



11930 Cyrus Way
Mukilteo, WA 98275
(425) 263-8000

Notice of Decision

**Estes Single-Family Residence
Reasonable Use and Variance**
6305 Webster Way

The City of Mukilteo has issued a Notice of Decision for a Reasonable Use and Variance as required by Regulatory Reform Act (RCW 36.70B.130) and Mukilteo Municipal Code (MMC 17.13.080), and has GRANTED the following project:

Project Name: Estes Single-Family Residence Reasonable Use and Variance

Proponent: Chris Estes

Project Number: RUP-HE-2020-001, SFR-2020-005, ENG-2020-009 and VAR-2021-001

Description of Proposal: Reasonable Use and Variance for the construction of a new single-family residence with associated grading on approximately .31 acres consisting of steep slopes. The property is zoned Single-Family Residential 12.5(S). Total permanent disturbance area estimated at around 4,090 sf. The applicant is asking for a reduction in the required critical areas and zoning setbacks.

Project Location: 6305 Webster Way

Project Decision:	Granted
Notice of Decision Date:	Thursday, July 13, 2023
End of Appeal Date:	Thursday, August 3, 2023 (4:30 PM)
Project Expiration Date:	July 13, 2025

Project Decision

A public hearing was held before the Hearing Examiner on May 2, 2023, for a Reasonable Use Permit and Variance Application. After considering comments by the public, City staff, and outside agencies, the Hearing Examiner granted the project with conditions based on and subject to the attached Findings of Fact, Conclusions and Decision.

The Reasonable Use Permit and Variance shall be valid for two (2) years from the date of this Notice of Decision. If a building permit, as permitted by the Reasonable Use Permit and Variance, is not obtained within this period, the project permit shall become null and void, and a new Reasonable Use Permit and Variance will be required.

Any violation of the Conditions of Approval shall be considered a violation of the project permit and shall be subject to the City's code enforcement procedures.

Appeals

An appeal of this decision must be filed by a Party of Record within 21 calendar days from issuance of this Notice of Decision. Only parties of record may initiate an administrative appeal of a land use development permit application. Parties of record include the applicant, any person who testified at the open record hearing on the application (if a public hearing was held), and/or any person who submitted written comments concerning the application (excluding persons who have only signed petitions or mechanically produced form letters). Appeals must be delivered to Snohomish County Superior Court by **Thursday, August 3, 2023** at 3000 Rockefeller Ave., Everett, WA 98201.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. For information regarding property valuations and/or assessments, contact the Snohomish County Assessor's Office at 425.388.3433.

Staff Contact: Sarah Kress, Associate Planner

(425) 263-8044

Email: skress@mukilteowa.gov

Sarah Kress

Sarah Kress,
Associate Planner
Community Development
Department

7/11/2023

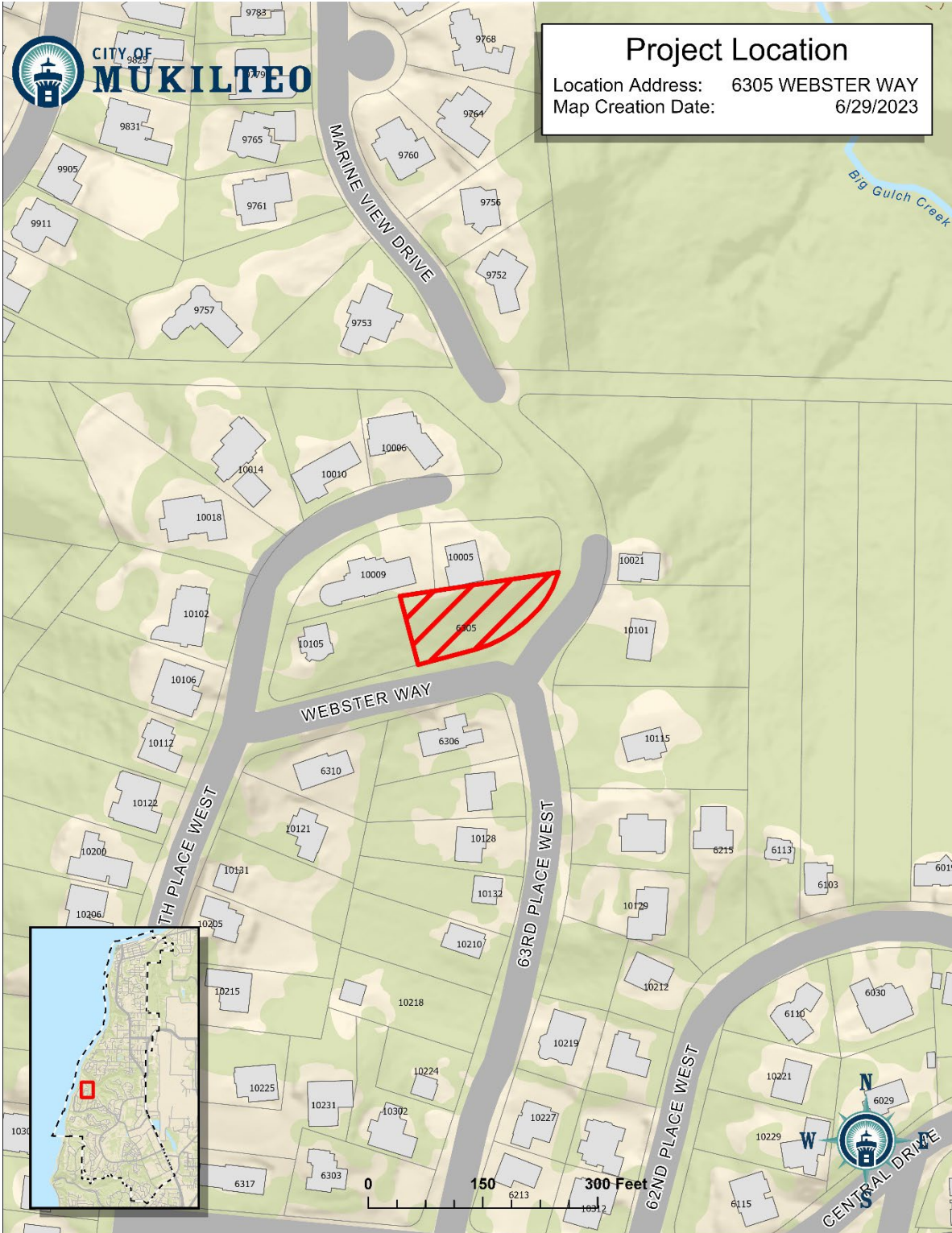
Date:

