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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. 2018101393
)	
James and Cheryl Morris)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For a Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

The request for a reasonable use exception to construct a single-family residence within a landslide hazard area is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

James and Cheryl Morris (Applicant) requested a reasonable use exception (RUE) to construct a single-family residence within a landslide hazard area. The subject property is located at 5001 Sunrise Beach Road NW, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the request on December 10, 2019.

Testimony

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

- Scott McCormick, Associate Planner, Thurston County
- Dawn Peebles, Thurston County Environmental Health
- Cheryl Morris, Applicant
- Jim Morris, Applicant
- Bruce Studeman, Bracy & Thomas, Surveyor for the Applicants

Exhibits

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

EXHIBIT 1 Community Planning and Economic Development Staff Report including the following attachments:

Attachment a	Notice of Public Hearing
Attachment b	Zoning Map
Attachment c	Master Application, received March 19, 2018
Attachment d	Reasonable Use Exception application, received March 19, 2018
Attachment e	Cover letter received September 12, 2018
Attachment f	Applicant's Exhibit "A" undated
Attachment g	Letter to applicant dated May 29, 2018 with responses from applicant received September 12, 2018
Attachment h	Revised site plan received February 6, 2019
Attachment i	Letter from Professional Engineering Services Inc. dated July 15, 2019 regarding grading volumes and impervious surface
Attachment j	Limited Critical Area Ordinance Report by Materials Testing & Consulting Inc. received March 19, 2018
Attachment k	Memo from Mark Biever, LPG, LEG, TC Water Resources dated May 24, 2018
Attachment l	Notice of Application dated June 7, 2018 with adjacent property owners list dated May 31, 2018
Attachment m	Memo from Dawn Peebles, TC Environmental Health dated April 16, 2019
Attachment n	Letter from the WA Dept. of Ecology dated June 27, 2018
Attachment o	Comment letter from the Nisqually Indian Tribe, THPO dated June 7, 2018
Attachment p	Letter from the WA Dept. of Ecology dated April 24, 2018

- EXHIBIT 2 Photos of posted hearing notice
- EXHIBIT 3 Site Plan by Shannon & Wilson dated April 1999
- EXHIBIT 4 Sunrise Beach NW Landslide Mitigation by Thurston County Roads & Transportation Services

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

FINDINGS

1. The Applicants requested a reasonable use exception (RUE) to construct a single-family residence within a landslide hazard area. The subject property is located at 5001 Sunrise Beach Road NW, Olympia, Washington.¹ *Exhibits 1, 1.C, 1.D, 1.E, 1.F, and 1.H.*
2. The RUE application was submitted on March 19, 2018 and determined to be complete on April 17, 2018. *Exhibits 1, 1.C, 1.D, and 1.L.*
3. The subject property is 2.12 acres in area and is zoned Residential LAMIRD – One Dwelling Unit per Two Acres (RL 1/2). This zone allows single-family and two-family residential development, agriculture, and home occupations as primary uses. *Thurston County Code (TCC) 20.10A.020.* The subject property contains a 716 square foot cabin built in 1940, which the Applicants intend to convert into a guest house.² A second cabin on the site was removed in 2016. The Thurston County Code allows a maximum 800 square foot guest house as accessory use in all residential zones provided the criteria contained in TCC 20.34.020 are satisfied. *Exhibits 1 and 1.H; TCC 20.34.020(7).*
4. Surrounding parcels, which are roughly half the size of the subject property, are developed with single-family residences.³ The residence to the north is 1,176 square feet in area. The residence to the south has a finished floor area of approximately 3,400 square feet, divided between a basement (1,087 square feet), main floor (1,087 square feet), and second floor (1,243 square feet). *Exhibits 1 and 3.*

¹ The legal description of the subject property is a portion of Section 31, Township 19 North, Range 2 West, W.M.; also known as tax parcel number 12931322400. *Exhibit 1.*

² Per TCC 20.03.040, guest house is defined as follows: "Guest house, or rooms for guests" means an accessory use area in an attached or detached building that provides a bedroom, or areas that could be used as habitable space, and a bathroom with a shower or a tub for guests of the occupants of the primary dwelling unit. A guest house or rooms for guests will contain no kitchen or cooking facilities, or areas that could be considered as or converted to a kitchen or cooking facility." *TCC 20.03.040(61).* The cabin currently contains a kitchen (see Morris testimony), which would need to be removed for compliance with guest house restrictions.

