August 5, 2014
Attachment p	Geotechnical response to Thurston County comments by Bradley-Noble Geotechnical Services dated February 27, 2008 Re: Parcel no. 8300200800
Attachment q	Copy of Thurston County Title 17, Chapter 17.15 – Critical Areas, Part 600 – Geologic Hazard Areas
Attachment r	Review of Geotechnical Documentation of Slope Characteristics – Evaluation of Causes of Recent Slope Movement, Slope Below 1704 24 th Ave NW, Parcels 83002101100, 83002100200 and 83002100300 by Kenneth Neal & Assoc. dated March 5, 2008
Attachment s	Ladd & Lichtenstein site photos “Attachment B: Land Movement in the Area of Case #2012103206 & Case #2012103208 dated December 18, 2012, received December 20, 2012

Attachment t	Comments on Case nos. 2012103206 and 2012103208 from Kaye V Ladd and Karen Lichtenstein dated December 18, 2012
Attachment u	Road Variance Approval memo from Arthur Saint, P.E. TC Public Works dated August 5, 2015
Attachment v	Approval memo from Arthur Saint, P.E. TC Public Works dated September 25, 2015
Attachment w	Approval memo from Sara Brallier, TC Environmental Health dated September 25, 2012
Attachment x	Letter of water and sewer availability from the City of Olympia dated September 17, 2012
Attachment x-1	Letter from the City of Olympia Fire Department dated July 23, 2015
Attachment y	Shoreline Administrative Variance decision from Thurston County Resource Stewardship dated January 20, 2016
Attachment z	Letter to applicant from TC Resource Stewardship dated January 20, 2016
Attachment aa	Email chain between applicant and TC Resource Stewardship dated December 16, 2015 – December 29, 2015
Attachment bb	Email chain between applicant and TC Resource Stewardship dated December 1, 2015 – December 3, 2015
Attachment cc	Email from Arthur Saint, TC Public Works to Scott McCormick dated September 22, 2015
Attachment dd	Email chain between applicant and TC Resource Stewardship dated July 15, 2015 – July 16, 2015
Attachment ee	Email from Mark Biever, L.G. L.E.G. to Scott McCormick, dated June 3, 2015
Attachment ff	Email from Mark Biever, L.G. L.E.G. to Scott McCormick, dated April 1, 2015
Attachment gg	Email chain between applicant and TC Resource Stewardship dated March 6, 2014 – March 10, 2014

Attachment hh	Email from applicant to TC Resource Stewardship dated October 20, 2013
Attachment ii	Email from Kaye Ladd to Scott McCormick, TC Resource Stewardship dated January 7, 2013 (Re: Tree cutting and vegetation management, opposed to project)
Attachment jj	Comment letter from Keith and Susan Klovee-Smith dated December 24, 2012 (History of slides, opposed to project)
Attachment kk	Email from Kelli Larson, TC Public Works to Tom Schrader dated December 13, 2012
Attachment ll	Email comments from Keith and Susan Klovee-Smith dated December 23, 2012 (opposed to project)
Attachment mm	Comment letter from Lars Nashlund dated December 18, 2012 (opposed to project, instability, inadequate road etc.)
Attachment nn	Email from applicant to Scott McCormick, TC Resource Stewardship dated November 9, 2012
Attachment oo	Thurston County Assessor Cost Valuation Report – Assessment Year 2016
Attachment pp	Washington State Department of Fish and Wildlife, Example Drawing M – 1, Diffuser Tee, Softshore Detail.
Attachment qq	Soils Investigation Report by Bradley-Noble Geotechnical Services, dated July 11, 2012 (originally submitted report for different, off-site property – Lot numbers altered on report cover and heading)
Attachment rr	Email from applicant to TC Resource Stewardship dated February 21, 2016, with attached Assessor’s Dept. information and Deed (regarding legal lot status).
Attachment ss	Email from applicant to TC Resource Stewardship dated March 8, 2017
Attachment tt	Email from Steve Hatton P.E. forwarded by the applicant to TC Stewardship March 9, 2017
Attachment uu	Email from applicant to TC Resource Stewardship dated March 9, 2017

Attachment vv Tax deed for subject property recorded March 5, 2012
under Thurston County Auditor's File No. 4254227¹

- Exhibit 2 Public comments:
- a. William Waugh email, March 16, 2017, with attached Bradley-Noble letter dated April 21, 2011 relating to 1626 - 25th Avenue NW
 - b. Lars Nashlund email, March 15, 2017
 - c. Kaye Ladd email/letter, dated March 14, 2017
 - d. Jim Barnett letter, March 17, 2017
 - e. Lee Harrison (1602 - 25th Avenue NW) written comments (undated)
- Exhibit 3 Copy of photograph of posted notice
- Exhibit 4 Memorandum from Scott McCormick with corrections for staff report and additional recommended conditions
- Exhibit 5 Applicant's hearing submittal, with attachments:
- a. Photo of 2910 Valmere Drive, Malibu, California
 - b. Site reference map with photos of existing conditions surrounding the subject properties (map plus seven pages of color photos)
 - c. Resume of Thomas Schrader
 - d. Copies of five photos taken of alleged landslide son surrounding parcels
 - e. Bradley-Noble Geotechnical Services report of test pit B-1 boring (two pages)
 - f. Email from Mark Biever to Scott McCormick, June 3, 2015
 - g. Copies of three photos of vegetation related to removed trees
 - h. Thurston County Public Works letter, August 5, 2015
 - i. Letter from Olympia Fire Department, July 23, 2015
 - j. Letter from Erik Ainsworth, PE, March 13, 2017
- Exhibit 6 Thurston County Road Standards, with attached email from Arthur Saint dated March 20, 2017 and attached Olympia Private Access Lane standard

Based upon the record developed at the open record hearing, the Hearing Examiner enters the following findings and conclusions.

