BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND

In the Matter of the Application of	)	No. PLN-51228 RUE
	)	
Emily Kroman & Justin Huguet	)	
	)	
	)	
For Approval of a Reasonable Use	)	FINDINGS, CONCLUSIONS,
Exception	)	AND DECISION

SUMMARY OF DECISION

The request for a reasonable use exception to allow the construction of a single-family residence and garage, with associated improvements, on a 1.03-acre lot impacted by critical areas, off of NE Spargur Loop Road, is **APPROVED.** Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:
The Hearing Examiner held an open record hearing on the request on February 25, 2021, using remote technology.

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

Annie Hillier, City Associate Planner
Paul Nylund, P.E., City Development Engineer
Emily Kroman, Applicant
Justin Huguet, Applicant
Joanne Bartlett, Senior Biologist, Ecological Land Services, Inc.

Exhibits:
The following exhibits were admitted into the record:

1. Staff Report, dated February 25, 2021
2. Preapplication Conference Memorandum, dated August 20, 2018; Site Assessment Review Memorandum, dated August 29, 2018
3. Land Use Application, received November 27, 2019
4. Notice of Incomplete Application, dated December 23, 2019
5. Notice of Complete Application, dated March 18, 2020
6. Notice of Application and Hearing, dated March 27, 2020
7. Notice Materials:

a. Mailing List
b. Legal Invoice, *Bainbridge Island Review*, dated March 27, 2020
c. Affidavit of Publication, dated April 3, 2020
d. Classified Proof, dated March 27, 2020
e. Certificate of Posting, dated March 30, 2020

8. Department of Planning and Community Development Memorandum, dated April 29, 2020
9. Wetland Delineation and Buffer Mitigation Plan, Ecological Land Services, revised July 22, 2020
10. Conceptual Drainage Plan, Seabold Engineering, LLC, dated January 5, 2021
11. Septic Design Plan (Revised), dated November 20, 2020
12. Bainbridge Island Fire Department Memorandum, dated December 4, 2019
13. City Development Engineering Comments, dated April 28, 2020
14. Health District Comments, dated December 12, 2019

The Hearing Examiner enters the following findings and conclusions based on the testimony and exhibits:

FINDINGS

Application and Notice

1. Justin Huguet and Emily Kroman (Applicant) request approval of a reasonable use exception (RUE or RUEX) to allow construction of a single-family residence, garage, and other associated improvements, on a 1.03-acre lot containing wetlands and associated wetland buffers. The unaddressed property is off of NE Spargur Loop Road in the Port Madison area of Bainbridge Island, and an existing driveway already provides access to the proposed development area.[1] The RUEX would allow for development of a single-family residence and associated improvements, not to exceed 1,200 square feet in lot coverage, on an area of the property that currently consists of mowed grass and invasive blackberries.[2] As discussed in more detail below, the septic drainfield serving the property would be located on an adjacent developed lot to the west, also owned by the Applicant, because this is the only area within the vicinity with adequate soils to accommodate the drainfield. As mitigation for the proposal, the Applicant would remove invasive species throughout wetland buffer areas and would install a variety of native vegetation in three buffer mitigation areas on the property, totaling approximately 6,200 square feet. Over 65 percent of the property would be protected in perpetuity following development. *Exhibit 1, Staff Report, pages 1 through 15; Exhibit 3; Exhibit 8; Exhibit 9; Exhibit 11.*

[1] The property is identified by tax parcel number 34260240332007. *Exhibit 1, Staff Report, page 1.* A legal description of the property is included with the Wetland Delineation and Buffer Mitigation Plan. *Exhibit 9.*

[2] Under Bainbridge Island Municipal Code (BIMC) 18.12.050.K, *lot coverage* means "that portion of the total lot area covered by buildings, excluding up to 24 inches of eaves on each side of the building, any building or portion of building located below predevelopment and finished grade."

2. The City of Bainbridge Island (City) determined that the application was complete on March 18, 2020. On March 27, 2020, the City provided notice of the application and the associated open record hearing by mailing or emailing notice to property owners within 500 feet of the subject property and to reviewing government departments and agencies, and by publishing notice in the *Bainbridge Island Review.* On March 30, 2020, notice of the application and associated hearing was also posted at the project site. Notice materials provided for a comment period ending April 17, 2020. The City received no public comments in response to its notice materials. *Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 7.*

State Environmental Policy Act

3. The City determined that the proposal is exempt from review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), and Washington Administrative Code (WAC) 197-11-800(1)(b)(i), because it would involve minor new construction. *Exhibit 1, Staff Report, page 1.*

Comprehensive Plan, Zoning, and Surrounding Property

4. The property is designated "Residential District-.04" under the City Comprehensive Plan. The purpose of the City's Residential District designation is to promote low-impact residential development that reconciles development and conservation. *City Comprehensive Plan, LU-22.* City staff analyzed the proposal for consistency with the Comprehensive Plan and identified goals and policies applicable to the proposal, including:
   - Preserving and enhancing Bainbridge Island's natural systems, natural beauty and environmental quality.
   - Encouraging sustainable development that maintains diversity of healthy, functioning ecosystems that are essential for maintaining quality of life and economic viability into the future.
   - Protecting and enhancing wildlife, fish resources, and ecosystems.
   - Using areas designated as Residential Districts for less intensive residential development and a variety of agricultural and forestry uses.[3]

   Exhibit 1, Staff Report, pages 5 and 6.

