



COUNTY COMMISSIONERS

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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2020101096 Sweeney RUE
)	
Charlie and Shelly Sweeney)	FINDINGS, CONCLUSIONS,
)	AND (CORRECTED) DECISION
)	FOLLOWING REMAND
)	
For a Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

The requested a reasonable use exception to allow construction of a single-family residence, septic system, and well within a wetland buffer on property located at 3939 26th Avenue NE in unincorporated Olympia, Washington is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request

Charlie and Shelly Sweeney (Applicants) requested a reasonable use exception (RUE) to construct a single-family residence, septic system, and well within a wetland buffer. The subject property is located at 3939 26th Avenue NE, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on August 25, 2020. In order to ensure public access to the virtual hearing process, the record was held open two business days (through August 27, 2020) to allow for public comment from members of the public who may have had difficulty joining the virtual hearings, with additional time arranged for responses by the parties. No timely post-hearing public comment was submitted, and the record closed on August 27, 2020. However, after close of the record and during deliberations, the Hearing Examiner remanded the matter to allow the Applicant an

opportunity to revise the project and/or supplement the record. The requested additional/revised information was timely submitted.

Testimony

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

Brett Bures, Building and Planning Manager
Dawn Peebles, Thurston County Environmental Health Division
Artur Saint, Thurston County Public Works Department
John Johnson, Johnson Custom Homes, Applicant Representative
Ben Alexander, Applicant Representative

Exhibits

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

- Exhibit 1 Community Planning and Economic Development Report including the following attachments:
- A. Notice of public hearing, issued August 14, 2020
 - B. Master Application, received March 13, 2020, Reasonable Use Exception application, received March 13, 2020, and Applicant narrative addressing RUE criteria
 - C. Notice of Application, dated April 15, 2020
 - D. Site Plan, dated March 13, 2020
 - E. Letter from Jim Hunter and Associates regarding preferred septic drainfield location, received March 13, 2020
 - F. Wetland Delineation and Buffer Rating Report, dated November 2019
 - G. Sweeney Wetland Buffer Mitigation Plan, dated March 4, 2020
 - H. Engineered Abbreviated Drainage Report, received March 13, 2020
 - I. Recorded BLA, Auditor's File Number 4663879, recorded December 27, 2018
 - J. Letter from Nisqually Indian Tribe, dated April 6, 2020
 - K. Memo from Amy Crass, Public Health and Social Services to Leah Davis, Associate Planner, dated May 11, 2020
 - L. Comment from Department of Ecology, dated April 13, 2020
 - M. Comment from Department of Ecology, dated May 5, 2020
 - N. Comment from Squaxin Island Tribe, dated March 30, 2020
- Exhibit 2 Revised site plan depicting distances from proposed structures to wetland edge
- Exhibit 3 Applicant's narrative per Remand Order, submitted October 1, 2020

Exhibit 4 Revised Site plan per Remand Order, submitted October 1, 2020

Exhibit 5 Planning Staff's Response to Revised Proposal and Site Plan, submitted October 14, 2020

The record also contains the Remand Order, issued September 14, 2020 and an October 29, 2020 request for clerical correction submitted by Shelly Sweeney following the October 28, 2020 issuance of the instant decision. The subject property's address was misstated in the originally issued decision.

Based on the record developed through the open record hearing and subsequent remand reopening the record for a revised proposal, the Hearing Examiner enters the following findings and conclusions.

FINDINGS

1. Charlie and Shelly Sweeney (Applicants) requested a reasonable use exception (RUE) to construct a single-family residence, septic system, and well within a wetland buffer. The subject property is located at 3939 26th Avenue NE, in unincorporated Olympia, Washington.¹ *Exhibits 1, 1.B, 3 and 4.*
2. The RUE application was submitted on March 13, 2020 and determined to be complete for purposes of commencing project review on March 30, 2020. *Exhibit 1.C.*
3. The relatively flat subject property is the site of a former Christmas tree farm. The southwestern corner of the property is forested with a canopy dominated by Red Alder. The remainder of the site contains the remnant trees from the tree farm, primarily Grand firs. No streams or regulated drainages are identified on site, and the subject property is not regulated pursuant to the Shoreline Master Program for the Thurston Region. There are no known protected species or species of concern on or in the immediate vicinity of the subject property. The current size and configuration of the property is the result in a December 2018 boundary line adjustment (BLA) that reduced the size of the subject parcel (Parcel A, 3939 - 26th Avenue NE) to exactly one acre and incorporated some portion of former Parcel A into Parcel B (4039 - 26th Avenue NE, now 2.27 acres) as a means of dividing off a portion of the overall property for separate residential development. Parcel B retained a pipestem access to 26th Avenue NE that abuts the eastern boundary of the subject property; the pipestem is Parcel B's only frontage on public roads.² *Exhibits 1, 1.F, 1.G, and 1.I.* As of the date the current image available

