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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

December 26, 2023

PROJECT NO.: 2022106177, Irish Reasonable Use Exception

SEQUENCE NO.: 22-116564 XI

APPLICANT: Trevor Irish

REQUEST

The Applicant requests approval of a Reasonable Use Exception to construct a single-family residence, and associated appurtenances within a wetland buffer.

GENERAL INFORMATION

- A. Applicant/Owner: Trevor Irish
4402 Henderson Blvd SE 101
Olympia, Washington, 98501
- B. Representative: Alex Callender
Land Services NW
120 Stave Ave NE PMB 190
Olympia, Washington, 98501
- C. Location: 7125 Libby Rd NE, Olympia WA, 98506
- D. Legal Description: Section 13 Township 19 Range 2W SE-SE-NE LESS S 315F LESS N 30F
LESS CO RD; parcel 12913140200
- E. Area: 4.56 Acres

PROJECT DESCRIPTION

The Applicant seeks approval of a Reasonable Use Exception to construct a single-family residence and appurtenances within a wetland buffer (Attachments d, and e). The proposed residence consists of a 3,000 square foot single family residence, 900 square foot garage, 2,955 square foot driveway, and 2,620 square foot septic drainfield areas. Access to the property is to be provided from Libby Rd NE, a public roadway.

The subject property has several jurisdictional wetlands with buffers that completely encumber the site thus a reasonable use exception is required in order to reduce the buffers enough to allow for the residence and associated infrastructure (Attachment f). The site is 4.56 acres (198,633 square feet). The proposed development will require 9,715 square feet of unavoidable impact to the buffer of Wetlands B and C, which is only 4.9% of the property, leaving the majority of the site undeveloped per wetland protection standards. The project shall also include wetland restoration for a portion of the site that was cleared and graded without benefit of permit. The applicant cleared 27,825 square feet of forested buffer, of which 19,961 square feet shall be restored. The remaining 7,864 square feet of cleared area shall serve as a portion of the proposed homesite. An additional 9,715 square feet of buffer area shall be enhanced to mitigate for the proposed residence and appurtenances (Attachments e and h).

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 is flat in the east with a slight slope west to the swale identified as Wetland B, which transects the lot from north to south. The property was inadvertently cleared in the center by the applicant for a recreational area, which he is now working to rectify through the permit process. Onsite vegetation consists of upland forest and hydrophytic wetland species. There is a spall road leftover from earlier forest practices at the eastern front center portion of the lot for ingress and egress. The property contains wetlands, a stream, and critical aquifer recharge areas. Wetlands, streams, and critical aquifer recharge areas are critical areas subject to requirements of the Thurston County Critical Areas Ordinance (CAO, Thurston County Code (TCC) 24). 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 and undeveloped forest areas.

The Reasonable Use Exception application was submitted to the County for review on December 20, 2022 (Attachments c, d, and e). The application was deemed complete for purpose of beginning project review on January 17, 2023.

NOTIFICATION

Written notice of application was sent to all property owners within 500 feet of the site on January 13, 2023 (Attachment j). 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 December 15, 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 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 (for this property, the property lines are within the wetland and buffers and these setbacks would be determined by CAO regulations, with the exception of the front property line).

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 described in its current configuration per 1970 deed, Auditor File Number 830045 (Attachment f). The parcel boundaries have not been adjusted since, and the lot meets legal lot criteria per TCC 18.04.045(E).

B. Critical Areas Ordinance (CAO, TCC 24)

The property contains a large wetland, two small wetlands, and a small stream. Chapter 24.25 and 24.30 of the CAO lists standards and limitations for development of property containing streams and wetlands, including buffers. The onsite stream is less than 5 feet wide and ditched through the largest wetland, Wetland B. The riparian habitat area width for a fish-bearing stream less than 5 feet wide would be 150 feet, which is superseded by the standard buffer for Wetland B (Attachment e). The wetlands and stream have been delineated and categorized by a professional wetland biologist (Land Services NW, report revised June 15, 2023) (Attachment g). Wetland A is a small non-jurisdictional wetland with no required buffer. Wetlands B and C are rated Category III with a habitat score of 8, which require a 280-foot buffer according to standards of the CAO (TCC 24.30.045). The new residence is proposed to be located approximately 51 feet from the closest wetland edge, and the septic is proposed to be 49 feet from the closest wetland edge. The total buffer reduction of Wetland C would be 82% from the wetland edge to the home, and 58% from the wetland edge to the home for Wetland B. The proposed development will require 9,715 square feet of unavoidable impact to the buffer of Wetlands B and C, which is only 4.9% of the property, leaving the majority of the site undeveloped per wetland protection standards.

For existing lots where the standards of the CAO would not allow development, the Existing Nonconforming Uses, Structures and Lots chapter applies (TCC 24.50). Chapter 24.50.060 would allow a development area of 3500 square feet in the outer 50% of the standard buffer through a Critical Area

Review Permit and applicable standards. There appears to be insufficient area on the property in the outer 50% of the wetland buffer for residential development. A Reasonable Use Exception is the procedure to propose development within the inner 50% of the buffers.

