



COUNTY COMMISSIONERS

Carolina Mejia-Barahona
District One

Gary Edwards
District Two

Tye Menser
District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2021103678
)	
Todd Mason)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For a Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

The request for a reasonable use exception to construct a single-family residence within the outer 20 feet of a 50-foot landslide hazard area buffer is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

Todd Mason (Applicant) requested a reasonable use exception (RUE) to construct a single-family residence within the outer 20 feet of a 50-foot landslide hazard area buffer. The subject property is located at 7005 Boston Harbor Extension Road NE, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on October 12, 2021. The record was held open through October 14, 2021 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with a deadline of October 18, 2021 for Applicant and County responses to any post-hearing comments. Comments were submitted by three members of the public prior to the October 14, 2021 deadline. County Staff and the Applicant timely submitted responses to these comments by October 18, 2021. The record closed on October 18, 2021.

Testimony

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

Scott McCormick, Associate Planner, Thurston County

Dawn Peebles, Environmental Health Specialist, Thurston County
Matt Unzelman, P.E., Thurston County Public Works
Todd Mason, Applicant
Sally Cloninger
Edward Steinweg
Jordan Belmonte
Patty Belmonte

Exhibits

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

- Exhibit 1 Thurston County Community Planning and Economic Development Department Staff Report including the following attachments:
- A. Notice of Application and Notice of Public Hearing, dated September 15, 2021, with Adjacent Property Owners list dated September 13, 2021
 - B. Zoning/Site Map
 - C. Master Application, received July 15, 2021
 - D. Reasonable Use Exception application, received July 15, 2021
 - E. Project narrative, received August 9, 2021
 - F. Site plan received, August 9, 2021
 - G. Steep Slope Evaluation, dated June 29, 2021
 - H. Critical Areas Report, received July 15, 2021
 - I. Comments from this Squaxin Tribe, dated July 30, 2021
 - J. Approval memo from Amy Crass, Thurston County Environmental Health, dated August 10, 2021
 - K. Approval memo from Matt Unzelman, PE, Thurston County Public Works, Development Review Section, dated August 23, 2021
- Exhibit 2 Public comments received after publication of Staff Report
- A. Public Comment from Jordan Belmonte, dated October 4, 2021
 - B. Public Comment from Jules James, received October 11, 2021
- Exhibit 3 Critical area review permit

Exhibit 4 Public comments received after the hearing¹

- A. Lasha Steinweg, received October 13, 2021
- B. Randy Carman, received October 14, 2021
- C. Joe Belmonte, received October 14, 2021

Exhibit 5 Staff responses to comments

- A. Staff response to Exhibit 4.A, dated October 14, 2021
- B. Staff response to Exhibit 4.B, dated October 14, 2021

Exhibit 6 Applicant's response to public comments received October 18, 2021, including Memorandum from William Halbert, LEG of Insight Geologic dated October 18, 2021

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

FINDINGS

1. The Applicant requested a reasonable use exception (RUE) to construct a single-family residence within the outer 20 feet of a 50-foot landslide hazard area buffer. The subject property is located at 7005 Boston Harbor Extension Road NE, Olympia, Washington.² *Exhibits 1, 1.C, 1.D, 1.E, and 1.F.*
2. The RUE application was submitted on July 15, 2021 and determined to be complete on August 13, 2021. *Exhibits 1, 1.C, and 1.D.*
3. The subject property consists of two undeveloped parcels that were created through the 1907 Boston Harbor Plat and encompasses a portion of a 20-foot width of unimproved right-of-way (in the narrative referred to as an alley) separating the two parcels. The underlying parcel fronting Boston Harbor Extension Road measures 63 by 100 feet, and the rear parcel measures 90 by 100 feet. The Board of County Commissioners has approved vacation of the right-of-way, but the action is not yet final as the Applicant has not yet submitted an appraisal and paid for the land. Assuming the vacation receives final approval, the total site area would be 0.53 acres. *Exhibits 1.B, 1.E, and 1.F; Todd Mason Testimony.*

¹ One post-hearing written comment was submitted by a member of the public who had already testified at hearing, and another post-hearing written public comment was submitted after close of the post-hearing written public comment period. Unfortunately, neither of these comments were admitted in the record for failure to meet the advertised parameters for post-hearing comment.

