

Kitsap Transit
North Kitsap Fire District
North Kitsap School District
Puget Sound Energy
Water Purveyor
Sewer Purveyor
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
WA State Dept of Transportation
Interested Parties: Reed & Melissa Blanchard, reed.blanchard@gmail.com; Tia Schwarz, tia@fasttrackci.com; David Vliet & Kristel Dillon, dpvliet@hotmail.com; Beverly Parsons, bevandpar@gmail.com; Doug Hayman, seattleguitarman@hotmail.com; Carol Price, carol9price@comcast.net; Elizabeth Nichols, dbnichols@centurytel.net; Doug Beal & Michael Pouncil, acupt@comcast.net; Joe Lubischer, jslubischer@gmail.com; Katherine Rose Lewis, katherine12lewis@yahoo.com; Rod Malcom – Suquamish Tribe, rmalcom@suquamish.nsn.us

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BEFORE THE HEARING EXAMINER FOR KITSAP COUNTY

Phil Olbrechts, Hearing Examiner

RE: Brandon & Jolie Shirley Critical Area Variance and Zoning Variance File No. 22-03914 and 22-00285	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION.
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INTRODUCTION

Brandon & Jolie Shirley request two variances to construct a single-family home on a lot completely encumbered with a Type III wetland and its associated buffer located at 9615 N.E. Dronawood Dr. in Kingston. To build the home, they request a critical areas variance to reduce the 225 wetlands buffer to 25 feet and to reduce the building setback from 15 feet to 7.5 feet. They also request a zoning variance to reduce the front yard setback from 50 feet to 40 feet. Both variances are approved subject to conditions.

The proposal has drawn significant opposition from numerous members of the community and beyond who are concerned about impacts to their neighborhood and adequate protection of wetlands and streams in general. Project opposition resulted in close scrutiny of the Applicant’s wetland assessment and mitigation plan. That opposition successfully resulted in revisions to the Applicant’s wetland classification, increasing the required wetland buffer from 110 feet to 220 feet.

Neighbors still have numerous concerns with the adequacy of the mitigation and conformance to variance approval criteria. Ultimately, the findings of the Applicants’ wetland biologist and are the most compelling on these areas of disagreement. The Applicant’s wetland biologist is the only expert witness of the proceeding to opine on the adequacy of proposed mitigation. As such, the opinions of the applicants’ expert will usually be found to be the most compelling in the absence of any inconsistencies with the County’s detailed wetland protection standards or any conclusions that are inherently illogical or unreasonable.

Project opponents were still able to improve the proposal by identifying additional measures that could be taken to reasonably protect the wetlands. Ms. Nichols identified several recommendations from the Washington State Department of Ecology designed

1 to optimize wetland protection. These measures include a pervious driveway and the
2 recording of a covenant to prohibit use of pesticides and fertilizers. Those measures
3 have been adopted as Conditions No. 19-22. Mr. Lubischer pointed out that the reduced
4 building setback will be difficult to enforce. To help ensure conformance, Condition
5 No. 9 mandates a split rail fence along the buffer boundary. The Suquamish Tribe
6 made several recommendations for improvements to staff recommended mitigation.
7 Staff recognized the expertise of the Tribe and recommended adoption of all of the
8 Tribe's suggestions, which have been implemented in this decision.

9 This decision attempts to address all the major concerns raised by project opponents in
10 the findings of fact and conclusions of law below. Many of the concerns are attributed
11 to their authors by name and can be found in this decision by doing a word search for
12 the names.

13 The remaining portion of this Introduction provides some background information on
14 why counties and cities adopt critical area variance and reasonable use provisions that
15 facilitate wetland encroachments such as that proposed by the Applicants. Project
16 opponents sincerely question why counties and cities appear so quick to waive critical
17 area standards. It is hoped that the explanation below makes the actions of Washington
18 cities and counties more understandable when it comes to implementation of critical
19 area protections. Those that just want to know how the critical area variance criteria
20 are met for this application are encouraged to skip to the Findings of Fact and
21 Conclusions of Law starting at page 7 below.

22 Several project opponents, perhaps all, feel that Kitsap County critical area variances
23 are too freely approved. Several opponents believe the applications should be denied.
24 In point of fact, Kitsap County is very likely legally mandated to approve the variances.
25 As previously identified, the most compelling testimony in the record, from the only
wetlands expert of the record, establishes that the wetland will not be adversely affected
by the proposal. With that testimony in hand the Applicant clearly meets the rest of
the variance criteria and any decision to deny would likely lead to reversal upon judicial
appeal. In point of fact, as elaborated below, denial of the variance under such
circumstances would also likely subject the County to takings liability under the state
and federal constitution.

