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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE THURSTON COUNTY
 HEARING EXAMINER**

In the Matter of the Application of)	NO. 2015106377
)	
Walter Goe)	
)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For a Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

The requested reasonable use exception to place a single-wide manufactured home within the 250-foot Conservancy shoreline riparian habitat area buffer and the 50-foot riparian management area associated with the Nisqually River is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request

Walter Goe (Applicant) requested a reasonable use exception to place a single-wide manufactured home within the 250-foot Conservancy shoreline riparian habitat area buffer and the 50-foot riparian management area associated with the Nisqually River. The subject property is located at 8400 Sumac Court SE, Yelm, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the request on January 4, 2016.

Testimony

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

- Tony Kantas, Thurston County Resource Stewardship Department, Associate Planner
- Dawn Peebles, Thurston County Environmental Health
- Walter Goe, Applicant

Exhibits

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

- Exhibit 1 Land Use and Environmental Review Section Report with the following Attachments:
- Attachment A Notice of Public Hearing
 - Attachment B Master Application, received August 28, 2015
 - Attachment C Reasonable Use Exception Application, received August 28, 2015
 - Attachment D Notice of Application
 - Attachment E Vicinity Map
 - Attachment F Site Plan, received August 28, 2015
 - Attachment G 2012 Aerial
 - Attachment H 100-Year Flood Zone Map
 - Attachment I Comment Memorandum from Dawn Peebles, Thurston County Public Health and Social Services Department, dated November 20, 2015
 - Attachment J Comment Memorandum from Kevin Chambers, Thurston County Public Works Department, dated October 9, 2015
 - Attachment K Comment Letter from Washington State Department of Ecology, dated September 24, 2015
 - Attachment L Comment Letter from Washington State Department of Ecology, dated November 12, 2015
 - Attachment M Comment Letter from Nisqually Indian Tribe, dated September 16, 2015
 - Attachment N Comment Letter from Arnold Cox, received November 5, 2015
 - Attachment O 2-Foot Contour Map
- Exhibit 2 Color copy of four photographs of the site, including photograph of the posted notice of hearing.

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant requested a reasonable use exception to place a 14-foot by 44-foot single wide manufactured home in the 250-foot Conservancy shoreline riparian habitat area buffer and the 50-foot riparian management area associated with the Nisqually River. The Applicant proposes an approximately 154-foot buffer from the ordinary high water mark (OHWM) of the Nisqually River. The residentially zoned subject property is located at 8400 Sumac Court SE, Yelm, Washington.¹ *Exhibits 1, Attachment B, and Attachment C.*
2. The 0.32-acre subject property is Lot 82, Division 2 of the Plat of Nisqually Pines, recorded with the Thurston County Auditor in 1969. It is accessed from Sumac Court SE by an existing driveway to the south. The Nisqually River borders the northeastern site boundary. Topographically, the parcel slopes down to the river from an elevation of 254 feet near the access point down to 212 feet along the river and into the lot. The 100-year flood plain occupies approximately two-thirds of the subject property. No known species of concern are identified as occurring on the upland portion of the property. *Exhibit 1; Attachments G, H, and O.*
3. The subject property is vacant but is developed with a three-bedroom on-site septic system. The Nisqually Pines Community Club Group A public water system provides domestic water to the site. *Exhibit 1; Exhibit 1, Attachments G and I; Goe Testimony.*
4. Surrounding land uses include single-family residences, recreational lots, and undeveloped lots all within Nisqually Pines subdivision. The Nisqually River flood plain has prevented development of many of the lots along the river. *Exhibit 1.*
5. The subject property has a Residential LAMIRD, 2 Units Per 1 Acre (RL 2/1) zoning designation. *Exhibit 1.* Single-family residences are allowed as primary uses, subject to applicable design standards. Other primary permitted uses in this zoning district include duplexes and agriculture. *Thurston County Code (TCC) 20.13A.020.* The minimum property line setbacks for all structures larger than 120 square feet are: 20 feet from the front property line; six feet from side lot lines; and 10 feet from rear property line. *TCC 20.13A.030.*
6. Pursuant to the Shoreline Master Program for the Thurston Region (SMPTR), the Nisqually River is a shoreline of the state, which is also considered a Type S stream pursuant to the Thurston County critical areas ordinance (CAO). The CAO requires a 250-foot riparian habitat buffer be provided from the ordinary high water mark all Type S streams. An additional 50-foot management zone extending landward from the outer

