



## Notice of Hearing Examiner Decision

10/17/2022

To: Interested Parties and Parties of Record

RE: Project Name: Kipperberg Event Venue and Accessory Dwelling Unit  
Applicant: Marilyn Kipperberg  
P.O. Box 547  
Olalla, WA 98359-0547  
Application: Type III – Conditional Use Permit; Shoreline  
Conditional Use Permit; Accessory Dwelling Unit;  
Shoreline Substantial Development Permit  
Permit Numbers: 21-04111 (CUP); 21-03049 (ADU); 21-02413 (SCUP);  
21-00036 (SSDP)

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #21-04111 (CUP); 21-03049 (ADU); 21-02413 (SCUP); 21-00036 (SSDP): Kipperberg Event Venue and Accessory Dwelling Unit – Type III – Conditional Use Permit; Shoreline Conditional Use Permit; Accessory Dwelling Unit; Shoreline Substantial Development Permit, 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](mailto:help@kitsap1.com) or (360) 337-5777.

CC: Owner/Applicant: Marilyn Kipperberg, [jkipperberg@gmail.com](mailto:jkipperberg@gmail.com)  
William Palmer, [wpcnslts@telebyte.net](mailto:wpcnslts@telebyte.net); Kings Homes, Inc.  
[josiah@kingshomesinc.com](mailto:josiah@kingshomesinc.com)  
BGE Environmental: [robbyn@bgeenvironmental.com](mailto:robbyn@bgeenvironmental.com)

Kitsap County Health District, MS-30  
Kitsap County Public Works Dept., MS-26  
Parks  
DSE  
Kitsap Transit  
South Kitsap Fire District  
South Kitsap School District  
Puget Sound Energy  
Suquamish Tribe  
Puyallup Tribe  
Port Gamble S'Klallam Tribe  
Point No Point Treaty Council  
Squaxin Island Tribe  
WA Dept of Fish & Wildlife  
WA State Dept of Ecology-Shoreline Planner  
DCD Staff Planner: Colin Poff  
Interested Parties: Timothy & Krista Hoffsommer, [kristahoffsommer@gmail.com](mailto:kristahoffsommer@gmail.com);  
Linda Murnane, [murnane@centurytel.net](mailto:murnane@centurytel.net); Douglas & Mary Soule,  
[soule.d5@gmail.com](mailto:soule.d5@gmail.com); Amy Kirkland, [catmom17@use.startmail.com](mailto:catmom17@use.startmail.com)

**BEFORE THE HEARING EXAMINER  
FOR KITSAP COUNTY**

In the Matter of the Application of	)	Nos. 21-04111, 21-03049, 21-02413, and
	)	21-00036
	)	
	)	
<b>Marilyn Kipperberg</b>	)	<b>Kipperberg Event Venue and ADU</b>
	)	
	)	
	)	
For Approval of a Conditional Use Permit,	)	
Shoreline Conditional Use Permit, and	)	FINDINGS, CONCLUSIONS,
<u>Shoreline Substantial Development Permit</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a conditional use permit, shoreline substantial development permit, and shoreline conditional use permit to allow for the operation of a wedding and event venue and a conditional use permit to allow occupancy of an 860 square foot detached accessory dwelling unit, at 11967 Luna Vista Ave SE in the Olalla area of unincorporated Kitsap County, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the requests on August 25, 2022, using a hybrid approach allowing for live participation or participation by remote access technology. The record was left open until September 8, 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:

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated August 18, 2022
2. Garage ADU Floor Plans, dated March 20, 2019
3. Single Family Residence Floor Plans, dated March 20, 2019
4. Single Family Residence Elevations, dated March 20, 2019
5. Authorization Form, dated February 15, 2019
6. Garage ADU Elevations, dated March 20, 2019
7. BSA, dated February 8, 2019

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8. Concurrency, dated March 25, 2019
9. Garage Structural Report, dated March 8, 2019
10. Parking Lease Agreement, dated February 3, 2021
11. Letter from Geologist, dated March 2, 2018
12. Permit Questionnaire, undated
13. Small Site Plans Site and Package, dated July 20, 2021
14. Submittal Waiver, dated July 24, 2021
15. Notice of Application, dated October 7, 2021
16. Public Comments
17. Revised Habitat Management Plan, dated March 17, 2019
18. Revised CUP Project Narrative, March 1, 2022
19. Revised JARPA, dated March 10, 2022
20. Revised Parking Analysis Worksheet, dated March 10, 2022
21. Revised SEPA Checklist, dated March 10, 2022
22. Revised Site Plan, dated March 11, 2022
23. Response to RFI, dated March 10, 2022
24. House Plans with Labels, dated March 8, 2022
25. Stormwater Worksheet Parking Area, dated March 10, 2022
26. Updated Legal Description, dated March 9, 2022
27. Revised SEPA Mitigated Determination of Nonsignificance, dated August 4, 2022
28. Notice of Public Hearing, dated August 10, 2022
29. Certification of Public Notice, dated August 17, 2022
30. Staff Presentation
31. Hearing Sign-in Sheet
32. Comment from Linda Murnane, dated August 24, 2022
33. Short Plat No. 6205, dated March 1, 1994
34. Comment from William Palmer, Applicant Representative, dated August 23, 2022
35. Off-site Parking Memorandum, dated August 25, 2022
36. Comment from Josiah Kipperberg, Applicant Representative, undated
37. Proposed Edits to Conditions from Applicant, undated
38. Public Comments
  - a. Comment from Douglas Soule, dated August 25, 2022
  - b. Comment from Ashley Hayes, undated
  - c. Comment from the Fraley family, undated
39. Edgewater House CUP Notice of Decision, dated September 26, 2014, and Edgewater House Revocation Notice of Decision, dated December 5, 2018
40. Response from Department of Community Development to Applicant Comments, dated August 25, 2022
41. Additional Public Comments, dated August 31, 2022
42. Off-Site Parking Memorandum from William Palmer, Applicant Representative, dated September 2, 2022

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

## **FINDINGS**

### Application and Notice

1. Marilyn Kipperberg (Applicant) requests a conditional use permit (CUP) to allow for the occupancy of an existing 860 square foot detached accessory dwelling unit (ADU) and a conditional use permit, shoreline substantial development permit (SSDP), and shoreline conditional use permit (SCUP) to recommence the operation of an event and wedding venue, called “Edgewater,” on a 5.87-acre property. The property is currently developed with a 4,195 square foot single-family residence, a detached garage, an ADU located above the garage, and a single-access path to the shoreline of Colvos Passage. Events would be held primarily outdoors, with indoor areas used primarily for a dressing area, a warming kitchen, and incidental activities.<sup>1</sup> Event parking would be provided on an adjacent 2.47-acre lot northwest of the site, which is owned by the Applicant.<sup>2</sup> Guests would be shuttled between the parking area and the event space. Access to both the event venue and the parking lot would be provided by Luna Vista Avenue SE. The venue was previously permitted through a CUP, granted on September 24, 2014. The CUP was revoked by the County’s former Hearing Examiner in 2018 when the Applicant was unable to adequately satisfy the conditions of approval. The property is located at 11967 Luna Vista Avenue SE.<sup>3</sup> *Exhibit 1, Staff Report, pages 1 through 3, 5; Exhibits 2 through 6; Exhibit 10; Exhibit 12; Exhibit 13; Exhibit 18; Exhibit 22; Exhibit 23; Exhibit 34; Exhibit 36; Exhibit 39.*

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<sup>1</sup> During the open record hearing, Applicant Representative Josiah Kipperberg testified that the Applicant had always intended to have more extensive indoor use for events. County Planner Scott Diener testified that the Applicant only submitted the indoor uses listed above, but that the Applicant would be able to seek more indoor uses, provided that the necessary permits are acquired, as required by the conditions of approval. The Applicant’s “Required Permit Questionnaire” for the CUP states that “while there is ancillary activity that takes place in the house for changing clothes and assembly of the wedding, the primary events take place out on the lawn adjacent to both the house and the waterfront.” The Applicant’s revised Conditional Use Permit Narrative states that “[a]ll weddings and other events will take place outdoors, but wedding preparations take place in the house, principally on the first floor,” but once interior modifications are made, including sprinkler system installation, “there could be small scale ceremonies that take place inside the house and wedding gatherings might utilize the second-floor space within the house.” *Exhibit 12; Exhibit 18; Testimony of Mr. Diener; Testimony of Mr. Kipperberg.*

<sup>2</sup> The property that would be used for the parking lot is identified by Kitsap County Assessor’s Tax Account No. 342302-2-049-2006. *Exhibit 1, Staff Report, page 2.*

<sup>3</sup> The property is identified by Kitsap County Assessor’s Tax Account Nos. 342302-2-055-2007 and 342302-2-049-2006. *Exhibit 1, Staff Report, page 1.*

