

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NAME: MORALEZ REASONABLE USE EXCEPTION

PROJECT NUMBER: 2020104201

TAX PARCEL NUMBER: 13825410102

LOCATION ADDRESS: 3434 Delphi Road S.W., Olympia, WA 98512

APPLICANTS: Joseph and Anna Moralez
2154 Lakemoor Drive S.E.
Olympia, WA 98512

PLANNER: Brett Bures

SUMMARY OF REQUEST:

The Applicants request a Reasonable Use Exception (RUE) for a reduction of the buffer beyond that which is allowed in Thurston County Code. The development proposal is for a single-family residence and an on-site septic system within a reduced wetland and/or stream or its buffer. The home will utilize the existing drive and the onsite well. No impacts to the wetlands or stream are proposed. The site is located at 3434 Delphi Road S.W., Olympia, Section 25 Township 18 Range 3W NPS-0062 LT 1 Document 8208090018 EXCEPT ROW 4408257

SUMMARY OF DECISION: Approved with conditions.

DATE OF DECISION: September 16, 2021

PUBLIC HEARING:

After reviewing the Community Planning and Economic Development Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on August 17, 2021, at 10:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT 1 - Community Planning and Economic Development Department Staff Report**
- Att. A - Master Application**
- Att. B - Reasonable Use Exception Application**
- Att. C - Revised Site Plan**
- Att. D - Revised Wetland Delineation and Stream Analysis Report and Mitigation Report**
- Att. E - Comment from the Squaxin Island Tribe**
- Att. F - Email Correspondence between Applicant and the Squaxin Island Tribe stating that Inadvertent Discovery Plan is requested**
- Att. G - Comment Letter from the Nisqually Indian Tribe**
- Att. H - Memorandum from Environmental Health**
- Att. I - Letter from Jim Hunter and Associates regarding Septic System Placement**
- Att. J - Notice of Land Use Application and Public Hearing Notice**
- Att. K - Email Regarding Subdivision of a Subject Property**

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

BRETT BURES, County Development Services Manager, appeared and testified that the proposal is for a Reasonable Use Exception (RUE) for a reduction of a regulated wetland buffer which is beyond what is allowed by Code. The Applicants have proposed a single-family residence and on-site septic system that will utilize an existing drive. (He corrected the Staff Report to note the proposal will not include the existing well but a new on-site well.) Wetland A is rated a Category III wetland with an overall score of 17 and a habitat score of 8. Wetland B was discovered in 2019, but is exempt as being below the threshold for the buffer requirements with an overall score of 14 and a habitat score of 6. If the RUE is approved by the Examiner, the County recommends certain conditions of approval.

DAWN PEEBLES, County Senior Environmental Health Specialist, appeared and testified that Environmental Health has reviewed the RUE application and has spoken to the Applicants who have not yet submitted a formal application for the on-site septic system design. However, the Applicants are working with a licensed septic system designer. (Att. I) Therefore, the Department does not object to approval of the RUE with the understanding that such approval does not represent approval of any proposed on-site septic system as shown on the site plan or the suitability of the site to support an on-site system. (Att. H) At the time of formal application, the design will be reviewed as to proper setbacks and may need to be moved within the box area designated on the site plan.

JOSEPH MORALEZ, Applicant, appeared and stated they appreciate all the work of the County and testified that they are in agreement with the conditions of approval except for questioning the requirement to plant 99 trees included in the Mitigation Report. (Att. D). He stated that proposal was intended to release the moratorium on the property imposed prior to their purchase but is due to expire. While in force, new growth is such that he is unsure there is room to plant the 99 trees.

BRETT BURES testified that the tree plantings were included in the Applicants' application to mitigate the impacts of the proposal. If there has been a change of circumstances, he would defer to Applicants' project biologist to provide the analysis.

ALEX CALLENDER, Applicants' project biologist, appeared and testified that the Applicants' property is encumbered by a fish bearing stream and an associated wetland that need to be protected. The Forest Practices Moratorium was in effect to address the impacts of forestry on the area. The proposed mitigation was above and beyond what was required due to impacts from those practices. Due to the new growth, much of the property could be overplanted which is not a healthy situation due to competition between plants for light and food. He opined that the original mitigation proposal for the stream and the wetland would be sufficient to maintain their functions and values.

BRETT BURES testified that Condition 4 could be amended to add verbiage to enable the Applicants to submit a revised mitigation plan regarding tree planting.

ALEX CALLENDER reappeared and summarized his report noting the fact the stream is within the wetland increases the required habitat points in Thurston County. The development will not impact the stream as the position of the home will result in drainage to the south, and not towards the stream. Also, the distance from the home to the stream is such that stormwater and the lawn watering will not affect the stream due to natural filtering. The mitigation plan also includes screening the home from the wetland and stream habitat by planting shrubs and other plants such as ground covers and trees.