¹ The legal description of the subject property is a portion of Section 8, Township 18, Range 1 West, Quarter NE NW, BLA18113282TC TR A Document 4663879. *Exhibit 1.*

² Notes on the face of the BLA indicate the following (abbreviated) information: 1) "...The BLA process does not confirm the presence of critical areas, delineate their boundaries, or establish required buffers.... The property may be impacted by wetland buffers. Future development on [either parcel] is subject to separate review and approval processes." ; and 2) "As a result of the boundary line adjustment, Parcel A will be considered an undersized lot in regard to density requirements. Any future development must meet all requirements of the Thurston County

on Google Maps was taken, the pipestem was developed with an asphalt paved driveway serving the structure(s) on Parcel B. There is a wire fence along the west side of the existing paved driveway. *Google Maps Site view; Exhibit 3.*

4. The subject property is within the Lacey Urban Growth area and is zoned Low Density Residential 3-6 (R 3-6/1). The one-acre parcel exceeds the required minimum lot size. Primary permitted uses in the R 3-6/1 include agriculture, forest practices, single-family and two-family residential, and home occupations. At one acre, the parcel exceeds the minimum site size of 12,500 square feet for residences on septic, and also provides adequate room that all setbacks can be met. *TCC 20.15.060.*
5. Properties to the north, east, and south are developed with single-family residential uses. Property to the west is vacant. *Exhibit 1; Google Maps site view.*
6. With the application packet, a wetland delineation and rating report was submitted; the report was prepared by a qualified professional. The report identified one jurisdictional wetland on site, extending off site at the southwest corner. Labeled as Wetland A, it is a small isolated depressional wetland in the southwest corner of the site, which was classified as a Category 3 wetland with five habitat points rated as M,M,L. Wetland A requires a 160-foot no disturb buffer pursuant to the Thurston County critical area ordinance (CAO). *TCC 24.30.045.* The required 160-foot buffer encumbers approximately four-fifths of the subject property, leaving only an irregularly shaped slice of the site outside the regulated area in the north/eastern portion of the subject property. The application materials do not indicate the amount of square footage onsite that is unencumbered by required buffer, but from the revised site plan it does not appear that the proposed residence would fit in the unencumbered portion of the site while maintaining compliance with required setbacks from property lines. *Exhibit 2.*
7. As stated on the October 1, 2020 revised site plan, the proposal would place a single-family residence, well, and septic on the subject property in the northeast corner of the site. Total proposed impervious surface area is 3,604 square feet, including 1,913 square feet³ for the residence, 379 square feet of decks, 472 square feet of garage, 400 square foot garage pad, and 440 square feet of driveway. This totals 8.27% impervious surface coverage over the whole site.⁴ The proposed septic drainfield is placed in front of the residence (away from the wetland), with septic tanks and components west of the residence and the reserve drainfield in the far northwest corner of the site. At its closest, the southwest corner of the residence would be placed approximately 119 feet from the

Sanitary Code without the benefit of a waiver. Approval of the [BLA] in no way represents suitability of site development.” *Exhibit 1.I.*

³ The record does not make clear whether this is a 1,913 square foot total area or if it is the proposed footprint.

⁴ Of note, the Engineered Abbreviated Drainage Report states that 14,000 square feet would be cleared and graded, and states that the following impervious surfaces were proposed: 3,051 square feet of roof, 252 square feet of walkway, 1,054 square feet of driveway, and 640 square feet of off site driveway. *Exhibit 1.H.* The discrepancy in these numbers is assumed to reflect iterative change in the site plan/proposal since the drainage report was issued, including changes made in response to the remand order.

wetland edge, and the proposed septic components would be 128 feet from the wetland edge.⁵ The design includes driveway access onto 26th Avenue NE adjacent to the eastern property boundary along the pipestem access⁶ reserved for Parcel B of the BLA. The October 1 revised site plan reflects a significant change in the proposal, reducing the proposed intrusion into the 160-foot wetland buffer substantially. *Exhibit 4*. The project forwarded at hearing only provided 90 feet setback between residence and wetland edge, and 87 feet between septic components and wetland edge. The earlier site plan notes that roof runoff would be conveyed by downspouts to splash blocks and that vegetation would be planted to provide erosion control. *Exhibit 2*.