2. Kitsap County (County) determined the SSDP application was complete on February 4, 2021. The County determined the SCUP application was complete on June 23, 2021. The County determined that the CUP application for the ADU was complete on July 13, 2021, and the CUP application for the event venue was complete on August 25, 2021. On October 7, 2021, the County provided notice of the proposal (i.e., the various applications) in the County's publishing newspaper of record and by mailing notice to property owners within 800 feet of the site and to reviewing departments and agencies, with a 30-day comment period. On August 10, 2022, the County mailed notice of the associated open record hearing to property owners within 800 feet of the site and to interested parties, published notice in the County's publishing newspaper of record, and posted notice on the property. *Exhibit 1, Staff Report, pages 1 and 9; Exhibit 15; Exhibit 28; Exhibit 29; Exhibit 40.*
  
3. The County did not receive any comments on the proposal from reviewing agencies or tribal entities with jurisdiction. The County received the following comments from members of the public in response to its notice materials:
  - Attorney Ronald Leeroy Ulman, Jr., representing Mad River Investments, LLC, the property owner directly south of the parking area, commented that his client had not been aware of the event venue operations prior to the purchase of the property, and had been disturbed by the traffic and noise associated with the property. Mr. Ulman stated that his client ultimately decided to sell the property, and that disclosure of the parking lot impacts seemed to be a major drawback to potential buyers. Mr. Ulman commented that legal action would be taken if event venue operations continued without mitigation measures.
  - Krista and Tim Hoffsommer, who own property directly north of the proposed parking area, expressed concerns about noise and traffic impacts associated with the parking lot, and impacts to property values, wildlife, and the shoreline.
  - Linda Murnane commented that she lives next to another area event venue that has had significant noise impacts. She also raised concerns that the subject event venue has created noise disturbances in Anderson Park. She stated that she has encountered difficulties in the enforcement of noise pollution ordinances.
  - Douglas Soule expressed support for the proposal, noting that the County Charter encourages development of small businesses and that his neighboring residence has not been impacted by noise pollution from events. Mr. Soule commented that County staff was requiring extensive water mitigation measures for the proposal that were not necessary.
  - Ashley Hayes expressed support for the proposal, noting that the venue provides jobs to people in the surrounding area.

- The Fraley family expressed support for the proposal, noting that their neighboring property was not impacted by event venue operations and the proposal provides jobs for people in the area.
- An additional member of the public identified only as “Amy,” expressed support for the proposal, commenting that the subject property and structures add value to the surrounding area and the venue offers opportunities for tourism.

*Exhibit 16; Exhibit 32; Exhibit 38; Exhibit 41.*

State Environmental Policy Act

4. The County acted as lead agency and analyzed the environmental impacts of the project as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). After analyzing the Applicant’s environmental checklist and other available information, the County determined that, with conditions, the project would not have a probable significant adverse impact on the environment and issued a Mitigated Determination of Nonsignificance (MDNS) on May 19, 2022. This initial MDNS, however, was subsequently withdrawn and the County issued a revised MDNS on August 4, 2022, with an appeal deadline of August 18, 2022. The revised MDNS included more detailed mitigation requirements addressing noise management, frequency of events, and failure to comply with mitigation requirements.

The MDNS was not appealed and requires the Applicant to comply with the following measures to mitigate for the project’s anticipated environmental impacts:

- A grass parking lot is proposed on the upland parcel. A drainage plan demonstrating compliance with KCC Title 12 and the Kitsap County Stormwater Design Manual would be required.
- Noise must meet the County noise ordinance per KCC 10.28. The Applicant expects the project to include: “Music, singing, and normal noises associated with events. These would be weekend occurrences between 8 AM and 9 PM.” (SEPA Environmental Checklist). Neighbors have complained about noise from the Applicant’s events, and the County has received many recent noise complaints about similar event venues in Rural Residential zones. Noise levels shall not exceed the standards in KCC 10.28.040 for Maximum Permissible Environmental Noise Levels and shall not exceed the standards in KCC 10.28.145 for Public Disturbance Noises. Compliance with these standards is a condition of this MDNS and corresponding permits.
- If sound amplification is proposed to be used, noise monitoring at wedding and events shall first be performed by a qualified third-party approved by the Department of Community Development (DCD) to ensure ongoing compliance with Chapter 10.26 KCC. The qualified and approved third-party must monitor noise levels at the first event following permit

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issuance, and at the first event where amplified sound is used, and thereafter as requested by DCD, or the permittee. The third-party contractor must report the results of the monitoring to DCD. As the permit applicant, the responsibility for providing this information lies with the permittee and their successors and will be provided at their expense regardless of whether it is the permittee or DCD that requests the monitoring for a particular event. SEPA mitigation measures may include monitoring the impact and taking corrective measures. *WAC 197-11-768(6)*. If the noise analysis or noise monitoring reports indicate noise levels exceeding the standards in KCC 10.28.040 or 10.28.145, all weddings and events must cease until DCD finds sufficient noise mitigation is in place. Such mitigation may include, but not be limited to, no longer allowing amplified sound.

- To accommodate the proposal while also protecting rural character, use compatibilities and balanced uses, as described in the Kitsap County 2016 Comprehensive Plan, as updated April 2020, there shall be no weddings or events for a minimum of 50 percent consecutive days in any one month. *See Comprehensive Plan narrative, pages 1-11 to 1-13, Land Use Goals 13 and 14, Land Use Policies 57 to 59, and Economic Development Policy 21.*
- The Hearing Examiner may increase or decrease the number of days per month, and hours of operation allowed for outdoor events to reduce the potential impact to neighbors and the adjacent park users, and to prevent the conditional use from becoming incompatible with the Rural Residential character of the zone. *KCC 17.550.030.*
- Weddings or events are expected to occur primarily on weekends and are expected to result in 60 to 100 trips per event. Construction of a Road Approach to the parking area parcel will be required, which must be constructed in compliance with County Road Standards and permitting requirements.
- Lighting shall be shielded and directed downward to minimize the effect on nearby current and future residential properties and other uses in the area. Not more than one foot candle of illumination may leave the property boundaries. *KCC 17.105.100.*

*Exhibit 1, Staff Report, pages 2 and 3; Exhibit 21; Exhibit 27.*

#### Comprehensive Plan and Zoning

5. The property and all surrounding properties are designated “Rural Residential” by the County Comprehensive Plan. The Comprehensive Plan recognizes that rural areas and communities have “unique historical characters, appearances, and functions that should be retained and enhanced.” *Kitsap County Comprehensive Plan, 1-11*. The rural element “shall permit appropriate land uses that are compatible with the rural character of such

lands and provide for a variety of rural densities and uses and may also provide for cluster, density transfer, design guidelines, conservation easements and other innovative techniques that will accommodate appropriate rural uses not characterized by urban growth.” *Comprehensive Plan, 1-12*. The County recognizes that “the rural character of the County is the primary reason many residents decide to make their homes” in the County. *Comprehensive Plan, 1-12*. The Comprehensive Plan defines rural character areas as “differing natural features, landscape types and land uses” that consist of “both dispersed and clustered residential developments, farms, wooded lots, and small and moderate-scale commercial and industrial uses that serve rural residents as their primary client” and a “quality of life [that] includes a sense of quiet, community and a slower pace of life. Rural characteristics include the abundance of trees, access to recreation, views of water and mountains, and a quiet, unregimented atmosphere.” *Comprehensive Plan, 1-12, 1-13*.

County staff identified the following Comprehensive Plan policies as relevant to the proposal:

- Protect Kitsap County’s unique rural character. [Land Use Policy 13]
- 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 50]
- Permit residential uses in rural areas consistent with the planned rural character of the surrounding area. [Land Use Policy 51]
- Unlimited expansion of commercial and industrial uses in the rural areas is not appropriate. Accordingly, only limited new commercial and industrial uses will be permitted in the rural areas. Such commercial and industrial uses must be consistent with Growth Management Act and Comprehensive Plan requirements for rural areas, preserve Kitsap County’s rural character, and shall not allow urban-type uses or services. [Land Use Policy 57]
- Encourage business growth in existing Limited Areas of More Intensive Rural Development (LAMIRD) while limiting business growth outside of LAMIRDS so as to not impact the rural character. [Land Use Policy 58]
- Allow or conditionally allow home-based cottage-type businesses and industries in the rural areas that do not negatively affect rural level of service or rural character. [Land Use Policy 59]
- Consider and identify the vital connection between protection of Kitsap County’s rural character, environmental assets and environmental benefits and economic opportunities. [Economic Development Policy 21]
- Compensatory mitigation shall be the last option of resort in mitigation sequencing, following documentation of avoidance and minimization of any impact to the natural environment that triggers compensatory

mitigation. Replacement of altered or displaced natural environments (including critical areas and buffers) must be mitigated either on-site, within the watershed, or service area as defined through an approved mitigation bank or in-lieu fee program. [Environment Policy 18]

*Exhibit 1, Staff Report, pages 5 through 7.*

6. The subject property is zoned “Rural Residential” (RR). The RR zone “promotes low-density residential development 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.” *KCC 17.130.010*. The properties to the north and west of the subject property are also zoned RR. The property to the south is zoned “Park” (P) and contains Anderson Point Park, a County park with white sand beach. The property is bounded on the east by the Puget Sound (Colvos Passage). Event facilities are allowed in the RR zone with a conditional use permit.<sup>4</sup> *KCC 17.410.042*.<sup>5</sup> ADUs are also allowed in the RR zone with a conditional use permit. *KCC 17.410.042*. Additionally, ADUs are subject to the special-use provisions of *KCC 17.410.060*, which are discussed in detail below. The Applicant proposes to use a parcel it owns to northwest of the property for a parking lot, to serve the event venue. As discussed in greater detail below, off-street private parking facilities are not permitted in Rural Residential zones. *KCC 17.410.042*. County staff determined, however, that the proposed parking here could be allowed as an accessory use to the event venue so long as parking occurs on the event venue property.<sup>6</sup> Accordingly, the County has recommended lot aggregation of the two parcels as a condition of approval. *Exhibit 1, Staff Report, pages 3, 4, and 10 through 14; Exhibit 35; Exhibit 42.*

#### Existing Property and Proposed Development

7. The 5.87-acre property is a rectangular parcel with shoreline frontage to Colvos Passage, a tidal strait within Puget Sound. The property is currently developed with a 4,195 square foot single-family residence with a detached garage, and 860 square foot ADU above the garage. The yard and dune area contain (or previously contained) a fire pit, small arbor, golf driving tee, and single access pathway. The Applicant and/or their

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<sup>4</sup> *Event facility* means a facility or site where private or public events, such as weddings, musical performances, parties, reunions, fairs, markets, bazaars, retreats, or conferences, are conducted in exchange for compensation and that are not part of a larger venue, such as a hotel, resort, or conference center. *KCC 17.110.269*.

