



Notice of Hearing Examiner Decision

10/13/2022

To: Interested Parties and Parties of Record

RE: Project Name: Pedigo Residence Shoreline Variance Stream Buffer
Reduction and Zoning Variance
Applicant: Philip Bonstein
13330 SE 30th Street
Bellevue, WA 98005
CC: Ron Pedigo, 1507 Fir Street, Auburn WA 98092
Application: Shoreline Variance Stream Buffer Reduction &
Zoning Variance
Permit Number: #20-03709 & 21-00024

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #'s 20-03709 & 21-00024 Pedigo Residence Shoreline Variance Stream Buffer Reduction and Zoning Variance**, subject to the conditions outlined in this **Notice and included Decision**.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review by contacting the Department of Community Development; if you wish to view the case file or have other questions, please contact help@kitsap1.com or (360) 337-5777. Please note DCD is open Tuesday through Thursday from 9:00am to 12:00pm except holidays.

CC: Applicant/Owner: Philip & Natalie Bonstein, phil@klepps.com
Former Applicant/Owner: Ron Pedigo, r_pedigo60@yahoo.com
Authorized Agent: Crater Land Use Consulting, ryan@craterluc.com
Project Manager: Paul Wandling, pwengineer@comcast.net
Health District
Public Works

Parks
Navy
DSE
Kitsap Transit
Central Kitsap Fire District
Central Kitsap School District
Puget Sound Energy
Water Purveyor- KPUD #1
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
WA State Dept of Ecology- Shoreline; Rebekah Padgett,
RPAD461@ECY.WA.GOV
WA State Dept of Transportation
Interested Parties: Neil Molstad – Dept of Ecology, neil.molstad@ECY.WA.GOV

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	Nos. 20-03709 & 21-00024
)	
Ron Pedigo)	Pedigo Variance and SVAR
)	
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Zoning Variance and Shoreline Variance</u>)	AND DECISION

SUMMARY OF DECISION

The requests for a zoning variance from the requirements of Kitsap County Code 17.420.060, to reduce a required 100-foot residential structural setback to 20 feet, and for a shoreline variance associated with the reduction of several critical areas buffers impacting the subject property, to allow for the construction of a single-family residence, driveway, and septic system, at 4607 Kid Haven Lane NW, are **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 requests on August 25, 2022, utilizing a hybrid approach allowing for live participation or participation by remote access technology. The record was left open until September 1, 2022, to allow for the submission of additional comments and materials on the proposal.

Testimony:

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

Steve Heacock, County Senior Environmental Planner
Paul Wandling, Applicant Representative
Neil Molstad, Washington State Department of Ecology Wetland Specialist
Robert Hankins, County Engineer

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated August 18, 2022
2. Authorization Form, dated August 6, 2020
3. Habitat Management Plan and No Net Loss Report, Crater Land Use Consulting, dated July 13, 2020
4. Joint Aquatic Resources Permit Application (JARPA) Form, dated August 26, 2020

*Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Pedigo Zoning Variance and SVAR
Nos. 20-03709 & 21-00024*

5. Project Description, received September 21, 2020
6. Required Permit Questionnaire, received September 21, 2020
7. SEPA Checklist, dated August 25, 2020
8. Drainage Map and Kitsap Public Health District Information, dated February 19, 2020
9. Stormwater Worksheet, received September 21, 2020
10. Notice of Application, with Distribution List, dated November 27, 2020
11. Comment from Dana Sarff, Skokomish Tribe, dated November 28, 2020
12. Comment from Alison O’Sullivan, Suquamish Tribe, dated December 1, 2020, with email string
13. Comment from Brittany Gordon, Washington Department of Fish and Wildlife, dated December 2, 2020, with email string
14. Comment from Maria Sandercock, Washington Department of Ecology, dated December 7, 2020
15. Revised Notice of Application, with Distribution List, dated February 25, 2021
16. Channel Migration Zone Determination Report, WNEK Engineering, dated June 14, 2011
17. Shoreline No Net Loss Wetland Delineation and Buffer Mitigation Report, Crater Land Use Consulting, dated October 10, 2021
18. Information Request Checklist, dated April 26, 2021
19. Geological Site Assessment, Resolve Environmental & Geotechnical, Inc., dated December 27, 2020
20. Comment from Neil Molstad, Washington Department of Ecology, dated April 22, 2022, with email string
21. Stormwater Conditions Memorandum, dated February 15, 2022
22. Notice of Public Hearing, dated August 10, 2022
23. Certification of Public Notice, dated August 17, 2022
24. Staff Presentation
25. Hearing Sign-In

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

FINDINGS

Application

1. Ron Pedigo (Applicant)¹ requests a zoning variance and shoreline variance (SVAR) to allow for the construction of a 1,950 square foot single-family residence, a 983 square foot driveway, and septic system with a reserve drainfield, on a 2.09-acre property. The property is currently undeveloped apart from the presence of a well and an existing 207-foot long access road. All proposed development would be limited to a 17,354 square

¹ The parcel recently came under the ownership of Natalie and Phillip Bonstein, who are making the same request as Mr. Pedigo. County staff testified that it kept the application under Ron Pedigo’s name for administrative ease. *Exhibit 1, Staff Report, page 2; Testimony of Steve Heacock.*

foot “development envelope,” within the northwest corner of the property, which had been previously cleared by former property owners for agricultural purposes. No additional clearing of vegetated areas is proposed. Access to the site would be provided from Kid Haven Lane NW.

Big Beef Creek, a freshwater stream/river subject to the County’s Shoreline Master Program (SMP) and two of its associated stream channels, covers approximately 11.5 percent of the property and essentially bounds the property to the south and east. When accounting for the Channel Migration Zone (CMZ) related to Big Beef Creek—as explained in greater detail below—the required 200-foot buffer associated with Big Beef Creek encumbers the entire property. In addition, prescriptive buffers associated with an off-site Category III Wetland (Wetland A) and associated Type-F Stream north of the subject property also impact the site, although the portions of both buffers that extend onsite are subsumed within the 200-foot stream buffer related to Big Beef Creek, as measured from the CMZ boundary. The Applicant does not propose any direct impacts to Big Beef Creek itself, the CMZ associated with Big Beef Creek, or the wetland and stream north of the property, but a shoreline variance is required to allow development of the proposed single-family residence within the buffer areas associated with these critical areas.

