

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF WOODINVILLE**

In the Matter of the Application of)	Nos. RUP19002; CAA19006;
)	SEP19015
Merle Ash, Land Technologies, Inc.,)	
on behalf of Jacobsen Homes, Inc.)	Jacobsen RUEX and Critical
)	Area Alteration
)	
For Approval of a Reasonable Use Exception)	FINDINGS, CONCLUSIONS,
<u>and Critical Area Alteration</u>)	AND DECISION

SUMMARY OF DECISION

The request for a reasonable use exception from the building setback requirements of Woodinville Municipal Code 21.51.310 and for a critical area alteration to allow construction of a new single-family residence, with associated improvements, on a 43,332 square foot property located on 136th Avenue NE, approximately 120 feet southwest of the intersection of 136th Avenue NE and NE 202nd Street, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on January 20, 2021, using remote meeting technology in light of the ongoing COVID-19 pandemic.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Emily Larson, City Associate Planner
Merle Ash, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated January 11, 2021
2. Application Materials, submitted November 8, 2019:
 - a. Land Use Application, dated November 7, 2019
 - b. Application Submittal Checklist, undated
 - c. Project Narrative, undated
 - d. Owner Authorization Form, dated September 17, 2019
 - e. Submittal List, dated November 8, 2019
 - f. Water and Sewer Availability Questionnaire, dated September 17, 2019

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- g. Certificate of Water Availability, dated September 27, 2019
- h. Certificate of Sewer Availability, dated September 27, 2019
- i. Email from Christian Hoffman to Marcella Chew, dated June 12, 2018, with email string
- j. Sewer and Water Plan, dated September 17, 2019
- k. Sewer Profile, dated September 17, 2019
- 3. Incomplete Application Letter, dated December 2, 2019
- 4. Complete Application Letter, dated December 17, 2019
- 5. Notice of Application and SEPA Optional DNS, dated December 26, 2019
- 6. Mailing Labels
- 7. Public and Agency Comments:
 - a. Comment from Muckleshoot Indian Tribe, dated January 21, 2020
 - b. Comment from Kristiana Wright and John Schreiber, dated January 9, 2020
- 8. Topographic Survey, Pacific Coast Surveys, Inc., dated October 7, 2019
- 9. Plan Set (17 Sheets), Land Technologies, Inc., revised August 26, 2019
- 10. Critical Areas Report and Buffer Mitigation Plan, Wetland Resources, revised May 4, 2020
- 11. SEPA Environmental Checklist, dated November 7, 2019
- 12. Construction Stormwater Pollution Prevention Plan, Land Technologies, Inc., dated May 2020
- 13. Technical Information Report, Land Technologies, Inc., revised August 2020
- 14. Water and Sewer Availability Questionnaire, dated September 17, 2019; Certificate of Water Availability, dated September 27, 2019; Certificate of Sewer Availability, dated September 27, 2019; Email from Christian Hoffman to Marcella Chew, dated June 12, 2018, with email string; Sewer and Water Plan, dated September 17, 2019; Sewer Profile, dated September 17, 2019
- 15. Arborist Report, Gilles Consulting, updated August 26, 2020
- 16. Request for Additional Information Letter, dated March 9, 2020
- 17. Applicant Response to Request for Additional Information, dated March 21, 2020
- 18. Applicant Response to Comments, dated May 21, 2020
- 19. Request for Additional Information Letter, dated July 20, 2020
- 20. Applicant Response to Request for Additional Information, dated August 26, 2020
- 21. SEPA Determination of Nonsignificance (DNS), dated October 14, 2020
- 22. Notice of Public Hearing, dated January 5, 2021
- 23. Public Comment, dated January 15, 2021
- 24. City Staff PowerPoint Presentation