<sup>5</sup> The application materials were deemed complete prior to the adoption of Ordinance 611-2022, which adopted changes to the municipal code that, relevant here, amended Chapter 17.410 KCC. Accordingly, all references to Chapter 17.410 KCC in this text refer to the former code provision. *Exhibit 1, Staff Report, pages 10 through 12; Exhibit 40; Testimony of Mr. Diener.*

<sup>6</sup> “Accessory use or structure” means an activity or structure that is commonly associated with but subordinate to any principal use or structure. *KCC 17.100.030*.

family members reside in the single-family residence. All weddings and other events would take place outdoors, with wedding preparations, including dressing and food warming, taking place in the house, principally on the first floor. The Applicant would install a sprinkler system and, in the future, interior modifications for small scale ceremonies within the home. Events would take place on scheduled days between the hours of 10:00 AM and 9:00 PM. Parking standards for event venues are based on the parking analysis completed for the venue. *KCC 17.490.030*. The Applicant indicated that the parking facility would contain up to 55 spaces and, from past experience, an average of 3-people per vehicle is expected, accommodating a total of 165 people. The Applicant's submitted materials also indicate that in the past, the number of guests has been between 120 and 150 people, but that she does not want to set a maximum number of guests. Accordingly, County staff set the guest maximum number of guests at 165. One parking spot for the ADU and three parking spots for the single-family residence would be provided on the subject parcel, in compliance with *KCC 17.490.030*. The property would provide public access to the beach with signage. The Applicant has expressed opposition to providing public access to the beach on her property. As discussed in further detail below, however, an event venue is a non-water-oriented commercial use within the shoreline jurisdiction *requiring* public access (even in limited fashion) in order to meet the criteria for SCUP approval. *See KCC 22.600.130.B.8. Exhibit 1, Staff Report, pages 14, 15; Exhibit 18; Exhibit 20; Exhibit 23; Exhibit 25; Exhibit 33; Exhibit 36; Exhibit 40.*

#### Conditional Use Permit – Accessory Dwelling Unit

8. The County zoning code makes some uses conditional in certain zoning districts. A *conditional use* is an activity specified by the zoning code “as a principal or accessory use that may be approved or denied based on consistency with specific criteria.” *KCC 17.110.175*. As noted above, the Applicant requests a CUP to occupy an existing ADU, which is listed as a conditional use in the RR zoning district. *KCC 17.410.042*. ADUs in the RR zone are required to satisfy the ADU special-use provisions of *KCC 17.410.060*. County staff reviewed the proposal and determined it would satisfy these provisions.

The ADU special-use provisions are listed below, together with County staff's analysis (in italics):

- An ADU shall be allowed as a permitted use in those areas contained within an urban growth boundary. *The subject property is not located within the urban growth boundary.*
- An ADU shall be subject to a conditional use permit in those areas outside an urban growth boundary. *The subject property is located outside of the urban growth boundary. This application is a CUP for an ADU.*
- Only one ADU shall be allowed per lot. *This application proposes only one ADU. Additionally, the second one-half of the space above the garage, currently used as an office, shall become permitted jointly with*

*the ADU. A condition of approval requires that the building permit application shall show decommissioning of the kitchen stove and the 240 voltage in the office space.*

- *Owner of the property must reside in either the primary residence or the ADU. The owner intends to reside in the single-family residence. A condition of approval has been added with the requirement that the owner reside in either the primary residence or the ADU.*
- *The ADU shall not exceed 50 percent of the square footage of the habitable area of the primary residence or 900 square feet, whichever is smaller. Dimensions are determined by exterior measurements. The single-family residence is 4,195 square feet. Fifty percent of 4,195 is 2,097 square feet; therefore, the ADU is limited to 900 square feet (the smaller value). The ADU is two stories with a total floor area of 860 square feet, meeting the size criteria.*
- *The ADU shall be located within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure. Per the submitted site plan, the single-family residence and the proposed accessory dwelling unit are less than 15 feet apart, satisfying this requirement.*
- *The ADU shall be designed to maintain the appearance of the primary residence. The elevations of the single-family residence were compared to the elevations of the proposed ADU. There are many architectural similarities between the structures. Both utilize similar brick at the base of the structure, horizontal siding, and a pitched roof. Building material would be reviewed again during the building permit stage. A condition of approval has been added to ensure the appearance of the ADU remain similar to that of the primary dwelling.*
- *All setback requirements for the zone in which the ADU would be located shall apply. All setbacks and dimensional standards required by the Rural Residential zone are met for the proposed ADU.*
- *The ADU shall meet applicable health district standards for water and sewage disposal. The application was reviewed by Kitsap County Health District. The structures have approval for water and sewage disposal.*
- *No mobile homes or recreational vehicles shall be allowed as an ADU. There are no mobile homes or recreational vehicles present on the subject property or posed in this application.*
- *An ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking. The submitted site plan shows the proposed ADU would use the same driveway that serves the single-family residence. Adequate parking is available adjacent to both the primary home and ADU.*

- An ADU is not permitted on the same lot where an accessory living quarter exists. *There are no present or proposed accessory living quarters as shown in the submitted single-family residence floor plan.*  
*Exhibit 1, Staff Report, pages 12 through 14; Exhibit 2; Exhibit 6; Exhibit 19.*

Conditional Use Permit – Event Venue

9. County staff determined that, with conditions, the proposed event venue would meet the requirements for a CUP under KCC 17.550.030.A, noting:

- The proposed use requires a CUP in rural areas. The criteria for approval for a CUP ensure consistency with the Comprehensive Plan. Rural compatibility is a paramount concern when considering event venues.
- The property has few adjacent residential neighbors. However, impacts to the vicinity can occur due to noise, parking, traffic, and other matters incidental to operation of an event venue. The property abuts Anderson Point Park to the south, a popular County-owned white sand beach, and park users have the right to expect a rural park setting and experience that is not substantially impacted by adjacent uses. The County allows a limited number of “non-residential” uses of Rural Residential property, however, at the same time it is assumed that Rural Residential zoning should be primary residential use and other non-residential events are secondary to this.
- To address the Comprehensive Plan and its relevant goals and policies, County staff is requesting that at least 50 percent of consecutive days in any one month would not include wedding or event activities. Assuming events typically take place in the summer over a four-month season, there would be 17 or 18 weekends each year where events with up to 165 guests, vendors, and contractors could occur. This “exclusionary period” allows predictability for when events occur for neighbors and park users and coincides with the same time of year that neighbors and park users are most likely to use and enjoy their outdoor space, and general peace and quiet. Limiting the events to essentially one-half of each month balances the interests of the Applicant with the interests of neighbors and park users and furthers compatibility of uses so that there is reliably and predictably at least one block of time each month for typical rural enjoyment. With the “50 percent schedule” no one can argue that the commercial use overshadows the residential or park uses. It is important to note that if the Hearing Examiner agrees to this condition, it would not impact the Applicant’s property for other potential uses during the “venue downtime,” such as short-term vacation rentals.
- The Applicant discusses hours of operations in the provided narrative. They state that weddings typically occur between the hours of 10:00 AM

and 9:00 PM. Time is required for “take down” for a wedding, which may be postponed to the following morning.

- Kitsap County has a noise ordinance (Chapter 10.28 KCC) which, for the zones in this area, limits noise to 55 decibels at lot line boundaries and prohibits noise from audio equipment that can be “clearly heard by a person of normal hearing at a distance of fifty feet or more from the source of the sound.” *KCC 10.28.040.a; KCC 10.28.145.5*. An understanding of the sound level of 55 decibels (anecdotally compared to the hum of a refrigerator, a coffee percolator, an electric toothbrush) makes it difficult to manage an event venue’s amplified systems, particularly on compact venue sites or sites where the noise generation is near a property line or next to water. In Kitsap County, noise enforcement has historically been challenging, especially for rural sites. The site being considered under this proposal is also adjacent to Colvos Passage and it is also commonly understood that noise travels well over water. Currently, the bulk of complaints that DCD receives regarding event venues is due to noise. The Applicant has stated that they would monitor noise to ensure compliance with the noise ordinance as well as ensure that amplified music is reduced during “quiet hours after 9:00 PM.” Because measuring noise and enforcement of noise levels are both difficult, and because the Applicant has not demonstrated how noise would decisively or irrefutably be managed, noise has been further addressed and restricted through SEPA mitigation measures.