The Applicant also requests a zoning variance to reduce a required 100-foot residential structural setback, associated with property to the north zoned “Rural Wooded,” to 20 feet in order to locate the residence as far as possible from Big Beef Creek and the CMZ. The property is located at 4607 Kid Haven Lane NW, in the Bremerton area of unincorporated Kitsap County.² *Exhibit 1, Staff Report, pages 1 through 3, 5, and 11; Exhibit 2; Exhibit 5; Exhibit 6; Exhibit 17.*

Initial Notice and Agency Review

2. In the early stages of the permitting process associated with the proposal, the Applicant was unaware of the CMZ associated with Big Beef Creek, the presence of Wetland A and an associated Type-F Stream off-site and north of the property, and of the 100-foot residential structural setback required under Kitsap County Code (KCC) 17.420.060, footnote 29, because the subject “Rural Residential” zoned property abuts a property to the north that is zoned “Rural Wooded.” Accordingly, the Applicant initially applied for an SVAR related solely to reducing the 200-foot prescriptive buffer associated with Big Beef Creek (as measured from its ordinary high water mark). Kitsap County (County) determined that the initial SVAR application was complete on September 21, 2020. On November 17, 2020, the County provided notice of the application to property owners within 800 feet of the subject property and to reviewing departments and agencies. The County’s notice materials stated that comments on the proposal could be submitted up

² The property is identified by Kitsap County Assessors Tax Account No. 032401-2-031-1005. *Exhibit 1, Staff Report, page 1.*

until seven days before the open record hearing associated with the application. *Exhibit 1, Staff Report, pages 8 through 14; Exhibits 11 through 14.*

3. The County did not receive any comments on the proposal from members of the public in response to its initial notice materials. The County received the following comments from reviewing agencies and departments:
- Dana Sarff, Skokomish Tribe, submitted a comment, dated November 28, 2020, stating that even if the on-site well is permit-exempt, the well would still require a variance to be installed in the Rural Conservation zone. Ms. Sarff noted that under established case law, recognized Indian tribes hold the senior water right to Big Beef Creek. She requested that the Applicant be required to design and install a stormwater runoff infiltration system as part of the no net loss mitigation strategy in order to protect fish habitats.
 - Alison O’Sullivan, Suquamish Tribe, submitted a comment, dated December 1, 2020, stating that the mitigation sequencing did not reduce impacts to the greatest degree possible. She commented that impervious surfaces should be limited to ensure the safety of the building and to minimize the potential of an accelerated bank erosion rate due to the site’s location in a channel migration zone.
 - Maria Sandercock, Washington State Department of Ecology (DOE), submitted a comment, dated December 7, 2020, recommending that the Applicant provide a more detailed description of the existing conditions in the location of the proposed development and that the house should be located further from the stream. She also requested that the Applicant reanalyze cumulative impacts using the appropriate Shoreline Management Act standards.
 - Brittany Gordon, Washington State Department of Fish and Wildlife (WDFW), submitted a comment, dated December 2, 2020, stating that the presence of residences on adjacent lots within the CMZ does not justify further development in the CMZ. She noted that building on the lot would increase the chances of new bank armoring, which degrades stream and riparian habitat by reducing wood and sediment recruitment, floodplain connectivity, and channel complexity. Ms. Gordon inquired about whether a CMZ is a geohazard and whether a geotechnical report was required. She also requested to be included in a site visit.

Exhibit 1, Staff Report, pages 8 through 14; Exhibits 11 through 14.

4. After reviewing these initial agency comments, the County arranged a site visit that was attended by the Applicant and their consultants, members of County staff, a representative of WDFW, a representative of DOE, and a biologist with the Suquamish Tribe. During the site visit, the group determined that there is a Channel Migration Zone (CMZ) associated with Big Beef Creek and, accordingly, the prescriptive 200-foot buffer related to Big Beef Creek must be measured from the CMZ boundary (not the ordinary high water mark of the creek itself), and that there is unmapped Category III Wetland (Wetland A) and associated Type-F Stream off-site on property to the north owned by the

Department of Natural Resources (DNR) requiring further consideration. Upon further review, the County also determined that the DNR property is zoned “Rural Wooded,” requiring a 100-foot residential structural setback under KCC 17.420.060, footnote 29. *Exhibit 1, Staff Report, page 7.*

Revised Notice and Agency Review

5. The Applicant prepared and/or revised technical reports and the proposal to address the new information and, ultimately, the County determined that the revised application—now including the request for a zoning variance—was complete on January 5, 2021. On February 25, 2021, the County provided notice of the revised proposal in the same manner as previously, noting the additional permit application and project changes. On August 10, 2022, the County provided notice of the open record hearing associated with the revised proposal by mailing/emailing notice to interested parties (including DOE, WDFW, and the Skokomish and Suquamish Tribes) and to property owners within 800 feet of the site, publishing notice in the County’s publishing newspaper of record, and posting notice on-site. *Exhibit 1, Staff Report, page 7; Exhibit 10; Exhibit 15; Exhibit 22; Exhibit 23.*
6. The County received no comments on the revised proposal from members of the public. Neil Molstad, DOE, submitted a comment, dated April 22, 2022, stating that he reviewed the revised materials associated with the proposal but still has concerns about the adequacy of the information provided by the Applicant’s consultants. Mr. Molstad recommended that the Applicant add figures in its materials that show the extent of the shoreline jurisdiction on the parcel. He also noted that, aside from the portions of the parcel within shoreline jurisdiction, all other buffers that extend over the parcel are regulated by the County, not DOE. The County’s staff report notes that the Applicant’s materials have been or would be revised to include the requested information. No other comments from reviewing agencies and tribal entities were received in response to the notice of the revised proposal or public hearing. *Exhibit 1, Staff Report, pages 7 through 15; Exhibit 20.*

State Environmental Policy Act

7. The County determined that the proposal is categorically exempt from review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). Under Washington Administrative Code (WAC) 197-11-800(6)(e), variance applications based on special circumstances applicable to the property, such as size, shape, topography, location, or surroundings, that would not result in any change in land use or density are exempt from SEPA environmental review. *Exhibit 1, Staff Report, page 3.*