Matt Nienhuis

Matt Nienhuis (Jul 12, 2023 07:08 PDT)

Matt Nienhuis
Public Works Director

Date:



Location Map

pc: Applicant/Representative
 Reviewing Agencies
 Interested Parties

CDD Director
 Permit Services Assistants (2)

Property File
 Property Owners (300')

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

In the Matter of the Application of)	No. RUP-HE-2020-001
)	No. VAR-2020-001
)	
Chris Estes and Jacqueline de Leon-Estes)	Estes Residence Proposal
)	
For Approval of a Reasonable Use Permit)	FINDINGS, CONCLUSIONS,
<u>and Variances</u>)	AND DECISION

SUMMARY OF DECISION

The request for a reasonable use permit and variances to allow construction of a single-family residence and associated improvements, on a 0.31-acre property with slopes greater than 40 percent located at 6305 Webster Way, 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 May 2, 2023.

Testimony:

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

Sarah Kress, City Associate Planner
Chris Estes, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Hearing Agenda, dated April 3, 2023
2. Chennault Beach Plat Map, dated April 24, 1943
3. Land Use Permit Application, dated September 22, 2020; Variance Supplemental Application Form, dated December 22, 2020; Engineering Permit Application, dated September 2, 2022
4. Site and Drainage Plan Set (3 Sheets), dated October 10, 2022
5. Construction Stormwater Pollution Prevention Plan, ESM Consulting Engineers, LLC, dated June 10, 2022
6. Building and Elevation Plans (12 Sheets), dated November 23, 2021
7. Geotechnical Reconnaissance, Geospectrum Consultants, Inc., dated November 27, 2017, with Addendum Letter, Geo Group Northwest, Inc., dated December 18, 2020;

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- Addendum Letter 2, Geo Group Northwest, Inc., dated March 19, 2021; Addendum Letter, Geo Group Northwest, Inc., dated June 13, 2022
8. Stormwater Site Plan, ESM Consulting Engineers, LLC, revised June 10, 2022
 9. Applicant Letter re: Reasonable Use Criteria, dated June 2, 2022
 10. Applicant Letter re: Variance Criteria, dated June 2, 2022
 11. Determination of Completeness, dated June 11, 2021
 12. Notice of Application, dated June 28, 2021
 13. Public Comments:
 - A. Comment from Mukilteo School District, dated January 22, 2021
 - B. Comment from Mukilteo Planning Commission, dated July 2, 2021
 - C. Comment from Mukilteo Water and Wastewater District, dated July 6, 2021
 - D. Comment from Agata Aren't and Kyle Lytton, dated July 6, 2021
 - E. Comment from Snohomish County Public Utility District No. 1, dated July 27, 2021
 14. Affidavit of Publication, dated July 2, 2021, with Classified Proof, *Everett Daily Herald*
 15. Staff Presentation, dated April 3, 2023
 16. Notice of Public Hearing, dated May 23, 2023
 17. Staff Report, undated

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. Chris Estes and Jacqueline de Leon-Estes (Applicant) request a reasonable use permit (RUP) from the requirements of Mukilteo Municipal Code (MMC) 17.52A.050.A, which requires a 25-foot critical areas buffer for all slopes of 40 percent or greater, and a variance to reduce the 25-foot structural setback to ten feet to allow for the construction of a 2,134 square foot single-family residence and associated improvements. The Applicant also requests a variance to reduce the 20-foot front yard zoning setback required for the “Single-Family Residential District – South” (RD-12.5(S)) zoning district under MMC 17.20.020 to ten feet. The zoning variance will allow for development to occur as far from the on-site critical areas buffer as possible. Associated works would include installation of a driveway, grading, and street frontage improvements. Access to the property would be provided by Webster Way. The 0.31-acre property is located at 6305 Webster Way.¹ *Exhibit 2; Exhibit 9; Exhibit 17, Staff Report, pages 1, 2, and 8.*
2. The City of Mukilteo (City) determined that the application was complete on June 8, 2021. On July 2, 2021, the City provided notice of the application by mailing or emailing notice to property owners within 300 feet of the subject property, posting notice on-site

¹ The property is identified by Tax Parcel No. 00408600400300. *Exhibit 17, Staff Report, page 2.*

and at designated City locations, and publishing notice in *The Everett Herald*, with a comment deadline of July 16, 2021. On May 23, 2023, the City provided notice of the open record hearing associated with the proposal by mailing or emailing notice to property owners within 300 feet of the subject property, posting notice on-site and at designated City locations, and publishing notice in *The Everett Herald*. The hearing had to be rescheduled but City Associate Planner Sarah Kress explained during the open record hearing that the City provided notice of the rescheduled open record hearing by emailing interested parties and posting notice on the City's website ten days before the rescheduled hearing. *Exhibit 11; Exhibit 12; Exhibit 13; Exhibit 17, Staff Report, pages 9 and 11; Testimony of Ms. Kress.*