Over the past decade, Kitsap County has issued eight critical area variance decisions.
Six of those were for the construction of single-family homes and all six were
approved¹. This result is likely similar to the practice of most if not all Washington

¹ In Ex. 54, Mr. Haymon submitted CVAR 21-03118 as an example of a variance that was denied. That project was for a garage, which arguably does not have the same level of takings protection as a single-family home. More important, the Applicant of that case did not identify why potentially less adverse portions of the parcel in question could not be used to accommodate the proposed garage. There were also outstanding questions regarding the adequacy of the wetland mitigation assessment. In this case the home could no be located in any less adverse location on the project site. The size of the home is also as reasonably modest as could be required given surrounding development. For these reasons, CVAR

1 State cities and counties – wetland and stream protection standards are usually waived
2 when necessary to enable construction of a reasonably sized home on a reasonably
3 sized lot designed for that purpose. So long as the applicants can establish that all
4 adverse impacts are fully mitigated and they're seeking minimum reasonable use,
5 approval is the likely result. The reason for that is that critical area variance and
6 reasonable use standards are designed to prevent cities and counties from incurring
7 constitutional takings liability. This objective is not inconsistent with the Growth
8 Management Act (GMA) as asserted by one commentator on this project. One of the
9 GMA goals specifies that “[p]rivate property shall not be taken for public use without
10 just compensation having been made.” Variance and reasonable use provisions in
11 critical area ordinances implement this goal while also protecting those critical areas
12 with the inclusion of criteria that require mitigation and minimization of critical area
13 impacts.

14 There is surprisingly little case law directly addressing stream and wetland regulations,
15 but the little that there is makes it fairly clear that takings liability is a major hazard in
16 wetlands and stream regulations. In the context of regulatory takings caused by wetland
17 regulations, a taking will most often occur under either a *Lucas* analysis where the
18 property owner is deprived of all reasonable economical use or a *Penn Central* analysis
19 where the burden on the property owner is weighed against the public need and benefit
20 of the regulations in question.

21 The *Lucas* analysis comes from the US Supreme Court Case, *Lucas v. South Carolina*
22 *Coastal Commission*, 505 U.S. 1003 (1992). In that case, a property owner owned two
23 vacant oceanfront lots in South Carolina. The Beachfront Management Act, passed two
24 years after his purchase of the lots, effectively prevented him from erecting homes on
25 properties due to the effects it would have on the public beach. The *Lucas* case set the
precedent for “categorical takings”, where no balancing of public verses private interests
is required to determine if a property owner is entitled to compensation under the takings
clause. The U.S. Supreme Court in *Lucas* ruled that when regulations deprive a property
owner of all economically viable use, a categorical takings has occurred and
compensation is due unless the regulations fall into some very limited exceptions.

Lucas takings liability is a serious issue of concern for any decision that prohibits
single-family development of a lot zoned and sized for that purpose. If a single-family
home is prohibited in this case, the only other uses with less impacts on the wetlands
that could be potentially permitted would be limited to walking the property and
conducting the limited activities authorized within wetland buffers by the County’s
Critical Areas Ordinance. Such use would likely not qualify as economically viable and
hence substantially risk a *Lucas* takings claim.

In the absence of a categorical takings, the remaining way to establish a regulatory
takings is through a *Penn Central* analysis. *Penn Central* is a United States Supreme

21-03118 decision is not found to provide any compelling precedent as grounds to deny or further limit
the proposed development of this application.

1 Court case that created the concept of regulatory takings, where just compensation under
2 the federal constitution 5th Amendment takings clause can be required by over-
3 regulation of property without any physical appropriation. *See Penn Central v. New York*
4 *City*, 438 U.S. 104 (1978) The *Penn Central* court ruled that whether a regulatory
5 action that diminishes the value of a claimant's property constitutes a "taking" of that
6 property depends on several factors, including the economic impact of the regulation on
7 the claimant, particularly the extent to which the regulation has interfered with distinct
8 investment-backed expectations, as well as the character of the governmental action.

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10 There have been very few cases that have applied 5th Amendment takings claims to
11 wetland and/or stream buffer regulation. None have assessed *Penn Central* takings
12 claims in the State of Washington to wetland regulations. One case outside of
13 Washington provides some insight as to how the regulation should be applied. *See*
14 *Friedenburg v. New York State Dept. of Environmental Conservation*, 3 A.D.3d 86
15 (2003). In *Friedenburg* the property owner was denied a permit to fill wetlands in order
16 to build a single-family home on a 2.5-acre waterfront parcel. The only remaining use
17 the property was access rights to the shoreline. The denial of the permit devalued the
18 property from \$665,000 to \$31,500. The value of the property would have been \$50,000
19 if additional use rights alleged by the government defendant applied, such as the
20 construction of a catwalk or moorage for a houseboat. The New York Supreme Court
21 applied federal constitutional takings case law and ruled that a takings occurred whether
22 the property was valued at \$50,000 or \$35,000. The Court reasoned that the property
23 owner experienced either a 95% or 92.5% reduction in value and that in either case the
24 reduction was significant. The Court found that the public benefit conferred by wetlands
25 protection did not justify the taking of public property. It noted that if there are no
direct reciprocal benefits to the property owner, the property owner should not bear the
burden of providing those benefits to the general public. Due to the significant loss in
value and the lack of reciprocity in the benefits of wetland protection, the Court found
a takings under *Penn Central*.