¹ The legal description of the property is as follows: Section 17 Township 17 Range 2E Lot 82 Division 2 of the Plat of Nisqually Pines; also known as Tax Parcel No. 65132008200. *Exhibit 1, page 1.*

boundary of the riparian habitat area is also required, for a total buffer area of 300 feet. *Thurston County Code (TCC) Table 24.25-1; TCC 24.25.040(A).*

7. The proposal would position the home outside the 100-year flood plain and as far away as possible from the river while complying with the 20-foot front setback. The total proposed reduced buffer would be 154 feet. Septic and water infrastructure were installed by a previous owner after permits were obtained. The site has electric service. No vegetation is proposed to be removed from the riparian area. *Exhibit 1; Attachments B, C, and F; Goe Testimony; Peebles Testimony.*
8. The required 300-foot buffer encumbers the entire parcel. Additionally, the size and shape of the property and the location of the access and existing septic system restrict potential locations for a residence. Planning Staff asserted that the proposed placement of the residence appears to result in the minimum critical area disturbance necessary to allow for reasonable use of the property. *Exhibit 1; Attachment F; Kantas Testimony.*
9. Most nearby shoreline lots outside of the 100-year flood plain are developed with single-family residences. The size of the proposed residence is similar to or smaller than existing residences on nearby lots. Planning Staff submitted the position that a single-wide manufactured home would be a reasonable use of the property. *Exhibit 1; Kantas Testimony.*
10. A building permit would be required for placement of the mobile home, and it would be reviewed for compliance with applicable County development standards, which would govern erosion control, extent of impervious surface area, accidental spills of toxic material, and impacts to vegetation. Given that the residence would be placed outside the 100-year flood plain, that it would be similar in nature and intensity of use as surrounding uses, and that the proposal does not include any vegetation removal. Planning Staff submitted that approval would not result in damage to other properties or threaten the health, safety, or welfare on or off the site. Set back 154 feet and protected by existing riparian vegetation, the residence would not generate pollutants or sediment that would reach the river and wouldn't elevate water temperature or increase peak stream flows of the river. *Exhibit 1; Attachments B and C; Goe Testimony; Kantas Testimony.*
11. In order to mitigate the unavoidable impacts to the 300-foot buffer from placement of the home, Planning Staff recommended a condition of approval requiring native vegetation to be planted in bare areas along the shoreline, which would be intended to increase habitat functions and improve flood and erosion control. *Exhibit 1; Kantas Testimony.*
12. The Comprehensive Plan land use map designation for the subject property is Residential LAMIRD Two Dwelling Units per One Acre. This designation was created to recognize residential development related to marine and/or freshwater shorelines in rural areas that were predominately developed at that density prior to July 1, 1990. *Comprehensive Plan, Chapter 2—Land Use.* Planning Staff submitted the position that the proposal could be conditioned to be consistent with the Thurston County Comprehensive Plan. *Exhibit 1.*

13. The Development Review Division section of the Thurston County Public Works Department reviewed the project for access, traffic, and stormwater control requirements, and recommended approval subject to a condition requiring the Applicant to apply with the Department of Ecology for a Construction Stormwater Permit, if required by that state agency. *Exhibit 1, Attachment J.*
14. The Department of Ecology also commented on the proposal, noting that a Construction Stormwater Permit might be required and also that if soil or groundwater contamination is suspected or discovered, the Department must be notified. *Exhibit 1, Attachment K.*
15. The Thurston County Environmental Health Department reviewed the project for compliance with the County's health codes and recommended approval without condition. Environmental Health Division Staff commented, however, that caution should be taken to prevent any vehicle or equipment parking or travel or staging of materials on top of existing on-site septic components, including the tanks, transport lines, and drainfields. *Exhibit 1, Attachment I; Peebles Testimony.*
16. The Nisqually Tribe commented on the application, noting they had no concerns and asking to be informed of any inadvertent discoveries of archeological resources or human remains. *Exhibit 1, Attachment M.*
17. The Washington State Department of Fish & Wildlife did not comment. *Exhibit 1.*
18. Reasonable use exceptions are non-project actions that are exempt from the requirements of the State Environmental Policy Act (SEPA). *WAC 197-11-800.*
19. Notice of application was mailed to all property owners within 500 feet of the site on October 15, 2015. One comment was received and forwarded to Thurston County Department of Health, essentially asking why his septic system had been previously denied while the subject property's was approved. *Exhibit 1, Attachment N.* Notice of the public hearing was posted on-site on December 23, 2015, mailed to all owners of parcels within 500 feet of the site on December 24, 2015, and published in The Olympian on December 25, 2015. *Exhibit 1, page 2; Exhibit 1, Attachment D; Exhibit 2.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for Reasonable Use Exception pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.06 and 24.45 of the Thurston County Code.

