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HEARING EXAMINER

Creating Solutions for Our Future

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THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2020103435, 2020103438, 2020103440
DW Visions LLC REASONABLE USE EXCEPTION

SEQUENCE NO.: 20-108941 XI, 20-108944 XI, 20-108947 XI

LOCATION ADDRESS: 11603, 11611 & 11625 Independence Rd SW
Rochester WA 98579

TAX PARCEL NO.: 14512120201 (Project 2020103435)

LEGAL DESCRIPTION: Section 12 Township 15N Range 4W W2 NW NE LY NLY O-WR & N
CO LESS E330F LESS N204F OF W214

TAX PARCEL NO.: 14512120202 (Project 2020103438)

LEGAL DESCRIPTION: Section 12 Township 15N Range 4W W2 NW NE W150F OF
E330F LY
NLY O-WR & N CO LESS N3 0F CO R

TAX PARCEL NO.: 14512120203 (Project 2020103440)

LEGAL DESCRIPTION: Section 12 Township 15 Range 4W W2 NW NE W150F OF
E180F LY N
OF O-WR & N CO LESS N 30F CO

APPLICANT: DW Visions LLC
PO Box 446

Rochester, WA 98579

POINT OF CONTACT: Kim Pawlawski
Bracy and Thomas Surveyor
1520 Irving Street Suite B
Tumwater, WA 98512

PLANNER: Heather Tschackofske, Associate Planner

SUMMARY OF REQUEST:

The Applicant requests approval of a Reasonable Use Exception (RUE) to build a single family residence, driveway, utilities, well and a new septic system within a frequently flooded area (100 year flood zone, and 1996 flood of record) associated with the Chehalis River. The request is for three separate RUE approvals for single family development on the three subject parcels, which are currently under common ownership.

SUMMARY OF DECISION: Approved with Conditions.

DATE OF DECISION: August 3, 2022

PUBLIC HEARING:

After reviewing the Community Planning and Economic Development Department 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 July 12, 2022 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 Report**
- Attachment a - Notice of Public Hearing, July 1, 2022**
- Attachment b - Zoning Vicinity Map**
- Attachment c - 100 year Flood Zone Map**
- Attachment d - 1996 Flood of Record Map**
- Attachment e - Shoreline Jurisdiction Map**
- Attachment f - Master Applications, August 5, 2020**
- Attachment g - Reasonable Use Exception Applications, August 5, 2020**
- Attachment h - Site plan, May 26, 2022**
- Attachment i - Mitigation site plan, May 26, 2022**
- Attachment j - Driveway profile May 26, 2020**
- Attachment k - Habitat Assessment, May 31, 2020**
- Attachment l - Flood Elevation Certificates June 2, 2019 and Topographic Survey, May 2020**
- Attachment m - RUE Narratives, August 5, 2020**

- Attachment n** - **Notice of Applications, December 16, 2020**
- Attachment o** - **Comment Memorandum, Amy Crass, Thurston County Public Health & Social Services, September 14, 2021 – Parcel 14512120201**
- Attachment p** - **Comment Memorandum, Amy Crass, Thurston County Public Health & Social Services, September 14, 2021 – Parcel 14512120202**
- Attachment q** - **Comment Memorandum, Amy Crass, Thurston County Public Health & Social Services, September 14, 2021 – Parcel 14512120203**
- Attachment r** - **Brad Beach, Nisqually Indian Tribe, Letters, August 18, 2020**
- Attachment s** - **Shaun Dinubilo, Squaxin Island Tribe, Letters, August 27 and December 18, 2020**
- Attachment t** - **Dan Penn, Confederated Tribes of the Chehalis Reservation, Letters, August 31, 2020**
- EXHIBIT 2a** - **Jared M. Snyder Letter, July 10, 2022**
- EXHIBIT 2b** - **Kayla McCarthy Letter, July 12, 2022**

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.

