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**COMMUNITY PLANNING &
ECONOMIC DEVELOPMENT DEPARTMENT**

Creating Solutions for Our Future

Joshua Cummings, Director

**THURSTON COUNTY COMMUNITY
PLANNING & ECONOMIC DEVELOPMENT REPORT**

HEARING EXAMINER HEARING

November 14, 2023

PROJECT NO.: 2023103576 Halpin Reasonable Use Exception

SEQUENCE NO.: 23 109246 XI

APPLICANT: Cale Halpin

REQUEST

The applicant requests approval of a Reasonable Use Exception (RUE) for permitting of proposed shop within important fish and wildlife habitat (Oregon white oaks). This is an-after the fact RUE request for Oregon white oak impacts due to preliminary site work. The subject property zoning is Rural Residential Resource- One Dwelling Unit per Five Acres (RRR 1/5) in unincorporated Thurston County.

GENERAL INFORMATION

- A. Applicant/Owner: Cale Halpin
12910 118th Ave SE
Rainier, 98576
- B. Location: 12910 118th Ave SE, Rainier, 98576
- C. Legal Description: Section 34 Township 17 Range 1E Quarter SE NW LL020063TC LT 1
Document 3453363; parcel 21734240101
- D. Area: 5.16 Acres

PROJECT DESCRIPTION

The Applicant seeks approval of RUE to construct an accessory shop within Oregon white oak habitat. (Attachments c, d, e, i, and k). The proposal is for an accessory pole building with a footprint of 48 x 60 feet,

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Website: <https://www.thurstoncountywa.gov/departments/community-planning-and-economic-development>

which replaces dilapidated horse stalls and a small storage shed/pump house near the residence. Within the proposed structure will be a mechanical room to include water pressure tank and filtration system. The structure will have a concrete floor in the main building which consists of a 36 x 48 foot area with 16 foot eaves, with attached 12 feet of lean-to structure on each side that have gravel floors for parking. Access to the property is currently provided by 118th Ave SE, a public roadway, but the applicant is proposing to modify the access to utilize the existing private easement road, Eagleview Ln SE.

BACKGROUND

The subject property is located within the rural portion of Thurston County. The Comprehensive Plan designation is residential, and the zoning district is the Rural Residential Resource One Dwelling Unit per Five Acres district (RRR 1/5) (Attachment b). The subject property has an existing 1,428 square foot residence built in 1940, and two small sheds. The subject property has variable topography, with a depressional area in the center, and is partially forested. The property contains Oregon white oak trees, Mazama pocket gopher soils, Oregon vesper sparrow species area, and critical aquifer recharge areas. Oregon white oaks, Mazama pocket gophers, and Oregon vesper sparrow are identified as important fish and wildlife habitats, which along with critical aquifer areas are critical areas subject to requirements of the Thurston County Critical Areas Ordinance (CAO, Thurston County Code (TCC) 24), as well as the County Habitat Conservation Plan (HCP). The property is not within the jurisdiction of the Shoreline Master Program.

2022 Aerial Image



Surrounding land uses consist of neighboring lots within the RRR 1/5 zoning developed with single-family residences (Attachment b).

The Reasonable Use Exception application was submitted to the County for review on July 31, 2023 (Attachments c, d, and e). The application was deemed complete for purpose of beginning project review on August 11, 2023.

NOTIFICATION

Written notice of application was sent to all property owners within 500 feet of the site on August 11, 2023 (Attachment f). 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 November 3, 2023, at least ten (10) days prior to the hearing (Attachment a).

STAFF ANALYSIS

A. Zoning (TCC 20)

The Thurston County Comprehensive Plan designation for the subject property is Rural Residential Resource and the zoning is RRR 1/5. The RRR 1/5 zoning district allows certain primary uses (TCC 20.09A.020) and special uses (TCC 20.54). Single family residences and associated appurtenances, such as accessory structures, are allowed as primary uses, subject to applicable design standards (TCC 20.09A.040). The minimum property line setbacks for all structures larger than 200 square feet are: 20 feet from the front property line (or private road easement), 5 feet from the side property lines, and 5 feet from the rear property line. The maximum impervious surface limit for the subject property is 10 percent.