3. The City received the following comments on the proposal in response to its notice materials:
- The Mukilteo School District stated that impact fees must be paid to the District before issuance of building permits.
 - The Mukilteo Planning Commission commented that the front yard pavement grading of 14 to 25 percent is outside engineering grading design norms of the 10 percent to 13 percent maximum for paved driving surfaces; the preliminary drainage analysis shows that if the driveway is 25 percent, then the front yard slope would push 35 percent and the proposed development would not comply with the “grass strip” storm filter mitigation; the proposed development needs a curb and interceptor CB with a storm detention vault; half of the buildout would be impervious runoff and the rest would be new unstable steep slope even more steep than the existing slope; and building a three-story building with the reduced ten-foot building setback means neighboring properties would never see the sun during winter months. The Planning Commission recommends that the Applicant should be required to complete a 365-day sun shading analysis and that the Applicant should have a concrete retaining wall in the rear of eight feet to ten feet to reduce building elevation and extreme front yard paving and site grading.
 - Mukilteo Water and Wastewater District stated that it had no objections to the proposed development. The District also noted that there is no existing water service for the lot; one existing sanitary sewer service is stubbed into the southeast corner of the property; a water main capable of serving the property is located in the north right-of-way of Webster Way; there is an existing fire hydrant in the Webster Way right-of-way; and the Applicant would need to make an application and payment for a water and side sewer permit to obtain water and sewer service.
 - Snohomish County Public Utility District No. 1 (PUD) stated that there is sufficient electric system capacity to serve the proposed development but that existing District facilities in the area may require upgrading. The PUD noted that any relocation, alteration, or removal of District facilities to accommodate the

proposed development would be at the expense of the project developer and must be coordinated with the PUD in advance of final design.

- Agata Aren't and Kyle Lytton expressed concerns that the reduced setbacks would impact the privacy of their property, which is located across the street.

Exhibit 13.

4. City staff provided the following responses to concerns raised by members of the public and reviewing agencies:

- MMC 17.52.025 has provisions that allow a property owner reasonable use of their property. The Applicant is proposing to reduce the critical area buffer by 60 percent and the front setback by 50 percent in order to construct the proposed home. Reductions of critical area buffers by 50 percent or more require approval by the Hearing Examiner through a variance process and the submittal of a report relying on best available science and prepared by a qualified specialist to the City that demonstrates the reduction is warranted. *MMC 17.52.025.C.3.c.* The Applicant has provided this information and therefore the City has no objection to the variance request to reduce the front setback in order to have reasonable use of the property due to the critical areas onsite.
- The slope of the driveway has been revised to meet the City's development standards of 5 percent. Per the Mukilteo Development Standards Section 4.6.5.5, the maximum grade for driveways to meet the public right-of-way is 5 percent. This grade shall not be exceeded for a distance of 20 feet from edge of pavement.
- Stormwater improvements were designed to the Washington State Department of Ecology's Stormwater Management Manual for Western Washington (2012), as amended in 2014. The current height limit for this zone is 35 feet. The City has no objection to the variance request to reduce the front setback in order to have reasonable use of the property due to the critical areas and/or required buffers on-site.
- The Applicant is required to enter into an agreement with the Mukilteo Water and Wastewater District to ensure all water and sewer provisions meet the District's specifications and requirements. This is identified as a recommended condition of the permit.
- The Applicant is required to adhere to the requirements of the utility companies. This is identified a recommended condition of the permit.
- The Applicant is required to adhere to the requirements of the School District. This is identified a recommended condition of the permit.

Exhibit 17, Staff Report, pages 9 through 11.

State Environmental Policy Act

5. City staff determined that the request is categorically exempt from review under the State Environmental Protection Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). Under Washington Administrative Code (WAC) 197-11-800(1)(b)(i), the

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proposal is exempt from environmental review because the proposal is for the construction or location of fewer than four detached single-family residential units. *Exhibit 17, Staff report, page 11.*

Comprehensive Plan, and Zoning

6. The property is designated “Single-Family Residential – Low Density” by the City Comprehensive Plan. The Single-Family Residential – Low Density designation permits a maximum density of 3.48 lots per acre. City staff indicated that the proposed development would be consistent with the City Comprehensive Plan. *Exhibit 17, Staff Report, pages 3 and 12.*
7. The subject property and all surrounding properties are zoned “Single-Family Residential District – South” (RD-12.5(S)). Single-family residential development is permitted outright in the RD-12.5(S) zoning district. *MMC 17.16.040.* The RD-12.5(S) zoning district requires a minimum lot size of 12,500 square feet. *MMC 17.12.010.* The subject property is 13,652 square feet. The RD-12.5(S) zoning district also requires a front setback of 20 feet, interior side setbacks of five feet, and a rear setback of five feet. *MMC 17.20.020.* The proposed development would comply with side and rear setback requirements. As discussed in further detail below, the Applicant is requesting a variance to reduce the 20-foot front setback to ten feet. *Exhibit 17, Staff Report, pages 1 and 3.*

Subject Property and Surrounding Uses

8. The 0.31-acre property includes a relatively flat area in the northwest corner of the property, a moderately sloped area to the southwest, and steep to very steep slopes in the northeast portion of the property. Vegetation in the upper flat area of the property consists of grasses and landscaping, including rhododendron and arborvitae. The sloped areas have overstories consisting of alder trees. Understory within the moderate steep slope area includes alder saplings, blackberries, and sword fern. Understory vegetation within the very steep slope area consists of ivy and scattered blackberries. All surrounding properties are developed with single-family residences. *Exhibit 7; Exhibit 17, Staff Report, pages 2 and 3.*

Critical Areas

9. Geospectrum Consultants, Inc., prepared a geotechnical reconnaissance (“geotechnical report”) on behalf of the Applicant, dated November 27, 2017. The geotechnical report indicates that the property is mapped within a moderate landslide hazard area. The geotechnical report identifies a central steep slope area with gradients between 40 and 50 percent and a northeastern very steep slope area with gradients between 70 and 100 percent. The geotechnical report states that development or disturbance is not recommended in the steep to very steep slope areas of the site and that development should be limited to moderately sloped areas with slope gradients less than 40 percent, which are generally located in the western-third of the property and along the southern

boundary line. The geotechnical report indicates that the structure setback from the steep slope area could be significantly reduced due to the nature of the boundary between the moderate steep slope areas. Specifically, the geotechnical report notes that the moderately sloped western area is not above or below the steep slope areas of the lot, but rather the boundary between the moderate and steep slope areas is a lateral boundary. The geotechnical report concludes that development-related site disturbance of the moderately sloped area may extend to the edge of the steep slope area provided the disturbed areas are stabilized after construction and that development could be located ten feet from the top of slope. The geotechnical report also indicates that the property contains a moderate seismic hazard but that structures that are set back from steep slope areas and supported on natural bearing soils should not be significantly affected by seismically induced shallow slope movements.