Comprehensive Plan, Zoning, and Surrounding Properties

8. The property is designated “Rural Development” by the County Comprehensive Plan. County staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:
- Encourage and support shoreline diversity through planned and coordinated development, which gives preference to water-dependent uses, traditional and historic use patterns, and environmental protection. [Policy SH-1]
 - Uses and activities along shorelines and in the waters of Kitsap County should not have a significant adverse effect on water quality. [Policy SH-3]
 - Land use activities shall be sited and designed to minimize conflicts with and impacts on the shoreline environment. [Policy SH-8]
 - Encourage development practices and design standards for the rural area, such as minimizing changes in grade from pre-development and design standards for the rural area, such as minimizing changes in grade from pre-development site conditions in order to maximize native vegetation retention. [Policy LU-55]
- Exhibit 1, Staff Report, pages 3, 5, and 6.*

9. The subject property is zoned “Rural Residential” (RR). The RR zone “promotes low-density residential development and agricultural activities that are consistent with rural character. It is applied to areas that are relatively unconstrained by environmentally sensitive areas or other significant landscape features. These areas are provided with limited public services.” *Kitsap County Code (KCC) 17.130.020*. Development of detached single-family residential dwellings is a permitted use within the RR zoning district. *KCC 17.410.042*. The property is bordered to the south, east, and west by properties that are also zoned RR. The property to the south is developed with a single-family residence. County staff notes that the development of surrounding areas occurred prior to adoption of the Growth Management Act (GMA) and zoning designations. The property to the north is zoned “Rural Wooded” (RW). Residential development adjacent to the RW zoned parcels requires a 100-foot setback from the parcel. *KCC 17.420.060 (Footnote 29)*. As noted above, the Applicant seeks a zoning variance to reduce the required setback from 100 feet to 20 feet in order to locate the proposed residential development as far from the CMZ and Big Beef Creek as possible. *Exhibit 1, Staff Report, pages 3 and 4.*

Existing Site and Critical Areas

10. The 2.09-acre property is relatively flat, with stable sediments and substrate. A steep slope is located on an adjacent property to the west. The lot is irregular in shape and similar in size to surrounding properties. The site is currently developed with a wellhead and a 207-foot-long access road. The property was previously developed with a cabin

that was removed at an unknown time. Approximately 17,492 square feet of the site has been cleared in the northwest corner of the property, which is where the new development would be located. Applicant Representative Paul Wandling testified that this cleared portion of the property was vegetated with invasive plant species such as Himalayan blackberry and contained remnants of the original cabin structure and some limited agricultural use. *Exhibit 1, Staff Report, pages 2 and 3; Testimony of Mr. Wandling.*

11. Crater Land Use Consulting prepared a Habitat Assessment and Mitigation Plan on behalf of the Applicant on July 13, 2020, which it later revised following the coordinated site visit discussed above. The revised critical areas report (“Revised CAR”) determined that the property is impacted entirely by Big Beef Creek, its associated CMZ, and the 200-foot buffer related to Big Beef Creek as measured from the CMZ boundary. The Revised CAR also determined that the required 110-foot buffer of a Category III Wetland (Wetland A) and 150-foot buffer of a Type-F Stream—both located on DNR property to the north—would extend on to the northern portion of the subject property (including the proposed development envelope). Both of these critical areas buffers, however, are subsumed within the 200-foot prescriptive buffer for Big Beef Creek required under the County SMP. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 3; Exhibit 16; Exhibit 17.*
12. WNEK Engineering completed a Channel Migration Zone Determination Report on behalf of the Applicant, dated June 14, 2021. The report determined that the side channel, north of the main creek channel, is likely still active during heavy flows. The report also indicated that, based on the valley wall continually grading down to the stream, it is difficult to imagine that the historical stream location within the valley has been significantly different than its current location. The report recommends that the Applicant monitor changes to the creek channel and banks. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 3; Exhibit 16; Exhibit 17.*
13. Resolve Environmental & Geotechnical, Inc., submitted a Geotechnical Report on behalf of the Applicant on December 27, 2020. The report determined that the parcel is mapped as having a potential for shallow landslide hazards across most of the site. The report further indicated that, if the recommended conditions of the report and appropriate drainage are applied, geologic conditions would not preclude construction on the site and that construction would not significantly impact the slope stability or the site in general. *Exhibit 19.*

Shoreline Management Act and County Shoreline Master Program

14. The proposed single-family residence and associated improvements would be located within 200 feet of the CMZ boundary related to Big Beef Creek. The State Shoreline Management Act (SMA) and the County Shoreline Master Program, Title 22 KCC, govern work within 200 feet of the CMZ associated with Big Beef Creek. *RCW*

90.58.030(2)(e) and (g); KCC 22.200.100.A. The primary goal of the SMA is to protect the public interest in the state's shorelines through a coordinated development process. The SMA contemplates protecting against adverse effects to the public health, the land, the vegetation, the wildlife, and the waters, and preserving the public's opportunity to enjoy the physical and aesthetic qualities of the natural shoreline to the greatest extent feasible. Permitted uses in the shorelines must be designed and conducted in a manner to minimize damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. RCW 90.58.020. *Exhibit 1, Staff Report, pages 18 and 20.*

15. The purpose of the County Shoreline Master Program (SMP) is to guide the future development of the shorelines in Kitsap County in a manner consistent with the Shoreline Management Act. KCC 22.100.110. The SMP establishes six shoreline environment designations "based on the existing development pattern, the biophysical capabilities and limitations of the shoreline being considered for development, the provisions of WAC 173-26-211 and the goals and aspirations of the citizens of Kitsap County as expressed in the Comprehensive Plan." KCC 22.200.105. The proposed single-family residence would be located within the "Rural Conservancy" environment. The purpose of the Rural Conservancy environment is to "protect ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource use, achieve natural floodplain processes, and provide recreational opportunities." KCC 22.200.125. Single-family residences are allowed in the Rural Conservancy environment. KCC Table 22.600.105. Any "substantial development" within the shoreline jurisdiction requires approval of an SSDP. *Substantial development* is any development for which the total cost or fair market value exceeds \$7,047, or any development that materially interferes with the normal public use of the water or shorelines of the state. RCW 90.58.030(3)(e); KCC 22.150.605.³ Development of a single-family residence by the property owner, however, is exempt from the need for an SSDP. KCC 22.500.100.C.3.g. *Exhibit 1, Staff Report, pages 17 through 20.*
16. KCC 22.300.125 provides general policies for shoreline use and planning that apply to all use and development activities within the SMP jurisdiction, regardless of shoreline environment designation. The purpose of the SMP's general shoreline use and site planning policies is to "[p]reserve and develop shorelines in a manner that allows for an orderly balance of uses by considering the public and private use, along with the

³ *Development* is defined as:

a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level.