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

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FINDINGS

Application and Notice

1. Merle Ash, Land Technologies, Inc., on behalf of Jacobsen Homes, Inc. (Applicant), requests a reasonable use exception (RUEX) from the minimum 10-foot wetland buffer building setback requirement of Woodinville Municipal Code (WMC) 21.51.310, and for a “critical area alteration,” to allow construction of an approximately 3,000 square foot single-family residence on a 43,332 square foot property that is entirely covered by a Category II wetland and its associated buffer. Associated improvements would include critical areas mitigation, street frontage improvements, tree removal, stormwater management, and landscaping. The property is located on 136th Avenue NE, approximately 120 feet southwest of the intersection of 136th Avenue NE and NE 202nd Street.¹ *Exhibit 1, Staff Report, page 1; Exhibit 2; Exhibit 9.*
2. The City of Woodinville (City) determined that the application was complete on December 17, 2019. On December 26, 2019, the City provided notice of the application by posting notice on-site and at designated City locations, mailing or emailing notice to interested agencies and to property owners within 500 feet of the site, and publishing notice in *The Seattle Times*, with a comment deadline of January 21, 2020. On January 5, 2021, the City provided notice of the open record hearing associated with the application in the same manner used to provide notice of the application. *Exhibit 1, Staff Report, page 2; Exhibit 2; Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 22.*
3. The City received two public comments and one agency comment in response to its notice materials, specifically:
 - The Muckleshoot Indian Tribe commented that the Applicant’s wetland buffer enhancement plan should include more diverse native species plantings and requested copies of the buffer enhancement “as-built” drawings and all monitoring reports.
 - Neighboring property owners Kristiana Wright and John Schreiber commented that tree coverage on-site should be maintained as much as possible to provide privacy and noise screening.
 - Neighboring property owner “Jerri” provided a comment raising concerns about the proposal’s impacts to wetlands and about construction noise.
Exhibit 7; Exhibit 23.
4. The Applicant provided responses to the submitted comments, which note:
 - The buffer mitigation plan has been revised to include more diverse plantings that would include Douglas fir, western red cedar, western hemlock, and big leaf maple, as well as salmonberry, beaked hazelnut, osoberry, and vine maple.

¹ The property is identified by Tax Parcel No. 0326059090. *Exhibit 1, Staff Report, page 1.* A legal description of the property is included with the plan set. *Exhibit 9.*

- Trees along the north property line would remain. The house and driveway would be located to minimize tree removal. Eight trees would be removed for the location of the house, and eight trees would be removed between the location of the house and the frontage sidewalk.
- Impacts to the wetland buffer would be mitigated by the planting of 220 native understory plantings and the removal of invasive species, blackberries, trash, and debris. In addition, 30 Douglas fir, 30 western hemlock, 60 big leaf maple, and 25 western red cedar would be planted to replace removed trees.

Exhibit 18.

State Environmental Policy Act

5. The City acted as lead agency and analyzed the environmental impacts of the proposal as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City determined that the project was not exempt from SEPA review because the exemption found in Washington Administrative Code (WAC) 197-11-800(1)(b)(i) for the construction of up to four detached single-family residences does not apply to projects undertaken wholly or partly on lands covered by wetlands. *WAC 197-11-800(1)(a)(i); WAC 197-11-756.* The City used the optional DNS process under WAC 197-11-355 and provided notice of the threshold determination with the notice of application. The City did not receive any comments specific to SEPA in response to its notice materials. The City reviewed the Applicant's Environmental Checklist, and other available information on file, and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Determination of Nonsignificance (DNS) on October 28, 2020, with an appeal deadline of October 28, 2020. The DNS was not appealed. *Exhibit 1, Staff Report, pages 4 and 5; Exhibit 2; Exhibit 5; Exhibit 10; Exhibit 13; Exhibit 21.*

Subject Property, Comprehensive Plan, and Zoning

6. As noted above, the 43,332 square foot (0.99-acre) property is located on 136th Avenue NE, approximately 120 feet southwest of the intersection of 136th Avenue NE and NE 202nd Street. The property is undeveloped, consists primarily of forested vegetation, and gently slopes down to the west. As discussed in greater detail below, a Category II wetland encompasses the western half of the property, with a standard 165-foot buffer that covers the remaining eastern portion of the property. In addition, a Type F fish bearing stream is located off-site to the south of the property, with a standard 140-foot buffer that overlaps with the on-site wetland and covers approximately three-quarters of the property. The Applicant requests a RUEX and critical area alteration to allow construction of an approximately 3,000 square foot single-family residence within the wetland buffer area of the property that, with associated yard and driveway areas, would disturb approximately 6,000 square feet of on-site wetland buffer. The Applicant does not propose any development within the wetland area on the western portion of the property. Adjacent properties to the north, east, and south are developed with single-