³ The site plan entered into the record as Exhibit 3 supports the Applicant’s testimony that whereas the subject property is approximately 200 feet wide, the adjacent shoreline parcels are approximately 100 feet wide. *Exhibit 3; Cheryl Morris Testimony.* The Site Plan entered into the record as Exhibit 1.H depicts that the subject property was originally two adjacent lots. *Exhibit 1.H; see also Exhibit 1.F.*

5. The proposed daylight-basement residence, as shown on the submitted site plan, would have a footprint of 2,376 square feet, plus an attached garage. The Applicant submitted that the overall building footprint, including garage, would not exceed 2,800 square feet. *Exhibits 1, 1.D, 1.H, and 1.I; Scott McCormick Testimony*. The total impervious surface coverage, including the existing cabin/guest house, well house, and gravel areas providing access to the proposed residence and existing cabin, would be 8,249 square feet. *Exhibit 1.I*.
6. The subject property is on the Eld Inlet shoreline of Puget Sound. The Shoreline Master Program for the Thurston Region (SMPTR) designates the shoreline as Rural. While construction of a single-family residence is exempt from shoreline substantial development permit (SSDP) requirements (see RCW 90.58.030.3.e), development within the regulated shoreline must conform to the development standards of the SMPTR. For Rural shorelines, these include a maximum impervious surface coverage of 30% of the upland portion of the parcel and a minimum building setback of 50 feet. *SMPTR, Section Three, Chapter XVI(D)(3)(b)*. In this case, impervious surfaces (8,249 square feet) would cover 29% of the upland area of 28,049 square feet. *Exhibit 1.I*. The proposed building envelope would be set back at least 70 feet from the bulkhead. *Exhibit 1.H*.
7. The subject property is at the southern margin of a documented, deep-seated landslide known as the Sunrise Beach Road Landslide. The most recent landslide activity was in 1999, during which several homes north of the subject property were partially or severely damaged. A site plan prepared after the event in 1999 recorded earth cracks along the northwestern boundary of the subject property along Sunrise Beach Road. *Exhibit 1.K*. Thurston County subsequently installed drainage improvements in the area to stabilize the landslide. These included numerous horizontal drains, including along the northern boundary of the subject property. The drains on the subject property are still in good condition. *Exhibits 1.K and 4; Bruce Studeman Testimony*. Visual inspection of the site by the County's engineering geologist during review of the subject application did not indicate any recent slide activity. Data from instruments designed to detect ground movement within the adjacent slide area did not reveal ongoing activity. *Exhibit 1.K*.
8. Due to the historic landslide activity, the entire parcel is classified as a Landslide Hazard Area⁴ and therefore it would not be possible to construct a residence onsite outside of the regulated critical area. *Exhibit 1*.

⁴ "Landslide hazard areas" means those areas which are potentially subject to risk of landslide due to a combination of geologic, topographic, and/or hydrologic factors; and where the vertical height is fifteen feet or more, excluding those wholly manmade slopes created under the design and inspection of a geotechnical professional. The following areas, at a minimum, are considered to be subject to landslide hazards: A. Any area with a combination of: 1. Slopes of fifteen percent or steeper; and 2. Impermeable subsurface material (typically silt and clay), frequently interbedded with granular soils (predominantly sand and gravel); and 3. Springs or seeping groundwater during the wet season; B. Slopes of forty percent or greater; C. Any areas located on a landslide feature which has shown movement during the Holocene Epoch (post glacial) or which is underlain by mass wastage debris from that period of time; D. Known hazard areas, such as areas of historic failures, including areas of unstable, old and recent landslides; *TCC 24.03.010*.

9. The Applicant's geotechnical consultant conducted a slope stability analysis as part of the geotechnical review of the site and concluded that at the proposed building envelope the Factor of Safety (FS) would exceed industry standards under both static and seismic conditions. Slopes with FS values exceeding 1.0 are expected to be stable (with values close to 1.0 prone to failure with a trigger), and slopes with FS values below 1.0 are expected to fail. For static conditions, the target value was a minimum FS of 1.5 and the calculated value was 1.97. For seismic conditions, the target value was 1.1 and the calculated value was 1.29. *Exhibit 1.J.* In his review memo, the County's geologist submitted that the Applicant's analysis meets code and industry requirements but noted that the analysis does not take into account the impact of grading, as the report was prepared prior to final grading plans. He warned that, despite the mitigation measures that have been implemented, there is still a risk of reactivation of the landslide. However, he did not recommend denial of the application. He recommended that the drainage features located on site not be disturbed and that construction comply with the recommendations in the geotechnical report. *Exhibit 1.K.* On a direct question on the subject, the Applicants indicated that they feel "absolutely safe" constructing and living in a residence built on the site. They intend to occupy the residence themselves. *Testimony of Cheryl Morris and Jim Morris.*
10. Impacts associated with site development would be addressed through preparation of an engineered drainage and erosion control plan and revegetation of disturbed areas after construction. There are no critical area functions and values at issue, and there would be no disturbance to Puget Sound species of concern. County Planning Staff submitted that limiting the size of the proposed residence would not reduce impacts to the critical area. *Exhibit 1.*
11. With respect to whether the existing cabin – alone – represents reasonable use of the property, Staff noted the small size of the cabin and submitted that the usefulness of the property would likely be diminished if the Applicant was limited to the cabin. *Exhibit 1.* The Applicants do not consider expansion of the cabin to be feasible due to the its age, condition, and design. *Testimony of Cheryl Morris and Jim Morris.*
12. There is an existing on-site sewage system, approved for a one-bedroom residence, and a two-family well serving the existing cabin. The County Public Health and Social Services Department reviewed the application for conformance to the requirements of the Thurston County Sanitary Code and recommended approval, subject to conditions that the residence be located a minimum of ten feet from any existing or proposed sewage system drainfield (the site plan depicts minimum ten-foot setbacks), and that an on-site sewage system evaluation by a licensed designer be approved prior to building permit issuance. *Exhibits 1.H and 1.M.*
13. No change in site access is proposed. Entry to the garage would be from the existing driveway, which may be improved but would not be expanded. *Testimony of Cathy Morris and Scott McCormick.*

