



COUNTY COMMISSIONERS

Carolina Mejia-Barahona  
District One

Gary Edwards  
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District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. 2021104627
	)	
<b>Randy and Lisa Woodward</b>	)	<b>FINDINGS, CONCLUSIONS</b>
	)	<b>AND DECISION</b>
	)	
For a Reasonable Use Exception	)	
_____	)	

**SUMMARY OF DECISION**

The request for a reasonable use exception to construct a driveway within a wetland buffer at 13810 Vail Cut Off Road SE, Rainier, Washington is **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request**

Randy and Lisa Woodward (Applicants) requested a reasonable use exception (RUE) to construct a gravel driveway within a Category II wetland buffer to serve a proposed single-family residence that would be located outside of the wetland buffer. The subject property is located at 13810 Vail Cut Off Road SE, Rainier, Washington.

**Hearing Date**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on January 11, 2022. The record was held open through January 13, 2022 to allow members of the public who had technical or access issues that prevented them from joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing comments were submitted, and the record closed on January 13, 2022.

**Testimony**

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

Lacy Garner, Associate Planner, Thurston County Community Planning & Economic Development Department

Dawn Peebles, Senior Environmental Health Specialist, Thurston County Public Health and Social Services Department

Arthur Saint, Civil Engineer, Thurston County Public Works Department

Randy Woodward, Applicant

### **Exhibits**

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

- Exhibit 1      Community Planning and Economic Development Report including the following attachments:
- A. Notice of Public Hearing, dated December 31, 2021
  - B. Master and Reasonable Use Exception Applications, received September 1, 2021
  - C. Site plan, received September 1, 2021
  - D. Critical Areas Report and Effects Analysis for Single Family Dwelling, prepared by EcoAssets Environmental LLC, dated April May 24, 2021
  - E. Addendum to Critical Areas Report, prepared by EcoAssets Environmental LLC, dated August 10, 2021
  - F. Mitigation Plan Addendum, prepared by EcoAssets Environmental LLC, dated November 12, 2021
  - G. Mitigation Planting Plan, prepared by Randy Woodward, received December 8, 2021
  - H. Ingress/Egress and Utilities Easement, dated March 29, 2021
  - I. Revised notice of application, dated November 5, 2021
  - J. Comment memorandum from Amy Crass, Thurston County Public Health & Social Services Department, dated October 20, 2021
  - K. Comment letter from Brad Beach of the Nisqually Indian Tribe, dated September 30, 2021
  - L. Comment emails from Shaun Dinubilo of the Squaxin Island Tribe, dated September 24, 2021
  - M. Public comment email from and response to John Frazier, dated November 24, 2021 and November 29, 2021, respectively
- Exhibit 2      Emails from Lacy Garner and Heather Tschaekofske regarding proposed Black Cottonwood selection in the mitigation plan, dated January 11, 2022
- Exhibit 3      Emails from Randy Woodward and Lacy Garner regarding revision of the proposed mitigation plan, dated January 12, 2022

Based on the record developed through the open record hearing process, the Hearing Examiner enters the following findings and conclusions.