*Exhibit 1, Staff Report, pages 10 through 12.*

Shoreline Management Act and County Shoreline Master Program

10. The proposed public-access improvements would be located within 200 feet of the Colvos Passage ordinary high water mark (OHWM). Colvos Passage is a tidal strait in Puget Sound. The State Shoreline Management Act (SMA) and the County Shoreline Master Program, Title 22 KCC, govern work within 200 feet of the Puget Sound OHWM. *RCW 90.58.030(2)(e) and (g); KCC 22.200.100.A*. 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. Exhibit 1, Staff Report, pages 16 through 21; Exhibit 18; Exhibit 19.*
11. 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

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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*.

12. 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 event venue 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*. An event facility is considered a “Non-Water-Oriented Commercial Use” in the SMP. Non-water oriented commercial uses require a shoreline conditional use permit. *KCC 22.600.105.B; KCC 22.600.130.B.8*. Commercial developments require additional special use provisions, discussed in detail further below, under *KCC 22.600.130*. *Exhibit 1, Staff Report, pages 16 through 21*.
13. *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 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 economic development policies is to “[p]rovide for the location and design of industries, transportation, port and tourist facilities, commerce and other developments that are particularly dependent upon a shoreline location and/or use, when the shoreline can accommodate such development.” *KCC 22.300.115*.

#### *Shoreline Substantial Development Permit*

14. BGE Environmental, LLC submitted a Habitat Management Plan on behalf of the Applicant on March 18, 2019. The report identified Colvos Passage as a deep-water tidal habitat influenced by water runoff from land, typically low-energy with variable salinity. Tidal water alternately floods and exposes land surface at least once daily. The report also determined that the site consists of geologically hazardous areas of high and moderate hazard west to east. Hydric soils, wetlands, and a Type N water characterize

the eastern quarter along the shoreline. A priority 2 bald eagle habitat fronts the shoreline. A letter provided on behalf of the Applicant by Allen L. Hart, an engineering geologist, on March 18, 2018, determined that geological or geotechnical studies were not necessary for the proposed site usage. The Applicant would not construct any additional structures within the shoreline jurisdiction. The Habitat Management Plan found that the proposed use would not impact water quality, the habitats of geoduck and other marine wildlife, or change the value and function of tidal, shoreline, and upland complexes. The Applicant would remove the existing trellis, deck, fireplace, and golf tee, which are within the shoreline area. The County did not find evidence that these structures were previously permitted, and their re-siting/reestablishing or continued use would require a shoreline variance. *Exhibit 1, Staff Report, pages 18 to 21, and 31; Exhibit 11; Exhibit 12; Exhibit 17; Exhibit 19.*

#### *Shoreline Conditional Use Permit*

15. As noted above, non-water-oriented commercial uses are allowed in the Rural Conservancy Environment with a SCUP. *KCC 22.600.105.B. KCC 22.600.130.B* provides specific criteria for commercial development within the Rural Conservancy Environment. The commercial use provisions are listed below, together with County staff's analysis (in italics):
- Commercial development shall result in no net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020, such as navigation, recreation, and public access. No new development is proposed. *A Habitat Management Plan was submitted demonstrating no net loss. Dune grass within the shoreline buffer that has been removed over time would need to be replanted as a condition of approval of this permit.*
  - Commercial developments shall be permitted on the shoreline in descending order of preference: water-dependent uses; water-related uses; water-enjoyment uses; non-water-oriented uses that include substantial opportunities for public access and subject to a CUP. The Applicant shall demonstrate that a more preferred use is not feasible when proposing a less preferred use. *The use was once an event venue which is considered non-water-oriented, which requires a CUP. Signage indicating public access to the shoreline will be required.*
  - Commercial development shall not significantly impact views from upland properties, public roadways, or from the water. *No views would be impacted.*
  - The design and scale of a commercial development shall be compatible with the shoreline environment. The following criteria will be used to assess compatibility: building materials; site coverage; height; density; lighting, signage and landscaping; public access; visual assessment. *The*

*design of the development is predominantly single-family residential, which is an allowed and common use in the shoreline designation.*

- The County shall consider public access and ecological restoration as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development, unless such improvements are demonstrated to be infeasible or inappropriate. Public access shall be provided consistent with Section 22.400.145. In-kind mitigation shall be determined infeasible prior to utilizing out-of-kind mitigation. *No new development is proposed. A Habitat Management Plan was submitted demonstrating no net loss. Dune grass within the shoreline buffer that has been removed over time would need to be replanted as a condition of approval of this permit. Signage indicating public access to the shoreline will be required.*
- Non-water-dependent commercial uses shall not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses. *Not applicable.*
- Parking shall be located upland of the commercial use and designed to minimize adverse visual impacts to the shoreline. Over-water parking is prohibited. *Parking is provided upland of the event venue at the top of bluff, well outside of the shoreline jurisdiction.*
- Non-water-oriented commercial uses are prohibited unless:
  - The use is on land designated commercial by the Kitsap County Comprehensive Plan and existing on the effective date of this program;
  - The use is on land designated commercial by the Kitsap County Comprehensive Plan and is physically separated from the shoreline by another property or public right-of-way;
  - The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Act's objectives, such as providing ecological restoration and public access. Water-dependent components of the project and ecological restoration and access shall be improved prior to occupancy
  - The use is on a site where navigability is severely limited and the use would provide a significant public benefit with respect to the Act's objectives, such as providing public access and ecological restoration.
  - Non-water-oriented commercial uses meeting these criteria must obtain a CUP. *The primary use of this parcel remains single-family residential. This application is for a CUP to reestablish the event/wedding use of this parcel as it was used prior to revocation*

*of its previous CUP permit in 2018. There is no new development proposed, and this CUP will require removal of minor structures within the shoreline buffer, reestablishment of shoreline vegetation, and increased public access.*

*Exhibit 1, Staff Report, pages 18 to 31.*

#### Testimony

16. County Planner Colin Poff testified generally about the proposal and how, with conditions, it would comply with the County's Comprehensive Plan, the Shoreline Management Act, and the County's Shoreline Master Program. He described the proposed use and the four permits that the Applicant was required to obtain for the existing ADU and proposed event venue. Mr. Poff explained that a revised MDNS was reissued to include more specific mitigation measures and code citations. He described the property as developed with a single-family residence and detached garage on the eastern part of the parcel and containing a coastal dune area, yard, single path access trail, and several unpermitted shoreline amenities (such as a golf tee). He noted that the property is adjacent to Anderson Point Park to the south, which contains a trail that is close to the property line of the subject lot. Mr. Poff explained that the proposed use was initially unclassified, but the Washington State Department of Ecology (DOE) classified the use as a non-water-oriented commercial use. He noted that while the site contains steep slopes, an engineering geologist visited the site and submitted an evaluation on behalf of the Applicant that determined the site does not pose any hazards impacting the proposed use. Mr. Poff explained that the existing stove in the ADU would need to be decommissioned to meet ADU criteria. He noted that there are architectural similarities between the ADU and the single-family residence. He explained that the County recently adopted a new definition of an event facility that is not applicable to the current proposal. Mr. Poff noted that the CUP does not prohibit indoor use for the event venue but does contain conditions that the Applicant would need to comply with for future indoor uses.  
*Testimony of Mr. Poff.*
17. Department of Community Development Manager Scott Diener explained that the 2014 CUP for the proposal was revoked in 2018 after the Applicant failed to comply with the conditions of approval. He noted that the Applicant continued to have events on the property after the CUP was revoked. He stated that event guests would be shuttled from a parking area on an adjacent lot. He explained that a stand-alone off-street parking facility is not permitted in the Rural Residential zone, so the Applicant would be required to aggregate the lots containing the parking area and the single-family residence to allow for the proposed, off-street parking as an accessory use to the event venue use. He noted that the lot proposed for the parking area contains a reserved drainfield and parking should be located to avoid the drainfield or the Applicant should provide screening to protect the drainfield area. Mr. Diener explained that the County has been questioning the role of event venues in rural parts of the County, noting that rural areas in the County

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contain many small, non-conforming lots. He noted that the County has had trouble with noise mitigation and amplified music with similar proposed uses in rural Kitsap County. He noted that the Applicant has not demonstrated how noise impacts would be mitigated. He stated that amplified music would be permissible if the Applicant demonstrated that adequate mitigation measures were in place. Mr. Diener responded to several comments made by representatives of the Applicant, noting that the application did not include any materials requesting RV parking, which would be a major change to the proposed use, that amplified music would be permissible in indoor spaces, and that the fire marshal would need to approve permits for future expansion and/or construction within the single-family residence. *Testimony of Mr. Diener.*