18 Other opinions have reached similar results. In *Baycrest Manor, Inc. v. City of N.Y.* (In
19 re New Creek Bluebelt, Phase 3), 2017 N.Y. Slip Op. 7994 (N.Y. App. Div. 2017), the
20 court found it "likely" in assessing the value of property in a condemnation action that
21 a property owner would have prevailed in a takings claim solely due to the fact that
22 wetlands regulations reduced the value of the property by 88%. The court made this
23 finding even though the takings claim was based upon an owner who would have
24 purchased the property after adoption of the wetland regulations instead of before (i.e.
25 the owner would have purchased the property knowing that wetland regulations severely
limited development potential).

The only Washington case that provides some useful insight on when zoning regulations
should be waived to protect private property rights is *Buechel v. Dept. of Ecology*, 125
Wn.2d 196, 884 P.2d 910 (1994). In applying a "reasonable use" term in Mason
County's shoreline variance standards, the *Buechel* court largely used the same factors
employed by the US Supreme Court in its *Penn Central* analysis. In the *Buechel* case,
the Applicant requested a shoreline variance to build a home within a shoreline setback

1 along Hood Canal. The Mason County shoreline variance criteria at the time required
2 the Applicant to establish that if he complied with shoreline regulations, "...*he cannot*
3 *make any reasonable use of his property.*" Without the variance there was no space for
4 a single-family home. The subject lot only had 1,000 square feet of developable space
5 because the rest of the property was submerged. The property was zoned for residential
6 use. The County denied the variance request.

7 The State Supreme Court sustained the County's denial on the basis that the property
8 could be used for recreational use, such as for a dock or boathouse. Although the
9 Supreme Court did not directly identify takings law in its assessment, the factors it
10 applied are largely the same used in a Penn Central takings analysis, probably not
11 coincidentally. In assessing whether recreational use qualified as a reasonable use, the
12 *Buechel* court noted that "[t]he size, location, and physical attributes of a piece of
13 property are relevant when deciding what is a reasonable use of a particular parcel of
14 land." 125 Wn.2d at 208. Other factors the *Buechel* court found relevant was
15 investment backed expectations, including the zoning of the property at the time of
16 purchase. *Id.* In the *Buechel* case the size of the developable portion of the property
17 was small, the property had significant regulatory and physical constraints at the time
18 of purchase and the use of many surrounding waterfront properties was limited to
19 recreational use. For all these reasons, the Court determined that recreational use was a
20 reasonable use of the property and, therefore, the Applicant was not denied all
21 reasonable use because he wasn't allowed to build a home.

22 Given the case law above, it is fairly compelling that at minimum, the Applicants must
23 be authorized to construct a single-family home on each of the two lots subject to the
24 appeal. Unlike the *Buechel* situation, the subject lots are sized for single-family
25 development. The lot doesn't meet the minimum lot size requirement for the Rural
Residential zone, but at 2.5 acres it is of more than sufficient size as a nonconforming
lot to accommodate a reasonably sized home. The Applicants admit to acquiring the
property at a substantially reduced price. However, as testified by the Applicants, the
reduction in price reflects the permitting costs in building on a parcel completely
encumbered by wetlands. As previously noted, except for extreme cases of substandard
lots such as in the *Buechel* case, critical area variance and reasonable use requests are
usually approved for single-family development if associated with a reasonable sized
lot zoned for that purpose. The Applicants can reasonably claim that their investment
backed expectations in paying the reduced price was to have a variance application
approved upon performing the costly due diligence necessary to ensure that wetland
impacts will be fully mitigated as required by the County's variance standards.

23 ORAL TESTIMONY

24 A computer-generated transcript of the hearing has been prepared to provide an
25 overview of the hearing testimony. The transcript is provided for informational
purposes only as Appendix A.

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EXHIBITS

Exhibits 1-49 listed in the Index to the Record prepared by County staff were admitted² during the hearing. The following were also admitted during the hearing:

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- Exhibit 50: Corrected staff report.
 - Exhibit 51: January 5, 2024 Email chain between Kreifels and Hayman
 - Exhibit 52: November 21, 2023 email chain between Kreifels and Bartlett
 - Exhibit 53: January 8, 2024 email chain between Walston and Lubischer
 - Exhibit 54: Public comment received 1/9/14 through 1/19/24
 - Exhibit 55³: Past hearing examiner decisions on critical area variance applications.

