

1. Thurston County Community Development and Economic Planning Department Report including the following attachments:
 - A. Notice of public hearing, dated October 25, 2019
 - B. Master application, received May 22, 2019
 - C. Special use permit application, received May 22, 2019
 - D. WCF site plan detail, received May 22, 2019
 - E. Findings of Critical Area Review Permit, Project 2019101394
 - F. Original Hearing Examiner decision, dated March 10, 1992
 - G. Notice of Application, mailed October 16, 2019
 - H. Mailing list of adjacent property owners within 2,600 feet
 - I. Memorandum from Thurston County Environmental Health, dated July 30, 2019
 - J. Memorandum from Thurston County Development Review, dated October 25, 2019
 - K. Comment letter from Nisqually Tribe, dated June 25, 2019
 - L. Comment email from Squaxin Tribe, dated June 24, 2019

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

FINDINGS

1. AT&T Mobility (Applicant) requested a special use permit (SUP) to install a 20 kilowatt (kw) emergency backup diesel generator on a proposed four-foot by ten-foot square foot concrete within the fenced area of an existing monopole tower and equipment. The project is proposed on a portion of a 33.5-acre parcel developed with an existing monopole tower and equipment compound (previously approved SUP 7-91) located at 11247 Morris Road SE, Yelm, Washington.¹ *Exhibits 1, 1.B, 1.C, 1.D, and 1.F.*
2. The existing WCF monopole was approved by the Thurston County Hearing Examiner through special use permit number 7-91 on March 10, 1992. Planning Staff submitted that this WCF may have been the very first one to be received through the special use permit process in Thurston County. Since the 1992 SUP approval, there have been 15 administrative approvals of modifications to the existing WCF for collocations and equipment upgrades. However, the currently proposed emergency backup generator was not included in the original WCF design. Condition 2 of the previous decision expressly forbid a generator, stating as follows:

There shall be no rotary converters, generating machinery, or other equipment that would cause substantial noise, electrical interference, or similar disturbances.

¹ The legal description of the subject property is a portion of Section 30, Township 17 North, Range 2 East; also known as Tax Parcel No. 22730430400. *Exhibits 1 and 1.B.*

Exhibit 1.F.

It is as a result of condition 2 that the instant proposal was required to undergo a public hearing process and obtain hearing examiner decision. Due to the previous administratively approved modifications over the years, the existing antenna support structure and ground equipment meet current WCF standards established in TCC 20.33 for wireless communication facilities. Review of the instant proposal is limited to compliance with the general standards for special use (TCC 20.54.040) and design standards for ground mounted WCF equipment (TCC 24.33.100). *Exhibits 1 and 1.F; Leah Davis Testimony.*

3. The subject property has a Rural Residential Resource (RRR) 1/5 zoning designation. Pursuant to Thurston County Code (TCC) 20.09A.010, 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. Wireless communications facilities are allowed in the RRR 1/5 zone pursuant to TCC 20.54 Table 1, subject to compliance with the County Code's wireless communications facilities regulations at TCC Chapter 20.33. *Exhibit 1.*
4. Land uses adjacent to the subject property consist of large residential, forestry, and agricultural uses. The nearest residence is 400 feet to the south. There is a public school 1,200 feet to the east of the site. *Exhibit 1.*
5. Typically, as in the previously approved administrative modifications to the existing facility, adding accessory equipment to an existing WCF would be approved through an administrative SUP. The subject property was logged through a DNR forestry permit in February 2018, and there is a six-year development moratorium currently in effect on the property. Planning Staff determined that the addition of a generator to an existing WCF within the existing leased area does not constitute development for the purposes of the County's forest conservation ordinance. Staff concluded the proposal is akin to an equipment upgrade. *Exhibit 1; Leah Davis Testimony.*
6. The proposal seeks approval to add a backup generator on a new 40 square foot concrete pad within the existing lease area on a currently graveled surface. The new pad would bring the total paved impervious surface area within the lease area up to 200 square feet. No part of the proposed improvements would be taller than eight feet. No changes to the tower height, leased area, or site access are proposed. As proposed, all required setbacks, screening, and other standards of the underlying zoning district would be satisfied. The improvements are not anticipated to be visible from off-site due to location, topography, and tree cover. The current facility is unstaffed, without public water or sewer service, and is generally visited once a month by one to two employees for routine maintenance. No change is proposed to site utilities, staffing, or maintenance. Maintenance staff would test the generator approximately once a month by running it for about 10 minutes while there on a maintenance visit; no additional traffic to the site would occur from this approval. Noise from the operation of the generator in the case of a power outage is exempt from compliance with State and County noise regulations. In exchange for these minor increases in impacts from the existing WCF, the project would result in public