18. Applicant Representative William M. Palmer noted that he submitted an updated site plan on March 11, 2022. He also noted that the parcel containing the proposed parking area is owned by the Applicant, so a parking agreement and lease is no longer necessary. Mr. Palmer objected to the condition that a noise study must be done before any events are held and the limitations on the frequency of events, commenting that the Applicant should not be subject to the frequency limitations County staff was recommending. He expressed concerns that County staff did not address event use of the single-family residence itself in detail, as the Applicant intends on using indoor portions of the residence for events. He explained that the parking area could be redesigned to avoid encroachment on the reserved drainfield. Mr. Palmer commented that the surrounding area already contained noise from traffic. He raised concerns about vesting dates for the application and implications for criteria for future major and minor modifications. *Testimony of Mr. Palmer.*
19. Applicant Representative Josiah Kipperberg described the history of the prior CUP that was revoked and interactions with staff. He explained that the Applicant has been working with County staff to receive the necessary permits to come into compliance with County codes for the proposed use. He commented that the Applicant reinitiated event operations in 2021 and were called into court, citing safety issues. Mr. Kipperberg explained that the Applicant could not cancel events occurring in the near future, but that they had started helping clients rebook to other locations for future events. He raised concerns that County staff was harassing numerous businesses in the area. Mr. Kipperberg also expressed concerns that the event venue was being blamed for noise problems caused by visitors in Anderson Point Park and about public access to the beach from the park. Mr. Kipperberg stated that County staff came up with the maximum guest number without the Applicant's input. He noted that neighbors had requested the off-site signs for guests to find the property and that the property is served by a Class B well that is monitored by the public system. Mr. Kipperberg noted that the site does not currently contain a golf pad or trellis. He requested clarification on whether amplified music would be permissible within indoor spaces and on the striping requirement for the parking area, noting that the parking area would contain mowed grass. Mr. Kipperberg

noted that venue guests may want to stay overnight and requested clarification about whether the next day would be considered a separate event. He also noted that enforcement of noise ordinances is up to the sheriff's office. Finally, in response to a question from the Hearing Examiner, Mr. Kipperberg acknowledged that the Applicant considers the property primarily as a commercial venture, not as a residential property with a supplemental commercial use. *Testimony of Mr. Kipperberg.*

20. Douglas Soule testified that he lives near the property and supports the proposed use. He stated that the proposed use is supported by members of the surrounding community. He noted that there is a hill between his property and the subject property that prevents noise pollution. He commented that the County is supposed to be encouraging business in the area. Mr. Soule also read letters from two neighbors in support of the proposed use, who stated that the proposed use provides jobs and business ownership opportunities and does not negatively impact the surrounding area. *Testimony of Mr. Soule.*
21. Linda Murnane testified that she lives next to an event venue in Olalla and experiences disruptive and intrusive noise disturbances from the facility. She noted that she has experienced difficulty with enforcement of noise ordinances. *Testimony of Ms. Murnane.*

#### Additional Materials

22. Following the hearing, Scott Diener submitted a memorandum which noted that off-street parking facilities are not permitted in Rural Residential zones as a primary use. He explained that the Applicant would be required to aggregate the parking area and single-family residential lots to have the parking facility permitted as an accessory use to the single-family residence. Mr. Diener also submitted a memorandum which clarified that the CUP for the event venue was deemed complete on August 25, 2021; the ADU CUP was deemed complete on July 13, 2021; the SCUP was deemed complete June 23, 2021; and the SSDP was deemed complete February 4, 2021. He also submitted a comment responding to several concerns brought up at the open record hearing. Specifically, he noted that:
  - Minor or major changes to an approved CUP: KCC 21.04.265 discusses both minor and major proposed changes to a CUP. KCC 21.04.100 shows that minor CUP amendments are subject to a Type 1 approval and major CUP amendments are a Type 3 approval.
  - ADU and owner occupancy on site: the Applicant presumably understood the criteria for owner occupancy of ADUs in rural Kitsap. DCD cannot waive that requirement.
  - Concurrency: The project should be conditioned with “concurrency as authorized under Kitsap County Code.”
  - Lighting requirements: Lighting was briefly discussed. The requirement for lighting is noted at KCC 17.105.110 (Obnoxious Things). This requirement notes “Lighting is to be directed away from adjoining

properties. Not more than one foot candle of illumination may leave the property boundaries.” This requirement is typically conditioned for permit applications and is perhaps most important for any lighting in the parking lot.

- Dune Grass pathway: County staff does not object to a reasonable-width path through the Dune Grass, such as 6-feet wide. County staff understands the pathway will most frequently be used by attendees wishing to go to the beach, but understands the emergency response need as portrayed by the Applicant. County staff would ask that the pathway be bordered by a durable delineation to prevent pathway widening over time.
- Amplified equipment within the house: DCD has no issue with amplified systems inside the home, so long as sound that leaves the house is still mindful of the noise ordinance.
- Signage: The signage condition is meant to ensure that any signage belonging to the Applicant is located on the common property line between the Applicant’s property and the Park. This is most applicable at the Park beach. County staff would like to ensure signs are appropriately located and do not give false impressions about property ownership and does not have concerns about directional signage and understands it may be needed to get attendees to the parking lot or employees to the venue.
- RVs and camp trailers overnighting in the parking lot: DCD cannot find reference to this particular request in any documents, including the CUP permit questionnaire submittal narrative. DCD believes this request to be a significant change that was not otherwise publicly noticed nor available for any prior review. This proposal creates a higher intensity of the parking lot with likely more adverse impacts than previously analyzed. County staff views the request by the Applicant as a heretofore unknown and last-minute afterthought, and objects to allowing RVs/trailers onsite.
- Occupancy limit: the Applicant chose the occupancy limit. It was not driven by County Staff. County staff could not find industry standards on average persons per vehicle attendee for wedding event venues, and County staff accepted the average of 3-persons per vehicle calculation the Applicant proposed in the March 10, 2022, response to the CUP February 11, 2022, Information Request. Several other documents, including the parking analysis, reference the same calculation and approach by the Applicant.

*Exhibit 35; Exhibit 40.*

23. Applicant Representative William M. Palmer submitted a memorandum that requested clarification on the dates which the applications were deemed complete, objected to the County staff’s reliance on rural policies under the Comprehensive Plan, noted the increased demand for the proposed use, raised concerns about the necessity to aggregate

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lots to permit the off-street parking facility, objected to the limitations on event frequency and hours of operation, and objected to conclusions about noise exposure and the required noise mitigation measures. He noted that County staff did not have reason to expect adverse noise pollution requiring a noise study. In a second memorandum submitted after the open record hearing, Mr. Palmer reiterated concerns that lot aggregation was not necessary to permit the off-street parking facility under KCC 17.490.020.C and that the restrictions on event frequency were not reasonable. *Exhibit 34; Exhibit 42.*

24. Applicant Representative Josiah Kipperberg submitted materials raising concerns that the County staff did not adequately address the proposed indoor use for the event venue, that there is not adequate due process for noise restrictions ordinance violations, that event frequency is unreasonably restricted, that maximum guest number should not be limited to the amount of proposed parking for the venue, that there is an adequate sound buffer for the property and a noise study should not be required, that guests should be able to park RVs on-site overnight, public access to the beach would pose numerous safety and legal issues, that the Applicant should be able to have multiple events per day, that adding parking strips to the grass parking area would be a hazard, that 100 percent reduction of headlight glare is unrealistic, that County staff inspections of events would violate privacy agreements with clients, that it would be unreasonable to remove the 240 voltage wiring from the ADU, that the Applicant should not be required to seek County staff approval to structure modifications where a permit was not required, that the parking area parcel has its own drainfield and would not require a septic easement, that event guests should be able to park in the County rights-of-way, and that it is not reasonable for the fire marshal to do the design and construction of the parking area. He also stated that after the 10:00 PM music cut-off time, additional time for breakdown would be required and that the Applicant would allow amplified music indoors. *Exhibit 36; Exhibit 37.*

#### Staff Recommendation

25. County staff recommends approval of the application, with conditions. *Exhibit 1, Staff Report, pages 22 through 29.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide requests conditional use permits and shoreline permits. *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

##### *Conditional Use Permit*

The Hearing Examiner may approve, approve with conditions, or deny a conditional use permit. Approval or approval with conditions may be granted by the Hearing Examiner only when all the following criteria are met:

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1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of [the zoning code];
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and
4. 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.

*KCC 17.550.030.A.*

As a condition of CUP approval, the Hearing Examiner may:

1. Increase requirements in the standards, criteria, or policies established by [the zoning code];
2. Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
3. Require structural features or equipment essential to serve the same purpose set forth in Chapter 17.420;
4. Include requirements to improve compatibility with other uses permitted in the same zone, protecting them from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not, in connection with action on a conditional use permit, reduce the requirements specified by [the zoning code] as pertaining to any use nor otherwise reduce the requirements of [the zoning code] in matters for which a variance is the remedy provided;
5. Assure that the degree of compatibility with the purpose of [the zoning code] shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;
6. Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
7. Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
8. Impose any requirement that will protect the public health, safety, and welfare.