RCW 90.58.030(3)(a).

development of shorelines and adjacent land areas with respect to the general distribution, location and extent of such uses and development.” *KCC 22.300.125*. *KCC 22.300.130* provides general policies for public access and recreation that apply to all use and development activity within the SMP jurisdiction. The purpose of the SMP’s general public access and recreation policies is to “[p]rovide physical and visual public access opportunities and space for diverse forms of water-oriented recreation in such a way that private property rights, public safety, and shoreline ecological functions and processes are protected in accordance with existing laws and statutes.” *KCC 22.300.130*. *Exhibit 1, Staff Report, pages 17 through 20*.

17. County staff reviewed the proposal and determined that it would be consistent with several SMP general policies related to shoreline use and site planning and to public access. The applicable policies identified by County staff are listed below, together with County staff’s analysis of how the proposal would be consistent with those policies (in italics):
- Policy SH-20. For shoreline use and development activities, including plats and subdivisions at full build-out, employ innovative development features to achieve no net loss of ecological functions, such as sustainable and low impact development practices where appropriate. *The proposed residential design is a small footprint, minimizing ground disturbance. Mitigation plantings meet no net loss criteria. Stormwater designs provide conveyance of stormwater and treated septic water to the groundwater.*
 - Policy SH-21. Give preference to water-dependent uses and single-family residential uses that are consistent with preservation of shoreline ecological functions and processes. Secondary preference should be given to water-related and water-enjoyment uses. Non-water-oriented uses should be limited to those locations where the above-described uses are in appropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Act. For use preference within shorelines of statewide significance, see Section 22.300.145(B). *The proposed single-family residence is reasonable, including associated parking and stormwater control, for supporting residential use.*
 - Policy SH-22. Designate and maintain appropriate areas for protecting and restoring shoreline ecological functions and processes to control pollution and prevent damage to the shoreline environment and/or public health. *The proposed project would enhance buffers, while providing residential development. The water quality treatment facility would recharge into the ground and would reduce erosive impacts. Minimization of the parking areas and driveway are provided. Native plantings would be installed adjacent to the shoreline per the mitigation design from the Applicant.*
 - Policy SH-23. Through appropriate site planning and use of the most current, accurate and complete scientific and technical information available, shoreline use and development should be located and designed to avoid the need for shoreline

stabilization or actions that would result in a net loss of shoreline ecological functions. *The proposed residential use does not require armoring.*

- Policy SH-32. Protect the public's opportunity to enjoy the physical and visual qualities of the shoreline by balancing shoreline use and development in such a way that minimizes interference with the public's use or enjoyment of the water. This may be achieved through regulatory provisions, incentives or other cooperative agreements. *The proposed residence would afford access for the property owner for private enjoyment of the shoreline and would not affect neighboring shoreline uses.*

Exhibit 1, Staff Report, pages 17 and 18.

18. KCC 22.400.110 provides that permitted uses and developments be designed and conducted in a manner that protects the current ecological conditions and prevents or mitigates adverse impacts. The requirements for mitigation measures are listed below, together with Applicant's analysis of how the proposal would be consistent with those criteria (in italics):
- Avoid the impact altogether by not taking certain action or parts of an action. *The landowner seeks to build a single-family residence for personal occupation, which was the landowner's intent when the property was purchased. When considering all regulations subject to the construction of a home on the property, it was found impossible to meet the applicable prescriptive critical area buffer standards. Avoiding the impact altogether would deprive the landowner of reasonable use, which is why a buffer alteration is being requested through the shoreline variance process.*
 - Minimize impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking steps to avoid or reduce impacts. *The landowner has designed a reasonable sized single-family residence similar to other homes in the area to build on the property. Its placement has also been located as far away from Big Beef Creek and out of its associated buffer as possible. The residence could be moved further away, but its proposed location is necessary to accommodate an on-site septic system because no municipal sewer service is available nearby. During the construction of the home, appropriate steps such as required permit conditions for stormwater control measures and those described within this report would be taken to ensure impacts are reduced to the greatest extent possible.*
 - Rectify the impact by repairing, rehabilitating, or restoring the affected environment. *The proposed project would provide buffer enhancement features in the form of the planting of native vegetation. Native vegetation would be planted in accordance with applicable mitigation standards found in the Kitsap County SMP, specifically Chapter 22.800 – Appendix B.*

- Reduce or eliminate the impact over time by preservation and maintenance operations. *Impacts for the project and its over time can be reduced if the actions list in Chapters 7 and 8 of the Habitat Management Plan are followed.*
- Compensate for the impact by replacing, enhancing, or providing substitute resources or environments, including utilization of the in-lieu fee process where appropriate. *As a result of the proposed buffer impacts of 0.398 acres, the project would provide on-site buffer mitigation in the form of native vegetation plantings to achieve no net loss of ecological functions.*
- Monitoring the impact and the mitigation projects and take appropriate corrective measures. *Monitoring of the proposed enhancement features area is described in Appendix C of the Habitat Management Plan. Best management practices described in Chapter 8 of the report are also recommended to ensure appropriate actions are taken to avoid potential impacts.*

County staff reviewed the Applicant's reports, analysis, designs, and proposed mitigation and determined that the application conforms to the requirements under KCC 22.400.110. *Exhibit 1, Staff Report, pages 20 and 21.*