benefit by providing continuous cell service during power outages. *Exhibits I, I.C, and I.D; Allen Koreis Testimony; TCC 10.36.040.B.*

7. Planning Staff indicated that backup generators are now commonplace appurtenances that are reviewed and approved in new wireless communication facilities. The County Code's WCF provisions (TCC Chapter 20.33) do not prohibit generators, subject to review for and compliance with applicable environmental and zoning standards, and Planning Staff submitted that there is no prohibition against generators in applicable State and Federal laws. *Exhibit I; Leah Davis Testimony.*
8. The proposal would not impact any known or planned pedestrian, bicycle, or vehicular circulation routes. *Exhibits I and I.J.*
9. The Environmental Health Division (EHD) of the Thurston County Public Health and Social Services Department reviewed the proposal for compliance with applicable health codes. In their comments, EHD Staff noted that the Applicant provided details confirming that secondary containment for hazardous materials associated with the proposed generator and leak detection are proposed. Nevertheless, EHD recommended approval conditioned to require compliance with applicable noise standards and secondary storage requirements for fuel storage onsite. *Exhibit I.I; Dawn Peebles Testimony.*
10. After reviewing the project for access and storm water control requirements, Public Works Department Development Review Services recommended approval without additional conditions. *Exhibit I.J.*
11. Both the Nisqually Indian Tribe and the Squaxin Island Tribe submitted comments indicating that neither tribe had particular concerns regarding the proposal. Both Tribes requested to be notified of inadvertent discoveries of artifacts or human burials. *Exhibits I.K and I.L.*
12. The project is considered minor new construction/ground disturbance and is therefore exempt from review for compliance with the provisions of the State Environmental Policy Act (SEPA). *Exhibit I; Washington Administrative Code (WAC) 197-11-800 categorical exemptions.*
13. In August 2019, County Staff performed a critical area review of the subject property for an unrelated permit application. Gopher and prairie soils were noted throughout the parcel. Two site visits were completed. Steep slopes were noted approximately 500 feet from the WCF. All proposed improvements in the instant project would be well outside the standard 50-foot setback from the slope. No Mazama pocket gophers were found. County Staff noted the three-year vesting period for Mazama pocket gopher clearance would expire in August 2022. *Exhibits I and I.E.*
14. The instant special use permit application was received on May 22, 2019. Notice of the application was mailed to all owners of property within 2,600 feet of the project location and to applicable review agencies on October 16, 2019. No public comment was

submitted to the County. Written notice of public hearing was mailed to parties of record on October 25, 2019 and published in The Olympian on November 1, 2019. Notice of the public hearing was posted on site on October 31, 2019. *Exhibits I, I.A, I.G, and I.H.* No members of the public attended to offer comment at the open record public hearing.

15. Planning Staff recommended approval subject to the conditions listed in the staff report with one addition. Staff requested an additional condition to the effect that the instant SUP, if approved, would specifically exempt the existing WCF from future hearing examiner review in the event that additional generators are proposed on-site by collocating carriers. Any future generators or other equipment upgrades would be subject to administrative review, unless greater impacts were proposed due to an expanded scope of improvements compared to the instant project. *Exhibit I; Leah Davis Testimony.*
16. In response to this suggestion by Staff, the Applicant representative indicated that as a result of relatively recent federal action requiring each WCF to have its own generator, it is likely that collocating carriers would propose additional generators in the future. The representative waived objection to all recommended conditions of approval, including this last one suggested by Staff at the hearing. *Allen Koreis Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide the special use permit applications pursuant to TCC 2.06.010, TCC 20.54.015(2), and Revised Code of Washington (RCW) 36.70.970.