5. The 1.03-acre property is within the "Residential-.04" (R-.04) zoning district. The purpose of the R-0.4 zoning district is to "provide low-density housing in an environment with special Island character consistent with other land uses, such as agriculture and forestry, and the preservation of natural systems and open space." *Bainbridge Island*

[3] City staff specifically identified the following goals and policies of the Comprehensive Plan as relevant to the proposal: Environmental Element Goals EN-1, EN-4, and EN-5; and Land Use Element Policy LU-14.1. *Exhibit 1, Staff Report, pages 5 and 6.*

Municipal Code (BIMC) 18.06.020.A. Single-family dwellings are a permitted use in the R-0.4 zone. *BIMC Table 18.09.020.* Development of the property would occur within an area that is approximately 6,186 square feet, resulting in the remainder of the property being preserved as protected wetland and buffer areas. *Exhibit 1, Staff Report, pages 5 and 6; Exhibit 9.*

6. Within the R-.04 zoning district, dimensional standards require a minimum lot area of 100,000 square feet per dwelling unit; a minimum lot depth and width of 110 feet; and a maximum lot coverage of 10 percent. *BIMC Table 18.12.020-2*. Setback requirements include front lot line setbacks of 25 feet and side lot line and rear setbacks of at least 15 feet. *BIMC 18.12.020.* Two parking spaces are required for each primary dwelling. *BIMC 18.15.020.C. Exhibit 1, Staff Report, pages 6 and 7.*

7. Project plans show that the parking requirements, minimum width and depth requirements, maximum lot coverage requirements, and minimum setback requirements would be satisfied. The lot area (approximately 44,867 square feet) is nonconforming to the R-.04 zoning district but, under BIMC 18.30.050, any nonconforming lot that was lawfully created and recorded may be used for permitted purposes notwithstanding minimum lot area requirements. Because a RUEX is proposed, lot coverage would be limited to 1,200 square feet, as required by BIMC 16.20.080.F. Given the size of the property (1.03 acres), development would entail lot coverage of less than three percent, far less than the maximum lot coverage of 10 percent typically allowed under the municipal code. Structure height and setback requirements would be reviewed and verified during building permit review. *Exhibit 1, Staff Report, pages 2 through 7; Exhibit 3; Exhibit 9; Exhibit 10.*

8. The property is bounded to the north by NE Spargur Loop Road. All surrounding properties are also zoned for residential development and generally contain single-family residences. *Exhibit 1, Staff Report, page 2; Exhibit 9.*

Critical Areas

9. The site is generally undeveloped, although there is an existing lawn area that is continuous with the lawn on the adjoining western property owned by the Applicant, and an existing driveway that provides access to the site development area. Site topography is relatively flat, with less than 15 feet of grade change from north to south. Ecological Land Services, Inc. (ELS), prepared a Wetland Delineation and Buffer Mitigation Plan, revised July 22, 2020, addressing on-site critical areas. ELS biologists visited the site to collect data on vegetation, hydrology, and soils, and identified three Category III wetlands (Wetlands A, B, and C), and one Category IV wetland (Wetland D) occupying a majority of the subject property. Specifically, Wetland A is located in the northern portion of the property, just east of the existing driveway, and north of the maintained lawn area; Wetland B occupies much of the southern portion of the property; the majority

of Wetland C occupies adjacent property to the east, although portions of it cover the northeast corner of the subject property; and Wetland D covers a low-lying area in the northwest of the property (and on the adjacent property to the west), between the existing driveway serving the subject property and the existing driveway that provides access to the existing residence owned by the Applicant on the property to the west. ELS also identified an unnamed stream originating offsite to the east that is adjacent to or flows through Wetlands A, B, and C, along the eastern edge of the property, before discharging into an existing roadside ditch north of the property. *Exhibit 9.*