HEATHER TSCHACKOFSKE, Associate Planner and Biologist, appeared and testified that the Applicant seeks approval of three separate Reasonable Use Exception (RUE) permits and Floodplain permit to build a single family residence, driveway, utilities, well, and a new septic system within a frequently flooded area (100 year flood zone and 1996 flood of record) associated with the Chehalis River on three subject parcels currently under common ownership. The future building permits would act as the required Floodplain permit for these applications, however appropriate flood conditioning is also provided within the RUE. Written notice of the public hearing was sent to all property owners within 500 feet of the site and notice was published in The Olympian on July 1, 2022 at least ten (10) days prior to the hearing. The project was determined to be categorically exempt from SEPA per WAC 197-11-800(1)(a and b(i)), and per TCC 17.09.055(B).

The Comprehensive Plan designation for the subject properties is agricultural resource use and the zoning district is Long Term Agriculture (LTA). The properties are mapped within the Conservancy Shoreline designation of the Shoreline Master Program for the Thurston Region (SMPTR) due to association with the Chehalis River which is a Type S stream and is designated a shoreline of the state requiring a riparian habitat area width of 250-feet measured from the edge of ordinary high water mark. Staff finds the proposal consistent with the SMPTR policies and standards as the planned impervious surfaces are well under the maximum impervious surface coverage allowance of 30% for each lot.

The subject properties have scattered open field areas, with dense mature Christmas tree farm covering the majority of each parcel. The southern property lines are bordered by railroad right of way and the surrounding land uses consist primarily of single-family residences and agricultural lands zoned Rural Residential Resource One Dwelling Unit Per Five Acres (RRR 1/5) and LTA. Each parcel is entirely within the FEMA regulated floodplain and, therefore, the proposal requires RUE approval for the construction of a new single-family residence. Frequently flooded areas means lands in the floodplain subject to at least a one percent or greater chance of flooding in any given year or areas

within the highest known recorded flood elevation, or within areas subject to flooding due to high ground water. The property is also mapped within a critical aquifer recharge area Category I which are characterized by extreme aquifer sensitivity. A Habitat Assessment was completed by Land Services NW wherein a “may affect, not likely to adversely affect” determination was made for the listed species Bull trout satisfying FEMA flood guidelines for Endangered Species Act protections. Although the Applicant’s comprehensive mitigation plan demonstrated “no net loss” from impacts to endangered species, the plan will offset the addition of impervious surface of the project area within the flood zone. Stormwater and surface water will be encouraged and directed to infiltration areas through splash blocks and infiltration trenches and impervious surfaces for each lot will be mitigated by the addition of native plant enhancement areas at a 1:1 ratio with vegetation enhancement and invasive removal.

The proposal for a single family residence (SFR) is consistent with the Comprehensive plan designation of LTA which provides for SFR being a primary use. There should be no impact to critical areas since the projects are designed to be consistent with septic and building code flood standards. The proposed structures are modest, located in the northern portion of each parcel which is the highest point of each property to minimize impacts to the frequently flooded areas, the driveways will be paired and constructed at existing grade on adjacent lots and clearing is limited around the homes, septic and driveways. Although each of the three subject parcels is entirely located within the 100 year flood zone, all development is outside the most restrictive riparian habitat area. There are no known impacts to species of concern and the location and scale of surrounding development was not the sole basis for recommendations of approval. No objections were received from public agencies. The Nisqually Indian Tribe requested a cultural resource survey to which the Applicant is responsible to address. The Chehalis Tribes and Squaxin Island Tribe have no concerns. No public comments were received prior to the filing of the Staff report. Ms. Tschackofske concluded that the County recommends approval with certain conditions of approval imposed on each of the three RUE applications and requested Exhibit 1 and attachments a-t be made a part of the record.

The Examiner was informed that two public comments were recently received and made a part of the public record as follows:

- Exhibit 2a: Jared M. Snyder letter dated July 10, 2022
- Exhibit 2b: Kayla McCarthy letter dated July 12, 2022

DAWN PEEPLES, Senior Environmental Health Specialist, appeared and testified that Environmental had reviewed the three applications and had no objections at this time as the Applicant has chosen to move forward with the RUE application prior to obtaining an approved on-site system design. Approval of the RUE would not represent approval of the proposed on-site septic system as the Applicant would be required to file the on-site septic system application and meet all code requirements of the Code. Environmental Health has provided recommended conditions of approval to address this requirement.

