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HEARING EXAMINER

Creating Solutions for Our Future

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2022101273
SEATON REASONABLE USE EXCEPTION

SEQUENCE NO.: 22-103462 XI

LOCATION ADDRESS: 15545 Runyon Rd. SE
Rainier, WA 98576

TAX PARCEL NO.: 21622140100

LEGAL DESCRIPTION: Section 22 Township 16N Range 1E N4-SE-NE LESS E 30F RD

APPLICANT: Gabe Seaton
7120 85th Ln SE
Olympia, WA 98513

REPRESENTATIVE: Alex Callender
Land Services NW
120 Stave Ave NE PMB 190
Olympia, WA 98501

PLANNER: Heather Tschackofske, Associate Planner/Biologist

SUMMARY OF REQUEST: The Applicant requests approval of a Reasonable Use Exception to construct a single-family residence and associated appurtenances within a wetland buffer.

SUMMARY OF DECISION: Approved with Conditions.

DATE OF DECISION: September 6, 2022

PUBLIC HEARING:

After reviewing the Thurston County 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 August 16, 2022 at 10:00 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**
- Attachment B - Zoning Map**
- Attachment C - Master Application; March 18, 2022**
- Attachment D - Reasonable Use Exception Application; March 18, 2022**
- Attachment E - RUE Supplemental Narrative; May 3, 2022**
- Attachment F - Site Plan; revised June 14, 2022**
- Attachment G - Wetland Vegetation Enhancement Site Plan; June 14, 2022**
- Attachment H - Wetland Delineation Report, Land Services NW; June 13, 2022**
- Attachment I - Wetland and Buffer Enhancement Mitigation Plan, Land Services NW; June 13, 2022**
- Attachment J - Tree Removal Site Plan; June 14, 2022**
- Attachment K - Notice of Application; May 6, 2022**
- Attachment L - Comment Memorandum; Amy Crass, Thurston County Public Health and Social Services Department; June 1, 2022**
- Attachment M - Comment Letter; Brad Beach, Nisqually Indian Tribe; May 12, 2022**
- Attachment N - Comment Email; Shaun Dinubilo, Squaxin Island Tribe; May 12, 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 TSCHACKOFSKE, Associate Planner and Biologist, appeared and testified regarding her Staff Report (Ex. 1) that the Applicant seeks approval of a Reasonable Use Exception to construct a single-family residence and appurtenances within a wetland buffer. The proposed residence consists of a new 2,570-square foot single family residence and a new 1,720-square foot offsite drainfield using an existing septic easement. The project will use the existing drinking water well and the existing driveway. The subject property is almost completely encumbered by a large jurisdictional wetland. The reasonable use exception is required to reduce the buffers for the residence and associated infrastructure. The site is 9.79 acres (426,452.4 square feet). The total buffer impacts will require 5,196-square feet of unavoidable impact to the buffer of the wetland which is only 1.2% of the

property, leaving the majority of the site undeveloped per wetland protection standards. Written notice of application was sent to all property owners within 500-feet of the site on May 6, 2022. Written notice of the public hearing was sent to all property owners within 500 feet of the site on August 1, 2022 and notice was published in The Olympian on August 5, 2022, at least ten (10) days prior to the hearing. The project was determined to be categorically exempt from SEPA. The Thurston County Comprehensive Plan designation for the subject property is Rural Residential Resource and the zoning is RRR 1/5. The subject property meets the minimum lot size of five acres and the proposed single-family residence is consistent with the primary use in the RRR zoning. The property topography contains a swale which lessens to the north and south and to the west there is an uphill grade. The property contains wetlands and wetland buffers, gopher soils and critical aquifer recharge areas which are critical areas subject to requirements of the Thurston County Critical Areas Ordinance. (CAO) The existing dense forest and understory foliage of the subject property makes it exempt from current gopher review protocol; however, if development results in clearing of the property, the gopher review protocol may apply. The property is not within the jurisdiction of the Shoreline Master Program. A Wetland Delineation Report provided by Land Services NW delineated and categorized the onsite wetland as Category II which requires a 220-foot buffer according to standards of the CAO. The wetland is an isolated depressional wetland that sprawls throughout the site. The new residence is proposed to be located approximately 40.4-feet from the closest wetland edge and the septic is proposed to be 85-feet from the closest wetland edge. The total buffer reduction of the wetland would be 82% from the wetland edge to the home and 62% from the wetland edge to the septic. There is no way to avoid the wetland buffer as the property is almost completely encumbered.