10. ELS determined that the wetlands are composed of forested, scrub/shrub, and herbaceous vegetation communities with the forested portion of the wetlands dominated by red alder, the scrub/shrub portion of the wetlands dominated by salmonberry, and the herbaceous lawyer dominated by fringecup, sword fern, trailing blackberry, and horsetail. The maintained lawn area of the site (where site development would occur) includes mowed grasses, blackberry, buttercup, and dead nettle. ELS determined that a combination of groundwater discharge, a seasonally high-water table, and direct precipitation contribute to wetland hydrology on and off-site. It determined that the Category III wetlands would, in normal circumstances, require a 110-foot buffer, with an additional 15-foot building and impervious surface setback, and the Category IV wetland would require a 40-foot buffer, with an additional 15-foot building and impervious surface setback. Any required buffer related to the unnamed stream would overlap or be subsumed by required wetland buffers and the wetlands and associated buffers would cover the entirety of the subject property. Accordingly, ELS determined that buffer modifications (i.e., buffer width averaging or buffer reduction) would not be feasible for the project site. *Exhibit 9.*

11. City staff reviewed the Wetland Delineation and Buffer Mitigation Plan through the site assessment review process, as required by BIMC 16.20.080.A, and concurred that use of buffer averaging or an administrative buffer reduction of up to 25 percent would still result in insufficient space being available to construct a single-family residence with necessary infrastructure. Accordingly, City staff determined that developing the property with a single-family residence would only be possible through the reasonable use exception process. *Exhibit 1, Staff Report, pages 7 and 8; Exhibit 2; Exhibit 9.*

12. The City code identifies aquifer recharge protection areas (ARPAs) as critical areas that must be protected. BIMC 16.20.100.E.1 generally states that any proposed development or activity requiring a site assessment review located within the R-0.4 zone requires designation of an ARPA. Under BIMC 16.20.100.E.1.d, however, if 65 percent of a property would be protected in perpetuity by a legal instrument acceptable to the City attorney and would otherwise meet the requirements for an ARPA, no such designation is required. Here, the proposed wetlands and remaining wetland buffers would occupy over 65 percent of the site and be protected in perpetuity. Accordingly, the City determined that an ARPA need not be designated. Under BIMC 16.20.070.G, the Applicant would

field-verify the presence of the critical area and buffer and record this information with the Kitsap County Auditor, along with any limitations on actions related to the protected area. This notice would run with the land and would serve as a legal instrument acceptable to the City attorney. *Exhibit 1, Staff Report, page 13.*

Reasonable Use Exception

13. The City code provides for a reasonable use exception (RUEX) where the City's critical areas ordinance (Chapter 16.20 BIMC) would deny all reasonable use of the property; where there are no reasonable alternatives with less impact to the critical area or its required buffer; where the proposal minimizes the impact through mitigation sequencing; where the proposed impact is the minimum necessary; where the inability to derive reasonable use of the property is not the result of actions by the Applicant; where the proposed total lot coverage does not exceed 1,200 square feet for residential development; where the proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the property; and where any alterations are mitigated. *BIMC 16.20.080.F.*

14. The Applicant proposes construction of a single-family residence and garage on the property, with other associated improvements. To minimize adverse impacts to the wetlands and buffer areas, the residence would be constructed on a portion of the property that is currently maintained as an existing lawn area. Prior to site development, the Applicant would explore use of Low Impact Development (LID) techniques to minimize ground disturbance activity and excavation, especially within wetland buffer areas. This would include an analysis of the feasibility of employing minimal excavation foundation systems per the 2012 Low Impact Development Guidance Manual for Puget Sound and exploring alternative building designs and layouts within the proposed building envelope (such as constructing a detached garage). City staff would review this "alternatives analysis" prior to building permits being issued to ensure that development would result in no net loss of function to on-site critical areas. Because the property is not located within the City's sewer service area, an on-site septic system would be installed on the property. The septic drainfield serving the site, however, would be located on the adjacent property to the west, because this is the only area within the vicinity with adequate soils to accommodate the drainfield. In addition, an existing well on the adjacent property to the west would provide water for the new residence. The sewer line from the residence to the septic drainfield would be constructed within a required setback associated with the well but the Applicant worked with Kitsap Public Health District (KPHD) over several months and received a waiver from KPHD allowing for placement of the sewer line in this location. This placement allows the sewer line to be installed outside of Wetland D, as sewage facilities are prohibited within wetlands under BIMC 16.20.140.G. As proposed, the single-family residence would be located entirely within required buffer areas associated with the wetlands, but no work would occur within the wetlands themselves. The Applicant would install split-rail fencing

along the edge of the building setback to minimize human intrusion into the critical areas. The proposal would result in less than three percent of lot coverage, and the majority of the site would be protected in perpetuity. *Exhibit 1, Staff Report, pages 1 through 8; Exhibit 2; Exhibit 3; Exhibit 8; Exhibit 9; Exhibit 10; Exhibit 11; Exhibit 14.*