Special Use Permit Criteria for Review

The Hearing Examiner may approve an application for a special use permit in the Lacey Urban Growth Area only if the following general standards set forth in TCC 21.87.035 are satisfied:

1. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan and all applicable federal, state, regional, and Thurston County laws or plans.
2. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.
3. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
 - a. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though the adverse effects may occur.

- b. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

Wireless Communications Facilities Standards

Pursuant to 20.33.080, the following standards apply to freestanding WCFs and remote freestanding WCFs/antenna support structures.

1. Evaluation of Alternative Sites. Prior to submission of an application for a WCF/antenna support structure, the Applicant is encouraged to meet with residents of the search area for the proposed WCF/antenna support structure for the purpose of evaluating alternative sites and exploring the possibility that other technically feasible sites may be available that would be more acceptable to the community.
2. Siting.
 - a. Freestanding WCFs and other antenna support structures regulated by this chapter shall not be permitted in residential districts unless ... (not applicable);
 - b. WCFs and other antenna support structures shall be located, designed and screened, to the extent feasible, to blend with the immediate surroundings so as to reduce visual impacts.
 - i. Proposed WCFs/antenna support structures shall be located where their visual impact is least detrimental to views of recognized landmarks, such as, but not limited to, Puget Sound, Nisqually Valley, Mount Rainer, the Black Hills, and the Olympic Mountains. If the approval authority determines that the proposed location for the facility would have a significant detrimental impact on a view of a recognized landmark, she/he shall deny the proposal unless the Applicant demonstrates that a less impacting site is not available.
 - ii. In order to demonstrate that a less impacting site is not available, Applicants for WCF/antenna support structures impacting the views listed in subsection (2)(b)(i) of this section shall ... (not applicable).
 - iii. WCFs/antenna support structures shall be sited off ridgelines unless they are designed to blend in with the surrounding environment in such a manner that they would not have a significant visual impact, as determined by the approval authority, or the Applicant demonstrates that no alternative location is available.
 - iv. In determining whether or not a WCF/antenna support structure will have a significant adverse visual impact on a view/location listed in subsections (2)(b)(i) and (2)(b)(iii) of this section ... (not applicable);
 - v. Applicants proposing uncamouflaged WCFs/antenna support structures in locations that cannot be at least partially screened by existing trees, topography, or structures must submit documentation as to why sites which would provide screening potential are not available or technically feasible to provide adequate service...

- vi. Unless effectively camouflaged, as determined by the approval authority, WCFs/antenna support structures shall be located on a site to take maximum advantage of the screening afforded by any existing trees, topography, and structures in order to minimize their visibility from the surrounding area, consistent with other applicable regulations. Priority shall be given (in descending order) to minimizing visibility from existing dwellings, public rights-of-way, and public parks and open spaces.
- vii. In residential and commercial districts, flush mounted antennas shall be used unless the Applicant demonstrates that another mount is necessary.
- c. WCFs and other antenna support structures shall be located so they do not narrow the sidewalk width below the county's minimum standard, create a hazardous situation for pedestrians, bicyclists or motorists, or interfere with utilities, as determined by the approval authority. (See TCC Title 13, Roads and Bridges).
- d. WCFs and other antenna support structures shall be located, designed, and screened to maintain property values and neighborhood character.
- e. WCFs and other antenna support structures shall be sited consistent with the provisions of the Thurston County Agricultural Uses and Lands Critical Areas Ordinance (Chapter 17.15 TCC), the Thurston County Critical Areas Ordinance (Title 24)...;
- 3. Setbacks.
 - a. WCFs/antenna support structures, except those in rights-of-way, shall be set back from property lines a minimum of one hundred ten percent of the antenna support structure's height, including antennas. ...
- 4. Separation. WCFs/antenna support structures shall be separated from one another as follows:
 - a. (not applicable)
 - b. Outside urban growth areas, freestanding WCFs/antenna support structures shall be a minimum of two thousand four hundred feet from another freestanding WCF/antenna support structure.
 - c. Separation distances shall be measured from antenna support structure to antenna support structure regardless of property lines and roadways. ...
- 5. Co-location. All freestanding and remote freestanding WCFs/antenna support structures shall be designed and constructed to fully accommodate at least two additional WCF providers, including an area for each co-locator's equipment near the base of the tower, each comparable in size to the area required by the Applicant, unless the Applicant demonstrates why such design is not feasible for technical or physical reasons (for

example, because it would ruin the disguise of a camouflaged antenna support structure). This requirement does not apply to antenna support structures in rights-of-way. The approval authority may require Applicants to accommodate more than two co-locations, based on documented demand, consistent with the provisions of this chapter.

