



Staff Report for the Hearing Examiner

Report Date: August 17, 2017

Application Submittal Date: May 31, 2017

Hearing Date: August 24, 2017

Application Complete Date: May 31, 2017

Permit Number: 17 02110 and 17 02112

Project Name: DiGiovanni Accessory Dwelling Unit

Type of Application: Conditional Use Permit (CUP) and Shoreline Substantial Development Permit (SSDP)

This staff report was prepared by Katharine Shaffer, Planner, based on information available up until the time the report was prepared. New information relevant to review of this application may become available prior to the hearing or at the hearing. Staff may wish to change their analysis based upon that new information, and reserves the right to do so.

Proposal Summary:

The Department of Community Development is recommending approval of Dale and Tracy DiGiovanni's request for a Shoreline Substantial Development Permit and Conditional Use Permit for an accessory dwelling unit at 5823 Clover Valley Road SE in Port Orchard.

Project Request:

The DiGiovanni's propose a 900 square foot accessory dwelling unit at their shoreline property located at 5823 Clover Valley Road SE. The proposed project is within 200 feet of the shoreline to Long Lake, which falls under the jurisdiction of the Kitsap County Shoreline Master Program, Kitsap County Code Title 22. The subject property is zoned Rural Residential which allows Accessory Dwelling Units through a Conditional Use Permit. The two permits were reviewed concurrently.

Project Location:

5823 Clover Valley Road SE
Port Orchard, WA 98367

Assessor's Account #:

072302-4-048-2006

Applicant/Owner of Record:

Dale and Tracy DiGiovanni
5823 Clover Valley Road SE
Port Orchard, WA 98367

SEPA (State Environmental Policy Act):

The State Environmental Policy Act (SEPA), found in Chapter 43.21C RCW (Revised Code of Washington), is a state law that requires the County to conduct an environmental impact review of any action that might have a significant, adverse impact on the environment. The review includes the completion of an Environmental Checklist by the applicant and a review of that checklist by the County. If it is determined that there will be environmental impacts, conditions are imposed upon the applicant to mitigate those impacts below the threshold of "major"

environmental impacts. If the impacts cannot be mitigated, an environmental impact statement (EIS) must be prepared. The decision following environmental review, which may result in a Determination of Nonsignificance (DNS), Mitigated DNS, or the necessity for an EIS is called a threshold determination. A separate notice of the threshold determination is given by the County. If it is not appealed, it becomes part of the hearing record as it was issued, since it cannot be changed by the Hearing Examiner.

Pursuant to WAC 197-11-355, the optional DNS process was utilized for this project. The SEPA Comment period previously occurred concurrent with the Notice of Application dated June 6, 2017 (Exhibit 29). A Determination of Nonsignificance (DNS) was issued on July 5, 2017 (Exhibit 31). SEPA noted the following information/SEPA mitigation conditions have been imposed and are listed under the 30 conditions at the end of this report:

The SEPA appeal period expired July 19, 2017. No appeals were filed; therefore, the SEPA determination is final.

Physical Characteristics:

The parcel is located on the west side of Long Lake and is approximately 0.97 acres. It is rectangle shape approximately 530 feet long and 81 feet wide. Long Lake abuts the eastern portion of the property.

Comprehensive Plan Designation and Zoning:

Zoning: Rural Protection

Minimum Lot Area - N/A
 Minimum Lot Width - 140 feet
 Minimum Lot Depth - 140 feet
 Maximum Height - 35 feet

Standard Rural Protection Zoning Setbacks

Front - 50 feet
 Side - 20 feet; 5 feet for accessory structures
 Rear - 20 feet; 5 feet for accessory structures

Per Kitsap County Code 17.420.060 Footnote A.4, the subject property can use Urban Restrictive setbacks because it is less than one acre. The Urban Restrictive setbacks are as follows:

Front - 20 feet
 Side - 5 feet
 Rear - 10 feet

Surrounding Land Use and Zoning:

The subject property is zoned Rural Protection; the surrounding parcels have like zoning. The Rural Protection zoning continues east for approximately 1 mile until the zoning becomes Urban Low. The subject property is lake front – the other side of the lake is also zoned Rural Protection zoning.

Public Utilities and Services:

Water: West Sound Utility District
 Power: Puget Sound Energy

Sewer: Private Septic System
Police: Kitsap County Sheriff
Fire: South Fire District
Schools: South Kitsap School District

Access:

Access to the site is off of Clover Valley Road SE. Access to the proposed accessory dwelling unit will be off of Clover Valley Road and using the current driveway for the single-family residence.

