



COUNTY COMMISSIONERS

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District One

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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. 2019100401 |
| |) | |
| YWAM, Faith Harvest Helpers |) | FINDINGS, CONCLUSIONS, |
| |) | AND DECISION |
| For a Reasonable Use Exception |) | |
| _____ |) | |

SUMMARY OF DECISION

The documents, testimony, and argument submitted fail to show that the request can satisfy the criteria for reasonable use exception, and therefore the requested after-the-fact permits for the installation of a mobile home, RV cover, and garage within a wetland buffer are **denied**.

SUMMARY OF RECORD

Request

Charlie Beukelman for YWAM, Faith Harvest Helpers (Applicant) requested reasonable use exception (RUE) for after-the-fact permits for the installation of a mobile home, RV cover, and garage within a wetland buffer. The subject property is located at 12643 Case Road, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on May 26, 2020. Due to the potential difficulty for people to access virtual hearings, the record was held open two business days to allow for public comment, with additional time arranged for responses by the parties. Additional public comment was submitted on May 28, 2020, which was forwarded to the parties for their responses, due by June 1, 2020. Neither party responded to the post-hearing public comment submitted. The record closed on June 1, 2020.

Testimony

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

Leah Davis, Senior Planner, Thurston County Community Planning & Economic Development Department

Dawn Peebles, Thurston County Environmental Health Department

Arthur Saint, PE, Thurston County Public Works Department

Charlie Beukelman, Applicant

Jon Pettit, Applicant witness

Paul Shorb, Applicant witness

Doreen Milward

Heather Burgess on behalf of Sidney Clausen

Jennifer Lyne

Sabra Noyes

Judith Kolb

Doug Milward

Exhibits

The following exhibits were admitted into the record:

- Exhibit 1 Development Services Section Community Planning & Economic Development Department (staff) report with the following attachments:
- Attachment A Notice of Public Hearing
 - Attachment B Revised Master Application, received April 11, 2019
 - Attachment C Revised Reasonable Use Exception Application, received April 11, 2019
 - Attachment D Supplemental application narrative, dated April 11, 2019
 - Attachment E Site Plan, received June 13, 2019
 - Attachment F Wetland delineation, received February 13, 2018
 - Attachment G Notice of Application, dated May 14, 2019
 - Attachment H Approved site plan for two pole buildings (project 2016106035) showing planting area, dated July 3, 2018

- Attachment I Comment Memorandum from Dawn Peebles, Thurston County Public Health and Social Services Department, dated May 6, 2019
- Attachment J Comment Letter from Nisqually Tribe, dated February 6, 2019
- Attachment K Comment Letter from the Washington Department of Ecology, dated February 19, 2019
- Attachment L Letter from neighbor, dated May 24, 2019
- Attachment M Website pages (3)
- Attachment N Faith Harvest Helpers request to continue hearing, dated August 23, 2019
- Attachment O Legal Notice from August 27, 2019 hearing date

- Exhibit 2 Public comments submitted prior to hearing:
 - a. Doreen Milward, dated May 15, 2020
 - b. Judith Kolb, dated May 20, 2020
 - c. Heather Burgess on behalf of Sidney Claussen, dated May 20, 2020
 - d. Robin Rexius, dated May 21, 2020
 - e. Paul Stasch, dated May 24, 2020
 - f. Sabra Noyes, dated May 25, 2020
 - g. Jennifer Lyne, dated May 25, 2020
 - h. Karen Daniels, dated 2019
 - i. Karen Daniels, dated May 25, 2020
- Exhibit 3 Applicant letter in support of proposal, dated May 26, 2020, with attachments:
 - a. County Geodata map and parcel information for both parcels
 - b. Excerpt from TCC Chapter 20.08G, Agritourism Overlay District (AOD)
 - c. Excerpted information from TCC Title 24 and TCC Chapter 17.15
 - d. CPED Staff Report, dated August 27, 2019, for a previously scheduled hearing in this same proposal
 - e. Map of buildings under discussion
 - f. US Fish and Wildlife gopher review, dated August 1, 2017
 - g. Review comments from Dawn Peebles, Thurston County EHD, dated May 6, 2019
 - h. Assorted pages from County records on subject property apparently dating from September 1981
 - i. Approved 2018 site plan related to placement of pole buildings
 - j. Letter from Thurston County Planning Manager Brett Bures to Applicants, dated January 25, 2020
 - k. Letter from Jon Pettit to Brett Bures, dated December 27, 2019

