



COUNTY COMMISSIONERS

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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. 2021103792
)	
Mountain Terrace Builders)	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 and associated improvements within a wetland buffer is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

Mountain Terrace Builders (Applicant) requested a reasonable use exception to construct a 3,732 square foot single-family residence and associated improvements, including a septic tank, septic drainfield, and an improved concrete driveway/parking pad, within a Category II wetland buffer. The proposed buffer reduction would be 100 feet. The subject property is located at 19421 161st Way SE, Yelm, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on March 8, 2022. The record was held open through March 10, 2022 to allow members of the public who may have been unable to join the virtual hearing for technology or lack of access reasons to submit written post-hearing comments, with time scheduled for responses from the parties, and for planning staff to provide supplemental analysis to the staff report. No post-hearing comments were submitted, the supplement to the staff report was timely submitted, and the record closed on March 10, 2022.

No in-person site visit was conducted, but the Examiner viewed the subject property on Google Maps.

Testimony

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

Sharon Lumbantobing, Senior Planner, Thurston County Community Planning & Economic Development Department

Jody Clifford, Mountain Terrace Builders, Applicant

Exhibits

The following exhibits were admitted in the record through the open record public hearing:

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

- A. Notice of Public Hearing, dated February 18, 2022
- B. Master Application, submitted July 21, 2021, and revised on October 5, 2021
- C. Reasonable Use Exception Application, submitted July 21, 2021, and revised on October 5, 2021
- D. Site plan, submitted July 21, 2021, and revised on October 5, 2021
- E. Wetland Delineation Report and Buffer Mitigation Report, submitted July 21, 2021, and revised on October 5, 2021
- F. Thurston County Inadvertent Discovery Plan, acknowledged by Applicant representative September 6, 2021
- G. Impervious Surface Worksheet, submitted October 5, 2021
- H. Notice of Application for Reasonable Use Exception, dated October 13, 2021
- I. Approval memo from Amy Crass, Thurston County Environmental Health, dated January 6, 2021
- J. Comment letter from the Nisqually Indian Tribe, dated July 30, 2021
- K. Comment email from the Squaxin Island Tribe, dated August 3, 2021
- L. Comment email from the Squaxin Island Tribe, dated October 21, 2021
- M. Email from Washington State Department of Archaeology and Historic Preservation requesting Inadvertent Discovery Plan, dated August 4, 2021

Exhibit 2 Memo from Sharon Lumbantobing, dated March 8, 2022, to supplement Staff Report

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

FINDINGS

1. Mountain Terrace Builders (Applicant) requested a reasonable use exception (RUE) to construct a 3,732 square foot single-family residence and associated improvements, including a septic tank, portions of septic drainfield, and an improved concrete driveway/parking pad, within a Category II wetland buffer. The proposed buffer reduction would be 100 feet. The subject property is located at 19421 161st Way SE, Yelm, Washington.¹ *Exhibits 1, 1.B, and 1.C.*
2. The RUE application was received on July 21, 2021 and deemed complete for purposes of commencing project review on October 8, 2021. *Exhibit 1.H.*
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). Primary permitted uses in the RRR 1/5 zone include single-family and two-family residences, agriculture, accessory farm housing, and home occupations. *Exhibit 1; Thurston County Code (TCC) 20.09A.020.*
4. The subject property is five acres in area and is undeveloped except for an existing driveway extending into the site from 161st Way SE along northern property boundary and a wellhead. The property is partially cleared, with the cleared area in the southern portion of site. Historically, numerous vehicles and shipping containers were stored on the site, along with unidentified debris. The property was cleaned up by approximately 2006 and has been in its current state since then. The Applicant purchased the property approximately two years ago. *Exhibits 1, 1.C, and 1.E; Jody Clifford Testimony.*
5. Parcels in the immediate vicinity of the subject property within the neighborhood surrounding 161st Way SE are of similar size and shape as the subject property, and nearly all are developed with single-family residences. Parcels in the greater vicinity of the subject property vary in size and shape and used for agricultural and residential purposes. The size of residence proposed is comparable to the sizes of residences on surrounding properties. *Exhibits 1 and 1.E.*
6. The subject property contains a 0.12-acre portion of a 7.9-acre Category II wetland. The largest portion of the wetland is south of the subject property, but a branch of the wetland extends north near the eastern property line and then crosses the property from east to west near the northern property line. The property is thus surrounded by wetland on three sides. The wetland has a habitat score of 8 (HHM), requiring a standard buffer width of 280 feet. An additional 15-foot building setback from the buffer edge is required. *Exhibit 1.E; TCC Table 24.30-2.*
7. The Category II wetland and standard 280-foot buffer occupy 98.6% of the subject property, leaving an isolated area of approximately 3,050 square feet available for development adjacent to the western property line in the southcentral portion of the site.

