



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)	
)	
)	SUPT NO. 2017106252
Grand Mound)	
Utility Water Reservoir)	
)	
)	
For a Special Use Permit)	FINDINGS, CONCLUSIONS,
)	AND DECISION
)	

SUMMARY OF DECISION

The request for approval of a special use permit to construct a 475,000 gallon welded steel water reservoir at the existing Grand Mound Reservoir site located at 5919 Ivan Way SW, Rochester, Washington is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

Thurston County Public Works Department (Applicant) requested approval of a special use permit to construct an additional water reservoir at the existing Grand Mound Reservoir site located at 5919 Ivan Way SW, Rochester, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the request on June 12, 2016.

Testimony

At the open record public hearing, the following individuals presented testimony under oath:

Robert Smith, Senior Planner, Thurston County Community Planning & Economic Dept.
Dawn Peebles, Thurston County Environmental Health
Jack King, Applicant Representative, Thurston County Public Works
Dominic Miller

Exhibits

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

Exhibit 1 Community Planning & Economic Department Report including the following attachments:

Attachment A	Notice of Public Hearing
Attachment B	Zoning/Site Map
Attachment C	Master Application, received November 13, 2017
Attachment D	Special Use Permit Application, received November 13, 2017
Attachment E	Site Plan, received December 28, 2017
Attachment F	Site and Review Detail, dated November 2017
Attachment G	Critical Area Report, Pan GEO Inc., dated March 12, 2018
Attachment H	Notice of Application, issued December 28, 2017
Attachment I	Complete Application letter, dated December 28, 2017
Attachment J	SEPA Determination of Non-Significance, issued December 18, 2017
Attachment K	Comment Memorandum from Dawn Peebles, Thurston County Environmental Health Department, dated April 6, 2018
Attachment L	Comment Letter from Jackie Wall, Nisqually Indian Tribe, dated January 22, 2018

Exhibit 2 Photograph of posted notice (taken by Robert Smith), May 30, 2018

Exhibit 3 Findings, Conclusions, and Decision in Thurston County SUPT-97-0136/SUPT-97-0138, issued August 21, 1997

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant requested a special use permit to construct a 475,000 gallon welded steel water reservoir at the existing Grand Mound Reservoir site located at 5919 Ivan Way SW, Rochester, Washington.¹ Proposed improvements to the existing reservoir facility include the 42-foot diameter, 52-foot tall reservoir, potable waterlines, access drives, stormwater conveyance piping, and an expanded stormwater pond.² *Exhibits 1, 1.C, and 1.D.*
2. Established in the 1990s, most of the Grand Mound Water System (ID# 071580), including wells and distribution lines, is located west of Interstate 5 in the Grand Mound urban growth area. The existing Grand Mound Utility site where the instant proposal would be built received land use approval via special use permits (SUPT-97-0136 and SUPT-97-0138) issued in August 1997. The approvals permitted construction of the existing 465,000 gallon water supply reservoir on Tax Parcel #1351231030 (east of I-5), and also approved two wells on Tax Parcel # 51303300000 and one well on Tax Parcel #09340003003 (west of I-5). The 1997 permit approval references two water reservoirs on the site; however, to date only one has been constructed. *Exhibits 1 and 3; Robert Smith Testimony.*
3. The irregularly shaped subject property is south and east of Old Highway 99, east of Interstate 5. Built in 1998, the existing reservoir, is 42 feet in diameter and 48 feet high. The presently proposed reservoir would be located next to it. Together, the total use area for the two reservoirs, potable waterlines, access drives, stormwater conveyance piping, and stormwater pond would be approximately 1.6 acres. *Exhibit 1.*
4. In addition to the existing water reservoir, there are two 180-foot tall lattice wireless communications towers located on site, one adjacent to the proposed reservoir and another further south. There is a single-family residence in the northern portion of the property. An immature conifer forest surrounds the proposed reservoir site. Soils in the northern portion of the property (approximately 900 feet from the project site) are considered potential habitat for native prairies and protected species including the Mazama pocket gopher, which is listed as Threatened under the federal Endangered Species Act. Prairie Creek, a fish-bearing stream, bisects the subject property approximately 630 feet north of the proposed reservoir; no construction is proposed within 250 feet of the creek. A slope meeting the definition of a landslide hazard area, and therefore regulated by the Thurston County critical area ordinance, is located just to the north of the proposed reservoir location. The site is not subject to the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR). *Exhibit 1.*