- Exhibit 4 Post-hearing public comment:
- a. Jennifer Lyne, August 26, 2019
 - b. Doreen Milward, dated May 28, 2020
 - c. Elizabeth Pagan, August 26, 2019

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

FINDINGS

1. The Applicant requested a reasonable use exception (RUE) for after-the-fact permits for the installation of a mobile home, RV cover, and garage within a wetland buffer. The subject property is comprised of two tax parcels located at 12643 Case Road, Olympia, Washington.¹ *Exhibits 1, 1.C, 1.D, and 1.E.* The RUE application was submitted on January 29, 2019 with a completed application being submitted on April 11, 2019. A revised site plan (Exhibit 1.E) was received June 13, 2019 and the application was determined to be complete for project review on June 14, 2019. *Exhibits 1, 1.B, 1.C, and 1.E.*
2. According to its website, Faith Harvest Helpers (FHH) is a faith-based interdenominational gleanings organization dedicated to feeding hungry people, which operates a food bank out of Lacey, Washington. In 2013 FHH joined Youth With A Mission (YWAM), a global movement of Christians spreading Christian teachings around the world through youth missions. In joining YWAM, FHH became one of many YWAM campuses focused on training people to go out into the world and preach the good news. The FHH website states, “Our purpose is to demonstrate God’s love by using every opportunity to build relationships.” *Information from <https://ywamfhhwa.org/>; Exhibit 1.M.*
3. The subject property consists of two tax parcels totaling 29.36 acres in the Maytown area just west of I-5 and north of Maytown Road.² Case Road borders the east site boundary. The property is relatively flat. Allen Creek, a seasonal Type F (fish-bearing) stream, flows near the northern site boundary and eventually meets the Black River. A small tributary to Allen Creek abutting the northern parcel creates an ephemeral stream and wetland that flow through the center of both subject parcels oriented generally north to south. The subject property is developed with one or more residential structures, two pole barns, and several accessory structures on a filled area accessed by Case Road. These improvements abut a filled parking area containing vehicles and trailers. The remainder of the site is characterized as pasture with few trees; there are no areas of forest or shrub cover on site. Surrounding properties are developed with low-density single-family residential uses and agriculture. There is a commercial use adjacent to the south called Mobile Mini Portable

¹ The legal description of the subject property is S5-16N-2W 4.76A LOT 2 LESS 19.59A; also known as Tax Parcels 12605230100 and 12605240600. *Exhibit 1.*

² The undersigned takes notice that both tax parcels are addressed as 12643 Case Road in County Assessor records.

Storage & Offices, which stores and leases shipping containers for storage and portable office use. *Exhibits 1 and 1.F; Google Maps site view.*

4. According to a professionally prepared wetland delineation commissioned by the Applicant, the site contains one wetland broken into two units named (in the study) Wetland A and Wetland B. Wetland A is a 0.58-acre depressional, open wetland that is rated as a Category II wetland with a habitat score of 6. Wetland B is 7.68 acres and is also a depressional, open wetland that is rated as a Category II wetland with a habitat score of 6. Pursuant to the Thurston County critical areas ordinance, the wetlands both require a 220-foot no disturb buffer. *Thurston County Code (TCC) 24.30.045.* The wetlands align with a Department of Natural Resources (DNR)-mapped Type F intermittent stream; however, because the feature lacks defined channel and there is no documentation of fish in it historically, the wetland delineation classified it as a non-fish bearing stream lacking habitat suitable for fish. The stream requires a 150-foot no disturb buffer from the ordinary high water mark on both sides (*TCC 24.23.020*); however, the wetlands and buffers encompass and extend beyond the stream and associated buffer, so the stream and associated buffer will not further be addressed in these findings. The wetland delineation found one upland area of approximately 6,100 square feet (0.14 acres) in a triangular space abutting Case Road well south of existing site improvements. The majority of the rest of the property is entirely encumbered by wetland and buffer, including all areas where the structures in question in the instant application are located. The critical areas report states that there may be additional upland areas west of the wetlands, but these were not field identified or delineated, and accessing them would only be possible after significant grading, which would necessarily cross the wetlands and stream. *Exhibit 1.F.*
5. The subject property is in the rural portion of the County and is zoned Rural Residential Resource – One Dwelling Unit Per Five Acres (RRR 1/5). The RRR 1/5 zoning district (TCC Chapter 20.09A) allows specified primary uses and special uses. Single-family residential uses are allowed primary uses without land use approvals subject to applicable design standards in TCC 20.09A.050 and limited to one primary residence per lot. *TCC 20.09A.020; TCC 20.09A.040.*
6. The Comprehensive Plan designation for the subject property is Residential – One Dwelling Unit per Five Acres (RRR 1/5) within Rural Thurston County. The purpose of this designation, as stated in the Comprehensive Plan, 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. *Thurston County Comprehensive Plan, Section II – Land Use.* Comprehensive Plan Chapter 9, Natural Environment, contains goals promoting the protection and improvement of water quality and the biological health of lakes, wetlands, rivers, streams, and Puget Sound. *Comprehensive Plan, Chapter 9, Surface Water Goal, Objective 1, Policies 1-6.*
7. The Applicant bought the subject property in 2016, at which time the site contained a single-family mobile home, a garage/pole barn (single combined structure), and an accessory structure the Applicant calls the “wood shop.” Later that year, the County

