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HEARING EXAMINER

Creating Solutions for Our Future

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2022100363
CHOWDHARY REASONABLE USE EXCEPTION

SEQUENCE NO.: 22 100970 XI

TAX PARCEL NO.: 13811130600

LOCATION ADDRESS: 6602 19th Lane NW
Olympia, WA 98502

LEGAL DESCRIPTION: Section 11 Township 18 Range 3W Quarter SW
NE LL030411TC LT 6 Document 3733499

OWNER: Abhineet Chowdhary
8427 23rd Ave SE
Olympia, WA 98513-3444

APPLICANT: Daniel Toole
Daniel Toole Architecture
530 NW 23rd Suite 109
Portland, Oregon, 97210

PLANNER: Heather Tschaekofske, MES
Associate Planner/Biologist

SUMMARY OF REQUEST:

The Applicant requests approval of a Reasonable Use Exception to build a single-family residence,

driveway, utilities, well, guest house, and a new septic system within a geologic landslide hazard area.

SUMMARY OF DECISION: Approved with conditions.

DATE OF DECISION: August 9, 2022

PUBLIC HEARING:

After reviewing the Community Planning and Economic Development Department 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 July 19, 2022, at 11:05 a.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 Report**
- Attachment a - Notice of Public Hearing, July 8, 2022;**
- Attachment b - Zoning Vicinity Map**
- Attachment c - Master Application, January 26, 2022**
- Attachment d - Reasonable Use Exception Application, January 26, 2022**
- Attachment e - Site Plan, Revised, May 15, 2022**
- Attachment f - Geotechnical report, June 3, 2021; memo, May 27, 2022; email, June 29, 2022**
- Attachment g - RUE Project Summary, January 26, 2022**
- Attachment h - Notice of Application, March 11, 2022**
- Attachment i - Topographic Survey, June 2, 2021**
- Attachment j - Revegetation Plan, June 13, 2022**
- Attachment k - Preliminary Stormwater Plan, June 27, 2022**
- Attachment l - Comment Memorandum, Mark Biever, Thurston County Engineering Geologist, March 23, 2022, and email, June 13, 2022**
- Attachment m - Comment Memorandum, Arthur Saint, Thurston County Public Works Department, June 28, 2022**
- Attachment n - Comment Memorandum; Lyndsey Smith, Thurston County Public Health & Social Services Department, February 8, 2022**
- Attachment o - Comment Letter, Brad Beach of the Nisqually Indian Tribe, February 7, 2022**
- Attachment p - Comment emails, Shaun Dinubilo, Squaxin Island Tribe, February 7 and March 23, 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.

HEATHER TSCHAEKOFKSKE, MES, Associate Planner/Biologist, Community Planning, presented an overview of the Staff Report and attachments which were admitted into the record and testified that the Applicant seeks approval of a Reasonable Use Exception (RUE) to construct a 5,000-square foot single family residence (SFR), guest house, driveway and associated utilities within a geologic

landslide hazard area on top of Eagle Mountain to be setback 20-feet from the top of slopes at the closest point with additional hard surfaces such as walkways and patios located closer to the top of slope. The subject property has landslide hazard areas at the western side and southeast corner of the parcel. Proper written notice of the application was sent out on March 11, 2022, and notice of the public hearing was sent to all property owners within 500-feet of the site and the notice was also published in The Olympian on July 8, 2022, at least ten (10) days prior to the hearing. The subject property is located within the rural portion of Thurston County. The Comprehensive Plan designation is residential and the zoning district is the Rural Residential Resource One Dwelling Unit per Five Acres district (RRR 1/5). The project was determined to be categorically exempt from review of the State Environmental Policy Act (SEPA).

A Geotechnical Report dated June 3, 2021, prepared by All American Geotechnical in support of the proposed development confirmed site development will meet geotechnical safety standards. The portions of the development within the hazard area and buffer have been reviewed and approved by the County geotechnical staff. A setback of 16-feet from the top of slope was initially proposed but revised to 20-feet for all structures pursuant to the recommendation of the County. The residential use of the property is consistent with the zoning and the environmental constraints. The location of the development in the center of the flat portion of the site will minimize disturbance to tops of the slopes and the predominantly one story residence with typical footings built slightly offset from the large exposed diabase formation will avoid blasting and further minimize disturbance to the site and surrounding environment. Utilizing an already cleared area including an existing driveway for vehicle entry, parking and turnaround will also further minimize impact and accommodate emergency vehicle access. Although nearly all of the available site area is encumbered by the landslide area and buffers, mitigation will eliminate or minimize the risk of hazard to the subject property and neighboring properties by designed plans and specifications for the construction of the home meeting the requirements of Thurston County Code (TCC) 14 and the geotechnical report. The current development location was selected to minimize impacts to critical areas by locating the structure further east to avoid the higher risk slopes along the western side of the property. The Geotechnical recommendations state revegetation must be done in compliance with industry standards for plantings within a landslide hazard area and the utility line placement must avoid over-excavation on the steep slopes. Any open areas of ground during site excavation on steep slopes must be revegetated or protected with alternate measures to avoid and prevent erosion during site development. The proposed stormwater design mitigates for increased stormwater.