The RRR 1/5 zoning district has a minimum lot size of five acres or one-one hundred twenty-eighth of a section, (TCC 20.09A.050(2.a)). The subject property was created through a 2002 large lot subdivision, as Lot 1 (Auditor File Number 3453363), and meets legal lot standards per TCC 18.04.045.

B. Critical Areas Ordinance (CAO, TCC 24)

The property contains Oregon white oak trees and is mapped within the DNR Critical Oak Habitat and Grasslands Mapping Layer (Natural Heritage Program), see below image.



DNR Critical Oak Habitat and Grasslands Mapping (Green layer)

The applicant submitted a building permit for the accessory shop on June 26, 2023, and per initial County site visit in July, it was discovered that preliminary site work had removed a mature Oregon white oak tree without benefit of permit. A second mature oak was partially impacted with initial soil disturbance under the drip line, but the applicant quickly remedied this with replacement soils and a landscape wall to retain soils in place (Attachments d, e, i, and k). Per TCC 24.25.065 and TCC 24.25.070, clearing, grading, filling or other development activities are prohibited within the tree protection area of protected Oregon white oak trees, thus a Reasonable Use Exception is the procedure to

propose development within the tree protection zone, or for removal of existing Oregon white oak trees. The removed individual Oregon white oak tree qualifies as a protected tree per TCC 24.25.065(B.4):

Oregon white oak (Quercus garryana) woodlands, stands, and individual trees meeting the following criteria are subject to this section:

- a. Oak woodlands, as defined in Chapter 24.03 TCC.*
- b. Oak Savanna, as defined in Chapter 24.03 TCC.*
- c. Individual oak trees and stands of oak or oak conifer associations less than one acre in size that are located within one-half mile of a stand meeting the criteria in this subparagraph.*

The subject property is also mapped within Mazama pocket gopher soils, and an Oregon vesper sparrow species area. The Thurston County HCP provides regulations for properties mapped within Mazama pocket gopher soils, as well as Oregon vesper sparrow species areas, per TCC 17.40. The Thurston HCP enables the county to locally manage habitat protection when authorizing lawful projects that may impact the federally protected species. Application and review under this chapter is required for all activities and development where the project application overlaps any land parcel with known habitat, potential habitat, or known occupancy of a covered species. Known habitat, potential habitat, or known occupancy is determined by the terms and requirements of the Thurston HCP and ITP. An HCP application is required prior to building permit issuance, and the appropriate mitigation fees for impacts to listed species are calculated at the time of HCP application and approval.

The property is also mapped within a critical aquifer recharge area Category 1 and 2, which are characterized by extreme and high aquifer sensitivity.

C. Reasonable Use Exception (TCC 24.45)

The Thurston County CAO sets out the process and criteria for any property owner to apply for a Reasonable Use Exception to carry out a land use or activity that is prohibited by the Ordinance (TCC 24.45). The CAO includes eight review criteria that the hearing examiner must consider when determining whether to approve or deny the request (TCC 24.45.030). Those eight criteria, along with staff analysis of each, are as follows:

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

Staff comments: The primary permitted uses in the RRR 1/5 zoning district are single-family residences and agriculture (TCC 20.09A.020). The applicant has limited accessory structures on site, and the proposed pole building provides for necessary residential usage adjacent to the residential use area. Therefore, no other reasonable use of the property is permitted.

2. 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.

Staff comments: The applicant cleared the area he wanted to use before he realized that it was impacting a critical area. Per the applicant, the following details were considered for the location of the proposed pole building:

"This proposed building is an important addition to our family's property. It will provide us with a place for storage and parking. The only outbuilding currently on the property is a 10' by 10' greenhouse in the middle of our garden. We are currently renting a "dry box" at the cost of 175 dollars per month.

The proposed building location is needed for the following reasons...