¹ The legal description of the subject property is Tract B of Boundary Line Adjustment BLA-1647; also known as Tax Parcel Number 13512310300. *Exhibit 1.*

² The staff report incorrectly stated that the overall height would be 40 feet. On the record, the Applicant clarified that height would be 52 feet. *Jack King Testimony.*

5. Surrounding properties to the west and south are undeveloped and forested. Parcels to the east are developed with single-family residences on five-acre lots. There are additional residential uses and a trailer sales business to the north. *Exhibit 1.*
6. The northern 450 feet of the subject property is zoned Planned Industrial District (PID) and the remainder is zoned Rural Residential Resource, One Dwelling Unit per Five Acres (RRR 1/5). The proposed reservoir would be placed in the RRR 1/5 portion of the property. The purpose of the RRR 1/5 zone is to: encourage residential development that maintains the County's rural character; provides opportunities for compatible 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.*
7. Public utilities are allowed in the RRR 1/5 district with approval of a special use permit. *TCC Chapter 20.54, Table 1.*
8. Development standards for the RRR 1/5 zone are established in TCC 20.09A.050, which limit lot coverage by building for special uses on parcels greater than 10 acres in area to 20,000 square feet. With the proposed second reservoir, site coverage would be approximately 3,570 square feet. Parcel coverage by impervious surface is also restricted to a maximum of 10%. The total of existing and proposed impervious surfaces is approximately 1.49 acres, or 4% of the underlying parcel. While the zone restricts maximum building height to 35 feet, water towers can be considered exempt from that limit pursuant to TCC 20.07.080. The zone requires setbacks from property lines of 10 feet along Ivan Way SW (the north property line) and five feet from the other property lines. *TCC 20.09A.050(5) and 20.07.030(1).* As proposed, the new reservoir would located 140 feet from the nearest property line. *Exhibit 1.*
9. The County's zoning ordinance requires off street parking to be provided; however, the parking standards do not specify how many spaces are required for water reservoirs. *TCC 20.44.030.* The Applicant indicated that once construction is complete, the only traffic to the site would consist of maintenance vehicles. The Applicant submitted, and Planning Staff agreed, that the existing driveway on-site would provide adequate parking area. *Jack King Testimony; Exhibits 1 and 1.D.*
10. The zoning ordinance also requires landscaping to screen commercial uses from adjoining residential parcels and adjacent rights-of-way. *TCC Chapter 20.45.* Having reviewed the site and existing vegetation, topography, and existing development, Planning Staff determined that additional landscaping would not be required for the proposed reservoir. *Exhibit 1; Robert Smith Testimony.*
11. The proposed reservoir would be setback at least 50 feet from the top of the 80- to 90-foot tall regulated landslide slope in the project site, satisfying the minimum critical area setbacks established in TCC 24.15.015. The project involves enlarging an existing stormwater pond at the base of the slope to accommodate the additional flows from the

new reservoir. The stormpond is also located outside of any required slope setbacks. In order to address the potential issues from development at the top of a steep slope, the Applicant submitted a professionally prepared geotechnical report that analyzed slope stability and the requirements for safe construction of additional stormwater storage capacity at the base of the slope. The geotechnical consultants found no indications of instability, potential instability, groundwater seeps, or springs, and determined that the project location is globally stable. The report concluded that the potential for shallow or deep slope failures as a result of the proposal is low. *Exhibit 1.G.*