KIM PAWLAWSKI, Applicant’s Point of Contact, appeared and testified that the request from the Nisqually Indian Tribe that the Applicant conduct a cultural resource survey (Ex. 1 p.11E) should not be required as the proposed single-family residence is categorically exempt from SEAPA review to which the Ms. Tschackofske agreed and noted that the survey was not included as a condition of

approval of the RUE applications and that the Staff Report second section “E” on page 11 should be Section F making section F revised to section G.

KAYLA MCCARTHY, appeared and stated she was currently interning on a farm adjacent to the subject property and owns one acre also adjacent to the property noted her interest in preserving farm lands.

LARRY WEAVER, Applicant, appeared and testified regarding Jared M. Snyder’s July 10, 2022, letter expressing concern that the approval of the RUE would impact water availability in the area by reducing the aquifer and also for the periodic displacement of flood waters to the detriment of nearby properties and businesses. Mr. Weaver stated that the Washington State Department of Ecology has never restricted water rights in the area and the nine (9) wells in the area that have been monitored since the 1970’s show only “fractional changes” in the water table. Further, the 3 nearest wells to the subject property have water pull rights per minute of 50-gallons, 50-gallons and 25-gallons. The aquifer in Scatter Creek and Chehalis River Basin is tremendous and the daily water usage of the three proposed single family residences of 300-400 gallons each will have no effect on it.

HEATHER TSCHACKOFSKE, reappeared and stated that Mr. Snyder’s concerns are addressed in the conditions of approval which require the plans and construction of the residences and associated utilities to meet the requirements of the TCC Building Code for buildings within the Special Flood Hazard Area (SFHA).

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:40 a.m.

The Examiner held the record open through July 14, 2022, for public comment from members of the public who tried to join the virtual hearing but were unable to join/make comment during the meeting due to technology or access problems. If there is no timely post hearing public comment, the record closes for public comment on July 14, 2022, and the 10-business day decision deadline is July 28, 2022. If there is public post-hearing comment, Staff and Applicant may respond by July 18, 2022, the record closes on July 18, 2022, and the 10-business day decision deadline is August 1, 2022.

NOTE: A complete record of this hearing is available in the office of the Thurston County Community Planning & Economic Development Department.

FINDINGS:

1. The Applicant filed the Master Applications (Att. f) and Supplemental Applications (Att. g) for three (3) Reasonable Use Exception (RUE) permits on August 5, 2020: Project No. 2020103435 (Lot 1); Project No. 2020103438 (Lot 2); Project No. 2020103440 (Lot 3). The Applications Project Description for each parcel is “for new single-family residences, septic, well, driveway in 100-yr floodzone.” Each single family residence (SFR) will be approximately 2500-square feet (sf) with a rear porch, driveway, drinking water well and utilities at the road with each parcel requiring approximately 10,000-sf of clearing for development. (Att. k)

