

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

In the Matter of the Application of)	Nos. RUP20001; CAA20004;
)	SEP20009
)	
Susan Peterson)	Peterson RUEx and Critical
)	Area Alteration
)	
For Approval of a Reasonable Use Exception)	FINDINGS, CONCLUSIONS,
and Critical Area Alteration)	AND DECISION

SUMMARY OF DECISION

The request for a reasonable use exception from the setback requirements of Woodinville Municipal Code 21.51.320, related to the placement of a private septic system partially within a wetland buffer, and for a critical area alteration, to allow the installation of a new septic drainfield on a 32,400 square foot property at 16214 NE 180th 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 26, 2021, using remote technology in light of the ongoing COVID-19 pandemic.

Testimony:

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

Kelsey Loch, City Associate Planner
Susan Peterson, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated January 19, 2021
2. Application Materials, received June 22, 2020:
 - a. Land Use Application, dated June 18, 2020
 - b. Owner Authorization Form, dated June 18, 2020
 - c. Project Narrative, dated June 18, 2020
 - d. Certificate of Sewer Availability, dated February 15, 2019
 - e. Letter from Amanda Almgren to Susan Peterson, dated November 27, 2019

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3. Site/Project Plans, dated September 24, 2018
4. On-site Septic Approval Letter, Seattle-King County Department of Public Health, dated May 7, 2020
5. Critical Areas Report, The Watershed Company, dated June 2020; Updated Wetland Delineation Report, The Watershed Company, dated November 22, 2019; Wetland Delineation Report, the Watershed Company, dated June 28, 2018
5. Notice of Application and SEPA Optional DNS, dated December 26, 2019
6. Mitigation Plans, The Watershed Company, revised November 10, 2020
7. Tree Inventory and Impact Assessment, The Watershed Company, revised June 11, 2020
8. SEPA Checklist, dated June 18, 2020
9. Technical Memorandum (Critical Areas Review), Otak, dated August 27, 2020
10. Determination of Incomplete Application, dated July 22, 2020
11. Determination of Complete Application, dated August 10, 2020
12. Notice of Application, issued August 17, 2020
13. Requests for Additional Information, dated September 10, 2020, and October 6, 2020
14. Applicant Response to Request for Additional Information, received September 16, 2020
15. Notice of Public Hearing & Determination of Nonsignificance, dated January 7, 2021
16. Determination of Nonsignificance, dated January 7, 2021
17. Mailing Labels
18. Technical Memorandum (Mitigation Plan Review), Otak, dated January 15, 2021
19. Staff PowerPoint Presentation, dated January 26, 2020

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

FINDINGS

Application and Notice

1. Susan Peterson (Applicant) requests a reasonable use exception (RUEX) from the requirements of Woodinville Municipal Code (WMC) 21.51.320, which generally restricts the placement of a private septic system to the outer 25 percent of a wetland buffer, to allow installation of a private septic drainfield partially within the inner 75 percent of a 165-foot Category II wetland buffer and the removal/replacement of approximately 20 cubic yards of soil within the buffer. The Applicant also requests a “critical area alteration” in association with the same work. The 32,400 square foot property is located at 16214 NE 180th Street, adjacent to Lake Leota.¹ *Exhibit 1, Staff Report, page 1; Exhibit 2; Exhibit 9.*

¹ The property is identified by Tax Parcel No. 4045900066. *Exhibit 1, Staff Report, page 1.* A legal description of the property is included with the project/plan set. *Exhibit 3.*

2. The City of Woodinville (City) determined that the application was complete on August 10, 2020.² On August 17, 2020, the City provided notice of the application by posting notice on-site and at designated City locations, mailing or emailing notice to reviewing government departments and agencies and to property owners within 500 feet of the site, and publishing notice in *The Woodinville Weekly*, with a comment deadline of August 31, 2020. On January 7, 2021, the City provided notice of the open record hearing associated with the application by posting notice on-site and at designated City locations, mailing or emailing notice to reviewing government departments and agencies and to property owners within 500 feet of the site, and publishing notice in *The Seattle Times*. The City's notice materials indicated that written comments on the proposal could be submitted up until the scheduled open record hearing on January 26, 2021. The City received no comments in response to its notice materials. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2; Exhibit 10; Exhibit 11; Exhibit 12; Exhibit 15; Exhibit 17.*