¹ The legal description of the subject property is: "Section 22 Township 16 Range 2E Quarter SE SE BLA-1634 TR A Document 2434/714"; also known as Tax Parcel Number 22622441800. *Exhibits 1 and 1.B.*

It would not be possible to fit a residence and associated improvements within that unencumbered area, as the septic drainfields alone require more than 5,500 square feet. *Exhibit 1.E.*

8. The Applicant proposes to place the proposed residence and septic system in the southwestern portion of the property, as far from wetland areas as possible. The septic drainfields would be placed near the western property line, in an area coinciding with (but necessarily extending outside of) the unconstrained portion of the site. *I.E., Appendix C "Proposed Project Map."* The residence would be placed to the east of the drainfields, and the driveway to the north of the residence. With this configuration, a minimum buffer of 180 feet would be maintained, plus the required 15-foot building setback. Because the buffer reduction would exceed the 25% reduction that may be administratively approved pursuant to TCC 24.30.050, a RUE is required. The total area of buffer reduction would be 28,558 square feet (including setback and yard areas), but the development footprint within the buffer would be 9,249 square feet.² *Exhibits 1 and 1.E.*
9. As mitigation for the proposed development, the Applicant proposes to enhance 53,802 square feet of buffer to the north and south of the proposed development area by planting native species of vegetation, with most of the enhancement area to be located between the development area and the southern property line. Proposed enhancement would include the planting up to 100 trees, 320 shrubs, and 200 ferns at locations to be determined by a qualified biologist, as well as removal of invasive species. The buffer areas proposed for enhancement are currently in poor condition due to historic clearing and vehicle storage on the site. The enhancement is designed to increase plant diversity, density, and canopy layers, provide increased control of stormwater runoff, and provide greenery, cover, and shade for wildlife. With the mitigation, there would be no net loss of ecological functions resulting from the reduced buffer width. Planning Staff reviewed the mitigation plan and determined that it meets the requirements of the Critical Areas Ordinance. *Exhibits 1 and 1.E.*
10. Based on review of the Washington Department of Fish and Wildlife Priority Habitats and Species database, waterfowl concentrations occur in the vicinity of the subject property, although no waterfowl were observed during a site visit by the Applicant's wetland consultant. No species listed as endangered or threatened were identified on site or in the immediate vicinity during the review process. *Exhibits 1 and 1.E.*
11. The residence would be served by the proposed on-site septic system and a new well; an existing well on the site would be decommissioned. The Thurston County Environmental Health Division reviewed the proposal and did not identify any issues of concern, nor conditions needed to protect public health. *Exhibit 1.I.*

² While the total footprint of improvements adds up to 11,617 square feet, a portion of the septic drainfield would be located outside the standard wetland buffer on the small unencumbered portion of the subject property, such that only 9,249 square feet of the improvements are within the standard buffer. *Exhibit 1.E page 2 and 1.E Appendix C.*

12. The proposed development is categorically exempt from review pursuant to the State Environmental Policy Act. *Exhibit 1; WAC 197-11-800; TCC 17.09.055(B)*.
13. The Nisqually Indian Tribe and the Squaxin Island Tribe each commented 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. The Washington Department of Archaeology and Historic Preservation (DAHP) requested that the Applicant create an inadvertent discovery plan to keep on site during construction. The Applicant has signed a form acknowledging and expressing intent to comply with the Thurston County inadvertent discovery plan. Planning Staff's recommended conditions of approval require the plan to be implemented during construction. *Exhibits 1, 1.F, 1.J, 1.K, 1.L, and 1.M*.
14. Notice of the open record hearing was mailed to property owners within 500 feet of the site on February 18, 2022 and published in *The Olympian* on February 25, 2022. Notice of the application was mailed to property owners within 500 feet of the site on October 13, 2021. There was no public comment on the application. *Exhibits 1, 1.A, and 1.H*.
15. Having reviewed all submitted materials and heard testimony at hearing, Planning Staff maintained their recommendation of approval subject to conditions. *Exhibit 1; Sharon Lumbantobing Testimony*. The Applicant representative waived objection to the recommended conditions. *Jody Clifford Testimony*.