15. The Applicant submitted a Conceptual Drainage Plan, prepared by Seabold Engineering, LLC, addressing stormwater management, with the application materials. Conceptually, the Applicant intends to infiltrate all stormwater on-site. All hardscaping would be constructed of permeable materials or contain wide permeable jointing, where feasible, to allow infiltration. Finally, diffuse flow methods would be used to discharge surface stormwater into the wetland buffers, to provide for increased hydrological recharge. The Applicant would submit a final Stormwater Site Plan for review and approval prior to development. *Exhibit 10; Exhibit 13.*

16. Paul Nylund, the City's Development Engineer, reviewed the proposal and determined that it would be consistent with applicable stormwater regulations and that the proposal would protect the critical area functions and values consistent with the best available science as it pertains to the incorporation of LID techniques for the purpose of handling of stormwater, retaining vegetation, and mimicking natural hydrology to the maximum extent feasible. Furthermore, he determined that the site plan conforms to the City's Design and Construction Standards and Specifications. Mr. Nylund provided several recommendations about site development and construction that City staff determined should be incorporated as conditions of approval for the RUEX. *Exhibit 13.*

17. Jackie Purviance, the City's Deputy Fire Marshal, reviewed the proposal and noted that the future development must comply with all provisions of the City's adopted Fire Code. Ms. Purviance also provided information on requirements related to fire apparatus access roads and noted that fire flow for the residence would be met through an existing fire hydrant located at the corner of Spargur Loop Road, Madison Avenue NE, and Phelps Road NE. *Exhibit 12.*

18. As discussed above, KPHD reviewed the proposal and provided preliminary approval for the proposed septic system, including installation of the septic drainfield on the adjacent property to the west. It also determined that an existing well on the property to the west would serve the subject property. The Applicant would construct a well house on the adjacent property outside of the wetland buffer. *Exhibit 2; Exhibit 11; Exhibit 13; Exhibit 14.*

19. ELS included a Habitat Management Plan, along with its Wetland Delineation Report, addressing impacts that would result from reducing the wetland buffers around the single-family residence and addressing the compensatory mitigation that would be necessary to ensure the integrity, function, and value of the wetlands on-site and to ensure that no net

loss of wetland functions would result from construction of a single-family residence on the property. To mitigate for permanent impacts to the wetland buffers from development of approximately 6,186 square feet of the property, including no more than 1,200 square feet of lot coverage, the Applicant would:

- Utilize the existing open grassy area on the west side of the property and the existing driveway.
- Ensure stormwater on the property continues to discharge into the wetlands to ensure consistent hydrologic recharge.
- Rectifying impacts to the buffer of Wetland D from installation of the sewer line and septic drainfield through the replanting of native vegetation.
- Enhancing 6,200 square feet of the mowed grass areas of the buffers of Wetlands A, B, and D, especially around the proposed development, through removal of invasive species and installation of a variety of types of native vegetation to create a multilayer, forested vegetation community.
- Installing a split-rail fence along the building setback edge to demarcate the critical areas and limit human intrusion.
- Monitor the mitigation areas for no less than 7 years to ensure long-term survival of installed vegetation.

Exhibit 9.[4]

20. City staff analyzed the proposal for compliance with the RUEX criteria from BIMC 16.20.080 and noted:

- The Applicant would not be able to develop the lot without the requested RUEX. Lot coverage of 1,200 square feet is considered reasonable on lots encumbered by critical areas or associated buffers. Although the Applicant owns and resides on the adjacent property to the west and could continue to maintain the existing yard area on the subject property, the lot has development rights in and of itself and, were the lot sold, development would be allowed with a RUEX.
- Given the size of the on-site wetlands and associated buffers, there do not appear to be any other reasonable alternatives to the proposed use that would achieve the same purpose for the Applicant with less impact to the critical area buffer. It is

[4] ELS provided a separate letter, dated May 15, 2020, addressing the septic drainfield on the adjacent property to the west and potential impacts to the buffer of Wetland D from installation of the drainfield and sewer line. ELS initially determined that installation of the drainfield and sewer line would result in 1,123 square feet of impacts to Wetland D that would be mitigated on the subject property. *Exhibit 9.* Later, after further changes to the proposal, the revised Wetland Delineation and Buffer Mitigation Plan determined that the proposal would result in 915 square feet of impacts to the buffer of Wetland D on the adjacent property. While native vegetation would be planted on the adjacent property following installation of the septic drainfield and sewer pipe, compensatory mitigation for these 915 square feet of impacts would also be installed on the subject property as part of the 6,200 square feet of buffer mitigation that would occur. *Exhibit 13.* City staff determined that, because mitigation for the impacts from the drainfield would be provided on the subject property, a separate critical areas permit would not be required related to installation of the drainfield. *Exhibit 1, Staff Report, page 12.*

possible that alternative site development within the proposed development envelope could result in fewer critical areas impacts, such as through construction of an attached or under-building garage, and use of LID foundation design. The City will further evaluate such possibilities with the Applicant prior to site development and building permits being issued.