6. Maximum Height.

- a. (not applicable)
- b. Maximum height outside urban growth areas: one hundred eighty feet including antennas, except remote freestanding WCFs/antenna support structures which may be two hundred feet including antennas.

7. Screening/Camouflaging.

- a. Color. WCFs/antenna support structures and antennas, with the exception of camouflaged and wooded antenna support structures, shall have a nonglare finish in a gray, blue, green or other color(s) appropriate to the background against which it would be primarily viewed (e.g. green to the tree line and gray above) as determined by the approval authority, unless a different color or finish is required by the FCC or FAA. ...
- b. Pole Material. WCFs/antenna support structures in rights-of-way shall be limited to poles of the same design and appearance as the utility poles to which they are linked, except as required by the approval authority consistent with the Uniform Building Code.
- c. Maintenance. The permittee shall maintain the approved WCF/antenna support structure in a condition that preserves its original appearance and any concealment or camouflage elements incorporated into the design, consistent with all applicable requirements. This includes repair or replacement of equipment, removal of rust and associated stains, removal and replacement of peeling paint that would be visible from adjoining rights-of-way or property, and maintenance of required landscaping and fencing.
- d. Screening. WCFs/antenna support structures shall be located among or beside trees wherever possible.
 - i. If the site proposed to accommodate an antenna support structure is treed within fifty feet of the proposed antenna support structure's location ... (not applicable);
 - ii. If the site does not contain sufficient trees to provide effective screening, as determined by the approval authority, a minimum twenty-foot wide buffer around the perimeter of the WCF/antenna support structure location, excluding the access point, shall be planted with site-obscuring conifer trees. The trees shall be planted six feet on center in at least three offset rows. The trees shall be a minimum of six feet in height at the time of planting. Planting shall occur prior to the facilities becoming operational. The required trees shall be maintained in a green and

growing state so long as the antenna support structure is on the site. Any tree within the buffer that dies or is removed shall be replaced during the next planting season with a conifer tree a minimum of six feet in height at the time of planting. This requirement shall not apply to WCFs/antenna support structures in rights-of-way.

- iii. The approval authority may modify the screening requirements in subsections (7)(d)(i) and (ii) of this section to the extent existing structures on site, existing vegetation along the parcel perimeter, or topography provide adequate screening. The approval authority may also modify or waive those requirements, as she/he deems appropriate, if the Applicant camouflages the WCF/antenna support structure through a design that significantly mitigates its visual impact (for example, but not limited to, an antenna support structure designed to resemble a conifer tree, flag pole, clock tower, street light, or utility pole).
 - iv. Approval of a setback pursuant to subsection (3)(d) of this section is contingent upon the Applicant submitting to the approval authority an easement or other instrument approved by the Thurston County prosecuting attorney's office from the adjacent property owner that accommodates screening required pursuant to this subsection (7)(d).
 - e. Camouflaged WCFs/Antenna Support Structures. Camouflaged WCFs/antenna support structures shall be designed appropriate to the context, as determined by the approval authority, so they do not appear to be out of place. Camouflage proposals shall be modeled after design concepts approved by the department director or designee.
8. Public Safety.
- a. For freestanding WCFs/antenna support structures, a minimum six-foot high chain link fence with privacy slats shall be installed around the perimeter of the site for public safety and screening purposes. The fence and privacy slats shall be a nonreflective, deep green or other color that blends in with the surrounding environment, as determined by the approval authority. (A fence over six feet in height will require a building permit). Access to the tower shall be through a locked gate. The approval authority may authorize alternate methods of providing for public safety if a level of public safety and screening similar to that provided by the previously described fence is clearly demonstrated. These requirements shall not apply to camouflage WCFs and antenna support structures in rights-of-way and their associated equipment cabinets unless potentially dangerous equipment would be accessible by the public.
 - b. For remote freestanding WCFs/antenna support structures, adequate public safety measures shall be provided, as determined by the approval authority.
 - c. All freestanding and remote freestanding WCFs/antenna support structures, with the exception of replacement utility poles, shall be fitted with anti-climbing devices.