State Environmental Policy Act

3. 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 would not be exempt from SEPA review because, under WMC 21.52.280, the City has selected certain categorical exemptions that will not apply when work is being completed in a critical area or its associated buffer. Specifically, the City has removed the SEPA exemption for the construction of accessory structures that support single-family residences, such as septic systems, when building within critical areas and their buffers. The City used the optional DNS process under Washington Administrative Code (WAC) 197-11-355 and provided notice of the threshold determination with the notice of application, issued August 17, 2020. The City's notice materials indicated that the City expected to issue a Determination of Nonsignificance (DNS) for the proposal and provided for a SEPA comment deadline of August 31, 2020. The City did not receive any comments specific to SEPA in response to its notice materials. Accordingly, following the comment period, 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. The City issued a DNS on January 7, 2021, consistent with notice requirements of WMC 21.84.040, with an appeal deadline of January 25, 2021. The DNS was not appealed. *Exhibit 1, Staff Report, pages 1 through 5; Exhibit 2; Exhibit 8; Exhibit 16; Exhibit 19.*

² On November 28, 2020, the City Council adopted Ordinance 706, comprehensively updating the City's project permitting procedures and decision criteria. The City has determined that the application would be processed under the old project permitting procedures and previous decision criteria. *Exhibit 1, Staff Report, page 2.*

Subject Property, Comprehensive Plan, and Zoning

4. As noted above, the 32,400 square foot property (.74 acres) is located at 16214 NE 180th Street. The lot is pie-shaped and 89 feet in width at its widest, narrowing down to 70 feet of width at the shoreline of Lake Leota. The property is approximately 359 feet deep. The lot gently slopes towards Lake Leota and is developed with a single-family home constructed in 1960, detached garage, landscaping, and other site improvements. The site has several groves of dense mature trees, including trees near the road and between the house and the shoreline. The buffer adjacent to Lake Leota mostly consists of lawn areas and some landscape plantings. The existing septic system serving the residence was installed with the original house. As discussed in detail below, although Lake Leota is referred to as a “lake,” because it is less than 20 acres in size it is actually considered a Category II depressional wetland for critical areas regulatory purposes, requiring a 165-foot buffer. In addition, Lake Leota is considered a fish-bearing water body (Type F) regulated as both a watercourse and a fish and wildlife habitat conservation area (FWHCA). Required buffers associated with Lake Leota as an FWHCA, and as a Type F water body, overlap with the required Category II wetland buffer. The Applicant requests a RUEX and critical area alteration to allow installation of a new septic drainfield for the property, which would extend between 9 and 58 feet into the 165-foot wetland buffer (i.e., partially within the inner 75 percent of the wetland buffer). *Exhibit 1, Staff Report, pages 1 through 7; Exhibit 2; Exhibit 3; Exhibit 5; Exhibit 19.*

5. The City Comprehensive Plan designates the property as “Low Density Residential” (LDR). The purpose of the LDR designation is to provide for “established low density residential neighborhoods that are inappropriate for more intensive urban development” due to “significant environmentally critical areas, high cost and difficulty in extending public facilities and/or presence of natural features.” *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.
 - Policy LU-2.4: Allow new development only where adequate public services can be provided.
 - 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.

6. The property is zoned Residential-1 (R-1), which allows for a maximum of one dwelling unit 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 low density zones, including the R-1 zone, by providing for predominantly single-family detached dwelling units. *WMC 21.20.040(1)(a)*. *Exhibit 1, Staff Report, pages 1 and 7; Exhibit 9; Exhibit 24.*
7. The Applicant purchased the property in 2016 and plans to replace or remodel the existing single-family residence. Due to the age of the original septic system, however, which also has no recorded permits, the Seattle-King County Department of Public Health (Public Health) determined that replacing the original septic system would be necessary. The existing system was installed in the 1960s, prior to the City’s incorporation or adoption of its current critical areas regulations, and would be considered a legal, nonconforming structure under *WMC 21.11.160*. Replacing the entire system, however, as required by Public Health, would constitute a “substantial

