



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. 2022103582
)	
Jim Greene)	Kamilche RUE
)	
)	FINDINGS, CONCLUSIONS,
For a Reasonable Use Exception)	AND DECISION
_____)	

SUMMARY OF DECISION

The request for approval of a reasonable use exception is **GRANTED** with conditions.

SUMMARY OF RECORD

Request

Jim Greene (Applicant) on behalf of Kamilche Investments (Owner) requested a reasonable use exception (RUE) to construct a driveway within a Category III wetland buffer to serve proposed residential development on land encumbered by Category III wetlands and buffers. The subject property is located at 8805 Steamboat Island Road NW, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the application on May 9, 2023. The record was held open through May 11, 2023 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comments were submitted and the record closed on May 11, 2023.

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:

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

Alex Callender, Biologist, Land Services Northwest LLC, Applicant Representative

Jim Greene, Applicant Representative

Exhibits

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

- Exhibit 1 Community Planning and Economic Development Report including the following attachments:
- A. Notice of Public Hearing, dated May 9, 2023
 - B. Master Application and Reasonable Use Exception Application, received July 14, 2022
 - C. Revised Reasonable Use Exception Application, received February 24, 2023
 - D. Revised RUE Application supplemental answers
 - E. Notice of Application, sent September 7, 2022
 - F. Squaxin Island Tribe email, sent September 12, 2022
 - G. Nisqually Indian Tribe cultural resource request, sent September 13, 2022
 - H. Site Plan figure 2, received February 24, 2023
 - I. Site Plan figure 5, received February 24, 2023
 - J. Impervious Surface Calculations
 - K. Wetland Delineation and Assessment by Land Services Northwest LLC, drafted February 20, 2023
 - L. Buffer Enhancement Plan by Land Services Northwest LCC, drafted February 20, 2023
 - M. Thurston County Environmental Health memo of approval, dated March 23, 2023
 - N. Communication Matrix, sent October 31, 2022
 - O. Thurston County Inadvertent Discovery Plan
- Exhibit 2 Planning Staff's post-hearing follow up (email) on the topic of cultural resources, requested on the record by the Examiner, submitted May 9, 2023
- Exhibit 3 Applicant's acknowledgement (email) of Staff's post-hearing follow up, dated May 10, 2023

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

FINDINGS

1. Jim Greene (Applicant) on behalf of Kamilche Investments (Owner) requested a reasonable use exception (RUE) to construct a driveway to serve a single-family residence, well, and septic system on land encumbered by Category III wetlands and buffers. The subject property is located at 8805 Steamboat Island Road NW, Olympia, Washington.¹ *Exhibits 1, 1.B, 1.C, and 1.D.*
2. The RUE application was received on July 14, 2022 and deemed complete for purposes of commencing project review on September 9, 2022. *Exhibits 1.E.*
3. The subject property is a 10-acre forested, undeveloped parcel. Surrounding land uses are characterized by single-family residences, undeveloped forested parcels, and pastureland. *Exhibit 1.*
4. The subject property is within the rural portion of the County in unincorporated Olympia and is zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5). *Exhibit 1.* The purpose of the RRR 1/5 zone is “to encourage residential development that maintains the County’s rural character; provides opportunities for compatible agricultural, forestry and other rural land uses; is sensitive to the site’s physical characteristics; provides greater opportunities for protecting sensitive environmental areas and creating open space corridors; enables efficient road and utility systems; and does not create demands for urban level services.” *Thurston County Code (TCC) 20.09A.010.* 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; TCC 20.09A.020.*
5. Based on evaluation by a professional wetland scientist, the subject property contains two Category III wetlands. Wetland A, located in the eastern portion of the property (adjacent or parallel to much of the property’s Steamboat Island Road frontage) and extending off site, is a palustrine forested wetland that is seasonally flooded. The on-site area of Wetland A is approximately one-half acre. Wetland B, located in the western portion of the property and extending off site, is a palustrine forested seasonally flooded wetland that is primarily forested with patches of emergent vegetation. The on-site area of Wetland B is approximately one acre. Each of the Category III wetlands has a habitat score of 6, requiring a standard buffer width of 220 feet pursuant to the Thurston County critical areas ordinance. The buffer may be administratively reduced by 25% to 165 feet if mitigation is provided. Structures requiring a permit must be set back 15 feet from the wetland buffer edge. *Exhibit 1.K; TCC Table 24.30-1; TCC 24.01.035; TCC 24.30.050.*
6. The Wetland A and B buffers combined encompass nearly the entire parcel, leaving a relatively small wedge of unencumbered land in the southcentral portion of the parcel and a strip of unencumbered land along the western edge of the parcel. Due to the location and extent of Wetland A and its buffer in the eastern portion of the parcel, it would not be

