



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. 2021104738
	)	
<b>Steve Rushing</b>	)	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 and detached garage within a stream buffer is **GRANTED** with conditions.

**SUMMARY OF RECORD**

**Request**

Steve Rushing requested a reasonable use exception to construct a single-family residence and detached garage within a 150-foot Type Ns stream buffer. The proposed reduced buffer would be 20 feet wide at its narrowest point. The subject property is located at 7820 Mirimichi Drive in unincorporated Olympia, Washington.

**Hearing Date**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on November 22, 2022. The record was held open through November 24, 2022 to allow members of the public who may have had technology or access difficulties joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing comments were submitted, and the record closed on November 24, 2022.

**Testimony**

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

Scott McCormick, Associate Planner, Thurston County Community Planning & Economic Development Department

Steve Rushing, Applicant

Dawn Peebles, Senior Environmental Health Specialist, Thurston County Public Health and Social Services Department

Arthur Saint, Civil Engineer, Thurston County Public Works Department

Tim Nord, neighbor

**Exhibits**

The following exhibits were admitted in the record through the open record public hearing:

Exhibit 1 Community Planning and Economic Development report including the following attachments:

- A. Notice of Public Hearing, dated November 11, 2022
- B. Zoning/Site Map
- C. Master Application, received September 8, 2021
- D. Reasonable Use Exception application, received September 8, 2021
- E. Revised narrative, received May 15, 2022
- F. Site plan, dated April 26, 2022
- G. Topographical survey, received September 8, 2021
- H. Draft septic design, received September 8, 2021
- I. Notice of Application, dated April 20, 2022 with adjacent property owners list, dated April 19, 2022
- J. Critical Areas Report & Buffer Mitigation Plan, received May 4, 2022
- K. Response by Envirovector to County Letter, dated November 4 2021
- L. Report of Critical Area Assessment (Geotech Report) by MTC Inc., received May 4, 2022
- M. Memo from Amy Crass, Thurston County Environmental Health, dated November 2, 2021
- N. Comment email from Noll Steinweg, Washington Department of Fish and Wildlife, dated September 27, 2021
- O. Comment email from the Squaxin Island Tribe, dated September 27, 2021
- P. Comment email from neighbor Tim Nord dated May 10, 2022

Exhibit 2 Revised Site Plan received November 21, 2022

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

### FINDINGS

1. Steve Rushing (Applicant) requested a reasonable use exception (RUE) to construct a single-family residence and detached garage within a 150-foot Type Ns stream buffer. The proposed reduced buffer would be 20 feet wide at its narrowest point. The subject property is located at 7820 Mirimichi Drive in unincorporated Olympia, Washington.<sup>1</sup> *Exhibits 1, 1.C, 1.D, 1.E, 1.F, 1.J, and 2.*
2. The RUE application was received on September 8, 2021 and deemed complete for purposes of commencing project review on October 6, 2021. *Exhibit 1.I.*
3. The subject property is 0.92 acres in area and is on the Totten Inlet, Puget Sound shoreline. Adjacent shoreline properties to the north and south are similar in area to the subject property and are developed with single-family residences. The parcels to the west of the subject property across Mirimichi Drive area also developed with single-family residences. *Exhibit 1.*
4. The subject property is zoned Residential LAMIRD One Dwelling Unit per Acre (RL 1/1). Primary permitted uses in the RL 1/1 zone include single-family and two-family residences, agriculture, and home occupations. *Exhibits 1 and 1.B; Thurston County Code (TCC) 20.11A.020.* At less than one acre in area, the County considers the subject property to be a legally nonconforming lot. *Exhibit 1.*
5. The subject property slopes down from west to east towards the marine bluff. Based on geotechnical evaluation by a licensed geologist and an engineer, the slope face shows evidence of past erosion and mass wasting and indicators of a recent deep-seated failure (within approximately 10 to 15 years). The proposed building site is set back 100 feet from the top of the bluff, in a more gently sloped area that the consultants deemed suitable for development. Construction at that location is not expected to destabilize the slope. *Exhibit 1.L.*
6. The Shoreline Master Program for the Thurston Region (SMPTR) designates the subject property shoreline as a Rural shoreline environment. Single-family residential development is allowed in the Rural environment subject to the development standards contained in the SMPTR. In relevant part, these standards require a minimum 50-foot setback from the ordinary high water mark (OHWM). In this case, the setback would be at least 100 feet. *Exhibits 1 and 2.*
7. The subject property contains a Type Ns (non-fish bearing) stream, which enters the subject property from the south near the southwest property corner. The stream corridor extends across most of the width of the subject property, approximately 50 feet east of

