



COUNTY COMMISSIONERS

Carolina Mejia-Barahona
District One

Gary Edwards
District Two

Tye Menser
District Three

HEARING EXAMINER

Creating Solutions for Our Future

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2020103722
EDWARDS REASONABLE USE EXCEPTION

SEQUENCE NO.: 20 109544 XI

TAX PARCEL NO.: 22620430000

LOCATION ADDRESS: 17301 Lakepoint Dr SE
Yelm, WA 98597

LEGAL DESCRIPTION: Section 20 Township 16 Range 2E PTN GOVT LT 3
NOT PLATTED LAND EXTENDING SELY FROM LT 18 DIV
3 & LT 1 DIV 4 LAKE LAWRENCE

OWNER: Edwards Family Master Trust
6535 Seaview Ave NW Apt. 302B
Seattle, WA 98117

APPLICANT: Doug Bloom
Rainier General Development
PO Box 627
Rainier, WA 98579-6051

POINT OF CONTACT: Kim Pawlawski
Bracy & Thomas Land Surveyors
1520 Irving St. SW, Ste B
Tumwater, WA 98512

PLANNER: Richard Felsing, Associate Planner

SUMMARY OF REQUEST: The Applicant requests approval of Reasonable Use Exception to construct a single-family residence within the 200-foot buffer of a Category III lake-fringe wetland and a Variance of the 100-foot shoreline setback on a parcel located within the Conservancy shoreline environment of Lake Lawrence under the jurisdiction of the Shoreline Master Program of the Thurston Region. A 2,565-square foot development area is proposed and paired with a mitigation planting and invasive species removal area of 2,565-square feet.

SUMMARY OF DECISION: Approved with conditions.

DATE OF DECISION: November 18, 2022

PUBLIC HEARING:

After reviewing the Community Planning and Economic Development Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on October 25, 2022 at 2:00 p.m. Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT 1** - **Community Planning and Economic Development Staff Report**
- Attachment a** - **Notice of Public Hearing**
- Attachment b** - **Master and Reasonable Use Exception Applications; August 18, 2020**
- Attachment c** - **Shoreline Variance JARPA Application; July 15, 2022**
- Attachment d** - **Revised Site Plan, July 15, 2022**
- Attachment e** - **Revised Project Narrative, July 15, 2022**
- Attachment f** - **Zoning and Vicinity Maps**
- Attachment g** - **Edwards Wetland Delineation Report & Conceptual Mitigation Plan, Land Services Northwest, August 17, 2022**
- Attachment h** - **Edwards No-Net-Loss Buffer Enhancement Plan, Single-Family Residence RUE, August 30, 2022**
- Attachment i** - **Notice of Application, July 30, 2021**
- Attachment j** - **Comment Letters; Nisqually Indian Tribe, September 10, 2022; Squaxin Island Tribe, September 6, 2022; DAHP, August 31, 2022**
- Attachment k** - **Memorandum for Approval; Environmental Health, Dawn Peebles**
- Attachment l** - **Development Area Map & Mitigation Area Map**
- Attachment m** - **Priority Habitats and Species Map**
- Attachment n** - **Deeds**
- Attachment o** - **Boundary Line Adjustment**

- EXHIBIT 2** - **Lori Loveland email, October 15, 2022**
- EXHIBIT 3** - **Michael Edwards email, October 21, 2022**
- EXHIBIT 4** - **Alex Callender, Land Services Northwest, Letter, October 21, 2022**

EXHIBIT 5 - Ruth Boyle, email, August 18, 2022

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

RICHARD FELSING, Associate Planner, appeared, requested that the Staff Report and attachments be admitted into the record and testified that the Applicant requests approval of Reasonable Use Exception (RUE) to construct a single family residence in the buffer of a Category III lake-fringe wetland, located within the Conservancy shoreline environment of Lake Lawrence. A 2,565- square foot development area is proposed paired with a mitigation planting and invasive species removal area of 2,565-square feet. A variance is required for the shoreline setbacks due to the parcel shape on the narrow peninsula jutting out into Lake Lawrence. The parcel is defined by the physical characteristics of the peninsula. The 1.9-acre parcel is located in rural Thurston County, is zoned Residential LAMIRD—Two Dwelling Unit per Acre (RL 2/1) and is heavily forested with an opening down the spine of the peninsula at the proposed building site, and invasive plant species occur throughout the parcel. The property is entirely encumbered by the 200-foot buffer of an on-and off-site Category III lake-fringe wetland. A mitigation plan has been proposed that has been revised and accepted by the Associate Planner. Existing on the property are a waterline and water meter, septic tank, septic drainfield, a utility shed and an unpermitted cabin now used for storage and not equipped with utilities which will remain to minimize adverse impacts to the shoreline. The Conservancy shoreline environment requires a 100-foot development setback from the Ordinary High Water Mark (OHWM) and the Category III wetland carries a 200-foot required buffer. The peninsula at the proposed building site is approximately 185-feet to 190-feet wide. He then stated that an archaeological survey was requested but the County does not require a cultural survey for projects that are exempt from SEPA and concluded by noting an email in support of the RUE by an adjacent neighbor, Ruth Boyle.