2. The construction of the three single-family home is categorically exempt from review under the State Environmental Policy Act (SEPA) per (WAC 197-11-800(1)(a and b)(i) and per Thurston County Code (TCC) 17.09.055(B).
3. In letters dated August 18, 2020, the Nisqually Indian Tribe requested that cultural resources surveys be required before any development permits were issued and requested to be informed if there are any Inadvertent Discoveries of Archaeological Resources/Human Burials. (Att. r).
4. In emails dated August 27, 2020, the Squaxin Island Tribe Cultural Resources commenting that they had no specific concerns but would concur if DAHP recommended cultural resources surveys, but at a minimum would request an Inadvertent Discoveries of Archaeological Resources/Human Burials condition. (Att. s)
5. In letters dated August 31, 2020, the Confederated Tribes of the Chehalis Reservation had no concerns for the proposals. (Att. t)
6. Notice of Application of Application for the projects was issued on December 16, 2020, with the comment period expiring on January 5, 2021. (Att. n)
7. In letters dated September 14, 2021, Amy Crass, Thurston County Environmental Health Division, commented that the Thurston County Environmental Health had reviewed the request and had no objections but noted “the applicant has chosen to move forward with the RUE application prior to obtaining an approved on-site septic system design. Approval of the RUE in no way represents approval of the proposed on-site septic system as shown on the site plan or suitability of the site to support an on-site septic system.” (Atts. o, p and q)
8. Thurston County Floodplain Manager, Tim Rubert, provided the following comment, “*Firm # 420, Flood Zone AE,BFE 117' NAVD 88. FOR is 117.86 East of the site. Flood Elevation is from FEMA map dated 06/19/2020. Future development of the site will be required to meet TCC 14.38.*” Tim also provided flood conditions as outlined in the conditions of approval.
9. The Thurston County Public Works Department closed their review with no comments.
10. Written notice of the public hearing was mailed to all property owners within 500-feet of the site on June 24, 2022, and was published in The Olympian on July 1, 2022, at least ten (10) days prior to the hearing. (att. a)
11. The Applicant, DW Visions LLC, PO Box 446, Rochester, WA 998579 has possessory interests in the above-listed parcels located at 11603, 11611 and 11625 Independence Rd SW, Rochester WA 98579 which are located within the rural portion of Thurston County. The three parcels cover 8.38-acres of which 5.3-acres is a dense mature noble Christmas tree farm that will be cleared as necessary; the rest of the subject properties is scattered open field areas, Parcel 14512120201 consist of 4.24-acres, Parcel 14512120202 is 2.07-acres and Parcel 14512120203 is 1.91-acres. The site is fairly flat with a slight slope to the north where the Chehalis river flows from east to west toward the Pacific Ocean. With the exception of the abandoned railroad right-of-way and the native forest associated with it bordering the

southern property lines of the subject properties, the parcels are entirely within the FEMA regulated floodplain (100 year flood zone of the Chehalis River) although flooding can occur more frequently. Each parcel is also entirely within a 1996 flood of record, which is considered a special flood hazard area (SFHA). (Att. k) The parcels were created by an approved subdivision recorded in 1975 (#SS-0078, Auditor File number 934490).

12. The Thurston County Comprehensive Plan designation for the parcels is agricultural resource use and the zoning classification is Long Term Agriculture (LTA) (Att. b). The properties are also mapped within the Conservancy Shoreline designation of the Shoreline Master Program for the Thurston Region (SMPTR), associated with the Chehalis River (Attachments e). The Chehalis River is a Type S stream, and designated “shorelines of the state” as defined in chapter RCW 90.58.030. A Type S stream requires a riparian habitat area width of 250-feet, measured from the edge of ordinary high water line. (Thurston County Code (TCC) 24.25.020) The property is also mapped within a critical aquifer recharge area Category I, which are characterized by extreme aquifer sensitivity.
13. The applications for the proposed development are consistent with the Thurston County Comprehensive Plan designation of LTA which allows single family residences as primary uses subject to applicable design standards. Although the parcels sizes (4.24, 2.07 and 1.91 acres) are non-conforming to the 5-acre minimum parcel size of the zoning district, they are legal lots created by an approved subdivision and are, therefore, consistent with the zoning.
14. Pursuant to the SMPTR promulgated in 1990, the proposed project is consistent with the policy and provisions of the SMPTR Conservancy designations. Each parcel exceeds the minimum lot size of 40,000-sf of dry land area and the minimum lot width of 100-feet (Lot 1 is 185,934-sf/ and 117.31-ft wide; Lot 2 is 89,834-sf,/150-ft wide; Lot 3 is 82,945.2-sf/150 wide) (Att. k and h). The single family residential proposals are exempt from the requirement for Substantial Development Permits per WAC 173-27-040 (2.g.) and are consistent to standards and specific regulations of the residential chapter (SMPTR Section Three, Chapter XVI, Residential Development) which will be confirmed through the building permit review process. Each proposal is well under the maximum impervious surface coverage allowance of 30% for each lot and no part of any of the projects will be more than 35-feet above average grade.
15. The requested Reasonable Use Exceptions to allow for development within a frequently flooded area are consistent with the relevant General Requirements of the Thurston County Critical Area Ordinance, TCC 24.01.035.
 - A. Avoid Impacts. As each property is entirely located within the 100-year flood zone and a SFHA, the residences, wells and septic systems will be constructed in the highest elevations areas which are in the northern portion of each parcel. The driveways are to be constructed at existing grade (Attachment j) and all development will be outside the most restrictive riparian habitat area width of 250-feet from the ordinary high water line of the Chehalis River and all development will be as far as possible from nearby critical areas (Attachments i and k). Further, the projects will be implemented with best management practices for erosion and sediment control as well as stormwater and waste management to avoid and minimize construction impacts to critical areas (Attachment k).
 - B. No Net Loss of Critical Area Functions. Each home must meet the requirements of