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<sup>1</sup> The subject property is Lot 9 of Plat of Mirimichi Beach, and is also known as Tax Parcel Number 62500900000. *Exhibits 1, 1.C, and 2.*

and parallel to Mirimichi Drive, then turns east near the northern property line and continues down the slope to Puget Sound. The stream channel contains barriers preventing potential fish passage in the form of three consecutive topographic drops of 12 feet, six feet, and four feet. Riparian understory vegetation is dominated by the non-native invasive weeds Himalayan blackberry and English ivy. *Exhibits 1.J and 2.*

8. The Thurston County critical areas ordinance (CAO) requires a minimum 150-foot buffer for Type Ns streams that drain directly to Puget Sound. *TCC Table 24.25-1.* Because the stream extends through both the width and depth of the property, and the parcel is only 92 feet wide, the 150-foot buffer necessarily encumbers the entire parcel. *Exhibit 2.*
9. The site design reviewed by Planning Staff prior to the hearing, and which formed the basis for Staff's recommendation, included a single-story residence with attached carport and deck, to be located 20 feet from the stream at its closest point and having an overall footprint not to exceed 1,850 square feet.<sup>2</sup> The reviewed plan was itself an update of a prior plan (not in the record) that included a detached garage and allowed for only a 15-foot setback. The Applicant submitted a further updated site plan at the hearing (Exhibit 2), not reviewed by Planning Staff prior to hearing, which depicts a smaller residential building footprint (changed from a single-story to a two-story design) and a detached garage. Upon initial review during the hearing, Planning Staff submitted that this most updated design in Exhibit 2 represents an improvement over the original detached garage plan. The residence would have a footprint of 680 square feet plus a 200 square foot attached deck, with a 308 square foot detached garage. The residence would be set back approximately 30 feet from the stream at its closest point, and the garage, which would be slightly northwest of the residence, would be 20 feet from the stream at its closest point. The site plan depicts that a retaining wall might be constructed on the south side of the garage. The Applicant proposes to install a drainage culvert in the stream to facilitate driveway access to the to the proposed buildings. *Exhibits 1.D and 2; Scott McCormick Testimony; Steve Rushing Testimony.*
10. While the proposed buildings would be centrally located, rather than being placed as far from the stream as possible, the proposed locations would allow the septic tanks and drainfields to be located as far from the stream as possible. As proposed, the septic system would be placed along the southern property line, at the point where the stream is closest to the northern property line, and the proposed residence and garage would be between the septic drainfields and the stream. *Exhibit 2; Steve Rushing Testimony.*
11. As mitigation for the proposed encroachment into the stream buffer, the removal of seven trees from the building footprint<sup>3</sup>, and installation of the culvert, the Applicant proposes to remove invasive species and plant 29 western red cedar trees, spaced nine feet apart,

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<sup>2</sup> The project narrative proposed a total footprint of 1,850 square feet, although the submitted site plan (which was conceptual in nature and did not include features such as slope contours) stated a footprint of 1,744 square feet. Planning Staff submitted that the dimensions shown on the site plan did not appear accurate and recommended as a condition of approval that the Applicant revise the site plan prior to building permit issuance. *Exhibits 1.E and 1.F.*

<sup>3</sup> The identification of seven trees for removal was based on the site design entered into the record as Exhibit 1.F.

