



Community Development

2025 NE Kresky Avenue
Chehalis WA 98532

May 7, 2024

Becky Rieger, Wetlands Specialist
Environmental Design, LLC
becky@environmentaldesignllc.com

Dear Mrs. Rieger,

The Lewis County Director of Community Development has made a final determination that you are not a qualified professional as defined in LCC 17.10.170 which states:

LCC 17.38.110 requires the types of reports identified to be completed by a "qualified professional." The administrator shall make final determinations as to qualifications. LCC 17.10.010 defines "Administrator" as the director of Community Development.

Based on this decision, Lewis County will no longer accept from you the following types of reports: critical areas assessments and critical area mitigation plans which include wetland assessments, wetland mitigation plans, aquatic habitat area assessments, aquatic habitat mitigation plans, other related studies, and /or site investigations used for the purposes of identifying critical areas. The effective date of this determination is May 7, 2024.

This determination is based on a history of incomplete, inaccurate or insufficient studies starting in 2019 and continuing through the most recent report submitted for MSR24-0172 on April 16, 2024. These inaccuracies have resulted in significant permit processing setbacks, including the need for multiple corrections, site visits from various agencies, and delays in permit reviews. Your repeated inability to provide accurate assessments causes delays and confusion for our customers, necessitating prompt action to address the situation.

Community Development and Washington State Department of Ecology Staff have worked closely with you over the past several years to attempt to improve your quality of work and reporting. Basic reporting requirements are still unmet in every report submitted by you to Community Development for review. As a result, planning staff can no longer trust that the reports are accurate.

Recent reports regarding parcels 017166011000, 011859004004, 011966006001, 011966006002, 014589002017, 035185001000, 014587010002, 012705005004 and 023875000000 were incomplete or inaccurate. This is not a complete list of reports or projects where inadequate wetland ratings, critical area assessments or site exploration has occurred. A discussion of a recent report and site visit for 280 and 240 Nicholson Rd, Ethel on parcels 014589002016 and 014589002017 is attached to this letter.

If you feel that this determination has been made in error you may appeal this decision, a code interpretation, to the hearing examiner according to the process identified in LCC 17.05.040 by **4pm on (within 13 days of the date of this letter)**.

Regards,

Lee Napier

Lee Napier
Director, Lewis County Community Development

Attached: Site Example, SUP23-0001 & SEP23-0024 Hold Letter, SUP23-0001 Site Visit Summary

Example: A wetland report was submitted for parcels 014589002017 (-17) and 014589002016 (-16). The wetland study was for proposed residential development including septic installation, a single-family residence, accessory dwelling unit, and shared well on -17. It also included an unpermitted airstrip on -16. The report identified a Category 4 wetland that was generally in the middle of the field on both parcels but several hundred feet from any development on either lot. During the SEPA review of the special use permit for the airstrip, staff was made aware from Fish and Wildlife of a potential critical area violation within a stream buffer on -17. This was not addressed in the wetland report and a site visit was scheduled with Ecology, the US Army Corps of Engineers, and Fish and Wildlife to determine if any violations had occurred.

While on site, we observed a much more expansive wetland than what was delineated in the report. The home sites which were several hundred feet from the wetland in the report were actually built in a wetland that was not identified. When the consultant was asked about this, the consultant stated that the client built where they weren't supposed to. This is correct, but the client actually built further away from the wetland than the consultant had delineated, not closer to it.

Additionally, a large pit, several acres in size, was dug for the construction of the airstrip. If proper delineation methods had been followed this pit would have been discovered and addressed by the consultant. When the consultant was asked about the pit for the approval of the development on -17, planning staff were told that there was nothing on site and it had returned to pasture grasses and photos were provided. This pit is in fact located within the wetland that was inaccurately delineated by the consultant. When asked about this on site the consultant stated that they did not delineate that area of the property and did not know about it. That is a perfectly acceptable way of delineation when the wetland is very large. However, in the report the consultant identified clear boundaries of the wetland which would have required them to walk the perimeter of the wetland for the testing and the pit would have been discovered. It was evident that the consultant had not delineated the boundary of the wetland as written and shown in the report submitted to Community Development.