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family residences. Adjacent property to the west consists of undeveloped forested areas. *Exhibit 1, Staff Report, page 4; Exhibit 2; Exhibit 8; Exhibit 9; Exhibit 10; Exhibit 13; Exhibit 24.*

7. The City Comprehensive Plan designates the property as “Medium Density Residential” (MDR). The purpose of the MDR designation is to provide for “moderate density residential neighborhoods on lands that are suitable for urban development.” *City Comprehensive Plan at 2-7.* City staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:
- Goal LU-1: Protect and reinforce Woodinville’s Northwest Woodland Character.
 - Policy LU-1.1: Maintain and enhance development regulations that preserve Woodinville’s wooded hillsides, open spaces, and the character of established residential neighborhoods.
 - Goal LU-2: Provide land area and densities necessary to meet Woodinville’s projected needs for housing, employment, and public facilities. To guide the city’s population growth in a manner that maintains or improves Woodinville’s quality of life, environmental attributes, and Northwest Woodland character.
 - Goal H-1: Provide a diversity of housing types.
 - Policy H-1: Allow for a variety of housing types and lot sizes, including: mixed use development, small and large lot single-family development, accessory dwelling units, townhomes, duplexes, multiplexes, and apartments, and manufactured housing.
 - Policy H-2: Promote infill development designed to be compatible with existing neighborhoods while creating new housing opportunities.
 - Policy H-3: Provide a land use plan that accommodates Woodinville’s regionally determined housing growth target and supports regional objectives for housing diversity, affordability, innovative and flexible techniques, and a jobs-housing balance.
 - Goal H-4: Foster livable neighborhoods with a desirable quality of life, environmental sustainability, and health active living.
 - Policy H-18: Ensure that new development and redevelopment are compatible with existing and planned neighborhood character such as through design and landscape standards.
 - Goal E-1: Preserve and enhance aquatic and wildlife habitat.
 - Policy E-1.1: Identify and ensure the protection of fish and wildlife habitat conservation areas.
 - Policy E-1.2: Protect the functions and values of critical areas, including wetlands, streams, and lakes.
 - Goal U-1: Coordinate utility, land use, and transportation planning so that utilities are available or can be provided to serve in a manner that is fiscally and environmentally responsible, aesthetically acceptable to the community, and safe for nearby inhabitants.

- Policy U-1.5: Regulate construction of utilities within sensitive areas in accordance with the Critical Areas Regulations.

Exhibit 1, Staff Report, pages 1 through 3.

8. The property is zoned Residential-6 (R-6), which allows for a maximum of six dwelling units per acre. *WMC 21.22.030*. The purpose of Residential zones is “to implement Comprehensive Plan goals and policies for housing quality, diversity and affordability, and to efficiently use residential land, public services and energy.” *WMC 21.20.040(1)*. These purposes are accomplished in moderate density zones, including the R-6 zone, by providing for predominantly single-family attached and detached dwelling units. *WMC 21.20.040(1)(b)*. *WMC 21.22.030* provides dimensional standards applicable to residential development in the R-6 zone. City staff reviewed the proposal and determined that it would meet all dimensional standards, including standards related to minimum lot size, minimum lot width, minimum street setbacks, minimum interior setbacks, maximum building coverage, and minimum landscape coverage. *Exhibit 1, Staff Report, pages 1 and 7; Exhibit 9; Exhibit 24.*
9. *WMC 21.50.060* requires development projects within the R-6 zoning district to have a minimum tree density of 50 tree credits per acre, which is calculated as the sum of all retained existing trees and any supplemental plantings. The project would be required to have a minimum tree density of 49.5 tree credits for the 0.99-acre property. Gilles Consulting prepared an arborist report identifying 41 existing trees on site, 35 of which are viable, resulting in a total of 111.75 tree credits. The Applicant proposes to remove trees having a total of 12 tree credits to facilitate the proposed construction of a single-family residence and associated improvements, resulting in the retention of 99.75 tree credits, which exceeds the minimum 49.5 tree credits required for the 0.99-acre site. The City would verify that the project complies with tree density requirements during building permit review. *Exhibit 1, Staff Report, page 6; Exhibit 9; Exhibit 15.*
10. The proposed single-family residence would be accessed from 136th Avenue NE. The Applicant would make street frontage improvements along 136th Avenue NE that include pavement widening and the installation of a sidewalk and a planter strip, consistent with requirements under former *WMC 21.81.060 (2019)*. City staff reviewed the Applicant’s preliminary road plans and determined that they would comply with the City’s Transportation Infrastructure Standards and Specifications. Final approval of the Applicant’s road plans would occur during construction plan review. *Exhibit 1, Staff Report, page 7; Exhibit 9.*
11. Woodinville Water District issued water and sewer availability certificates, dated September 27, 2019, indicating that there is sufficient water and sewer capacity to serve the proposed development. The water availability certificate states that a fire hydrant and a 130-foot water main extension would be required to serve the development. The sewer