8. According to the professionally prepared mitigation plan, the initial proposal would impact 7,740 square feet of wetland buffer.⁷ The mitigation plan identifies vegetation surrounding the wetland onsite as sparse consisting of sword fern, lady fern, and blackberry. Farther from the wetland edge, the tree farm covers the site with Grand firs planted on six foot centers with sparse to nonexistent understory; the Grand firs range from 10 to 20 feet in height. In the southeast portion of the site is an approximately 6,000 square foot area vegetated with grasses and weeds. *See Exhibit 1.G, Sheet 1 Planting Plan*.
9. Proposed mitigation is comprised of enhancing 18,000 square feet of retained/reduced wetland buffer width through removal of nonnative ground covers, thinning the farmed trees, and planting native species. An additional 4,750 square feet in the identified grass/weed area in the southeast corner would be restored by being cleaned of invasive species and planted with natives. An additional small area would be cleared of weeds, only, for a total of 24,000 square feet of enhanced areas. The goal of both enhancement areas is to enhance the diversity of species and the structure of the canopy, returning it to a native forested condition. The proposal would thin Grand firs to a spacing of 12 to 15 feet and plant three native tree species interspersed among the retained farm trees, plant native understory species, and maintain the reduced/retained buffer in a weed free condition for a period of five years while native plants become established. The removed Grand firs would be cut as close to the ground as possible and may be chipped/mulched in place. The total cost of the planting plan as proposed is \$9,940, including labor and three years of maintenance and monitoring. The author of the Applicant's mitigation report offered testimony at hearing, asserting that in his professional opinion the impact of the buffer reduction is far outweighed by the proposed mitigation. He stated that the area of buffer to be reduced has minimal ecological value in its current condition,

⁵ The October 1, 2020 revised site plan shows the corner of the residence just within the 120-foot demarcation from the wetland edge, although the site plan includes a measurement of the distance slightly north of this extreme southwest corner of the house at 122 feet from wetland edge. *Exhibit 4*.

⁶ The revised site plan refers to this access east of the subject parcel as an easement; however, according to the BLA it is a pipestem that is part of Parcel B. *Exhibits 1.I, 2, and 4*.

⁷ This measurement in the wetland report/mitigation plan was based on the previous site plan forwarded at hearing. Presumably, the total area of wetland impacts is reduced by the project depicted in the October 1, 2020 revised site plan.

whereas after implementation of the mitigation plan, habitat and erosion control functions would be improved. *Exhibit 1.G; Ben Alexander Testimony.*

10. County Planning Staff reviewed the proposed mitigation plan and submitted that it adequately addresses impacts and is expected not to result in net loss of wetland functions and values. Staff was satisfied that the proposed mitigation would result in a better condition on site over the existing condition. *Exhibit 1; Brett Bures Testimony.*
11. The proposed single-family residence and appurtenances are exempt from review for compliance with the requirements of the State Environmental Policy Act (SEPA). *TCC 17.09.055.B.*
12. Notice of the open record hearing was mailed to property owners within 500 feet of the site on August 7, 2020 and published in *The Olympian* on August 14, 2020. No public comment was received. *Exhibits 1 and 1.A.* There was no public comment on the application. *Brett Bures Testimony.*
13. Staff from Thurston County Public Health and Social Services Department and Thurston County Public Works Department reviewed and recommended approval the project. County Public Works Staff had no comment on the application. Environmental Health Staff noted for the record that the site plan submitted matched the approved septic plan. *Exhibits 1 and 1.K; Testimony of Arthur Saint and Dawn Peebles.*
14. Representatives of the Nisqually Indian Tribe and the Squaxin Island Tribe submitted comments indicating that neither has site-specific concerns; however, both requested to be notified in the event of inadvertent discoveries and the Squaxin Island Tribe submitted a concurrence in the event that Washington State Department of Archaeology and Historic Preservation requested a cultural resources survey be completed prior to the issuance of a building permit. *Exhibits 1.J and 1.N.*
15. Washington State Department of Ecology submitted typical comments relating to water quality standards and water resources with recommendations for measures to take if toxic materials are discovered during construction. *Exhibit 1.L.* Subsequently Ecology submitted additional comments recommending that the proponent be required to minimize wetland buffer impacts to the maximum extent possible, encouraging the Applicant to use the existing access easement along the subject property's east boundary for access and moving the residence farther toward the east, which would increase the retained buffer width. In these additional comments, Ecology also requested that the Applicant be required to demarcate (fence) and protect the full extent of retained buffer on site. *Exhibit 1.M.*
16. At the hearing, Applicant representatives submitted that the house cannot be moved farther to the east to reduce intrusion into the wetland buffer because if it were any closer, the residents of the proposed house would have to back out into the pipestem serving Parcel B when departing their garage. Per testimony, to move the house outside of the 120-foot reduced buffer, the edge of the house would only be 18 feet from the access

driveway of Parcel B. As of the hearing date, the Applicants felt they had moved the residence as far east as is reasonable due to the need to avoid backing into the driveway of the other parcel and to avoid interfering with the placement of utilities, including the septic drain fields. Because the proposed buffer mitigation would result in a better buffer function than the existing condition, Applicant representatives felt the request is reasonable. *John Johnson Testimony.*