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FINDINGS OF FACT

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Procedural:

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1. Applicant. Brandon & Jolie Shirley, PO Box 1015, Kingston, WA 98346-1015.
 2. Hearing. The Hearing Examiner conducted a virtual hearing on the application at 9:30 am on January 11, 2024. The record was left open through January 24, 2024 to give time for public review and comment of proposed exhibits. The January 11, 2024 hearing was continued from a hearing opened on September 7, 2023. That September hearing had been continued to reassess the buffer required for the project. According to staff at the January 11, 2024 hearing, no verbal public comment had been taken at the September 7, 2023 hearing.

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² In Ex. 54, pdf p. 58, Mr. Lubischer requests the exclusion of Ex. 41 because it's unclear when the document was revised and by whom. He points to correspondence in Ex. 52 where the lead planner requested Ms. Bartlet, the Applicants' wetlands expert, to correct some scrivener's errors in the wetlands report, Ex. 41. Ex. 41 contains some, but not all of the requested revisions. For example, Page 2 of the report still erroneously identifies the wetland buffer as 110 feet instead of 220 feet, but Page 5 has been revised to identify that the drain field will be located on-site instead of off-site. Mr. Lubischer requests that the Applicants be questioned as to who made the alterations to Ex. 41, how the file was transmitted and what edits were made. These questions are adequately answered in the information already in the record. As to revisions to the wetlands report, that can be ascertained by comparing Ex. 41 to the last report, Ex. 7. As to who made the changes, from Ex. 52 it is likely Ms. Bartlet. In any event, the changes requested by staff in Ex. 52 are clearly just scrivener's errors that would not materially change the substantive conclusions of the report, most important the classification and delineation of the wetland and what mitigation is necessary to avoid significant adverse impacts to the wetlands. Finally, how the report was transmitted does not have any bearing on its accuracy or authenticity. Given the correspondence in Ex. 52, there is no reason to conclude that anyone other than Ms. Bartlet made any significant changes to her report. As previously noted, the last round revisions to Ex. 41 were to correct scrivener's errors and did not entail any re-evaluation of anything of substance by Ms. Bartlet. As such, there is no need for further inquiry and/or cross-examination on this issue.

³ The examiner typically would just take judicial notice of these decisions. They were just added as an exhibit since some members of the public wanted to see them as well.

1 **Substantive:**

2 3. Site/Proposal Description. Brandon & Jolie Shirley request two variances
3 to construct a 1,617 square foot single-family home on a lot completely encumbered
4 with a wetland and its associated buffer. To build the home, they request a critical
5 areas variance to reduce the 225 buffer of a Type III wetland to 25 feet and to reduce
6 the building setback from 15 feet to 7.5 feet. They also request a zoning variance to
7 reduce the front yard setback from 50 feet to 40 feet.

8 The subject property is 2.5 acres in size and is currently undeveloped. The property is
9 composed mostly of the Type III wetland with an area of upland about midway along
10 the north property line that follows the grade of Dronawood Drive, which is a gradual
11 rise in elevation from the west and down on the east side. The upland area is wooded
12 with a band of maintained grass on all sides and is dominated by young deciduous trees
13 and scattered conifers. The wetland begins on either side of the wooded upland and is
14 part of a large wetland system that extends south to Kingston Farm. The onsite portion
15 is composed of forest, scrub/shrub, and emergent communities with the emergent area
16 immediately adjacent to the wooded upland. Carpenter Creek originates offsite to the
17 north and flows southerly through the western portion of the lot and into Appletree
18 Cove Estuary. It is a Type F stream that requires a 150-foot buffer.

19 4. Characteristics of the Area. The project area is bordered on all sides with
20 single-family homes and abuts Parcels Road on its west side. The proposed home will
21 be more than 200 feet from the nearest residence.

22 5. Adverse Impacts. No significant adverse impacts are anticipated from the
23 proposed variances. Adverse impacts caused by the buffer reduction and front yard
24 reduction are addressed separately in more detail below:

25 A. Wetland Impacts. The record establishes that buffer functions will improve as
a result of the mitigation proposed for the buffer encroachment and that impacts
have been minimized to the maximum extent reasonably practicable

Functions Improved: The findings of the Applicant's wetland expert establish
that the proposal will improve wetland functions as mitigated. The Applicant
hired a senior professional wetlands scientist, Joanne Bartlett, to classify,
delineate and prepare a mitigation plan for the wetland of the project site. Ms.
Bartlett prepared a revised wetlands report, Ex. 41, which concluded as follows
on wetland impacts after mitigation:

*The buffer mitigation plan proposes a variety of evergreen and
deciduous plants to increase the function of the current reed
canarygrass dominated buffer. The function will increase as the
vegetation grows and dense thickets are formed that will screen
the noise and light generated on the homesite. Installation of
woody plants will also improve the water quality function by*

1 *slowing the flow of potential runoff across the buffer and into*
2 *the wetland. By the end of the 5-year monitoring period, it is*
3 *expected that the buffer will have achieved the goal of creating*
 a buffer that functions better than the current buffer at the
 reduced and standard widths.