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improvement” under WMC 21.11.210, as the work would exceed 50 percent of the market value of the existing structure.³ Accordingly, the City determined that a RUEX would be necessary to allow the Applicant to replace the septic drainfield such that a portion of the drainfield would intrude into the inner 75 percent of the wetland buffer associated with Lake Leota. Under WMC 21.51.320, utilities may not be located within the inner 75 percent of a critical area buffer or FWHCA absent approval of a RUEX. Public Health has reviewed and approved the design of the new septic system itself. *Exhibit 1, Staff Report, pages 3 through 5; Exhibit 4.*

Critical Areas

8. The Watershed Company prepared a Wetland Delineation Report for the proposal, revised November 22, 2019, that determined that “Wetland A” consists of Lake Leota and its adjacent shoreline areas. As noted above, despite its name, Lake Leota is less than 20 acres in size and, accordingly, is considered a depressional wetland for critical areas regulatory purposes. Based on its review of existing data and its own review of the project site, The Watershed Company determined that Wetland A is a Category II wetland requiring a 165-foot buffer under WMC 21.51.300 and -.310. Wetland A covers the northern third of the subject property and, although the existing residence is sited outside of the 165-foot wetland buffer, any septic drainfield associated with the project would necessarily encroach into the buffer area. The Wetland Delineation Report also notes that Lake Leota would be regulated independently as both a fish-bearing (Type F) water body and a fish and wildlife habitat conservation area (FHWCA), under WMC 21.51.400. The wetland buffer associated with the lake, however, would subsume the 140-foot buffer required for a Type F water body so no additional analysis of impacts to the critical area buffer associated with Lake Leota as a Type F water body are necessary. The City’s third-party wetland consultant, Otak, reviewed the Watershed Company’s revised Wetland Delineation Report and concurred with the above-detailed information. *Exhibit 5; Exhibit 9.*
9. The Watershed Company also prepared a Critical Areas Report (CAR) for the proposal, dated June 2020, with attached Mitigation Plans. The CAR satisfies WMC 21.51.110, requiring that a critical areas report be prepared as part of any proposal to modify a critical area or critical area buffer or setback, demonstrating how the development leads to equivalent or better protection of critical area functions and values. The CAR notes that the existing septic system on-site is failing and that a new system is necessary. It addressed required mitigation sequencing and impact analysis and determined that no “direct, permanent impacts to critical areas [would] result from the proposed site

³ The Applicant provided a “Certificate of Sewer Availability,” with its application materials showing that a 3,382-foot sewer main extension, and lift station, would be necessary to connect the property to the municipal sewer system. *Exhibit 2.*

improvements.”⁴ The CAR ultimately determined that the new septic drainfield would be sited as far from Lake Leota as possible and that the Applicant would enhance a total of 1,360 square feet of the site through lawn removal and the planting of dense native shrubs and groundcover, concentrated in two areas, which would serve to mitigate any permanent buffer impacts from installation of the new septic drainfield at a 1:1 ratio. All temporary buffer impacts would be mitigated through promptly returning disturbed areas (which are all lawn) to their pre-construction condition using grass seed. The Mitigation Plans call for a 5-year monitoring period to ensure that the required mitigation plantings are appropriately installed and successfully mitigate for project impacts. Otak reviewed the CAR and Mitigation Plans and determined that the proposal would comply with mitigation sequencing requirements under the municipal code and would result in no net loss of ecological functions for Lake Leota and its associated critical areas buffer. *Exhibit 5; Exhibit 6; Exhibit 18.*

10. The Watershed Company also prepared a Tree Retention Plan for the proposal, revised June 11, 2020, in order to protect existing trees located within the area that would be impacted by installation of the new septic drainfield. The Tree Retention Plan was prepared after The Watershed Company’s arborist, the City’s consulting arborist, and the Applicant’s septic designer all met on-site, in August 2019, to assess the site and discuss alternative construction techniques that could be used to reduce construction impacts to existing trees within the proposed drainfield location. Accordingly, the Tree Retention Plan incorporates several recommendations that the Applicant would adhere to during installation of the new septic system. The City has determined that, so long as the recommendations of the Tree Retention Plan are followed, installation of the system is unlikely to destroy the structural integrity of trees in the vicinity of the new drainfield. *Exhibit 1, Staff Report, page 6; Exhibit 7.*