*KCC 17.550.030.B.*

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“If the approval criteria are not met or conditions cannot be imposed to ensure compliance with the approval criteria, the conditional use permit shall be denied.” *KCC 17.550.030.C.*

In addition to the criteria listed above, ADUs are subject to the following special-use provisions of KCC 17.410.060.B.3:

1. An ADU shall be allowed as a permitted use in those areas contained within an urban growth boundary;
2. An ADU shall be subject to a conditional use permit in those areas outside an urban growth boundary;
3. Only one ADU shall be allowed per lot;
4. Owner of the property must reside in either the primary residence or the ADU;
5. 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. Dimensions are determined by exterior measurements.
6. The ADU shall be located within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (e.g., garage);
7. The ADU shall be designed to maintain the appearance of the primary residence;
8. All setback requirements for the zone in which the ADU is located shall apply;
9. The ADU shall meet the applicable health district standards for water and sewage disposal;
10. No mobile homes or recreational vehicles shall be allowed as an ADU;
11. An ADU shall use the same side-street entrance as the primary residence and shall provide additional off-street parking; and
12. An ADU is not permitted on the same lot where an accessory living quarters exists.

#### *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

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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 Substantial Development Permit*

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. The Hearing Examiner reviews the Shoreline Substantial Development Permit (SSDP) application under the following criteria:

- (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.
- (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.

*WAC 173-27-150.*

Thus, the Hearing Examiner must review the SSDP application against the County SMP policies and regulations. Consistent with the requirements under WAC 173-27-150, the County SMP provides that an SSDP shall be granted only when “the applicant can demonstrate that the proposed development is consistent with the policies and procedures of the [SMA] and the [SMP], as well as criteria in WAC 173-27-150.” *KCC 22.500.100.B.3.*

Under KCC 22.500.100.B.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”

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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.

*Shoreline Conditional Use Permit*

Uses that are classified in the County SMP as conditional uses may be authorized by the Hearing Examiner provided that the Applicant demonstrates all of the following:

- a. That the proposed use is consistent with the policies of RCW 90.58.020 and this program;
- b. That the proposed use will not interfere with the normal public use of public shorelines and does not conflict with existing water-dependent uses;
- c. That the proposed use of the site and design of the project are compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and this program;
- d. That the proposed use will not result in significant adverse effects or a net loss to the shoreline ecosystem functions in which it is to be located;
- e. That the public interest suffers no substantial detrimental effect;
- f. That consideration has been given to the cumulative impact of additional requests for like actions in the area and shall not result in substantial adverse effects or net loss of shoreline ecosystem functions. For example, if CUPs were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the use preference policies and shall not produce substantial adverse impacts to the shoreline environment. Consideration shall be demonstrated through preparation of a cumulative impacts report, if requested, that substantially conforms to the applicable provisions of Chapter 22.700 (Special Reports);
- g. Other uses which are not classified or set forth in this program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program;
- h. Uses which are specifically prohibited by this master program may not be authorized pursuant to this section.

*KCC 22.500.100.D.3.*

Additionally, the SMP provides the following development standards for commercial developments in the Rural Conservancy Environment:

1. Commercial development shall result in no net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses,

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- resources and values provided for in RCW 90.58.020, such as navigation, recreation and public access.
2. Commercial developments shall be permitted on the shoreline in descending order of preference. The applicant shall demonstrate that a more preferred use is not feasible when proposing a less preferred use.
    - a. Water-dependent uses;
    - b. Water-related uses;
    - c. Water-enjoyment uses;
    - d. Non-water-oriented uses that include substantial opportunities for public access and subject to a CUP.
  3. Commercial development shall not significantly impact views from upland properties, public roadways, or from the water.
  4. The design and scale of a commercial development shall be compatible with the shoreline environment. The following criteria will be used to assess compatibility:
    - a. Building materials.
    - b. Site coverage.
    - c. Height.
    - d. Density.
    - e. Lighting, signage, and landscaping.
    - f. Public access.
    - g. Visual assessment.
  5. The county shall consider public access and ecological restoration as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development, unless such improvements are demonstrated to be infeasible or inappropriate. Public access shall be provided consistent with Section 22.400.145. In-kind mitigation shall be determined infeasible prior to utilizing out-of-kind mitigation.
  6. Non-water-dependent commercial uses shall not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.
  7. Parking shall be located upland of the commercial use and designed to minimize adverse visual impacts to the shoreline. Over-water parking is prohibited.
  8. Non-water-oriented commercial uses are prohibited unless:
    - a. The use is on land designated commercial by the Kitsap County Comprehensive Plan and existing on the effective date of this program;
    - b. The use is on land designated commercial by the Kitsap County Comprehensive Plan and is physically separated from the shoreline by another property or public right-of-way;

- c. The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Act's objectives, such as providing ecological restoration and public access. Water-dependent components of the project and ecological restoration and access shall be improved prior to occupancy;
- d. The use is on a site where navigability is severely limited and the use would provide a significant public benefit with respect to the Act's objectives, such as providing public access and ecological restoration.

Non-water-oriented commercial uses meeting these criteria must obtain a CUP.

*KCC 22.600.130.B.*

The criteria for review adopted by the Kitsap County Board of 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.*

#### Conclusion Based on Findings

##### *Accessory Dwelling Unit*

1. **With conditions, the proposed ADU would be consistent with the special-use provisions of KCC 17.410.060.B.3 and would meet the criteria for CUP approval under KCC 17.550.030.A.** The proposed ADU would be located within the Rural Residential (RR) zoning district, outside the boundary of an urban growth area, and would therefore be allowed with a conditional use permit. The Applicant proposes to construct/retain only one ADU, and there are no other ADUs, accessory living quarters, mobile homes, or recreational vehicles currently located or proposed to be located on the property. The Applicant would continue to reside in the existing 4,198 square foot single-family residence on the property. The proposed ADU measures 860 square feet, which is less than the 900 square foot maximum permitted for an ADU associated with a 4,198 square foot primary residence. The ADU is situated approximately 15 feet from the existing single-family residence and is designed to maintain the appearance of the single-family residence through the incorporation of the same roof pitch, horizontal siding, and brick base. The ADU also incorporates materials and color schemes that match the existing primary structure. The proposed ADU would meet all applicable setback requirements for the RR zone, utilize the existing driveway serving the single-family residence, and be provided an additional off-street parking space within the driveway.

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The County provided reasonable notice and opportunity to comment on the proposal. The County did not receive any comments relevant to the proposed ADU in response to its notice materials. The proposed ADU would be consistent with the County Comprehensive Plan policies that permit low-density residential uses in rural areas and generally encourage diverse, affordable housing options suitable to meet the needs of county residents. The Kitsap County Health District reviewed and approved the proposal without conditions. As conditioned, the proposed ADU would comply with all applicable provisions of the County zoning code, and the specific ADU special-use provisions of KCC 17.410.060.B.3. The project's compliance with these special-use provisions would ensure the project would not be materially detrimental to other uses or property in the vicinity and would be compatible with the existing character of the subject property and property in the vicinity. Conditions, as detailed below, are necessary to mitigate project impacts and to ensure compliance with relevant federal, state, and local statutes, ordinances, and regulations. *Findings 1 – 8, 16 – 25.*

#### *Event Venue*

- 2. With conditions, the proposed event venue would be consistent with the criteria for CUP approval under KCC 17.550.030.A.** The residential property that would serve as the site of the event and wedding venue is located in the Rural Residential (RR) zoning district. Event facilities require a CUP to operate in the RR zone. The proposed event venue would be consistent with County Comprehensive Plan policies that protect the County's unique rural character, conditionally allow home-based cottage-type businesses and industries in the rural areas that do not negatively affect rural level of service or rural character and consider and identify the vital connection between protection of Kitsap County's rural character, environmental assets and environmental benefits and economic opportunities. The County received a number of comments related to the venue from members of the public in response to its notice materials. Several members of the public expressed support for the project, noting that the event venue would provide jobs to individuals in the community. Other members of the public expressed concerns about the proposal, especially about traffic impacts, impacts related to the parking area proposed to serve the venue, and noise pollution. The Applicant would be required to implement noise mitigation measures including decibel monitoring, adherence to quiet hours, and limitations on amplified music to address noise concerns. The Applicant would also be required to appropriately screen the parking area that would serve the site and must consolidate the lot that would be used for parking as, otherwise, such use would not be allowed outright in the RR zone. Lot consolidation would allow for the parking area to occur on the site itself (i.e., following consolidation) such that the parking would be an ancillary use on the property associated with the event venue—not a prohibited, “stand alone” use on a separate property.

The County issued a Mitigated Determination of Nonsignificance (MDNS) after determining that, with conditions, the proposal would not have a probable significant

adverse impact on the environment. The MDNS requires the Applicant to submit a drainage plan for the grass parking lot on the upland area of the site (following lot consolidation), comply with County noise ordinances, have noise monitoring performed by a third-party approved by County staff if sound amplification is proposed, have no events for a minimum of 50 percent consecutive days in a month, construct a road approach to the parking area, and shield and direct light to minimize the effect on nearby and future residential properties. The MDNS also permits the Hearing Examiner to increase or decrease the number of days per month and hours of operation for outdoor events to reduce the potential impact to neighbors and users of Anderson Point Park. Of particular importance, the MDNS was not appealed. Although the Applicant has objected to the County's suggestions and/or proposed conditions concerning the limitation of events on-site, the Hearing Examiner concludes that the County's proposed mitigation measures under SEPA (which, again, were not appealed) and the related conditions that have been proposed in association with the event venue CUP, are reasonable and that an adequate nexus exists between the potential impacts of the event venue and the conditions addressing such impacts.