### FINDINGS

1. Randy and Lisa Woodward (Applicants) requested a reasonable use exception (RUE) to construct a gravel driveway within a Category II wetland buffer to serve a proposed single-family residence that would be located outside of the wetland buffer. The subject property is located at 13810 Vail Cut Off Road SE, Rainier, Washington.<sup>1</sup> *Exhibits 1, 1.B, and 1.C.*
2. The RUE application was received on September 1, 2021 and deemed complete for purposes of commencing project review on September 29, 2021. *Exhibit 1.I.*
3. The subject property is within the rural portion of the County and is zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5). *Exhibit 1.* Primary permitted uses in the RRR 1/5 zone include single-family and two-family residences, agriculture (including forest practices), home occupations, and accessory farm housing. *Thurston County Code (TCC) 20.09A.020.*
4. Surrounding parcels to the north, south, and west across Vail Cut Off Road SE are developed with single-family residential uses. A neighbor to the north has granted the Applicants an ingress/egress and utility easement that would allow the Applicants to access the subject property from an existing private road that runs just north of the shared property line. The Applicants propose to construct the driveway into the site from the terminus of the private road, roughly 450 feet east of Vail Cut Off Road SE. *Exhibits 1, 1.C, and 1.H.*
5. The subject property is approximately 6.42 acres in area. It is undeveloped and in a forested condition. *Exhibit 1.* There is a Category II wetland (Wetland A) in the center of the subject property. Wetland A has a habitat score of 6 (H, M, L), requiring a standard buffer width of 220 feet, which may be reduced to 165 feet with mitigation. *Exhibits 1.C and 1.E; TCC Table 24.30-2.* There is also an off-site wetland to the southeast of the subject property with similar characteristics (Wetland B), which is presumed to have the same 220-foot buffer requirement. *Exhibit 1.D.*
6. Wetland A and its buffer encumber the entire central portion of the property, from the northern property line to the southern property line. Wetland B's buffer encumbers the southeast corner of the property. There is unencumbered land within both the western and eastern portions of the property, but the western portion of the property next to Vail Cut Off Road is fairly significantly sloped<sup>2</sup> and contains two clusters of Oregon white

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<sup>1</sup> The legal description of the subject property is a portion of Section 23, Township 16 North, Range 1 East, W.M.; 23-16-1E SE SW LY E OF VAIL C/O RD LESS PT S OF FOLL LN: BE G NE CO R S230F. *Exhibit 1.*

<sup>2</sup> The grade of the slopes along Vail Cut Off Road is not stated in the record, and it is not known whether or not these slopes are regulated; however, as can be seen from the closeness of the topographic lines in the top image on

oak, which is a state-listed priority species. Oregon white oak woodlands, stands, and individual trees are regulated pursuant to the County's critical areas ordinance and buffers around these trees on site must be protected.<sup>3</sup> The protected trees and slopes leave too little area for development in the western end of the site outside of wetland buffer. The proposed development envelope in the eastern portion of the property is flat and more suitable for development. There is sufficient area in the eastern portion of the property for the Applicants to construct the residence, septic system, and well without any reduction in wetland buffer width, and the access driveway for which the instant RUE is sought entirely avoids any potential slope or Oak buffer. *Exhibits 1.B, 1.C, 1.D, and 1.E; Randy Woodward Testimony.*

7. The proposed path of the driveway to the residence would cross the northeast portion of the Wetland A buffer. The driveway width would be 15 feet, and the total footprint within the buffer would be approximately 5,500 square feet. In order to minimize tree removal, approximately 40% of the route would follow an old, overgrown access road. With the route proposed, only four trees would need to be removed. This route is generally flat, eliminating the need for any grading within the buffer. The driveway would be surfaced with gravel, rather than paved, which would further reduce potential buffer impacts over the life of the use. *Exhibits 1.B, 1.C, 1.E, and 1.G; Lacy Garner Testimony.*
8. As mitigation for the driveway's encroachment into the Wetland A buffer and associated vegetation removal, the Applicants propose to plant 19 trees and 100 shrubs along the south side of the driveway (between the driveway and the wetland) for the driveway's entire distance through the buffer. The proposed mitigation plan breaks the plantings into zones based the nature of the impact for each road segment. The area of plantings would total 6,875 square feet. The planting area would exceed the impact area of 5,500 square feet to ensure no net loss of wetland buffer functions. The additional area would extend the mitigation to the wetland edge at the closest point between the driveway and the wetland, providing improvements in wildlife habitat.<sup>4</sup> *Exhibits 1.G and 1.F.*
9. The Thurston County Environmental Health Division verified that there are suitable soils in the proposed septic system location and has approved the septic system design. Environmental Health did not identify any issues of concern with respect to the project. *Exhibit 1.J; Dawn Peebles Testimony.*