Reasonable Use Exception

11. As noted above, the Applicant requests a RUEX to allow the installation of a new septic drainfield partially within the inner 75 percent of the 165-foot buffer associated with Lake Leota. 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, based on site constraints, any septic drainfield associated with a single-family residence on-site would encroach within the wetland buffer. Without replacing the existing, failing septic system, it will no longer be possible to use the property for a single-family residence.
 - The proposed development of a single-family residence and associated improvements would not pose a threat to public health, safety, or welfare because the components of the new drainfield will be buried and the affected portions of

⁴ *Exhibit 5.*

the property will be re-landscaped to a level equivalent with the existing landscaping. In addition, the improved septic system will significantly reduce the likelihood of a sewage outflow having detrimental impacts on neighboring properties or Lake Leota.

- The new drainfield will be located as far as possible from the edge of the wetland in an area that is currently maintained as lawn and planting beds. The tanks and control panel will be located outside of the wetland buffer. All affected areas will be relandscaped to prevent erosion and enhance the functions of the wetland. Impacts to the buffer area will be temporary.
- The Watershed Company has prepared Mitigation Plans that provide for in-kind, on-site mitigation which is designed to maintain and enhance ecological functions and values of Lake Leota. Best available technology will be used to minimize project impacts and native and drought-tolerant plants will be used to enhance the functions of the buffer area.
- The septic design has been approved by the Seattle-King County Department of Public Health and is far superior to the existing, failing system.
- The proposed development would be consistent with all other application regulations and requirements.

Exhibit 2.

12. City staff also reviewed the proposal against the criteria for a RUEX under former WMC 21.51.070(a). Staff determined:

- The homeowners undertook this septic replacement in hopes of remodeling/replacing the existing home. Having a functioning septic system is necessary for occupancy of the house. Due to the age of the septic system, Seattle-King County Health Department's lack of records for these older systems and knowing that similarly aged septic systems along Lake Leota are also in need of replacement, it is reasonable to assume this property owner may have needed to replace the system in the near future due to failure anyways. A reasonable use permit would be required for replacement of a failing septic system when located in a critical area buffer regardless of the reason. Denying an applicant the right to replace their septic system would deny use of the property.
- Septic systems have a limited life span that is typically around 40 years. Other septic systems in this area of Lake Leota for similarly aged homes have been identified also needing replacement. A new septic system can contribute to an overall health improvement of the Lake and the associated stream ecosystems. Failing systems can leach E.coli and fecal waste into neighboring groundwater or surface waters, which can be harmful to the both wildlife and neighbors.
- The existing septic drainfield is located immediately north of the residence and has resulted in compacted ground in this area. The drainfield will be placed immediately north of the existing failed drainfield, as far from the lake and wetland as possible. However, the new septic drainfield is located partially within

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the wetland buffer. The temporary disturbance associated with installation will be restored to its previous condition, as new grass seed will be applied and established. The new tanks will be located outside the buffer.

- Approximately 1,360 square feet of wetland buffer area between the house and Lake Leota shoreline will be enhanced with native plantings. A 5-year monitoring period will begin once the City receives written notification (compliance/as-built report) confirming the mitigation plan has been implemented, and City staff issues approval of the installation.
- The work being proposed appears to be the minimum necessary and protects the critical area and its buffer. The proposed mitigation plantings will result in over 1,360 square feet of lawn being converted to native wetland vegetation. The City's wetland consultant believes the goals and performance standards in the Mitigation Plan are appropriate for the site.
- The project has been reviewed against all applicable City codes and is consistent with all applicable regulations and requirements.

Exhibit 1, Staff Report, pages

Critical Area Alteration

13. 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 property is a long narrow parcel which is located between NE 180th Street on the south and Lake Leota on the north. Lake Leota, and the adjacent strip of land ranging from 10' to 20' in width, has been identified as a critical area (wetland). According to the wetland delineation report prepared by The Watershed Company, dated June 15, 2018, the wetland is rated Category II with a habitat score of 7, which requires a 165-foot buffer. The lake is also regulated as a fish and wildlife habitat conservation area, and it meets the criteria for a "fish bearing stream," which requires a buffer of 140 feet. There are no other critical areas existing on the property.
 - The critical areas report, prepared by The Watershed Company, dated June 2020, uses the best available science to evaluate the proposal and all probable impacts.
 - The provided critical areas report describes existing conditions of the critical area, including an assessment of habitat and ecological functions and values.
 - As the proposed work is necessary for the continued use of the property as a single-family residence, the Applicant has applied for a reasonable use permit to undertake the work. It will also provide significant added protection for the wetland and adjacent property owners, as compared to the existing, 60-year-old septic system. The proposal utilizes the best available science and minimizes impacts to the greatest extent possible. It also includes appropriate mitigation as