TCC 14.38 of the building code for buildings within the SFHA “to minimize losses due to flood conditions.” (TCC 14.38.010) Specifically, development will be on the highest elevation point for each property; the residences will be elevated 2-feet above Base Flood Elevation (BFE) measured to the bottom of the floor joist; the engineered plans must be designed to prevent floatation, collapse, lateral movement and for flood velocity if required by site conditions; all development on the three subject parcels will be outside the most restrictive riparian habitat area width of 250-feet from the OHWM of the Chehalis River; and no fill is proposed on any of the three subject parcels.

- C. Monitoring. Although mitigation in floodplains does not typically refer to monitoring impacts on natural habitats, the Applicant has submitted a 5-year mitigation and monitoring plan to offset the addition of impervious surface within the 100-year floodplain.
- D. Access to Enable Administration. The Applicant will grant access to the county, or designee, to inspect the development and to perform monitoring in response to county personnel presenting proper credentials and making reasonable efforts to contact the property owner before entering onto the Applicant’s private property.

16. The requested Reasonable Use Exceptions to allow for development within a frequently flooded area are consistent with the relevant General Standards of the Thurston County Critical Area Ordinance, TCC 24.20.080.

- A. The RUE applications submitted herein include site plans, narratives, flood elevation certificates and a habitat assessment that provide all the information necessary to evaluate the proposed activity, its impacts and its compliance with the applicable provisions TCC 24 and TCC 14.38, Development in Flood Hazard Areas.
- B. The RUE applications regarding development outside the most restrictive riparian habitat width of 250-feet from the Chehalis River are designed to minimize impacts to critical area resulting in “no net loss” to habitat and the proposed impervious surfaces will be offset by tree and shrub mitigation plantings.
- C. The parcels are entirely located within the 100-year flood zone and the SFHA resulting in no location to construct a single-family home outside flood hazard area. However, the residences will be placed outside the most restrictive riparian habitat area width of 250-feet in the highest elevation available, no fill is proposed, the driveways will be built to existing grade and the septic systems and buildings will be designed to allow flood waters to flow through and not increase the flood hazard.
- D. No structural flood hazard reduction measures proposed. Each development will be designed to meet the requirements of TCC 14.38 and best management practices will provide erosion control, construction materials shall be stored on site when flooding is least likely to occur and construction debris will be removed to an approved location off-site to prevent flood impacts during and after project completion (Attachment k).
- E. Thurston County Staff have concluded that the proposal will not significantly impact ground water if the proposed stormwater management and mitigation plans are followed. In this regard, the “Floodplain Habitat Assessment” determined that the mitigation plan would result in “no net loss of river floodplain functions.” More specifically, the Assessment stated:

The hyporheic zone of the Chehalis River is large and the extent of development on the site is small even relative to the available area onsite. The best available science shows that the functions

deteriorate when impervious increases above 33% and the proposed project is well below that. In order to prevent the occurrence of the cumulative impacts of similar development, infiltration galleries and stormwater management will maintain all stormwater on site and direct it to groundwater replenishment. The result will be no impact to the hyporheic zone.” Staff believes the proposals will not significantly impact ground water if proposed stormwater management and mitigation plans are followed. The habitat assessment determined “the purpose of the mitigation plan is to provide no-net loss of river floodplain functions. (Attachment k)