Criteria for Review

Pursuant to TCC 24.45.030, the Hearing Examiner shall grant the reasonable use exception if all of the following specific findings can be made:

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

Conclusions Based on Findings

1. The subject property is too small to be used for agriculture. Considering the uses allowed by the zoning ordinance, the size of the parcel, surrounding existing residential development, and the encumbrance by critical areas, there are no other reasonable uses of the property. *Findings 2, 4, 5, 8, 9, and 12.*
2. There is no other reasonable use of the property that would have less impact on the riparian habitat area. The proposed residence is modest in size and would not affect habitat near the river. The proposed placement is set back as far from the water as is possible, while meeting septic and front yard setbacks. *Findings 1, 5, and 8.*
3. The residence would be placed outside of the 100-year floodplain, and no vegetation would be removed from the riparian area. The residence would be similar in nature and intensity of use as surrounding residences. There is no evidence of potential

- hazard to other properties or public health, safety, or welfare. *Findings 2, 3, 4, 5, and 9.*
4. The residence would be set back as far as possible from the river's edge and would be outside the floodplain, and no riparian vegetation would be removed. As proposed, the project minimizes encroachment to the extent possible. *Findings 6, 7, and 10.*
 5. The residence would not generate pollutants or sediment that could enter the river, and it would have no impact on water temperature or peak stream flows. No riparian vegetation would be removed. There is no evidence that the project would impact fish and wildlife resources or hydrologic conditions. *Findings 2 and 7.*
 6. Building permit review would ensure compliance with County regulations regarding erosion control, setbacks, amount of impervious surfaces, potential spills of hazardous materials, and impacts to vegetation. A condition of approval would require additional native plantings in bare areas along the water, which would go towards ensuring no loss of riparian habitat area function and improving flood control. *Findings 10 and 11.*
 7. Approval would not result in adverse impacts to species of concern. *Finding 2.*
 8. The location and scale of existing development on surrounding properties is not the only, or even a primary, factor in considering approval. *Finding 5.*

DECISION

Based on the preceding findings and conclusions, the requested reasonable use exception to place a single-wide manufactured home within the 250-foot Conservancy shoreline riparian habitat area buffer and the 50-foot riparian management area associated with the Nisqually River is **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, and Thurston County Resource Stewardship Department shall be met.
- B. The location of the proposed home shall be moved as closely as possible to the front property line while meeting all zoning setbacks and required setbacks from the septic tank and drainfield. The following are the applicable minimum setbacks from property lines: front 20 feet and side six feet.
- 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. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, the Washington State Department of Ecology must be notified [Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300].
- E. A total of three native trees shall be planted within 50-feet of the ordinary high water line of the Nisqually River. The plantings must be installed prior to issuance of the certificate of occupancy unless a performance assurance devices such as assignment of savings, letter of credit or performance bond is provided to assure completion of required landscaping. Landscaping is expected to be completed prior to occupancy. In no case may the property owner/developer delay performance for more than six months after occupancy.
- F. 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 Land Use and Environmental Review Section will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

DECIDED January 19, 2016.

By:



Sharon A. Rice

Thurston County Hearing Examiner

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 Resource Stewardship 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 **\$651.00** for a Request for Reconsideration or **\$866.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance 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 \$652.00 for Reconsideration or \$870.00 for Appeal. Received (check box): Initial _____ Receipt No. _____

Filed with the Resource Stewardship Department this _____ day of _____, 20___.