The Applicant intends to build a home for sale as there is not any real market for a recreational lot with no septic facilities. The adjacent neighboring lots contain single-family residences. Although the primary permitted uses in the RRR 1/5 zone are single-family residences and agriculture, such uses are prohibited in wetlands and wetland buffers and there is insufficient area in the outer 25% of the wetland buffer to construct a residence and appurtenances consistent with the CAO non-conforming use requirements. Therefore, no other reasonable use of the property is permitted. The Applicant has taken steps to minimize the impact to the wetland and wetland buffers by limiting the footprint of the proposed residence, including the house, and septic and implementing a native plant enhancement and invasive species removal plan. The Applicant will use many of the existing improvements such as the existing driveway and well to minimize the new impacts to the property, will locate the septic in a previously approved easement away from the development and will reduce the construction setback to four feet. The stormwater will be maintained on site and a certified septic will be installed, resulting in no impacts to "Waters of the State" will occur offsite due to this project. The vegetation enhancement plan should maintain the overall integrity of the wetland and prevent damage to nearby properties as well. The impacts of the proposal will be limited to the wetland buffer, The proposed development area represents the least amount of impact while maintaining a viable project that meets the Applicant's needs. As there is very little unencumbered land in which to site the home, the Applicant has reduced the overall footprint of the home, utilized an existing driveway, combined the location of septic with the neighboring property, used the existing well and provided a mitigation plan to maintain wetland functions and values. The driveway will be small but will meet County standards and not change the property hydrology. The project should have little impact to critical areas, including impacts to vegetation, fish and wildlife resources, hydrological conditions and geologic conditions as the proposed development will not occur in the wetland. A mitigation plan will maintain the functions and values of the wetland after buffer reduction. The impacts to the upland forest near the wetland area will be mitigated by a planting plan that will provide species diversity and

structure and the buffer areas around the house will be planted with native buffer plants, The hydrological condition will be maintained by stormwater bmp's which will not dewater the wetland but return water to infiltration trenches as to maintain this water onsite and the grading requirements for the site are minimal which should maintain geologic condition as well. The Applicant's invasive removal and enhancement mitigation planting plan will ensure a no net loss of critical area functions and values by complying with County codes regarding 1:1 ratio of impacts to enhancements and applicable impact reductions measures. The subject property and the immediate vicinity have no listed occurrence of listed plant or animal species of concern. The location and scale of existing development on surrounding properties is not listed by the Applicant as a reason supporting their request.

Ms. Tschaekofske then noted the Public Health and Social Services Department recommends approval, the Public Works Department closed their review with no comments, the Nisqually Indian Tribe and the Squaxin Island Tribe submitted comments stating they have no concerns with the proposal and no public comments were submitted. After noting that the proposal is consistent with the County Comprehensive Plan, she concluded by stating the County recommends approval of the RUE with certain conditions of approval imposed.

DAWN PEEPLES, Senior Environmental Health Specialist, appeared and testified that Environmental Health has reviewed the application and has no objections. She noted that there are no structures on the site of the proposed residence which will served by an existing well and a new on-site septic system has been reviewed and approved by Environmental Health.