Our preliminary findings on site suggest that this wetland is a potential Category 1 wetland which is tens of acres larger than shown by the report. The consultant states that all the work was done after they were on site to do the delineation. Again, this is untrue as aerial images show work being done on both sites in 2019 and the report was written in 2023. Attached is a letter sent by Community Development for the wetland violations on both sites and a summary of the site visit by Ecology.



April 8, 2024

KELLER, DENNIS D & CAROL M
8200 W CIRCULO DE LOS MORTEROS
TUCSON, AZ 85743

**RE: Development Review Application # SUP23-0001, SEP23-0024 & MSR23-0498
Parcel #: 014589002016 & 014589002017**

Dear Applicant:

During the comment period for your Special Use Permit (SUP23-0001) Lewis County planning staff received comments from the Washington State Department of Fish and Wildlife raising concerns over a potential pit that had been dug within the 150' buffer of Baker Creek located on tax parcel number 014589002017. This pit appears to have been used for construction of your unpermitted airstrip. Using aerial imagery, staff was able to confirm that disturbance to the critical area had occurred and a site visit was scheduled with the Washington State Departments of Ecology, and Fish and Wildlife, the United States Army Corps of Engineers, Lewis County staff and your consultant, Becky Reiger of Environmental Design.

During our site visit on March 4, 2024 multiple violations of local, state and federal wetland codes were observed, see attached summary from Ecology. The extent and impacts of the wetland and other critical area violations are currently unclear as the wetland report prepared by Becky Rieger of Environmental Design LLC on June 6, 2023 is inaccurate and incorrectly identifies the entire extent of the wetlands on your properties. This includes the area where your single-family residence and ADU were approved under MSR23-0498 which are in wetland habitat that was not delineated in the report.

The following proposals and projects will be placed on hold until all of the critical area violations on the properties have been resolved.

- Special Use Permit (SUP23-0001)
- State Environmental Policy Act Determination of Non-Significance (DNS) (SEP23-0024) will be withdrawn as the extent of environmental impacts is unknown.
- All approved items for MSR23-0498. No permits associated with this approval will be accepted and the septic permit (S23-00400), and wellsite inspection (WS23-00048) will be placed on hold.

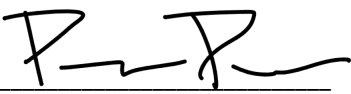
A qualified consultant will need to prepare a full, complete and accurate delineation of all wetlands within 300' of your unpermitted airstrip, hanger, access routes used for their construction, the excavated pit within the stream buffer, and your home sites on 240 Nicholson Rd. The report will be utilized to determine the extent of any impacts to the wetlands, wetland buffers and stream buffers. A mitigation and restoration plan prepared by a qualified consultant will also be required to correct or mitigate any impacts that your development has caused.

This is not a complete list of all items required for your site. Other permits and applications may be required which will be determined after completion of your wetland delineation report, and the mitigation and restoration plan.

If these items are not submitted **within 90 days of the date of this letter**, your application will automatically lapse per Chapter 17.05.070(B)(1) Lewis County Code and will not be processed. Your project is an active code enforcement case with Lewis County, if your applications lapse, the code enforcement case will seek other remedies for resolving the violations on your parcels.

Please contact me directly at Karen.Witherspoon@lewiscountywa.gov, if you are unclear as to how to proceed with resolution.

Karen Witherspoon
Karen Witherspoon
Senior Project Planner


Preston Pinkston
Planner

Attached: Site Visit Summary

Cc: Zach Meyer, Washington State Department of Ecology
Brad Johnson, United States Army Corps of Engineers
Elliot Johnson, Washington State Department of Fish and Wildlife
Lee Napier, Lewis County Community Development Director
Meja Handlen, Lewis County Public Health & Social Services Director
Becky Rieger, Environmental Design LLC