- d. The county shall require remedial action by the responsible party if it determines that structural failure, ice accumulation, or other conditions pose a risk to public safety.
 - e. A device shall be installed on all WCFs and antenna support structures that automatically stops transmission from the antennas in the event the antenna support structure falls or shifts significantly out of alignment, unless the Applicant demonstrates that it is not technically feasible to do so. This does not apply to remote freestanding WCFs/antenna support structures.
 - f. Foundations for replacement utility poles subject to this chapter shall require a commercial building permit.
9. **Parking/Access.** At least one parking space, plus adequate turnaround area, shall be provided. The access road, parking and turnaround areas shall have a paved, gravel or other all-weather surface. The access road must be a minimum of ten feet wide. These requirements shall not apply to WCFs/antenna support structures in rights-of-way and their associated equipment structures. Approval of WCFs/antenna support structures in rights-of-way shall be contingent upon demonstration by the Applicant that parking space is available for maintenance vehicles that will not obstruct vehicle travel lanes, bike lanes, or sidewalks.
10. **Signals, Lights and Signs.** No signals, lights or signs shall be permitted on a WCF/antenna support structure unless required by the FCC or FAA (also see subsection (6)(d) of this section). If lighting is required, the county shall review the available lighting alternatives consistent with FAA requirements and approve a design that it determines would cause the least impact on surrounding views. However, in documented migratory bird flyways, preference shall be given to white strobe lights operating at the longest interval allowed per FAA requirements. WCFs/antenna support structures shall have a sign posted on the access gate with the WCF provider name and an emergency contact phone number on it. When the site is not fenced, the sign required above shall be placed in a location authorized by the approval authority. Any site security lighting shall be shielded to contain light and glare on site.
11. **Outdoor Storage.** Outdoor storage of motor vehicles or materials associated with the WCF/antenna support structure is prohibited outside of the fenced area installed pursuant to subsection (8) of this section.

TCC 20.33.100 - Design standards for ground mounted equipment structures.

- 1. **Maximum Height.** Ground mounted equipment structures shall not exceed ten feet in height.
- 2. **Location, Design, and Color.**
 - a. Ground mounted equipment cabinets/structures that would be visible from adjacent residential properties or public rights-of-way shall be partially buried, to the extent the seasonal high ground water level permits, of the smallest size possible and of a color, nonreflective material, texture, and architectural design so as to camouflage, conceal, or otherwise make the structure compatible with the setting and any immediately adjacent structure, as determined by the approval authority.

- b. Equipment cabinets/shelters associated with WCFs/antenna support structures in rights-of-way or camouflaged WCFs/antenna support structures shall be buried or located, to the extent possible, to take advantage of the screening afforded by existing structures and vegetation. Ground mounted equipment cabinets/shelters shall be located outside of rights-of-way unless the approval authority determines that the proposed facilities, including associated screening, will not impede existing and planned road, bicycle, pedestrian, and utility facilities nor obstruct motorists' view of the travel lanes (also see TCC Section 20.07.070, Use Limitations on Corner Lots). The portion of the equipment structure/fencing that would be visible from adjacent rights-of-way or parcels occupied or zoned and developable for residential or commercial use shall be screened with evergreen shrubs and/or trees, and/or berms (also see Section 20.33.080(7)). This vegetation shall be of a type, size, and spacing so that within three years of planting (along with any berm or other landscaping feature) it forms a continuous screen as tall as the equipment structure and any associated fencing.
- c. Equipment cabinets/structures must meet all building setbacks, screening and other standards of the underlying zoning district, except where they conflict with specific requirements of this chapter.