² The legal description of the subject property is: a portion of Section 14, Township 19, Range 2 West, Plat BOSTON HARBOR BLK 59 LT 1, 2, 37-39 Document 008/031; also known as known as tax parcel number 35905900100.

4. The western portion of the subject property is zoned Residential LAMIRD One Dwelling Unit per Acre (RL 1/1), and the eastern portion of the subject property is zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5). Primary permitted uses in both zones include single-family and two-family residences, agriculture, and home occupations. Accessory farm housing is also allowed in the RRR 1/5 zone. *Exhibits 1 and 1.B; Thurston County Code (TCC) 20.11A.020; TCC 20.09A.020.*
5. Although the subject property is nonconforming with respect to the minimum lot area of the RL 1/1 and RRR 1/5 zones, it is a legal building lot capable of being developed with uses allowed in the underlying zones. It also has sufficient area to meet all sanitary code setback requirements without the need for a waiver. *Testimony of Scott McCormick and Dawn Peebles.*
6. Surrounding land uses include Burfoot County Park to the south and east, vacant land and a single-family residence to the north, and Boston Harbor Extension Road NE to the west. Parcels in the vicinity are generally less than an acre in area. The property is approximately 500 feet east of Budd Inlet of Puget Sound. *Exhibits 1, 1.B, and 1.F; Scott McCormick Testimony.*
7. The eastern portion of the property slopes down into a deep ravine containing a seasonal non-fish bearing stream (Type Ns),³ which discharges into Puget Sound. The Thurston County critical areas ordinance (CAO) requires a 150-foot buffer from the stream. *TCC Table 24.25-1.* Because the 150-foot buffer encumbers nearly the entire property, the Applicant sought and obtained approval of a 50% buffer reduction pursuant to TCC 24.25.025 through the administrative critical area review permit (CARP) process. No RUE is needed for the reduction, and the administrative CARP determination is a final decision. To mitigate for the reduced stream buffer, the Applicant proposes to plant 35 native trees and shrubs, focusing on areas currently lacking native vegetation. The reduced buffer would be delineated with three-rail fencing and signage to prevent pedestrian access while allowing for passage by wildlife. The approved critical areas permit requires compliance with these mitigation measures, and also requires erosion and stormwater to be controlled on site and stop work and notification protocols to be followed in the event that cultural resources are discovered during construction. *Exhibits 1, 1.H, and 3.*
8. The slope in the eastern portion of the subject property ranges from 48 to 90%, or approximately 65% overall. It is approximately 30 to 35 feet high as measured from the top of the slope to the stream. The ravine's side slope meets the CAO's criteria for a landslide hazard area because its height is 15 feet or more and the slope is at least 40%. The CAO specifies a minimum buffer from the top of a landslide hazard area slope of the greater of (A) 50 feet, (B) the distance measured from the toe of slope upward at a slope

³ The Type Ns classification was the conclusion of the Applicant's environmental consultant after a field investigation. Please refer to the critical areas report (Exhibit 1.H) for the stream typing analysis. The author of the report notes that the Washington Department of Natural Resources maps the stream as N, indicating a perennial stream. *Exhibit 1.H, page 10.*

of 2:1 to a point that intersects with the existing topography of the site, or (C) the minimum distance recommended in a geological assessment. In this case, 50 feet is the greatest of these measurements. *TCC 24.15.015; Exhibits 1.G and 6.*