4 There was no contrary opinion from an expert in wetland science that wetland
5 functions would be degraded by the proposal. No one provided any scientific
6 literature or other science-based rational to substantiate a finding that wetland
7 functions would not improve as a result of the proposed mitigation. No code-
8 based rational for finding the mitigation inadequate was presented. For these
9 reasons, Ms. Bartlett’s opinion on the issue of wetland function is found to be
 determinative. Wetland function is found to be improved as a result of the
 proposal, as mitigated. With improved function, the proposal is not found to
 create any significant adverse impacts to the wetland.

10 To mitigate for stormwater impacts, this decision requires conformance to the
11 County’s stormwater regulations. County stormwater regulations are primarily
12 based upon the Kitsap County Stormwater Design Manual, which in turn is
13 based upon highly detailed minimum requirements adopted by the Washington
14 State Department of Ecology. Those requirements, subject to frequent updates,
15 are based upon all known, available and reasonable methods of stormwater
 prevention, control and treatment as required by RCW 90.52.040 and RCW
 90.48.010. The requirements include maintaining wetland hydrology and
 protecting water quality.

16 Mr. Lubischer believes that more stringent stormwater requirements should
17 apply. Mr. Lubischer has not identified how or why the adopted stormwater
18 regulations fall short in adequately protecting the subject wetland. In the
19 absence of any science based rational that the County’s regulations are
 inadequate, they are found to sufficiently protect the wetland from stormwater
 impacts.

20 The Suquamish Tribe in Ex. 28 made several suggestions for revising the staff
21 recommended conditions of approval. All of those suggestions, as
22 recommended by staff, have been incorporated into the adopted
 recommendations.

23 Reed Blanchard identified in Exhibit 31 that the wetland score for the proposal
24 dictated a 225 foot buffer. This observation was agreed upon by staff and has
25 been incorporated into the proposal. Ex. 31 is presumably the reason the
 September hearing was continued. Mr. Blanchard also noted that there was
 conflicting information on the slope of the wetland site and that if the slope was
 2-5% as identified in one part of the Applicant’s wetlands report that the
 wetland may have to be classified as a Type II wetland. The report was
 subsequently corrected in Ex. 34 by Ms. Bartlett to note that the slope is only

1 1%. The 1% slope according to Ms. Bartlet does not change the classification
2 of the wetland as a Type II wetland. The revision has been undisputed and
found to be a verity based upon the expertise of Ms. Bartlett.

3 *Impacts Minimized:* Wetland impacts have also been minimized to the
4 maximum extent reasonably possible to accommodate a single-family home by
5 placing the home at the very north end of the upland area to permit a buffer
6 width of at least 25 feet along the wetland boundary. There is approximately
7 22,064 square feet of upland (~0.5 acres) on this 2.52-acre property at the north
8 end and immediately adjacent to Dronawood Drive. The building site and
9 drainfield will impact less than half of the available area of upland (9,910 square
10 feet (0.23 acres)). The drainfield is placed as far from the wetland as possible,
which will reduce potential negative water quality impacts to the wetland or
Carpenter Creek. The project is maintaining the required buffer from Carpenter
Creek. The impacts to the buffer are further minimized by placing the home in
an area where minimal native vegetation cover is present and there is very low
buffer function.

11 The proposed home size on its face is also fairly minimal. Staff testified that
12 the proposed size is consistent with those of surrounding homes. The size
13 generally does not appear to be over-reaching on the part of the Applicant and
should be considered a minimum size for purposes of minimum reasonable use
analysis.

14 Additional measures implemented to minimize the impacts to the wetland and
15 include:

- 16 • Direct outdoor lighting away from the wetland and buffer.
- 17 • Reduce the front yard setback to allow the home to be sighted as far from
the wetland as possible.
- 18 • Proposing a small footprint to create minimal onsite of impervious
surfaces.

19 Compensation for the buffer reduction is proposed to improve the function of
20 the current buffer by controlling the cover by reed canary grass and installing
21 native vegetation. The total area of buffer mitigation is 1.22 times the size of
22 the building envelope so there will be a greater area of buffer compensation
than impact, which will aid in improvement of the function.

23 Monitoring is required to track the success of the buffer mitigation plan for a
24 period of five years. The monitoring plan, which includes performance
standards, is described in the Buffer Mitigation Plan section of this report. Mr.
25 Lubischer asserts that a longer monitoring plan is necessary. He provides no
scientific basis for such an extended period or explanation as to why five years
is not sufficient. Ms. Bartlett's expert opinion in recommending five years
holds sway in the absence of any reason to depart from that recommendation.