ALEX CALLENDER, Representative, Wetland Biologist, Land Services NW, appeared and testified that the Applicant had used the property recreationally and the driveway previously constructed to accommodate such use is longer than other RUE applications to cross the swale to get to the site. Therefore, the impervious surfaces seems high. The proposed modest and reasonably sized residence is near the center of the uplands with a vertical separation from the wetlands with well drained gravelly soil resulting in most of the storm water percolating prior to entering the wetland area. The heavily forested areas will provide some screening from the wetland and residential activities and a planting plan will bolster such screening. The approved septic system located to the north in a previously established easement will function well. Most of the site is undeveloped so while most of the parcel is encumbered by the wetland, the Applicant is making the best use of the property. Using the existing driveway will not require grading and the home will be located in the least dense area of existing trees which will minimize tree removal.

GABE SEATON, Applicant, appeared and testified that he has a long history with the property and agrees with the comments of the County and Mr. Callender.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:30 a.m.

The Examiner held the record open through August 18, 2022, for public comment from members of the public who tried to join the virtual hearing but were unable to join/make comment during the meeting due to technology or access problems. If there is no timely post hearing public comment, the record would close for public comment on August 18, 2022, and the 10-business day decision deadline would be September 1, 2022. If there is public post-hearing comment, Staff and Applicant

may respond by August 22, 2022, and the record would close on August 22, 2022, and the 10-business day decision deadline would be September 6, 2022.

NOTE: A complete record of this hearing is available in the office of the Thurston County Resource Stewardship Department.

FINDINGS:

1. The Applicant filed the Master Application to construct a single-family residence in Project No. 2022101273 (Att. C) and the Supplemental Application Reasonable Use Exception (Att. D) on March 18, 2022.
2. The construction of the single-family home is categorically exempt from review under the State Environmental Policy Act (SEPA).
3. The Applicant filed a RUE supplemental narrative on May 3, 2022. (Att. E)
4. The Notice of Land Use Application was issued on May 6, 2022 with a comment period ending on May 26, 2022. The project was described as follows:
The proposal is a Reasonable Use Exception request for permitting a future single family residence and associated appurtenances and existing accessory structures within a reduce wetland buffer. The zoning is Rural Residential Resource One Dwelling Unit Per five Acres (RRR 1/5) in unincorporated Thurston County.
5. In a letter dated May 12, 2022, Brad Beach on behalf of the Nisqually Indian Tribe noted no special comments or concerns but did request to be informed if there are any Inadvertent Discoveries of Archaeological Resources/Human Burials. (Att. M)
6. In an email dated May 12, 2022, Shaun Dinubilo on behalf of the Squaxin Island Tribe Cultural Resources noted that they had no specific cultural resource concerns but would concur if DAHP recommended cultural resources surveys; but at a minimum, he requested to be informed if there are any Inadvertent Discoveries of Archaeological Resources/Human Burials condition. (Att. N)
7. In a memorandum dated June 1, 2022, and as testified to by Dawn Peebles, Senior Environmental Health Specialist, Amy Crass commented that the Thurston County Environmental Health Division had reviewed the request and had no objections and noted that "the proposed residence will be served by the existing well and a new on-site septic system that has been reviewed and approved by Environment Health under Project #2022101235." (Att. L)
8. The Thurston County Public Works Department closed their review with no comments.
9. Written notice of the public hearing was mailed to all property owners within 500-feet of the site on August 1, 2022, and was published in The Olympian on August 5, 2022, at least ten (10) days prior to the hearing. (Att. A)

