



**LAND USE HEARING EXAMINER
CITY OF KENT**

Andrew M. Reeves
Hearing Examiner

In the Matter of the Application of)	No. RECA-2018-1
)	KIVA #RECR-2184965
)	
Jeffrey Jones)	Cuttings RUEX
)	
)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Reasonable Use Exception</u>)	AND DECISION

SUMMARY OF DECISION

The request for a reasonable use exception (RUEX) from the requirements of Chapter 11.06 of the Kent City Code (KCC) to allow construction of a single-family residence on a parcel entirely encumbered by a wetland buffer at 14707 SE 272nd 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 April 17, 2019.

Testimony:

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

- Kaelene Nobis, City Planner
- Erin George, City Planning Manager
- Jeffrey Jones, Applicant
- Emmett Pritchard, City Wetland Consultant
- Debra Russell

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated April 8, 2019

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2. Distribution of Staff Report & Agenda, with Declaration of Service, dated April 10, 2019
3. Reasonable Use Application, with Project Narrative, received December 3, 2018
4. Wetland Buffer Enhancement Plan (3 Sheets), revised March 9, 2019
5. Notice Materials (Public Hearing):
 - a. Ad copy for publication on April 5, 2019; Email from Gale Gwinn to Tanya Kosen, dated March 25, 2019, and email string
 - b. Affidavit of Posting, dated April 5, 2019, and Vicinity Map/Site Plan
 - c. Distribution of Notice of Public Hearing, with Affidavit of Mailing, dated April 5, 2019
6. Notice Materials (Application):
 - a. Ad copy for publication on December 7, 2018; Affidavit of Publication, *Kent Reporter*, dated December 7, 2018
 - b. Revised Notice of Application, with Affidavit of Posting, dated December 7, 2018
 - c. Distribution of Notice of Application, with Declaration of Delivery, dated December 7, 2018
7. Wetland Rating Forms:
 - a. Wetland Rating Form (2004), site visit June 14, 2016
 - b. Wetland Rating Summary – Western Washington (2014), site visit June 14, 2016
8. Letter from Robert Knutsen to Jeffery Jones, dated May 8, 2017
9. Wetland Assessment, J.S. Jones and Associates, Inc., dated July 25, 2016
10. Letter from Kaelene Nobis to Jeffery Jones, dated March 19, 2019
11. Critical Areas Mitigation Bond Quantity Worksheet, received March 13, 2019
12. Certificate of Water Availability, dated April 16, 2018; Certificate of Sewer Availability, dated May 2, 2018
13. Shoreline Master Program Exemption Determination, dated April 9, 2019
14. Wetland Buffer Enhancement Plan Set (Full Size), revised March 9, 2019:
 - a. Enhancement Areas (Sheet 1 of 3)
 - b. Planting Details (Sheet 2 of 3)
 - c. Text (Sheet 3 of 3)
15. Third-Party Review:
 - a. Letter from Raedeke Associates, Inc., dated November 7, 2016
 - b. Letter from Raedeke Associates, Inc., dated February 15, 2017
 - c. Letter from Raedeke Associates, Inc., dated October 12, 2018
 - d. Letter from Raedeke Associates, Inc., dated December 7, 2018
 - e. Letter from Raedeke Associates, Inc., dated February 14, 2019
16. Wetland Rating Summary – Western Washington (2014), site visit April 12, 2019

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. Jeffery Jones (Applicant) requests a reasonable use exception (RUEX) from the requirements of Chapter 11.06 KCC to allow construction of a single-family residence on a 0.7-acre parcel entirely encumbered by a Category II wetland buffer. The Applicant would construct a single-family residence with a carport and patio on a 1,248 square foot building footprint, within a 3,871 square foot development envelope. As mitigation for project impacts, the Applicant would enhance approximately 16,462 square feet of wetland buffer by removing invasive vegetation and installing native plants. The property is located at 14707 SE 272nd Street. ¹ *Exhibit 1, Staff Report, pages 1 through 3; Exhibit 3; Exhibit 14.*

