



COUNTY COMMISSIONERS

Carolina Mejia  
Gary Edwards  
Tye Menser,  
Wayne Fournier, District Four  
Emily Clouse, District Five



**COMMUNITY PLANNING &  
ECONOMIC DEVELOPMENT DEPARTMENT**

*Creating Solutions for Our Future*

Joshua Cummings, Director

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

**HEARING EXAMINER HEARING**

**January 23, 2024**

**PROJECT NO.: 2023101169 NW Green Construction Inc Reasonable Use Exception**

**SEQUENCE NO.: 23 103158 XI**

**APPLICANT: NW Green Construction Inc**

**REQUEST**

The applicant requests approval of a Reasonable Use Exception (RUE) for permitting of future single family residence and appurtenances within important fish and wildlife habitat (designated prairie habitat and Mima mounds). 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: NW Green Construction Inc  
Representative: Rebecca Meister  
261 Hamilton Rd  
Chehalis, Washington, 98532
- B. Location: 13401 Marksman St SW  
Olympia WA
- C. Legal Description: Section 9 Township 16 Range 3W S2 N2 NW NE LESS CO RD ON E FILE  
#856506; parcel 13609120100
- D. Area: 9.55 Acres

**PROJECT DESCRIPTION**

The Applicant seeks approval of RUE to construct a single-family residence and appurtenances within designated prairie habitat. (Attachments c, d, e, and f). The proposal is for a 3-bedroom residence with associated septic drainfield. The home will measure approximately 3,500 square feet, with an additional development footprint for a driveway of approximately 500 square feet and required septic drainfield areas. Access to the property is provided by Marksman St. SW, a public roadway.

**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 variable topography and is partially forested. The western half of the property is forested, partially with Oregon white oak woodlands, and a mapped fish-bearing stream which bisects the two halves of the property (Attachments f and k). The eastern half of the property contains degraded prairie habitat and is covered with Mima mounds. Mapped Oregon white oaks, prairie soils, streams, and Oregon spotted frog habitats 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, and Public Parks, Trails, and Preserves zoning district (DNR land) (Attachment b).

The RUE application was submitted to the County for review on March 21, 2023, and later revised (Attachments c, d, e, and f). The application was deemed complete for purpose of beginning project review on April 5, 2023. County staff completed site visits in April and May, 2023, to verify critical areas and site conditions.

**NOTIFICATION**

Written notice of application was sent to all property owners within 500 feet of the site on April 5, 2023 (Attachment g). 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 January 12, 2024, at least ten (10) days prior to the hearing (Attachment a).

### **ENVIRONMENTAL EVALUATION**

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).

### **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 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 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 described per 1971 and 1975 deeds per Auditor File Numbers 856506 and 932720.

#### **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)

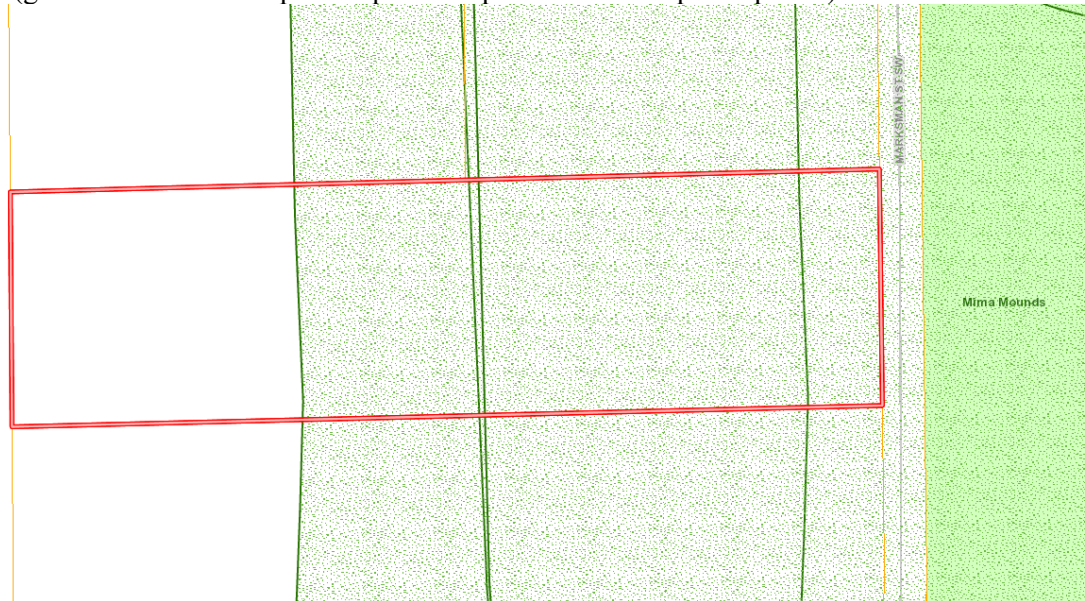
Per TCC 24.25.065 and TCC 24.25.070, clearing, grading, filling or other development activities are prohibited within the tree protection area of protected Oregon white oak trees. The subject parcel Oregon white oak woodland qualifies as a protected per TCC 24.25.065(B.4):