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availability certificate states that a 130-foot trunk or lateral line would be required to serve the development. The Applicant would be required to submit copies of water and sewer plans approved by the Woodinville Water District before approval of construction plans for the project. *Exhibit 1, Staff Report, page 7; Exhibit 14.*

Critical Areas

12. Wetland Resources prepared a Critical Areas Report and Buffer Mitigation Plan for the proposal, revised May 4, 2020. The report identified a Category II wetland (Wetland A) on the western portion of the property, with a six-point habitat score requiring a standard 165-foot buffer. Wetland A covers approximately 21,743 square feet of the property and, as noted above, has an associated buffer that covers the remaining portion of the property. Hydrology from Wetland A outflows to an off-site Type F stream (Stream A) to the south of the property, which has a standard 140-foot buffer that overlaps with Wetland A and covers approximately three-quarters of the property. No other critical areas were identified on or near the property. The buffer mitigation plan proposes to mitigate for the project's permanent impacts to 6,000 square feet of buffer area by enhancing the remaining 15,610 square feet of on-site buffer area through the removal of invasive species, trash, and debris and the planting of native species. The buffer mitigation plan includes a five-year maintenance and monitoring component to ensure that the mitigation measures are successful. The project would employ relevant measures under WMC 21.51.310(2) to minimize impacts to Wetland A. In addition, signage and fencing would be installed along the boundary of disturbed buffer areas, consistent with requirements under WMC 21.51.140. The report determined that the proposed mitigation would protect and improve buffer functions and values consistent with best available science. The City's third-party wetland reviewer reviewed the Applicant's buffer mitigation plan and determined that it would sufficiently mitigate for the project's impacts. *Exhibit 1, Staff Report, pages 5 and 6; Exhibit 10.*

13. Land Technologies, Inc., prepared a Construction Stormwater Pollution Plan, revised May 2020, and a Technical Information Report, revised August 2020, for the project. The project's proposed improvements would not exceed the threshold triggering a requirement for stormwater flow control or water quality facilities. The Applicant would manage stormwater on-site through dispersion trenches to capture, treat, and disperse stormwater from developed areas of the site. City staff reviewed the Applicant's preliminary stormwater management plan and determined that it would be generally consistent with the City's Stormwater Runoff and Surface Water and Erosion Control standards of Chapter 13.05 WMC. The City would review the Applicant's final stormwater management plan during the construction permit stage. *Exhibit 1, Staff Report, page 6; Exhibit 12; Exhibit 13.*

Reasonable Use Exception

14. As noted above, the Applicant requests a RUEX to allow construction of a new single-family residence within the buffer associated with on-site Wetland A. Addressing the specific criteria for a RUEX under former WMC 21.51.070(a) (2019), the Applicant provided a project narrative, which asserts that the proposal should be approved based on the following:
- Strict application of Chapter 21.51 WMC would deny all use of the property because the entire property is encumbered by a Category II wetland and its associated buffer.
 - The proposed development of a single-family residence and associated improvements would not pose a threat to public health, safety, or welfare because the residence would be constructed in compliance with code requirements and because the project would mitigate for buffer impacts in a manner maintaining or improving buffer functions and values.
 - The proposal is for a single-family residence that would be compatible with other homes in the area. The disturbed area would consist of only 6,500 square feet in the upland corner of a 43,332 square foot lot.
 - Mitigation for buffer impacts would include the removal of invasive species and planting of native species, which would result in improved buffer functions and habitat. In addition, the project would employ low-impact development stormwater techniques to maintain hydrology to the wetland.
 - The submitted critical area report and buffer mitigation plan demonstrate that wetland buffer functions and values would be maintained or improved.
 - The proposed development would be consistent with all other application regulations and requirements.