2. The City of Kent (City) determined that the RUEX application was complete on December 3, 2018. The City provided notice of the application on December 7, 2018, by posting notice on-site, mailing or emailing notice to reviewing government departments and agencies, and publishing notice in the *Kent Reporter*. On April 5, 2019, the City provided notice of the open record hearing associated with the application by mailing or emailing notice to reviewing government departments and agencies, interested parties, and owners of property within 300 feet of the subject property; posting notice on-site; and publishing notice in the *Kent Reporter*. The City received no comments in response to its notice materials. *Exhibit 1, Staff Report, page 5; Exhibit 5; Exhibit 6.*

State Environmental Policy Act

3. The City determined that the proposal is categorically exempt from review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), as minor construction, in accord with Washington Administrative Code (WAC) 197-11-800(1)(c) and KCC 11.03.210.A.1. *Exhibit 1, Staff Report, page 4.*

Subject Property, Comprehensive Plan, and Zoning

4. The subject property abuts SE 272nd Street to the north, a principal arterial street. The property was annexed from King County in 1996, as part of the Meridian annexation (Ordinance No. 3241), and is undeveloped. The subject parcel was created in May 15, 1978, when the Park Meridian Plat was approved by the King County Council, and has been designated for "future development" since that time. The property measures approximately 120 feet by 255 feet, is

¹ The property is identified by King County Tax Parcel No. 6648500830. *Exhibit 1, Staff Report, page 2.* A legal description of the property is included on the face of the Wetland Buffer Enhancement Plans. *Exhibit 14.*

approximately 0.7-acres in size, and is currently vacant and covered by invasive Himalayan blackberry. *Exhibit 1, Staff Report, pages 2 through 8; Exhibit 9.*

5. The City Comprehensive Plan designates the property as Single-Family Residential (SF-6). The goals and policies of the City Comprehensive Plan represent an expression of community intentions and aspirations concerning the future of Kent. The SF designation allows single-family residential development at varying densities and housing forms (e.g., cottage and cluster). Within the city limits, there are four single-family designations: SF-3, SF-4.5, SF-6, and SF-8. These designations allow development of up to 3, 4.5, 6, and 8 dwelling units per acre, respectively, and could accommodate lower densities as well. *City Comprehensive Plan, Chapter Two, page 37. Exhibit 1, Staff Report, page 2.*
6. The property is zoned "SR-6" (Single Family Residential), which allows 6.05 dwelling units per acre. *Kent City Code (KCC) 15.04.170.* The purpose of the single-family residential districts is to stabilize and preserve single-family residential neighborhoods, as designated in the Comprehensive Plan. An additional purpose is to provide a range of densities and minimum lot sizes in order to promote diversity and recognize a variety of residential environments. One single-family dwelling per lot is allowed within the SR-6 zoning district. *KCC 15.03.010; KCC 15.04.020.* The site is bounded on the north by SE 272nd Street, running east/west. Lake Meridian Park and the shoreline of Lake Meridian lie further to the north, beyond SE 272nd Street. A daycare abuts the property to the east. A park/recreation tract that contains a large portion of the wetland that encumbers part of the subject property is located directly to the west and south. *Exhibit 1, Staff Report, pages 2 through 4.*