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 an application for 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 size and zoning of the parcel and the character of development within the surrounding neighborhood, single-family residential use is the only reasonable use of the property. *Findings 3, 4, 5, and 15.*
2. No reasonable use with less impact on the critical area or buffer is possible. There is no other reasonable use of the property. Because nearly 99% of the site is encumbered by wetland buffer, any residential development of the property would impact the wetland buffer. The proposed site design maximizes the buffer width while maintaining required setbacks between the septic system, residence, and well, and it concentrates the septic components in the small portion of the site that is not encumbered by the wetland buffer. All proposed development would be within a previously disturbed portion of the wetland buffer. *Findings 6, 7, 8, and 9.*
3. As conditioned, the requested development would not result in damage to other property and will 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. The conditions of approval incorporate the comments submitted by the Nisqually and Squaxin Island Tribes and the DAHP with respect to cultural resources. No other issues relating to public health, safety, or welfare were identified during the application review process. *Findings 11, 13, 14, and 15.*
4. The proposed reasonable use is limited to the minimum encroachment necessary to prevent denial of all reasonable use of the property. As described in Conclusion 2, the proposed site design maximizes the buffer width while maintaining setbacks between the septic system, residence, and well. *Finding 8.*
5. As conditioned, the proposed reasonable use would result in minimal alteration of the critical area. The wetland itself would not be impacted by proposed development activities. Impacts to the buffer would be minimized through the proposed site design and implementation of the mitigation plan. Conditions of approval address storm

drainage and erosion control requirements to protect the wetland during construction. *Findings 6, 8, and 9.*

6. As conditioned, the proposal ensures no net loss of critical area functions and values. Given the extensively degraded condition of the on-site buffer, the proposed mitigation would result in improvement in several critical area functions. Conditions of approval require a surety agreement and bond, consistent with CAO requirements, to ensure that the mitigation plan is implemented. *Finding 9.*
7. The use would not result in unmitigated adverse impacts to species of concern. As proposed and conditioned, the project would improve wildlife habitat on-site. No endangered or threatened species were identified during the review process. *Findings 9 and 10.*
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 encumbers nearly the entire parcel, leaving insufficient area for reasonable use of the property. *Finding 7.*

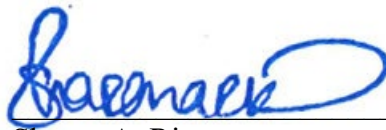
DECISION

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 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 and Economic Development Department shall be met.
2. The Applicant shall complete all buffer mitigation, monitoring, and reporting, as proposed in the Wetland Delineation Report and Buffer Mitigation Report (Exhibit 1.E).
3. Prior to building permit issuance, the Applicant shall provide a surety agreement and bond, in compliance with TCC 24.70, to ensure the proposed monitoring and maintenance portion of the mitigation report is completed successfully. The amount of the bond is to be 125% of the cost of mitigation and monitoring plan, which is \$22,577.60 (Exhibit 1.E).
4. Prior to building permit issuance, erosion control shall be installed and inspected by Thurston County Community Planning and Economic Development staff. Photos may substitute for inspection. Erosion and stormwater controls, (i.e. silt fencing and/or straw waddles) must be installed landward of the reduced buffer such that uncontrolled storm water cannot reach the adjacent wetland.
5. Prior to building permit issuance, all landscaping, wetland buffer fencing, signage, and buffer enhancement work proposed in the plan shall be installed, subject to standards of TCC 24.60.

6. Prior to building permit issuance, the Applicant shall record with the Thurston County Auditor a Critical Area and Buffer Notice and a site plan showing the wetlands and associated buffers indicating that the property is within a critical area and setting out the mitigating conditions imposed upon the subject property.
7. All development on 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. The Applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of critical areas and their buffers.
9. If archaeological artifacts are observed during any phase of the project, all work shall be immediately halted. Washington State Department of Archaeology and Historic Preservation, Thurston County Community Planning & Economic Development Department (CPED) and affected Tribes shall be contacted to assess the situation prior to resumption of work. The Inadvertent Discovery Plan for Thurston County shall be implemented for the project as necessary.
10. The proposed project is subject to compliance with the following policies and regulations, including any applicable mitigation requirements: Thurston County Comprehensive Plan, Zoning Ordinance (TCC 20), Critical Areas Ordinance (TCC 24), Stormwater Drainage Design and Erosion Control Manual (TCC 15.05), Uniform Building Code (TCC 14), State Environmental Policy Act (SEPA) Ordinance (TCC 17.09.)

DECIDED March 21, 2022.



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.



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 \$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___.