Exhibit 2.

15. City staff reviewed the proposal against the criteria for a RUEX under former WMC 21.51.070(a). Staff determined:
- WMC 21.51.310(6) prohibits buildings and structures to encroach into wetland buffers and requires a 10-foot building setback from the edge of the required buffer. Because the entire property is encumbered by Wetland A and its associated buffer, a Reasonable Use Permit is necessary to provide relief from the regulations to build any structure on the vacant property.
 - The proposed development of a single-family residence includes appropriate water and sewer connections to serve the use, as well as a stormwater system consistent with storm water regulations to minimize potential impacts to the critical areas and nearby development. The proposed development appears to meet all setback and tree protection standards so as not to impact adjacent properties. Impacts during construction are proposed to be minimized using appropriate construction protection and best management practice measures.

- The proposed single-family residence would be located within the wetland buffer area only and would be sited as close to the street as allowed by the zoning code. The size of the site disturbances would not exceed the minimum lot size allowed for the R-6 zone (6,000 square feet). Tree removal would be limited to the area of the proposed house. The Applicant is taking reasonable measures to minimize alterations to the critical area.
- It is not possible to avoid impacts to critical areas on this property altogether, the first preferred option under WMC 21.51.120(3), because the entire site is encumbered by critical areas and buffers. The Applicant proposes to utilize the next two mitigation sequencing options under WMC 21.51.120(3) by reducing the magnitude of the action and by rectifying the impact through rehabilitation of the surrounding buffer with restoration efforts. Approximately 6,000 square feet of buffer area would be disturbed with the proposed development, including the construction of the house, driveway, and utilities needed to serve it. The proposed buffer mitigation area is approximately 15,610 square feet, which creates a mitigation ratio of 2.6:1; higher than the 1:1 ratio required by WMC 21.51.340(5)(c). This mitigation would include the clearing of invasive species and replanting the area with a mix of native species.
- The proposed mitigation plantings would result in over 15,000 square feet of the buffer being cleared of invasive species and being replanted with a mix of native species. Review of the mitigation plans determined that the goals and performance standards in the Mitigation Plan are appropriate for the site and the proposed development, consistent with Chapter 21.51 WMC.
- The project has been reviewed against applicable City codes and is consistent with all applicable regulations and requirements. Verification of the project's compliance with these standards would be reviewed with the construction permits.

Exhibit 1, Staff Report, pages 8 through 10.

Critical Area Alteration

16. Because the proposal would result in impacts to the existing conditions of a critical area buffer, approval of a critical area alteration is also required. *WMC 21.51.020(2); Former WMC 21.80.070(2) (2019)*. The Applicant's project narrative addresses the specific criteria for approval of a critical area alteration under former WMC 21.80.070(2), which asserts that the proposal should be approved based on the following:
- The Applicant provided a critical areas report that identified a Category II wetland with a required 165-foot buffer on the property.
 - The critical areas report was prepared by a professional with experience in these matters.
 - The entire property is encumbered with the wetland and its associated buffer, and no reasonable use of the site would be possible without alteration of the buffer.

Exhibit 2.