9. The Applicant proposes to construct a 1,340 square foot single-family residence, a detached 720 square foot garage, and a sewage disposal system in the western portion of the property. The residence would be situated near the southern property boundary (in the area of vacated right-of-way) to minimize vegetation removal. The minimum setback between the foundation and the top of slope would be 30 feet. One pod of the proposed two-pod Glendon biofilter sewage disposal system (shown as Pod B on the site plan) would also intrude a short distance into the buffer. The garage and biofilter Pod A would be west and northwest, respectively, of the residence and entirely outside of the buffer. No lawn is proposed, to minimize potential impacts to the stream. *Exhibit 1.F; Todd Mason Testimony.*

10. A licensed engineering geologist evaluated the stability of the slope after conducting a site reconnaissance. During the site visit, the only indicator of recent slope failure was a small surficial landslide associated with a tree topple. The geologist did not observe any indicators of deep-seated failure such as slump blocks, back-tilted slopes or ponded water. In addition, curvature of evergreen tree trunks – an indicator of ongoing shallow soil creep – was not found on site. The site soils consist of glacial till, which has a high bearing capacity, high internal shear strength, and is not prone to deep-seated failure. The geologist’s opinion was that the probability of slope failure is low, and that the proposed construction activities would not affect slope stability. To reduce the potential for future slope failure, he recommended that storm drainage be tightlined downslope or to an engineered drainage system and not be allowed to discharge onto the face of the slope, and that low growing vegetation be encouraged within 10 feet of the slope edge and on the slope face to reduce erosion and increase soil strength. *Exhibit 1.G.* Planning Staff’s recommended conditions of approval require compliance with the geologist’s recommendations. *Exhibit 1.* Having considered public comment expressing concerns that the placement of the septic treatment pod closest to top of slope would potentially impact slope stability, the Applicant’s consultant reiterated his professional opinion that placement of Pod B within the retained top of slope buffer would not contribute significant hydrology to the slope and thus would not negatively impact slope stability. *Exhibit 6.*

11. The Thurston County Environmental Health Division has approved the Applicant’s proposed septic design, and the location of the residence, garage, and at hearing, testified that the septic system depicted on the site plan under RUE review is consistent with the approved design. The proposed Glendon biofilter is an above-ground system that achieves treatment level A, which is the highest treatment level possible. *Exhibit 1.J; Dawn Peebles Testimony.* One biofilter pod is needed for each bedroom, and the system alternates between the pods, metering effluent for treatment over a 24-hour period. *Todd Mason Testimony.* The volume of effluent infiltrated within Pod B, located within the landslide hazard area buffer, would not significantly affect the overall hydrogeology of

- the parcel and would not increase the risk of slope failure. *Exhibit 6 (Insight Geologic Memo)*.
12. The Thurston County Public Works Department reviewed the proposed drainage plan and determined that it meets the requirements of the Thurston County Drainage Design and Erosion Control Manual. Because the Applicant is a Public Works employee, an engineer in a different division than the Applicant's conducted the County's review. *I.K; Testimony of Matt Unzelman and Todd Mason*.
 13. The construction of a single-family residence and accessory structures is categorically exempt from review under the State Environmental Policy Act. *Exhibit 1; TCC 17.09.055; WAC 197-11-800*.
 14. Notice of the open record hearing was mailed to property owners within 500 feet of the subject property and was published in *The Olympian* on October 1, 2021. Notice of the application was issued on September 15, 2021. *Exhibits 1 and 1.A*
 15. Public comment on the application included concerns regarding the stream, including that the stream should be classified as a perennial stream and not a seasonal stream, that the buffer reduction should not have been granted, and that the project would degrade the ecological functions of the stream; concerns regarding ADA access to the park during construction and ongoing parking issues within the neighborhood; questions about why the lack of public sewer availability does not prevent development of the lot; and concerns that the slope is unstable, based on landslide activity in the area during the past few years. *Exhibits 2 and 4; Testimony of Sally Cloninger, Edward Steinweg, Jordan Belmonte, and Patty Belmonte*.
 16. With respect to issues relating to the stream, Planning Staff submitted that the issue has been administratively decided and is outside the scope of the instant proceedings, which are limited to the RUE for slope setback. Staff submitted that the stream buffer reduction was supported by the critical areas report and proposed mitigation plan. *Exhibit 5.B*. The Applicant emphasized his commitment to preserving the ecosystem, as demonstrated by the siting of the residence to minimize vegetation removal and the proposed mitigation plan. *Exhibit 6*.
 17. With respect to impacts to park access, the subject property fronts Thurston County right-of-way; the area in front of the residence is not part of the park. The 20-foot wide paved public roadway ends just south of the Applicant's parcel, and a paved driveway extends through the otherwise unimproved right-of-way into the park to the park caretaker's residence. General access to the driveway is blocked with a locked gate. There is a system in place by which disabled park visitors can telephone the caretaker, who can open a gate allowing disabled individuals to drive to the beach. However, public parking for the beach is not at this location; the public parking area is accessed from Boston Harbor Road. *Todd Mason Testimony; Exhibit 6*. The Public Works Department follows up on complaints of impeded vehicular traffic and pedestrian facilities. If access is prevented due to staging or construction parking, the Applicant would be required to