- F. In reviewing the proposal herein addressing flood control under the general standards provided in TCC 24.20.080, Staff has noted the following statements in Section F:
The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside of frequently flooded areas or usages permitted within such areas will not be subject to flooding or flood damage. This chapter shall not create liability on the part of Thurston County, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

- 17. The requested Reasonable Use Exceptions to allow for development within a frequently flooded area are consistent with the requirements of the Thurston County Critical Area Ordinance TCC 24.20.130, regarding “New on-site sewage disposal systems.”
 - A. Although the three proposed septic systems are located within the 100-year flood zone and a SFHA, they are outside the 250- foot riparian habitat area for the Chehalis River and there are no locations to locate a system outside of the flood hazard areas. The Public Health and Social Services Department reviewed the current proposals for each of the three parcels and provided a “no objection” to the RUE for each parcel. (Attachments o, p, and q) The septic must be built at or below grade elevation, and the septic alarm panel must be elevated 2-feet above the BFE and also on the top of the well, per TCC 14.38 flood standards.
 - B. Pursuant to TCC 24.30, new on-site sewage disposal may be located inside a one-hundred-year channel migration hazard area, However, such location may require systems that provide a higher level of sewage treatment and are required to be located as far from the frequently flooded area as possible. (Also see Article IV, the Rules and Regulations of the Thurston County Board of Health Governing Disposal of Sewage and WAC 173-160-171.)
 - C. This section on failing on-site sewage disposal systems is not applicable to the proposal herein as the subject proposals are for three new septic systems.
- 18. The requested Reasonable Use Exceptions to allow for development within a frequently flooded area are consistent with the requirements of the Thurston County Critical Area Ordinance TCC 24.20.135 regarding “Residential Single Family Home.”

- A. The proposal for the single-family residence, driveway, septic and well is designed to meet TCC 14.38 flood standards and public health standards for each of the three parcels at the time of building permit submittal.
- B. The proposal is for a single-family residence.

19. 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.

20. TCC 24.45.030, Review criteria, provides that the Hearing Examiner shall approve, or approve with conditions, the reasonable use exception if the following eight (8) criteria are met:

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

The proposed single family residence is a primary use in the Long Term Agriculture (LTA) zoning classification and is a reasonable use when in compliance with "the no net loss" requirements of the Thurston County Critical Areas ordinance. (TCC Title 24) The current agricultural use has limited floodplain attributes and would not provide any additional residential use. The improvements have a small overall footprint, will not require fill in the flood zone and will promote improved floodplain functions as the vegetation planted pursuant to the buffer and wetland enhancement plan matures,

- 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.

Although each property is entirely within a 1996 flood of record which is considered a special flood hazard area result in an inability to avoid construction in a frequently flooded area, the Applicants' proposals for single family residences are consistent with zoning and are designed to meet the septic and building code flood standards of TCC 14.38. The development is located on the highest point of each property to minimize impacts to the frequently flooded areas and to reduce the length of the driveways which are paired on adjacent lots to reduce the clearing requirements, as are the septic systems. Clearing is limited to 15-feet around the homes and approximately 5-15-feet around the septic and driveway on each of the three parcels. The mitigation plan compensates for the proposed impervious surface additions and all development will be done at grade to prevent any rise in overall flooding in the area.

- 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 conditions of approval of the proposed projects will comply with the Thurston County flood standards provided in TCC 14.38. The proposed filtration galleries on each of the three sites are designed to prevent stormwater discharge offsite. The septic systems will be reviewed and approved per current public health standards at the time of building permit submittal. As such, the proposal does not pose a potential hazard to other properties and will not threaten the public health, safety or welfare on or off the Applicants' property.