¹ It was clarified on the record at hearing that Attachment VV was inadvertently included as Attachment R in the South Parcel staff report. This document relates to the North Parcel and was reidentified as Attachment VV to the North Parcel staff report on the record.

FINDINGS

1. The Applicant requested a reasonable use exception (RUE) to construct a single-family residence and attached garage at 1730 - 25th Avenue NW (Tax Parcel No. 83002100100), a shoreline parcel that is designated as a landslide hazard area and a marine bluff hazard area.² *Exhibits 1, 1.C, 1.D, and 1.G.*
2. The RUE application was submitted and determined to be complete on July 23, 2012. The County considers the application to be vested to the critical areas ordinance in effect as of July 23, 2012 (TCC 17.15). Associated improvements for which relevant permit applications have not been submitted (such as shoreline and critical areas permits addressing roadway, retaining wall and drainage improvements) would be subject to the ordinances in effect at the time of submittal. *Exhibits 1, 1.C, 1.D, and 1.Z; McCormick Testimony.*
3. The subject parcel was created through the Plat of West Olympia in 1869, and consists of Lot 1 of Block 21 of that plat. The total area is 0.25 acre. County Resource Stewardship Staff are satisfied that the parcel satisfies the legal lot criteria contained in TCC 18.04.045(H), based on evidence that contiguous lots were in different ownership as of July 29, 1974. *Exhibits 1 and 1.RR.*
4. The subject property has an assessed value of \$36,950, calculated from a base value of \$146,132. The primary reasons for the reduction in value are steep topography, “restrictions,” and “no access.” *Exhibit 1.OO.*
5. The subject property is located on Budd Inlet of Puget Sound, a shoreline that is regulated under the Washington State Shoreline Management Act and the Shoreline Master Program for the Thurston Region (SMPTR). The subject property is located in an area that the SMPTR designates as a Rural shoreline environment. *Exhibits 1, 1.B, and 1.F.*
6. Single-family residences are allowed in the Rural shoreline environment subject to development standards. The minimum building setback in the Rural shoreline environment is 50 feet, unless an increased or decreased setback is administratively approved pursuant to Chapter XVI, Section C(16). The Administrator may require an increased setback when the building or setback areas have a slope greater than 40%, severe slope instability exists, or a feeder bluff is present. In this case, the County has not requested an increased setback despite slopes steeper than 40%. *Exhibit 1.*
7. The subject property is located in the Olympia Urban Growth Area and is zoned Residential 4-8 dwelling units per acre (R 4-8). *Exhibits 1 and 1.B.* The R4-8 zone requires a minimum residential density of four units per acre, a minimum 5,000 square foot lot size, and setbacks of 20 feet for front and rear lot lines and five feet for side lot lines. *TCC 23.04.080, Table 4.04.*

² The legal description of the subject parcel is a portion of Section 03, Township 18, Range 2W, Quarter SE SW Plat WEST OLYMPIA BLK 21 LT 1 Document 001/012; also known as Tax Parcel No. 83002100100. *Exhibit 1.*

8. Surrounding land uses include single-family residences and vacant parcels. There are four existing residences served by 25th Avenue NW, all of which predate the County's adoption of its first critical areas ordinance in 1994. Two of the residences, located south of the subject property, were built in 1992. These have footprints of approximately 2,200 square feet and 1,600 square feet, respectively. The two residences north of the subject property (on the beach at the base of the bluff) include one built in 1913 with an approximate footprint of 1,100 square feet, and one built in 1957 with an approximate footprint of 720 square feet. None of these residences are immediately adjacent to the subject property. There is an existing residence immediately upslope of the subject property, on the west side of 25th Avenue NW (1704 24th Avenue NW). City of Olympia City limits are several hundred feet south of the site. *Exhibits 1, I.J, and 5; McCormick Testimony.*
9. The proposed residence would have a 1,645-square-foot footprint, including 1,285 square feet as living area and 360 square feet as garage, and a 220-square foot driveway, for a total development area of 1,865 square feet. The Applicant proposes to situate the residence as far west (away from the shoreline) as possible, while maintaining the minimum front and side yard setback requirements of the R 4-8 zone. The Applicant requested, but was denied, an administrative shoreline variance to reduce the 50-foot shoreline setback required by the SMPTR to 40 feet, because the parcel satisfies the criteria for an *increased* buffer due to the steepness and instability of the slope. This decision was not appealed, and the Applicant's site plan shows that the residence would be set back 50 feet from the ordinary high water mark. *Exhibits 1, .G, and I.Y.* The Applicant has indicated that the structure would be of a "modern" design with a flat roof, only one story tall as seen from the street grade, and would have low visual impact to upslope residences. *Schrader Testimony.*
10. The subject property is on a marine bluff approximately 110 feet high, which slopes down from west to east (Puget Sound). The existing access for the lot and the surrounding residences, 25th Avenue NW, traverses the bluff. The residences west of 25th Avenue NW at the top of the bluff are accessed from 24th Avenue NW. *Exhibits 1, I.R, I.J, and 5.*
11. The vertical relief between the ordinary high water mark and 25th Avenue NW corridor is 60 feet, and the average slope inclination is 83%. *Exhibit I.L.* With a slope height exceeding 15 feet and an inclination exceeding 50%, the slope is consistent with the criteria for a landslide hazard area per the definitions contained in the critical areas ordinance in effect at the time of complete application (former TCC 17.15.200). Per TCC 17.15.610 and 17.15.620, single-family residential development is prohibited within a landslide hazard area, and development adjacent to a landslide hazard area is subject to a minimum 50-foot vegetated buffer from the top of slope and a 25-foot vegetated buffer from the toe of slope. *Exhibits 1 and I.Q.*
12. The subject property is mapped as "unstable" on the landslide hazard map of the Coastal Zone Atlas of Washington (Volume 8, 1979). *Exhibits 1 and I.K.* Pursuant to TCC 17.15.200, marine bluff hazard areas include marine bluffs with a vertical height of 20