DAWN PEEBLES, Senior Environmental Health Specialist, Environmental Health Division, appeared and testified that the Division had reviewed the application and confirmed the site is served by the Lake Lawrence Group A community water system that has been approved by the Department of Health. The site also has an existing on-site septic system that was permitted, approved and installed in 1994 to serve a two bedroom residence.

KIM PAWLAWSKI, Applicant Project Point of Contact, Bracy and Thomas Land Surveyors, appeared and testified that they concur with the County's recommendations with the exception of Attachment n. After a brief discussion, the County agreed that the Attachment n would be deleted and be replaced with documentation Ms. Pawlawski would provide indicating the subject parcel is a legal lot.

DOUG BLOOM, Applicant, Rainier General Development Surveying, appeared and testified that he is in agreement with the substitution of documents under Attachment n and the recommendations of the County numbered 1-13 and the letter from Alex Callender dated October 21, 2022, filed as Exhibit 4.

ALEX CALLENDER, Biologist, Land Services Northwest, appeared and testified that he visited the site during the winter of 2020. The site is forested with shrubs along the lake edge and has a beaver home off the eastern shoreline line. The original mitigation plan has been revised to minimize the impact on the beavers habitat. However, the plan is still to screen the development from the lake. He has not observed any eagle presence except the likelihood they visit the area.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 2:30 p.m.

NOTE: A complete record of this hearing is available in the office of the Thurston County Community Planning and Economic Development Department.

FINDINGS:

1. The Applicant filed a Master Application and Supplemental Application for a Reasonable Use Exception (RUE) on August 18, 2020, as well as a Supplemental Joint Aquatic Resources Permit Application (JARPA) on July 15, 2022, requesting a “Reasonable Use Exception for SFR to reduce shoreline & wetland buffers,” and, specifically, for “approval of a development envelop within a 100-foot Conservancy shoreline setback and wetland buffer” including “a dated, non-conforming 280 square foot storage building and deck (210 sf storage, 70 sf covered area, 146 sf wood deck.)” (Att. b and c)
2. The Notice of Application of Application entitled “Edwards Reasonable Use Exception Permit to Build Single -Family Dwelling in a Critical Area Wetland/ Buffer & Conservancy Shoreline Environment” was issued on July 30, 2021, with the comment period expiring on August 19, 2021. (Att. l)
3. In a Memorandum dated August 15, 2022, Dawn Peeples, Thurston County Senior Environmental Health Specialist, commented that the Thurston County Public Health and Social Services department had reviewed the request and recommended approval noting that “The existing storage building is not currently served by utilities. The proposed single-family residence will be served by Lake Lawrence Group A community water system and an existing on-site septic system. The on-site septic system was permitted to serve a 2-bedroom residence and installed in 1994. The location of the septic system as shown on the project site plan matches records on file.” (Att. k)
4. In a letter dated, August 31, 2020, Dennis Wardlaw, Transportation Archaeologist, Washington State Department of Archaeology and Historic Preservation (DAHP), identified the proposed project area as having “high sensitivity for archaeological resources” and requested an archaeological survey. In an email dated September 6, 2020, Shaun Dinubilo, Archaeologist, Squaxin Island Tribe, stated no specific cultural resource concerns but would concur if a survey was requested by the DAHP. In a letter dated September 10, 2020, Brad Beach of the Nisqually Indian Tribe commented that “no further information or concerns at this time” but did request to be informed if there are any “Inadvertent Discoveries of Archaeological Resources/Human Burials.” (Att. j)
5. In a letter dated October 25, 2021, Richard Felsing, Associate Planner, advised the Applicant that the County does not require cultural or archaeological surveys for projects that do not involve a SEPA process. (Ex. j) The County is recommending an “Inadvertent Discovery” condition be included in the Examiner’s decision. (Ex. 1, p. 17)
6. The Washington State Departments of Ecology and Fish and Wildlife did not provide comments nor did the County Public Works Development Review Division.