17. City staff reviewed the proposal against the criteria for a critical area alteration under former WMC 21.80.070(2). City staff determined:
- The Applicant submitted a Critical Areas Report and Buffer Mitigation Plan, prepared by Wetland Resources, which identified a Type II Wetland on the property. No streams were identified on-site. An off-site stream was identified south of the property.
 - Under WMC 21.51.110(1), a critical areas report is required for an application for a development proposal that includes a critical area or its buffer. The Applicant's critical areas report satisfies this requirement.
 - City staff reviewed the critical areas report and included the report's recommendations as proposed conditions of approval for the critical area alteration.
 - WMC 21.51.310 sets forth the development standards applicable to wetlands, including the designation of buffers. A Category II wetland was verified on the property and was determined to have a wetland rating score of six habitat points. WMC 21.51.410 sets forth the development standards for fish and wildlife habitat areas (streams), including the designation of buffers. One Type F (fish bearing) stream was verified south of the site, with a 140-foot buffer extending onto the subject property. The Applicant's critical areas report and buffer mitigation plan is consistent with the requirements for mitigating impacts to the on-site wetland and off-site stream.
 - The Applicant's buffer mitigation plan is consistent with mitigation sequencing outlined in WMC 21.51.120(3).
 - The Applicant's critical areas report and buffer mitigation plan includes recommendations to protect the public health, safety, and welfare. City staff reviewed the report and plan and determined that the recommendations therein would comply with the requirements in Chapter 21.51 WMC. These requirements include that the alterations would not adversely impact the critical areas or their buffers more than necessary and would be designed so that the risk of damage is eliminated or mitigated to a level where there is no increased adverse impact relative to ecological functions of the critical areas, its associated land use, or adjacent properties.

Exhibit 1, Staff Report, pages 10 and 11.

Testimony

18. City Associate Planner Emily Larson testified generally about the proposal and how, with the City's proposed conditions, it would meet the criteria for a reasonable use exception under former WMC 21.51.070. She noted that the subject property is currently undeveloped and covered with natural vegetation comprised of both native and invasive species. Ms. Larson explained that the Applicant's proposal to construct a 3,000 square foot single-family residence on the property would require approval of both a reasonable use exception and critical area alteration because a Category II wetland covers the

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western half of the site and the 165-foot buffer associated with the on-site wetland covers the remaining eastern half of the site. She noted that the proposed residence would be adequately served by public utilities and that the project would minimize construction impacts to the wetland buffer through appropriate construction mitigation and best management practices. Ms. Larson stressed that the proposed development would occur only within the wetland buffer area and that the 6,000 square foot disturbed area would be equal to the minimum lot size for the R-6 zone. She also stressed that the only trees that would be removed would be those required for the construction of the house and that the Applicant's buffer mitigation plan demonstrates that the project would maintain or enhance wetland and wildlife habitat functions. Ms. Larson explained that the Applicant revised the planting plan to include more diverse species in response to comments submitted by the Muckleshoot Tribe. She detailed how the proposal would be consistent with all other development regulations applicable to the R-6 zone, including regulations related to minimum tree density, dimensional requirements, water and sewer connections, stormwater management, and street and sidewalk improvements. Ms. Larson noted that the City Council recently adopted Ordinance 706, effective November 28, 2020, which made comprehensive updates to the City's project permitting procedures and decision criteria. She explained that the City, after consultation with the City attorney, has determined that the current proposal should be processed and decided in accordance with the procedures and decision criteria in effect when the application was deemed complete on December 17, 2019. *Testimony of Ms. Larson.*

19. Applicant Representative Merle Ash testified that he agrees with the analysis provided in the City staff report. He stressed that the request for a RUEX to allow construction of one single-family residence is modest and reasonable, noting that the subject property is nearly one acre in size, where six single-family residential lots could have been permitted on the property if not encumbered by a wetland and its associated buffer. Mr. Ash explained how the proposed siting of the residence would minimize impacts to the wetland and to existing trees. He also explained how the buffer mitigation plan would improve the existing values and functions of the wetland buffer. Mr. Ash stated that the Applicant has reviewed and would comply with City staff's recommended conditions. *Testimony of Mr. Ash.*

Staff Recommendation

20. The City recommends approval of the application for a reasonable use exception and critical area alteration, with eight conditions. *Exhibit 1, Staff Report, pages 11 and 12; Testimony of Ms. Larson.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is authorized to hold hearings and make decisions on reasonable use exception applications. *WMC 2.27.040; Former WMC 21.83.020(5) (2019).* The Hearing

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Examiner is also authorized to hear and decide applications for a critical area alteration through the City's consolidated permit procedures. *Former WMC 21.83.020(4) (2019); former WMC 21.83.030 (2019).*