Shoreline Variance

19. Approval of a shoreline variance is required to allow the proposed single-family residence, driveway, and septic system to be located within the 200-foot buffer associated with Big Beef Creek (as measured from the boundary of the CMZ). Because the 110-foot buffer related to Wetland A, and the 150-foot buffer related to the associated Type-F Stream, both on DNR property to the north, are subsumed within the required buffer area associated with Big Beef Creek, impacts to all said buffers are analyzed under the County's SMP. Under KCC 22.500.100.E.1, the purpose of a shoreline variance is: strictly limited to granting relief from specific bulk, dimensional, or performance standards (not uses) set forth in [the SMP] where there are extraordinary or unique circumstances relating to the property such that the strict implantation of [the SMP] will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. *Exhibit 1, Staff Report, pages 22 through 25; Exhibit 3; Exhibit 16; Exhibit 17.*
20. As noted above, the Applicant submitted a Revised CAR for the proposal following a July 25, 2021, coordinated site meeting with staff from the County, WDWF, DOE, and others. The Revised CAR determined that the proposal would not directly impact the on-site CMZ but would result in 17,354 square feet of unavoidable impacts to the 200-foot shoreline buffer (as measured from the CMZ boundary) associated with Big Beef Creek from construction of the single-family residence, driveway, and septic system. This figure (17,354 square feet of unavoidable impacts) also accounts for the fact that the proposed development would result in 2,329 square feet of unavoidable impacts to the Wetland A buffer and 1,329 square feet of unavoidable impacts to the Type-F Stream buffer as both buffers are subsumed within the shoreline buffer of Big Beef Creek.

The Applicant proposes to minimize impacts from the proposed development by locating the development as far as possible from the CMZ, not engaging in any additional clearing, and using the current access road. As mitigation for the 17,354 square feet of unavoidable impacts to critical areas buffers, the Applicant would enhance 54,182 square feet of remaining buffer areas by planting native vegetation. The Applicant's mitigation plan includes monitoring requirements and a maintenance plan to ensure that the proposal would result in no net loss of shoreline ecological functions or ecological functions related to the off-site wetland and stream. *Exhibit 1, Staff Report, pages 15 through 19; Exhibit 3; Exhibit 16; Exhibit 17.*

21. KCC 22.500.100.E provides criteria for shoreline variance decisions. The Applicant provided a variance justification with its revised application materials that addresses these criteria, which contends:
- The variance as proposed for the residential development would be limited to granting relief from the requirements for a 110-foot wetland buffer, a 200-foot freshwater stream shoreline buffer, and a 150-foot stream buffer. The buffer enhancement ratio is affected by the limited size of the subject property. Granting the variance would allow minimal development for an allowed use in the zone, and the project has been designed to minimize effects to the natural environment to the extent practicable.
 - The variance is classified as a Type III permit under Chapter 21.04 KCC.
 - Denial of the variance would result in the project not being constructed. The property is a legal lot of record and, with mitigation, should be afforded residential development, outside of flood zone and landslide hazard areas.
 - The proposed variance would be located landward of the OHWM and would meet the requirements of KCC 22.500.100.E.4.
 - Due to the shape and size of the existing lot, the strict application of the prescriptive 200-foot stream buffer under KCC 22.400.120.B.f on the proposed development would leave no room on the lot outside of the regulatory buffer and setbacks to allow for the placement of a single-family residence.
 - The hardship is specifically related to the property and is the result of the existing shape, size, natural features, and regulatory restrictions placed on the property after it was legally created. The hardship is not related to any conditions or actions the landowner has taken to include the design of the proposed development.
 - The proposed project would be compatible with existing residential uses in the area and with uses planned for the area under the Comprehensive Plan and the County SMP. Specifically, the Comprehensive Plan, zoning code, and County SMP all plan for and allow residential development within the

area and on-site. The proposed development would be located in an existing cleared area and as far away from the critical area as possible. Any potential loss to current ecological functions would be addressed with proposed buffer enhancements features (native vegetation plantings) in areas of the existing buffer. No net loss is anticipated as a result of this project.

- Approval of the requested variance would not grant a special privilege that is not afforded to other citizens who may face similar site conditions and regulatory buffer restrictions.
- The landowner is requesting the minimum relief necessary to allow for the construction of a reasonably sized single-family residence and associated on-site utilities.
- The public interest would suffer no substantial detrimental impact as a result of the variance request being approved. Buffer mitigation measures are proposed to improve the existing buffer, and these measures would both improve on-site habitat and ensure that a healthy and dense vegetated buffer would be maintained into the future.
- Buffer mitigation is being proposed as part of this project and minimal buffer reduction request consistent with the intent of the regulations contained with the County SMP. Cumulative impacts of the proposal have been addressed in Chapter 6 of the Habitat Management Plan, and appropriate mitigation is being proposed to ensure that no net loss of ecological functions would result from the approval of the project building permit application.
- The variance permit application would not be considered final until approved by DOE.

Exhibit 17.

22. In addition to the criteria addressed above, consideration must be given to the cumulative impact of additional requests for like action in the area. *KCC 22.500.100.E.6*. The cumulative effects analysis of the Applicant's Habitat Management Plan asserts in relevant part:

Of the estimated 92 distinct lots bordering Big Beef Creek, 29 (approximately 32 percent) currently appear to contain residential development. In the neighborhood of the proposed project, along Kid Haven Lane, there are 12 lots bordering the creek. Of those, four, or 33 percent, are currently developed. Development along Big Beef Creek is concentrated in three areas: surrounding Lake William Symington at the west end, in the Kid Haven Lane neighborhood, and where the creek meets Hood Canal to the north. Outside of these areas, the vast majority of land bordering Big Beef Creek is designated forest land, belonging to a mix of public and private entities.

This single project is not expected to have a cumulative effect. Given the considerable regulatory requirements and cost to develop along Big Beef Creek, it is the opinion of this report that substantial development of the remaining residential lots is not likely in the next decade or even beyond. In the unlikely event that all existing undeveloped residential lots located on the shoreline are developed, there could be some cumulative impact, though this development will be contained to the previously mentioned areas where residential development currently exists due to the zoning.

Exhibit 17.