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the cover sheet of the critical areas report (Exhibit 1.D), the angle of the slope parallel to the road frontage is dramatic. *Exhibit 1.D; Randy Woodward Testimony.*

<sup>3</sup> The full required oak buffer is not detailed in the critical areas study nor depicted on the site plan. *Exhibits 1.C and 1.D; Lacy Garner Testimony.*

<sup>4</sup> The Applicants retained a critical areas consultant for preparation of the critical areas report and two addenda (Exhibits 1.D, 1.E, and 1.F), but the Applicants prepared the mitigation plan detail themselves, identifying the location and specific species proposed for planting. Planning Staff testified that the mitigation plan satisfies the requirements of the critical areas ordinance. *Exhibit 1.G; Lacy Garner Testimony.*

10. The proposed development is categorically exempt from review under the State Environmental Policy Act. *Exhibit 1; WAC 197-11-800; TCC 17.09.055(B)*.
11. Representatives of the Nisqually Indian Tribe and the Squaxin Island Tribe submitted comments indicating that they have no issues of concern; however, both requested to be notified if there are any inadvertent discoveries of archaeological resources or human burials. *Exhibits 1.K and 1.L*.
12. Notice of the open record hearing was mailed to property owners within 500 feet of the site on December 22, 2021 and published in *The Olympian* on December 31, 2021. *Exhibits 1 and 1.A*.
13. Public comment on the application was limited to a request for an environmental impact study. Planning Staff responded to this request by email explaining that an environmental impact study is not required for the project type, but that the Applicants are required to provide a mitigation plan that demonstrates no net loss of wetland functions. *Exhibit 1.M*. There was no further public comment at or following the virtual hearing.<sup>5</sup>
14. Having reviewed all information submitted by the Applicants and all agency and public comment, Planning Staff maintained their recommendation of approval subject to the conditions recommended in the staff report. *Lacy Garner Testimony; Exhibit 1*. The Applicants did not object to the recommended conditions. *Randy Woodward Testimony*.
15. At hearing, it was discussed that the tree species proposed in the mitigation plan was Black Cottonwood. Planning Staff asked for the opportunity to supplement the record with input from other County staff regarding the desirability of that species. According to the Buffer Planting Recommendations for Thurston County (Listing Only Native Species), Black Cottonwoods are allowed. County Biologist Staff confirmed that the species tends to do better in wetter conditions and that it grows quickly, which can cause it to be more prone to breakage during wind/storms. Following the invited post-hearing email exchange, Planning Staff and the Applicants jointly proposed that the number of trees be set at 19, but that the species of trees be left open to be selected from the approved planting list submitted by Planning Staff at Exhibit 2, to be determined at time of planting. *Exhibits 2 and 3*.

## 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**

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<sup>5</sup> Lack of post-hearing comment was confirmed by the Hearing Clerk.

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. Given the zoning of the parcel, its encumbrance by regulated critical areas, and the character of surrounding development, single-family residential use is the only reasonable use of the property. Driveway access is an essential element of the residential use. *Findings 3, 4, and 5.*
2. No reasonable use with less impact on the critical area or buffer is possible. The only reasonable location for the residence, septic system, and well is in the eastern portion of the subject property, outside the wetland buffer but several hundred feet from the street. It would not be possible to access the eastern portion of the property without crossing wetland buffer. However, the proposed extension of the driveway from the existing private road on the neighboring parcel would reduce the length of the on-site portion of the driveway by roughly 450 feet and would avoid impacts to the western portion of Wetland A's buffer. The proposed driveway placement would minimize the need for tree removal. *Findings 5, 6, 7, and 8.*