The geotechnical report recommends that the Applicant utilize foot foundations on natural soils; install cantilevered retaining walls; complete site grading; strip all existing fill, organic, and loose soils from planned structural fill areas; use sloped temporary construction excavations where planned excavation limits would not interfere with other construction; utilize clean sand and gravel materials free of organic debris and other deleterious material; excavate all topsoil, fill, and organic soils in subgrade areas to expose dense/stiff natural soils and replace the areas with compacted structural fill to final slab subgrade; control and divert surface drainage from the adjoining upslope areas from the subject property; tightline roof drains into the storm drain system; and provide siltation fences or other suitable devices during construction to control the transport of eroded material. *Exhibit 7; Exhibit 17, Staff Report, page 9.*

10. Geo Group Northwest, Inc., provided an addendum to the geotechnical report (“addendum”) on December 18, 2020. The addendum affirmed the safety factors calculated by the slope stability analysis in the geotechnical report and stated that the recommendations outlined in the geotechnical report have been properly implemented into the design and the project site would remain stable during and after construction of the new residence.

On March 19, 2021, Geo Group Northwest, Inc., provided a second addendum letter (“second addendum”). The second addendum stated that the first addendum letter applied to the updated location of the proposed residence and that the updated location would not adversely impact the nearby steep slope area to the east, provided the recommendations included in the geotechnical report are implemented.

On June 13, 2022, Geo Group Northwest, Inc., provided a third addendum letter (“third addendum”). The third addendum reaffirmed the safety factors calculated by the slope stability analysis in the geotechnical report, that the recommendations outlined in the geotechnical report have been properly implemented in the design, and that the project

site would remain stable during and after construction of the new residence. The remaining portion of the slope setback buffer not impacted by the proposed development would be preserved in a Native Growth Protection Area (NGPA). *Exhibit 7; Exhibit 17, Staff Report, page 9.*

Stormwater

11. ESM Consulting Engineers, LLC, prepared a drainage report on behalf of the Applicant, revised June 10, 2022. The drainage report states that runoff from the rooftop area would be conveyed in roof drains and would discharge directly to the existing roadside ditch along Webster Way. Runoff from the driveway area would sheet flow and disperse through the adjacent vegetation to the roadside ditch. At the end of the gravel road, stormwater is dispersed in a vegetated corridor and flows approximately 1,700 feet through vegetation and ravines, eventually discharging to the Puget Sound. The drainage report indicates that the Applicant would apply applicable construction source control Best Management Practices (BMPs) for the proposed development, including installation of a silt fence, stabilized construction access, and catch basin inserts to mitigate the effects of construction activities on downstream water quality. ESM Consulting Engineers, LLC, also prepared a Construction Stormwater Pollution Prevention Plan (CSWPPP) on behalf of the Applicant on June 10, 2022. The CSWPPP recommends that the Applicant install silt fences on downstream property boundaries; retain the duff layer, native topsoil, and natural vegetation in an undisturbed state; limit site clearing and grading activities to relatively dry months; clean all sediment that is tracked onto the roadway due to construction activities at the end of each working day; seed all disturbed soils surrounding the site to avoid erosion and control sediment; install a silt fence around the perimeter of the property; protect all installed storm drain inlets on the property; clean contaminated surfaces immediately following any discharge or spill incident; and maintain all temporary and permanent erosion and sediment control BMPs. *Exhibit 5; Exhibit 8.*

Reasonable Use Permit

12. As noted above, the Applicant requests a reasonable use permit from MMC 17.52A.050.A to construct a single-family residence within the 25-foot buffer associated with an onsite-slope with grades of greater than 40 percent. Addressing the specific criteria for an RUP under MMC 17.52.050.B, the Applicant provided a project narrative, which asserts that the proposal should be approved based on the following:
 - Due to the water district's acquisition of the lower portion of the lot and required steep slope and front lot setbacks, the only remaining portion of the lot that is usable is the lower western portion where the proposed footprint is shown. If the front setback and steep slope buffer are strictly applied, the remaining usable portion would be too small to construct a feasible single-family residence.
 - As stated in the geotechnical report, the proposed site would have very little impact and is the best option on the site.

- The only location on the lot that is not part of the steep slope, setbacks, or in the water district right-of-way is the proposed footprint in the lower west portion of the lot. More than 70 percent of the over 13,000 square foot lot would be left undisturbed.
- Best available practices would be used to minimize lot disturbance. The driveway and subsequent utility connections would be directed as straight as possible into the lot from the street. The Applicant has eliminated the yard and is only disturbing the minimum area as would be necessary to safely construct the single-family residence. Total lot coverage of the structure would be approximately 14 percent. The onsite disturbance area would be less than 30 percent of the over 13,000 square foot lot.
- As detailed in the CSWPPP, best management practices would be administered to reduce site impact and ensure no material damage to nearby public or private property or material threat to the health and safety of people on or off the property would occur.
- The Applicant would obtain all required permits and ensure all activity complies with local and state federal laws.
- The Applicant has not made any adjustments to property boundaries or altered property to create any of the existing conditions.

Exhibit 9.

13. City staff also reviewed the proposal against the criteria for an RUP under MMC 17.52.050.B and determined:
- The proposed use of a single-family residence is an allowed use within the RD 12.5(S) zone. The proposal has been designed to have the least impact possible on the steep slope by reducing the steep slope and front setback.
 - Most of the site is impacted by steep slopes 40 percent or greater. The proposed building footprint was chosen because it creates the least impact to the steep slopes.
 - With the majority of the property encumbered by either critical areas or setbacks, no reasonable building envelope is available without impacting the critical area setback. The building envelope has been located close to the existing street and ten feet from the top of the slope. The building footprint has been designed to produce the least impact to the critical area. The geotechnical report makes recommendations for construction that include erosion control, stormwater drainage, grading, foundations, structural fill, and retaining walls. These recommendations account for the characteristics of the site and applied best available science and prevailing technology to the analysis and recommendations.
 - The proposed house would be constructed outside of the steep slope area and would require the reduction of the steep slope buffer. Stormwater would be collected and tied into the existing stormwater facility within the right-of-way.