The property is also mapped within a critical aquifer recharge area Category 3, which is characterized by moderate 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: Per the applicant representative, “The applicant wishes to derive some kind of economic value from the property. Adjacent neighboring lots contain single-family residences. The primary permitted uses in the RRR 1/5 zoning district are single-family residences and agriculture (TCC 20.09A.020).” There appears to be insufficient area in the outer 25% of the standard wetland buffer for development of a residence and appurtenances consistent with the Nonconforming Use chapter of the CAO (TCC 24.50.060). 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: Per the applicant representative, “The applicant cleared the area he wanted to use before he realized that it was not available due to the buffers and now is resigned to replanting much of it to reduce the overall impact. The applicant has used the property as a recreational property, however, now it is no longer acceptable to promote this use without proper facilities. The applicant would like to build in the area to the east nearest the road to reduce the impacts as much as possible. The wetland buffers would be impacted no matter where he builds on the property, but he is maintaining the largest buffer between the home and Wetland B, which is the largest wetland with the highest value in the vicinity of the project area. The shorter driveway will be screened to minimize impacts to the buffer.”

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 (Attachments d, g, o, p, r, and s). A certified septic approved per Thurston County Environmental Health standards will be installed, 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 restoration and enhancement plan should maintain the overall integrity of the wetland 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 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 buffers of Wetland B and C. No direct impacts to the wetlands or stream are proposed. The configuration of the wetland and the buffers completely transect the site. Unavoidable impacts to the buffers will occur as a result of the configuration of the lot and the critical areas onsite which limit the location of the home and drainfield to the area proposed for development (Attachment e).

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 are impacts to the wetland buffer proposed, the development represents the minimal alteration of the buffer. The proposed development of the home and appurtenances will not occur in the wetland, thus no direct impacts to the critical area will occur. Per the applicant representative, "Impacts to the buffer vegetation will be offset at a 1:1 impact to enhancement mitigation ratio and monitored for a period of five years where it will be self-sustaining (Attachments g and h). The hydrological condition will be maintained by stormwater bmp's which will not dewater the wetland but return water to infiltration trenches as to maintain this water onsite. 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 biologist submitted a Restoration and No-Net-Loss Wetland Buffer Enhancement Plan (Attachments e and h). This plan involves a 1:1 ratio of impacts to buffer enhancement area as required in code. In addition, 19,961 square feet of previously cleared buffer area shall be restored with native vegetation (Attachment q). The mitigation plan will incorporate the applicable impact reduction measures found in TCC Table 24-30-2 (Required Measures to Mitigate Impacts to Wetlands). These measures are considered the best available science for mitigation of buffer impacts. The mitigation will occur on site and an analysis of the planting enhancement lift over baseline conditions is provided in the Wetland Buffer Mitigation plan. An invasive removal and enhancement mitigation planting plan will result in no net loss of critical area functions and values of the wetland. The applicant will be providing a maintenance and monitoring plan for woody and herbaceous vegetation that will assure success over a ten-year period as required.

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

Staff comments: The subject property and the immediate vicinity have no listed occurrence of listed plant or animal species of concern.

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. Per the applicant representative, "The

applicant has reduced the footprint and impacts to the greatest extent possible, and the size and scale of the project was made with the knowledge that the nature of the property requires the reasonable consideration of impacts.”

D. Commenting Agencies

The Public Health and Social Services Department has no objection to approval of the application (Attachment k).

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

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

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

The Department of Archaeology and Historic Preservation submitted a comment email requesting an Inadvertent Discovery Plan (Attachment n) be in place during all site development, dated January 26, 2023 (Attachment i).

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 single family residence, and associated restoration and 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, primarily regarding stormwater impacts. The applicant submitted responses and stormwater analysis to address stormwater requirements specific to the project (Attachments o, p, q, r, s, t and u).

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. Applicant is responsible for compliance with other jurisdictional permitting requirements.
- C. 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.

- D. The Applicant shall complete all buffer restoration, and mitigation enhancement and monitoring as proposed in the Restoration and No-Net-Loss Wetland Buffer Enhancement Plan, Land Services NW, dated June 15, 2023 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.
- E. Mitigation/enhancement shall be monitored at minimum for five years, if project is self-sustaining by that time, and a maximum of ten years if goals are not met per the mitigation plan, per TCC 24.35.017(B.6.).
- F. Critical Area signs shall be installed along the reduced buffer edge, subject to standards of TCC 24.60. Sign locations shall be verified and staked by the biologist and installed prior to final building permit inspection.
- G. 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.
- H. 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.
- I. Inadvertent Discovery Plan must be posted on site prior to and during all construction (Attachment n).
- 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 Application, received December 20, 2022
Attachment d	Reasonable Use Exception Application and Narrative, revised September 11, 2023
Attachment e	Figure 2 and Figure 5 site plans from critical area reports
Attachment f	1970 Deed, Auditor File Number 830045
Attachment g	Wetland Delineation and RUE Analysis Report, Land Services NW, June 15, 2023
Attachment h	Restoration and No-Net-Loss Wetland Buffer Enhancement Plan, Land Services NW, June 15, 2023
Attachment i	Comment email from Department of Archaeology and Historic Preservation, dated January 26, 2023
Attachment j	Notice of Application, dated January 13, 2023
Attachment k	Comment Memorandum from Dawn Peebles, Thurston County Public Health and Social Services Department, dated November 9, 2023
Attachment l	Comment letter from Brad Beach, Nisqually Indian Tribe, dated January 23, 2023
Attachment m	Comment email from Shaun Dinubilo, Squaxin Island Tribe, dated January 20, 2023
Attachment n	Inadvertent Discovery Plan for Thurston County
Attachment o	Stormwater project summary, dated August 31, 2023
Attachment p	Stormwater civil site plans, dated August 31, 2023
Attachment q	Impact versus mitigation quantities, submitted September 11, 2023
Attachment r	Stormwater Plan, submitted September 11, 2023
Attachment s	Stormwater Agreement and Maintenance Checklist, submitted September 11, 2023
Attachment t	Public comments submitted
Attachment u	Applicant responses to public comments, submitted September 11, 2023