1. *The proposed building site is adjacent to the property well. If the well was in a different location then the oak tree could have been saved. There was about 35 feet of distance from the wellhead to the oak tree. I would estimate that the drip edge of the oak was within 20 feet of the well. The drip edge of the proposed building will be 10 ft from the wellhead. The previous pump house/horse shed was on the same spot.. The old pump house/shed was rotting and needed to be replaced. The oak tree that was removed was about 4 ft away from the southwest corner of the previous pump/horse shed.*

2. *Before grading, there was a slight downslope from the pumphouse to the family home. This resulted in water running toward the house and potentially harming the foundation. The house was built in 1942 and at some point floor joists under the north side of the house rotted and had to be repaired. The bottom of the oak tree sat at the top of the grade next to the old horse shed. If a retaining wall had been built at 5 feet outside the drip edge of the oak the area that could be graded between that and the well would have been only 20 feet wide.*

3. *There is a majestic mature oak tree that guards the entry to our garden. This oak tree is only 47 feet to the east of the well. From the drip edge to the well is only about 14 feet. There was no possibility of building to the east of the well. (Well is seen in attached Pictures).*

During the site visit the county official noticed that the drip edge of this oak tree was disturbed during grading. I can't remember who suggested the remedy of a retaining wall and returning the soil to original grade but my impression was that this was something the county expected to be done. I have since built a stone retaining wall and used all native soils to return the area around the oak tree to its original grade. (Picture Attached).

4. *The building site is on the north side of the house. This is behind the house as compared to 118th av. This is a highly trafficked road. Our house has been robbed in the past. Since we will be using the building for our only storage and parking, it is preferable to have the building set back from the road. (Rented dry box currently used for all storage.)*

5. *As stated previously, the building will be used for parking. Since we do not have a garage or any other covered parking it will be nice to have the building close to the house. The building can't be too close to the house because the septic tank is just north of the center of the house. Also our gravel parking area will be between the shop and the house. (47 foot distance).” (Attachment k).*

3. **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.**

Staff comments: The stormwater will be maintained on site in accordance with the most recently approved Thurston County Stormwater Manual and will be reviewed accordingly at the time of building permit. There is no change to septic or water usage, thus no impacts to " Waters of the State" will occur offsite due to this project. There are no other hazard areas such as flood zones or geologic hazards that could result in damage to nearby properties. Development impacts will be limited onsite and the construction site will use best management practices (BMP's) to maintain water and air quality. The mitigation plan should maintain the overall integrity of the important habitat onsite and prevent damage to nearby properties as well. As proposed and conditioned, staff does not believe the use will result in damage to other properties and should not threaten the health, safety, or welfare on or off the site. The change in access point will benefit both the existing oak habitat on site, as well as provide for greater public safety. The development is proposed consistent with regulations intended to protect the environment and public health.

4. **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.**

Staff comments: Impacts have been limited to the removal of a single mature oak tree within the proposed development area, as well as clearing and grading within the development footprint, some of which was in an area of existing impervious surfaces. Applicant provided details outlining their

site configuration and development limitations that dictated the location for the proposed development footprint. (Attachments c, d, e, i, and k).

5. **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.**

Staff comments: Even though there was an impact to an existing Oregon white oak, the property retains many additional oak trees (50 per applicant tally) of varying ages which were not impacted by the current and proposed development. Impacts to listed protected species for the property shall be mitigated via the County HCP process. The hydrological condition on site will be maintained by stormwater BMP's. The grading requirements for the site are minimal and the geologic condition should be maintained as well.

6. **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.**

Staff comments: The applicant's mitigation plans include but are not limited to: maintaining appropriate habitat for existing native species such as oak trees; removing existing driveway and replanting with native species; providing an existing mature oak tree with a protective retaining wall and back filling to preexisting grade; and planting Oregon white oak seedlings on the property. Owner is a middle school instructor and proposes to hand out oak tree seedlings to his students for them to plant at their homes. This practice will hopefully encourage generations to come to be more conservation minded. Owner will maintain a naturally diverse property by planting and protecting native species and mechanically manage weeds while avoiding chemical control. Owner will maintain aesthetics of existing trees and species diversity (Attachments c, d, and k). Prior to Hearing, the applicant also provided additional mitigation by planting 300 Oregon White Oak acorns on the subject property, documenting the planting with video and photos. The applicant also handed out 100 Oregon White Oak starts to the 7th grade science students at his school and documented this as well (Attachment l, videos available upon Hearing Examiner request).