*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 parcel also contains a mapped Type F seasonal stream with a channel width of 6-8 feet. Streams with channel width 5-20 feet wide require a 200 foot riparian habitat area width per TCC 24.25.020. Riparian habitat area widths are measured on a horizontal plane, outward from the ordinary high water mark (OHWM) on each side of the stream. The proposed development is outside the maximum Oregon oak tree protection areas, and the stream and riparian habitat area.

The subject property is also mapped within prairie soils (Spanaway Nisqually complex 2-10% slope), has visible Mima mound topography per LiDAR imagery, and is also mapped within the DNR Natural Heritage program for rare plant species (Maritime reindeer lichen, Cup lichen, and White-top aster), see image below (green flecked areas represent potential presence of rare plant species):



The Thurston County CPED Prairie Field Screening methodology outlines the prairie field screening process, and the criteria required in order for a property to meet designated prairie habitat (Attachment n). Sites with mapped prairie soils are reviewed for prairie habitat during the approved survey window from April through early September, when plants are readily identifiable.

West Fork Environmental consultants delineated all critical areas on site, including prairie plant and Mima mound surveys, in the Critical Areas Report and Mitigation Plan, updated October 2023 (Attachment k). Six target prairie plant species were observed onsite in low abundances, which did not meet criteria for protected prairie vegetation per County protocols, however the Mima mounds are defined as prairie, per TCC 24.03:

*"Prairie" or "westside prairie," means herbaceous, non-forested (forested means greater than or equal to sixty percent forest canopy cover) plant communities that can either take the form of a dry prairie where soils are well-drained or a wet prairie. In parts of the Puget Trough, prairies can sometimes be recognized by mounded topography commonly referred to as Mima Mounds. Mima Mounds are a unique geologic feature of prairie habitat in Thurston County.*

*"Prairie, dry" means prairies located in areas containing prairie vegetation. Although dry prairie can occur on other soils, typically it occurs on any one of the soils known to be associated with prairie (Table 24.25-6). Locations occurring on mapped prairie soils where the surface is impervious is not considered dry prairie. Certain vegetation characteristics typify dry prairie. These include the occurrence of diagnostic grasses, sedges, and forbs. Mosses, lichens, and bare ground may also be found in the spaces between grass and forbs cover.*

*The presence of certain diagnostic plants is required to establish an occurrence of dry prairie. In particular, three of the diagnostic grasses, sedges, or forbs (Table 24.25-8) are required to establish the presence of dry prairie.*

The easternmost portion of the site received additional plant survey and sampling near the development footprint, with positive identification of the rare plant species, Cup lichen and Maritime reindeer lichen on site (Attachments e and k). Per TCC 24.25.075(D), when prairie habitat is identified, a buffer of 50 feet will be applied:

*Prairie Habitat. The approval authority, in consultation with the WDFW and DNR Natural Heritage Program, shall establish buffers for prairie habitat that extend outward from the outer boundary of the habitat the greater of fifty feet, measured on the horizontal plane, or the minimum distance recommended in the critical area report, whichever is greater. When setting the buffer width, the approval authority shall consider the recommendation and supporting rationale in the applicant's critical area report and the following:*

- 1. The habitat functions and their sensitivity to disturbance, the risk that the adjacent proposed land use poses for those functions (e.g., from noise, light, stormwater runoff, introduction of invasive or non-native plant species, pesticides, herbicides, and domestic animals) and, if applicable,*
- 2. The minimum buffer width necessary to protect adjacent properties from fire management practices on prairies. If fire is included within the critical area report as a management element for prairie habitat, the applicant shall:*
  - a. Submit a fire management plan to the Thurston County Fire Marshal and the appropriate fire district for technical review and approval; and*
  - b. Notify the Thurston County Fire Marshal and the appropriate fire district prior to setting fires as part of the fire management plan.*

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 buffer for residential development, and there are direct impacts to existing Mima mounds. A RUE is the procedure to propose development within the inner 50% of the buffers.

The subject property is also mapped within an Oregon spotted frog screening area. The Thurston County HCP provides regulations for properties mapped within Oregon spotted frog screening 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. Staff reviewed the site in spring 2023 and determined the site does not contain Oregon spotted frog habitat, thus no additional mitigation is required under the HCP.

The property is also mapped within a critical aquifer recharge area Category 1, which is characterized by extreme 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's consultant, "The entire eastern half of the subject property is encumbered with Mima mounds habitat. The required 50 foot buffer covers nearly the entire eastern portion of the parcel. The primary use of the property is RRR 1/5 zoning for single family residential use. Any land use in the eastern portion of the subject property would impact Mima mounds directly because the only access is from Marksman St SW. There is not sufficient areas outside of prairie buffers for a residence and necessary appurtenances. Therefore, no other reasonable use of the property is permitted without approval of an RUE." Staff believes this criteria is met.

**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's consultant, "The home and septic are proposed in the southeastern portion of the parcel to minimize disturbance to Mima mound habitat as much as possible. While there is a portion of the property outside of critical area buffers in the western portion of the property, there is no access to this area. Driveway access to the western side of the parcel would disturb at least 6,500 square feet of prairie habitat including 12 Mima mounds, cross a stream, and pass through an area under the canopy of protected Oregon white oak. Instead the applicant proposes disturbing a minimal amount of critical area habitat by concentrating development near Marksman St SW. This will provide adequate area for a family home and preserve the functions of the remainder of habitat on the property." The initial proposed development area was reduced significantly to provide the current minimal impact area of less than 3,500 square feet for the home, with additional use area for driveway and septic. Staff believes this criteria is met.

**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:** Per the applicant's consultant, "Other parcels along Marksman St SW contain single family homes similar to that proposed in this project. Development is consistent with regulations and proposed in a manner to protect public health and safety." 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. Proposed septic and well sites will be reviewed by the Environmental Health Department at the time of building permit review. 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. 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. Staff believes this criteria is met.



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:** Per the applicant's consultant, "The applicant considered multiple locations for the home and it was determined the Southeast corner of the parcel nearest the road provided the minimum impact to critical area habitat. The minimum amount necessary for a reasonable home is proposed and denial of this would prevent all reasonable use of the property. The proposal seeks to protect as many of the Mima mound features as possible and enhance prairie habitat (Attachments e, f, and k). No action would result in further degradation of potential prairie habitat by continued growth of invasive plant species." Staff believes this criteria is met.

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:** An earlier version of the site development plan was revised to provide for a smaller impact footprint, which is currently proposed. Per the applicant's consultant, "The development has been positioned in the most disturbed portion of the parcel near Marksman St SW. This location will still impact two Mima mounds which is the minimum necessary to allow reasonable use of the property. The applicant proposes to enhance over 3,500 square feet of prairie habitat immediately behind the home site, and to protect the remaining onsite prairie area by fencing the home site, resulting in greater than 98% protection of the total onsite prairie habitat (Attachments f and k)." Staff believes this criteria is met.