- There are existing single-family residences located to the north, south, east, and west of the property. The proposed construction area would have little to no impacts to adjacent public and private property. The proposed building footprint has been designed to reduce impacts to neighboring properties. The geotechnical report and addenda did not identify any potential concerns for neighboring property or people. Access to neighboring properties is not affected, as the lot is directly accessed from Webster Way. Impacts during construction may include temporary blockage to a lane along Webster Way. The Applicant is required to store all equipment and construction material outside of the public right-of-way. If temporary road closures are required, a traffic control plan must be submitted by the Applicant and reviewed and approved by the Public Works Director.
- The proposal appears to meet the requirements of the MMC and the City's Development Standards. The Applicant is required to obtain clearing and grading, right-of-way, stormwater, and building permits. City staff is unaware of any state or federal permits required for the project.
- The property was created under a plat that was recorded in 1943, prior to the adoption of any critical area regulations.

Exhibit 17, Staff Report, pages 4 through 6.

14. Under MMC 17.52.025.C.2, at least 70 percent of a reasonable use lot must be left undisturbed. Including the driveway, the proposed development would have a disturbance area of 4,090 square feet, which is 30 percent of the 13,652 square foot lot. This disturbance area includes the driveway. The building footprint would be 16 percent of the subject property. In order to determine the appropriate building footprint and disturbance area for the site, City staff analyzed eight approved reasonable use permits within the RD-12.5 and RD-12.5(S) zoning districts. The building footprints ranged from 3 percent to 16 percent of the property and the disturbance areas, excluding driveways, ranged from 12 percent to 30 percent of the properties. *Exhibit 17, Staff Report, pages 8 and 9.*

Variances

15. As noted above, the Applicant is proposing to reduce the 25-foot setback required for steep slopes 40 percent or greater to ten feet, which is a 60 percent reduction. Under MMC 17.52.025.C.3.c, reductions of steep slope setbacks by 50 percent or more require approval by the Hearing Examiner through a variance process. The Applicant also requests a zoning variance to reduce the 20-foot front setback to ten feet. Both the Applicant and City staff combined their reviews of the separate variance requests. Addressing the specific criteria for a variance under MMC 17.64.040, the Applicant provided a project narrative, which asserts that the proposal should be approved based on the following:
- Approving the variance to reduce the steep slope setback would not constitute a special privilege for the subject property and would allow development consistent

with the RD-12.5(S) zoning district and surrounding residential properties. The site plan has a housing print of only 2,020 square feet on a 13,652 square foot lot, which is 14.7 percent of the lot.

- Due to the majority of the lot being designated a geologically sensitive area, the western portion of the lot is the only location for the proposed residence. To construct a home and garage on the property within the slope setback reduction and still adhere to the neighboring lot setback and street setback would result in a footprint that would be too small to be economically viable to develop.
- A variance request to reduce the steep slope setback to allow development of a reasonable single-family residence would not be materially detrimental to the public welfare or injurious to the property or the surrounding neighborhood. There would be no additional demand on public services, such as police or fire, because the zoning district is specifically designated for residential development and therefore a new single-family residence on the property is expected and provided for in the City's public service and zoning regulation allowances. Approving the variance and the development would further stabilize the lot by reducing the number of large alder trees, which are notorious for shallow root systems and destabilization of hill sides.
- The variance request is due to the nature of the property, not actions created by the Applicant. The area was plotted prior to the adoption of critical area regulations.
- Granting the variance would not alter the existing use permitted for the property. A single-family residence is allowed in the RD-12.5(S) zoning district. The Applicant seeks only to allow the property to be developed with its best use within the current City regulations and zoning allowances and to a reasonable standard that is consistent with the existing residential development in the surrounding neighborhood.

Exhibit 10.

16. City staff also reviewed the proposal against the criteria for a variance under MMC 17.64.040 and determined:
 - The MMC allows reasonable use of any property that is encumbered by critical areas such as steep slopes, wetlands, or streams. The Applicant has met all other criteria for a RUP under MMC 17.52.025. By following the recommendations of the geotechnical report originally prepared by Geospectrum Consultants, Inc., with addenda from GEO Group Northwest, Inc., the long term stability of the steep slopes is expected to increase.
 - Most of the site is impacted by steep slopes 40 percent or greater. Under MMC 17.52A.050, a 25-foot setback is required from the top of steep slopes for all undeveloped lots. If these regulations, under MMC 17.52A, were applied to this site, all reasonable use of the property would be taken, creating an unbuildable lot

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under standard zoning and critical areas regulations. The proposed building footprint was chosen because it creates the least impact to the steep slopes.

- The project application and submittals have been routed to other agencies and departments for their review and comments. The City did not receive any comments that stated that the variance would adversely impact public street operations, drainage, or the public welfare. With implementation of the recommendations in the geotechnical report, the proposed ten-foot front yard setback, ten-foot setback from the top of slope, and 4,090 square feet of disturbance area would not be detrimental to the property or improvements in the area. Access would be provided from Webster Way and would not affect neighboring properties.
- The request for the variance is due to the nature of the property and not actions created by the Applicant. The lot was legally created prior to the adoption of critical area regulations that restrict development on steep slopes, wetlands, streams, and their associated buffers.
- Single-family residences are a permitted use in the RD-12.5(S) zoning district.

Exhibit 17, Staff Report, pages 6 through 8.

Testimony

17. City Associate Planner Sarah Kress testified generally about the proposal and how, with conditions, it would comply with the City Comprehensive Plan and zoning ordinances and would satisfy the specific criteria for approval of a reasonable use permit and variances. She clarified that the Applicant is seeking a variance to reduce the top of slope setback and a variance to reduce the front yard setback. She noted that the requested reasonable use permit is similar to other reasonable use permits approved in the past. She explained that the City received several comments on the proposal, including a comment from the School District that the Applicant pay impact fees and a comment from a neighboring property owner that expressed opposition to the proposed development. She noted that the City looked into concerns expressed by the neighboring property owner but determined that the proposed development would comply with the criteria for a reasonable use permit and variances. Ms. Kress explained that the proposed development would comply with the five-foot side setback to the west and that the reduced front setback would allow the new single-family residence to have the least impact to the critical areas buffer as possible. She noted that the City received a comment from a member of the public shortly before the open record hearing that did not specifically address the proposed development but made general comments about residential development in the City.