received a complaint from a neighbor who called to report several land use violations. During ensuing site visits by County Staff from multiple departments to inform the new landowners about required permitting and critical area regulations, substantial unpermitted development was discovered. Later in 2016, the Applicant applied for building permits for two large pole buildings and Staff found that the building and land use violations were ongoing. Since 2017, several unpermitted structures have been added to the site, including two of three being reviewed through this application and additional structures that appear to be “tiny houses.” Based on multiple further neighbor complaints from, County Staff site visits, and aerial photography, there are up to eight recreational vehicles on site at any given time with people living in them, several transport containers, and mobile homes in various stages of construction. County Staff understood from the Faith Harvest Helpers’ website that these structures are used to house volunteers and staff, and for processing and canning fish. In the standard process of attempting the assist landowners in correcting code violations, County Staff informed the Applicant that it is possible under the critical areas ordinance (CAO) to obtain reasonable use exception (RUE) for improvements in areas in which development prohibited by the CAO, subject to compliance with the RUE criteria for approval. *Exhibit 1; Leah Davis Testimony.*

8. The instant hearing process does not address code violations or any other structures, but only seeks to determine whether the three structures for which Applicant requested RUE approval can satisfy the RUE criteria for approval. Those three structures are a second mobile home (single-family residence), an RV shelter, and the unpermitted garage that predates Applicant ownership of the property. The first two structures have been installed since 2017. The unpermitted second mobile home occupies approximately 1,500 square feet of regulated wetland buffer. The metal, pre-fabricated RV cover, which is installed in the ground, occupies another 780 square feet of wetland buffer. The unpermitted garage occupies approximately 1,200 square feet of regulated wetland buffer. *Exhibits 1 and 1.F, Figures 3 and 7 (photos of the site improvements).* The record does not identify the proposed setbacks between the three structures and the wetland edge. The submitted site plan does not identify the locations of the critical areas or buffers. It does not identify the distance between the structures in question and the wetland edge. It refers to the RV cover as a car port (north most structure). *Exhibit 1.E.*
9. Pursuant to TCC 24.50.070, Existing Nonconforming Uses, Structures and Lots, mobile or manufactured homes within critical areas may be replaced in the same location at the discretion of the County Code administrator if damaged or at the end of their useful lives. One of the existing mobile homes, which had been onsite since prior the adoption of the critical areas ordinance, was permitted to be replaced in 2017 (permit 17 111983) pursuant to these critical areas regulations; it is considered the primary single-family residential unit onsite for zoning purposes. *Exhibit 1.*
10. In 2016, the Applicant applied for building permits for two 36- by 60-foot pole barn structures proposed to be placed in the 0.14 upland acres of the site identified by the critical areas study. The County’s review and approval of those two structures (permit #s 16-115192 BS and 16-115190 BS, as reviewed in Project # 2016106035) resulted in a final approved site plan that showed the pole barns largely contained in the