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:** Per the applicant's consultant, "Unavoidable impacts to Mima mound prairie habitat will occur at the home site. The parcel is directly across the street from Mima Mounds Natural Area. A mitigation strategy detailed in Section 7.0 of the submitted critical area report (Attachment k) considered the best available science, consulted agency staff and other experts, and provides measures to control invasive species, enhance native prairie vegetation and monitor and maintain the mitigation plan for 5 growing seasons. Non-native Scots broom was mowed in 2022 and will continue to be controlled as described in the mitigation plan throughout the protected prairie area on site. In addition, native prairie seed will be sown to encourage establishment of herbaceous prairie species." An existing culvert that was placed within the stream by a previous owner with permit shall also be removed when the stream is dry. An area of 186,000 square feet of existing prairie habitat shall be set aside in a protected state, and an area of 3,500 square feet shall be enhanced with native plant species. A portion of the existing lichens within the development footprint shall be transplanted prior to site disturbance. Staff believes this criteria is met.

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

**Staff comments:** The property contains several rare prairie plant species. Per the applicant's consultant, "The subject property is directly across Marksman St SW from the Mima Mounds Natural Area where endangered Taylor's checkerspot butterfly and other prairie species are mapped. To our knowledge, no endangered plant or animal species occur within the development area. The DNR Natural Heritage Program mapped two rare lichen species as possibly occurring within the parcel. The consultant sampled within and near the proposed development area and found these lichen species. They appear to be scattered throughout the eastern portion of the property. The

mitigation plan addresses minimization and efforts to mitigate unavoidable impacts to these lichen.” Staff believes this criteria is met.

**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:** Per the applicant’s consultant, “The intended use of the parcel is for a single family home. The proposed plan was developed independent of surrounding properties and is not listed as reason for this permitting request.” Staff believes this criteria is met.

**D. Commenting Agencies**

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

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

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

The Squaxin Island Tribe submitted a comment email stating they have no concerns with the proposal (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 single family residence and appurtenances, 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 prior applications for forest practices (Attachment l). The applicant submitted responses to public comments and withdrew the prior forest conversion application (Attachment m).

**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. HCP application and approval for Oregon spotted frog review is required prior to building permit issuance.



- D. 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.
- E. 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. Monitoring shall be completed in accordance with the Critical Area Report and Mitigation Plan dated October 2023, by West Fork Environmental.
- F. A critical area affidavit shall be signed and recorded with the Thurston County Auditor's office, prior to final building inspection for the proposed residence.
- G. Critical area protection fencing shall be placed prior to final building inspection, per the approved mitigation plan, on the protection line per Figure 17 of the critical area report (Attachment k).
- H. Construction fencing and erosion control shall be placed along the proposed development area, on the protection line per Figure 17 of the critical area report (Attachment k). This fencing and erosion control shall be inspected prior to building permit issuance.
- I. Lichens marked for transplant shall be marked in the field and verified by County staff prior to building permit issuance.
- J. 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.
- K. 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.
- L. 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 March 21, 2023
Attachment d	Reasonable Use Exception Application, revised October 20, 2023
Attachment e	RUE Narrative, revised October 20, 2023
Attachment f	Site Plan, revised November 16, 2023
Attachment g	Notice of Application, dated April 5, 2023
Attachment h	Comment Memorandum from Kyle Overton, Thurston County Public Health and Social Services Department, dated November 15, 2023
Attachment i	Comment email from Shaun Dinubilo, Squaxin Island Tribe, dated April 12, 2023
Attachment j	Comment letter from Brad Beach, Nisqually Indian Tribe, dated April 6, 2023
Attachment k	Critical area report and mitigation plan report, dated October 2023
Attachment l	Public comments submitted
Attachment m	Applicant responses on communication matrix, received October 20, 2023
Attachment n	CPED Prairie plant inspection fact sheet and guidelines for prairie inspections, 2023 and 2022