Ms. Kress testified that the City included a condition to place temporary signs for the Native Growth Protection Area (NGPA) during construction and permanent signs after construction. She clarified that NGPAs are permanently protected areas associated with critical areas and are set aside to be left undeveloped. She stated that the City was also

requesting weekly inspection reports to ensure the project would comply with the geotechnical report provided by the Applicant. She stated that the Applicant and future property owners would be required to submit an arborist report and have approval of an arborist to remove trees from the NGPA. She noted that City staff did not identify any issues in the drainage report or with the proposed stormwater system. Ms. Kress explained that the City provided notice of the rescheduled open record hearing by emailing interested parties and posting notice on the City's website ten days before the hearing. *Testimony of Ms. Kress.*

18. Applicant Chris Estes testified that the proposed RUP and variances would allow the construction of a single-family residence with a total lot coverage of 27.4 percent. He stated that the residence would not encroach on the steep slope itself and that there are no other critical areas on-site. He clarified that the eaves would not encroach further into the setback than the proposed reduction, consistent with City zoning guidelines. *Testimony of Mr. Estes.*

Staff Recommendation

19. The City recommends approval of the application for a reasonable use permit and variances, with conditions. *Exhibit 17, Staff Report, pages 8 and 9; Testimony of Ms. Kress.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is authorized to hold an open record hearing for various permit applications, including variance and reasonable use permit applications. *MMC 2.38.030; MMC 17.13.060 - .070; MMC 17.64.040.* Two or more land use development permits may be processed under a consolidated review and approval process and the consolidated process used shall be that which corresponds to the process used for the required land use development permit requiring a decision by the City's highest decision-maker. *MMC 17.13.060.F.* The City of Mukilteo has authorized the Hearing Examiner to approve, approve with conditions, or deny land use applications. *Chapter 17.13 MMC.*

Criteria for Review

Reasonable Use Permit

If application of Chapter 17.52 MMC would deny all reasonable use of the property containing critical areas, an applicant may apply for a reasonable use permit. *MMC 17.52.025.1.*

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

1. That no reasonable use with less impact on the critical area and/or the buffer is feasible and reasonable;
2. There is no feasible and reasonable on-site alternative to the proposed activity or use that would allow reasonable use with less adverse impacts to the critical area

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and/or buffer. Feasible on-site alternatives shall include, but are not limited to: reduction in density or building size, phasing of project implementation, change in timing of activities, and revision of road or parcel layout or related site planning considerations;

3. There are no practical alternatives available to the applicant for development of the property. An alternative is practical if the property or site is available and the project is capable of being done after taking into consideration existing technology, infrastructure, and logistics in light of the overall project purpose;
4. The proposed activity or use will be mitigated to the maximum practical extent and result in the minimum feasible alteration or impairment of functional characteristics of the site, including contours, vegetation and habitat, groundwater, surface water, and hydrologic conditions, and consideration has been given to best available science;
5. There will be no material damage to nearby public or private property and no material threat to the health or safety of people on or off the property;
6. The proposed activity or use complies with all local, state, and federal laws and the applicant has applied for or obtained all required state and federal approvals; and
7. The inability to derive reasonable use is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after March 23, 1992.

MMC 17.52.025.B.

Variance

A variance may be granted only if all of the following criteria are met:

1. The variance shall not constitute a grant of special privilege inconsistent with the rules and regulations governing the uses of other properties in the vicinity or zoning district in which the property for which the variance is requested is located; and
2. The variance must be necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity that are located in the same zoning district in which the subject property is located; and
3. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity or zone in which the subject property is situated;
4. Hardships of a financial nature, hardships which are self-created, and hardships which are personal to the owner and not to the property, shall not be grounds for a variance;

5. Variances shall not be granted if the granting of the variance would allow a use not permitted outright or by conditional use permit, or any use prohibited outright or by implications in the zoning district involved.

MMC 17.64.040.A.

In making a decision on any variance application, the Hearing Examiner may approve the variance as presented, deny the variance, or approve the variance with such conditions, regulations, or safeguards as necessary to ensure that the variance meets the above criteria and that the purpose and intent of the regulations adopted in Chapter 17.64 MMC are not violated.

MMC 17.64.040.D.

Conclusions Based on Findings

Steep Slope Setback and Buffer

1. **With conditions, the proposal would meet with the criteria for a reasonable use permit under MMC 17.52A.050.B.** The subject property is located within the RD-12.5(S) zoning district. Single-family residences are permitted outright in the RD-12.5(S) zoning district. Development of the property with a single-family residence would be consistent with surrounding properties, which are all developed with single-family residences.

The subject property contains steep slopes with gradients greater than 40 percent that extend over almost the entire property. Only the lower western portion of the property contains area usable for development. The property was created under a plat that was recorded in 1943 prior to the adoption of any critical area regulations. Strict application of the steep slope setback and buffer and zoning setbacks would prevent reasonable use of the subject property. The Applicant requests a reasonable use permit to construct a single-family residence and associated improvements within the 25-foot buffer associated with the steep slope. As discussed in further detail in Conclusion 3, the Applicant is also requesting a variance to reduce the front yard setback in order to minimize impacts to the steep slope buffer.

The proposed development is exempt from SEPA environmental review under WAC 197-11-800(1)(b)(i). The City provided reasonable notice and opportunity to comment on the proposal. Mukilteo Water and Wastewater District indicated that there would be sufficient water and sanitary sewer capacity to serve the proposed development and Snohomish County PUD No. 1 stated that there is sufficient electric system capacity to serve the proposed development. The Mukilteo Planning Commission expressed concerns over certain grading activities on the property and the height of the proposed development. Neighboring property owners expressed concerns about impacts to privacy on their property. City staff indicated that the slope of the driveway has been revised to meet the City's development standards of 5 percent and that the grade would not be exceeded for a distance of 20 feet from edge of pavement. The proposed development would comply with the maximum height requirement of 35 feet.