Policies and Regulations Applicable to the Subject Proposal:

The Growth Management Act of the State of Washington, RCW 36.70A, requires that the County adopt a Comprehensive Plan, and then implement that plan by adopting development regulations. The development regulations must be consistent with the Comprehensive Plan. The Comprehensive Plan process includes public involvement as required by law, so that those who are impacted by development regulations have an opportunity to help shape the Comprehensive Plan which is then used to prepare development regulations.

Kitsap County Comprehensive Plan
Adopted June 2016

The following Comprehensive Plan goals and policies are most relevant to this application:

Rural Land Use Goals and Policies

Land Use Policy 50

Limit the designed rural area to low residential densities that can be sustained by minimal infrastructure improvements, cause minimal environmental degradation, and that will not cumulatively create the future necessity or expectation of urban levels of service.

Land Use Policy 51

Permit residential uses in rural areas consistent with the planned rural character of the surrounding area.

Land Use Policy 53

Outside of the Type III Limited Area of More Intensive Rural Development (LAMIRD), limit development only to that which serves rural residential or resource needs and does not draw population from Urban Growth Areas. This policy is implemented through Comprehensive Plan Land Use designation, zoning designation, and zoning code provisions.

Housing, Human Services Goals and Policies

Housing, Human Services Policy 5

Use regulatory strategies to incentivize and provide flexibility for development of affordable and special needs housing.

Housing, Human Services Policy 7

Adopt regulatory changes to allow non-traditional housing types.

Housing, Human Services Policy 11

Promote fair housing to ensure that all residents of Kitsap County have an equal and fair opportunity to obtain safe and sanitary housing suitable to their needs and financial resources, regardless of race, religion, gender, sexual orientation, age, national origin, family status, income, disability, or other protected class.

Housing, Human Services Policy 12

Identify and remove regulatory barriers and limits access to or the provision of a diverse affordable housing supply.

Housing, Human Services Policy 13

Identify and remove impediments to creating housing for harder to house populations.

Housing, Human Services Policy 14

Disperse affordable housing opportunities throughout the County.

The County's development regulations are contained within the Kitsap County Code. The following development regulations are most relevant to this application:

Kitsap County Code (KCC)

Title 12	Storm Water Drainage
Title 13	Water and Sewers
Title 14	Buildings and Construction
Title 17	Zoning

Chapter 18.04 State Environmental Policy Act (SEPA)

Chapter 20.04 Transportation Facilities Concurrency Ordinance

Chapter 21.04 Land Use and Development Procedures

Title 22 Shoreline Master Program

Documents Consulted in the Analysis:

A complete index of exhibits is located in the project file. To date, the index to the record consists of Exhibits 31.

Exhibit #	Document	Date or date stamped
1	Project Application: Conditional Use Permit for an Accessory Dwelling Unit	05/31/2017
2	Project Application – Shoreline Substantial Development Permit	05/31/2017
3	Supplemental Application – CUP/ADU	05/31/2017
4	Joint Aquatic Resource Permit (JARPA)	05/31/2017
5	SEPA Environmental Checklist	05/31/2017
6	Supplemental Application – Traffic Concurrency Test	05/31/2017
7	Statement of Intent – Project Narrative	05/31/2017
8	Site Plan	05/31/2017
9	Site Plan – Health District	05/31/2017
10	Stormwater Worksheet	05/31/2017
11	Site Assessment Packet	05/31/2017
12	Floor Plan – Existing Single Family Residence, Basement	05/31/2017
13	Floor Plan – Single Family Residence, Main Floor	05/31/2017
14	Floor Plan – Proposed Accessory Dwelling Unit	05/31/2017

15	Elevations – Existing Single Family Residence	05/31/2017
16	Preliminary Elevations Plan – Accessory Dwelling Unit	05/31/2017
17	Proposed Elevations and Landscaping – Accessory Dwelling Unit	05/31/2017
18	Building Site Application Notice- Kitsap Health District	05/31/2017
19	Water Availability Letter – West Sound Utility District	05/31/2017
20	Health Officer Decision – Onsite Sewage System	06/07/2017
21	Zoning Map	07/31/2017
22	Critical Area Map	07/31/2017
23	Aquifer Recharge Map	07/31/2017
24	Comprehensive Plan Map	07/31/2017
25	Shoreline Designation Map	07/31/2017
26	Aerial Map	07/31/2017
27	Assessor Parcel Map	07/31/2017
28	Property Photos	05/31/2017
29	Notice of Application	06/05/2017
30	Notice of Public Hearing	08/09/2017
31	SEPA – Determination of Non-significance	07/05/2017

Public Comments:

No public comments were received.