10. The Applicant, Gabe Seaton, 7120 85th Ln SE, Olympia, WA 98513, has a possessory interest in the above-listed parcel located at 15545 Runyon Rd. SE, Rainier, WA 98576 which is located within the rural portion of Thurston County. Runyon Road SE borders the east (Att. E) The 9.79-acre (426,452.2-square foot) parcel was described in its current configuration per a 1968 deed, Auditor File Number 913133. (Ex. 1)
11. The subject property is relatively flat in the front with a swale in the eastern portion that is culverted to allow water to flow through an access to the interior of the lot via an existing driveway. After crossing the swale, the topography lessens to the north and south and to the west there is an uphill grade. The uplands onsite are primarily vegetated with Douglas fir, Beaked hazelnut, Salal, Oregon grape and Sword fern. (Att. H) The property contains wetlands and wetland buffers as well as gopher soils, and critical aquifer recharge areas. Wetlands, gopher soils, and critical aquifer recharge areas all of which are critical areas subject to requirements of the Thurston County Critical Areas Ordinance (CAO) (TCC 24).
12. The Thurston County Comprehensive Plan designation for the subject property is Rural Residential Resource (RRR). The purpose of the RRR 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. As proposed and conditioned, the application for a new single family residence and appurtenances and the associated mitigation plans (Atts G, H and I) is consistent with the Thurston County Comprehensive Plan. The property is not within the jurisdiction of the Shoreline Master Plan.
13. The zoning classification is RRR 1/5 (Att. B). Pursuant to TCC 20.09A.020(2), single-family residences are permitted as a primary use with the limitation of one primary residential structure per lot and, pursuant to TCC 20.09A.050 (20(a), the minimum lot size is five-acres. In addition, pursuant to TCC 20.09A.050(4) and (5), the maximum building height shall not exceed 35-feet and the minimum yard and setback requirements for structures over 200-sq. ft. are 20-feet from the front property line (or private road easement), 5-feet from the side property lines and 5-feet from the rear property line. As proposed and conditioned, the application is consistent with the zoning code.
14. The property is mapped with soils that often contain the presence of priority species (Mazama pocket gopher (MPG)), which are regulated by TCC 24.25, Critical Areas Ordinance. On April 8, 2014, the U.S. Fish and Wildlife Service listed four subspecies of the Mazama pocket gopher under the Endangered Species Act. The existing forested state of the property with dense understory exempts the project from the current gopher review protocol. Should the property be cleared of vegetation prior to building permit submittal, MPG review standards may apply. (Ex. 1)
15. The subject site contains wetlands and wetland buffers. Specifically, the Wetland Delineation Report prepared by Land Services Northwest found one wetland, Wetland A rated as a Category II wetland with an overall score of 20 and a habit score of six (LHM). (Att. H) This type of wetland requires a 220-foot buffer according to standards of the TCC 24.30.045, County Critical Areas Ordinance. TCC 24.30.050 entitled "Wetland buffers - Reduced width" allows for a reduction of wetland buffer by 25-percent; however, the proposed single-family

residence will encroach into the 220-foot standard buffer by 3,476-square feet and require a buffer reduction to 40-feet to the south and 45-feet to the north. This is the least amount of land to provide the Applicant with a usable residential development. In addition, the septic drainfield will encroach into the buffer to 85-feet with 1,720-square feet of impacts which will be mitigated with a native vegetation enhancement planting plan. (Att. I)

16. The new residence is proposed to be located approximately 40.4-feet from the closest wetland edge, and the septic is proposed to be 85-feet from the closest wetland edge. The total buffer reduction of Wetland A would be 82% from the wetland edge to the home and 62% from the wetland edge to the septic. The project consists of a new 2,570-square feet single family residence, and 1,720-square feet offsite drainfield using an existing septic easement. The project will use the existing drinking water well and the existing driveway. The clearing limits or total disturbed area due to the single-family home will encompass 3,476-square feet. This represents 0.8% of the total lot. The project will use the existing well and driveway which crosses the wetland near Runyon Road SE. The existing driveway is approximately 8,633-square feet or 2% of the total lot. Although this represents a larger impervious area, it has existed for over 20 years so it does not create additional onsite impacts. (Att. E)
17. The Applicant has requested the Reasonable Use Exception (RUE) which is authorized by TCC 24.45.010 which states:

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.