feet or more, along with the upland area within 200 feet of the top of the bluff; and those marine bluffs shown as "unstable" on the Coastal Zone Atlas, unless under 20 feet in height and determined to be stable. *Exhibits 1 and 1.Q*. In this case, the marine bluff satisfies both the height and mapping criteria for classification as a marine bluff hazard area. *Exhibits 1.L and 1.K*. Per former TCC 17.15.610, residential development is allowed within a marine bluff hazard area if certain standards are satisfied, including maintaining a vegetated buffer from the top of the bluff. *Exhibits 1 and 1.Q*. Resource Stewardship Staff testified that the County interprets these ordinances to mean that single-family residences are allowed in marine bluff hazard areas that are also landslide hazard areas, subject to development standards. *McCormick Testimony*.

13. The elevations shown on the Applicant's plans are based on Thurston County Geodata; no site-specific topographic survey has been performed. Resource Stewardship Staff recommended that the Applicant be required to submit engineered plans based on site-specific elevations prior to building permit approval. *Exhibit 1; McCormick Testimony*.
14. The subject property is wholly encumbered by regulated critical areas. It would not be possible to establish a building footprint outside of the landslide hazard area/marine bluff. *Exhibits 1.G and 1.H*.
15. There are two main soil layers on site. The upper 15 to 20 feet consist of medium dense to very dense silty sands, gravelly sands, and sandy gravels (advance outwash deposit). Beneath the upper layer (and extending to a depth of approximately 61 feet) are very dense silty sands and hard silts, with some gravel lenses (pre-Vashon glaciolacustrine deposit). *Exhibit 1.N-1, page 3*.
16. There is a history of slope movement in the vicinity of the subject property, including relatively recent events. Slide indicators such as scarps and cracks can be seen in the area. *Exhibits 1.N, 1.LL, 1.R, 1.S, and 1.T*. The slide events are well-documented in several exhibits in the record, including geotechnical reports for this and other projects in the area, and in photographs and testimony submitted by neighbors (see e.g., Exhibit 1, Attachments N, P, R, S, T,). For example, in 2003 a debris flow originating upslope and 130 feet north of the subject property flowed down across 25th Avenue NW and into Budd Inlet. This event is estimated to have involved approximately 100 cubic yards of material, and caused temporary closure of 25th Avenue NW. *Exhibits 1, 1.P, and 1.R*. In 2007, a debris flow originated above the parcel immediately north of the subject property. *Exhibits 1, 1.P, and 1.R*. The Applicant's engineering geologist, who prepared the soils report for this project and previously prepared a geotechnical evaluation in support of the residence constructed immediately upslope of the subject property, characterized these slides as shallow events caused by heavy rainfall, inadequate control of storm drainage, and poor upslope vegetation management practices. *Exhibits 1.I and 1.HH*. While some evidence submitted indicated that there was a slide on the subject property in 1990, third-party geotechnical review indicated that "the presence of mature trees on the northern parcel [subject property] indicates that no large slides have occurred here in recent decades." *Exhibit 1.N, page 4*.

17. Ground water seepage has been observed in several locations along the cut bank on the west side of 25th Avenue NW, and the presence of seeps is inferred on the subject property; the steep topography and vegetative cover have prevented detailed inspection. *Exhibits 1, 1.N-1, and 1.L*. However, based on review by the Applicant's engineering geologist, the seeps that occur on the slope are not a potential source of slope instability that would affect a pile-supported structure such as the one proposed. *Exhibit 1.L, page 3*.
18. Several engineers have evaluated the proposal, including engineers from Bradley-Noble Geotechnical Services, Associated Earth Sciences, The Land Developer, and Thurston County, and all have concluded that the development is feasible with proper design. *Exhibits 1.L, 1.M, 1.N, 1.N-1, 1.EE, and 1.FF*. The recommended design features include use of drilled and auger cast-in-place piles for foundation support, with the upper portions of the piles designed to serve as unsupported columns in the event of exposure from a mass wasting event, use of retaining walls (both on the west side of the residence and on the west side of 25th Avenue NW), and installation of drainage improvements. *Exhibits 1.L and 1.N*.
19. The Applicant submitted a geotechnical stability analysis prepared by Associated Earth Sciences (AES) on May 21, 2015 (Exhibit 1, Attachment N-1). AES determined that the pre-development static safety factor for the parcel is 1.6, and the pre-development seismic safety factor is 1.1. The safety factor is "the ratio of the sum of all forces or moments resisting slope movement versus the sum of all forces or moments tending to cause slope movement." *Exhibit 1.L, page 4*. A higher number indicates greater resistance to slides. A safety factor of 1.0 is on the verge of sliding, but safety factors higher than 1.0 indicate some resistance to sliding, with a minimum static safety factor of 1.5 and a minimum seismic safety factor of 1.1 considered desirable long-term. *Exhibit 1.N-1, page 4*.
20. For the developed state, AES calculated the static safety factor to be 1.6, and the seismic safety factor to be 1.1. Although the safety factors would be unchanged from the pre-development condition, the modeled location of slope failure would change slightly. In the pre-developed state, the modeled slope failure originates near the center of 25th Avenue NW, but in the developed state, the modeled slope failure originates several feet west (upslope) of 25th Avenue NW. AES does not consider this to be a significant effect on slope stability. *Exhibit 1.N-1, page 6 and Appendices C and D*.
21. The AES slope stability analysis was based on several assumptions with respect to future development, including construction of a soldier pile wall on the downslope side of 25th Avenue NW to support the house excavation, use of auger cast piles extending to an elevation of 20 feet or lower to support the residence, and installation of drainage improvements, including intercepting most surface and near-surface seepage water from upslope of the roadway and tightlining it downslope, and installing drainage improvements along the soldier pile wall. *Exhibit 1.N-1*.