The proposed development should have little or no impact on critical areas. New plantings are proposed which will partially make up for the loss of vegetation and provide improved erosion and stormwater control. The proposed total impervious surface area within the buffer is 9,500-square feet, offset by a total revegetation area within the buffer of 14,380-square foot, and an additional 11,020-square foot of area within the eastern steep slope area will be revegetated for stormwater and erosion control and habitat benefits. The location and scale of development on surrounding properties was not the sole basis for determining approval of the RUE. Staff from the County Public Health and Social Services Department and the Public Works Departments and the County Engineering Geologist, Mark Biever, recommend approval of the application with conditions. The Nisqually Indian Tribe submitted a comment letter stating that they have no concerns. The Squaxin Island Tribe submitted two comment emails requesting a cultural resource survey and it is the Applicant's responsibility to comply with this request. The Community Planning and Economic Development Department recommends approval with requested conditions.

DAWN PEEBLES, Senior Environmental Health Specialist, appeared and testified that Environmental Health reviewed the project and recommends approval and has provided attachment n to the Staff Report. The Department has also reviewed and approved a proposed septic system design pending RUE approval.

DANIEL TOOLE, Daniel Toole Architecture, Applicant, appeared and testified the project addressed unique conditions, topography and geological formations to create a house that is environmentally sensitive. The RUE process was triggered with the submittal of the septic system application. He noted the 900-square foot guest house contains a 450-square foot dwelling unit and a 450-square foot garage and his appreciation for everyone helping them during the process.

The Examiner held the record open through July 21, 2022, for public comment from members of the public who tried to join the virtual hearing but were unable to join or make comment during the meeting due to technology or access problems. If there is no timely post hearing public comment, the record closes for public comment on July 21, 2022, and the 10-business day decision deadline is August 4, 2022. If there is public post-hearing comment, Staff and Applicant may respond by July 25, 2022, at which time the record would close on and the 10-business day decision deadline is August 8, 2022.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 11:35 a.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 the Master Application (att. c) and the Supplemental Application for a Reasonable Use Exception (RUE) (att. d) on January 26, 2022, requesting approval for “building a single family residence, guest house and associated utilities.”
2. 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))
3. The Notice of Application was issued on March 11, 2022, with the comment period expiring on March 31, 2022. (att. h)
4. In a letter dated February 7, 2022, Brad Beach of the Nisqually Indian Tribe commented that they have no concerns. (att. o) In emails submitted on February 7, 2022, and March 23, 2022, Shaun Dinubilo of The Squaxin Island Tribe requested a cultural resource survey (att. p) to which the County noted would be the Applicant’s “responsibility to comply” but would not be a condition of approval due to the RUE request was for a single-family residence.
5. In an email dated February 8, 2022, Lyndsey Smith, Thurston County Senior Environmental Health Specialist, noted the “application is a request to construct a single-family residence and guest house within a landslide hazard area” and commented that the Thurston County Public Health and Social Services department had reviewed and approved a septic system

design and a water system design for the project and were recommending approval of the request for the Reasonable Use Exception. (att. n)