- D. The proposed reasonable use is limited to the minimal encroachment into the critical area and/or buffer necessary to prevent the denial of all reasonable use of the property;

There is no way to avoid the frequently flooded area as the entire property for each of the three parcels is encumbered. However, the project footprints are modest and structural development is located on the highest points of the three parcels to minimize the length of driveway and thereby minimize impervious surfaces. The new impervious surface areas will be offset by the proposed mitigation plan at a 1:1 restoration ratio. Furthermore, clearing has been limited to the minimum extent possible to allow ingress and egress to the properties and building without creating hazards to the homes due to vegetation encroachment.

- 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 area proposed for development on each of the three parcels is outside the most restrictive riparian habitat area width from the Chehalis River as well as outside the required SMPTR setbacks for residential development. The proposed new impervious surfaces will be offset by tree and shrub mitigation plantings which will provide increased habitat and hydrologic value during flood events. Replacement trees will grow higher and are more appropriate for the surroundings than the existing planted Noble firs. As proposed, the projects should have little to no impact to critical areas, including impacts to vegetation, fish and wildlife resources, hydrological conditions 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 Applicants' buffer and wetland enhancement plan provided in the "Floodplain Habitat Assessment" (Att. k) should not only ensure no "net loss of critical area functions and values" but will also provide increased habitat benefit to critical areas, including impacts to vegetation, fish and wildlife resources, hydrological conditions and geologic conditions. The area proposed for development on each of the three parcels is located at the highest elevation and is outside the most restrictive riparian habitat area width from the Chehalis River, as well as outside the required SMPTR setbacks for residential development. The proposed impervious surfaces will be offset by tree and shrub mitigation plantings. Specifically, the mitigation plan proposes a total of 12,712-sf of mitigation planting (3,800-sf on parcel 14512120201, 4,630-sf

on parcel 14512120202 and 4,282 sf on parcel 14512120203), which is a 1:1 mitigation ratio for the total area proposed for impervious surfaces on each site. Plantings will be a mix of native tree and shrub species which will be more appropriate for the surroundings than the existing planted Noble firs.

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

The project will not result in impacts to any species of concern. The project is designed such that there are no known impacts to species of concern which require mitigation. The habitat assessment evaluated all known species of concern in the project vicinity and determined “may affect, not likely to adversely affect” ESA listed Bull trout within the vicinity of each proposal (Attachment k).

- 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 location and scale of existing development on surrounding properties is not being considered the sole basis in reviewing the proposed RUE application. The current proposals are designed to have the least impact to critical areas on site. However, it should be noted that there are other residences located much closer to critical areas in the immediate vicinity of the subject properties.

21. 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 not from any “self-created” hardship created by the Applicant.

CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The Applicant has demonstrated that the proposal will be consistent with all applicable codes; therefore, each request for the Reasonable Use Exception should be approved subject to the following conditions:

Parcel 14512120201:

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. Applicant is responsible for compliance with other jurisdictional permitting requirements.
3. Per the Public Health and Social Services Department no objection to RUE approval letter dated September 14, 2021, “the applicant has chosen to move forward with the RUE application prior to obtaining an approved on-site septic system design. Approval of the RUE in no way represents approval of the proposed on-site septic system as shown on the site plan or suitability of the site to support an on-site septic system.”
4. Plans and specifications for the construction of the home, plus associated utilities and site development must meet the requirements of chapter 14.38.050 of the Thurston County Building Code for buildings within the SFHA.
5. Plans and specifications for the septic system must meet the requirements of chapter 14.38.050 of the Thurston County Building Code for buildings within the SFHA.
6. Mitigation and mitigation monitoring is required per the Habitat Assessment, dated May 31, 2022. Mitigation shall be implemented through the residential building permit process.
7. The area of property mapped as Shoreline Jurisdiction has a maximum impervious surface coverage allowance of 30%. The property has a maximum impervious surface coverage allowance of 10% per zoning criteria. The most restrictive shall apply.
8. The applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of subject property. No fill is allowed on site.
9. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the applicant’s responsibility to obtain this permit if required.
10. Best management practices (BMPs) such as completing work during the dry season and maintaining proper working order of equipment, as well as temporary erosion and sediment control (TESC) methods including silt fencing and/or coir logs shall be implemented. All disturbed areas will be promptly backfilled and reseeded following installation, and TESC measures will remain in place until site conditions are restored.
11. The Applicant 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 Applicant must immediately stop work and contact the Tribe and the State Department of Archaeology and Historic Preservation.