¹ The legal description of the subject property is listed in the staff report as follows: 4-19-2W N4-SW-SW. *Exhibit 1.* The subject property is also known as Tax Parcel Number 12904330100. *Exhibit 1.A.*

possible to access these potentially developable areas from Steamboat Island Road without crossing the Wetland A buffer, even if the buffer were to be reduced to 165 feet. In addition, because Wetland B bisects the western portion parcel from north to south, it would not be possible to access the unencumbered land along the far western extent of the site without crossing Wetland B and its buffer in addition to the Wetland A buffer. The wedge of unencumbered land in the southcentral portion of the parcel therefore represents the least impactful development location because access to the area would only require crossing the Wetland A buffer. It is in this area where the residence is proposed to be sited. *Exhibits 1.K, 1.H, 1.I, and 1.C.* In the initial proposal, the project would have made use of a former road into the site located more towards the center of its frontage, because it had already been used as a roadway; however, it has substantially grown over with vegetation and the County felt that reopening it would result in greater impacts to the wetland. The final proposal minimizes impacts by placing the access driveway as far from on-site wetlands as possible. *Alex Callender Testimony.*

7. The proposed residential building footprint would be 3,057 square feet in area, and would be located outside of all wetland buffers. The only deviation from code standards triggered by the residence is a very minor intrusion into the required 15-foot construction setback from the Wetland A buffer in the very northwest-most corner of the primary septic drainfield. The area of intrusion into the construction setback is not to scale on the revised site plan, but was estimated by the Applicant representative to be three feet deep, leaving the construction setback in that exact location at approximately 12 feet.² The well would be west of the residence, at the Wetland B buffer edge but not encroaching into the wetland buffer. The septic tanks would be east of the residence, and the primary and reserve drainfields would be north of the residence. The reserve drainfield, a portion of the primary drainfield, and the septic tanks would encroach into the outer 25% of the Wetland A buffer, as allowed with mitigation pursuant to TCC 24.30.050. The distance between the septic drainfields and the wetland would be 165 feet at the closest point. The portion of the project necessitating a RUE is the proposed driveway from Steamboat Island Road, which would run through the Wetland A buffer along the southern property line as far from the wetland as possible. The driveway would be as narrow as possible while meeting Thurston County design standards. The distance between the driveway and the wetland edge would be 44 feet at the closest point. No wetland would be directly impacted by the project. *Exhibits 1.C, 1.D, 1.I, and 1.H; Alex Callender Testimony.*
8. The total area of buffer impact from the reserve drainfield and driveway would be 8,343 square feet (5,262 square feet for the driveway and 3,081 square feet for the septic