unencumbered 0.14 upland acres. One corner of the southern pole barn was authorized to extend very slightly into regulated buffer area. Also approved was a specific area for additional future encroachment into the buffer, which was depicted in a wedge-shaped swath south of the 0.14 upland acres (called out on the site plan with red dots). This area was determined by the County to be 165 feet or more from the wetland edge, representing a buffer reduction of 25% as authorized in TCC 24.30.050.A. The area of allowed encroachment is clearly called out as not to exceed 5,000 square feet and any future development within this area is subject to mitigation plantings at a 1:1 ratio (one square foot plantings for one square foot of buffer encroachment) to be placed around the perimeter of the developed portion of the property; specific mitigation areas were identified along the north, south, and western edges of the developed portion of the site. Mitigation was to include the installation of permanent wetland buffer signage around the envelope of authorized development (the pole barns and authorized buffer encroachment area). *Exhibit 1.H.*

11. Comparing Exhibits 1.E (current site plan) with the 2018 approved site plan, although no measurements are provided, it is clear that the locations of the three structures proposed to be made legal through RUE are closer to the wetland than 165 feet, meaning they are within the inner 75% of regulated buffer width. The three car garage and the second mobile home are located west of, and closer to the wetland edge than, the original (and recently approved as legally nonconforming) mobile home. Because the site plan doesn't include the wetland, and because the 2018 approved site plan only shows the southern tax parcel, the relationship between the RV cover, on the northern parcel, and the wetland has to be extrapolated by comparing those two plans with the wetland delineation mapping (see Exhibit 1.F, Figure 3). It appears the RV cover is closer than 165 feet from the edge of the uppermost lobe of Wetland B. *Exhibits 1.E, 1.F (Figure 3), and 1.H.*
12. The critical areas report recommended site development to avoid and minimize impacts, and noted that locating improvements outside of the wetland buffer would ensure avoidance of wetland impacts. It went on to state that if avoidance of wetland buffers is not possible, then improvements should be designed and located to minimize the footprint within buffers. The report noted that there are on-site restoration opportunities that could offset impacts of development within the buffer, and that restoration efforts could possibly result in no net loss of function, or even overall gain in function. However, no restoration plan was submitted. *Exhibit 1.F.*
13. As noted in the Applicant's critical areas report, the wetland and stream onsite are mapped as priority habitat for the Oregon spotted frog, supporting both a regular concentration of and breeding areas for the frog. The Oregon spotted frog is listed by the US Fish and Wildlife as Threatened pursuant to the Endangered Species Act, and by Washington Department of Fish and Wildlife (WDFW) as Endangered. Pursuant to TCC 24.25.065.A and .B, identified habitats of federal and state listed species are regulated through the CAO. The northern of the two subject parcels is a known point location for Oregon spotted frog egg masses; however, the property has been surveyed by WDFW for the two years prior to the report date (February 2018), resulting in no Oregon spotted frog sightings. According to the Applicant's critical areas report, current conditions on the

subject property are no longer adequate to support the species. *Exhibit 1.F (page 13)*. Planning Staff submitted that the unpermitted activities on site are very likely impacting this species. *Exhibit 1*.

14. The subject property contains soils known to provide habitat for the Mazama pocket gopher. On August 1, 2017, the US Fish and Wildlife Service issued a letter stating the federal agency's conclusion that, based on lack of gopher mounds observed on-site, the then-proposed pole barn project would not result in a "take" of the federally listed species. The letter states that the determination was valid through October 3, 2018. *Exhibit 3.F*. This determination appears to have expired.
15. In the application itself, the Applicant offered the following comments in response to the criteria for RUE approval:

No, the Critical Areas Ordinance has no provision for 120-foot buffers without Resource Use application; Approved permit 16-115191 BA and 16-115193 BA have on plot plan "one portion of the wetland boundary is allowed to be reduced with approved mitigation" and "development shall remain in the outer portion of the critical area buffer (outside 165 feet distance to wetland)." Request our three applications that are currently on hold, be included in one RUE with setbacks for wetland buffers changed from 240 feet to 120 feet.

No. all structures have been situated according to county guidelines. There would not be a way to relocate existing 20+ year structures as their placement would no longer adhere to the county guidelines.