Conclusions Based on Findings

1. SUP: Wireless communication facilities are a permitted special use in the RRR 1/5 zoning district. As proposed, the addition of a concrete pad and generator would be placed wholly within the approved equipment compound and would not be visible from off-site. No change to WCF tower height, staffing, or site access are proposed. EHD review of the project raised no concerns about the proposal's ability to comply with applicable noise standards. The facility would continue to generate approximately one monthly vehicle trip for maintenance. Neighboring property owners and affected Tribes were notified of the proposal and no concerns were raised. As conditioned, the facility would not result in additional demand on or for public infrastructure or services. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, and 16.*
2. Wireless Communications Facilities Use-Specific Standards: The proposal would add ground equipment only to an existing WCF on a 33.5-acre parcel. The proposed ground equipment would be enclosed within the fenced lease area, be under eight feet in height, and remain in compliance with applicable zoning setbacks. As proposed and conditioned, the facility would be consistent with the use-specific standards established for WCFs as well as with the intent of the County's WCF regulations.² *Findings 1, 4, 6, 7, 8, 9, 10, 15, and 16.*

² Pursuant to TCC 20.33.010, the purposes of the County's Wireless Communications Facilities chapter are to:

1. Manage the location of WCFs, radio, television and automated meter reading antenna support structures, antennas, and equipment structures in the county by providing standards for their placement, design, construction, modification, and removal;
2. Accommodate WCFs, and radio, television and automated meter reading facilities operating consistent with Federal Communication Commission (FCC) guidance and meeting the standards of this chapter to serve the routine and emergency communications needs of county residents;
3. Protect residential, historic and other land uses, neighborhood character, aesthetic quality, property values, and the quality of life from potential adverse impacts of WCFs and other antenna support structures through careful siting, design, screening and camouflaging techniques, and by encouraging clustering of WCFs and other antenna support structures in remote and industrial areas;
4. Minimize the total number of antenna support structures by requiring, to the extent feasible, co-location of new facilities on freestanding and remote freestanding WCFs and other antenna support structures;
5. Protect public health and safety consistent with federal, state, and local regulations; and
6. Avoid potential damage to adjacent properties through sound engineering practices and the proper siting of WCFs and other antenna support structures.

3. Planning Staff's request to exempt future proposed generators to serve the other two collocated carriers on-site from public hearing processes is adopted subject to condition. *Findings 2, 15, and 16.*

DECISION

Based on the preceding findings and conclusions, the requested special use permit to install a 20 kilowatt emergency backup diesel generator on a proposed 40 square foot concrete pad within the fenced area of an existing cell tower on leased property at 11247 Morris Road SE, Yelm, Washington is **GRANTED** subject to the following conditions:

1. Ground mounted equipment shall not exceed ten feet in height.
2. The WCF shall remain in compliance with the Thurston County Wireless Communication Facilities and Antenna Support Structure Chapter (TCC 20.33).
3. The Applicant shall notify Thurston County Community Planning and Economic Development of any changes in ownership, and any significant changes in technology or operation affecting the facility within 60 days of the change. The current owner of the tower must provide all documents containing conditions of approval to each new owner or lessee.
4. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of this use beyond that approved by the Hearing Examiner will require approval of a new or amended special use permit. Thurston County Community Planning and Economic Development will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
5. The proposed project must comply with the noise standards of Thurston County Ordinance, Title 10, Chapter 10.36 and Chapter 173-60 of the Washington Administrative Code (WAC).
6. The proposed diesel generator shall meet all storage and secondary containment requirements of Article VI of the Thurston County Sanitary Code. Any potentially hazardous materials shall be stored and handled in such a way that any spilled or released materials are contained inside a secondary container and are not allowed to release to the environment.
7. Future additional generators at the site will not require additional public processes so long as the impacts of any proposed future improvements do not exceed the scope of the impacts reviewed in the instant decision.

DECIDED December 6, 2019.



Sharon A. Rice
Thurston County Hearing Examiner

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

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

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

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

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

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

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

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

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$750.00** for a Request for Reconsideration or **\$1,020.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development 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 ☐ \$750.00 for Reconsideration or \$1,020.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.