along the stream bank. The Applicant's consultant submitted that the cedars would acidify the soil to prevent germination of non-native species, provide shade, and provide habitat. The proposed mitigation plan includes no provision for any understory plantings, or plantings within the portion of the buffer closest to the buildings. The plan provides for a five-year monitoring program and contingency measures. The Applicant requested that the performance bond be waived. *Exhibit 1.J; Steve Rushing Testimony.*

12. With respect to demonstrating "no net loss of critical area functions and values" per the RUE criteria, the Applicant's consultant's report includes a statement that the mitigation is intended to ensure no net loss of critical area functions and values; however, the report did not provide any supporting analysis. The report indicated that existing non-native invasive species degrade the habitat value of the buffer (*Exhibit 1.J, page 10*), but does not otherwise explicitly evaluate existing buffer functions and how the proposed mitigation would ensure that there is no loss of those functions. Of particular concern, the report does not contain analysis of water quality functions that could be affected by a reduction in buffer from 150 to 20 feet. The report does not identify downstream herring and surf smelt habitat on site. *Exhibits 1, 1.J and 1.N.*
13. The Applicant has not yet obtained Thurston County Environmental Health Division approval of a septic design; however, septic designs have been approved for the subject property in the past. Environmental Health Staff submitted that if the system meets code (which would be required), it should have no negative impact on Puget Sound. *Exhibit 1.M; Dawn Peebles Testimony.*
14. The geotechnical evaluation concluded that the proposed building location would not present a "specific erosional hazard" as long as adequate surface improvements are made. *Exhibit 1.L, page 9.* The recommended improvements include stormwater control by tightlining runoff to an existing inland catch basin or stormwater system, or tightlining the runoff all the way down the slope. The site is not suitable for infiltration or dispersion of stormwater. The recommendations also include controlling erosion by limiting vegetation removal and planting additional vegetation. *Exhibit 1.L.*
15. Hydraulic project approval (HPA) from the Washington State Department of Fish and Wildlife would be required for the proposed driveway stream crossing and for a stormwater outfall onto the beach. *Exhibit 1.N.*
16. Although not disclosed or analyzed in the submitted critical areas report, per comments submitted by the Washington Department of Fish and Wildlife, herring and surf smelt spawning have been documented on the subject property's shoreline. *Exhibit 1.N.* There are also commercial and residential shellfish beds on the adjacent beaches. *Exhibits 1 and 1.P.*
17. The proposed single-family residence is categorically exempt from review under the State Environmental Policy Act; however, the proposed stream crossing (to be separately administratively reviewed) would be subject to SEPA review. *Exhibit 1; Washington Administrative Code (WAC) 197-11-800; TCC 17.09.055(B).*

18. Public comment on the proposal expressed concern that the proposal would adversely affect water quality and slope stability and would be detrimental to existing commercial and residential shellfish aquaculture uses and the oyster, clam, and geoduck habitat within the cove where the stream outfalls (Gallagher Cove). Public comment included a request that the Applicant be required to provide more data to support the application and the mitigation proposed, including relating to potential impacts of the septic system, and that the septic system be approved prior to or in conjunction with the RUE. *Exhibit 1.P.*
19. County Planning Staff also identified several issues of concern with respect to the application, due to the combined effect of the site topography (in which the proposed construction area slopes towards the stream), the lack of understory vegetation proposed, and the extreme narrowness of the proposed buffer as compared to the standard buffer required by the CAO, which is based on best available science. Planning Staff argued that the water quality and habitat functions of a buffer cannot be met with the narrow buffer proposed, and that removal of invasive species and planting a row of cedar trees would not adequately address project impacts to the point of demonstrating no net loss of buffer functions and values. The specific concern is that the 20- to 30-foot buffer would not be adequate to protect the stream from sediment carried by erosion, yard chemicals, and pet wastes, particularly since eight feet of the buffer would be cleared for construction and the replacement plantings would take time to establish, and other portions of the reduced buffer would be disturbed through invasive species removal. Staff recommended numerous conditions to address these concerns, including a requirement that an improved mitigation plan be submitted that addresses erosion, water quality, and habitat impacts, that provides for the planting of understory vegetation, and that addresses all project elements including the driveway, well, and septic system. The recommended conditions also require the following: stream buffer fencing and signage; that the project comply with the recommendations of the geotechnical report; preparation of an engineered storm drainage plan; a requirement that grading be timed to coincide with dry weather and that erosion control be installed prior to construction; that the Applicant apply for and receive approval of an administrative critical area review permit for the driveway, stream crossing, well, and septic system prior to building permit issuance; and a condition that would prohibit lawn anywhere on the site. *Exhibit 1; Scott McCormick Testimony.* The Applicant requested not to be required to provide any more mitigation than recommended in the previously submitted critical areas and geotechnical reports. *Steve Rushing Testimony.*
20. Notice of the open record hearing was mailed to property owners within 500 feet of the site on July 22, 2022 and published in *The Olympian* on July 29, 2022. *Exhibits 1, 1.A, and 1.H.* A neighboring property owner attended the public hearing and asked that his written comments in Exhibit 1.P be considered in the review of the RUE request. *Tim Nord Testimony.*
21. Having heard all testimony, Planning Staff maintained their recommendation for approval subject to the conditions detailed in the staff report. *Exhibit 1; Scott McCormick Testimony.* The Applicant objected to the conditions requiring further