Analysis:**Land Use and Zoning Analysis****Kitsap County Code 17.410.060.3 Provisions Applying to Special Uses**

Accessory Dwelling Unit (ADU). In order to encourage the provision of affordable and independent housing for a variety of households, an accessory dwelling unit may be located in residential zones, subject to the following criteria:

- a. An ADU shall be allowed as a permitted use in those areas contained within an urban growth boundary;

Staff Comments: *The subject property is not located with an urban growth boundary and requires a Conditional Use Permit.*

- b. An ADU shall be subject to a conditional use permit in those areas outside an urban growth boundary;

Staff Comments: *The applicant has applied for a Conditional Use Permit.*

- c. Only one ADU shall be allowed per lot;

Staff Comments: *No other accessory dwelling units are present or proposed.*

- d. Owner of the property must reside in either the primary residence or the ADU;

Staff Comments: *The applicants and owners reside in the primary residence.*

- e. The ADU shall not exceed fifty percent of the square footage of the habitable area of primary residence or nine hundred square feet, whichever is smaller;

Staff Comments: *The existing single-family residence is 3,532 square feet. Since fifty percent of the habitable area of the existing single-family residence is greater than 900 square feet the accessory dwelling unit is limited to 900 square feet. The proposed accessory dwelling unit is 900 square feet meeting the size requirement.*

- f. The ADU shall be located within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (i.e., garage);

Staff Comments: *The proposed accessory dwelling unit is proposed to be located 150 feet from the single-family residence. The proposed accessory dwelling unit is not a converted existing detached structure.*

- g. The ADU shall be designed to maintain the appearance of the primary residence;

Staff Comments: *The application includes the elevations for the existing primary residence and the elevations for the proposed accessory dwelling unit (Exhibit 15 and 16). The structures are similar in appearance and color scheme. The permit will be conditioned for the two structures to remain comparable.*

- h. All setback requirements for the zone in which the ADU is located shall apply;

Staff Comments: *The proposed ADU meets all zoning setbacks.*

- i. The ADU shall meet the applicable health district standards for water and sewage disposal;

Staff Comments: *Kitsap County Health District has approved the accessory dwelling unit for water and sewage (Exhibit 20).*

- j. No mobile homes or recreational vehicles shall be allowed as an ADU;

Staff Comments: *The proposed accessory dwelling unit is a stick built structure and is not a mobile home or recreational vehicle.*

- k. An ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking; and

Staff Comments: *The proposed accessory dwelling unit will be accessed off of Clover Valley Road SE. The proposed accessory dwelling unit has a driveway in the front which would satisfy the requirement for off-street parking (Exhibit 8). Included in the accessory dwelling unit is a 2 car garage.*

- l. An ADU is not permitted on the same lot where an accessory living quarters exists.

Staff Comments: *There are no accessory living quarters present or proposed.*

KCC 22.200.115 Shoreline Residential Jurisdiction and Environment Designation

Purpose. To accommodate residential development and appurtenant structures that are consistent with this program, and to provide appropriate public access and recreational uses.

Designation Criteria.

1. Shoreline areas that are predominately single-family or multifamily residential development or are planned or platted for residential development;
2. Does not include shorelines supporting existing residential development that may not support higher densities of development due to potential cumulative impacts to sensitive environments or safety, such as steep slopes or floodplains. Such shorelines shall be designated rural or urban conservancy, whichever applies.

Management Policies.

1. Standards for buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality should be set to assure no net loss of shoreline ecological functions.
2. Multifamily and multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities. If public access is not feasible on site, off-site options such as an in-lieu fee may be recommended.
3. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.
4. Commercial development should be limited to water-oriented uses. Water-oriented includes water-dependent, water-related and water-enjoyment uses.