provide alternative access or stage equipment elsewhere. *Matt Unzelman Testimony*. The Applicant submitted that materials can be staged on site in the proposed garage area while the residence is being constructed. There is room along the property frontage and west of the construction area to park construction vehicles. *Todd Mason Testimony*.

18. With respect to sewer, connection to the Boston Harbor Sewer System would not be possible due to capacity constraints, but this does not preclude development. Legal lots of record, even if nonconforming as to lot area, may be developed as long as Thurston County Sanitary Code setback requirements can be satisfied. In this case, all requirements can be satisfied without need for a waiver. *Testimony of Dawn Peebles and Todd Mason; Exhibit 6*.
19. With respect to slope stability, the Applicant provided additional geotechnical analysis addressing site soils and potential impacts associated with the Glendon biofilters. As described in previous findings, the glacial till underlying the site is not prone to deep-seated landslides, and biofilter Pod B would not increase the risk of slope failure. In addition, the Applicant provided a diagram depicting that the proposed residence would be behind the 2:1 slope projection from the base of the slope, consistent with the CAO setback measurement methodology.⁴ *Todd Mason Testimony; Exhibit 6*.
20. Having heard all public comment and the Applicant's responses thereto, and having reviewed all materials submitted, Planning Staff maintained their recommendation for approval of the RUE with conditions. *Scott McCormick Testimony; Exhibit 1*. The Applicant waived objection to the recommended conditions. *Todd Mason Testimony*.

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for reasonable use exceptions pursuant to TCC 2.06.010(F) and TCC 24.45.030.

Criteria for Review

Pursuant to TCC 24.45.030, the Hearing Examiner shall grant the reasonable use exception if:

- A. No other reasonable use of the property as a whole is permitted by this title; and
- B. No reasonable use with less impact on the critical area or buffer is possible. At a minimum, the alternatives reviewed shall include a change in use, reduction in the size of the use, a change in the timing of the activity, a revision in the project design. This may include a variance for yard and setback standards required pursuant to Titles 20, 21, 22, and 23 TCC; and
- C. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety or welfare on or off the development proposal site, or increase public safety risks on or off the subject property; and

⁴ A similar drawing can be found in Exhibit 1.G.

- D. The proposed reasonable use is limited to the minimum encroachment into the critical area and/or buffer necessary to prevent the denial of all reasonable use of the property; and
- E. The proposed reasonable use shall result in minimal alteration of the critical area including but not limited to impacts on vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions; and
- F. A proposal for a reasonable use exception shall ensure no net loss of critical area functions and values. The proposal shall include a mitigation plan consistent with this title and best available science. Mitigation measures shall address unavoidable impacts and shall occur on-site first, or if necessary, off-site; and
- G. The reasonable use shall not result in the unmitigated adverse impacts to species of concern; and
- H. The location and scale of existing development on surrounding properties shall not be the sole basis for granting or determining a reasonable use exception.