Critical Areas

7. J.S. Jones and Associates, Inc., prepared a Wetland Assessment, dated July 25, 2016, on behalf of the Applicant. According to the Wetland Assessment, the wetland is located along the west side of the property, is approximately 4 acres in size, and extends from the property boundary at SE 272nd Street to the south approximately 600 feet. The wetland is a seasonally inundated depressional wetland with no surface water connection to Lake Meridian. The initial Wetland Assessment determined that the wetland would be categorized as a Category III wetland with low habitat function, requiring a 75-foot wetland buffer under KCC 11.06.600.B. *Exhibit 9.*
8. The City requested third-party review of the Wetland Assessment, and associated wetland delineation. Raedeke Associates, Inc. (Raedeke), visited the site on September 2, 2016, and provided a review letter on November 7, 2016. Raedeke determined that, although the wetland on-site was appropriately delineated and accurately described by J.S. Jones and Associates, it believed the

wetland would be rated as a Category II wetland based on its proximity to Lake Meridian and its habitat score. Under KCC 11.06.600.B, Category II wetlands with moderate habitat function require a 125-foot buffer. Raedeke also noted that the northwest corner of the property (where development would occur) is within the 200-foot shoreline jurisdiction for Lake Meridian, under the City Shoreline Master Program, potentially triggering the need for a Shoreline Substantial Development Permit (SSDP) under the Shoreline Management Act.² Raedeke recommended that the Applicant revise the wetland rating form, provide a conceptual mitigation plan addressing development impacts, and determine whether an SSDP would be necessary for development. *Exhibit 15a.*

9. In response to Raedeke's review, the Applicant revised the wetland rating, to reflect that a Category II wetland encumbers the property, and prepared project plans and conceptual mitigation plans addressing development impacts from the proposal. The project plans call for construction of a single-story residence, with approximately 780 square feet of living space on a building footprint of approximately 1,248 square feet. A carport, patio, and storage space would comprise the remaining square footage of the building footprint. This footprint would be located approximately 58 feet from the wetland edge, entirely within the required 125-foot wetland buffer. The entire development footprint, including the driveway, would permanently impact approximately 3,871 square feet of wetland buffer. Accordingly, the Applicant requests relief from the requirements that a 125-foot wetland buffer (KCC 11.06.600) and a 15-foot building setback line related to critical area buffers (KCC 11.06.600.K) be maintained. *Exhibit 1, Staff Report, page 2; Exhibit 3; Exhibit 4; Exhibit 14.*
10. Raedeke reviewed the Applicant's materials several more times and determined that mitigation plans would result in greater protection to the wetland than currently exists. Ultimately, in a letter dated February 14, 2019, Raedeke determined that:
 - The Category II wetland and its buffer encumber nearly the entire property, necessitating that the proposed single-family residence be situated within the northeast corner of the property to minimize impacts to the wetland and its buffer.

² The Shoreline Management Act is codified at RCW 90.58.020. Applicable policies of RCW 90.58.020 include those to foster "all reasonable and appropriate uses"; protect against adverse effects to the public health, the land and its vegetation, and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alternations to the natural condition of the shoreline. Nonetheless, "private property rights are 'secondary to the SMA's primary purpose, which is to protect the state shorelines as fully as possible.'" *Samson v. City of Bainbridge Island*, 149 Wn. App. 33, 49 (2009) (internal quotation marks omitted) (quoting *Lund v. Dep't of Ecology*, 93 Wn. App. 329, 336-37 (1998)).

- The majority of the proposed development is regulated under the City's current critical areas regulations. In coordination with the City and the Washington State Department of Ecology (DOE), however, it has been determined that the northwest corner of the proposed development area would be within the shoreline setback area for Lake Meridian and regulated under the City Shoreline Master Program (City SMP), adopted in 2009. The City SMP adopts the former (2004) version of the City's critical areas regulations. A portion of the driveway and parking area for the proposed residence would be constructed in the area that falls under the jurisdiction of the City SMP and, in turn, the previous version of the critical areas regulations.
- A letter of exemption from the Shoreline Substantial Development Process would be obtained, obviating the need for a Shoreline variance.
- The rest of the project area would be reviewed under the City's current critical areas regulations, and development of the site would be processed as a reasonable use exception permit.

Exhibit 15.e.