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required by the WMC. The development proposal is consistent with the applicable provisions of Chapter 21.51 WMC.

- No alteration of the critical area (Lake Leota and the adjacent strip of land) is proposed. An alteration of the outer portion of the buffer area is proposed – the installation of the drainfield portion of the proposed new septic system. The septic system serving the existing single-family residence is beyond its useful life. Due to the configuration of existing development and mature trees on the property, the only feasible location for the installation of the new drainfield is partially within the wetland buffer. Without replacement of the existing septic system, now or in the relatively near future, it will no longer be possible to use the property as a single-family residence.
- The Mitigation Plan set out in the critical areas report satisfies the requirements of Chapter 21.51 WMC.

Exhibit 2.

14. City staff also 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 The Watershed Company, which identified a Category II Wetland on the property.
- The City had the study peer-reviewed by Otak and confirms the findings.
- Due to work occurring in a Category II wetland buffer, a critical areas report was required and submitted pursuant to WMC. 21.51.330.
- The report was reviewed and found to be compliant for the purposes of the reasonable use and critical areas alteration.
- The development proposal is not complaint with all of the utility placement provisions in Chapter 21.51 WMC. The Applicant, however, has taken the correct steps to apply for a reasonable use exemption and submitted a mitigation plan that is compliant with Chapter 21.51 WMC.
- The mitigation plan has been found to be consistent with the requirements of Chapter 21.51 WMC.

Exhibit 1, Staff Report, pages 10 and 11.

Testimony

15. City Associate Planner Kelsey Loch testified generally about the proposal and how, with the City's proposed conditions, it would meet the criteria for approval of reasonable use exception under former WMC 21.51.070. Ms. Loch explained that a RUEX and critical areas alteration are needed for private utilities, such as the septic drainfield proposed by the Applicant, to be installed within the inner 75 percent of a wetland buffer. She stressed that, here, the existing septic system is failing, is well past its useful life, and that installation of a new septic system would be necessary for the Applicant to continue using the existing single-family residence on the property or to replace/remodel the

residence. Ms. Loch discussed the City's vesting determination, and provided additional information about the SEPA review process, explaining that a proposal like this would normally be exempt from review under SEPA but the City has eliminated certain allowed exemptions in relation to appurtenances associated with single-family residential development. Finally, Ms. Loch noted that Lake Leota is not considered a "lake" for regulatory review purposes and is not subject to the Shoreline Management Act or the City's Shoreline Master Program. Instead, it is protected through implementation and enforcement of the City's critical areas regulations. *Testimony of Ms. Loch.*

16. Applicant Susan Peterson testified that she agrees with the analysis provided in the City staff report and with Ms. Loch's testimony. She stressed that her intent is to ensure that the new septic system provides greater environmental protection for Lake Leota and the project has been designed with that goal in mind. *Testimony of Ms. Peterson.*

Staff Recommendation

17. Ms. Loch testified that the City recommends approval of the application for a reasonable use exception and critical area alteration, with conditions. Ms. Peterson testified that she would comply with the recommended conditions of approval. *Exhibit 1, Staff Report, pages 12 and 13; Testimony of Ms. Loch; Testimony of Ms. Peterson.*

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)*. The Hearing 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); former WMC 21.83.030.*

Criteria for Review⁵

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;

⁵ As noted in the City staff report and in the testimony of Ms. Loch, 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 August 10, 2020, rather than under the current criteria as updated on November 28, 2020. *Exhibit 1, Staff Report, page 2; Testimony of Ms. Loch.*

- 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:

- 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.