Parcel 14512120202:

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. Applicant is responsible for compliance with other jurisdictional permitting requirements.
3. Per the Public Health and Social Services Department no objection to RUE approval letter dated September 14, 2021, "the applicant has chosen to move forward with the RUE application prior to obtaining an approved on-site septic system design. Approval of the RUE in no way represents approval of the proposed on-site septic system as shown on the site plan or suitability of the site to support an on-site septic system."
4. Plans and specifications for the construction of the home must meet the requirements of chapter 14.38.050 of the Thurston County Building Code for buildings within the SFHA.
5. Plans and specifications for the construction of the home, plus associated utilities and site development must meet the requirements of chapter 14.38.050 of the Thurston County Building Code for buildings within the SFHA.
6. Mitigation and mitigation monitoring is required per the Habitat Assessment, dated May 31, 2022. Mitigation shall be implemented through the residential building permit process.
7. The area of property mapped as Shoreline Jurisdiction has a maximum impervious surface coverage allowance of 30%. The property has a maximum impervious surface coverage allowance of 10% per zoning criteria. The most restrictive shall apply.
8. The applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of subject property. No fill is allowed on site.
9. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the applicant's responsibility to obtain this permit if required.
10. Best management practices (BMPs) such as completing work during the dry season and maintaining proper working order of equipment, as well as temporary erosion and sediment control (TESC) methods including silt fencing and/or coir logs shall be implemented. All disturbed areas will be promptly

backfilled and reseeded following installation, and TESC measures will remain in place until site conditions are restored.

11. The Applicant 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 Applicant must immediately stop work and contact the Tribe and the State Department of Archaeology and Historic Preservation.

Parcel 14512120203:

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. Applicant is responsible for compliance with other jurisdictional permitting requirements.
3. Per the Public Health and Social Services Department no objection to RUE approval letter dated September 14, 2021, "the applicant has chosen to move forward with the RUE application prior to obtaining an approved on-site septic system design. Approval of the RUE in no way represents approval of the proposed on-site septic system as shown on the site plan or suitability of the site to support an on-site septic system."
4. Plans and specifications for the construction of the home, plus associated utilities and site development must meet the requirements of chapter 14.38.050 of the Thurston County Building Code for buildings within the SFHA.
5. Plans and specifications for the septic system must meet the requirements of chapter 14.38.050 of the Thurston County Building Code for buildings within the SFHA.
6. Mitigation and mitigation monitoring is required per the Habitat Assessment, dated May 31, 2022. Mitigation shall be implemented through the residential building permit process.
7. The area of property mapped as Shoreline Jurisdiction has a maximum impervious surface coverage allowance of 30%. The property has a maximum impervious surface coverage allowance of 10% per zoning criteria. The most restrictive shall apply.
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10. Best management practices (BMPs) such as completing work during the dry season and maintaining proper working order of equipment, as well as temporary erosion and sediment control (TESC) methods including silt fencing and/or coir logs shall be implemented. All disturbed areas will be promptly backfilled and reseeded following installation, and TESC measures will remain in place until site conditions are restored.
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DECISION: The requests for the Reasonable Use Exceptions 2020103435, 2020103438, 2020103440 are approved with the conditions noted above.

ORDERED this 3rd day of August, 2022.



STEPHEN R. SHELTON
Pro Tem Hearing Examiner

TRANSMITTED this 3rd day of August, 2022, to the following:

APPLICANT: DW Visions LLC
PO Box 446
Rochester, WA 98579

POINT OF CONTACT: Kim Pawlawski
Bracy and Thomas Surveyor
1520 Irving Street Suite B
Tumwater, WA 98512

OTHERS:

THURSTON COUNTY