While the Applicant's submitted materials and the testimony of Mr. Palmer and Mr. Kipperberg focus heavily on concepts like government overreach and regulatory requirements harmful to business interests in addressing the County's proposed conditions, the materials and testimony consistently overlook and fail to address a fundamental and, in the Hearing Examiner's mind, controlling aspect of the property itself: that the subject property is a residential property, sited within the Rural Residential zoning district. The CUP in question is required to allow the Applicant to operate a commercial wedding and event venue as an ancillary, subordinate use to the residential use of the property (despite Mr. Kipperberg's express testimony that the Applicant wishes, primarily, to use the property for commercial purposes). Accordingly, conditions limiting the scope of the commercial use are both necessary and appropriate. Especially conditions designed to ensure that the commercial use of the property does not overshadow the intended residential zoning designation of the site. Should the Applicant desire to operate the property entirely as a commercial venue, it may seek a Comprehensive Plan amendment and accompanying zoning map amendment from the Kitsap County Board of Commissioners. Otherwise, the residential nature of the property must remain a significant and primary consideration throughout this (and future) analysis of venue operations and impacts.

Again, the non-residential use must be secondary to the single-family residence, which must remain the primary use of the parcel. Surrounding developed properties are also used for single-family residences, however the property has few adjacent residential neighbors that would be impacted by traffic, parking, and noise impacts. Anderson Point Park is directly south of the subject parcel. Parking would be provided on an adjacent parcel northwest of the property that is also owned by the Applicant. This parcel would

be aggregated with the subject property through the lot consolidation process to meet municipal code requirements related to off-street parking. The parking area would contain up to 55 parking spaces, accommodating up to 165 guests. Conditions are necessary to ensure the parking area is appropriately screened from residential properties to the north and south that would be most impacted by the parking area. Event guests would be shuttled down to the property from the parking area.

The proposed event use would not include construction of any new structures and would utilize the existing single-family residence, ADU, and temporary structures provided by event vendors. As noted above, event duration and frequency would be limited to provide predictability for neighbors and reduce noise and traffic impacts in the area. The residential nature of the property and limited nature of the use would retain the rural character of the subject property. The venue's draw would be its rural character. The Applicant lives on the property and would be available to ensure the security of the natural features of the property and the neighborhood. *Findings 1 – 7, 9 – 25.*

3. **With conditions, the proposed use would be consistent with the criteria for a Shoreline Substantial Development Permit under WAC 173-27-150 and relevant County codes.** Permitted shoreline uses must be designed 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 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.* The purpose of the SMP’s general economic development policies is to “[p]rovide for the location and design of industries, transportation, port and tourist facilities, commerce and other developments that are particularly dependent upon a shoreline location and/or use, when the shoreline can accommodate such development.” *KCC 22.300.115.* The proposal as conditioned is consistent with the policies of the SMA because the proposed project would not interfere with the public’s use of the water or result in damage to the ecology or environment of the shoreline area. The Applicant would be required to provide public beach access from the property and install relevant signage. The Applicant would not construct any new structures within the shoreline jurisdiction and would remove unpermitted structures along the shoreline including a small arbor, firepit and golf tee. The proposed use would not have an adverse impact on the ecological function or value of the Colvos Passage marine system or wildlife. *Findings 1 – 7, 10 – 25.*
4. **With conditions, the proposed use meets the criteria to obtain a Shoreline Conditional Use Permit under KCC 22.600.130.B and KCC 22.500.100.D.3.** The proposal is located in 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.A*. The primary use of the property would remain single-family residential, which is a permitted use in the Rural Conservancy Environment. The proposed event venue use is considered a “non-water-orientated commercial use” which is allowed in the Rural Conservancy environment with a shoreline conditional use permit. Commercial developments in the Rural Conservancy environment are subject to additional criteria. As noted above, the primary use of the property would remain a single-family residence that is occupied by the Applicant. Also as noted above, the proposal does not include any new construction within the shoreline jurisdiction and the Applicant would remove the unpermitted structures currently degrading the shoreline environment. Parking would be provided on an adjacent parcel upland of the subject property outside of the shoreline jurisdiction. The Applicant submitted a Habitat Management Plan that demonstrated the proposal would have no net loss of the ecological function or value of the shoreline environment. As a condition of approval, the Applicant would be required to replant dune grass that has been removed over time.

Non-water-oriented commercial uses are subject to additional criteria in the Rural Conservancy environment. The Applicant has expressed that it does not want to provide public access from the property, raising concerns about liability, privacy and crime. The proposal, however, would not meet the criteria for a non-water-oriented commercial use without providing or enabling some public access to the shoreline. The subject property is not designated commercial by the Kitsap County Comprehensive Plan and there is no indication that the proposed use is on a site where navigability is severely limited. Accordingly, the proposed use must facilitate public access to the shoreline to meet the criteria for a SCUP in these circumstances. In the application materials, the Applicant contends that events would provide “public access” by providing shoreline access for event guests. The County SMP defines “public access” as “the ability of the general public, or, in some cases, a specific community, to reach, touch, and enjoy the water’s edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.” *KCC 22.150.500*. The Applicant’s proposed “public access” is not consistent with the County’s definition of public access under the SMP. The Applicant must provide public access to the shoreline consistent with the County’s SMP and shall work with County staff concerning the details of how such access would occur, to what extent, and the appropriate signage and/or security measures that would be required and/or allowed. *Findings 1 – 7, 11 – 25*.

## DECISION

Based on the preceding findings and conclusions, the request for a conditional use permit, shoreline substantial development permit, and shoreline conditional use permit to allow for the operation of a wedding and event venue, and a conditional use permit to allow occupancy of an

860 square foot detached accessory dwelling unit, at 11967 Luna Vista Ave SE in the Olalla area of unincorporated Kitsap County, is **APPROVED**, subject to the following conditions:<sup>7</sup>

1. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.
2. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
3. 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.
4. The decision set forth herein is based upon representations made and exhibits contained in the project application permit Nos. 21-04111 (CUP), 21-03049 (ADU), 21-02413 (SCUP) and 21-00036 (SSDP). 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.
5. The project evaluation does not contemplate events that are drive-in/drive out, or which would be subject to regular public entrance/exiting (e.g., crafts fair, bazaar, pop-up markets). If these types of events are to be considered, a subsequent application may be needed, which may be a Type II or Type III application depending on scope and code in effect at time of application, and additional conditions may be assigned.
6. There shall be no more than one event on the subject property per day; each day shall be considered its own event, regardless of whether the event occurs over multiple days.
7. For the lifetime of the event venue approval, a minimum of 50 percent consecutive days of each month shall be free of events, which must begin with the same Friday each month (e.g., first or third Friday) to give neighbors and Anderson Park users reliability and predictability of events. The Applicant must submit the preferred schedule in advance of the “event” season to the County and the Applicant shall

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<sup>7</sup> This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by the County code. The Hearing Examiner has altered, added, or amended the County’s proposed conditions, as necessary, to ensure that the proposal does not have detrimental impacts on the surrounding community or environment.

provide notice to neighbors within 800' of the exterior property lines of the event-free period chosen in perpetuity. The notice shall include the contact information for an event manager who is available at all times during events to address issues.

8. The hours of operation for the event venue shall be from 8 AM until 9 PM (8 PM on Sundays). From 9 PM to 10 PM (or 8 PM to 10 PM on Sundays), the event shall cease operation and begin its equipment tear-down and disperse the attendees, including contractors and vendors.
9. Limited overnight accommodation for event venue participants is allowed within the residential structures on-site, but shall not be permitted until the structure(s) on-site are specifically permitted by DCD's Building and Fire Safety division. The Applicant must advise DCD when they wish to initiate overnight accommodations in advance of that first event. See Fire Safety conditions below.
10. Installation of a commercial kitchen is authorized, but shall not be permitted until specifically permitted by DCD's Building and Fire Safety division. The Applicant must advise DCD when they wish to use a commercial kitchen in advance of that first event. See Fire Safety conditions below.
11. Amplified sound may be used indoors so long as such sound meets the requirements of the County's noise ordinances. If an amplified system is to be used outdoors, it shall be first evaluated through a noise analysis as required by the SEPA mitigation measures.
12. DCD accepts the Applicant's parking ratio of 3 event participants per vehicle for purposes of gaging attendance. Parking for up to 55 spaces shall be provided on the northwesterly parcel that will be aggregated to the subject property. The spaces shall be inclusive of spaces for vendors and contractors (e.g., caterers, bar staff, musicians, photographers). The Applicant shall submit a landscape plan to DCD that demonstrates that the parking area will be appropriately screened from residential development, especially to the north and south, prior to event activities commencing on the property.
13. Because the principal or primary use of an "Off-Site Parking Lot" is not permitted in the Rural Residential zone, the currently undeveloped lot to the northwest that is proposed for parking must be aggregated with the primary use occurring at the main (event venue) parcel. This will need to occur through a lot aggregation recordation or a Declaration of Aggregation, and shall be completed prior to approval of Site Development Activity Permit (SDAP).
14. Use of parcel 342302-2-049-2006 for parking impacts the future viability of the parcel

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as a residential lot as shown on Short Plat 6205 recorded in Vol. 10 of Short Plats, Pg 151. Until easements are extinguished via a Short Plat Alteration or the parking arrangement is modified, the parking/shuttle lot (parcel 342302-2-049- 2006) is subject to Conditions of approval of Short Plat 6205.