1 Mr. Lubischer asserts that illegal clearing activities have occurred on the
2 property. Such activities could be relevant in that they would arguably establish
3 a different baseline in assessing whether mitigation measures improve
4 ecological function. The activities could also obscure the natural wetland
5 boundaries. However, recent case law holds that a baseline in assessing
6 environmental impacts cannot be modified due to alleged illegal activity. *See*
7 *King Cnty. v. Friends of Sammamish Valley*, 530 P.3d 1023 (Wash. Ct. App.
8 2023). If there in fact has been illegal activity that occurred on the project site,
9 the County still has the option of instituting a code enforcement action. A
10 successful code enforcement action would enable the County to require
11 mitigation and restoration for the illegal activities that occurred on the project
12 site. In addition and perhaps more important, the wetlands delineation manual
13 already contains provisions to account for artificial disturbance of wetland areas
14 in their delineation and classification. There was no assertion by project
15 opponents that Ms. Bartlett failed to accurately apply these provisions, if she
16 was required to do so.

11 Mr. Lubischer also asserts that wetland impacts could be further minimized by
12 encroaching further into the front yard setback. However, as shown in the site
13 plan in the staff report, the setback is already otherwise fully occupied by the
14 drainage field and driveway. The drainage field in particular should be
15 displaced as far from the wetland as possible. Given these circumstances, the
16 proposal can't reasonably be placed further into the front yard than proposed.

15 Mr. Lubischer doesn't believe that the proposed 7.5-foot building setback is
16 enforceable. Given the limited space to operate in the proposed building
17 setback area, Mr. Lubischer has a point that occupants of the property will find
18 it difficult to maneuver in the limited space. To provide for added assurance
19 that the setback will be honored, the staff recommended conditions of approval
20 have been revised to mandate critical area fencing in addition to signage.

19 Ms. Nichols identified several conditions recommended by the Washington
20 State Department of Ecology designed to minimize impacts to wetlands. *See*
21 *Ex. 54*, pdf. p. 40. She referenced measures recommended in DOE's Wetland
22 Avoidance and Minimization Checklist to reduce wetland impacts. The
23 Applicant and County staff did not oppose these measures. Given that the
24 measures are recommended by DOE, which has considerable expertise in
25 wetland mitigation, the measures have been adopted as conditions to the extent
not already covered by other County regulations.

24 B. Front Yard Impacts. The proposed 20% reduction of the front yard setback is
25 not found to create any significant impacts. As noted in the staff report, the
nearest residence is located 200 feet away. For this reason, the proposed home
will not look out of place in appearing closer to the right of way than adjoining

homes. The ten-foot difference in separation from the right of way will likely also not be noticeable to any passers-by.

C. Carpenter Creek. Some members of the public such as Cheryl Davis and Carol Price expressed concern over impacts to Carpenter Creek, including the proximity of the Applicants' septic system. The proposal will not encroach into the 150-foot buffer of Carpenter Creek. Since the proposal conforms to County critical area requirements as they pertain to Carpenter Creek, the proposal is not considered to adversely affect the creek.

D. Animals. Various commentators such as Davis, Hayman and Morrissey identified that the proposal would adversely affect wildlife at the project site, such as beaver and amphibians. None of the species identified in the comments are protected by the County's critical areas ordinance so any impacts to them would not be considered significantly adverse.

6. Special Circumstances for Front Yard Setback. The on-site wetland and its associated buffer are a special circumstance since the wetland and its buffer completely encumbers the subject parcel. The proposed ten-foot front yard encroachment is necessary to minimize impacts to the wetland while accommodating a reasonably sized single-family home.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. KCC 21.04.100 provides that critical area variances are Type II decision and zoning variances exceeding involving requests for a variation of 10-25% of bulk and dimensional standards are Type II decisions. The Applicants' applications have been consolidated under KCC 21.04.180, which authorizes consolidation under the highest number permit type, which in this case is Type III. As outlined in KCC 21.04.110, the Type III process involves an open record hearing held by the hearing examiner and a final decision issued by the hearing examiner.

Substantive:

2. Zoning Designation. The property is currently zoned Rural Residential.

3. Review Criteria. KCC 19.100.135A governs the criteria for critical area variances and KCC 17.560.010A governs the criteria for zoning variances. Pertinent criteria are quoted below and applied via corresponding conclusions of law.