23. County staff reviewed the proposal and determined that, with conditions, it would satisfy the specific criteria for a shoreline variance. *Exhibit 1, Staff Report, pages 22 through 28.*

Zoning Variance

24. The purpose of a zoning variance is to provide property owners with relief from the numerical standards of the zoning code, excluding housing density standards, when unusual circumstances relating to the property cause an undue hardship. *KCC 17.560.010.* KCC 17.560.010 authorizes the Hearing Examiner to grant a variance from the numerical standards of the zoning code only when certain criteria are met. The Applicant submitted a project narrative asserting that the proposal would satisfy these criteria, noting:

- The need for reasonable relief from the prescriptive 100-foot setback standard in KCC 17.420.060 (Footnote 29) is due to the lot's shape, size, topography, and on-site critical areas. These site conditions are not due to actions of the landowner.
- The variance is necessary to provide reasonable relief from the prescriptive standards to allow for the construction of a single-family residence in a similar manner enjoyed by other properties in the area.
- Failure to obtain the requested variance would deprive the Applicant of the ability to construct a single-family residence on the property because the remaining portion of the lot is encumbered by an on-site critical area (Big Beef Creek) and its associated buffer.
- Placement of the single-family residence has been done in a manner to avoid impacts to critical areas to the greatest extent possible. Reduction of the prescriptive standard found in KCC 17.420.060 (Footnote 29) is necessary to avoid further encroachment into critical area buffers on site is paramount to any protective measures intended by KCC 17.420.060 (Footnote 29).

- A Habitat Management Plan/No Net Loss Report [Revised CAR] has been provided with this application, which provides supporting evidence of why reasonable relief is both necessary and unavoidable.

Exhibit 17.

25. County staff analyzed the proposal and determined that, with conditions, it would meet the specific criteria for a zoning variance under KCC 17.560.010, noting:

- County staff concurs that the parcel features are informing the need for the variance.
- The property is in a rural residential area where most lots are developed with single family homes. Many of the lots are smaller and legally nonconforming with current lot size requirements. The variance would provide the property owner with the ability to reasonably develop the property with a single-family residence of similar nature to adjacent properties.
- The setback variance is not expected to have any adverse impacts on the property or properties in the vicinity.
- Many of the lots in the area are smaller in size, thereby accommodating a rear setback that is less than the 100-foot setback required of this property by virtue of being adjacent to Rural Wooded zoning. The request for an 80-foot setback reduction would result in a 20-foot setback and would allow for a minimized building envelope. The variance request is the minimum necessary.

Exhibit 1, Staff Report, pages 14 through 16.

Testimony

26. County Senior Environmental Planner Steve Heacock testified generally about the proposal, the review process that occurred, and how, with conditions, the proposal would be consistent with the County's Comprehensive Plan, zoning ordinances, critical areas ordinances, and shoreline master program and would meet the requirements for approval of a zoning variance and shoreline variance. Mr. Heacock explained that the subject property recently came under new ownership but that the application is proceeding under the former owner's name. He provided a detailed description of the critical areas on and near the subject property, including Big Beef Creek and the associated channel migration zone (CMZ), an off-site wetland, and an off-site Type F Stream. Mr. Heacock explained that critical areas within the County's shoreline jurisdiction are regulated by the County SMP and, therefore, the proposal for development within the buffers associated with the Big Beef Creek CMZ, wetland, and stream would require approval of a shoreline variance. He noted that Big Beef Creek is also regulated as a shoreline of the state because it has flow greater than 20 cubic feet per second.

Mr. Heacock stated that Big Beef Creek can migrate through the bed of the creek between two channels, which poses challenges to the development. He noted that County staff required the Applicant to undertake a special study analyzing the CMZ, which the Applicant provided. Mr. Heacock also noted that the site contains a moderate landslide hazard. He stated that the property and most adjacent properties are zoned Rural Residential and that the SMP designates the property as within the Rural Conservancy environment. Mr. Heacock noted that there are a number of homes in the area, many of which are larger than the proposed dwelling unit. He also summarized the mitigation planting plan for the proposal and explained that the proposed single-family residence and associated improvements would be located as far as possible from Big Beef Creek and the CMZ. Mr. Heacock explained that a zoning variance for the setback associated with the Rural Wooded zone was required to locate the residence and associated works as far as possible from critical areas. He noted that the required setback associated with the Rural Wooded zone reflects historic forestry practices that are no longer common. Mr. Heacock described County staff's recommended conditions of approval and explained how they would ensure consistency with the requirements for approval of a zoning variance and shoreline variance. He noted that DOE would have final review authority over the proposal and that DOE and WDFW staff had conducted a site visit with him.

Testimony of Mr. Heacock.

27. Applicant Representative Paul Wandling described the property, noting that the site was previously used for limited agricultural purposes and had become overgrown with blackberries and other invasive plants and contained remnants of original structures, which the Applicant had cleared. He explained that critical area buffers encompass most of the property's buildable land and that the Applicant proposes a building footprint that would constitute the smallest use of the property possible. Mr. Wandling clarified that the Applicant is proposing a flow dispersion stormwater system, which is specifically sized to fit the needs of the site. He explained that the soils of the site are shallow, but free-draining, and that stormwater would be conveyed and trapped in soil and would not discharge into nearby water areas. *Testimony of Mr. Wandling.*
28. Neil Molstad, a wetland specialist with the Washington State Department of Ecology (DOE), clarified that he has not personally visited the site but that DOE Shoreline Planner Maria Sandercock may have. He explained that, if the DOE approval decision came to him for review, he would like to conduct a site visit. *Testimony of Mr. Molstad.*
29. County Engineer Robert Hankins requested clarification about the Applicant's stormwater plan, noting that the application materials indicated that dispersion trenches would be used. He noted that additional review of stormwater facilities would occur during later stages of the project review process. *Testimony of Mr. Hankins.*

Staff Recommendation

30. Mr. Heacock testified that County staff recommends approval of the zoning variance and shoreline variance, with conditions. Mr. Wandling testified that the Applicant understands and would comply with County staff's recommended conditions. *Exhibit 1, Staff Report, pages 26 through 28; Testimony of Mr. Heacock; Testimony of Mr. Wandling.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide applications for a shoreline variance and for a zoning variance. *KCC 2.10.070; KCC 17.560.050; KCC 21.04.050; KCC 21.04.080; KCC 21.04.100; KCC 22.500.100.*

Criteria for Review – Shoreline Variance

Shoreline Management Act

The Shoreline Management Act is codified at Chapter 90.58 RCW. Applicable policies of RCW 90.58.020 include those to foster “all reasonable and appropriate uses;” protect against adverse effects to the public health, the land, and vegetation and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alternations to the natural condition of the shoreline. Nonetheless, “private property rights are ‘secondary to the SMA’s primary purpose, which is to protect the state shorelines as fully as possible.’” *Samson v. City of Bainbridge Island*, 149 Wn. App. 33, 49, 202 P.3d 334 (2009) (internal quotation marks omitted) (quoting *Lund v. Dep’t of Ecology*, 93 Wn. App. 329, 336-37, 969 P.2d 1072 (1998)). Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” *RCW 90.58.020*. See also *Buechel v. Dep’t of Ecology*, 125 Wn.2d 196, 203, 884 P.2d 910 (1994).