7. The construction of a single-family home is exempt from review under the State Environmental Policy Act (SEPA) (WAC 197-11-800(1)(b)(i)).
8. Written notice of the public hearing was mailed to all property owners within 500-feet of the site on October 12, 2022 and was published in The Olympian on October 14, 2022, at least ten (10) days prior to the hearing. (att. a)
9. The Owner, the Edwards Family Master Trust, has a possessory interest in the subject property located at 17301 Lakepoint Dr SE, Yelm, WA 98597, Parcel Number 22620430000, Section 20 Township 16 Range 2E PTN GOVT LT 3 NOT PLATTED LAND EXTENDING SELY FROM LT 18 DIV 3 & LT 1 DIV 4 LAKE LAWRENCE. (Ex. n) Currently existing on the property are a waterline and water meter, septic tank and septic drainfield, a utility shed and an unpermitted cabin now used for storage and not equipped with utilities. The cabin will remain because removal will result in unnecessary adverse impacts to existing natural habitat and to the Conservancy shoreline environment The two adjacent properties are undeveloped. One parcel is within the “Edwards Lake Lawrence Div. 3” development and the second is within the “Edwards Lake Lawrence Div. 4” development. The remainder of the property is surrounded by Lake Lawrence. (Att. c)
10. The subject parcel is approximately 1.9-acres in size and is located on Lake Point peninsula on Lake Lawrence within rural Thurston County. The peninsula is approximately 185-feet to 190-feet at the proposed building site and has historically been mostly forested with an opening down the spine of the peninsula at the proposed building site. The upland portion of the site is grass and small shrubs on the upper flat portion while the slopes are heavily vegetated. Invasive plant species dominate ground cover vegetation. The entirety of the parcel is encumbered by a wetland buffer and Conservancy Shoreline environment, both associated with Lake Lawrence. A topographic survey completed in February 2020 by Bracy and Thomas Land Surveyors verified that there are no slopes on the site that exceed 39%. A wetland report dated August 17, 2020, prepared by Land Services NW identified a Category III wetland along the shoreline of Lake Lawrence which is noted as Wetland A. (Att. c and h)
11. The proposed development is consistent with the zoning classification Residential LAMIRD-Two Dwelling Units per Acre (RL 2/1). Pursuant to Thurston County Code 20.13A.020, the RL2/1 zoning district specifies agriculture, single-family homes and duplexes as primary land uses, subject to applicable design standards (TCC 20.13A.030). Therefore, the proposed single-family residence is consistent with the zoning requirements as the 1.9-acre parcel is too small to support agriculture.
12. The proposed single-family residence is also consistent with the Thurston County Comprehensive Plan in that it proposes to develop in a manner meeting applicable purposes and design standards and at a density characteristic of the area. The RL2/1 land use was designed “to recognize [existing] residential development related to freshwater shorelines in rural areas that was predominately developed at a density of approximately two dwelling units per acre prior to July 1, 1990.” (Thurston County Comprehensive Plan, Land Use, p. 2-22) Shoreline lot sizes and densities are historically highly variable, commonly involving small lots with small homes or cabins in close proximity. The already-developed freshwater shorelines of Lake Lawrence include lots ranging from around 0.2 acres to approximately 0.6 acres that

appear to be developed with at least one dwelling unit, with the largest parcels around 1.3 acres.

13. Wetland A is an on-and-off Category III lake-fringe wetland with an overall score of 18 and a habitat score of six (MMM) which under Thurston County wetlands codes requires a 200-foot standard wetland buffer with a 15-foot building setback. Therefore, the entire property is encumbered by the wetland buffer. An administrative 25% buffer reduction available to the Applicant would reduce the buffer to 150-feet with a 15-foot setback which would still completely encumber the property. (Attachments g, h). Pursuant to TCC 24.45, the Applicant is requesting a Reasonable Use Exception
14. The Shoreline Master Program of the Thurston Region (SMPTR) designates this area of Lake Lawrence as a Conservancy shoreline environment. Conservancy shorelines require a 100-foot development setback from the Ordinary High Water Mark (OHWM). Pursuant to RCW 90.58.020 and WAC 173.27.160, the Applicant is requesting a Shoreline Variance for relief from the dimensional standards of the SMPTR.
15. The authority for a RUE is expressed in TCC 24.45.010:

A reasonable use exception is required when adherence to the provisions of this title would deny all reasonable use of the subject property as a whole, due to the property's size, topography, or location relative to the critical area and any associated buffer. A reasonable use exception shall only be granted if no other reasonable alternative method of development is provided under this title and the Thurston County Code.