environmental review, additional mitigation, and submittal of a surety or bond. *Steve Rushing Testimony.*

## CONCLUSIONS

### **Jurisdiction**

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

### **Criteria for Review**

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

- A. No other reasonable use of the property as a whole is permitted by this title; and
- B. No reasonable use with less impact on the critical area or buffer is possible. At a minimum, the alternatives reviewed shall include a change in use, reduction in the size of the use, a change in the timing of the activity, a revision in the project design. This may include a variance for yard and setback standards required pursuant to Titles 20, 21, 22, and 23 TCC; and
- C. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety or welfare on or off the development proposal site, or increase public safety risks on or off the subject property; and
- D. The proposed reasonable use is limited to the minimum encroachment into the critical area and/or buffer necessary to prevent the denial of all reasonable use of the property; and
- E. The proposed reasonable use shall result in minimal alteration of the critical area including but not limited to impacts on vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions; and
- F. A proposal for a reasonable use exception shall ensure no net loss of critical area functions and values. The proposal shall include a mitigation plan consistent with this title and best available science. Mitigation measures shall address unavoidable impacts and shall occur on-site first, or if necessary, off-site; and
- G. The reasonable use shall not result in the unmitigated adverse impacts to species of concern; and
- H. The location and scale of existing development on surrounding properties shall not be the sole basis for granting or determining a reasonable use exception.

### **Conclusions Based on Findings**

1. Given the size and zoning of the parcel, and the character of development in the surrounding neighborhood, the subject property is not appropriate for agricultural use. Single-family residential use is the only reasonable use of the property, and thus to deny residential development of the property would deny all reasonable use. *Findings 3, 4, 6, 7, 8, and 21.*