12. The project would not add rotary converters, generating machinery, or any equipment that would create substantial noise, electrical interference, or similar disturbances. *Exhibits 1 and 1.D.*
13. Planning Staff determined that the existing reservoir has been a "benign" land use that has not resulted in adverse impacts to the surrounding vicinity and submitted the position that a second reservoir would result in similarly low impact. *Exhibit 1; Robert Smith Testimony.*
14. The Nisqually Indian Tribe submitted a comment letter stating they had no concerns and asking to be informed of inadvertent discoveries. *Exhibit 1.L.*
15. The Thurston County Environmental Health Division (EHD) reviewed the proposal for compliance with environmental and public health standards. EHD Staff recommended project approval with conditions that would require final approvals from the Washington State Health Department prior to construction and to commencement of use. *Exhibit 1.K; Dawn Peebles Testimony.*
16. Pursuant to the State Environmental Policy Act (SEPA), Thurston County was designated lead agency for SEPA review and determined that, with the mitigation proposed, the project would not result in probable significant adverse environmental impact. A determination of non-significance (DNS) was issued on December 18, 2017. The DNS was not appealed and became final on January 2, 2018. *Exhibit 1.K; Robert Smith Testimony.*
17. Notice of application was issued on December 28, 2017. *Exhibit 1.H.* Notice of public hearing was mailed to owners of parcels within 500 feet of the site and others who requested notice on May 24, 2018. Notice was posted on-site on May 30, 2018 and published in The Olympian on June 1, 2018. *Exhibits 1.A and 2.* There was no public comment on the application. *Exhibit 1; Robert Smith Testimony.*
18. Having reviewed all materials and heard testimony at hearing, Planning Staff determined that with the conditions recommended, the project would be consistent with the Thurston County Comprehensive Plan, the Zoning Ordinance, and all other applicable policies and ordinances. *Exhibit 1; Robert Smith Testimony.* Applicant representatives waived objection to the recommended conditions. *Jack King Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide this special use permit application under Thurston County Code Sections 2.06.010 and 21.87.010 and Section 36.70.970 of the Revised Code of Washington.

Special Use Permit Criteria for Review

The Hearing Examiner may approve an application for a special use permit only if the following general standards set forth in TCC 21.87.035 are satisfied:

- A. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan, and all applicable federal, state, regional, and Thurston County laws or plans.
- B. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.
- C. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
 - 1. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effects may occur.
 - 2. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

Conclusions Based on Findings

- 1. As conditioned, the second reservoir at its proposed location appears to comply with all applicable laws and plans. In increasing capacity of an established domestic water system serving the Grand Mound urban growth area, the proposed use complies with the purpose and standards of the RRR 1/5 zoning district. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, and 15.*

2. The proposed expansion of the existing public utility use is appropriate for placement on the site. The proposed reservoir and expanded stormwater facilities would not generate noise or regular traffic. There is existing room on-site for maintenance vehicle parking. Due to substantial existing vegetation, topography, proposed setbacks, and the long-standing presence of the existing public and private utility facilities on-site, the additional reservoir would have negligible visual impacts on surrounding properties. The record supports the conclusions that the project would not create substantial or undue adverse impacts on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or generate adverse impacts on public services. *Findings 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, and 15.*


DECISION

Based on the preceding findings and conclusions, the requested special use permit to construct a second water reservoir as described herein at the existing Grand Mound Reservoir site addressed as 5919 Ivan Way SW, Rochester, Washington is **GRANTED** subject to 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 & Economic Development Department shall be met.
- B. On April 8, 2014, the U.S. Fish and Wildlife Service listed the Mazama Pocket Gopher under the Endangered Species Act. The subject parcel contains potential pocket gopher habitat. It is the responsibility of the landowner to comply with applicable federal regulations. Approval of this and other County permits may be superseded by federal law.
- C. The Applicant shall stop work and contact the proper authorities, including Nisqually Tribe Preservation Officer, Jackie Wall (360) 456-5221, if during excavation there are discoveries of archaeological artifacts or human burials.
- D. The reservoir shall be painted in a neutral, non-glaring paint color.
- 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. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, The Washington State Department of Ecology must be notified (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300).

- G. The reservoir site shall be fenced with a minimum six-foot high fence to prevent trespassing.
- H. The following Health related conditions:
 - 1. Prior to approval and release of the building permit, written confirmation of plan approval for the public water system must be received from Washington State Department of Health.
 - 2. Prior to putting the storage reservoir to use, written confirmation of final construction approval must be received from Washington State Department of Health.
- I. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of this use beyond that initially approved by the Hearing Examiner will require approval of a new or amended Special Use Permit. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

DECIDED June 26, 2018.



Sharon A. Rice
Thurston County Hearing Examiner

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 **\$688.00** for a Request for Reconsideration or **\$921.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex 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 ☐ \$688.00 for Reconsideration or \$921.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.