Karen Witherspoon

From: Meyer, Zachary (ECY) <ZMEY461@ECY.WA.GOV>
Sent: Wednesday, March 6, 2024 11:47 AM
To: Preston Pinkston; Karen Witherspoon
Cc: Johnson, Brad A CIV USARMY CENWS (USA); Johnson, Elliot (DFW)
Subject: Site visit summary, 280 Nicholson Rd

Hi Preston,

Thank you for the site visit to 280 Nicholson Rd, Ethel, TPN 014589002016 and TPN 014589002017. Lewis County, WDFW, Ecology, and Corps met with the property owners agent/consultant Becky Reiger of Environmental Design. The purpose of our site visit was to determine accuracy of wetland reporting (June 6, 2023 Critical Area Report prepared by Environmental Design) as it relates to after-the-fact permitting of an airstrip that was constructed without the appropriate approvals.

While onsite, we observed significant inaccuracies with the wetland report (wetlands substantially under-delineated and under-rated) and a number of illegal actions the property owner has taken in and near wetlands. Of note, two residences and associated fill (approx. 0.6 acres) along Nicholson Rd were observed in wetland (46°31'39.99"N, 122°47'41.68"W), an excavated approx. 0.6 area pond within wetland (46°31'44.72"N, 122°47'37.13"W), and an airstrip and storage building/hanger of approx. 2.5 acres bisecting multiple slope wetlands (46°31'49.22"N, 122°48'1.11"W). Additionally, multiple ditches (located at 46°31'39.48"N, 122°47'37.96"W; and 46°31'39.74"N, 122°47'42.43"W) were observed to recently have been dug in wetland to attempt to illegally drain this wetland. One ditch is notably causing erosion on Nicholson Rd. Equipment tracks were observed throughout the wetland between Nicholson Rd and the base of the airstrip. This unpermitted development and associated wetland impacts is in violation of RCW 90.48 WA Water Pollution Control Act and the Lewis County Critical Area Ordinance. Portions of this site (wetlands associated with Baker Creek, headwaters of Lacamas Creek) are within shoreline jurisdiction and thus a violation of RCW 90.58 WA Shoreline Management Act and the Lewis County Shoreline Master Program. All soil disturbance, excavation, and fill as described above in a wetland would have required permitting from Dept. of Ecology, which was not obtained.

Wetland conditions were observed immediately adjacent to Nicholson Rd (46°31'38.97"N, 122°47'38.17"W) extending to the base of the airstrip (46°31'47.45"N, 122°47'42.79"W) and beyond (surface hydrology, gleyed hydric soils, and hydrophytic vegetation including *Carex obnupta* (OBL), *Juncus effusus* (FACW), *Spirea Douglasii* (FACW), and *Phalaris arundinacea* (FACW)). Similar conditions existed bisecting the airstrip in multiple locations, and directly adjacent to the storage building/hanger. Photo and video evidence can be provided. While onsite, we observed at least 18 acres of wetland but this wetland unit is likely larger extending up the baker creek valley. Site conditions were not remotely accurate as described in the Environmental Design wetland report for the proposal.

These violations of state law can come with penalties from Dept of Ecology of up to \$10,000 a day the violations exist. Ecology does prefer to receive voluntary compliance from the applicant to address the illegal actions (restoration), but reserve the right of formal enforcement should the site not come into compliance. We should set up a time to discuss how to proceed. Ecology may issue a formal notice of violation to the property owner depending on if/how the County is able to address these significant violations.

The property owner here will need to prepare a restoration plan to restore unpermitted impacts to wetlands and wetland buffers, this will start with an accurate wetland delineation that shows site conditions before illegal/unpermitted fill/grading/excavation occurred onsite. Methodology for this forensic delineation can be found in the 1987 Army Corps Wetland Delineation Manual and 2010 Army Corps Western Mountains and Valleys Regional Supplement. A qualified wetland consultant will be need to be retained to address this violation.

Ecology as well as the other agencies involved may have more to add as we digest what was observed onsite.

Please let me know if you have any questions.

Zach Meyer
Shorelands Technical and Regulatory Lead
Shorelands & Environmental Assistance Program
Washington State Department of Ecology
Southwest Regional Office, Lacey, WA
360-481-9885



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