Staff Comment: *The proposal is for an accessory dwelling unit within the shoreline jurisdiction. The subject property is located within the Shoreline Residential jurisdiction which requires a standard shoreline buffer of 85 feet plus a 15 building setback. The proposal is outside of the shoreline buffer and does not include development on steep slopes or floodplains.*

22.300.100 Critical Area and Ecological Protection

Goal: Protect and conserve shoreline natural resources, including protection of critical areas, while accommodating reasonable and appropriate uses which will assure, at a minimum, no net loss to shoreline ecological functions and processes.

- A. Policy SH-1. Protect and conserve shoreline areas that are ecologically intact and minimally developed or degraded. Develop incentives and regulations for privately owned shorelines that will protect and conserve these areas while allowing reasonable and appropriate development.

Staff Comment: *The proposed accessory dwelling unit is located approximately 130' from ordinary high water outside of the standard buffer for the Shoreline Residential Jurisdiction.*

- B. Policy SH-2. Recognize that nearly all shorelines, even substantially developed or degraded areas, retain important ecological functions.

Staff Comment: *Condition #30 addresses keeping refuse out of the buffer which allows the shoreline to retain its ecological functions.*

C. Policy SH-3. Utilize transfer of development rights as allowed by Chapter 17.580, or as now or hereafter amended, as an option to protect ecological functions.

Staff Comment: *No transfer of development rights are proposed with this application.*

D. Policy SH-4. Permitted uses and developments should be designed and conducted in a manner that protects the current ecological condition, and prevents or mitigates adverse impacts. Mitigation measures shall be applied in the following sequence of steps listed in order of priority:

1. Avoid the impact altogether by not taking a certain action or parts of an action;
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
3. Rectify the impact by repairing, rehabilitating or restoring the affected environment;
4. Reduce or eliminate the impact over time by preservation and maintenance operations;
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments, including utilization of the in-lieu fee process where appropriate; and
6. Monitor the impact and the mitigation projects and take appropriate corrective measures.

Staff Comment: *The proposed accessory dwelling unit is located 130 feet from ordinary high water mark and is outside of the standard buffer of the Shoreline Residential Jurisdiction designation. Because the proposal is outside of the buffer, no mitigation is required.*

E. Policy SH-5. Shoreline ecological functions that should be protected include, but are not limited to:

1. Habitat (space or conditions for reproduction; resting, hiding and migration; and food production and delivery);
2. Water quality maintenance; and
3. Water quantity maintenance.

Staff Comment: *The standard buffer on the subject property will remain in native vegetation to protect habitat for water quality and quantity.*

F. Policy SH-6. Shoreline processes, both freshwater and marine, that should be protected to support the above functions include but are not limited to the delivery, loss and movement of:

1. Sediment;
2. Water;
3. Nutrients;
4. Toxins;
5. Pathogens; and
6. Large woody material.

Staff Comment: *The proposed project will not adversely affect the delivery, loss, and movement of sediment, water, nutrients, toxins, pathogens, and large woody material.*

G. Policy SH-7. In assessing the potential for new uses and developments to impact ecological functions and processes, the following should be taken into account:

1. On-site and off-site impacts;
2. Immediate and long-term impacts;
3. Cumulative impacts, from both current and reasonably foreseeable future actions, resulting from the project; and
4. Any mitigation measures or beneficial effects of established regulatory programs to offset impacts.

Staff Comment: *The onsite impacts will be minimal. The accessory dwelling unit will be located in an already cleared area. There will be no off-site impacts, as the proposal is limited to the subject property.*

Immediate impacts would include noise from the construction and construction material. Condition #30 restricts refuse in the buffers. Long term impacts will be additional trips and material generation from an additional unit. The increase will be marginal.

“Cumulative Impacts” is the impact on the shoreline which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future. It is unlikely, that other neighboring properties will request a similar proposal. The subject property is long and has enough space to meet the shoreline buffer with the additional unit. To the south of the subject property, the structures are very close to the shoreline, some 40’ away. Under today’s Shoreline Management Program, these structures would not be allowed. Because this proposal allows the shoreline buffer to remain intact, the cumulative impact is minimal.

This proposal requires no mitigation because the standard buffer of 85’ and the 15’ building setback are being met.

H. Policy SH-8. Critical areas in the shoreline jurisdiction shall be protected in a manner that results in no net loss to shoreline ecological functions. Pursuant to RCW 36.70A.030(5), critical areas include:

1. Wetlands.
2. Frequently flooded areas.
3. Fish and wildlife habitat conservation areas.
4. Geologically hazardous areas.
5. Critical aquifer recharge areas.