11. On April 9, 2019, the City issued a Shoreline Master Program "Exemption Determination." The Exemption Determination notes that, under Chapter 7.B.1 of the City SMP and under WAC 173-27-040(2)(g), construction of single-family residences and normal appurtenances are exempt from the requirement to obtain an SSDP. The Exemption Determination further notes that a part of the proposed driveway and an infiltration trench would be located within 200 feet of Lake Meridian and would be regulated by the 2004 version of the City's critical areas regulations (as adopted under the 2009 SMP) and that the rest of development would be subject to the City's current critical areas regulations.

Exhibit 13.

12. As noted above, the Applicant would mitigate for project impacts through enhancing approximately 16,462 square feet of the wetland buffer outside of the development footprint. The Applicant has submitted mitigation plans that indicate that invasive species on-site would be removed and that the remainder of the buffer would be planted with native trees and shrubs to provide greater function and value to the wetland. Buffer enhancement would be at a 4.25:1 ratio and would be implemented prior to occupancy of the single-family residence that would be built on-site. In addition, the Applicant would implement a 5-year monitoring program to ensure that mitigation is successful.

Exhibit 1, Staff Report, pages 4 through 9; Exhibit 3; Exhibit 4; Exhibit 14.

Reasonable Use Exception

13. Because a wetland buffer encumbers the entire site, the avoidance of critical area buffer impacts is not possible without denying the Applicant all reasonable use of the property. Accordingly, the Applicant has applied for a RUEX under KCC 11.06.090. *Exhibit 1, Staff Report, page 1; Exhibit 3.*

14. The Applicant provided a detailed project narrative with its application materials addressing the criteria for a RUEX under KCC 11.06.090, arguing that the proposal should be approved based on the following:
 - Because the entire parcel is encumbered by a wetland and wetland buffer, there is no buildable area on-site that would meet the critical area building setback requirements. The property is zoned for residential use and residential use would not be possible without a RUEX.
 - The proposed house would be occupied by the Applicant. The house would be one-story, with a carport, and would be significantly smaller than homes currently being constructed in the area. The living space of the residence would be 780 square feet. A carport, porch, and storage would comprise the remaining square footage. This is the minimum necessary to provide relief from the code.
 - Vegetative enhancement of the remaining wetland buffer would increase the functions and values of the wetland.
 - Impacts to the wetland buffer are unavoidable. Compensation for the loss of buffer would be provided, including enhancing remaining on-site vegetation within the wetland buffer at a 4.25:1 ratio. Mitigation would be implemented before occupancy of the single-family residence. In addition, a 5-year maintenance and monitoring plan would be implemented, and a financial guarantee would be provided.
 - The subject parcel was created in May 15, 1978, prior to the City's adoption of critical areas regulations. The parcel was designated for "future development," and no further division of the property has occurred since the original plat was approved. The inability to derive reasonable economic use is not the result of the Applicant or previous owner's actions.
 - The Applicant obtained all recorded documents and discussed the property with an attorney, the title company, and City planners prior to purchasing it. The Applicant was advised by all such parties that the property would be developable.
 - The Applicant, a wetland scientist, visually inspected the property prior to purchase and determined that a buildable area outside of the wetland exists.

Exhibit 1, Staff Report, pages 5 through 11; Exhibit 3.