Criteria for Review²

Reasonable Use Exception

If application of Chapter 21.51 WMC would deny all reasonable use of the property containing critical areas, an applicant may apply for a reasonable use exception. *Former WMC 21.51.070.*

The Hearing Examiner, in granting approval of the reasonable use exception, must determine that:

- a. The application of Chapter 21.51 WMC would deny all reasonable use of the property;
- b. The proposed development does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- c. Any alterations to the critical area shall be the minimum necessary to allow for reasonable use of the property;
- d. Any impacts permitted to the critical area are mitigated in accordance with WMC 21.51.120 to the greatest extent possible;
- e. The proposed development protects critical areas and/or buffer functions and values consistent with best available science; and.
- f. The proposed development is consistent with other applicable regulations and requirements.

Former WMC 21.51.070(a).

Any alteration of a critical area authorized by a reasonable use permit shall be subject to conditions established by the Hearing Examiner to safeguard public health, safety, or welfare.

Former WMC 21.51.070(b).

Critical Area Alteration

The purpose of a critical area determination is to evaluate any development permit application or other request for permission to proceed with an alteration on a site that includes a critical area or is within an identified critical area buffer. *Former WMC 21.80.070.*

A critical area alteration may be approved, under WMC 21.51.100, if the following criteria are met:

² As noted in the City staff report and in the testimony of Ms. Larson, the City has determined that the proposal should be decided in accordance with the decision criteria in effect when the application was deemed complete on December 17, 2019, rather than under the current criteria as updated on November 28, 2020. *Exhibit 1, Staff Report, page 2; Testimony of Ms. Larson.*

- a. Determine whether any critical area exists on the property and confirm its nature and type;
- b. Determine whether a critical areas report is required;
- c. Evaluate the critical areas report;
- d. Determine whether the development proposal is consistent with Chapter 21.51 WMC;
- e. Determine whether any proposed alteration to the critical area is necessary; and
- f. Determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety, and welfare, consistent with the goals, purposes, objectives, and requirements of Chapter 21.51 WMC.

The criteria for review adopted by the City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development.

Conclusions Based on Findings

1. **With conditions, the proposed development would meet the criteria necessary for a reasonable use exception.** The City reviewed the Applicant's environmental checklist, determined that the project would not have a probable significant impact on the environment, and issued a DNS, which was not appealed. The property is designated Medium Density Residential (MDR) by the City Comprehensive Plan and is located in the R-6 zoning district. The purpose of the MDR designation is to provide for moderate density residential neighborhoods on lands suitable for urban development. The proposed development of a detached single-family residential dwelling is consistent with several Comprehensive Plan goals and policies promoting infill development with diverse housing types in a manner compatible with adjacent land uses, while protecting the functions and values of wetlands. The subject property is entirely covered by a Category II wetland and its associated 165-foot buffer. In addition, an off-site Type F fish bearing stream to the south of the property has a standard 140-foot buffer that overlaps with the on-site wetland and covers approximately three-quarters of the property. Accordingly, strict application of the City's critical area code to prohibit development within the wetland buffer would deny all reasonable use of the property. The proposed alteration of the wetland buffer is the minimum necessary to allow for a reasonable use of the property. The Applicant proposes to construct a 3,000 square foot single-family residence with associate improvements that would disturb 6,000 of on-site wetland buffer, which equates to the minimum lot size allowed in the R-6 zone. To minimize impacts to the on-site wetland and to the functions of the remaining on-site buffer, the proposed single-family residence would be sited at the northeast corner of the property furthest from the on-site wetland. The Applicant's buffer mitigation plan proposes to mitigate for the project's