14. The subject property has not been subdivided, nor have the boundaries been adjusted, since February 1, 1994. *Exhibit 1.F.*
15. Notice of the open record hearing was mailed to property owners within 500 feet of the subject property on November 21, 2019, published in *The Olympian* on November 29, 2019, and posted on site on or before November 14, 2019. *Exhibits 1, 1.A and 2.* There was no public comment on the application.

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. No other reasonable use of the property as a whole is permitted by the critical areas ordinance. Based on the area of the site, existing surrounding land uses and the uses allowed outright in the RL 1/2 zone, a residential use is the only reasonable use of the property. *Findings 3 and 4.*
2. No reasonable use with less impact on the critical area or buffer is possible. Given the area of the site relative to surrounding parcels and the character of surrounding development, the existing cabin, which is sized consistent with the County's accessory guest house standards, does not constitute reasonable use of the parcel. For the proposed new residence, the Applicants propose a multi-story design to minimize the development footprint and keep the impervious coverage below the SMPTR limitations. Based on the testimony and evidence submitted at the hearing, requiring that the Applicants to further reduce the footprint would not result in a lesser impact to the critical area. *Findings 3, 4, 5, 6, 8, 10, and 11.*
3. With conditions of approval, the requested residential development would not result in damage to other property and would not threaten the public health, safety or welfare on or off the development site, or increase public safety risks on or off the subject property. Credible evidence was presented that landslide-related risks have been substantially mitigated, such that the residence may safely be constructed as long as the recommendations of the geotechnical report are followed and the drainage features installed by the County are maintained. The conditions of approval also address the sanitary code requirements identified by the Public Health and Social Services Department. *Findings 7, 9, and 12.*
4. The proposed reasonable use is limited to the minimum encroachment necessary to prevent denial of all reasonable use of the property. Because the entire site is a critical area, any reasonable use requires encroachment into the critical area. The proposed development footprint is relatively compact and is located to meet required setbacks from the shoreline and the septic system. *Findings 5, 6, 8, and 12.*
5. With conditions of approval, the proposed reasonable use would result in minimal alteration of the critical area. Construction would not be allowed to disturb the drainage features installed by the County as landslide mitigation. Erosion control measures would be implemented on the site. *Findings 7, 9, and 10.*
6. The proposal ensures no net loss of critical area functions and values. Implementation of an engineered drainage and erosion control plan would prevent impacts to the Puget Sound shoreline. *Finding 10.*
7. The use would not result in unmitigated adverse impacts to species of concern. *Finding 10.*

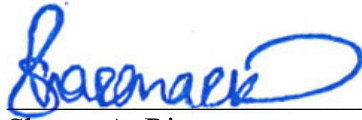
8. The location and scale of existing development is not the sole basis for granting the reasonable use exception. The reasonable use exception is required due to the critical area encumbering the entire parcel. No residential development of any scale would be possible without the approval. *Finding 8.*

DECISION

Based on the preceding findings and conclusions, the request to construct a single-family residence within a landslide hazard area at 5001 Sunrise Beach Road NW is **GRANTED** subject to the following conditions:

1. An engineered storm drainage and erosion control plan shall be submitted to Thurston County CPED for review and approval prior to building permit issuance.
2. Prior to building permit issuance, erosion control shall be installed and inspected by Thurston CPED Staff. Erosion and storm water controls, i.e. silt fencing and straw waddles, must be installed such that uncontrolled storm water cannot reach the Puget Sound shoreline.
3. The horizontal drainage feature located at the northern property line including the rock-filled basket on the beach must not be disturbed by any construction activities.
4. The applicant shall follow all recommendations contained in the project geotechnical report in the record at Exhibit 1.J.
5. Erosion and storm water control best practices meeting Thurston County standards; Chapter 15.05 shall be employed during all phases of the project. Proper erosion and sediment control practices shall be used on the construction site and adjacent areas to prevent upland sediments from entering the shoreline environment. All areas disturbed or newly created by construction activities shall be seeded, vegetated, or given some other equivalent type of protection against erosion.
6. The maximum impervious surface on the parcel shall not exceed 30% per the Shoreline Master Program for Thurston County.
7. The proposed residence must be located a minimum of 10 feet from any existing or proposed on-site sewage system drainfield area.
8. Prior to release of the building permit, an on-site sewage system evaluation prepared by a licensed designer must be submitted to Thurston County Environmental Health for review and approval.

DECIDED December 23, 2019.



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 **\$1,020.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

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



Project No. _____
Appeal Sequence No.: _____

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

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

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

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

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

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

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

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

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

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

STANDING

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

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED

SIGNATURE OF APPELLANT

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of \$750.00 for Reconsideration or \$1,020.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.