3. As conditioned, the requested 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. Conditions of approval would address erosion control requirements and cultural resources protection. No other issues relating to public health, safety, or welfare were identified during the application review process. *Findings 10, 12, and 14.*
4. The proposed reasonable use is limited to the minimum encroachment necessary to prevent denial of all reasonable use of the property. As concluded in conclusion 2 above, it would not be possible to reduce the wetland buffer encroachment while still providing for reasonable use of the property. *Findings 5, 6, 7, and 8.*
5. As conditioned, the proposed reasonable use would result in minimal alteration of the critical area. The proposed driveway corridor would follow an older access corridor for a portion of its distance, thereby minimizing tree removal and would be surfaced with gravel to reduce future impacts from stormwater runoff. New trees and shrubs would be installed between the driveway and the wetland to mitigate for vegetation removal within the driveway corridor. Conditions of approval require the mitigation plantings to be installed prior to the final building inspection. *Findings 8, 9, and 15.*
6. As conditioned, the proposal ensures no net loss of critical area functions and values. The mitigation plan provides for a planting area that exceeds the area of disturbance and would improve habitat and mitigate stormwater runoff from the driveway adjacent to the wetland. Conditions of approval require the mitigation plantings to be installed prior to the final building inspection and critical areas signage to be installed along the driveway, consistent with CAO requirements. *Findings 9 and 15.*
7. The use would not result in unmitigated adverse impacts to species of concern. The proposed building site and access route avoids the Oregon white oak in the western portion of the parcel. *Finding 7.*
8. The location and scale of existing development is not the sole basis for granting the reasonable use exception. The RUE is needed because a wetland buffer bisects the parcel, preventing access to the residential building site. *Findings 6 and 7.*

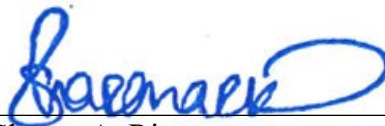
### **DECISION**

Based on the preceding findings and conclusions, the request for a reasonable use exception is **GRANTED** subject to the following conditions:

1. Prior to or in conjunction with the issuance of any building or construction permits, all applicable regulations and requirements of the Thurston County Public Health and Social Services Department, Public Works Department, Fire Marshall, and Thurston County Community Planning and Economic Development Department shall be met.
2. Applicants are responsible for compliance with all other applicable County permitting requirements.

3. Prior to requesting the final building inspection, the approved revegetation plan (Exhibit 1.G) must be installed and inspected. Prior to requesting the final building inspection, contact the permit center to have installation of revegetation plan inspected by the Planning Technician. Note that once requested, an inspection could take up to three weeks to schedule.
4. Critical area signage shall be required along the driveway within the wetland buffer per TCC 24.60.030 as a condition of final building permit issuance. This shall be inspected at the same time as the revegetation plantings.
5. A Construction Stormwater Permit from the Washington State Department of Ecology maybe 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 Applicants' responsibility to obtain this permit if required.
6. Best management practices such as completing work during the dry season and maintaining proper working order of equipment, as well as temporary erosion and sediment control methods including silt fencing and/or coir logs shall be implemented. All disturbed areas shall be promptly seeded with a non-propagating native grass/fescue mix following installation consistent with Exhibit 1.F, and temporary erosion and sediment control measures shall remain in place until site conditions are restored.
7. The Applicants must comply with all requirements of state and/or federal law to avoid disturbance and alteration of artifacts, remains, or other cultural resources on site during development. In the event of inadvertent disturbance or alteration, the Applicants shall immediately stop work and contact the Nisqually Indian Tribe, the Squaxin Island Tribe, and the State Department of Archaeology and Historic Preservation.

**DECIDED** January 27, 2022.



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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 **\$804.00** for a Request for Reconsideration or **\$1,093.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

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



<b>Project No.</b> _____ <b>Appeal Sequence No.:</b> _____
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**Check here for:**                    **RECONSIDERATION OF HEARING EXAMINER DECISION**

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

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

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

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

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

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

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

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

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

**STANDING**

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

Signature required for both Reconsideration and Appeal Requests

\_\_\_\_\_  
APPELLANT NAME PRINTED

\_\_\_\_\_  
SIGNATURE OF APPELLANT

Address \_\_\_\_\_

\_\_\_\_\_  
Phone \_\_\_\_\_

**Please do not write below - for Staff Use Only:**

Fee of  \$804.00 for Reconsideration or \$1,093.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.