² The Applicant representative noted that this minor intrusion into the construction setback is for a septic drainfield, which will have no above-ground presence, and thus he did not believe that it required any deviation from code. *Alex Callender Testimony.* Planning Staff submitted that the 15-foot construction setback is intended to exclude septic drainfields, as it is meant to protect the root zones of trees and vegetation on the outer edge of preserved buffers, but submitted that since the setback can administratively be reduced down to four feet, this minor intrusion for septic drainfield should be permitted. Staff also noted that while administrative approval for construction setback reduction is the typical procedure, in this case because an RUE is required for residential driveway, the decision of whether to approve the minor intrusion into the construction setback should be incorporated into the RUE decision by the Examiner. *Lacy Garner Testimony.*

system). The Applicant proposes to mitigate the impact at a 1:1 ratio as required by TCC 24.30.080 by installing 5,262 square feet of mitigation plantings immediately north of and parallel to the driveway (i.e., between the driveway and the Wetland A) and 3,081 square feet of mitigation plantings on the east side of the septic drainfields (i.e., between the drainfields and Wetland A). The driveway plantings would include quaking aspen, mock orange, red osier dogwood, oso berry, and red flowering currant. The drainfield plantings would include twinberry, evergreen huckleberry, and western hemlock. The plantings would be monitored for five years. *Exhibits 1.I and 1.H.*

9. The proposed mitigation plantings are intended to improve wetland functions by providing increased roughness, increasing nutrient uptake, providing screening for wildlife, providing shade for water quality and habitat, and producing food for wildlife and structure. The project wetland scientist determined, and County Planning Staff concurred, that there would be no net loss of wetland functions and values as a result of the project. *Exhibits 1 and 1.I; Alex Callender Testimony.*
10. No species listed under the federal Endangered Species Act or the state Priority Habitat and Species database were observed on or near the site during the environmental evaluation, and no evidence was submitted to suggest that the project would adversely affect such species. *Exhibits 1.K and 1.C.*
11. The Thurston County Environmental Health Division has reviewed and approved a septic design for the location depicted on the submitted site plan. Environmental Health did not identify issues of concern with respect to the project and recommended approval of the RUE. *Exhibit 1.M.*
12. Notice of the requested RUE was provided to both the Squaxin Island Tribe and the Nisqually Indian Tribe. The Squaxin Island Tribe requested to be notified if any materials of archeological nature were uncovered during site work. The Nisqually Indian Tribe requested a cultural resources survey to be performed and also requested implementation of an inadvertent discovery plan. Their request was a brief letter that did not specify a basis for the requested survey. *Exhibit 1.G.* In the staff report, Planning Staff recommended as a condition of approval requiring a cultural resources survey to be conducted prior to submittal of application for any land disturbing activities. *Exhibit 1.* At hearing, Applicant representatives noted that it was surprising that a cultural resources survey would be required for a single-family residence proposed so far inland and noted that they are typically quite expensive and there can be delays with contracting appropriate experts to perform the survey. *Testimony of Alex Callender and Jim Greene.* At the conclusion of the hearing, the record was held open for the Planner to consult with supervisors as to whether the Tribe should be asked to provide more information supporting the requested survey. Shortly after the hearing, Staff submitted a memo retracting the recommended condition of approval that would require a survey prior to application for earth disturbing work, and instead requested modification of another condition to require the Applicant to submit a signed inadvertent discovery plan during earth disturbing work. *Exhibits 1.O, 2, and 3; Lacy Garner Testimony.*

13. The proposal is categorically exempt from review under the State Environmental Policy Act. *Exhibit 1; WAC 197-11-800; TCC 17.09.055(B).*
14. Notice of the open record hearing was mailed to property owners within 500 feet of the site on April 20, 2023 and published in *The Olympian* on April 28, 2023. *Exhibits 1 and 1.A.* There was no public comment on the notice of application or through the open record hearing process. *Exhibit 1; Lacy Garner Testimony.*