16. TCC 24.45.030, Review criteria, provides that the hearing examiner shall approve, or approve with conditions, the reasonable use exception if the following eight (8) criteria are met:

A. No other reasonable use of the property as a whole is permitted by this title;

The Applicant's proposal for constructing a single-family home in a RL 2/1 zone is one of the three primary permitted uses. (TCC 20.13.A.020) The proposed residence is consistent with the character of residences on the peninsula. The 1.9-acre size and topography of the subject property is not suitable to feasibly support an agricultural operation. No other reasonable use of the property as a whole is permitted in the zone classification.

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.

The property is wholly encumbered by the 200-foot wetland buffers and the 100-foot shoreline setback associated with Lake Lawrence. As currently proposed, no future construction-related activity will occur within the vegetated slope areas as all construction will occur within the grassy upland area that is already disturbed and non-native. Therefore, the project is

designed to minimize impact on the existing habitat. The parcel consists of a narrow peninsula on Lake Lawrence, approximately 185-foot wide, bounded by the lake-fringe wetland to the north, east, and south, precluding any ability to move the proposed home site further away from the shoreline OHWM or Wetland A. In addition, the storage area was built with minimal impact to the surrounding vegetation and in the years since its construction, native vegetation has continued to grow and thrive on the site resulting in a dense vegetated buffer between the upland and edge of Lake Lawrence.

- 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;

The Applicant has used the parcel for years and has not degraded the wetland so it is reasonable to expect that the proposed mitigation will maintain a no net loss of wetland functions over baseline. The construction of the single-family residence proposed on the interior grasslands of the parcel that stretch across the end of the peninsula minimizes impacts on neighboring properties. The design of the home has been revised to reduce the overall footprint of the structure and to utilize the existing driveway and thereby avoid any change in hydrology. The concern for the construction impacting the presence of eagles on the property is not expected as eagles may have visited the area but no observations of nesting or habitating on the property have been presented.

- D. The proposed reasonable use is limited to the minimal encroachment into the critical area and/or buffer necessary to prevent the denial of all reasonable use of the property;

The use of the property will remain residential. Since the entire parcel is located on a peninsula bounded by the Lake Lawrence OHWM to the north, east, and south, the proposed encroachment is minimized to the extent practicable. No on-site location is outside the lake-fringe wetland buffer. The overall proposed development area is 2,565-square feet in size with 2,565-square feet of mitigation planting and enhancement proposed. The Applicant has avoided any direct impacts that were avoidable; however, the extent of wetlands have made complete avoidance of buffer impacts impossible without abandoning the purpose of providing a single-family residence. The project has been reduced to the point where the home, septic and driveway are the only impacts. This minimal impact of the development is due to a footprint that is small but sustainable. The house itself will be surrounded by vegetation to screen the daily activities. This vegetation is within 4-feet of the home; if it were any closer, the vegetation would be inadvertently damaged due to proximity to the house.

- 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;

The proposed building site is located on the center spine of the peninsula which is as far away from the Lake Lawrence OHWM as possible in an opening in the forest canopy with

non-native grass ground cover. Storm water resulting from the roof impervious surfaces will be mitigated and cause minimal alteration of the lake-fringe wetland buffer.

- 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;

The Applicant's wetland consultant, Land Services Northwest, has submitted a No-Net-Loss Buffer Enhancement Plan to mitigate adverse impacts to the Wetland A buffer. The Mitigation Plan includes a planting plan, species list, cost estimates, requirements for a surety bond and a monitoring plan and outlines. The biologist stated "This proposed mitigation will be combined with stormwater best management practices in order to limit storm water and wetland impacts. The final mitigation should result in no net loss of wetland functions and values" (Att. h,)

- G. The reasonable use shall not result in the unmitigated adverse impacts to species of concern;

The project will not result in impacts to any species of concern as the area and location of the construction will result in minimal removal of vegetation or disturbance of soil. Erosion control and proposed mitigation measures landward of the Lake Lawrence OWHM would ensure the proposed use would not result in unmitigated impacts to waterfowl or to the forested/shrub wetland. Searches of the Thurston County Geodata mapping system did not yield species of concern on the subject parcel. Geodata and the Washington Department of Fish & Wildlife Priority Habitats & Species (PHS) mapping database list the off-site lake-fringe wetland as a Waterfowl Wintering Area. The PHS system describes the area as a Freshwater Forested/Shrub Wetland.