No, no impact would occur to any nearby properties. These structures are on a small portion of the 30 acres (two parcels). The three car garage has been at this location prior to 1990. The permits for the two septic systems were approved and have been on file at the county offices. No locations changes have occurred since then.

No, no threat to public health, safety or welfare on/or off the property. We want to get approval for the existing site garage prior to 1990; the temporary RV cover is located near a grandfather septic system and power which were here when we purchased the property; the mobile home request would be sited near the approved septic system and power. Therefore, no public health, safety, or welfare on/or off the property.

No, no threat to public health, safety or welfare on/or off the property. We want to get approval for the existing site garage prior to 1990; the temporary RV cover is located near a grandfather septic system and power which were here when we purchased the property; the mobile home request would be sited near the approved septic system and power. Therefore, no public health, safety, or welfare on/or off the property.

Location of the RUE already has the existing RV cover and garage. We desire the placement permit of three bedroom home on the approved three bedroom septic system. There will be no loss of critical area functions, in fact the placement will enhance the efficiency of the operation.

Exhibit 1.D.

16. At hearing, the Applicant forwarded a new argument (not mentioned in the application or previously submitted materials) that the subject property is within the designated Agritourism Overlay District (TCC Chapter 20.08G) and is in agricultural use, implying through highlighting excerpted codes that the requested structures are replacements of former agricultural structures (*Exhibits 3.b and 3.c*). Applicant representatives asserted that activities on site should be reviewed pursuant to the agriculture critical areas ordinance at TCC Chapter 17.15, not the general CAO at TCC Title 24, and that no permit is required for agritourism uses. The representative asserted that the Applicant should not have been directed to apply for, and should not have to obtain, and RUE for the proposed uses. *Exhibits 3, 3.A, 3.B, and 3.C; Jon Pettit Testimony.*

17. Applicant representative Charlie Beukelman testified that Faith Harvest Helpers purchased the subject property in 2016 and that the three car garage and two approved septic systems were on site at the time of purchase. He stated that they applied for a permit to make the garage legal in 2016, which has not been approved. Mr. Beukelman testified that he was told there were Oregon spotted frogs on the property but that he has never seen any and he doesn't know who identified them. He disputed that there is a stream onsite, asserting it is a pasture with a dip in it, that there is no running water unless it rains, and then it's sheetflow from adjacent properties. He testified that they did the wetland delineation, which had to be redone three times before the County accepted it, but he disputes that there is water in wetlands on site and disputes there is a stream despite the critical area study conclusions. Mr. Beukelman testified that there is only one residence connected to onsite water supplies as of the hearing date. Regarding use of the property, he testified that at time of purchase, cattle grazing was underway and that since purchase, agricultural uses have included an orchard, apple trees, beef cattle, rodeo stock cattle, and hoop houses with garden crops. He stated both that the second residence will be an office, and also that it will be a bunk house containing an office serving the FHH ministry. Addressing assertions that there are inhabited structures and RVs on site, Mr. Beukelman testified that when people were helping to build the pole barns, they stayed in RVs on-site, and one RV was converted to bathrooms for the workers. He stated that they had been approved to be used for this purpose and that they have since been disconnected. The second mobile home/bunk house is intended to house overnight or weekly guests who come to the property to help with agricultural practices. Because it is a three bedroom septic, he assumes it can house up to six people. He also stated that the Applicant may at times have other guests stay in RVs or host guest RVs on the site; however, he stated there are no occupied RVs on-site as of the hearing. He testified that there has been and would be no fish processing conducted on-site. Speaking to the nature of the agritourism use the Applicant claims occurs on site, Mr. Beukelman testified that the hoop houses are intended to fill food banks and that the tourism is people coming to help raise food. The tie in with YWAM is FHH programming intending to teach kids how to grow and process food. Speaking to the RV cover for which permission is sought, he said it is a temporary aluminum structure, with metal supports that can be moved; it is not set in concrete. He testified that it was installed by a guest because their RV leaked, and when their RV departed, they left the structure. As of the time of hearing, he said there was a car and truck under it. *Charlie Beukelman Testimony.*