CONCLUSIONS

Jurisdiction

Conclusions Based on Findings

1. No other reasonable use of the property as a whole is permitted by the critical areas ordinance. Considering the RRR 1/5 zoning designation, the intent of the zone to encourage residential development that maintains the County's rural character, and the character of surrounding development, a single-family residential use is the only reasonable use of the property. Street access is an essential element of residential use, and it would not be possible to provide access to any building site on the subject property without crossing the Wetland A buffer. *Findings 3, 4, 5, 6, and 7.*
2. No reasonable use with less impact on the critical area or buffer is possible. The Applicant has designed the project to avoid wetland buffer impacts, such that the only encroachment into the inner 75% of a wetland buffer would be for the driveway from Steamboat Island Road. The driveway corridor would be as far from Wetland A as possible, and the impact would be mitigated in accordance with CAO standards. *Findings 5, 6, 7, and 8.*
3. As conditioned, the proposal would not threaten the public health, safety, or welfare on or off the development site, or increase public safety risks on or off the subject property. The septic design has been approved, and Thurston County Environmental Health did not identify any issues of concern with respect to the project. The project is appropriately conditioned to require implementation of an inadvertent discovery plan for the protection of cultural or archeological resources that may be discovered during project earth work. *Findings 6, 7, 11, 12, and 13.*
4. The proposal is the minimum encroachment necessary to prevent denial of all reasonable use of the property. Because Wetland A and its buffer encumber the entire street frontage, it would not be possible to access any potential residential building site without crossing Wetland A's buffer. Access is necessary to make reasonable use of the property. A proposed, the driveway would be placed as far from the wetland as possible. *Findings 5, 6, 7, and 8.*
5. As conditioned, the proposal would result in minimal alteration of the critical area. No direct impacts to the wetland are proposed. Buffer impacts would be mitigated through additional plantings within the reduced buffer areas. Erosion control measures would be

implemented during construction, and the buffer boundary would be delineated prior to occupancy approval. *Findings 5, 6, 7, 8, and 9.*

6. As conditioned to require implementation of the buffer mitigation plan, the proposal would ensure no net loss of critical area functions and values. *Findings 5, 6, 7, 8, and 9.*
7. Based on the record submitted, the use would not result in unmitigated adverse impacts to species of concern. *Finding 10.*
8. This decision is not based on the location and scale of existing development. Approval of the RUE is based on the Applicant's inability to make reasonable use of the parcel without intrusion into the wetland buffer. *Findings 3, 4, 5, and 6.*

DECISION

Based on the preceding findings and conclusions, the requested 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 Planning and Economic Development Department shall be met.
2. The Applicant is responsible for compliance with other jurisdictional permitting requirements.
3. The Applicant shall complete all buffer mitigation, monitoring, and reporting as outlined in the Wetland Buffer Enhancement Plan drafted by Land Services Northwest LLC, February 20, 2023 (Exhibit 1.L).
4. Either proposed mitigation plantings will be installed prior to final occupancy approval on future residential building permits or a surety agreement in the amount of 125% of the cost of mitigation plantings shall be executed and filed with Thurston County Community Planning and Economic Development (CPED) until the plantings are installed within the time specified by Thurston County CPED.
5. If archaeological artifacts are observed during any phase of the project, all work shall be immediately halted. The State Department of Archaeology and Historic Preservation, the Thurston County Community Planning & Economic Development Department (CPED), and affected Tribes shall be contacted to assess the situation prior to resumption of work. An Inadvertent Discovery Plan shall be implemented for the project as necessary. The Applicant shall provide a signed Inadvertent Discovery Plan with any future development applications, which must be accepted by Community Planning and Economic Development Staff prior to any earth disturbing work.

6. All development on the site shall be in substantial compliance with the approved Reasonable Use Exception application and site plan, as conditioned. Any expansion or alteration of this use will require approval of a new or amended approval. The Development Services Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
7. 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.
8. Prior to final occupancy approval, permanent Critical Area signs shall be installed along the boundary of the wetland buffer per TCC 24.60. The Applicant shall contact CPED staff for a site inspection upon completion of the wetland buffer fencing and signage or submit photos to the assigned planner.
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. The Applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of critical areas and their buffers.

DECIDED May 18, 2023.

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 **\$821.00** for a Request for Reconsideration or **\$1,112.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center at 3000 Pacific Ave SE, Suite 100 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 ☐ \$821.00 for Reconsideration or \$1,112.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.