22. The Applicant's engineering geologist submitted that "the need to improve the existing drainage system on this property is obvious," and that "protecting the soils of the slope from concentrated surface flows of storm water will improve long-term slope stability and minimize possible future small surface failures of the weathered soil zone." *Exhibit 1.L, page 7*. The Applicant had an engineered abbreviated drainage plan prepared for the proposed development, which is dated February 25, 2013. The plan includes tight-lining runoff collected from the roof and driveway to the beach for discharge. While an engineer providing third-party geotechnical review agreed with the drainage concept and submitted that the system will enhance the long-term stability of the slope, corrections and updates would be needed for the plan to be approvable by the County because the submitted plan does not comply with relevant stormwater management standards. One of the deficiencies identified by the County is that the plan shows use of riprap splash pads at the beach, which does not comply with Washington State Department of Fish and Wildlife requirements for diffusion of stormwater. Further, while construction of a single-family residence is exempt from environmental review under the State Environmental Policy Act (SEPA), the exemption does not apply to development "wholly or partly on lands covered by water" (TCC 17.09.055). Consequently, stormwater improvements such as those shown on the engineered drainage plan would require SEPA review. The Applicant has not yet submitted a SEPA Environmental Checklist for the project. *Exhibits 1, 1.M, 1.Z, 1.N, and 1.PP*.
23. An arborist visited and evaluated the site during the summer of 2014, and identified 14 trees on the subject property, 10 of which are in poor or very poor condition due to health and structural defects and are not suitable for retention. Many have broken tops or other storm damage. Only four trees on the site are in "fair" condition. The arborist recommended that most of the trees on site be removed, and that new vegetation include small or durable species, due to potential for high winds. *Exhibit 1.O*. The existing trees are located in or near the building footprint in the western portion of the subject property, and the Applicant proposes to remove all of them. The submitted revegetation plan depicts the planting of new trees of the recommended species at a 3:1 ratio to the trees removed. These would be distributed throughout the area between the ordinary high water mark and the residence. *Exhibit 1.I*. Resource Stewardship Department Staff noted that additional sword ferns at a higher density would help with minimizing surface soil erosion and slope stability and additional small, woody shrubs at a high density near the shoreline would improve soil stability and provide near shore habitat improvements. Due to poor quality of existing vegetative cover and the importance of vegetation for slope stability, Staff recommended that the Applicant be required to revise the revegetation plan to provide a higher density of plantings. *Exhibit 1*.
24. Access to the subject property is via 25th Avenue NW. The County right-of-way ends north of the subject property at the end of County-maintained Crestline Drive. The portion serving the subject property and the parcels to the south of the subject property is considered by the County to be a private road. Although the Plat of West Olympia shows a 20-foot wide alley near the road alignment, the alley has been statutorily vacated. The alignment of existing 25th Avenue NW follows a historic railroad bed (believed to have been built in the 1870s); it curves into and through the parcels south of the former alley.

At the subject property, the roadway is wholly contained within the parcel. There is no recorded easement for the private road used by the two residences south of the subject property. Resource Stewardship Staff recommended that the Applicant be required to provide evidence of easement rights prior to building permit approval. *Exhibits 1, 1.G-1, 1.J, 1. L, 1.KK, and 4; Saint Testimony.*

25. The 25th Avenue NW road surface is ten feet wide or less. Because the County does not maintain the southern portion of the road, residents have repaired it using un-engineered fill, plywood, and asphalt patches. Ground water and soil movement under the roadway have caused it to sink and crack. *Exhibits 1, 1.S (photos marked Figures 10, 11, 22 and 23), and 3.*
26. The subject property is within the service area of the Olympia Fire Department. The Fire Department commented that 25th Avenue NW does not meet its access requirements, but that the agency would support construction of new residential structures on that street if the structures are provided with fire sprinklers designed to NFPA 13-D and Olympia's standard requirements. *Exhibit 1.NN.*
27. County Public Works Staff requested that the Applicant be required to widen 25th Avenue NW from its intersection with Crestline Drive NW south to the subject property, and install drainage improvements. *Exhibits 1.Z and 1.AA.* Appendix 6-A of Thurston County Road Standards shows the required street section for a private road serving up to 16 single-family residences. The minimum roadway width is 20 feet, and the minimum surfacing width is 16 feet. The Applicant has obtained Public Works Department approval of a variance from the roads standards to reduce the required roadway width to 16 feet, on condition that the residence include a sprinkler system for fire suppression. *Exhibit 1, Attachment U; Exhibit 6.*
28. The Applicant objected to the recommendation that the road be widened the entire distance from Crestline Drive. In correspondence dated December 29, 2015, the Applicant indicated plans to improve the road from the end of the County-maintained portion (a shorter distance), including widening the road to 16 feet and paving it, building retaining walls where needed to support uphill cuts for the road, and installing drainage improvements that would tight-line collected runoff to the beach. *Exhibit 1.AA.* In his comments submitted at hearing, the Applicant argued that Staff's recommendation is inconsistent with assurances provided to him at the time of application, that widening the entire road is unnecessary both because the fire department would not attempt to access the site and because of low traffic volumes, and that the requirement would be cost prohibitive and would functionally prevent development of the site. *Exhibit 5; Schrader Testimony; Ainsworth Testimony.*
29. Upgrading the access to the subject property consistent with Thurston County Road Standards, as modified through the approved variance, would require review under the current critical areas ordinance (CAO, Title 24 Thurston County Code). The CAO prohibits expansion of roads within a marine bluff hazard area unless needed for public safety. County Resource Stewardship Staff submitted that this criterion might be met due

to the safety improvements associated with road and drainage improvements. *Exhibit 1, page 22.*