17. Having heard all testimony, Thurston County CPED Staff recommended approval subject to the conditions in the staff report. *Exhibit 1; Brett Bures Testimony.* Applicant representatives waived objection to the recommended conditions. *Testimony of John Johnson and Ben Alexander.*
18. During deliberation prior to decision issuance, the County's Hearing Examiner remanded the application to the parties for further development. Based on the site plan proposed in Exhibit 2, there appeared to be the possibility of moving the development envelope farther east, to provide a greater buffer setback. Washington State Department of Ecology Staff had called this possibility out in their comments on the proposal; however, it was shown on the plan that 55 feet of vehicle maneuvering room was to be provided east of the garage. In the judgment of the examiner, it appeared possible to reduce the setback from the east property line and to provide a greater buffer width. In their revised October 1, 2020 site plan, the Applicants accomplished exactly that: the final site plan provides 30 feet of vehicle maneuvering space east of the garage entrance, increasing the retained buffer width from 90 feet to approximately 120 feet. The final site plan also calls for a 64-foot width of the residence, instead of the 67-foot width in the plan forwarded at hearing. This 28-foot reduction in the proposed intrusion into the wetland buffer allows for a nearly 120-foot wide buffer to be provided, while still providing adequate vehicle maneuvering room east of the residence. *Exhibits 1.M, 2, 3, and 4.*
19. In the narrative provided following remand, the Applicants explained that the residence cannot be moved farther north (to further increase buffer width) due to the location of the septic drainfield, which according to the septic designed must go in the location proposed due to site soil conditions. In answering why the proposed residence cannot use the existing driveway in the pipestem, the Applicants stated that the owner of Parcel B plans to sell, after which it would no longer be owned by a relative. The Applicants also indicated that they did not desire to have the garage doors open to the north, putting vehicle maneuvering area north of the residence and allowing it to move even farther east, because they desire to maintain privacy rather than have garage doors open to 26th Avenue NE. *Exhibit 3.*
20. In review of the October 1, 2020 revised site plan and narrative, Planning Staff submitted that the revised proposal appears to meet the requirements of TCC 24.45.030.B and .D, because the revised site plan moves the house further away from the critical area, reducing the impact to the critical area. County Staff submitted that a joint driveway approach can only be proposed if two (or more) parties are amenable and that regardless of relationship to adjacent property owner, the County Code does not contain a provision allowing the County to require a joint driveway access. Also, Staff agreed that moving

the development envelope further north would compromise the location of the approved septic drainfield design. County Staff maintained its recommendation for approval of the RUE following review of the revised site plan. *Exhibit 5*.

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. The subject property is located in the Lacey Urban Growth Area and is zoned Low Density Residential 3-6, a zoning designation that contemplates single-family residential development as a primary permitted use. Surrounding parcels are developed with residential uses. Although agriculture would also be a reasonable use, a parcel within the

UGA carries an expectation of residential development. The first RUE criterion is satisfied. *Findings 3, 4, 5, 6, 7, 18, 19, and 20.*