7. **The reasonable use shall not result in the unmitigated adverse impacts to species of concern.**

Staff comments: The proposal shall mitigate for any impacts to listed species of concern (Mazama pocket gopher, and Oregon vesper sparrow) via the HCP application process.

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

Staff comments: The location and scale of existing development on surrounding properties is not listed by the Applicant as a reason supporting their request.

D. Commenting Agencies

The Public Health and Social Services Department recommends approval of the application (Attachment g).

Staff from the Public Works Department closed their review with no comments.

The Nisqually Indian Tribe submitted a comment stating they have no concerns with the proposal (Attachment m).

The Squaxin Island Tribe submitted a comment email stating they have no concerns with the proposal (Attachment h).

E. Comprehensive Plan

The Thurston County Comprehensive Plan designation for the subject property is Rural Residential Resource and the zoning is RRR 1/5. This designation was created to maintain the rural character of the county; to buffer environmentally sensitive areas and resource management areas from incompatible activities; and to maintain a balance between human uses and the natural environment. As proposed and conditioned, the application for a new accessory shop, and associated mitigation plan, is consistent with the Thurston County Comprehensive Plan.

F. Public Comments:

Several public comments were submitted in response to the application and noticing, in support of the proposal, and in objection to the County permit review process (Attachment j). The applicant submitted a general response providing property history and project details (Attachment i and k).

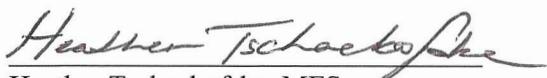
DEPARTMENT RECOMMENDATION

If the Hearing Examiner grants **approval** of the Reasonable Use Exception Permit, then based on the above analysis, the Community Planning and Economic Development Department recommends the following conditions:

- A. 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.
- B. The proposed shop building projection must be located a minimum of five feet from the existing well.
- C. Applicant is responsible for compliance with other jurisdictional permitting requirements.
- D. HCP application and approval for impacts to Mazama pocket gopher and Oregon vesper sparrow is required prior to building permit issuance.
- E. 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.
- F. The Applicant shall complete mitigation prior to final building permit inspection. A surety will be required in place of mitigation completion prior to final building permit inspection, per TCC 24.70.
- G. A critical area affidavit shall be signed and recorded with the Thurston County Auditor's office, prior to final building inspection for the proposed shop.
- H. Construction fencing and erosion control shall be placed outside the buffer alongside proposed development areas. This fencing and erosion control shall be inspected prior to building permit issuance.
- I. 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.

- J. 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.
- K. All development on the site shall be in substantial compliance with the approved Reasonable Use Exception application, as conditioned. Any alteration to the proposal will require approval of a new or amended Reasonable Use Exception. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.



Heather Tschaekofske, MES
Associate Planner/Biologist

LIST OF EXHIBITS

EXHIBIT 1	Community Planning and Economic Development Report including the following attachments
Attachment a	Notice of Public Hearing
Attachment b	Zoning Map
Attachment c	Master and Reasonable Use Exception Application, received July 31, 2023
Attachment d	RUE Narrative, received July 31, 2023
Attachment e	Site Plan, received July 31, 2023
Attachment f	Notice of Application, dated August 11, 2023
Attachment g	Comment Memorandum from Lisa Christensen, Thurston County Public Health and Social Services Department, dated October 24, 2023
Attachment h	Comment email from Shaun Dinubilo, Squaxin Island Tribe, dated August 21, 2023
Attachment i	Applicant photos
Attachment j	Public comments submitted, and County response
Attachment k	Applicant email responses to public comments and request for additional project narrative, and County response
Attachment l	Applicant's additional mitigation information and photos
Attachment m	Comments from Brad Beach, Nisqually Indian Tribe, dated August 24, 2023