30. The Applicant's site plan shows a retaining wall on the west (upslope) side of 25th Avenue NW. No specific plans in support of the retaining wall were submitted, and the retaining wall appears to extend onto neighboring properties. Plans for the retaining wall would be subject to review under the current critical areas ordinance and the Shoreline Master Program, and shoreline permits and a separate RUE might be required for its construction. *Exhibits 1, 1.G, and 1.M.*
31. City of Olympia water and sewer are available to serve the subject property. The Thurston County Public Health and Social Services Department recommended approval of the RUE on condition that the City utilities be provided to the residence. *Exhibits 1.W and 1.X.*
32. The reasonable use exception is exempt from environmental review under the State Environmental Policy Act (SEPA). However, subsequent improvements (such as the storm drainage system) would require SEPA review. *Exhibit 1.*
33. All Thurston County departments that reviewed the RUE application recommended approval, subject to conditions. *Exhibit 1.* Of particular relevance to this application, the County's engineering geologist has expressed satisfaction with the quality of the geotechnical analysis submitted, and concurs with the conclusions. Per the recommended conditions of approval, future engineered plans would be reviewed for conformance with the geotechnical recommendations. *Exhibits 1, 1.EE, and 1.FF.*
34. Notice of the open record hearing was mailed to owners of property within 500 feet of the site on March 6, 2017. Notice was published in *The Olympian* and posted on site and at entrance to 25th Avenue NW on March 10, 2017. *Exhibits 1, 1.A, and 3.*
35. The owners of the residences to the south of the subject property (Mr. Waugh and Mr. Harrison) submitted comments in favor of the proposed development, requesting their continued access to their properties via the private road be ensured. Mr. Waugh's residence, which is supported by augured cast-in-place piles, was inspected by a geotechnical engineer after the Nisqually earthquake of 2001; no indication of distress to the interior or exterior finishes was observed at that time. During a 2011 visit, the same engineer did not observe any structural distress. In his report he noted, "Using piles, the near-surface soils that form the slope have no influence on building stability. Even if major surface sliding of soils were to occur, the structure would not be affected as soil support is provided by the very dense sands and gravels at depth." *Exhibit 2.* Mr. Waugh and Mr. Harrison support the proposed development because it utilizes similar technology as their own residences, and because storm drainage improvements would improve slope stability. *Exhibit 2.*
36. Comments in favor of the development were also submitted by the owner of an undeveloped parcel to the north of the subject property (Mr. Barnett). Mr. Barnett emphasized the feasibility of the development as determined by those with expertise; the

inability of the Applicant to derive other use of the property; and the expected improvements to slope stability and water quality. *Exhibit 2.*

37. Comments were submitted in opposition to the proposed development by the owner of a residence located upslope and to the north of the subject property (Ms. Lichtenstein), expressing concern regarding risks to public safety. She submitted numerous photographs documenting slides and groundwater seepage in the vicinity of the subject property (including slides on her own parcel), and the poor condition of 25th Avenue NW (see Exhibit 1, Attachments FF and GG). In her written comments of March 14, 2017, she questioned why the County would recommend approval of the RUE if it believed that the project warranted the hold harmless agreement requirement contained in recommended condition V. *Exhibits 1.S and 2.*
38. At hearing, there were several public comments in favor of the proposal. One realtor, who works in the Applicant's real estate office, cited a lack of affordable housing as a factor in support of approval, and stated he feels the Applicant has met every condition required by the County. *Simmons Testimony.* Another Thurston County realtor testified in support, also citing lack of available housing stock, and stated he is concerned that property owners would be priced out of developing their properties if all the recommended conditions were in fact imposed. *Moe Testimony.* A third local realtor also spoke in support of the proposal. *Weigand Testimony.*
39. One person, who grew up in the house at 1602 - 25TH Avenue NW, testified in support of the proposal, asserting that the slope is capable of safely supporting residential development, and submitted the written comments of his father who has lived in that residence since its construction. The residence survived the 2001 Nisqually earthquake. *Harrison Testimony; Exhibit 2.*
40. James Laukkonen, owner of the parcel separating the Applicant's two waterfront lots, resides upslope at 1703 24th Avenue NW and testified in opposition to both RUEs. He expressed concern that both lots are unbuildable and that the new houses would impact his view. He requested that Staff's recommended ten-foot side setbacks be imposed, noting that the larger house allowed by the five-foot setback would mean more people, cars, and traffic. He noted that there are currently only two houses to the south of the Applicant's properties generating traffic that would go past these sites, and that the two proposed houses would therefore double the traffic on the road. He stated that the existing paved surface cannot accommodate the proposed traffic. He expressed concern that, despite knowing the Schraders, he has not been approached about the retaining wall depicted on his property in the Applicant's plans. Aside from the lack of permission sought, his primary concern is that the wall would affect his ability to access to his vacant waterfront lot. He also testified that he is concerned the proposed development would impact slope stability by taking down trees. He noted the entire slope is covered by English ivy and requested that native species be planted on-site whether or not the homes are built. Regarding the legal status of the private access driveway known as 25th Avenue NE, he testified that he does not recall an easement on his deed and noted that

construction of any improvements on his parcel would require new agreements even if there is an easement. *Laukkonen Testimony*.