2. The proposed residential development envelope covers less than 9% of the total site and retains a wetland buffer width of approximately 120 feet. The proposed residential footprint and appurtenances are not excessively large in size. Based on the revisions to the site plan proposed during the remand process, it appears that it would not be possible to develop the parcel with a single-family residence and appurtenances with much less impact on the critical area. *Findings 6, 7, 8, 9, 10, 18, 19, and 20.*
3. The proposal was reviewed by the County's Public Works and Environmental Health departments for compliance with applicable County regulations regarding stormwater management and sanitary code requirements; both County agencies recommended approval with conditions. Concerns submitted by the Washington State Department of Ecology have been addressed through revision to the site plan to reduce the project's intrusion into the wetland buffer and through imposing conditions requiring a state construction stormwater permit (if the threshold for said permit is triggered) and proper handling of contamination if discovered on site during development. The Nisqually Indian Tribe and the Squaxin Island Tribe reviewed the proposal and submitted comments indicating neither had concerns. A condition of approval would ensure proper procedures are followed in the event of inadvertent discovery of culturally significant resources during development. The record contains no evidence that would support a conclusion that the proposal, as conditioned, would cause harm to any surrounding property or to the public health, safety, and general welfare. *Findings 6, 7, 8, 9, 10, 13, 14, 15, 18, 19, and 20.*
4. As concluded above, the proposed residential development envelope covers less than 9% of the total site and retains a wetland buffer width of approximately 120 feet. The proposed residential footprint and appurtenances are not excessively large in size. Based on the revisions to the site plan proposed during the remand process, it appears that the October 1, 2020 site plan represents the least encroachment into the 160-foot wetland buffer necessary to allow residential development of the parcel. *Findings 6, 7, 8, 9, 10, 18, 19, and 20.*
5. As proposed in the October 1, 2020 site plan, the development envelope minimizes intrusion into the standard wetland buffer and would result in the minimum alteration of the on-site wetland buffer needed to allow residential development. Conditioned to require implementation of the buffer mitigation plan, the net impact to the retained buffer would be beneficial. *Findings 6, 7, 8, 9, 10, 18, 29, and 20.*
6. The record includes a critical area report and mitigation plan prepared by a qualified professional, whose undisputed testimony on the record supports a conclusion that implementation of the proposed mitigation plan would result in no net loss of wetland functions and values. *Findings 3, 6, 7, 8, 9, 10, 18, 19, and 20.*

7. There are no known species of concern on site. Conditioned to implement the proposed mitigation plan, the project would improve wetland buffer functions and values, improving habitat for plants and animals. *Findings 3, 6, 7, 8, 9, 10, 18, and 20.*
8. Location and scale of surrounding development were not considered. The reasonable use exception is based on the fact that the property is residentially zoned within a UGA and is nearly entirely encumbered by critical areas. *Findings 4, 6, 7, 18, 19, and 20.*

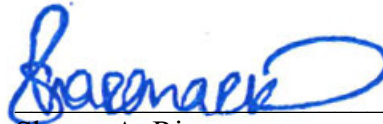
DECISION

Based on the foregoing findings and conclusions, the request for reasonable use exception to allow construction of a single-family residence and appurtenances that intrude approximately 40 feet into a wetland buffer at 3939 26th Avenue NE in unincorporated Olympia, Washington is **APPROVED** subject to the following conditions.

1. Prior to or in conjunction with the issuance of any building permit, all applicable regulations and requirements of the Thurston County Public Health and Social Services Department, Public Works Department, Fire Marshal, and Thurston County Community Planning and Economic Development Department shall be met.
2. The Applicants shall stop work and contact the proper authorities, including the Nisqually Tribe Cultural Resources Preservation Officer, Brad Beach, the Squaxin Tribe, Chehalis Tribe, Thurston County CPED and WA State Department of Archeology and Historic Preservation (DAHP) if during excavation there are discoveries of archaeological artifacts or human burials.
3. 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 Applicants' responsibility to obtain this permit if required.
4. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, the Washington State Department of Ecology must be notified [Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300.
5. Prior to occupancy certificate issuance, the Applicants shall complete all buffer mitigation as proposed in the Sweeney Wetland Buffer Mitigation Plan prepared by Sound Native Plants dated March 4, 2020.
6. The Applicants shall provide a surety agreement and bond, in compliance with TCC 24.70, to ensure the proposed monitoring and maintenance portion of the proposed Sweeney Wetland Buffer Mitigation Plan is completed successfully.

7. Fencing and critical area signs shall be installed along the reduced buffer edge, subject to standards of TCC 24.60.
8. All development on the site shall be in substantial compliance with the October 1, 2020 revised site plan. Any alteration from the proposed development as depicted on the October 1, 2020 site plan will require approval of a new or amended reasonable use exception. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
9. Prior to building permit issuance, erosion control shall be installed and inspected by Thurston CPED staff. Photos may substitute for on-site inspection. Erosion and stormwater controls (i.e. silt fencing and / or straw wattles) must be installed landward of the buffer such that uncontrolled stormwater cannot reach the adjacent wetland.

DECIDED October 28, 2020.⁸



Sharon A. Rice
Thurston County Hearing Examiner

⁸ Corrections to scrivener errors in the originally issued decision were made on October 30, 2020 without change to decision issuance date.

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

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

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

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

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

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

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

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

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

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$750.00** for a Request for Reconsideration or **\$1,041.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

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



Project No. _____ Appeal Sequence No.: _____

Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

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

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

Check here for: **APPEAL OF HEARING EXAMINER DECISION**

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

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

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

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

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

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

STANDING

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

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED

SIGNATURE OF APPELLANT

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of \$750.00 for Reconsideration or \$1,041.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.