2. As conditioned to require mitigation that more fully meets critical areas regulations, no reasonable use with less impact on the critical area or buffer is possible. The Applicant has redesigned the project multiple times, and the current version minimizes building footprint while ensuring that most of the building area is 30 or more feet from the stream. The conditions of approval address construction timing, requiring the work to be performed during dry conditions to reduce the risk of downstream impacts. *Findings 3, 4, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, and 21.*
3. With conditions of approval, the development would not threaten the public health, safety, or welfare on or off the development site, or increase public safety risks on or off the subject property. Based on geotechnical evaluation, the proposed building site is set back a sufficient distance from the bluff face to maintain slope stability. Aside from concern about impacts to the slope, the primary public health risks relate to downstream water quality impacts associated with stormwater runoff and septic effluent. Approval of an engineered storm drainage plan and septic system would be required in order to obtain building permit approval. Additionally, the stormwater outfall would be reviewed through the state HPA process. The conditions also require the reduced stream buffer to be densely planted to assist with erosion control and water quality functions. Such plantings would be required to be consistent with a plan that would be reviewed and require approval through a subsequent critical area review permit process. *Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 21.*
4. The proposal is the minimum encroachment necessary to prevent denial of all reasonable use of the property. The Applicant has redesigned the project multiple times, and the current version minimizes the building footprint while ensuring that most of the building area is 30 or more feet from the stream, which - conditioned to require more adequate mitigation – is the minimum encroachment that can be accomplished if the subject property is to be developed. *Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 21.*
5. As conditioned, the proposal would result in minimal alteration of the critical area. The proposed building footprint is relatively small. The conditions limit vegetation removal to the minimum needed for construction and require vegetation to be restored except for a two-foot pathway adjacent to the buildings. The reduced buffer would be protected through fencing and signage. *Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 21.*
6. With the conditioned imposed herein, the proposal can demonstrate no net loss of critical area functions and values. Conditions have been imposed to ensure that the critical areas report and mitigation plan are revised to reflect CAO requirements including evaluation of relevant buffer functions and ensuring the mitigation represents best available science. In particular, the mitigation plan must ensure a sufficient density of plantings in, and restrict future access to/use of, the reduced buffer to protect water quality. The CAO emphasizes the importance of stream buffers to maintain downstream water quality, and even allows the decision maker to require an *increased* buffer width when there is inadequate vegetation cover to maintain water quality. To be considered adequate, the



vegetation must be dense and continuous for a distance of at least 100 feet. *TCC 24.25.030*. Given that the stream drains directly into Puget Sound near an aquaculture area, and the proposed buffer is only one-fifth as wide as the minimum the CAO considers adequate for water quality maintenance (and even less than that considering construction impacts), the critical area study's failure to evaluate water quality functions and describe specifically how the proposed mitigation would result in no net loss is a serious omission. Although this omission would arguably justify denying the RUE outright, in this case the future CARP and SEPA processes, along with the thorough conditions recommended by Planning Staff, allow for RUE approval in light of the total encumbrance of the residentially zoned parcel. However, the conditional nature of the approval cannot be overstated. If the septic system, engineered drainage system, or HPA are not approved, or the Applicant fails to submit an adequate mitigation plan or fails to comply with any other condition, the residence cannot be built. The request for waiver of the performance bond for the vegetative improvements is denied due to the importance of vegetative cover to protect downstream water quality. *Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 21*.

7. As conditioned, the use would not result in unmitigated adverse impacts to species of concern. The species of concern in this case are the herring and surf smelt, which could be affected by site runoff. The conditions address these impacts by requiring additional buffer plantings, approval of an engineered storm drainage plan, and an HPA. *Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 21*.
8. This decision is not based on the location and scale of existing development on surrounding parcels. The basis for the RUE is the stream buffer which covers the entire parcel. *Findings 3, 4, 6, 7, 8, and 21*.

### **DECISION**

Based on the preceding findings and conclusions, the request for a reasonable use exception to construct a single-family residence within a stream buffer at 7820 Mirimichi Drive is **GRANTED** subject to the following conditions:

1. A final site plan shall be submitted prior to building permit application showing the correct dimension and sizes of proposed structures as approved through the RUE request. It is recommended that the revised site plan be in the form of a septic design.
2. A revised critical areas report and mitigation plan shall be submitted prior to building permit application that addresses erosion, water quality, and habitat impacts consistent with best available science as defined in *TCC 24.03.010* and the reporting requirements of *TCC 24.35.290*, and the revised plan must receive approval from the Community Planning and Economic Development Department. The revised mitigation plan shall include a variety of dense understory, shrubby native vegetation and native grasses to be provided between the proposed home and stream within the reduced stream buffer, in addition to the currently proposed tree plantings. A minimum of four inches of mulch shall be placed around the mitigation plantings immediately after plant installation. The

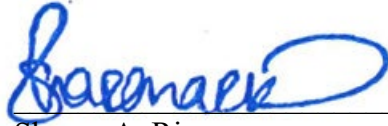
amended mitigation plan shall fully address impacts from the stream buffer reduction, stream crossing, driveway, well site, and septic system such that there is one consolidated mitigation plan. The mitigation plan shall address revegetation of disturbed areas related to the stream crossing.