41. In the staff report and at hearing, Resource Stewardship Staff recommended a 10-foot side setback be required to reduce the potential for harm to properties on either side during excavation, unless the Applicant can satisfactorily address impacts from grading/excavation so near property lines. *Exhibit 1; McCormick Testimony*. The Applicant objected to this requirement on the grounds that he merged two existing legal lots into one buildable parcel, because the geotechnical reports did not state it was necessary in order to safely build on the lot, and because to increase the north side setback by five feet would significantly reduce the footprint and the square footage of the residence. *Schrader Testimony; Wells Testimony*.
42. At hearing, Applicant agents challenged recommended condition F, arguing that the vesting of the RUE application to the former CAO (TCC Title 17.15) should vest all work needed to construct the residence to the same regulations. They also challenged recommended condition L, arguing that while appropriate licensed engineers must obviously be present for piling installation, they did not need to be present for placement of all fill. They requested that recommended condition S be stricken since it was established in the record that the right-of-way of 25th Avenue NW has expired and cannot be addressed through a right-of-way vacation process. With regard to condition N, the Applicant's engineer noted that it is the Applicant's plan to cover exposed soils with plastic during rain, and that it is the intention to conduct all earth disturbing activities in the dry, but that because the property is in the Pacific Northwest it is not possible to guarantee that there would be no rain during earth disturbing work. The Applicant architect requested that the project not be limited to the square footage identified on the site plan; it would be their hope to add additional useable space below the proposed footprint. *Schrader Testimony; Wells Testimony; Ainsworth Testimony*.
43. With regard to the RUE application's vesting to the 2012 CAO not extending to other necessary approvals, Resource Stewardship Staff noted that the Applicant was informed that such future review of additional permits would be required by letter dated January 20, 2016. This letter noted that off-site road and stormwater management work was not vested under the 2012 CAO. It also noted that the County would require demonstration of the Applicant's legal right to make off-site road improvements across adjacent private parcels. *Exhibit 1.MM; McCormick Testimony*.
44. The Applicant testified that he believes his property deeds contain access easement rights to 25th Avenue NW. *Schrader Testimony*. Aside from this testimony, no evidence of easement rights or the current status of 25th Avenue NW's ownership was offered in the record.
45. With regard to the request for flexibility on the final footprint of the future residence, Staff noted that the criteria for RUE approval require that a finding be made that the requested alteration to the critical area be the minimum possible and that Staff's recommendation for approval was limited to the proposed 1,981 square feet. Staff noted

that any expansion of the footprint would require new land use review (amended RUE or other permit process), while a proposed increase in square footage that did not expand the footprint could be reviewed at time of building permit. *McCormick Testimony*.

46. Regarding the Applicant's objection to being required to widen 25th Avenue NW all the way to the existing public right-of-way, the County Public Works representative, Arthur Saint, clarified that the administrative variance granted August 5, 2015 was approved based on the understanding that the road would be widened all the way from the subject parcels to the end of the County public right-of-way at Crestline. Mr. Saint testified that the purpose of the 16-foot road width was essentially so that two cars could pass on the road. *Saint Testimony*.
47. The Applicant testified that while the road width is narrow, there is a clear line of sight for nearly the full length of the roadway between the County public road and his parcels, and that existing traffic volumes are so low that new traffic from two lots would still have plenty of time and area to navigate safely around one another if two cars happened to encounter each other on the road. He requested that he be allowed to install a turn out instead of widening the entire length of the substandard road. *Schrader Testimony*.
48. Mr. Saint testified that installation of (a) turn out(s) instead of widening the road for the entire distance is a proposal that could be reviewed as a variance to County Road Standards, which would be decided by the County Engineer. In his testimony, Mr. Saint suggested that his recommended condition be revised to require widening the full length of the substandard road "unless a variance to this standard is approved by the Thurston County Engineer." *Saint Testimony*.
49. In response to neighbor comments, the Applicant testified that he intends to work with the neighbors, both those who supported him and those opposed. He offered to use earth tone colors and natural materials where possible and testified that he would work with his immediate neighbor to ensure parking/access remains possible on the lot between his two parcels. He noted that his landscape plan would replace invasive English ivy with native species, and he indicated that Madrona would be an appropriate native tree species for the required tree replacement. *Schrader 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 former TCC 17.15.415 (*Supplement 35, June 14, 2012*).

Criteria for Review

Pursuant to TCC 17.15.415(C), the Hearing Examiner shall grant the reasonable use exception if:

1. No other reasonable use of the property as a whole is permitted by this chapter;
2. No reasonable use with less impact on the critical area or buffer is possible;

3. 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;
4. Any alteration to a critical area is the minimum necessary to allow for reasonable use of the property; and
5. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the undevelopable condition after the effective date of this chapter.

When granting a Reasonable Use Exception, the Hearing Examiner shall impose conditions necessary to serve the purposes of this chapter and may require mitigation under an approved mitigation plan if necessary.

Conclusions Based on Findings

1. No other reasonable use of the property as a whole is permitted by the Critical Areas Ordinance. Table 5 of former TCC 17.15 lists the uses allowed in the various critical areas. Within landslide and marine bluff hazard areas, allowed new uses include activities such as outdoor recreation and wildlife viewing. In this case, to limit use of the subject property to these uses would be unreasonable due to the R 4-8 zoning, the location of the property within the Urban Growth Area, and the character of surrounding development. In addition, while the assessed value of the subject property has been discounted due to restrictions on development, the remaining value as of 2016 is \$36,950. Single-family residential development is the lowest-intensity use specified in the R 4-8 zone (TCC 23.04.040 Table 4.01), and the subject parcel is twice the minimum area for the R 4-8 zone (TCC 23.04.080 Table 4.04). Development of a single-family residence is the only reasonable use of the property. *Findings 3, 4, 7, and 8.*
2. No reasonable use with less impact on the critical area or buffer is possible. As concluded previously, a single-family residence is the only reasonable use of the subject property. The Applicant proposes a residence with a relatively modest footprint comparable in scale to existing development in the vicinity. The Applicant has already obtained approval of a zoning variance that will allow the residence to be sited as far back from the shoreline as possible and a road standards variance that will allow the width of the private road to be reduced to 16 feet. Due to the extent and type of the critical areas on site and the engineering solutions proposed (i.e., supporting the residence on piles), it is improbable that requiring a smaller building footprint would diminish critical area impacts. *Findings 8, 9, 10, 11, 12, 14, 18, and 27.*
3. With conditions of approval, the requested residential development would not result in damage to other property and would not threaten the public health, safety, or welfare on or off the development site. The requested development has been reviewed by several experts, among whom there is agreement that appropriate project design can mitigate risks associated with slide activity. Credible evidence was presented that if the design

recommendations are implemented, the proposal would improve the stability of the slope. *Findings 17, 18, 19, 20, 21, 22, and 33.*