- 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

The location and scale of existing development on surrounding properties is not considered a factor in reviewing the proposed RUE application as the construction of the single-family residence is on a narrow peninsula surrounded by Lake Lawrence on three of the four sides of the subject parcel.

- 17. TCC 24.45.020 entitled "Reasonable use exception-Certain properties not eligible" prohibits a RUE if the inability to derive reasonable use is the result of a self-created hardship such as subdividing the property, adjusting a boundary line, or other actions thereby creating the property undevelopable.

Herein, the sole basis for the RUE is the location of the subject parcel on a narrow peninsula jutting into Lake Lawrence and the topography of the parcel and not from any "self-created" hardship created by the Applicant.

18. The Applicant is requesting approval of a Shoreline Variance to construct the single-family home within the Conservancy shoreline environment. The SMPTR states that: "Alterations to the natural condition of the shorelines, in those limited instances when authorized, shall be given priority for single-family residences . . ." (SMPTR, p. 20) Aside from the proposed building footprint, the project would not extract resources nor be an option for public recreation but instead proposes non-consumptive residential uses. The Conservancy environment "is characterized by low-intensity land use and moderate-intensity water use with moderate to little visual evidence of permanent structures and occupancy." The project is proposed well under the allowable density. (SMPTR p. 28-29).

19. The proposal is consistent with the applicable Goals and Policies of the Conservancy shoreline environment: (SMPTR p. 28-29)

Goals:

6. Conservation. Replanting and restoration of the shoreline buffer area qualifies as sound conservation management of natural resources.
8. Restoration. The project will return the subject property to a useful condition by establishing the proposed residential land use.

Policies:

1. Mitigation measures are proposed to address adverse environmental and visual impacts on the shoreline and wetland through native plantings and height restrictions.
7. The removal of vegetation will be minimized and any areas disturbed will be restored to prevent erosion and other environmental impacts. The vegetation at the proposed building site consists of non-native grass, the project would minimize vegetation removal and mitigation measures are proposed to remove invasive species and plant native species along the Lake Lawrence shoreline.
8. Waste materials from construction will not be left on shorelines or beaches but stored upland.as control and proper disposal of construction materials will be required as a condition of approval.
10. The residential structures will be located to minimize obstruction of views of the water from upland areas as the existing trees screen the site and the 35-foot height limit will be required.
11. The proposed site of the residence in the center of the spine of the peninsula is designed to make unnecessary protective measures such as filling, beach feeding, bulkheading, shoreline berms, construction groins or jetties, or substantial grading of the site and requires no such activity or work at the Lake Lawrence OHWM.

20. The proposed development is generally consistent with the applicable General Regulations of the Conservancy shoreline environment: (SMPTR p. 100)

3. The residential development proposal does not identify those areas of natural vegetation, retention and erosion control measures; however, the Reasonable Use Exception requested herein by the Applicant retains natural habitat and mitigates adverse impacts to natural resources.
4. The character of the shoreline, and views of it, will be protected by screening of the existing tree canopy and the 35-foot height restriction under RL2/1 zoning. The

shoreline aesthetics will be enhanced by planting of native species and invasive species removal.

8. Erosion control measures during construction and the mitigation measures required for this project will prevent stormwater runoff from entering Lake Lawrence. The septic system is separate from any drainage patterns.