18. 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;

Although the Applicant and his family have owned and used the property for recreation, they now propose to build a single-family residence with a septic drainfield for sale purposes rather sell the property as recreation without a septic facility for which there is not a viable market. A single-family residence is a primary use in the RRR 1/5 zone classification. However, residential uses are prohibited in wetlands and wetland buffers (TCC 24.30.085) and the subject property has insufficient area in the outer 25% of the standard wetland buffer to proceed with construction of the residence with appurtenances as a non-conforming use pursuant to TCC 24.50.060. Therefore, for the Applicant, no other reasonable use of the property is permitted.

- 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.

Given the Applicant's preference for sale of his property as a viable residence rather than as recreational property without a septic system for which there is no real market, the Examiner finds the proposed residence to be a reasonable use of the property. The Examiner also finds there is no other reasonable use with less impact due to the Applicant's plan to minimize the impacts to the wetland and wetland buffers. The footprint of the proposed residence is modest. The proposed residence consists of a new 2,570-square foot single family home and a 1,720-square foot off-site drainfield using an existing approved septic easement located away from the development. The project will use the existing drinking water well and the existing driveway to minimize the new impacts to the property. The native plant enhancement and invasive species removal plan and the benefits that it provides are intended to make the wetland buffer more resilient, provide better screening, better nutrient uptake and erosion resistance and will maintain a no net loss of wetland functions. The construction setback has been reduced to 4-feet in order to minimize the overall impact of the clearing limits for the homesite and maximize the permanent buffer width.

- C. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety or welfare on or off the development proposal site, or increase public safety risks on or off the subject property;

The proposed development is consistent with regulations intended to protect the environment and public health. The stormwater will be maintained on site in accordance with the most recently approved Thurston County Stormwater Manual. A certified septic approved pursuant to Thurston County Environmental Health standards will be installed. Development impacts will be limited on-site and there should be no spillover affects to damage nearby properties. The vegetation enhancement plan should maintain the overall integrity of the wetland and also prevent damage to nearby properties as there will be no discharge off-site. In addition, the well will not impact offsite properties as the basin has enough water to accommodate use of the well by the new residence.

- 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 no direct impacts to the wetland are proposed, unavoidable impacts to the wetland buffer will occur as a result of the critical areas onsite which limit the location and configuration of the home and drainfield to the area proposed for development (Att. F) The Applicant has made reductions during the design phase to reduce the overall footprint of the home and will utilize the existing driveway and well, combine the location of septic with the neighboring property and provide a mitigation plan to maintain wetland functions and values. Stormwater cross drains will allow surface water to pass and the stormwater from the driveway will be directed to an infiltration trench so there should be no change in hydrology due to the driveway.

- E. The proposed reasonable use shall result in minimal alteration of the critical area including but not limited to impacts on vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions;

The construction of the residence and appurtenances will not be in the wetland; therefore, there will be no direct impact to critical areas, including impacts to vegetation, fish and wildlife resources, hydrological conditions and geologic conditions. Although, construction will require removal of vegetation within the wetland buffer, a mitigation plan has been provided to maintain the functions and values of the wetland. (Atts G, H, and I). Construction will impact the upland forest near the wetland where, currently, there is a lack of shrub vegetation and screening. However, the Applicant's mitigation plan will provide an enhanced buffer along the driveway in the outer portion of the buffer. The planting plan will provide species diversity and structure as well as roughness. Buffer areas around the house will be planted with native plants which will provide benefits noted above but will also become a landscape amenity that combines the practical plantings with aesthetic attributes of our native flora. The hydrological condition will be maintained by stormwater bmp's which will not dewater the wetland but return water to infiltration trenches as to maintain this water onsite. The grading requirements for the site are minimal and the geologic conditions should also be maintained. (Ex. 1)

- F. A proposal for a reasonable use exception shall ensure no net loss of critical area functions and values. The proposal shall include a mitigation plan consistent with this title and best available science. Mitigation measures shall address unavoidable impacts and shall occur on-site first, or if necessary, off-site;