Staff Comment: *There are no critical areas on the subject property.*

22.300.105 Vegetation Conservation Buffers

Goal: Conserve, protect and restore shoreline vegetation to provide for ecological and habitat functions as well as human health and safety. These functions include, but are not limited to, variable shading of the nearshore, food and shelter for terrestrial and aquatic organisms, and slope/soil stabilization.

A. Policy SH-9. Preserve native plant communities on marine, river, lake and wetland shorelines. In order to maintain shoreline ecological functions and processes, development along the shoreline should result in minimal direct, indirect, or cumulative impacts. This includes:

1. Keeping overhanging vegetation intact along the shoreline edge to provide shading and other ecological functions;
2. Preserving established areas of native plants and minimizing clearing and grading near bluff edges and other erosion or landslide-prone areas in order to maintain slope stability and prevent excess surface erosion and stormwater runoff;
3. Designing and placing structures and associated development in areas that avoid disturbance of established native plants, especially trees and shrubs; and
4. Removal of noxious weeds in accordance with WAC 16-750-020.

Staff Comment: *The proposed accessory dwelling unit will be placed in a location that is already cleared. Minimum clearing will be required for the placement of the structure.*

B. Policy SH-10. Shoreline landowners are encouraged to preserve and enhance native woody vegetation and native groundcovers to stabilize soils and provide habitat. When shoreline uses or modifications require a planting plan, maintaining native plant communities, replacing noxious weeds and avoiding installation of ornamental plants are preferred. Nonnative vegetation requiring use of fertilizers, herbicides/pesticides, or summer watering is discouraged.

Staff Comment: *Exhibit 8 shows a detailed description of onsite conditions. The site plan shows native plants on portion of the property. No non-native plants are proposed within this application.*

C. Policy SH-11. Maintaining native or ecologically functional vegetation is preferred over clearing to provide views or lawns. Limited and selective clearing may be allowed when slope stability and ecological functions are not compromised. Limited trimming and pruning is generally preferred over removal of native vegetation.

Staff Comment: *The subject property is mostly clear and will require minimal clearing.*

22.300.110 Water Quality and quantity

Goal: Provide regulations and voluntary incentives to encourage practices which protect water quality and reduce stormwater runoff and erosion in order to protect against adverse impacts to the public health, to the land and its vegetation and wildlife, and to the waters of the state and its aquatic life.

A. Policy SH-12. Shoreline use and development should minimize impacts that contaminate surface or ground water, cause adverse effects on shoreline ecological functions, or impact aesthetic qualities and recreational opportunities, including healthy shellfish harvest.

Staff Comment: *This subject property is located on a freshwater lake and will not adversely affect shellfish harvest. In addition, shoreline ecological functions and recreational opportunities will not be hindered due to the proposed accessory dwelling unit.*

B. Policy SH-13. Ensure mutual consistency with other regulations that address water quality and stormwater quantity, including standards as provided for in Title 12 (Storm Water Drainage) and Chapter 173-201A WAC (Water Quality Standards).

Staff Comment: *The proposal was reviewed by Kitsap County stormwater staff and approved with 6 conditions.*

C. Policy SH-14. Utilize pervious materials and other appropriate low impact development techniques where soils and geologic conditions are suitable and where such practices could reduce stormwater runoff.

Staff Comment: *The proposal was reviewed by Kitsap County stormwater staff and approved with 6 conditions.*

D. Policy SH-15. All shoreline use and development shall be conducted in accordance with Title 15 (Flood Hazard Areas). The subdivision of land should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. When evaluating alternate flood control measures or floodplain restoration opportunities, consider the removal or relocation of structures in flood-prone areas.

Staff Comment: *The subject property is not located within a special flood hazard area.*

22.300.125 Shoreline Use and Site Planning

Goal: Preserve and develop shorelines in a manner that allows for an orderly balance of uses by considering the public and private use, along with the development of shorelines and adjacent land areas with respect to the general distribution, location and extent of such uses and development.

A. 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.

Staff Comment: *The subject property is located outside of the standard shoreline buffer and does not require a no net loss impact analysis or mitigation.*

B. 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 inappropriate 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).