permanent impacts to 6,000 square feet of buffer area by enhancing the remaining 15,610 square feet of on-site buffer area through the removal of invasive species, trash, and debris and the planting of native species. Signage and fencing would be installed along the boundary of the disturbed boundary areas, and a Native Growth Protection Area easement would be required over delineated critical areas to protect them in perpetuity. The Applicant would also employ low-impact development techniques for dispersing on-site stormwater to maintain hydrology to the wetland. City staff reviewed the proposal and determined that it would meet all other applicable development regulations, including regulations related to minimum tree density, dimensional requirements, water and sewer connections, stormwater management, and street and sidewalk improvements. The Hearing Examiner concurs with City staff's determination. The City provided reasonable notice and opportunity to comment on the application. The Muckleshoot Tribe commented that the proposed mitigation plantings should include more diverse species, and the Applicant revised the buffer mitigation plan to include more diverse species in response to the Muckleshoot Tribe's concerns. Two public comments from neighboring property owners raised concerns about tree removal and about the proposal's impacts to the on-site wetland. The proposal would exceed tree density requirements and, as addressed above, has been designed to minimize and adequately mitigate for impacts to the on-site wetland and its associated buffer. Conditions, as detailed below, are necessary to ensure that the proposal complies with all state and local regulations and to ensure that the proposal meets all applicable criteria for approval of a reasonable use exception.

Findings 1- 20.

2. **The proposed development satisfies the requirements for a critical area alteration.** The Applicant submitted a critical areas report and buffer mitigation plan that identified a Category II wetland on the western half of the property, with a standard 165-foot buffer covering the remaining eastern half of the property. City staff reviewed the critical areas report and buffer mitigation plan and determined that the proposed development is the minimum necessary to make reasonable use of the property and that the proposed mitigation would adequately mitigate for impacts to critical areas and would ensure that the public health, safety, and welfare would be protected. The Hearing Examiner concurs with City staff's assessment. *Findings 1- 20.*

DECISION

Based upon the preceding findings and conclusions, request for a reasonable use exception from the building setback requirements of WMC 21.51.310 and for a critical area alteration to allow construction of a new single-family residence, with associated improvements, on a 43,332 square foot property located on 136th Avenue NE, approximately 120 feet southwest of the intersection of 136th Avenue NE and NE 202nd Street, is **APPROVED**, with the following conditions:

1. The reasonable use permit is limited to the intrusions reflected on the site plans in Exhibit 9, dated August 26, 2020. Minor modifications to the approved plans may be approved

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by the director. Major modifications may be approved by the director, but only after being processed as a new project permit conditional use and/or critical area alteration (Type 2 decision) application.

2. Construction of the proposed development and subsequent mitigation shall comply with the recommendations of the Critical Areas Report & Buffer Mitigation Plan prepared by Wetlands Resources, dated May 4, 2020.
3. Pursuant to WMC 21.51.150, a Native Growth Protection Area (NGPA) easement is required over delineated critical areas to protect them in perpetuity. The easement shall be recorded with King County prior to any certificate of occupancy being issued for any buildings. Approval from the City of the NGPA easement is required prior to the easement being recorded.
4. A performance bond or other security equal to or greater than 150 percent of the actual cost of mitigation shall be posted in a form acceptable to the City prior to issuance of construction permits. Actual costs shall include all labor and materials associated with the mitigation activity. The security shall be sufficient to guarantee that all required mitigation measures will be completed in a timely manner in accordance with Chapter 21.51 WMC.
5. A maintenance/monitoring bond or other security equal to or greater than 20 percent of the cost of mitigation shall be posted in a form acceptable to the City prior to final inspection, occupancy, or release of the performance bond, whichever comes first. The security shall be sufficient to guarantee satisfactory workmanship on, materials in and performance of or related to structures and improvements allowed or required by Chapter 21.51 WMC for a period of five years.
6. A final tree preservation and maintenance agreement for trees located in common areas, including streets, drainage features and other jointly maintained spaces shall be provided to the City prior to certificate of occupancy being issued for any buildings. The tree plan shall be designed in conformance with the City's Municipal Code and Infrastructure Standards.
7. The Applicant shall obtain pertinent construction permits from the City, including building, site development, and right-of-way permits, prior to commencing construction on the site. Any conditions set forth in these construction permits shall be included as conditions for approving the reasonable use permit and critical area alteration as applicable.
8. This approval of the reasonable use permit to construct the new single-family home and associated improvements shall expire two years from the date the reasonable use approval

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becomes final unless a City permit authorizing construction is issued in which case the reasonable use permit shall remain active as long as valid construction permits remain active. The director may authorize a one-year extension if the extension criteria set forth in WMC 21.83.080(2) are satisfied.

DATED this 3rd day of February 2021.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center