- The proposal minimizes impacts on the wetland buffer in accordance with mitigation sequencing requirements under BIMC 16.20.030. Specifically, use of a garage will minimize pollutant runoff from vehicles; a split-rail fence proposed along the edge of the building setback will minimize human intrusion into the critical areas; development will be confined to areas free of native vegetation and significant trees and located outside of the wetlands themselves; natural drainage on the property will be maintained; low-impact construction techniques will be considered to minimize ground disturbance and excavations; the Applicant will remove invasive species throughout the wetland buffer areas and install a variety of native vegetation throughout 6,200 square feet of mitigation areas; fencing and signing will be provided along the wetland buffer edge, to prevent encroachment; light will be directed away from the wetland and buffer, the Applicant will restrict the use of pesticides on-site; and site monitoring would occur for at least 7 years.
- The proposed impact to the critical area is the minimum necessary to allow reasonable use of the property. The City considers 1,200 square feet of lot coverage reasonable when a lot is encumbered by critical areas, provided enough mitigation is proposed to adequately compensate for impacts. Site alternatives were considered and deemed infeasible. In addition, development would occur in a historically disturbed area of the property that does not contain any native vegetation
- The inability of the Applicant to derive reasonable use of the property is not the result of actions by the Applicant or the Applicant's predecessor. No land use actions have occurred on the property since 1992, when the City adopted its Critical Areas Ordinance.
- Proposed total lot coverage would not exceed 1,200 square feet.
- The proposal would not pose an unreasonable threat to the public health, safety, or welfare on or off the property.
- The proposal would result in no net loss of critical area functions and values and would incorporate protective measures consistent with best available science, including LID measures, best management practices (BMPs) for stormwater, and protective fencing to avoid wetland impacts during and after construction. The City's Water Resources Technician, who holds a certificate of wetland science and management, reviewed the proposal and determined that the enhanced buffer would provide additional water quality benefits, as well as new habitat and wetland protection on-site.
- Development would occur in a manner that minimizes impacts to the wetlands and mitigates the reduction of the wetland buffers through the planting of dense,

diversified plantings in approximately 6,200 square feet of the remaining buffer areas. Temporary impacts would be addressed through protective measures, such as construction fencing, and future impacts would be addressed through monitoring, to ensure the success of compensatory mitigation, and through the installation of protective fencing along the boundary of the reduced buffer area. City staff has determined that the proposal adequately addresses cumulative impacts from development.

- The proposal would be consistent with zoning requirements and other applicable regulations and standards.

Exhibit 1, Staff Report, pages 9 through 14.

Testimony

21. City Associate Senior Planner Annie Hillier testified generally about the property, the process of reviewing the proposal, and how the proposal would comply with the City Comprehensive Plan, zoning ordinances, critical areas ordinances, and requirements associated with a RUEX. She explained that the proposal is somewhat unique in that the septic drainfield serving the project site would be located on the adjacent property to the west, which the Applicant also owns, but that all impacts from development on the adjacent property have been accounted for through review of the proposal. Ms. Hillier also explained that City staff and the Applicant have agreed that further review of ways to reduce potential impacts on critical areas within the proposed development area would occur prior to site development and/or building permit issuance, such as exploring the feasibility of LID foundation design. Ms. Hillier also verified that the Applicant did not short plat the property in the past but, instead, the Applicant's family has long owned the two separate but adjacent lots. *Testimony of Ms. Hillier.*

22. City Development Engineer Paul Nylund testified about stormwater requirements associated with the proposal and the review that engineering staff conducted related to the project. He explained that the proposal would have to comply with the Department of Ecology's 2012 Stormwater Manual, with updates in 2014 and 2018. Mr. Nylund also explained that, normally, the portion of a driveway apron within the municipal right-of-way must "match" the road surface to which it connects. Here, because NE Spargur Loop Road is paved, the apron within the right-of-way connecting to the Applicant's driveway would normally need to be paved. Mr. Nylund noted, however, that it is possible that the City may waive this requirement through administrative review of the site development permit associated with the project, if it is determined that doing so would have beneficial impacts to the critical areas on-site. Finally, Mr. Nylund stressed that the City encourages the Applicant to explore site development alternatives that would further reduce impacts to critical areas, such as use of LID foundations, and that the City will further assess site development impacts prior to issuing site development and/or building permits. *Testimony of Mr. Nylund.*