In promulgating the Shoreline Management Act of 1971, the legislature recognized that “ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development” of the state’s shorelines. *RCW 90.58.020*. The legislature also determined that “unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest.” *RCW 90.58.020*. Accordingly, the Shoreline Management Act requires local governments to develop a master program to regulate shoreline uses consistent with its guidelines. *RCW 90.58.080(1)*.

Shoreline Management Act Regulations

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant’s permit request. Chapter 173-27 WAC sets forth permitting procedures and permit

criteria. WAC 173-27-170 sets forth permitting procedures and permit criteria for shoreline variances.

The Hearing Examiner reviews the application under the following criteria:

- (1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- (2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(c), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
 - (b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
 - (c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;
 - (d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - (e) That the variance requested is the minimum necessary to afford relief; and
 - (f) That the public interest will suffer no substantial detrimental effect.

WAC 173-27-170.

Consistent with the requirements under WAC 173-27-170, the County SMP provides in relevant part:

1. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional, or performance standards (not uses) set forth in this program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this master

program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

2. Variances shall be classified as a Type III permit under Chapter 21.04. Administrative variances shall be a Type II permit and may be granted where allowed under the use and modifications matrix or applicable permit requirements.
3. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances, extraordinary circumstances shall be shown, and the public interest shall suffer no substantial detrimental effect.
4. Variance permits for development that will be located landward of the OHWM, except within those areas designated as marshes, bogs, or swamps pursuant to Chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:
 - a. That the strict application of the bulk, dimensional or performance standards set forth in Chapters 22.400 and 22.600 precludes, or significantly interferes with, reasonable use of the property;
 - b. That the hardship described in subsection (E)(1) of this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this program, and, for example, not from deed restrictions or from the actions of the applicant or a predecessor in title;
 - c. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and this program, will not cause net loss to shoreline ecological functions and does not conflict with existing water-dependent uses;
 - d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - e. That the variance requested is the minimum necessary to afford relief; and
 - f. That the public interest will suffer no substantial detrimental effect.
5. Variance permits for development and/or uses that will be located waterward of the OHWM, or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

- a. That the strict application of the bulk, dimensional or performance standards set forth in Chapters 22.400 and 22.600 preclude all reasonable use of the property;
 - b. That the proposal is consistent with the criteria established under subsections (E)(4)(a) and (b) of this section; and
 - c. That the public rights of navigation and use of the shorelines will not be adversely affected.
6. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances shall remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment. The applicant shall demonstrate such consideration through submittal of a cumulative impacts report, where required (Section 22.700.130).
 7. Variances may not be granted to authorize uses different from the shoreline use and modifications matrix in Section 22.600.105.
 8. All applications for shoreline variances approved by the county, including administrative variances, shall be forwarded to Ecology pursuant to WAC 173-27-200, for final approval, approval with conditions, or denial. No approval shall be considered final until it has been acted upon by Ecology.

KCC 22.500.100.E

Criteria for Review – Zoning Variance

The Hearing Examiner may grant a variance from numerical standards of the County’s zoning code, excluding housing density, only when unusual circumstances relating to the property cause undue hardship in the application of the zoning code. The granting of a zoning variance shall be in the public interest and shall only be made when all the following conditions and facts exist:

- A. There are special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, that were not created by the Applicant and do not apply generally to other property in the same vicinity or zone;
- B. Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the Applicant possessed by owners of other properties in the same vicinity or zone;

- C. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located; and
- D. The variance is the minimum necessary to grant relief to the Applicant.

KCC 17.560.010.

The criteria for review adopted by the Kitsap County Board of County Commissioners 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 County 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

Shoreline Variance

1. **With conditions, the proposed project would be consistent with the policies of the Shoreline Management Act (SMA), SMA shoreline regulations, the Kitsap County Shoreline Management Master Program (SMP), and applicable County SMP policies and regulations, and would satisfy the specific criteria for approval of a SVAR under KCC 22.500.100.E.** Applicable policies of RCW 90.58.020 include those that result “in long term over short term benefit;” “[p]rotect the resources and ecology of the shoreline;” “preserve the natural character of the shoreline;” and “[i]ncrease public access to publicly owned areas of the shoreline.” Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” *RCW 90.58.020.* The proposed single-family residence would be consistent with these SMA policies by locating the development as far as possible from critical areas and by implementing a mitigation plan ensuring no net loss of shoreline or wetland ecological function.

The proposal is exempt from SEPA environmental review. The County provided reasonable notice and opportunity to comment on the proposal. The County did not receive any comments on the proposal from members of the public in response to its notice materials. The County received comments from several reviewing agencies and departments. After receiving several comments from agencies and departments, County staff conducted a site visit of the property with staff from WDFW, DOE, and tribal entities. Following the site visit, the Applicant submitted a revised Habitat Management Plan/No Net Loss Report (Revised CAR) addressing concerns raised by the agencies and departments and providing additional analysis and clarification.

The County SMP designates the 2.09-acre subject property as within the Rural Conservancy environment, which allows residential development such as the proposed

single-family residence, septic system, and driveway. A shoreline variance is required to allow development within the 200-foot buffer associated with the Big Beef Creek channel migration zone (CMZ), the 110-foot buffer associated with an off-site Category III wetland, and the 150-foot buffer associated with an off-site Type F Stream. The 2.09-acre property contains a portion of Big Beef Creek that flows from the southwest corner to the northeast corner of the site and contains the buffers of a Category III wetland and Type F Stream that are located north of the subject property. The buffers associated with the critical areas extend over the entire site. Because of these extraordinary circumstances, which are unique to the site and are not the result of any action of the Applicant, would prevent any residential development on the site, strict application of wetland buffer standards would preclude the Applicant's reasonable use of the property.