Staff Comment: *The proposal is for single-family residential use and does not include any water-related or water enjoyment uses.*

C. 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.

Staff Comment: *This project has been reviewed by Department of Community Development and Kitsap County Public Works staff and was found to not be a threat to the shoreline ecological functions or public health.*

D. 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.

Staff Comment: *The permit is conditioned (Condition 29) to not allow any expansion of hard armoring of the shoreline. The subject property has an existing rock bulkhead but through this application process it will not be allowed to be expanded.*

E. Policy SH-24. Aquaculture is of statewide interest. Properly managed, it can result in long-term, over short-term, benefit and can protect the resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and, when consistent with the control of pollution and prevention of damage to the environment, is a preferred use of the water area.

Staff Comment: *No aquaculture is proposed in this application.*

F. Policy SH-25. Potential locations for aquaculture activities are relatively restricted by water quality, temperature, dissolved oxygen content, currents, adjacent land use, wind protection, commercial navigation, and salinity. The technology associated with some forms of aquaculture is still experimental and in formative states. Therefore, some latitude should be given when implementing the regulations of this section; provided, that potential impacts on existing uses and shoreline ecological functions and processes should be given due consideration. However, experimental aquaculture projects in water bodies should include conditions for adaptive management. "Experimental aquaculture" means an aquaculture activity that uses methods or technologies that are unprecedented or unproven in Washington.

Staff Comment: *No aquaculture is proposed in this application.*

G. Policy SH-26. Aquaculture activities should be located, designed and operated in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes.

Staff Comment: *No aquaculture is proposed in this application.*

H. Policy SH-27. Aquaculture should not be permitted where it would result in a net loss of shoreline ecological functions and processes, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses. Aquaculture is not required to protect state-listed noxious weed species when control methods are conducted within applicable agency standards. In general, the following preferences apply when considering new aquaculture activities:

1. Projects that are not likely to negatively impact critical saltwater habitats.
2. Projects that involve little or no substrate modification.
3. Projects that involve little or no supplemental food sources, pesticides, herbicides or antibiotic application.

Staff Comment: *No aquaculture is proposed in this application.*

I. Policy SH-28. Aquaculture facilities should be designed and located to avoid:

1. The spread of disease to native aquatic life;
2. The establishment of new nonnative species, which cause significant ecological impacts; and
3. Significant impact to the aesthetic qualities of the shoreline.

Staff Comment: *No aquaculture is proposed in this application.*

J. Policy SH-29. Upland uses and modifications should be properly managed to avoid degradation of water quality of existing shellfish areas.

Staff Comment: *The subject property is located on a freshwater lake where shellfish do not grow or are harvested.*

K. Policy SH-30. Planting and harvesting by boat shall be preferred over low-tide harvest methods where feasible.

Staff Comment: *Planting and harvesting is not proposed in this project.*

L. Policy SH-31. Noncommercial and small-scale aquaculture projects should be encouraged through the shoreline exemption process (Section 22.500.100(C)).

Staff Comment: *No aquaculture is proposed in this application.*

22.500.100(B). Substantial Development Permit.

1. The Act provides that no substantial development shall be undertaken on the shorelines of the state without first obtaining a substantial development permit (SDP).

Staff Comment: *The applicant has applied for a shoreline Substantial development Permit.*

2. A SDP shall be classified as a Type III permit under Chapter [21.04](#).

Staff Comment: *This shoreline substantial development permit is a Type III permit.*

3. An SDP shall be granted only when the applicant can demonstrate that the proposed development is consistent with the policies and procedures of the Act and this program, as well as criteria in WAC [173-27-150](#).

Staff Comment: *The applicant has met these requirements, as shown in this staff report.*

4. WAC 173-27-150

Review criteria for shoreline substantial development permits

1. A substantial development permit shall be granted only when the development proposed is consistent with:

(a) The policies and procedures of the act;

(b) The provisions of this regulation; and

(c) The applicable master program adopted or approved for the area. Provided, that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter [173-26](#) WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

Staff Comment: *Kitsap County approved the shoreline master program and adopted it on December 24, 2014.*

2. Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

Staff Comment: *A total of 30 conditions have been added to the staff report in order to assure consistency of the project with the act and the local master program.*

4. The Act provides a limited number of exceptions to the definition of substantial development. Those exceptions are contained in RCW 90.58.030 and in the section below, and do not require a Substantial Development Permit (SDP). Whether or not a development constitutes a substantial development, all development must comply with the requirements contained in the Act and this program and may require other permits or approvals under this master program. Permits may be issued with limitations or conditions to assure consistency with the Act and this program.