23. Applicant Emily Kroman testified that she has lived on the adjacent lot to the west since 1992 and that she and Justin Huguet bought the subject lot from her family in 2015. She noted that she and Mr. Huguet have been working on the proposal for almost four years and they are excited that they were able to work with the City and KPHD to arrive at this point, especially considering the challenges associated with installation of the septic drainfield and sewer pipe. In response to a question from the Hearing Examiner, Ms. Kroman also explained that she and Mr. Huguet are working with an attorney to ensure that any necessary easements associated with the septic drainfield and well on the existing developed property are properly recorded. *Testimony of Ms. Kroman.*

24. Applicant Justin Huguet concurred with Ms. Hillier's assessment of the proposal and with Ms. Kroman's and Mr. Nylund's comments. He explained that he and Ms. Kroman are open to exploring ways to further reducing impacts to critical areas from development of the property, including through construction of an attached or under-structure garage, and use of LID foundations, if feasible. *Testimony of Mr. Huguet.*

25. Wetland Biologist Joann Bartlett, of ELS, testified that ELS will continue to work with the Applicant and City staff to address further reducing impacts from development, where possible. She stressed that the Applicant has worked diligently to reduce impacts already, including through siting the septic drainfield on the Applicant's existing property to the west, and working to obtain a waiver from KPHD to allow the sewer line to be installed within the 50-foot well setback area, as opposed to within Wetland D. *Testimony of Ms. Bartlett.*

Staff Recommendation

26. Ms. Hillier testified that City staff recommends approval of the application, with conditions. Mr. Huguet testified that the Applicant would adhere to the conditions of approval. *Exhibit 1, Staff Report, pages 13 through 15; Testimony of Ms. Hillier; Testimony of Mr. Huguet.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has authority to hear and approve, approve with conditions, deny, or remand a request for a reasonable use exception. *BIMC 2.14.030; BIMC 2.16.100; BIMC 16.20.080.E.*

Criteria for Review

Criteria for review and approval of reasonable use exceptions are as follows:

1. The application of this chapter would deny all reasonable use of the property;

2. There is no reasonable alternative to the proposal with less impact to the critical area or its required buffer;
3. The proposal minimizes the impact on critical areas in accordance with mitigation sequencing (BIMC 16.20.030);
4. The proposed impact to the critical area is the minimum necessary to allow reasonable use of the property;
5. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant, or of the applicant's predecessor, that occurred after February 20, 1992;
6. The proposed total lot coverage does not exceed 1,200 square feet for residential development;
7. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the property;
8. Any alterations permitted to the critical area are mitigated in accordance with mitigation requirements applicable to the critical area altered;
9. The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values;
10. The proposal addresses cumulative impacts of the action; and
11. The proposal is consistent with other applicable regulations and standards.

BIMC 16.20.080.F.

The criteria for review adopted by the City of Bainbridge Island 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. *RCW 36.70B.040*.

Conclusions Based on Findings

With conditions, the proposal would comply with the reasonable use exception criteria of BIMC 16.20.080.F. The City provided reasonable notice and opportunity to comment on the application and no public comments were received during the comment period. The City determined that the proposal was exempt from SEPA review. Wetlands and wetland buffers cover the entirety of the Applicant's property such that that strict application of the City's critical areas ordinances would deny all reasonable use of the property. The City has not suggested any alternative uses for the property. The Applicant is proposing lot coverage of no more than 1,200 square feet. The Applicant submitted a wetland delineation and a mitigation plan setting out mitigation sequencing that would minimize the impact on critical areas. The wetland delineation also determined that the proposal would be the minimum necessary to allow reasonable use of the property. City staff determined that the present proposal would have the fewest impacts on the wetlands and their buffers. The lot was created prior to the adoption of the City's critical area ordinances and is not the result of any action of the Applicant.

The Applicant proposes construction of a single-family residence and garage on the property that would result in total lot coverage of no more than 1,200 square feet. To minimize adverse impacts to the wetlands and buffers, the residence would be constructed on a portion of the property that is already degraded and is currently maintained as mowed lawn. The Applicant would explore the use of Low Impact Development (LID) techniques to be employed to minimize ground disturbance activity and excavation prior to building permits being issued that the City would further review. Because the property is not located within the City's sewer service area, an on-site septic system would be installed, along with a septic drainfield that would be installed on the existing, developed property the Applicant owns to the west. As proposed, the site layout would result in a reduction of the required wetland buffers around the single-family residence, but the Applicant would install approximately 6,200 square feet of mitigation plantings to compensate for these impacts. In addition, the Applicant would remove invasive species throughout the wetland buffer areas and install fencing to protect the critical areas from further intrusion. Over 65 percent of the property would be protected in perpetuity following development.