6. In a memorandum dated June 28, 2022, Arthur Saint of the Public Works Department recommended approval of the RUE request with certain delineated conditions of approval. (att. m)
7. In an email dated June 13, 2022, Thurston County Engineering Geologist, Mark Biever, reviewed and recommended acceptance of the Geologic Report and memo submitted from All American Geotechnical (att. l).
8. Written notice of the application was sent out on March 11, 2022. (att. h) The notice of the public hearing was sent to all property owners within 500-feet of the site and was published in The Olympian on July 8, 2022, at least ten (10) days prior to the hearing (att. a).
9. Abhineet Chowdhary, 8427 23rd Ave SE, Olympia, WA 98513-3444, has a possessory interest in the subject property located at 6602 19th lane NW, Olympia, WA 98502; legal description, Section 11 Township 18 Range 3W Quarter SW NE LL030411TC LT 6 Document 3733499.
10. The 5.12 acre site at the top of Eagle Mountain is at the end of an existing private road and is one of the highest elevated parcels in Thurston County. The lot is abnormally shaped with the primary building area occurring on the previously leveled pad at the top of the hill. Given the lot location, slopes occur on all sides of the proposed development. Pursuant to TCC 24.03, the slopes at the western side of the site and at the southeast corner of the level portion of the site are defined landslide hazard areas. Additional topographic features include a large exposed basaltic diabase rock formation at the center of the site. (att. g)
11. This proposed project includes construction of a 5,000-square foot single-family residence, a 900-square foot guest house of which 450-square feet will be livable space and a 450-square foot garage, a driveway and associated utilities including a septic treatment system, power, plumbing, and stormwater drainage. The footprint of the house and the guest house are proposed to be setback 20-feet from the top of slopes at the closest point, with additional hard surfaces such as walkways and patios located closer to the top of slope. (att. e, d, and g)
12. The proposal is in compliance with the Thurston County Comprehensive Plan. The subject parcel is located within the rural portion of Thurston County. (att. b) The proposal is for a single-family residence with appurtenances including a well. The designation for the subject property is Rural Residential Resource. The purpose of the designation is to maintain the rural character of the county, to buffer environmentally sensitive areas and resource management areas from incompatible activities and to maintain a balance between human uses and the natural environment. The primary land uses in the one unit per five acre areas are resource-oriented and include open space and low density residential. The residential use may be limited due to physical land capability constraints, including the presence of critical areas, that are appropriate for lands that may have severe soil limitations, critical areas and/or very limited ground water. The area is too far from the urban area to enable cost-effective provision of public services; therefore, extension or provision of urban services is not required. (Thurston County Comprehensive Plan, Land Use Chapter, 2-18)

13. The proposal is consistent with the Thurston County Zoning Code. The parcel is a legal lot created through an approved subdivision recorded in 2005. (#LL-030411, Auditor File number 3733499) The zoning classification is Rural Residential Resource (RRR) 1/5; therefore, the 5.12-acre lot is conforming in terms of parcel size for the zoning district of 5-acres minimum and the proposed construction of the home is consistent with the zone as single-family residences are allowed as primary uses, subject to applicable design standards. (TCC 20.09A) The greater surrounding area is zoned RRR 1/5 and forestland and consists primarily of single-family residences. The more immediate surrounding area within the approved subdivision is undeveloped except for a single-family residence located adjacent to the Northeast and significantly below the elevation of the subject property which is on top of Eagle Mountain. (att. b) (TCC 18.04.045)
14. The primary reason for the requested Reasonable Use Exception is to allow for development within a geologic hazard area, which is protected under the Thurston County Critical Area Ordinance adopted on July 24, 2012. (TCC 24)
15. The proposal is in compliance with the general requirements of construction and use in a critical area articulated in TCC 24.010.032 as noted below:
 - A. Avoid Impacts. The proposed site plan and topographic survey show that nearly the entire site area available for development is encumbered by landslide hazards or buffers. Therefore, the site development footprint was designed to avoid extreme bedrock blasting on the central point of basalt on the flat terrace. Further, the pre-existing driveway will be used. Best management practices for erosion, sediment control and waste management will be implemented to avoid and minimize construction impacts to the critical areas. The submitted geotechnical analysis concluded the proposed site development and construction “indicate that the landslide hazard area (LHA) will not affect the structure and the construction off the latter will likewise not affect the LHA” (att. e and f).
 - B. No Net Loss of Critical Area Functions. The plans and specifications for the construction of the home must meet the requirements of TCC 14, as well as the listed specifications within the geotechnical report, to eliminate or minimize the risk of hazard to the subject property and neighboring properties. Further, the current development location was selected to minimize impacts to critical areas by locating the structure further east to avoid the higher risk slopes along the western side of the property. Although there is currently minimal vegetation along the top of the site where it was previously terraced flat, a revegetation plan has been submitted to offset any risk from erosion hazard currently present on the site. (att. j) The Geotechnical recommendations include revegetation in compliance with industry standards for plantings within a landslide hazard area, utility line placement to avoid over-excavation on the steep slopes and revegetation or alternate measures to avoid and prevent erosion during site development in any open areas of ground during site excavation on steep slopes. (att. f).
 - C. Monitoring. The submitted revegetation plan includes plant maintenance requirements. (att. j). At a minimum, monthly maintenance will occur during the growing season from March 1 to October 1 each year for a minimum of three (3) years

or until vegetation displays sufficient development. Once the revegetation plan has been installed, an as-built will be submitted to the County that shows the results of the installation, including any necessary modifications and reasons for those modifications.