15. City staff also reviewed the proposal against the criteria for a RUEX under KCC 11.06.190. Staff determined:
- Within the SR-6 zoning district, single-family homes are one of the only principally permitted uses. Accordingly, the proposal for one single-family home on the subject parcel is a reasonable use for the property.
 - Reasonableness was considered in context of the scope of the proposed home. The proposed home would be compatible with other authorized uses in the area and with uses planned for the area. Surrounding land uses include single-family homes, a park, and a daycare. Low-density single-family residential development is exactly the type of use that was envisioned for this area by the Comprehensive Plan and zoning ordinances.
 - The proposed residential footprint is significantly less than the average for a single-family residence within a quarter-mile of the property. The proposed footprint would be 1,248 square feet; the average footprint in the vicinity is 1,753 square feet.
 - There are no other reasonable economic uses of the property that would be possible with fewer adverse impacts. The proposed density is the minimum possible with only one residence proposed on-site. The residence would be located as far to the northeast of the property as the setbacks and parcel would allow and on the outer edge of the buffer as far from the wetland as possible. Given site constraints, the proposal would impact the wetland buffer to the minimum extent possible.
 - The Applicant would enhance 16,642 square feet of buffer outside of the development footprint with native trees and shrubs, which would provide greater function and value to the wetland.
 - The Applicant would implement a 5-year buffer enhancement and monitoring program. Requiring creation of wetland or off-site mitigation would not be reasonable because the proposed development would avoid any impact to the wetland itself. Buffer averaging is not feasible because the wetland buffer encumbers the entire property. Mitigation banking or in-lieu fee mitigation to mitigation for impacts off-site would not be feasible. The Applicant's proposed buffer enhancement is extensive, and all reasonable mitigation measures will have been taken.
 - The inability to derive reasonable economic use of the property is not the result of the Applicant's or previous property owner's actions.
 - Given the history of the property as a "future development" tract and the steps taken by the Applicant to review the site, all reasonable efforts to determine critical area limitations on the property were taken.
 - The City's wetland consultant (Raedeke) has reviewed the conceptual mitigation plans. A final mitigation plan is required and is to be submitted with the building permits.

Exhibit 1, Staff Report, pages 5 through 11.

Testimony

16. City Planner Kaelene Nobis testified generally about the proposal and how it would meet the criteria for a reasonable use exception under KCC 11.06.090. Ms. Nobis stressed that the Applicant would provide mitigation for permanent impacts to the wetland buffer at a 4.25-to-1 ratio and that this would ultimately result in improved wetland buffer function. She also explained how the City determined, in consultation with its wetland consultant and the Department of Ecology, that a small portion of the project site would be governed by the City SMP and the 2004 version of the City's critical areas regulations. Ms. Nobis noted that this would not impact the Hearing Examiner's review of the RUEX proposal because the City issued a shoreline "Exemption Determination" related to work that would be performed within the 200-foot shoreline jurisdiction of Lake Meridian. She also explained that the City granted an administrative variance related to the requirement under KCC 15.14.170 that a 20-foot setback be provided from the face of a carport or garage to the front property line. The administrative variance allows the carport to be sited 16 feet from the front property line. Ms. Nobis noted that all other requirements of the City's zoning ordinances would be met. *Testimony of Ms. Nobis.*
17. Planning Manager Erin George testified that the proposal would be consistent with the goals and policies of the City Comprehensive Plan and explained that the City determined the project would be categorically exempt from review, under SEPA, because it would involve minor new construction outside of lands covered by water. *Testimony of Ms. George.*
18. Applicant Jeffrey Jones testified that it seems problematic that two separate versions of the City's critical areas ordinances are involved with development on the same property and that, under the municipal code, enhancement of the entire wetland buffer is necessary, despite the minimal impacts that would occur. Mr. Jones, a wetland biologist, stated that he disagrees with the City's wetland consultant about how to rate the wetland, specifically on providing habitat value to snags, but would not challenge the rating. Mr. Jones also explained that he owns "Cuttings, LLC" and that the name does not reference someone else's last name. *Testimony of Mr. Jones.*
19. Emmitt Pritchard, the City's Wetland Consultant, testified about the review process that occurred and how the Applicant's mitigation plans would ensure that no negative impacts to the wetland would occur, noting that the proposed mitigation would improve the buffer habitat. *Testimony of Mr. Pritchard.*
20. Debra Russell testified that she owns the property directly to the east of the subject property. She stated that she hopes to be a good neighbor and would like to see the existing laurel hedge between their properties maintained. *Testimony of Ms. Russell.*

Staff Recommendation

21. Ms. Nobis testified that the City recommends approval of the proposal, with conditions. Mr. Jones stated that he would comply with the recommended conditions of approval. *Exhibit 1, Staff Report, page 11; Testimony of Ms. Nobis; Testimony of Mr. Jones.*