DAWN PEEBLES reappeared and testified that the proposed site plan shows an existing well on the property; however, County records indicate that it is a natural spring with a pumphouse which serves an adjacent property with an attendant easement. (Att. H)

JOSEPH MORALEZ reappeared and stated there is a plan for a new well and they would like to have their neighbor be on the new well as a two-party system and then the spring well and pumphouse would be decommissioned.

COREY HADDAD, a member of the public, appeared and asked if the subject property had been previously subdivided, why would a RUE be required?

BRETT BURES did not have the background information but would provide it to the Examiner. He noted that in general, critical areas are addressed during the subdivision process but he would need some time to research the subject property.

No one spoke further in this matter and the Hearing Examiner admitted the County Staff Report with Attachments A-J into the record, left the record open until 4:00 p.m. Friday, August 20, 2021, for Mr. Bures to research the history of the subject parcel and took the matter under advisement. The hearing was concluded at 10:48 a.m.

On August 17, Mr. Bures filed an email noting the property has been subdivided in 1982 (Att. K). (Examiner notes the subdivision pre-dated the critical areas ordinances).

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

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. The Applicants request a Reasonable Use Exception (RUE) for the reduction of the Wetland buffer greater than allowed in the Thurston County Code (TCC) to construct a single-family residence and an on-site septic system within the reduced wetland buffer. The home will utilize an existing driveway; a natural spring and attendant pumphouse will be decommissioned and a new well will be constructed on the property.
3. The subject property is located at 3434 Delphi Road S.W., Olympia, Tax Parcel Number 13825410102, within Section 25 Township 18 Range 3W NPS-0062 LT 1 Document 8208090018 EXCEPT ROW 4408257.
4. The forested parcel is approximately 5.26-acres in size and is surrounded by single-family residences to the north and west and by vacant land to the south and east.
5. The subject property has one regulated wetland, Wetland A, and one unregulated wetland, Wetland B, that was discovered during a site reconnaissance and delineated on July 29, 2019. Wetland A is rated as a Category III wetland with an overall score of 17 and a habitat score of 8. Wetland B is a Category IV with an overall score of 14 and a habitat score of 6. Wetland B is exempt as it is below the threshold for the buffer requirements. There is also an unnamed stream that was found at the southern boundary of the property. This was determined to be a Type F stream that has a channel and sorted gravels. The F Type stream is greater than

five feet in width and requires a buffer per TCC 24.03. This stream is separate from Wetland A.

6. A SEPA Determination of Nonsignificance (DNS) was issued on July 15, 2020, for a Release of Moratorium application which received approval on August 20, 2020, for the proposed residence.
7. Written notice of the public hearing was sent to all property owners within 500 feet of the project site and notice was publicized in The Olympian on August 6, 2021, at least ten (10) days prior to the hearing.
8. Thurston County did not receive any public comments. In a letter dated July 19, 2021, (Att. G) the Nisqually Indian Tribe indicated they had no comments or concerns regarding the proposal but did request being informed if there are any Inadvertent Discoveries of Archaeological Resources/Human Burials. In a email dated October 30, 2021, (Att. F) the Squaxin Island Tribe stated they were okay with the requirement of the Thurston County Inadvertent Discovery Plan instead of a cultural resource investigation.
9. The Thurston County Public Health and Social Services Department reviewed the proposal and did not object to the approval of the RUE with the understanding that such approval does not represent approval of any proposed on-site septic system as shown on the site plan nor the suitability of the site to support an on-site septic system. At the time of formal application, the design will be reviewed as to proper setbacks and may need to be moved within the box area designated on the site plan. (Att. H)
10. The purpose of Thurston County Code (TCC) 24.25 entitled "Fish and Wildlife Habitat Conservation Areas" is articulated in TCC 24.25.005:
 - A. Protect habitat and healthy functioning ecosystems to support viable populations of priority and locally important fish, wildlife, and plants in Thurston County.
 - B. Preserve the functions and values of locally important habitat.
 - C. Protect the functions and values of priority habitats such as, but not limited to, prairies, Oregon white oak, and riparian areas along streams and marine waters.
 - D. Protect the function and values of marine habitats, including shellfish beds harvested for commercial use or personal consumption.
 - E. Provide for connectivity among fish and wildlife habitats.

11. The authority for a RUE is expressed in TCC 24.45. 010:

A reasonable use exception is required when adherence to the provisions of this title would deny all reasonable use of the subject property as a whole, due to the property's size, topography, or location relative to the critical area and any associated buffer. A reasonable use exception shall only be granted if no other reasonable alternative method of development is provided under this title and the Thurston County Code.

12. The required criteria for a RUE is stated in TCC 24.45.030:

The hearing examiner shall approve, or approve with conditions, the reasonable use exception if:

- A. No other reasonable use of the property as a whole is permitted by this title;

The proposed single-family home is consistent with the surrounding properties and will have less impact than other types of development. Per the Applicants, the space outside the buffer zone is not suitable for home placement as it would be directly on the street and contains a swale.