Staff Comment: *This proposal does not qualify as an exemption and requires a Substantial Development Permit.*

5. All applications for shoreline substantial development permits or permit revisions shall be submitted to the Department of Ecology upon a final decision by local government pursuant to WAC 173-27-130. "Final decision by local government" shall mean the order of ruling, whether it be an approval or denial, that is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed.

Staff Comment: *Once all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed, portions of the project file will be forwarded to Department of Ecology for their 21-day review and appeal period.*

Residential Development. 22.600.170

B. Development Standards.

1. All new residential development, including subdivision of land, shall be designed, configured and developed in a manner that ensures no net loss of shoreline ecological function.

Staff Comment: *This application does not include a subdivision of land. The new residential development is developed for a not net loss of shoreline ecological functions.*

2. All sewage disposal and water systems shall be in compliance with state and local health regulations including but not limited to Kitsap County board of health Ordinance 2008A-01 for on-site sewage requirements.

Staff Comment: *Kitsap County Public Health reviewed this proposal and approved it (Exhibit 20) with the condition of a non-binding water availability needed which was provided in Exhibit 19.*

3. New and remodeled residential development and new subdivisions shall be designed, located and constructed so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses.

Staff Comment: *Condition 29 at the end of this report addresses additional shoreline armoring. The accessory dwelling unit is condition to not require additional shoreline armoring. The shoreline shall remain in its natural condition, with the exception of the existing bulkhead.*

4. New over-water residences, including floating homes, are prohibited. Where such homes exist as of the adoption date of this program, they shall be reasonably accommodated to allow improvements associated with life safety matters and property rights.

Staff Comment: *There is no new over-water residence being proposed; thus, the applicant meets this requirement.*

5. Stormwater quality and quantity measures for residential development must comply with current codes.

Staff Comment: *Stormwater reviewers at Kitsap Code have approved the proposal and added conditions at the end of this report.*

6. Flood hazard reduction measures for residential development shall comply with Chapter 19.500, as incorporated here by Section 22.400.115 (Critical areas), and Section 22.400.150 (Flood hazard reduction measures) of this program and shall be designed to prevent net loss of shoreline ecological functions.

Staff Comment: *The subject property is not located within a Special Flood Hazard Area.*

7. New multi-unit residential development, including the subdivision of land for five or more parcels, shall provide for joint or community and/or public access, except where demonstrated to be infeasible due to any of the following:

- a. Incompatible uses;
- b. Safety;
- c. Security;
- d. Impact to the shoreline environment;
- e. Constitutional or other legal limitations that may be applicable.

Staff Comment: *The application does not proposed a land division greater than 5 parcels. The proposal does add one residential unit but the use will be considered ancillary to the primary single-family residence.*

8. In cases where on-site access is infeasible, alternate methods of providing public access shall be considered, such as off-site improvements.

Staff Comment: *On-site access is feasible and no off-site improvements are proposed.*

9. Lot area shall be calculated using only those lands landward of the OHWM.

Staff Comment: *There is an existing bulkhead on the subject property that is considered the Ordinary High Water Mark (OHWM). When calculating lot area and evaluating this proposal, only lands water-ward of the OHWM were included.*

10. Single-family residential uses are a priority use only when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.

Staff Comment: *The proposal has been reviewed for control of pollution and will not cause damage to the natural environment.*

Agency Recommendation

Planning/Zoning review recommends approval based on 19 conditions. Development Engineering has 9 conditions of approval. Environmental Review recommends approval with 2 conditions.

Staff Evaluation of Decision Criteria

1. The Hearing Examiner has review authority for this permit application under KCC, Sections 17.410.010(C) and 21.04.100. The Kitsap County Commissioners have determined that this application requires review and approval of the Hearing Examiner. The Hearing Examiner may approve, approve with conditions or deny a permit. The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision. The powers of the Hearing Examiner are at KCC, Chapter 2.10.
2. The proposal is consistent with the comprehensive plan and the Shoreline Master Program.
3. The proposal complies with or will comply with requirements of Title 17 and complies with or will comply with all of the other applicable provisions of the KCC and all other applicable regulations, including all applicable development standards and design guidelines, through the imposed conditions outlined in this report. The proposal is consistent with the code and provisions of the Kitsap County Shoreline Master Program.
4. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity.
5. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.