In addition to the expert reports, safety can be inferred from the condition of existing residential development in the area. There are four residences near the subject property on 25th Avenue NW, all of which predate the County's first CAO's adoption in 1994. The fact that these structures, which were built without the benefit of the same level of critical areas review as the subject application, have survived the slide activity depicted in the exhibits in this hearing record, and the Nisqually earthquake, suggests that the proposed residence can be constructed in a manner that would not pose a safety threat either on or off the development site. *Findings 8, 16, 35, and 39.* However, it would be incumbent on the Applicant to: control stormwater runoff; improve vehicular access to the site; adequately support the slopes cut by road widening activities; revegetate the slope; extend City water and sewer to the site; and install a fire sprinkler system in the new residence (as required by the roads variance). Conditions of approval address these issues. Some of the required future improvements will require additional permitting processes. *Findings 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 35, and 39.*

The importance of vehicular access improvements must not be understated: slide activity has caused road closure in the past, and the current road has suffered from subsidence. Further, the existing roadway is extremely narrow and does not comply with County road standards. The instant RUE approval is conditioned on the Applicant improving 25th Avenue NW to the County's private road standards (with 16-foot road width) between Crestline Drive and the subject property, unless a variance to this standard is granted by the County Engineer. The required road improvements would also serve the Applicant's parcel that is south of the subject property. The road and any associated retaining wall(s) would be subject to review under ordinances in effect at the time development permit applications are submitted; they are not vested by the vesting of the 2012 RUE application. Conditions of approval include a requirement that protocols be established to maintain access for other residents during construction. *Findings 24, 25, 26, 27, 28, 29, 30, 32, 40, 43, 44, 46, 47, and 48.*

4. The proposed alteration to the critical areas is the minimum necessary to allow for reasonable use of the property. As concluded above, the Applicant proposes a residence with a relatively modest footprint that is comparable in scale to existing development in the vicinity. The Applicant has already obtained approval of a zoning variance that will allow the residence to be sited as far back from the shoreline as possible, and a roads standards variance that will allow the width of the private road to be reduced to 16 feet. Due to the extent and type of the critical areas on site and the engineering solutions proposed and required in conditions, it is improbable that requiring a smaller building footprint would diminish critical area impacts. There is no geotechnical evidence in the record supporting the conclusion that Staff's requested 10-foot side setback is necessary to protect adjacent properties. Due to the engineering required (which might necessitate slight modifications to house placement) and the small development area on the lot, to

confine this to 10-foot side setbacks would be unreasonable, and the requirement will not be imposed. *Findings 8, 9, 10, 11, 12, 14, 18, 27, 33, 41, and 45.*

Development of the residence would trigger the need for improvements that have not yet been reviewed in detail, including stormwater infrastructure, off-site road improvements, and (a) retaining wall(s). These improvements would require alteration to critical areas and/or buffers, the impacts and mitigation of which would be addressed at the time that appropriate permits are requested. Depending on design and location, future required permits might include (and are not limited to) shoreline conditional use and substantial development permits, SEPA review, critical areas permits/reasonable use exceptions, and floodplain permits. With respect to the Applicant's requested relief from these additional permitting requirements, the Hearing Examiner lacks authority to exempt the Applicant from applicable County review processes. *Findings 2, 22, 29, 30, 32, 42, 43, 46, 47, and 48.*

5. The inability of the Applicant to derive reasonable use of the property is not the result of actions by the Applicant. The subject parcel consists of lots that were subdivided in 1869. The critical areas are extensive and encumber the entire parcel. *Findings 3, 10, 11, 12, and 14.*

DECISION

Based on the preceding findings and conclusions, the request for a reasonable use exception to construct a 1,645 square foot single-family residence and attached garage at 1730 - 25th Avenue NW (Tax Parcel No. 83002100100) is **GRANTED** subject to the following conditions:

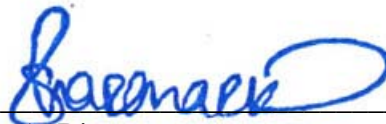
- A. Prior to or in conjunction with the issuance of any building permit, all applicable regulations and requirements of the Thurston County Public Health and Social Services Department, Public Works Department, Fire Marshal and Thurston County Resource Stewardship Department shall be met.
- B. Engineered foundation design, engineered storm drainage and erosion control plans, engineered grading plan, and a site plan with accurate surveyed site elevations shall be provided prior to building permit issuance. The location of the FEMA 100 year flood plain shall be shown on all plans.
- C. The engineered grading plan shall show both pre-development and post-development elevations based upon a topographical survey. The grading plan shall show plan and profile views with estimated volumes of soil export and import.
- D. As part of any future building permit the engineered foundation design, grading and drainage plans and site plan shall be reviewed by Thurston County Resource Stewardship, Water Resources Section geotechnical staff to ensure the design is consistent with geotechnical recommendations for the site contained in the project geotechnical reports and applicable engineering requirements and standards.