15. Parking will need to be prepared with consideration of fire apparatus, as well as being fire-wise in its design and maintenance. Additional comments are provided with Fire Safety conditions below.
16. Parking shall be striped to ensure adequate parking or through some other means acceptable to DCD. Temporary striping or use of an on-site parking attendant for all events are acceptable.
17. The Applicant shall post rules at the entrance to the parking lot advising event attendees of the proximity of nearby residences and for event attendees to be considerate of noise. The sign shall note the parking lot design and prohibit parking in the ROW or offsite. The sign shall encourage departure of attendees as soon as possible after returning to the parking lot.
18. The parking area shall be adequately screened from view by the adjacent residential parcel to the south/southwest and the undeveloped residential property to the north. A sight-obscuring fence, wall or vegetation shall be installed prior to events in 2023 to ensure that appropriate screening exists.
19. Any existing signage outside of the Applicant's property shall be removed (e.g., on Park property).
20. Dust management for driving surfaces may be needed for unpaved driveways.
21. A sight-obscuring fence, capable of 100 percent reduction of headlight glare, is required along the southern boundary of the parking area. Sight-obscuring irrigated vegetation that is capable of 100 percent headlight glare reduction may also be proposed.
22. Approval of this application does not restrict the Applicant's ability to use the property for short-term vacation rentals (e.g., VRBO, Airbnb). Short-term rental authorization would be required to be consistent with County codes in effect at the time of proposed use.
23. Approval of this event venue shall allow DCD to conduct inspections during event hours of operations.

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24. 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 an 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.
25. Only one accessory dwelling unit is allowed on the property. The second one-half of the space above the garage, currently used as an office, shall become permitted jointly with the ADU, and the building permit application shall show decommissioning of the kitchen stove and the 240 voltages in the office space, unless DCD otherwise grants the Applicant permission for either of these amenities to remain.
26. The accessory dwelling unit (ADU) 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.
27. Any proposed modification (not including cosmetic work such as painting, papering and similar finish work), remodel or expansion of the accessory dwelling unit 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.
28. Only one accessory dwelling unit shall be permitted on the subject property.
29. 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. The accessory dwelling unit's habitable area shall not exceed 50 percent of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 860 square feet. Any future expansion of the ADU will require a building permit and would have to comply with all code requirements in place at the time of the new building permit application.
30. The accessory dwelling unit shall be located within 150 feet of the primary residence.
31. The accessory dwelling unit shall be designed to maintain the appearance of the primary residence.
32. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

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33. No mobile home or recreational vehicle shall be allowed as an accessory dwelling unit.
34. The accessory dwelling unit shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
35. 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.
36. 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.
37. The accessory dwelling unit cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
38. The uses of the subject property are limited to the uses proposed by the Applicant and approved by this decision. 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. To that end, use of the property (including the parking area) for overnight RV camping is prohibited.
39. 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 four years of the Notice of Decision date or the resolution of any appeals.
40. An engineered Site Development Activity Permit (SDAP) shall be submitted within 90 days of the Hearing Examiner Decision. The project narrative and site plan identify that the vehicle maneuvering area is a gravel surface and grass field. This area is subject to vehicular use and is considered a pollution generating hard surface (PGIS or PGHS). The proposed PGHS is located outside of census-defined urban areas and results in ten thousand square feet or more of proposed hard surface area, therefore it meets the threshold for an SDAP.
41. The SDAP shall provide design for water quality feature(s) to capture and treat all runoff from the parking areas. Design and construction of the drive isle and parking

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lot shall be done in accordance with the most up-to-date Kitsap Stormwater Design Manual and Title 12. Pedestrian connectivity and safety awareness is encouraged in design.

42. The SDAP shall show the planned parking configuration for 50-55 parking spaces. All parking spaces must comply with required zoning and impervious surface setbacks. In addition, fire apparatus access requirements shall be met.
43. All parking spaces shall be configured outside the existing reserve drain field easement that lies on parcel 342302-2-049-2006 and benefits parcel 342302-2-050-2005, per Short Plat 6205, recorded in Vol. 10 of Short Plats, Pg. 151. The SDAP shall show that the reserve drain field easement is not subject to vehicular traffic as vehicular traffic will compact this easement area. Alternatively, the Applicant shall submit a Short Plat Alteration establishing a new reserve drain field easement (protected from parking), or another legally accepted method. This consideration must be made in mind with the lot aggregation requirement noted in other conditions above.
44. The Applicant shall adhere to and implement all recommendations for stewardship of the shoreline provided within the Habitat Management Plan (HMP) provided by BGE Environmental.
45. Areas of native vegetation and dune grass within the shoreline buffer that have been removed shall be reestablished to their previous condition. These areas include the current location of the golf driving tee pad, firepit and the wedding arbor/pad. Removal of these features shall occur immediately, replanting shall occur within 6 months, and reestablishment of these areas shall be approved within one year of this permit. Replanting shall be done in accordance with recommendations and oversight from a qualified biologist regarding plantings and monitoring.
46. As a commercial use on the shoreline, the Department of Ecology would require a sign to be installed that states the public is allowed access and recreational use of the shoreline in front of the Applicant's property. The sign shall be less than four sf per County code. This sign shall be sited on the common property line between the Applicant's property and the Park property, ideally slightly above ordinary high-water line, where there is a trail or pathway between the two properties, or elsewhere where advisable.
47. For any new development or use, an 85-foot native vegetation buffer must be maintained landward of Ordinary High Water, as depicted on the approved site plan. In addition, a building or impervious surface setback line of 15 feet is required from the edge of the buffer. No native vegetation may be removed within the shoreline buffer.

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48. No parking overflow is allowed, and parking in the right-of-way of Luna Vista Avenue is prohibited.
49. The conditional use permit authorizing use of any portion of buildings on the property for any purpose subject to this application shall not be in effect until the Applicant applies for and obtains building and fire code permits required for the intended use for all portions of the buildings, obtains approvals for all required inspections and obtains the certificate(s) of occupancy for the intended use.
50. The conditional use permit authorizing use of any portion of buildings or the venue site for any purpose subject to this application shall not be in effect until the fire apparatus access and fire flow requirements of the current edition of the fire code are met as approved by the fire marshal. The fire marshal may approve automatic fire sprinkler systems installed throughout all portions of all buildings on the venue site, identify locations where additional access road improvements shall be made, and turnouts or turnarounds shall be installed as an alternative, in whole or in part to the access and fire flow requirements. Should road improvements or installation of turnouts and turnarounds require a Site Development Activity Permit (SDAP) the Applicant shall obtain the SDAP, complete construction and obtain final approval prior to use of the site for any venue.
51. The indicated parking area shall be designed, constructed, and approved by the fire marshal in accordance with the Wildland Urban Interface Code (WUIC) and National Fire Protection Association Standard (NFPA) 1040 prior to use of the site for parking vehicles. If site work at the intended parking area requires a SDAP, such permit shall be obtained, completed, and approved in addition to the approval of the fire marshal prior to using the location for parking.
52. Any future construction, change in use, or expansion of use of any portion of the buildings subject to this application — including but not limited to overnight accommodations, and addition of a commercial kitchen — shall occur in compliance with the provisions of Title 14 of the Kitsap County Code and may require building or other permits, and may alter the classification of the building requiring additional fire alarms, fire sprinkler systems, access, or other requirements. Approval of this conditional use permit application does not approve such future use without first obtaining all required permits and approvals.
53. An emergency response plan prepared in accordance with the requirements of the fire code and approved by the fire marshal is required prior to using any portion of any of the buildings at the venue property for assembly purposes. No portion of any building shall be used for assembly purposes without approval of the emergency plan by the fire

marshal.

54. Prior to holding weddings or another activity authorized subject to this application all court and enforcement actions, judgements or orders implicating or related to use of the site as an event venue shall be satisfied.
55. The Applicant shall at all times conduct events in accordance with the provisions of the applicable building, fire and accessibility codes.
56. The Applicant shall apply for, obtain, and gain approval for fire code operational or any other permits that may be required to meet the needs of a specific event.
57. Event attendance using buildings on the site shall be limited based on the maximum occupant load established for the building.
58. The application materials state that the property is not currently served by Waste Management. As a result, the owners are responsible for the removal of all solid waste and recyclables from the site and the transport of all solid waste and recyclables to a facility established by them.

**DECIDED** this 17<sup>th</sup> day of October 2022.



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Andrew M. Reeves  
Hearing Examiner  
Sound Law Center