CONCLUSIONS

Jurisdiction

The City Council authorizes the Hearing Examiner to hold hearings and make decisions on reasonable use applications in accord with Kent City Code 12.01.040. *Kent City Code (KCC) 11.06.090.B.*

Criteria for Review

The standards and requirements of the Critical Areas Ordinance regulations are not intended, and shall not be construed or applied in a manner, to deny all reasonable use of private property. *KCC 11.06.090.A.*

Development may be permitted subject to appropriate conditions if an Applicant can demonstrate to the satisfaction of the Hearing Examiner that strict application of the Critical Areas standards would deny all reasonable use of the property. In order for the Hearing Examiner to approve a reasonable use exception, the

Applicant must demonstrate all of the following:

1. No reasonable use with less impact on the critical area and its buffer is possible.
2. There is no feasible and reasonable onsite alternative to the activities proposed, considering possible changes in site layout, reductions in density, and similar factors that would allow a reasonable economic use with fewer adverse impacts.
3. The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas, considering their functions and values and the risks associated with proposed development.
4. All reasonable mitigation measures have been implemented or assured.
5. The inability to derive reasonable economic use is not the result of the applicant's actions or that of a previous property owner, including, but not limited to, segregating or dividing the property in a manner that created an undevelopable condition, or exacerbating an existing condition to such a degree that reasonable economic use is no longer possible under the terms of this chapter.

6. The applicant adequately undertook reasonable efforts to acquire sufficient knowledge of existing limitations on the subject property at the time when the applicant acquired the property. For purposes of this section, "reasonable efforts" includes, but is not limited to: visual inspection of the site; review of critical area maps; site assessment by a qualified professional; and a price comparison to other properties that are comparable in terms of size, location, zoning, and access.
7. Any alteration of a critical area approved under this section shall be subject to appropriate conditions and will require mitigation under an approved mitigation plan.

KCC 11.06.090.C.

The criteria for review adopted by the Kent 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. **No reasonable use with less impact on the critical area and its buffer would be possible.** The City gave reasonable notice and opportunity to comment on the proposal. The property is designated Single-Family Residential (SF-6) by the City Comprehensive Plan and is located in the SF-6 zoning district. The purpose of the single-family residential zoning districts is to stabilize and preserve single-family residential neighborhoods, as designated in the Comprehensive Plan. An additional purpose is to provide a range of densities and minimum lot sizes in order to promote diversity and recognize a variety of residential environments. One single-family dwelling per lot is allowed within the SR-6 zoning district. Development of a single-family residence is a permitted use in the SR-6 zone. A Category II wetland encumbers the western portion of the subject property, and the rest of the property lies within the 125-foot wetland buffer. The proposed residence would be located in the northeast corner of the property, adjacent to existing development, including SE 272nd Street. The proposed building footprint would be comparable to the average footprint size of surrounding residences, and the proposed development envelope (including the driveway and patio) would be significantly smaller than the average of other developed sites in the area. Impacts to the wetland buffer would be mitigated with buffer enhancements. *Findings 1 – 21.*
2. **There is no feasible and reasonable onsite alternative to the activities proposed, considering possible changes in site layout, reductions in density, and similar factors, that would allow a reasonable economic**

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use with fewer adverse impacts. The entire property is encompassed by a wetland and wetland buffer, leaving no portion of the property free for development. No alternative sites would allow for fewer adverse impacts to the wetland buffer, and the site layout has been designed to ensure impacts to the wetland buffer would be the minimum necessary to allow development of a single-family residence. *Findings 1, 4 – 21.*