- D. Access to Enable Administration. Staff has determined the property owner is able to comply with this requirement by granting County access for the purpose of inspecting and monitoring the subject site proposed for development when County personnel presents proper credentials and/or makes reasonable effort to contact the property owner before entering onto private property.

16. The proposal is in compliance with the general standards for construction and use in a geologic hazard area articulated in TCC 24.010.030 as noted below:

- A. Application includes a geologic assessment. The Applicant has submitted a geologic assessment and memo that have been reviewed and accepted by County Staff.
- B. Application includes all necessary information. The submitted site plans, narratives, preliminary stormwater plan, revegetation plan, and geologic assessment meet critical area guidelines. The conditions of RUE approval will ensure the building permit meets the building standards required by TCC 14 at the time of building permit submittal.
- C. Design to protect public health and safety. The submitted geologic assessment has determined the "landslide hazard area (LHA) will not affect the structure and the construction off the latter will likewise not affect the LHA." The conditions of RUE approval ensure the building permit meets the building standards required by TCC 14 and public health standards at the time of building permit submittal.
- D. Design to not increase threat of geologic hazard to adjacent properties. The submitted geologic assessment has determined the "landslide hazard area (LHA) will not affect the structure and the construction off the latter will likewise not affect the LHA." Strict adherence to the construction recommendations and guidelines within the geologic assessment shall ensure there will be no increased threat of hazard to adjacent properties.
- E. Minimize negative impacts. The proposed building site utilizes the existing level top of slope terrace area and existing driveway to minimize new disturbance to the surrounding landslide hazard areas. Although there are no locations on the subject property to place a single-family home and associated appurtenances outside a landslide hazard area, the level portion of the property is located almost completely within a landslide hazard area buffer
- F. Shoreline stabilization. The property is not located in or adjacent to any shorelines.
- G. Restoration or enhancement surety. A surety is required at the time of final building permit inspection consistent with TCC 24.70 if the approved revegetation plan is not installed prior to final building inspection.

H. Fully mitigate adverse impacts. A revegetation plan has been approved for the proposed development site which offsets the past and potential impacts to the critical areas on site. The preliminary stormwater design mitigates for increased stormwater within the development footprint (att. k).

I. Existing legal structure. Not applicable to the proposed new construction.

17. The proposal is in compliance with the general standards for construction and use in a geologic hazard area as articulated in TCC 24.15 (Table 2.15) as noted below:

The RUE is proposed for approval because geologic hazard areas preclude development of a single-family home and appurtenances when much of the site is encumbered.

18. 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.

19. 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 property is zoned for residential use. Single-family residential use is a reasonable use of the property considering the area and zoning of the property and environmental constraints.

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 proposed single-family residence is reasonable as it is consistent with the RRR 1/5 zone classification wherein residential is a primary use. The proposed development was designed to have the least impact on the critical areas as possible by respecting the existing slopes and unique site features in a sensitive and reasonable manner. The location on the mountain top with slopes on all sides, a steep slope/landslide area at the western side of the site, a small landslide hazard area at the southeast corner and a large exposed basaltic diabase rock formation at the center of the site required the home to be built slightly offset from the diabase formation to avoid significant blasting and excavation, thereby minimizing excavation and foundation impacts and protecting the unique topographic features of the basaltic diabase. Further, concentrating the proposed building towards the center of the flat portion of the site and constructing a predominantly one-story structure with typical footings minimizes disturbance to the tops of slopes, the site and the surrounding environment. In addition, the

location of the vehicular entry to the site, the associated guest parking and the turn-around takes advantage of an existing driveway built during the subdivision site development and a previously cleared area thereby minimizing any further disturbance to the surrounding wooded slopes while accommodating emergency vehicle access.

- 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;

As proposed and conditioned, County Staff has concluded that the proposed construction will not result in damage to other properties and should not threaten the health, safety, or welfare on or off the site. Locating the house in the center of the site while tightly wrapping it around the exposed basalt formation generates a compact building that respects the unique features of the site while being pulled back enough to respect the neighbors below as well as from the landslide hazard steep slopes to the southeast and west of the site. Pursuant to the conditions of approval, the Applicant will adhere to the proposed revegetation and mitigation recommendations within the geotechnical report in the short and long term to ensure the safest environment for the subject property and neighboring properties and protect other properties as well as the public health, safety or welfare.

- 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;

Although the proposal would not result in alteration of the landslide hazard areas surrounding the site, the development proposed within the LHA 50-foot minimum buffer and associated 15-foot construction setback which includes the driveway, septic treatment area and connection lines, home, guest house, stormwater, necessary water, power, and propane utilities have been reviewed and approved by the Geotechnical engineer and County Geotechnical Staff (att. f and l). In this regard, the Applicant had initially proposed a 16-foot setback which the County requested to be a minimum of 20-feet for all structures with which the Applicant agreed.