Recommendation:

Based upon the information above, the Department of Community Development recommends that the Conditional Use Permit and Shoreline Substantial Development Permit request for the DiGiovanni Accessory Dwelling Unit be **approved**, subject to the following 30 conditions:

Planning/Zoning

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. The accessory dwelling unit is subject to the payment of impact fees. Impact fees must be paid at time of permit issuance, or if deferred, must be paid prior to final inspection. No certificate of occupancy will be granted until all impact fees are paid.
3. Any proposed modification (not including cosmetic work such as painting, papering and similar finish work), remodel or expansion of the accessory dwelling unit (ADU) building, regardless of whether a building permit is required, shall be reviewed by the Department of Community Development and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
4. Only one accessory dwelling unit shall be permitted on the subject property.
5. The owner of the property must reside in either the primary residence or the accessory dwelling unit and only one of the structures may be rented at any one time.
6. The accessory dwelling unit's habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 900 square feet (Exhibit 14).
7. The accessory dwelling unit shall be designed to maintain the appearance of the primary residence.
8. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.
9. No mobile home or recreational vehicle shall be allowed as an accessory dwelling unit
10. The accessory dwelling unit shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
11. An accessory living quarters or guest house is not permitted on the same lot unless the accessory dwelling unit is removed and the ALQ or GH complies with all requirements imposed by the Kitsap County Code
12. A property with a primary residence and an accessory dwelling unit cannot be segregated to create two separate legal lots unless it complies with all subdivision, zoning and density requirements in place at the time of a complete subdivision application.
13. The accessory dwelling unit cannot be sold separately from the primary residence

unless it has legally been segregated onto its own lot.

14. The recipient of any conditional use permit shall file a Notice of Land Use Binder with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The Notice of Land Use Binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared and recorded by the Department at the applicant's expense.
15. The uses of the subject property are limited to the uses proposed by the applicant and any other uses will be subject to further review pursuant to the requirements of the Kitsap County Code. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not, and is not, to be construed as approval for more extensive or other utilization of the subject property.
16. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.
17. The decision set forth herein is based upon representations made and exhibits contained in the project application #17 02110 and #17 02112. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.
18. This Conditional Use Permit approval shall automatically become void if no development permit application is accepted as complete by the Department of Community Development within three years of the Notice of Decision date or the resolution of any appeals.
19. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.

Development Engineering

GENERAL

20. 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.

STORMWATER

21. The information provided demonstrates this proposal is a Small Project as defined in Kitsap County Code Title 12, and, due to the property location within a critical area, will require a Simplified Drainage Review-Engineered Site Development Activity Permit (SDAP) from Development Services and Engineering.
22. 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 Conditional Use Permit and Shoreline Substantial Development Permit applications were deemed complete, May 31, 2017. 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 SDAP application.
23. The design of the infiltration facilities will be accordance with Volume II, Section 5.3.2 of the Kitsap County Stormwater Design Manual.
24. The infiltration facilities shall remain off line until the drainage areas are stabilized and the water quality treatment facility is adequately established. Temporary erosion and sedimentation ponds shall not be located over infiltration facilities.
25. During the construction of the proposed infiltration facilities, the Project Engineer shall provide an inspection to verify that the facilities are installed in accordance with the design documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer's stamp to Development Services and Engineering.
26. If the project proposal is modified from that shown on the submitted site plan dated May 31, 2017, Development Services and Engineering will require additional review and potentially new conditions.

TRAFFIC AND ROADS

27. 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.
28. Submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the Kitsap County Code. Existing approaches may need to be improved to meet current standards.

Environmental

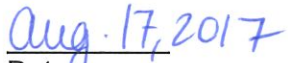
29. The Shoreline Substantial Development Permit shall be allowed provided that development of the accessory dwelling unit will not require additional shoreline armoring. The shoreline shall remain in its natural condition, with the exception of the existing bulkhead.

30. Permit approval requires that refuse shall not be placed in buffers.


Attachments:

Appendix A – Site Plan


Katharine Shaffer, Staff Planner


Date


Scott Diener, Development Services and Engineering Manager


Date

CC: Dale and Tracy DiGiovanni, digiovanni@shierslaw.com

Interested Parties:

None

Kitsap County Health District, MS-30

Kitsap County Public Works Dept., MS-26

DCD Staff Planner: Katharine Shaffer

DCD File: 17 02110 and 17 02112