- E. All future site plans for the site shall reference the correct address and parcel number for the site (1730 - 25th Avenue NW, Olympia WA 98502; parcel number 83002100100).
- F. Shoreline substantial development permit and shoreline conditional use permits are required for any proposed retaining walls within 200 feet of the Puget Sound unless otherwise exempt. All necessary shoreline substantial development and conditional use permits, SEPA environmental determination, floodplain permit, critical area review permit and/or reasonable use exceptions shall be obtained for all necessary road widening, retaining walls, storm water, and infrastructure improvements prior to ground disturbing activities and building permit issuance for a residence on the subject property.
- G. Due to the steepness and soil instability, all non-developed areas (non-impervious surfaces) shall be vegetated with native plants, shrubs and low growing trees at a high density. No grass or lawn areas shall be permitted on the subject property at any time.
- H. An amended revegetation plan shall be submitted to Thurston County Resource Stewardship for review and approval prior to building permit issuance or site disturbing activities. The revegetation plan in the record (Attachment i) requires revisions and improvements related to the number, type, and density of proposed plantings prior to building permit issuance. The proposed species shall be suited for steep, north facing slopes with partially saturated soil conditions.
- I. A bond or irrevocable assignment of savings shall be initiated in the amount equal to 125% of the fair market value of the landscaping materials, installation and three year monitoring plan prior to building permit issuance. The three year monitoring plan shall include dated photos and descriptions of the plantings and document a minimum 85% survival rate by the end of year three. Staff may require additional Shoreline and landslide hazard area buffer plantings if determined necessary to ensure adequate vegetative coverage prior to final occupancy approval.
- J. Accurate topographical mapping will be needed to complete the review of future building permits for the site. A topographical survey based on actual, existing elevations and topography shall be required prior to approving any future building permits for the site or construction permits for future road and drainage work. Landslide features, including cracks and scarps, shall be clearly shown on engineered site plans. The FEMA 100-year Flood Plain shall be identified on the topographical survey.
- K. Prior to building permit approval, an updated engineered stormwater plan shall be required that incorporates applicable geotechnical recommendations and surveyed topographical information. The stormwater plans shall be re-designed to meet all local, state, and federal standards and accepted practices for diffusion of stormwater at the toe of the slope (see Attachment pp). The engineered stormwater plan shall fully address how stormwater from up slope properties will be handled on site.

- L. A civil engineer and/or geotechnical engineer shall be on site during all earthwork related to piling installation and during any other portions of earthwork as recommended in the geotechnical reports provided for the project.
- M. Erosion control measures must be installed in the field prior to any clearing, excavation, grading, or construction and must be reviewed and approved by the Thurston County Resource Stewardship Land Use and Environmental Review Section. These measures must be effective to prevent soil from being carried into surface water by stormwater runoff.
- N. To the maximum extent possible, earth disturbing activities shall be conducted during dry weather.
- O. The following conditions from the Public Works Department Development Review Section shall be met prior to future building permit issuance:
 - 1) 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.
 - 2) Vehicular access must be upgraded to a minimum width of 16-feet for the length of the access road from the project site to the end of the public County right-of-way, unless the County Engineer grants a variance from this standard. All structures must have built in residential fire alarm and fire suppression sprinkler systems.
- P. City of Olympia public water and sewer utilities shall be provided at the time of future development. Critical area and other land use permitting, including shoreline review, may be required for the installation of underground utilities, including sewer and water lines. When plans are submitted with excavation details, appropriate application and land use review processes will be determined.
- Q. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, the Washington State Department of Ecology must be notified. (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300.)
- R. All project geotechnical recommendations shall be incorporated into the design and construction of the project as approved and conditioned by Thurston County Resource Stewardship. If determined necessary in order to meet applicable Thurston County requirements or for the purposes of protecting life, safety, and health, additional geotechnical information may be required prior to building permit issuance. Any additional geotechnical information submitted will be reviewed by Thurston County Resource Stewardship geotechnical staff for compliance with applicable standards.

- S. Prior to issuance of any grading or building permits, the Applicant shall submit evidence of easement or other legal access rights to the use of, and for the off-site improvement of, 25th Avenue NW.
- T. The proposed residence shall be designed and built so that shoreline armoring is not necessary. No shoreline bulkheads will be allowed on the subject property at any time now or in the future and a Critical Area Notice shall be recorded for the subject property stating this limitation prior to building permit issuance.
- U. Given the inherent risks associated with development in a known landslide hazard and marine bluff hazard area, the Applicant shall be required to sign and record a Hold Harmless Agreement (HHA) which protects Thurston County and Thurston County Staff from any liability for harm or damage to life or property caused relative to the Applicant's development of the subject property. The HHA shall be reviewed and approved by Thurston County Resource Stewardship (TCRS) legal counsel prior to recording and a copy of the approved and recorded HHA shall be provided to TCRS prior to construction, grading or building permit issuance.
- V. Building permits issued for future improvements associated with development of the subject property may include conditions to ensure the safety, health, and welfare of the general public as well as future on-site and adjacent residents.
- W. All outstanding fees for the project shall be paid to Thurston County Resource Stewardship prior to acceptance of future land use permit applications related to the project.
- X. During construction, appropriate protocols shall be implemented to ensure access for the other residences of 25th Avenue NW.

DECIDED April 17, 2017.



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 Resource Stewardship 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 **\$669.00** for a Request for Reconsideration or **\$890.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

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



Project No. _____
Appeal Sequence No.: _____

☐ Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

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

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

☐ Check here for: APPEAL OF HEARING EXAMINER DECISION

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

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

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

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

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

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

STANDING

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

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED

SIGNATURE OF APPELLANT

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of ☐ \$669.00 for Reconsideration or \$890.00 for Appeal. Received (check box): Initial _____ Receipt No. _____

Filed with the Resource Stewardship Department this _____ day of _____, 20__.

Q:\Planning\FORMS\Current Appeal Forms\2016.Appeal-Recon-form.he.doc