Critical Areas Variance

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2 **KCC 19.100.135A1:** *A variance in the application of the regulations or standards of*
3 *this title to a particular piece of property may be granted by Kitsap County, when it*
4 *can be shown that the application meets all of the following criteria:*

5 *1. Because of special circumstances applicable to the subject property, including size,*
6 *shape, or topography, the strict application of this title is found to deprive the subject*
7 *property of rights and privileges enjoyed by other properties in the vicinity; provided,*
8 *however, the fact that those surrounding properties have been developed under*
9 *regulations in force prior to the adoption of this ordinance shall not be the sole basis*
10 *for the granting of a variance.*

11 *4. Criterion met. The criterion is met. The property is subject to special*
12 *circumstances because it is completely encumbered by a Type III wetland and*
13 *associated buffer. That circumstance deprives the owner of property rights and*
14 *privileges enjoyed by others in the vicinity because without the variance the Applicants*
15 *would not be prohibited from building a home or any other critical area nonexempt*
16 *structure on their property. The construction of a single-family home is a right that*
17 *would be generally available to any other property of similar size that would not be*
18 *encumbered by critical area limitations.*

19 **KCC 19.100.135A2:** *The special circumstances referred to in subsection (A)(1) of*
20 *this section are not the result of the actions of the current or previous owner.*

21 *5. Criterion met. The criterion is met. The circumstances are a natural condition of*
22 *the property. As noted in the staff report, the lot was created in 1977, before the County*
23 *had adopted its critical areas ordinance.*

24 **KCC 19.100.135A3:** *The granting of the variance will not result in substantial*
25 *detrimental impacts to the critical area, public welfare or injurious to the property or*
26 *improvements in the vicinity and area in which the property is situated or contrary to*
27 *the goals, policies and purpose of this title.*

28 *6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.*
29 *5. Approval of the variance is consistent with the policies and purposes of Title 19 as*
30 *identified in KCC 19.100.105 because wetland functions and values are enhanced by*
31 *the mitigation plan proposed by the Applicants.*

32 **KCC 19.100.135A4:** *The granting of the variance is the minimum necessary to*
33 *accommodate the permitted use.*

34 *7. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.*
35 *5.*

1 Mr. Lubischer questioned whether the encroachments were sufficient to accommodate
2 a ten-foot setback for the drainage field. County staff testified that the proposed design
3 did include the ten-foot setback. Regardless, as testified by staff the health department
4 will be enforcing the setback requirement. If the approved wetland and front-yard
5 variances are not sufficient to accommodate the ten-foot setback, the Applicants will
6 have to amend its variance request to accommodate the drainfield setback. Such an
7 amendment would not be approved unless the Applicants could establish conformance
8 to all applicable variance criteria. Related to that issue Mr. Lubischer also identified
9 that the original wetlands report identified the drainfield as being located off-site. That
10 mistaken fact was corrected in the revised wetlands report, Ex. 41, p. 5, which identifies
11 the drainfield as on-site in the proposed location.

12 **KCC 19.100.135A5:** *No other practicable or reasonable alternative exists. (See*
13 *Definitions, Chapter 19.150.)*

14 8. Criterion met. The criterion is met. Without the variance, the Applicants would
15 not be able to build a single family home.

16 **KCC 19.100.135A6:** *A mitigation plan (where required) has been submitted and is*
17 *approved for the proposed use of the critical area.*

18 9. Criterion met. The criterion is met by the applicant's mitigation plan, Ex. 41.

19 Variance

20 **KCC 17.560.010A:** *A variance may be granted to any numerical standard of this title,*
21 *excluding housing density, only when unusual circumstances relating to the property*
22 *cause undue hardship in the application of this title. The granting of such a variance*
23 *shall be in the public interest. A variance shall be made only when all of the following*
24 *conditions and facts exist:*

25 A. *There are special circumstances applicable to the subject property, including size,*
shape, topography, location or surroundings, that were not created by the applicant
and do not apply generally to other property in the same vicinity or zone;

10. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
6.

KCC 17.560.010B: *Such variance is necessary for the preservation and enjoyment*
of a substantial property right or use of the applicant possessed by the owners of other
properties in the same vicinity or zone;

1 11. Criterion met. The criterion is met. The variance is necessary to minimize impacts
2 to the wetland, which in turn is necessary to enable a variance to the wetland buffer to
3 enable the construction of a residence on the property. As noted in Conclusion of Law
4 No. 4, the construction of a residence is a substantial property right possessed by others
5 in the same vicinity and zone.

6 **KCC 17.560.010C:** *The authorization of such variance will not be materially
7 detrimental to the public welfare or injurious to property in the vicinity or zone in which
8 property is located; and*

9 12. Criterion met. The criterion is met for the reasons identified in Finding of
10 Fact No. 5.

11 **KCC 17.560.010D:** *The variance is the minimum necessary to grant relief to the
12 applicant.*

13 13. Criterion met. The criterion is met. The variance is necessary to minimize impacts
14 to the wetland, which in turn is necessary to afford the relief of enabling the
15 construction of a single-family home.

16 **DECISION**

17 Based upon the conclusions of law above, the variance applications are approved
18 subject to the following conditions:

19 a. Planning/Zoning

20 1. All required permits shall be obtained prior to commencement of land clearing,
21 construction and/or occupancy.

22 2. This Variance approval shall automatically become void if no building permit
23 application is accepted as complete by the Department of Community Development
24 within four years of the Notice of Decision date or the resolution of any appeals.