- B. No reasonable use with less impact on the critical area or buffer is possible. At a minimum, the alternatives reviewed shall include a change in use, reduction in the size of the use, a change in the timing of the activity, a revision in the project design. This may include a variance for yard and setback standards required

The Applicants' proposal and request along with the mitigation plan will result in less impact than other residences by the suitable soils for the plantings. The Applicants state that due to the topography, the proposed location is the only viable location for the single-family residence.

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

The requested use as a single-family residence is consistent with the surrounding area and the proposed mitigation plan will prevent damage to the property or to other properties; therefore, the RUE will not threaten the public health, safety or welfare.

- 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;

The proposal will require a reduction to the west side of the property to limit the encroachment into the critical area and/or buffer necessary for reasonable use of the property. Further, with the proposed mitigation plan yielding a 'no net loss' in functions and values, the impacts to the critical area are minimized.

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

The proposed residence has minimal alteration of the wetland buffer as the mitigation plan for a robust plantings will maintain or even increase the functions and values of the fish and wildlife resources and the hydrological and geologic conditions.

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

The proposed mitigation plan will result in 'no net loss' of wetland and stream functions and values by planting trees, shrubs and ground cover and other measures will be taken to minimize/eliminate impacts during construction.

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

The impacts to the functions and values of Wetland A and B by the prior forest practices will be offset by the proposed planting plan and will result in no adverse impacts to the various wildlife in the area and, may likely increase their viability.

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

The proposed construction and mitigation plan are compatible with the surrounding single-family residences and vacant land but is not the sole basis for the RUE.

- 13. TCC 24.45.020 entitled "Reasonable use exception – Certain properties not eligible" prohibits a RUE if the inability to derive reasonable use is the result of a self-created hardship such as subdividing the property, adjusting a boundary line, or other actions thereby creating the property undevelopable.

Herein, the sole basis for the RUE is the regulated Wetland A associated with the fish bearing stream and overall topography of the parcel and not from any "self-created" hardship created by the Applicants. In this regard, Mr. Bures' research determined that the parcel had been part of a 1982 subdivision that pre-dated the relevant critical area regulations.

CONCLUSIONS:

- 1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
- 2. The Applicants have demonstrated that the proposal will be consistent with all applicable codes and, therefore, the request for the Reasonable Use Exception should be approved subject to the following conditions:
 - 1. Prior to or in conjunction with the issuance of any building permit, all applicable regulations and requirements of the Thurston County Public Health and Social Services Department, Public Works Department, Fire Marshal and Thurston County Community Planning and Economic Development Department shall be met.
 - 2. Prior to the issuance of any building permits, the Applicants shall submit an Inadvertent Discovery Plan.
 - 3. The Applicants shall stop work and contact the proper authorities, including the Nisqually Tribe Cultural Resources Preservation Officer, Brad Beach, the Squaxin Tribe, Chehalis Tribe, Thurston County CPED and WA State Department of Archeology and Historic Preservation (DAHP) if during excavation there are discoveries of archaeological artifacts or human burials.

4. The Applicants shall complete all buffer mitigation as proposed, and subsequently amended, in the Revised Mitigation Report as prepared by Land Services Northwest dated, December 2, 2020, or any revisions thereto, approved by Thurston County.
5. The Applicants shall provide a surety agreement and bond, in compliance with TCC 24.70, to ensure the proposed monitoring and maintenance portion of the proposed Wetland Delineation and Stream Analysis Report and Mitigation Report is completed successfully.
6. Fencing and Critical Area signs shall be installed along the reduced buffer edge, subject to standards of TCC 24.60.
7. All development on the site shall be in substantial compliance with the approved Reasonable Use Exception application, as conditioned. Any alteration to the proposal will require approval of a new or amended Reasonable Use Exception. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
8. Prior to building permit issuance, erosion control shall be installed and inspected by Thurston CPED staff. Photos may substitute for on-site inspection. Erosion and stormwater controls i.e.; silt fencing and / or straw waddles must be installed landward of the buffer such that uncontrolled stormwater cannot reach the adjacent wetland.
9. The Reasonable Use Exception (RUE) shall expire if the use or activity for which it is granted is not commenced within three (3) years of final approval by the RUE hearings examiner. The RUE shall also expire when the use or activity is vacated for a period of three years. Knowledge of the expiration date is the responsibility of the Applicants.

DECISION:

RUE approved with conditions.

ORDERED this 16th day of September, 2021.



STEPHEN R. SHELTON
Deputy Hearing Examiner

TRANSMITTED this day of September, 2021, to the following:

APPLICANTS: Joseph and Anna Moralez
 2154 Lakemoor Drive S.E.
 Olympia, WA 98512

OTHERS:

THURSTON COUNTY

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

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

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

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

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

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

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

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

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

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$777.00** for a Request for Reconsideration or **\$1,054.00** 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 \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.