The Applicant's mitigation plan contains monitoring and contingency plans, along with enhancement of the remaining wetland buffers, as noted above. The City determined that the wetland delineation and mitigation plan are based on the best available science and would result in no net loss of critical area functions and values, although a final mitigation plan would be reviewed by the City prior to the issuance of site development and/or building permits. The mitigation plan addressed the cumulative impacts of the proposed development and determined that there would be no negative cumulative impacts if the request is approved.

Conditions are necessary, including those to ensure that work is completed in substantial compliance with submitted plans; total lot coverage does not exceed 1,200 square feet; an additional "alternatives analysis" is performed and reviewed by City staff prior to permits being issued; buffer enhancement areas totaling approximately 6,200 square feet are installed to mitigate for permanent impacts to wetland buffers; all development occurs outside of delineated wetlands; requirements from the Buffer Mitigation Plan and from City staff's review of the proposal are followed; a final mitigation plan is provided, along with a final planting plan; temporary fencing is installed prior to site development; compensatory mitigation area monitoring occurs; a split-rail fence is installed for the entire length of the common boundary between the wetland buffers and the hard surface structure setback; appropriate signage is installed indicating the presence of a protected wetland buffer; all mitigation plantings are installed prior to occupancy; a notice to title documenting the presence of the wetlands, buffers, and compensatory mitigation planting areas is recorded; and that all requirements of the City Engineer are satisfied (as further detailed below). *Findings 1 – 26.*

DECISION

Based upon the preceding findings and conclusions, the request for a reasonable use exception to allow the construction of a single-family residence, with associated improvements, on a 1.03-acre property off of NE Spargur Loop Road, containing wetlands and wetland buffers, is **APPROVED,** with the following conditions:[5]

1. Work shall be completed in substantial compliance with the design and specifications included in the RUE file, including:
   a. Total lot coverage shall not exceed 1,200 square feet.
   b. A parking garage (attached or unattached, depending on the alternatives analysis).
   c. A permanent impact area not to exceed 6,186 square feet and consistent with the results of the alternatives analysis.
   d. A buffer enhancement area of 6,200 square feet, or equivalent to the permanent impact area consistent with the results of the alternatives analysis.
   e. Development and permanent impacts located outside of all wetlands.
   f. Implementation of the avoidance and minimization steps provided in the wetland mitigation plan.

2. To demonstrate that the proposal meets RUE decision Criteria #2, there is no reasonable alternative to the proposal with less impact to the critical area or its required buffer, an analysis of reasonable alternatives to the proposed site layout shall be provided prior to building permit submittal. The analysis must consider reducing the overall impact area by attaching the garage and SFR, the use of low-impact foundation designs, and other measures that may reduce permanent impacts to the wetland buffer. Factors such as stormwater management and site topography may be taken into account and included in the analysis. The analysis shall be reviewed and approved by City staff prior building permit issuance.

3. Minor changes to the site plan within the approved impact area may be authorized as a part of the building permit review, provided the square footages of structures and impacts in Condition 1 do not increase. Minor changes that further reduce impacts to the critical area may be allowed, provided the wetland mitigation plan is updated and approved as a part of the building permit review.

[5] This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by City code.

4. To further minimize impacts to the wetland buffer and ensure there is no reasonable alternative to the proposal with less impact, the following shall be implemented:
    a. The proposed well house must be located outside of the wetland buffer, to the extent feasible. The applicant must provide supporting documentation if an alternative location is deemed feasible.
    b. No pesticides, herbicides, or fertilizers may be used in fish and wildlife conservation areas or their buffers except those approved by the U.S. Environmental Protection Agency (EPA) and Washington Department of Ecology and applied by a licensed applicator in accordance with the safe application practices on the label. This shall be stated on the site plan and recorded with the Notice to Title.
    c. Lighting on the exterior of the residence to shall be limited to the minimum necessary and shall be directed downward and away from the wetlands.
    d. Access of machinery shall be restricted to as few areas as possible, to reduce soil compaction. These areas shall be indicated on the site plan.
    e. Construction shall take place during the dry season (May through September) to reduce impacts to aquatic resources.
    f. Tall, dense evergreen vegetation shall be planted around the outside edge of the buffers to improve screening between development and the wetlands.
    g. The buffer enhancement areas shall not be cleared or grubbed, except for the removal of invasive species. Downed woody debris shall be retained.
    h. No refuse, including but not limited to household trash, yard waste (e.g. lawn clippings) and commercial/industrial refuse, shall be placed in the buffer.
    i. Roofing shall be of a non-leaching material that is not harmful to the environment. Examples of non-leaching materials are metal and tile roofs. Any alternative method proposed requires approval by the City prior to final building permit issuance and must address BIMC water quality standards, Chapter 13.24, to assure that wetland flora and fauna functions and values are maintained/enhanced.
    j. To prevent inadvertent damage to significant trees, the site plan shall identify significant trees. Tree root protection fencing is required for any significant trees with roots in the immediate vicinity of the project area. Tree root protection fencing shall be marked on the final site plan and in place prior to the start of construction.