18. The Applicant's critical areas study makes no conclusion as to no net loss of wetland and stream functions and values related to the three structures proposed to be permitted. The submitted materials do not include a mitigation plan assessing and addressing impacts to the wetland buffer from the three structures. Such a plan is required by both TCC 24.45.030.F and TCC 24.30.070, which states that a mitigation plan shall be prepared by a qualified wetland scientist, and based on wetland functions found in a wetland delineation, the plan must demonstrate that the proposed mitigation can provide functions that are at least equal to the lost or diminished wetland and buffer functions. In testimony, the Applicant referred to mitigation that was provided during the pole barn review process. Planning Staff noted that while the approved pole barn site plan shows areas of mitigation, no mitigation plan was ever submitted and approved. Staff noted that the Applicant appears to have planted some native shrubs in the identified revegetation area from the pole barn site plan. It appears that the mitigation referenced on the 2018 approved site plan was intended to mitigate impacts of actions in the limited additional encroachment area identified on that plan. *Exhibits 1 and 1.H.*
19. The Thurston County Environmental Health Division (EHD) reviewed the proposal. The May 7, 2019 EHD comment letter noted that the site plan identifies two pump houses and an existing cistern providing water to the site and three existing on-site septic systems. It notes that during a site visit, County Staff observed multiple structures and RVs that appeared to be inhabited and that were not identified on the site plan. EHD was unable to determine if the three septic systems on site are conforming to the requirements of the Thurston County Sanitary Code. The County has no records on file for the system located on tax parcel 12605240600; the two systems on tax parcel 12605230100 were each permitted and approved to serve a three bedroom residence. However, given the number of inhabited structures onsite that appear to be connected to utilities and incomplete information submitted by the Applicant, EHD was unable to determine which structures were being served by which septic system, and thus whether any of them was conforming to Sanitary Code requirements. Regarding water supply, it was not possible to determine which of the structures were being served by which water supply. EHD Staff also noted that expansion of a two single-family water supply to serve a third residence requires approval of a public water system. During a 2016 site visit, EHD staff found a mobile structure and an RV being used as restroom facilities and as an office. Having reviewed the Applicant's website, EHD noted that it advertised the subject property as a campus, stated that the two pole barn buildings would be converted to a worship center and a fish canning facility, and that RVs and/or tiny homes were being developed for staff and volunteer housing. The County records for the two septic systems show 1981 approvals for two septic system serving single-family residences; no accessory structures were served by the approved systems. Because of these unpermitted uses of the structures on site, EHD was not able to recommend approval of the requested RUE in May 2019. At hearing, EHD Staff testified that since May 2019, the Applicants have been working to address Sanitary Code violations. They have hired a licensed septic designer who is working to demonstrate that on-site septic system use can be consistent with approvals, and while the water supply remains in violation, the Applicants have submitted an application for public water supply approval. As of the instant hearing

date, EHD Staff was still unable to recommend approval. *Exhibit 1.I; Dawn Peebles Testimony.*

20. The Nisqually Indian Tribe was notified of the application and submitted comments indicating they saw issues of Tribal concern but requested that they be contacted if archaeological resources are discovered during any construction. *Exhibit 1.J.*
21. The Washington State Department of Ecology submitted comment regarding protection of wetlands and buffers, noting that development would need to comply with the County critical areas ordinance, and also that state and federal permits would be required for projects that result in impacts to wetlands. *Exhibit 1.K.*
22. The hearing was originally scheduled and noticed take place in August 2019, but was continued to a later date at the Applicant's request, to allow them time to prepare. *Exhibits 1.N and 1.O.* Notice of the subsequent virtual open record hearing on May 26, 2020 was mailed to property owners within 500 feet of the site on May 11, 2020, published in The Olympian on May 15, 2020. *Exhibits 1 and 1.A.*
23. Public comment on the application was in opposition to the proposal, with concerns relating to the following: the history of unpermitted construction and code violations on site; public health impacts and environmental impacts from activities on site; groundwater contamination resulting from use of the septic systems beyond their permitted capacities; and concern about food handling safety for those visiting the site and traffic and noise impacts. Comments asserted that the Applicant allows people to live in the RVs and accessory structures on site and has conducted fish canning on site, including dumping of fish remains in the site soils; that a number of buildings have been constructed in the wetland buffers without permitting; that shipping containers and RVs are being stored and moved around on the site. One comment stated that a disassembled barn has been delivered to the site for assembly, currently stored in the wetland buffer, and is not shown in the site plan; this comment also asserts that a road has been graded through the wetland buffer and surfaced with crushed concrete, which materials releases stormwater runoff with a high pH capable of damaging wetland wildlife. One member of the public testified and submitted a letter with attached County mapping, arguing that the subject property is outside of the Agritourism Overlay District because Maytown Road is the northern boundary of the AOD and the site is well north of Maytown Road. This comment asserted that even if located within the AOD, the activities being pursued - including construction of a missionary campus, construction and operation of a cannery, and construction and inhabitation of staff and volunteer housing, would require review and permitting. Several expressed concern about impacts to protected species including the Oregon spotted frog. At least one comment noted that the approval of the pole barn site plan was conditioned on correcting other violating conditions onsite within 120 days, and this was never completed. Several nearby property owners expressed concern that their wells are shallow enough to be impacted by activities occurring on site, including fish parts dumping and overuse of septic systems. One noted that the Faith Harvest Helpers website invites people to stay at the site for a day, a week, or a year; invites people to come to the site to learn to can salmon; requests assistance from the public for