- 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;

As proposed, the project should have little impact to critical areas, including impacts to vegetation, fish and wildlife resources, hydrological conditions and geologic conditions. Although sparse ground covers and shrubs within the landslide hazard area buffer will be removed for construction of the home, new plantings are proposed pursuant to the geotechnical report recommendations which will partially make up for the loss of vegetation and will provide improved erosion and stormwater control from existing bare soil site conditions. The proposed total impervious surface area within the buffer is 9,500-square feet, offset by a total revegetation area within the buffer of 14,380-square feet. An additional 11,020-square feet of area within the eastern steep slope area will also be revegetated for stormwater and erosion control, as well as habitat benefits. (att. f)

- 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;

There should be no net loss of critical area functions and values if the proposed revegetation and stormwater plans are implemented and the guidelines and recommendations are followed per the geotechnical report and memo (att. f, j, and k).

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

There are no known upland species of concern which would be impacted by the project which has been designed to ensure no impacts to species of concern which require mitigation.

- 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 development on surrounding properties was not the sole basis for determining approval of the reasonable use exception.

20. 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.

The Applicant has not acted in a manner that resulted in a self-created hardship. The Owner, Abhineet Chowdhary, took a possessory interest of the subject parcel in 2021. The subject parcel is a legal lot created in 2005 through an approved and recorded subdivision. (#LL-030411, Auditor File number 3733499)

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 should be approved subject to the following conditions:
 1. Prior to or in conjunction with the issuance of any building or construction permits, all applicable regulations and requirements of the Thurston County Public Health and Social Services department, Public Works Department, Fire Marshall, and Thurston County Community Planning and Economic Development Department shall be met.
 2. Applicant is responsible for compliance with other jurisdictional permitting requirements.

3. The project shall be in compliance with the recommendations contained in the project Geotechnical Report dated June 3, 2021, and memo dated May 27, 2022 by All American Geotechnical (Attachment f).
4. The project shall be in compliance with and follow the recommendations and maintenance plan as proposed in the revegetation plan dated April 26, 2022 (Attachment j).
5. Either proposed mitigation plantings will be installed prior to final occupancy approval on future residential building permits or a bond or irrevocable assignment of savings in the amount of 125% of the cost of mitigation plantings shall be submitted and shall be retained by Thurston County until the plantings are installed.
6. All development shall be in substantial compliance with drawings and site plan submitted and made part of this staff report. Any expansion or alteration of this use 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.
7. The applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of subject property. No fill is allowed on site.
8. Best management practices (BMPs) such as completing work during the dry season and maintaining proper working order of equipment, as well as temporary erosion and sediment control (TESC) methods including silt fencing and/or coir logs shall be implemented. All disturbed areas will be promptly backfilled and reseeded following installation, and TESC measures will remain in place until site conditions are restored.
9. The Applicant must comply with all requirements of state and/or federal law to avoid disturbance and alteration of artifacts, remains, or other cultural resources on site during development. In the event of inadvertent disturbance or alteration, the Applicant must immediately stop work and contact the Tribe and the State Department of Archaeology and Historic Preservation.
10. Spaced split rail fencing sections, and/or critical area signage shall be placed adjacent to the top of the landslide hazard areas on site, as a precautionary safety measure.
11. Prior to building permit issuance an Engineered Drainage Report addressing Core Requirements #1-11 shall be submitted, reviewed, and accepted.
12. Prior to building permit issuance, Administrator Approval for the use of proprietary treatment devices will be required.
13. Prior to building permit issuance, a Variance Request so the applicant can elect to use List #2 to satisfy Core Requirement #5 vs. meeting the LID performance standard requirements.
14. Prior to building permit issuance, a Geotechnical Report supporting the final proposed stormwater dispersion areas. Note that there may be modifications if items are discovered during later phases of design.
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.

DECISION: The request for the Reasonable Use Exception to construct a single-family residence, driveway, utilities, well, guest house, and a new septic system/drainfields within a geologic landslide hazard area is approved with the conditions noted above.

ORDERED this 9th day of August, 2022.



STEPHEN R. SHELTON
Pro Tem Hearing Examiner

TRANSMITTED this 9th day of August, 2022, to the following:

OWNER: Abhineet Chowdhary
8427 23rd Ave SE
Olympia, WA 98513-3444

APPLICANT: Daniel Toole
Daniel Toole Architecture
530 NW 23rd Suite 109
Portland, Oregon, 97210

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___.