The Applicant's "Wetland and Buffer Enhancement Mitigation Plan" (Att. G and I) will ensure no "net loss of critical area functions and values." The Plan provides a 1:1 ratio of impacts to buffer enhancement area as required in code. In addition, twenty trees greater than 12-inches diameter at breast height will be necessarily removed and replaced at a 3:1 ratio throughout the remaining upland site, with a total of 60 Douglas fir trees (Attachment J). The mitigation plan will incorporate the applicable impact reduction measures found in TCC Table 24-30-2 (Required Measures to Mitigate Impacts to Wetlands). These measures are considered the best available science for mitigation of buffer impacts. An invasive removal and enhancement mitigation planting plan will result in no net loss of critical area functions and values of the wetland. The Applicant will be providing a maintenance and monitoring plan for woody and herbaceous vegetation that will assure success over a five-year period as required. (Ex. 1)

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

The project will not result in impacts to any species of concern as the subject property and the immediate vicinity have no listed occurrence of listed plant or animal species of concern.

- H. The location and scale of existing development on surrounding properties shall not be the sole basis for granting or determining a reasonable use exception

The location and scale of existing development on surrounding properties is not being considered the sole basis in reviewing the proposed RUE application. (Ex. 1)

19. TCC 24.45.020 entitled “Reasonable use exception-Certain properties not eligible” prohibits a RUE if the inability to derive reasonable use is the result of a self-created hardship such as subdividing the property, adjusting a boundary line, or other actions thereby creating the property undevelopable. Herein, the property is not “undevelopable and the sole basis for the RUE is not from any “self-created” hardship created by the Applicant but, simply, a decision to change the use of the property from one permitted primary use, recreation, to a different primary use, residential.

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 Reasonable Use Exception should be approved subject to the following conditions:
 - A. 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.
 - B. The Applicant is responsible for compliance with other jurisdictional permitting requirements.
 - C. 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.
 - D. The Applicant shall complete all buffer mitigation and monitoring as proposed in the Wetland and Buffer Enhancement Mitigation Plan, Land Services NW, submitted June 13, 2022 prior to final building permit inspection. A surety will be required in place of mitigation completion prior to final building permit inspection, per TCC 24.70.
 - E. Critical Area signs shall be installed along the reduced buffer edge, subject to standards of TCC 24.60. Sign locations shall be verified and staked by the biologist and installed prior to final building permit inspection.
 - F. Construction fencing and erosion control shall be placed outside the buffer alongside proposed development. This fencing and erosion control shall be inspected prior to building permit issuance.
 - G. 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.

- H. This property is mapped with soils that often contain the presence of priority species and habitat, which are protected by TCC 17 and 24. The requested development activity is planned to take place on a soil type, or area, which may provide habitat for the Mazama pocket gopher, or where the Mazama pocket gopher has either been found or is suspected to be located. Approval of this and other County permits may be superseded by federal law. If any are found during construction, the applicant should contact the U. S. Fish and Wildlife Services. Future site conditions may trigger additional review under MPG and upcoming HCP regulations.
- I. 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.
- J. All development on the site shall be in substantial compliance with the approved Reasonable Use Exception application, as conditioned. Any alteration to the proposal will require approval of a new or amended Reasonable Use Exception. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

DECISION: The request for Reasonable Use Exception No. 2022101273 is approved with conditions noted above.

ORDERED this 6th day of September, 2022.



STEPHEN R. SHELTON
Pro Tem Hearing Examiner

TRANSMITTED this 6th day of September, 2022, to the following:

APPLICANT: Gabe Seaton
7120 85th Ln SE
Olympia, WA 98513

REPRESENTATIVE: Alex Callender

Land Services NW
120 Stave Ave NE PMB 190
Olympia, WA 98501

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.



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| 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___.