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The Applicant would implement Best Management Practices (BMPs) to reduce impacts to the property and ensure no material damage to nearby public or private property or material threat to the health and safety of people on or off the property would occur. Geospectrum Consultants, Inc., provided a geotechnical report on behalf of the Applicant. The geotechnical report indicates that development would be limited to moderately sloped areas with slope gradients less than 40 percent and that the structure setback from the steep slope area could be reduced to ten feet due to the nature of the boundary between the moderate steep slope areas. The geotechnical report concluded that the location of the proposed development was the best option on-site for development. Geo Group Northwest, Inc., provided subsequent addenda to the geotechnical report, which affirmed the findings in the geotechnical report and determined that the recommendations outlined in the geotechnical report had been properly implemented in the design and the project site would remain stable during and after construction of the new residence. The geotechnical report recommends that the Applicant utilize foot foundations on natural soils; install cantilevered retaining walls; complete site grading; strip all existing fill, organic, and loose soils from planned structural fill areas; use sloped temporary construction excavations where planned excavation limits would not interfere with other construction; utilize clean sand and gravel materials free of organic debris and other deleterious material; excavate all topsoil, fill, and organic soils in subgrade areas to expose dense/stiff natural soils and replace the areas with compacted structural fill to final slab subgrade; control and divert surface drainage from the adjoining upslope areas from the subject property; tightline roof drains into the storm drain system; and provide siltation fences or other suitable devices during construction to control the transport of eroded material. City staff reviewed the geotechnical report and associated addenda and determined that the recommendations of the geotechnical report account for the characteristics of the site and applied best available science and prevailing technology to the analysis and recommendations.

The Applicant provided a drainage report and CSWPPP, which indicate that runoff from the rooftop area and driveway would be conveyed to an existing roadside ditch. The Applicant would install a silt fence, stabilize construction access, and install catch basin inserts to mitigate the effects of construction activities on downstream water quality. More than 70 percent of the over 13,000 square foot lot would be left undisturbed. The Applicant has eliminated the yard and is only disturbing the minimum lot area as necessary to safely construct the single-family residence. Building footprints of eight other reasonable use permits issued within the RD-12.5 and RD-12.5(S) zoning districts range from 3 percent to 16 percent of the property and the disturbance areas, excluding driveways, range from 12 percent to 30 percent of the properties. The driveway and subsequent utility connections would be directed as straight as possible into the lot from the street. Access to the property would be provided from Webster Way and would not impact any surrounding properties. The Applicant would obtain required permits and

ensure activity complies with all local and state federal laws, including clearing and grading, right-of-way, stormwater, and building permits.

Conditions are necessary to ensure that Applicant does not construct any structures or foundation walls within the steep slope setback area; places utilities within the driveway access or uses alternative methods acceptable to the Public Works Director to bring utilities through the property; submits minor modifications to the City; places temporary signs at the perimeter of the NGPA at 50-foot intervals during construction; does not clear or excavate within a native growth protection area; provides a written report by a certified landscape architect, arborist, or wetland specialist with all requests to modify or disturb a native growth protection area; completes all development in accordance with the geotechnical report and addenda; has a geotechnical engineer on-site during excavation; removes only those trees within the disturbance area; maintains the driveway approach; complies with applicable requirements of the Fire Code Development Standards and International Fire Code; provides an access route for firefighting apparatus; address all buildings visibly from the road; provide a Washington State certification number for any work done on fire protection systems, enter into a “Developer Extension Agreement” with the Mukilteo Water and Wastewater District; pay for any new or upgrades to the electric system; prepare and record a Land Use Binder; clean public streets during construction; attend a pre-construction meeting with City staff; and pay mitigation fees. *Findings 1 – 19.*

2. **With conditions, the proposal would meet with the criteria for a variance to reduce the 25-foot structural setback associated with a steep slope to ten feet under MMC 17.64.040.** As noted in Conclusion 1, most of the subject property consists of a steep slope area with gradients 40 percent or greater. The request for the structural setback variance is due to the nature of the property and is not a result of actions by the Applicant. The property was legally created in 1943, prior to the adoption of critical area regulations. The reduced slope setback would allow the Applicant to develop the property with a single-family residence, a use allowed by the RD-12.5(S) zoning district and enjoyed by surrounding property owners. The Applicant has also applied for a variance to reduce the front yard zoning setback from 20 feet to ten feet in order to reduce the impact to the slope area.

As detailed in Conclusion 1, the Applicant provided a geotechnical report and addenda, drainage report, and CSWPPP, which demonstrate that proposed location of the single-family residence is the only feasible location, and the Applicant would implement BMPs to ensure granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity or zone in which the subject property is situated. *Findings 1, 9 – 20.*

Front Yard Setback

3. **With conditions, the proposal would meet with the criteria for a variance to reduce the 20-foot front yard setback to ten feet under MMC 17.64.040.** As detailed in Conclusions 1 and 2, most of the subject property is covered by a steep slope area with gradients 40 percent or greater, which is not the result of actions by the Applicant and limits the buildable area of the property. The reduced front yard setback would allow the Applicant to develop the property with a single-family residence, a use allowed by the RD-12.5(S) zoning district and enjoyed by surrounding property owners. The variance would allow the Applicant to reduce the impact to the steep slope area in the northern portion of the property by locating the single-family residence further south toward the front boundary line. *Findings 1, 4 – 20.*

DECISION

Based upon the preceding findings and conclusions, the request for a reasonable use permit and variances to allow construction of a single-family residence and associated improvements on a 0.31-acre property with slopes greater than 40 percent, located at 6305 Webster Way, is **APPROVED**, with the following conditions:

1. The disturbance limit line as shown on the approved site plan submitted October 12, 2022, and approved November 8, 2022, delineates where all improvements may be constructed. The disturbance area includes the building footprint and the driveway area. The disturbance area shall also denote the border of the Native Growth Protection Area (NGPA).
2. No structures or foundation walls may be constructed within the steep slope setback area.
3. Utilities are not being proposed within the steep slope setback area. Utilities must be placed within the driveway access or use alternative methods acceptable to the Public Works Director to bring the utilities through the property.
4. In no case shall the disturbance area be greater than 30 percent of the property, excluding the driveway area but including any parking/turnaround area.
5. Minor modifications of the site plan submitted may be approved by the Community Development Director and Public Works Director if the modifications do not require a change to the findings of fact or the conditions of approval.
6. Temporary signs shall be placed at the perimeter of the NGPA at 50-foot intervals during periods of construction, clearing, grading or excavation on adjacent property. The signs shall describe the limitations on site disturbance and development adjacent to the NGPA. Permanent signs shall be placed at the perimeter of the NGPA at 50-foot intervals prior to final inspection/issuance of the certificate of occupancy.

7. There shall be no clearing, excavation, or fill within a native growth protection area shown on the face of this site plan/plat, with the exception of required utility installations, removal of dangerous trees, thinning of woodlands for the benefit of the woodlands as determined by a certified landscape architect or arborist, and removal of obstructions on drainage courses, or as allowed under Section 17.52A.070, Vegetation management on steep slopes.
8. A written report by a certified landscape architect, arborist, or wetland specialist shall be provided with all requests to modify or disturb a native growth protection area. The report shall be reviewed by the planning and public works directors, which shall approve, condition, or reject the request based on findings presented.
9. The following variances from MMC 17.20.020 Structure Bulk Matrix and MMC 17.52A.050 Geologic Sensitive Area Regulations are approved:
 - a. A reduction of the front yard setback from the southwestern property line from 20 feet to ten feet.
 - b. A reduction of the setback from the top of slope from 25 feet to ten feet.
10. All development shall proceed in accordance with the recommendations listed in the Geotechnical Report prepared by Geospectrum Consultants Inc., dated November 27, 2017, and the Geotechnical Report Addenda Letters prepared by Associated Earth Sciences Incorporated dated December 18, 2020, March 19, 2021, and June 13, 2022.
11. The Applicant's Geotechnical Engineer shall be on-site to monitor excavations to suitable bearing soils for the foundations. We should also be on site to inspect the progress of backfill and compaction, subsurface drainage installation, temporary and permanent erosion control, and to verify slope stability throughout the construction process, as noted in the geotechnical report. Copies of all inspection reports shall be submitted to the City's Engineering Department on a weekly basis.
12. Only those trees within the disturbance area are allowed to be removed. Other trees shall only be removed as allowed under MMC 17.52A.070, Vegetation Management on Steep Slopes. Outside of the approved disturbance area, only those trees that are determined to be hazardous by a certified arborist who specializes in risk assessment and a professional geotechnical engineer may be removed.
13. The portion of the driveway approach located within the right-of-way shall be maintained by the property owner. Per the Mukilteo Development Standards section 4.6.2, Access Management and Design, maintenance of driveway approaches shall be the responsibility of the owner whose property they serve.

14. The following requirements shall be adhered to during construction and completed before occupancy of any structure in accordance with Fire Code Development Standards and applicable International Fire Code at time of application:
 - a. An automatic 13D residential sprinkler system shall be required in accordance with Section 903.3.1 of the International Fire Code due to property topography and based on limited Fire Department access;
 - b. A water supply capable of supplying the required fire flow for fire protection must be provided;
 - c. An access route for firefighting apparatus must be provided at the start of construction. Minimum access route requirements include a 20' width, 13'6" vertical height clearance, and the ability to support a load up to 75,000 pounds;
 - d. All buildings must be addressed visibly and legibly from the road. When buildings are not visible from the street, appropriate provisions must be made to identify clearly which road or drive serves the appropriate address including private roads;
 - e. Hydrants shall be fitted with a 4" quarter turn Storz adaptor; and
 - f. Provide a Washington State certification number for any work done on fire protection systems, i.e., sprinkler systems, standpipe systems, fire detection/alarm systems or any underground for the fire protection system.
15. The Applicant shall enter into a "Developer Extension Agreement" with the Mukilteo Water and Wastewater District. All construction of water and sewer facilities shall be in accordance with the standards, specifications and regulations of the District.
16. The cost of any work, new or upgrade, to the existing electric system and facilities that is required to connect the project to the Snohomish County PUD electric system shall be in accordance with applicable Snohomish County PUD policies.
17. Prior to permit issuance, a Land Use Binder shall be prepared and recorded with Snohomish County stating the Conditions of Approval for the Estes Single-family Residence Reasonable Use Permit and Variance.
18. All contractors and subcontractors working on the project described herein shall obtain a business license from the City before initiation of any site work.
19. All construction equipment, building materials, and debris shall be stored on the Applicant's property, out of the public right-of-way. In no case shall the access to any private or public property be blocked or impinged upon without prior consent from the affected property owners and the City of Mukilteo.

20. If at any time during clearing, grading or construction the public streets are not kept clean and clear, all work will stop until the streets are cleaned and maintained in a manner acceptable to the Public Works Director.
21. All mailbox locations must be approved and signed off by the U S Postal Service prior to permit issuance. Please contact the Growth Management Coordinator at 425.514.9843 to arrange an appointment.
22. The Applicant and contractor shall attend a pre-construction meeting with City staff to discuss expectations and limitations of the project permit prior to the start of construction or site improvements.
23. An on-site stormwater preconstruction meeting with the contractor is required.
24. The Applicant shall pay park, school and traffic mitigation fees or other forms of negotiated impact mitigation directly to the City of Mukilteo in accordance with MMC 3.100, MMC 3.105 and MMC 3.107 or similar requirements associated with the Growth Management Act. Payment of the impact mitigation fees shall be made to the City prior to building permit issuance. The total fee or mitigation amount shall be based on the mitigation fees in effect at the time of fee payment.

DECIDED this 10th day of July 2023.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

Estes NOD

Final Audit Report

2023-07-12

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