Conclusions Based on Findings

1. No other reasonable use of the property as a whole is permitted by the critical areas ordinance. Based on the area of the site, existing surrounding land uses, and the uses allowed outright in the RL 1/1 and RRR 1/5 zone, a residential use is the only reasonable use of the property. *Findings 3, 4, 5, and 6.*
2. No reasonable use with less impact on the critical area or buffer is possible. The proposed residence would be modest in scale and intentionally oriented on site to preserve vegetation, which is important for slope stability, critical areas protection, maintenance of habitat, and aesthetic values, and to ensure adequate sanitary setbacks. Given these features, it appears that the site design avoids slope buffer impacts to the extent possible. *Findings 5, 7, 8, 9, 10, and 11.*
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, or increase public safety risks, on or off the subject property. The submitted slope evaluation provided credible evidence that the proposed 30-foot buffer would be safe for the development proposed and would not affect slope stability. In addition, the 30-foot buffer is consistent with the minimum buffer resulting from the 2:1 slope projection methodology set forth in TCC 24.15.015. The conditions of approval require compliance with the recommendations contained in the slope evaluation. With respect to public health, the proposed Glendon biofilters would provide the highest possible level of effluent treatment. The Environmental Health Division has approved the septic system design. Issues relating to park access and neighborhood parking, although not directly relevant to the RUE request, can be adequately addressed through existing complaint processes if an issue arises. Based on the evidence submitted, the proposed residential development would not affect usage of the park. *Findings 5, 10, 11, 15, 17, 18, 19, and 20.*

4. The proposed reasonable use is limited to the minimum encroachment necessary to prevent denial of all reasonable use of the property. Based on the modest size of the residence and the need to ensure minimum sanitary setbacks, it does not appear that the scale of the proposed development could be reasonably reduced. *Finding 9.*
5. With conditions of approval, the proposed use would result in minimal alteration of the critical area. Impacts to vegetation and wildlife resources would be minimized by the site design and the proposed stream buffer mitigation. Storm drainage would be controlled on site to prevent increased drainage from causing impacts to slope stability. The septic system would not significantly affect hydrologic conditions on site and would not destabilize the slope. Although public comment was submitted that objected to the reduction in stream buffer, the Hearing Examiner does not have jurisdiction to modify that administrative decision. This RUE decision only addresses the requested reduction in landslide hazard area buffer. *Findings 7, 9, 10, 11, 12, 15, 16, and 19.*
6. The evidence in the record supports the conclusion that the proposal would ensure no net loss of critical area functions and values. The mitigation plan for the administratively approved stream buffer reduction would be implemented on the site, which requires additional vegetation to be planted and fencing to be installed to restrict access into the critical area. Erosion would be controlled on site per the conditions of the critical areas review permit. The proposed construction would not adversely affect slope stability. The Applicant is aware of the potential hazards and to slope and stream and has designed the project intentionally to reduce, minimize, and mitigate for unavoidable impacts. *Findings 7, 10, 19, and 20.*
7. The use would not result in unmitigated adverse impacts to species of concern. The project review did not identify species of concern that would be affected by the project. Impacts associated with the reduction in stream buffer would be mitigated through vegetative enhancement and a wildlife-passable fence. *Finding 7.*
8. The location and scale of existing surrounding development is not the sole basis for granting the reasonable use exception. The RUE is granted due to the extent that the landslide hazard area and buffer encumber the site. The scale of development proposed is commensurate with the limitations inherent in the site and is therefore reasonable. *Findings 8 and 9.*
9. Much of the post-hearing written comment, and some of the comment offered in writing prior to and verbally at hearing, addressed issues that are not relevant to these proceedings. Some of this comment challenged the administrative approval of the stream buffer reduction; however, as noted above, the Examiner lacks authority to hear challenges to the administratively approved CARP for stream buffer reduction in these proceedings. Several commenters disputed the veracity of some statements made by the Applicant at the hearing. The Applicant addressed these allegations in post-hearing response at Exhibit 6. The topics addressed in these allegedly false statements by the Applicant primarily included: 1) the relative stability of the off-site bluff along which