tasks dealing with plumbing and electrical work and says “no experience necessary”; and invites families to the site for summer camps. One member of the public asserted that the cattle grazed on site belong to a neighbor and that they graze the site in summer and then are taken away by their owners. One stated that during the rainy season the site driveway floods. Several comments noted that neighbors do not object to the mission of the organization but they do object to the Applicant not taking responsibility to know and comply with County codes. *Exhibits 1.L, 2.a, 2.b, 2.c, 2.d, 2.e, 2.f, 2.g, 2.h, 2.i, 4.a, 4.b, and 4.c; Testimony of Doreen Milward, Heather Burgess on behalf of Sidney Clausen, Jennifer Lyne, Sabra Noyes, Judith Kolb, and Doug Milward.*

24. Responding to the Agritourism Overlay argument submitted by the Applicant, Planning Staff testified that an application for RUE doesn’t address the AOD and that the question of whether the site is within the mapped AOD is not relevant to these proceedings, which are solely for the purpose of determining whether the criteria for RUE can be met. Staff indicated that the proposed uses, even if in the AOD, would still require review for compliance with the same critical areas standards and would require land use permits, some perhaps special use permits, if allowed at all. Responding to public comment, Planning Staff noted that the County is aware of the violations alleged by the neighbors. She reiterated that code violations are addressed through a different process than the instant permit application proceedings, which are limited to the question of whether or not the Applicant has demonstrated compliance with RUE criteria for approval. Planning Staff stated that there remain several violating structures and RVs being used as living units on the site. Pursuant to TCC 26.05.020.C, the County cannot issue approvals on parcels where there are ongoing violations. Staff contended that the RUE cannot be approved until all code violations on both parcels are remedied. *Exhibit 1; Leah Davis Testimony.*
25. Also in response to public comment, EHD Staff reiterated that there are three existing septic systems, while only two were permitted and the approved of those two is for a three-bedroom single-family residence only. The County has no records for the third system, and while onsite County Staff witnessed the existing systems being used other than as permitted. Therefore, EHD issued a notice of violation in September 2019, and that approvals have not yet been granted. Staff indicated that public water system approval would be required if the public is coming to property, and that includes volunteers as well as people who pay to attend trainings or camps on site. *Dawn Peebles Testimony.*
26. In response to public comment, Applicant representatives offered testimony as follows. Mr. Paul Shorb testified that fish have not been dumped on property since 2018. Fish dumping occurred twice, and at some point the Applicant was instructed by the County to put down lime and hay, and the County inspected the placement of nutrient enhancement fish that were placed within a garden area marked with four posts and a rope. Mr. Shorb acknowledged that Allen Creek runs on the north part of the property, but alleged that former County Planning Manager Mike Kain and WDFW Staff at some point indicated that the stream was to be removed from middle of property on County maps; a particular County employee was supposed to do it. Addressing the mitigation from the pole barn

project, Mr. Shorb testified that they installed 250 plants, fruit and nut trees. Mr. Buekelman testified that he is not sure exactly what the problems are, because the Applicant has addressed every complaint and there have been no complaints for a year or so. He stated that some of the things stated in public comment by opponents were untrue, and he asked that RUE be approved so they can move on. Mr. Pettit disputed the public comment that asserted the subject property is not within the Agritourism Overlay District, stating that the commenter was wrong and that the about the Bountiful Byway has nothing to do with the AOD. *Testimony of Paul Shorb, Charlie Beukelman, and Jon Pettit.*