The proposed single-family residential development would not directly impact the on-site CMZ and has been designed to minimize impacts to the critical area buffers by locating the residence, septic system, and driveway as far as possible from Big Beef Creek and its CMZ. The project would, however, result in unavoidable impacts to 17,354 square feet of critical area buffers (as the entire development envelope of the proposal would be within the 200-foot shoreline buffer associated with Big Beef Creek, as measured from the CMZ boundary). As mitigation for these unavoidable impacts, the Applicant would enhance 54,182 square feet of remaining buffer areas with native plantings. The Applicant's Revised CAR and associated site plans have been designed to minimize effects to the natural environment to the extent practicable, the proposed project would provide buffer enhancement features greater than a one-to-one ratio, and the project would result in no net loss of wetland, stream, or shoreline ecological functions.

The requested variance is the minimum necessary to allow the Applicant to develop the property for residential use, consistent with the uses enjoyed by several surrounding properties, which are developed with residences that tend to be larger in size than the proposed dwelling unit. Accordingly, approval of the shoreline variance would not constitute a grant of special privilege. Cumulative impacts of additional requests for like actions in the area have been considered. The subject property is one of the only undeveloped residential lots in the area, which have mostly been developed with single-family residences and associated improvements.

The proposed development would be consistent with several SMP general policies related to shoreline use and site planning, and to public access and recreation, by designing the project to achieve no net loss of ecological functions. The SMP provides application requirements and development standards for mitigation sequencing within the Rural Conservancy environment. County staff reviewed the proposal and determined that, with conditions, it would comply with these requirements and standards. The Hearing Examiner concurs with County staff's assessment. Conditions, as detailed below, are

necessary to ensure that the Applicant obtains all necessary permits and approvals.
Findings 1 – 30.

Zoning Variance

2. **With conditions, the proposal would be consistent with the specific criteria for a zoning variance under the County code.** The 2.09-acre property is entirely impacted by buffers associated with Big Beef Creek and its CMZ, an off-site wetland, and an off-site Type F Stream. In order to minimize impacts to these critical areas, the Applicant proposes to locate the proposed single-family residence and associated improvements as far as possible from Big Beef Creek and its CMZ. This location would be within the 100-foot residential structural setback associated with the Rural Wooded (RW) zoned property adjacent to the subject property to the north. Accordingly, the Applicant is requesting a variance to reduce the required 100-foot setback to 20 feet to accommodate siting the new single-family residence within the existing cleared area and as far as possible from the CMZ. With strict application of the buffers and 100-foot RW setback requirements, the site would have no developable area, and the Applicant would be denied all reasonable use of the property. These circumstances restricting the developable area of the site are the result of the property's unique size, shape, and topography and were not created by the Applicant.

The subject property and all surrounding properties (apart from the DNR property to the north) are located in the Rural Residential zone, which promotes low-density residential development consistent with rural character. Development of detached single-family residences is a permitted use in the RR zoning district and is the only primary use allowed on the site. Surrounding properties are developed with single-family residences, many of which do not comply with current zoning setback and lot requirements and are larger than the proposed residence. As discussed above, Crater Land Use Consulting prepared a Revised CAR for the proposal, which determined that the proposed development would not result in any net loss of ecological function for impacted buffers. Resolve Environmental & Geotechnical, Inc., prepared a Geotechnical Report for the proposal, which determined that the proposed construction of a single-family residence would not result in an increased risk of erosion or landslides from on-site slope areas.

Granting the variance to allow construction of a single-family residence within the limited developable area of the property would promote Comprehensive Plan policies permitting residential uses in rural areas while minimizing environmental degradation. The requested variance from the applicable side setback requirement is the minimum necessary to allow a single-family residence to be constructed on the property, within the existing cleared area, while avoiding adverse impacts to critical areas on-site. The Applicant does not request any other deviation from applicable development standards. Conditions, as detailed below, are necessary to ensure that the Applicant obtains all required permits and approvals. *Findings 1, 5 – 30.*

DECISION

Based on the preceding findings and conclusions, the requests for a zoning variance from the requirements of Kitsap County Code 17.420.060, to reduce a required 100-foot residential structural setback to 20 feet, and for a shoreline variance associated with the reduction of several critical areas buffers impacting the subject property, to allow for the construction of a single-family residence, driveway, and septic system, at 4607 Kid Haven Lane NW, in the Bremerton area of unincorporated Kitsap County, is **APPROVED**, with the following conditions:⁴

1. The proposal must meet the 50-foot front and 20-foot side yard zoning setbacks that are not the subject of the zoning variance.
2. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.
3. The information provided demonstrates this proposal is a Small Project as defined in Kitsap County Code Title 12, is located entirely within critical areas and their standard buffers and is subject to Minimum Requirements #1-5. As such required building permits would require a storm drainage design prepared by a civil engineer licensed in the State of Washington.
4. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time the Shoreline Variance application was deemed complete, September 22, 2020. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of building permit application.
5. The owner shall be responsible for maintenance of the storm drainage facilities for this development following construction. Before issuance of Occupancy Permits for this development, the person or persons holding title to the subject property for which the storm drainage facilities were required shall record a Declaration of Covenant that guarantees the County that the system will be properly maintained. Wording must be included in the covenant that will allow the County to inspect the system and perform the necessary maintenance in the event the system is not performing properly. This would be done only after notifying the owner and giving him a reasonable time to do the necessary work. Should County forces be required to do the work, the owner will be billed the maximum amount allowed by law.

⁴ This decision includes conditions required to reduce project impacts as well as conditions required to meet County Code standards.

6. If the project proposal is modified from that shown on the site plan accepted for review September 21, 2020, Development Services and Engineering will require additional review and potentially new conditions.
7. A Hydraulic Project Approval (HPA) permit is not required from the Washington Department of Fish and Wildlife. An HPA may be required for any project revisions.
8. All recommendations of the revised Habitat Assessment and Mitigation Plan shall be followed.
9. Upon final permit issuance, all construction for the project must commence within two years and be complete within five years. A one-time one-year extension is available but only if requested on or before ninety days of original permit expiration. No exceptions are allowed unless provided for by law.
10. Submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW 1601 form reserves road capacity for the project.
11. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the SDAP process. The need for and scope of bonding would be determined at that time.
12. Fire access will be reviewed with the building permit application.
13. The Health District shall approve the final septic design.

DECIDED this 12th day of October 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center