existing residences are located; 2) whether the Applicant and/or neighbors have attempted to deter parking along the subject frontage at various points in time; and 3) whether and/or why the Applicant is not able to connect the proposed residence to the public sewer. Strictly speaking, these topics are outside the scope of the instant proceedings, which is properly limited to the question of whether the balance of the evidence demonstrates compliance with reasonable use exception criteria for approval related to the slope setback and other applicable development standards. Significantly, the three areas of alleged dispute (off-site bluff stability, attempted parking deterrence, and the reason for not connecting to sewer) are not pertinent to and/or determinative of the RUE criteria for approval. The record contains credible professional engineering evidence attesting to slope stability if the project proceeds consistent with recommendations, which have been made conditions of approval. Who can/can't park along the subject frontage is not relevant to the RUE criteria. The project does not need to connect to sewer because an advanced septic treatment plan has already been approved. Therefore, the "he said/she said" information is extraneous to the determination of compliance with RUE criteria for approval. The Applicant and the neighbors who oppose approval of the permit understandably see the same facts from opposite perspectives, and it is consistent with human nature that their differing perspectives color the way they interpret the things that happen. While it would be of great concern to have a project proponent - or any witness at a hearing - provide untrue testimony under oath, the undersigned is not persuaded that this proponent has done so. Finally, at least one member of the public alleged or implied that the Applicant may have gotten special treatment because he is a County employee. The undersigned sees no evidence of the Applicant having been excused from any procedural or substantive code requirement.

DECISION

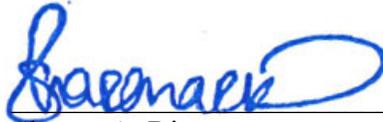
Based on the preceding findings and conclusions, the request for a reasonable use exception to construct a single-family residence within the outer 20 feet of a 50-foot landslide hazard area buffer at 7005 Boston Harbor Extension Road NE is **GRANTED** subject to the following conditions:

1. The Applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of critical areas and their buffers.
2. The project shall be in compliance with the recommendations contained in the project Steep Slope Evaluation by Insight Geologic, Inc. dated June 29, 2021 (Exhibit 1.G).
3. The project shall be in compliance with and follow the recommendations and mitigation plan as proposed in the critical areas report by Loowit Consulting Group LLC dated April 5, 2021 (revised) (Exhibit 1.H).
4. Either proposed mitigation plantings shall be installed prior to final occupancy approval on future residential building permits, or a bond or irrevocable assignment of savings in

the amount of 125% of the cost of mitigation plantings, shall be submitted and shall be retained by Thurston County until the plantings are installed.

5. All development shall be in substantial compliance with drawings and site plan submitted and made part of this staff report. Any expansion or alteration of this use shall require approval of a new or amended approval. The Community Planning and Economic Development Department shall determine if any proposed amendment is substantial enough to require a new public hearing process before the Hearing Examiner.
6. 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.
7. Approval of the instant RUE is subject to final approval of the right-of-way vacation of the intervening "alley" between the two underlying parcels by the Thurston County Board of Commissioners.

DECIDED November 1, 2021.



Sharon A. Rice
Thurston County Hearing Examiner

NOTE: Pursuant to TCC 22.62.020(C)10, affected property owners may request a change in valuation for property tax purposes.

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

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

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

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

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

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

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

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

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

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$777.00** for a Request for Reconsideration or **\$1,054.00** 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 \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.