21. The proposal is not consistent with the requirements of General Regulation number 16 regarding eligibility for an administrative variance to reduce the shoreline environment setback requirements for structures because the width of the peninsula is approximately 185-feet to 190-feet at the point of the proposed development area. Consequently, the proposed residence, and arguably no residence, can meet the Conservancy shoreline environment 100-foot development setback from either side of the peninsula as attempting to meet the 100-foot setback from the OHWM to the north would increase the non-conformity to the south, and vice versa. (SMPTR p. 101)

22. The proposal is generally consistent with the applicable environmental use regulations for residential development in the Conservancy Environment: (SMPTR p. 107)
 4. Conservancy Environment.
 - a. The construction of one single-family residence on the 1.9-acre parcel complies with the residential density as it does not exceed one (1) unit per acre.
 - b. The proposal complies with the minimum lot size of 40,000-square feet of dry land area and the minimum lot width shall be 100-feet, measured at the ordinary high water mark and at the building setback line, and the lot coverage with impervious surfaces in does not exceed 30-percent.
 - c. The proposal does not meet the basic setback for residential structures of one hundred (100) feet from the ordinary high-water mark nor does it comply with the administrative variance criteria in general regulation #16. (Finding 21)

23. The Applicant has applied for a shoreline variance based on the physical characteristics of the subject parcel. Thurston County Code Title 19 entitled "Shoreline Master Program," section TCC 19.01.010 entitled "Portions designated," states in relevant part:

Pursuant to the authority of the Shoreline Master Program for the Thurston Region and Chapter RCW 90.58, the Shoreline Management Act, this title constitutes a local ordinance . . . The provisions of the master program and this title are supplementary to the provisions of Chapter 90.58 RCW and Title 173 WAC.

24. The SMPTR provides as follows:

Shoreline Variance Permit State law authorizes the granting of relief from specific bulk, dimensional or performance standards of the master program in extraordinary situations. Such relief may be obtained through a Shoreline Variance Permit. Review criteria governing issuance of the Variance Permit are prescribed by state regulation and provisions of this program. Application for Variance Permit approval is also made to the local government with jurisdiction, and a public hearing is held. Final approval or disapproval is granted by the State Department of Ecology (refer to WAC 173-14). (SMPTR p. 3)

25. WAC 173-27-170 entitled "Review criteria for variance permits" provides:

The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

- (2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(c), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - (a) Strict application of the 100-foot Conservancy environment shoreline development setback from the Lake Lawrence OHWM on the Lake Point peninsula precludes reasonable use of the property as a single-family residence. Due to the property's unique shape and location, it is entirely encumbered by a wetland buffer and shoreline setback. There is no place to build that is outside these areas. Even if the modest family residence is constructed on the spine of the peninsula, the centerline of the structure would be approximately 92-feet to 95-feet from the north and south shorelines and, therefore, within the shoreline setback.
 - (b) The hardship described in section (a) above is specifically related to the property and is the result of unique conditions. The peninsula is a unique natural feature that defines the irregular shape, width, and size of the subject parcel. The hardship is due to the site conditions as determined by the physical features of the peninsula and no aspect of this hardship is under the Applicant's control nor the result of the Applicant's own actions.
 - (c) The design of the project is compatible with existing and future residential uses characteristic of the area and the Comprehensive Plan. Any adverse impacts to the shoreline environment will be mitigated by the location of the structures and the proposed mitigation plan to remove invasive species and to plant native species.
 - (d) The variance will not constitute a grant of special privilege to the Applicant that is not enjoyed by the other properties in the area as all or nearly all of the nearby parcels are developed with single-family residences. This application for a variance seeks only to exercise the same property rights under RL2/1 zoning. In addition, none of the residences are sited on a peninsula at a location that is so narrow that the setbacks for the shorelines cannot be met.
 - (e) The variance requested is the minimum necessary to afford relief. The proposed development envelop is located as far away from the critical areas as possible due to the location of the existing septic system.
 - (f) The public interest will suffer no substantial detrimental effect. The proposed development envelop is located as far from the critical areas as possible due to the location of the existing septic system. In addition, the existing non-conform storage

building was constructed at least 20-years ago and removal of this structure would result in substantial disturbance to the existing thriving native vegetation. The proposed mitigation plan will address adverse impacts by ensuring no net loss of wetland value or function. Finally, the public interest will not suffer detrimental effect as mitigation plantings will support the public interest in protecting the shoreline environment.

- (4) The granting of the subject variance most likely will not result in a cumulative impact of additional requests for like actions in the area as the subject parcel is the only property located at the terminus of the Lake Point peninsula which is the only peninsula on Lake Lawrence.
- (5) As stated above, the proposed development of a single-family residence is consistent with the permitted residential uses under the Shoreline Master Program of the Thurston Region for the Conservancy environment.

CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The Applicant has demonstrated that the proposal will be consistent with all applicable codes; therefore, the request for the Reasonable Use Exception and the Shoreline Variance should be approved subject to the following conditions:
 1. Inadvertent Discovery. If archaeological artifacts are observed during any phase of the project, all work shall be immediately halted. The State Department of Archaeology and Historic Preservation, the Thurston County Community Planning & Economic Development Department (CPED) and affected Tribes shall be contacted to assess the situation prior to resumption of work.
 2. Erosion Control. Prior to earth disturbing activities, erosion control best practices shall be implemented. The erosion control methods must be maintained to ensure ongoing protection throughout construction until there is no longer risk of erosion polluting waters of the state. Erosion control best practices shall be monitored and approved through the Building Site review associated with the building permit application.
 3. 'Built Prior-to-Permit' Process. Prior to issuance of any building permit, the land owner shall undergo the built-prior-to-permit process for the unpermitted storage cabin at the end of the peninsula.
 4. Erosion Control. Prior to building permit issuance, erosion control shall be installed and inspected by Thurston CPED staff. Photos may substitute for inspection. Erosion and stormwater controls, (i.e., silt fencing and / or straw waddles) must be installed landward of the reduced buffer such that uncontrolled storm water cannot reach the adjacent wetland.
 5. Mitigation Measures (Attachment h, pp. 8-16). Prior to building permit issuance, the project shall meet and implement the Mitigation Plan detailed in the No-Net-Loss Buffer

Enhancement Plan (Attachment h), and the project proponent and future landowners shall adhere to the findings, mitigating measures, monitoring programs and financial surety 2020103722 – Edwards RUE 18 October 25, 2022 stipulated in the Mitigation Plan as specified on pp. 8-16 of the No-Net-Loss Plan (Attachment h, No-Net-Loss Buffer Enhancement Plan, Land Services NW, pp. 8-16).

6. Surety Bond / Letter of Irrevocable Savings. Prior to building permit issuance, the applicant shall provide a surety agreement and bond, in compliance with TCC 24.70, to ensure the proposed monitoring and maintenance portion of the mitigation report is completed successfully. The amount of the bond is to be \$3,375.00, which is 125% of the \$2,700 cost of mitigation and monitoring (Attachment h, p.12).
7. Prior to building permit issuance, the applicant shall record with the Thurston County Auditor a Critical Area and Buffer Notice and a site plan showing the mitigation planting area, wetlands and associated buffers, and setting forth the mitigating conditions outlined here.
8. Prior to final occupancy, all wetland buffer enhancement work proposed in the plan shall be installed, subject to standards of TCC 24.60.
9. Release of Surety. Prior to the release of surety, the project proponent shall obtain written approval from Thurston County Community Planning & Economic Development that the measures agreed to have been implemented in the time period specified.
10. Clean Fill / Solid Waste. All grading and filling of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required from Thurston County Environmental Health prior to filling. All removed debris resulting from this project must be disposed of at an approved site. Contact TC Environmental Health for proper management of these materials.
11. Toxics Cleanup. If contamination is suspected, discovered, or occurs during the proposed SEPA action, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator for the Southwest Regional Office (SWRO) at (360) 407-6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Thomas Middleton with the SWRO, Toxics Cleanup Program at (360) 407-7263.
12. Construction Stormwater Permit. 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.
13. All development on the site shall be in substantial compliance with the approved Reasonable Use Exception application, as conditioned. Any alteration to the proposal will require approval of a new or amended Reasonable Use Exception. The Land Use and

Environmental Review Section will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

DECISION: The requests for the Reasonable Use Exception and the Shoreline Variance are approved subject to the listed Conditions.

ORDERED this 18th day of November, 2022.



STEPHEN R. SHELTON
Pro Tem Hearing Examiner

TRANSMITTED this 18th day of November, 2022, to the following:

OWNER: Edwards Family Master Trust
6535 Seaview Ave NW Apt. 302B
Seattle, WA 98117

APPLICANT: Doug Bloom
Rainier General Development Surveyors
PO Box 627
Rainier, WA 98579
doug@rainiergeneral.com

POINT OF CONTACT: Kim Pawlawski
Bracy & Thomas Land Surveyors
1520 Irving St. SW, Ste B
Tumwater, WA 98512
kim@bracythomas.com

OTHERS:

THURSTON COUNTY

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 **\$804.00** for a Request for Reconsideration or **\$1,093.00** 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 \$804.00 for Reconsideration or \$1,093.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.