5. A final mitigation plan shall be provided with the building permit application, in accordance with BIMC 16.20.180.G.3.b. The final plan must address the revised septic line, as well as the final building area layout as a result of the alternatives analysis. The City must agree that the final mitigation plan will result in no net loss of critical function and value prior to building permit issuance, and may require third-party review of the

final mitigation plan, the cost of which shall be borne by the Applicant, should the Director deem such review necessary.

6. A final planting plan shall be submitted with the building permit application, consistent with the results of the updated mitigation plan.

7. Lot coverage calculations shall be provided with the building permit application.

8. A temporary five-foot-high chain link fence with tubular steel poles or "T" posts shall delineate the area of prohibited disturbance, which is the outer edge of the reduced wetland buffers surrounding the residence and drainfield, unless the Director has approved the use of a four-foot-high plastic net fence as an alternative. The fence shall be indicated on the site plan. The fence shall be erected and inspected by City staff before clearing, grading and/or construction permits are issued and shall remain in place until construction has been completed, and shall at all times have affixed to it a sign indicating the protected area.

9. Prior to final inspection of the building permit, the temporary fencing shall be replaced with the permanent split-rail fence along the perimeter of the buffer enhancement area.

10. A minimum of two signs indicating the presence of a protected wetland buffer shall be placed on the split-rail fence, prior to final inspection of the building permit. Signs shall be made of metal or a similar durable material and shall be between 64 and 144 square inches in size. The Director may notify the Applicant that additional signs are required, should this be deemed necessary as a result of the final building area layout.

11. All plantings shall be installed prior to final building permit inspection, or a performance surety shall be provided in accordance BIMC 16.20.160.

12. A monitoring report shall be submitted annually by December 31st each year, at a minimum, documenting milestones, successes, problems, and contingency actions of the mitigation plan. The mitigation plan shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than seven years.

13. If the performance standards in the mitigation plan are not met, a contingency plan shall be submitted to the Department of Planning and Community Development for approval. Any additional permits or approvals necessary for contingency actions shall be obtained prior implementing the contingency plan.

14. A maintenance surety shall be provided prior to final building permit inspection, or upon release of the performance surety if plantings are not installed at the time of the final

inspection, whichever is applicable. The Director shall release the maintenance surety upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or compensatory mitigation have been satisfactorily met for the required period.

15. The Applicant shall record a notice to title with a site plan to document the presence of the wetland buffers and mitigation areas with the Kitsap County Auditor. Such notice shall provide notice in the public record of the presence of the critical area, the application of Chapter 16.20 BIMC to the property, and that limitations on actions in or affecting such areas may exist. The notice must be recorded prior to the issuance of the building permit.

16. The Applicant shall comply with the following conditions to the satisfaction of the City Engineer:
    a. Existing access to the City's right-of-way shall be improved to the standard paved residential driveway approach detail DWG. 8-170, unless such requirement is waived by the City Engineer.
    b. All underground utilities (well water, septic transport, power, etc.) shall be routed to minimize site disturbances to the maximum extent feasible.
    c. Use of soil sterilant to construct the driveway shall be strictly prohibited.
    d. Consideration shall be given to utilizing minimal excavation foundation systems per the 2012 Low Impact Development Guidance Manual for Puget Sound as means of minimizing impacts to the site and the adjacent critical areas. A bid comparison/analysis shall be submitted demonstrating the applicant has engaged an appropriate design and construction professional to explore alternative foundation systems including stilts, helical piers, and pin piles with grade beams. The bid shall be obtained from a designer or installer with previous experience building with this technology.
    e. Areas outside the building footprint, driveway, septic components and field and any necessary construction setbacks shall be protected from soil stripping, stockpiling, and compaction by construction equipment through installation of resilient, high visibility clearing limits fencing or equivalent, subject to inspection by the City prior to clearing and construction.
    f. Hardscaping should be constructed of permeable materials or contain wide permeable jointing where feasible to allow infiltration or shallow subsurface filtration of surface stormwater.
    g. Surface stormwater from the proposed structures and from the developed driveway shall discharge and disperse at a location and in a manner consistent with BMP T5.10B – Downspout Dispersion Systems. Strong priority shall be given to diffuse flow methods (i.e. BMP C206: Level Spreader, pop-up emitters,

diffuser tee or engineered equivalent to minimize point discharges of surface stormwater to the wetland buffer.

DECIDED this 12th day of March 2021.

ANDREW M. REEVES
Hearing Examiner
Sound Law Center