- 3. The proposed use would result in the minimum possible impacts to affected critical areas, considering their functions and values and/or the risks associated with the proposed development.** The entire property is encompassed by a wetland and its buffer. The proposed use would be sited on the property in a manner that would have the fewest possible impacts to affected critical areas. The Applicant would mitigate buffer impacts by enhancing the remaining buffer area—16,462 square feet—with native plantings, which would provide greater function and value to the wetland buffer. Although a portion of the proposed storm drainage trench, parking maneuvering area, and buffer enhancement would be located within the 200-foot Shoreline Management Act jurisdiction, the City determined that these features are exempt, and the City issued a Shoreline Master Program Exemption Determination. *Findings 1, 3 – 21.*
- 4. All reasonable mitigation measures have been implemented or assured.** The proposed development envelope would impact approximately 3,871 square feet of wetland buffer. The Applicant would mitigate impacts from development by enhancing the remaining 16,462 square feet of the site with native plantings. The adjacent wetland would not be directly impacted; thus, no wetland creation would be required. The City reviewed the proposed mitigation measures, and determined that the proposed mitigation would increase plant species diversity and density, resulting in improved wetland buffer function. In addition, the City would ensure that all reasonable mitigation measures have been adhered to when the Applicant seeks a building permit for the proposal. *Findings 1, 4 – 21.*
- 5. The inability to derive reasonable economic use is not the result of the Applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition.** The inability to derive reasonable economic use of the property is a result of the current requirements of the critical areas code, adopted after the parcel was originally created. Accordingly, the Applicant or his predecessors-in-interest did not contribute to the property being undevelopable without a REUX. *Findings 4, 14 – 17.*
- 6. The Applicant adequately undertook reasonable efforts to acquire sufficient knowledge of existing limitations on the subject property at the time when the Applicant acquired the property.** The Applicant

obtained all the recorded documents associated with the property and discussed the designation of the property as a “future development” tract with legal counsel, the title company, and City staff prior to acquiring the property. In addition, the Applicant is a wetland scientist and visually inspected the property prior to purchasing it. Based on this, the City determined that the Applicant undertook reasonable efforts to determine critical areas limitations prior to acquiring the property. *Findings 1, 5 – 21.*

- 7. Any alteration of a critical area approved would be subject to appropriate conditions and would require mitigation under an approved mitigation plan.** Staff determined that the conceptual mitigation plan prepared by the Applicant would satisfy the requirements of Chapter 11.06 KCC and ensure that mitigation would increase the functions and values of the critical area buffer above existing conditions. By implementing the mitigation plan, the Applicant would enhance 16,462 square feet of buffer outside of the development envelope. This would include preserving native vegetation, planting additional native trees and shrubs, and removing all invasive species within the wetland buffer. When the Applicant applies for a building permit, the City will review a final mitigation plan and condition the project, as necessary, to ensure that it complies with all requirements of the municipal code. Conditions are necessary to ensure the Applicant constructs the building and site improvements substantially as outlined in the submitted plans; submits a final mitigation plan; and constructs the single-family residence authorized by this decision in a timely manner. *Findings 1 – 21.*

DECISION

Based upon the preceding findings and conclusions, the request for a Reasonable Use Exception to the City’s critical area regulations to allow construction of a single-family residence on a parcel entirely encumbered by a wetland buffer at 14707 SE 272nd Street is **APPROVED**, with the following conditions:

1. The Applicant shall construct the building and site improvements substantially as outline in the plans submitted to the City on March 11, 2019. A final mitigation plan for the wetland mitigation planting will be reviewed at the time of building permit submittal and some items related to planting and landscaping may change; however, the location of the house, driveway, and other improvements shall be constructed as shown.
2. Upon submittal of the final mitigation review documents with the building permit, the Applicant shall submit a revised 2016 wetland rating form updating the category of the wetland to a Category II in order to be consistent with the site plan and other documents submitted to and approved by the City for review.

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3. The Reasonable Use Exception shall expire five years from the date of approval of this decision if no single-family residence is constructed by that time, unless an extension is granted by the City.

DATED this 1st day of May 2019.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center