27. County mapping available online appears to show that the AOD does not extend north of Maytown Road. <https://www.co.thurston.wa.us/permitting/agriculture/agriculture-tourism.html>; <https://www.co.thurston.wa.us/permitting/agriculture/docs/agritourism-update-2014-map.pdf> (map dated January 23, 2014); <https://www.co.thurston.wa.us/permitting/agriculture/docs/bountiful-byway-map.pdf> (map dated February 6, 2014). The subject property appears to be more than 1,000 feet north of Maytown Road. *Google Maps site view.*

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. Addressing the Applicant's request that the three structures (and unspecified other structures, uses, and activities) be allowed onsite under the alternate theory that they are allowed by the Agritourism Overlay District: The application under consideration is for reasonable use exception. The Hearing Examiner's jurisdiction in permit applications is limited to the determination whether the materials submitted show compliance with permit criteria for approval and applicable development standards. The County's Hearing Examiner lacks authority to, on the request of an applicant for permit A, decide that permit B - or process B - should have been implemented and require the Planning Department to take alternative action. This argument is outside the scope of these proceedings. *Findings 1, 3, 8, 15, 16, 24, and 26.*
2. In order to obtain reasonable use exception approval, all eight criteria established at TCC 24.45.030 must be shown to be satisfied for each portion of the RUE request (for each building sought to be legitimized). The RRR 1/5 zoned property is legally developed with a single-family residence, at least two septic systems, two pump houses and associated water infrastructure, and two pole barns. (The record is not abundantly clear; there may be other approved uses and structures on site as well.) The County has already administratively approved a 25% reduction in the wetland buffer exempting a 5,000 square foot area adjacent to the road frontage and the pole barns from compliance with the critical areas ordinance; this area may be developed with additional uses, subject to compliance with the conditions of the 2018 site plan approval. The request does not propose to use this area.

RUE Criterion B requires an applicant to show that no reasonable use with less impact on the critical area or buffer is possible. RUE Criterion D requires an applicant to prove that the requested encroachment is the minimum necessary to prevent the denial of all reasonable use of the property. With the existing legal uses and the 5,000 square foot encroachment area in the outer 25% of the wetland buffer already approved, the information submitted by the Applicant fails to make these "minimum necessary" showings for any of the three structures. Notably, the uses to which the three structures would be put are described inconsistently between witness testimony, written materials, and on the Applicant's website; however, taken as a whole, the various statements portray the property as a campus, the second mobile home as ministry offices/

headquarters, and the pole barns as a worship center and food processing facility. The website invites the public to come and stay on the site, either in their personal vehicles or in on-site accommodations, for unspecified times to participate in unspecified activities. On the record submitted, these uses would appear to exceed the minimum necessary encroachment into and alteration of the regulated critical areas necessary to afford reasonable use.

Criterion E requires an applicant to demonstrate the use or structure proposed for reasonable use exception can ensure no net loss of critical area functions and values, and to include a mitigation plan consistent with the CAO and best available science addressing all unavoidable impacts. The materials submitted do not assess the impacts of the three structures requested for exception approval, or even quantify the area of intrusion and distance from wetland edge, and no mitigation plan of any kind is proposed to address the impacts of these three structures and their prospective uses. *Findings 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 17, 18, 19, 23, 24, 25, and 26.*

Because all eight criteria must be satisfied, and Criteria B, D, and E have not been satisfied, it is not necessary to enter conclusions as to the remaining criteria.

DECISION

Based on the preceding findings and conclusions, the requested reasonable use exception for after-the-fact permits to legitimize a second mobile home, the RV cover structure, and the detached three car garage all placed within the inner 75% of a regulated wetland buffer at 12643 Case Road, Olympia, Washington is **DENIED**.

DECIDED June 17, 2020.



Sharon A. Rice
Thurston County Hearing Examiner

NOTE: Pursuant to TCC 22.62.020(C)10, affected property owners may request a change in valuation for property tax purposes.

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

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

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

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

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

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

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

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

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

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$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.



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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 \$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___.