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Conclusions Based on Findings

- 1. With conditions, the proposed development would meet the criteria necessary for a reasonable use exception.** The City provided reasonable notice of the application and associated open record hearing and did not receive any comments in response to its notice materials. In addition, the City reviewed the Applicant's environmental checklist and other available information on file, determined that the project would not have a probable significant impact on the environment, and issued a DNS, which was not commented on or appealed. The property is designated Low Density Residential (LDR) by the City Comprehensive Plan and is located in the R-1 zoning district. The purpose of the LDR designation is to provide for low density residential neighborhoods on lands suitable for urban development. The proposed installation of a new septic drainfield would, ultimately, allow for redevelopment of a detached single-family residential dwelling, consistent with several Comprehensive Plan goals and policies promoting infill development in a manner compatible with adjacent land uses, while protecting the functions and values of wetlands. The subject property is adjacent to Lake Leota, a Category II wetland, and much of its associated 165-foot buffer covers the property. Due to site constraints, a new septic drainfield for the property would necessarily be located (at least partially) within the inner 75 percent of the wetland buffer, contrary to WMC 21.51.320. Accordingly, strict application of the City's critical area code would deny all reasonable use of the property.

The Applicant requests a RUEX to allow installation of a new septic drainfield for the property, which would extend between 9 and 58 feet into the 165-foot wetland buffer (i.e., partially within the inner 75 percent of the wetland buffer). To minimize impacts to the on-site wetland and to the functions of the remaining on-site buffer, the proposed septic tanks would be installed outside of the wetland buffer and the associated drainfield would be installed within a portion of the buffer that currently has little habitat value. The Applicant submitted a Critical Areas Report and Mitigation Plan that determined this approach would have the fewest impacts on Lake Leota. In addition, the Applicant would enhance a total of 1,360 square feet of the site through lawn removal and the planting of dense native shrubs and groundcover, concentrated in two areas, which would serve to mitigate any permanent buffer impacts from installation of the new septic drainfield at a 1:1 ratio. All temporary buffer impacts would be mitigated through promptly returning disturbed areas (which are all lawn) to their pre-construction condition using grass seed. The Mitigation Plan calls for a 5-year monitoring period to ensure that the required mitigation plantings are appropriately installed and successfully mitigate for project impacts. The City's third-party review consultant reviewed the submitted Critical Areas Report and Mitigation Plan and determined that the proposal would comply with mitigation sequencing requirements under the municipal code and would result in no net loss of ecological functions for Lake Leota and its associated critical areas buffer. In addition, the proposal has been designed to avoid impacts to existing trees on-site and the Applicant would follow recommendations prepared by its (and the City's) professional

arborists to ensure tree protection occurs during installation of the septic system. The existing septic system on-site is failing and replacing the system would ensure that no detrimental impacts from sewage occur in relation to Lake Leota or adjacent properties. Finally, the proposed impacts to the wetland buffer are the minimum necessary for installation of the septic drainfield. 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 – 17.*

- 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 property (Lake Leota), with a standard 165-foot buffer covering a significant portion 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 – 17.*

DECISION

Based upon the preceding findings and conclusions, request for a reasonable use permit and for a critical area alteration to allow installation of a new septic drainfield within a Category II wetland buffer, on a 32,400 square foot property at 16214 NE 180th Street, is **APPROVED**, with the following conditions:

1. The reasonable use permit and critical areas alteration is limited to the intrusions reflected on the site plan in Exhibit 2, dated June 22, 2020, and Exhibit 3, dated September 24, 2018. Minor modifications to the approved plans may be approved by the Director.
2. Installation of the septic system and subsequent mitigation shall comply with the recommendations of the Critical Areas Report, Buffer Mitigation Plan, and Tree Retention Plan (Exhibits 5, 6, and 7).
3. A zero percent cover tolerance for knotweed (*Polygonum x bohemicum*, *Polygonum cuspidatum*, *Polygonum sachalinense*, *Persicaria wallichii*) shall be added as a performance standard during the five-year monitoring period.
4. This approval of the reasonable use permit and critical areas alteration to install the new septic drainfield and stormwater facilities shall expire two years from the date the reasonable use approval and critical areas approval becomes final unless a City permit authorizing construction is issued in which case the critical areas and reasonable use

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permits 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 the municipal code are satisfied.

DECIDED this 11th day of February 2021.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center