3. A stream buffer fencing and critical area signage plan shall be submitted prior to building permit issuance. These signs and fencing shall be installed prior to final building permit approval. Split rail or vinal fencing are some types of fencing that are permissible so long as they are designed to allow passage of animals. Fencing shall extend at least 20 feet beyond the northwest and northeast corners of the building foundations. The fencing shall be no more than four feet from the building foundations where the fence is adjacent to the home and the detached garage. One critical area sign shall be installed at the downstream side of the proposed stream crossing and two additional signs shall be installed near the northwest and northeast sides of the home site along the fence line.
4. The Applicant shall remove all construction related debris to an approved offsite location (landfill or recycling center) outside of critical areas and their buffers.
5. The project shall be in compliance with the recommendations contained in the project “Report of Critical Area Assessment” by MTC Inc. dated December 12, 2019 (Exhibit 1.L). An engineered storm drainage and erosion control plan specific to the proposed development shall be submitted to Thurston County Community Planning and Economic Development prior to building permit issuance. Stormwater tightlines from the home to the shoreline shall be placed above the 100-year floodplain; otherwise additional environmental permitting will be required.
6. The proposed stream crossing and grading for the road and homesite shall only occur during dry weather and when the stream is not flowing, to the extent possible.
7. Erosion control shall be installed prior to building permit issuance in accordance with the approved engineered storm drainage and erosion control plan. Construction fencing and erosion control fencing shall be installed no more than eight feet from the foundation on the north side of the proposed structures. This eight-foot area shall be replanted with native vegetation prior to final occupancy approval, with the exception of a two-foot wide unpaved trail.
8. Development of the project shall be in compliance with the revised critical area report and mitigation plan required in condition 2 above, except as otherwise conditioned by Thurston County Community Planning and Economic Development.
9. The Applicant shall apply for an administrative critical area review permit (CARP) for the driveway and stream crossing, well and septic system prior to building permit issuance. A SEPA environmental checklist (SEPA review) is required for the proposed stream crossing. The SEPA checklist shall be submitted along with the CARP application. Additional mitigation may be required for these activities consistent with the Thurston County Critical Areas Ordinance, Title 24.

10. A two-foot wide, unpaved pathway is permitted between each structure and critical area buffer fencing with the remainder of the buffer to be densely planted with native vegetation from the stream to the foundation of the proposed home.
11. Mitigation plantings shall be installed prior to final occupancy approval of future building permits. A financial instrument such as bond or irrevocable assignment of savings shall be in place prior to final occupancy approval for mitigation monitoring costs at 125% of fair market value for the period of time recommended in the revised project critical area report and mitigation plan required by condition 2 above.
12. In order to eliminate the need for herbicides, fertilizers and other lawn chemicals within the standard 150-foot stream buffer, no lawn area shall be permitted anywhere on the subject property and all vegetation shall remain native.
13. Development of the proposed structures shall remove as few trees as possible. Only the seven trees identified for removal by the critical areas report & buffer mitigation plan by Envirovector dated April 29, 2022 (Exhibit 1.J) shall be removed without further review and approval by Thurston County Community Planning and Economic Development.
14. All development shall be in substantial compliance with the revised site plan required in condition 1 above. Any expansion or alteration of this use will require approval of a new or amended approval. The Development Services Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
15. 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.
16. The Hearing Examiner Decision for this project shall be recorded with the Thurston County Auditor prior to building permit issuance.
17. Per comments from Thurston County Environmental Health, "Approval of the RUE in no way represents approval of the proposed on-site septic system as shown on the site plan or suitability of the site to support an on-site septic system."

18. Hydraulic project approval from the Washington Department of Fish and Wildlife shall be obtained prior to building permit issuance. Any mitigation required by the HPA shall be incorporated into the project design.

**DECIDED** December 12, 2022.



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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 **\$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.



<b>Project No.</b> _____ <b>Appeal Sequence No.:</b> _____
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**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\_\_\_.