25 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 #22-03914 and #22-00285. Any change(s)

1 or deviation(s) in such plans, proposals, or conditions of approval imposed shall be
2 subject to further review and approval of the County and potentially the Hearing
3 Examiner.

3 b. Development Engineering

4 5. Construction plans and profiles for all roads, storm drainage facilities and
5 appurtenances prepared by the developer's engineer shall be submitted to Kitsap
6 County for review and acceptance. No construction shall be started prior to said plan
7 acceptance.

6 6. Stormwater quantity control, quality treatment, and erosion and sedimentation
7 control shall be designed in accordance with Kitsap County Code Title 12 effective at
8 the time the SDAP (or Building Permit if no SDAP required) application is deemed
9 fully complete. The submittal documents shall be prepared by a civil engineer licensed
10 in the State of Washington. The fees and submittal requirements shall be in accordance
11 with Kitsap County Code in effect at the time of SDAP application, or Building Permit
12 if an SDAP is not required.

11 7. The owner shall be responsible for maintenance of the storm drainage facilities for
12 this development following construction. Before requesting final inspection for the
13 SDAP (or for the Building Permit if an SDAP is not required) 22-03914, Shirley,
14 Critical Area Variance Page 2 for this development, the person or persons holding title
15 to the subject property for which the storm drainage facilities were required shall record
16 a Declaration of Covenant that guarantees the County that the system will be properly
17 maintained. Wording must be included in the covenant that will allow the County to
18 inspect the system and perform the necessary maintenance in the event the system is
19 not performing properly. This would be done only after notifying the owner and giving
20 him a reasonable time to do the necessary work. Should County forces be required to
21 do the work, the owner will be billed the maximum amount allowed by law. If the
22 project proposal is modified from that shown on the site plan approved for this permit
23 application, Development Services and Engineering will require additional review and
24 potentially new conditions.

19 c. Environmental

20 8. The applicant shall record a Notice to Title for the proposed preservation area(s) of
21 the site. The Notice to Title shall be submitted with the associated building permit and
22 is required prior to approval of the building permit.

22 9. Prior to occupancy, the common boundary between the wetland buffer and the
23 adjacent land shall be permanently identified with critical area buffer signs. Critical
24 Area Ordinance (CAO) signs shall be placed along the designated boundary spaced
25 approximately 50-feet apart, visual from sign to sign. Signs must be attached to existing
trees with diameter breast height greater than 4 inches. In addition to the signage, a split
rail fence shall be installed to assure compliance with the building setback.

1 10. Permit application approval is subject to chapter 19.300.315 of Kitsap County
2 Code, which states that buffers or setbacks shall remain undisturbed natural vegetation
3 areas except where the buffer can be enhanced to improve its functional attributes.
4 Refuse shall not be placed in buffers. Clearing and tree removal within the established
wetland buffer shall be the minimum necessary to support the proposed improvements.
Clearing limits must be clearly shown on the site plan with the associated building
permit and clearing outside of the approved limits will require prior County approval.

5 11. A 150-foot native vegetation buffer shall be retained along the perimeter of the
6 stream as depicted on the approved site plan. In addition, a building or impervious
surface setback line of 7.5-feet is required from the edge of the buffer.

7 12. Unless otherwise allowed through this variance, a 25-foot native vegetation buffer
8 must be maintained along the delineated wetland boundary of Wetland 'A' as depicted
9 on the approved plans. In addition, a building or impervious surface setback line of 7.5
feet is required from the edge of the buffer, unless otherwise approved by this variance.

10 13. The project shall adhere to the mitigation measures and recommendations within
11 the approved Wetland Delineation & Buffer Mitigation Plan, dated September 21,
12 2020, and revised September 25, 2022, prepared by Ecological Land Services (ELS).

13 14. In addition to the ELS Mitigation/Monitor Plan, information collected during each
14 vegetative monitoring visit shall include the height of planted vegetation as well as
height of reed canary grasses.

15 15. Install plants during the winter months as proposed on page 8 (not page 11) of the
16 ELS Plan.

17 16. Monitoring and maintenance of the planted area shall be conducted for five years,
18 and extended, if necessary, after DCD staff approves planting. Monitoring includes live
19 and dead vegetation counts and records of all maintenance activities. Maintenance
20 activities can be defined as, but are not limited to, removal practices on invasive or
21 nuisance vegetation and watering schedules. Monitoring information shall be
22 summarized in a letter with photographs depicting conditions of the vegetation and
23 overall site. Monitoring reports are due to Kitsap County Department of Community
24 Development Services and Engineering Division annually. If more than 20 percent of
25 the plantings do not survive within any of the monitoring years, the problem areas shall
be replanted, and provided with better maintenance practices to ensure higher plant
survival. Such plants may also be replaced with a mitigation appropriate species, as
approved by Planning staff, that assures greater mitigation success. The construction
of the permitted project is subject to inspections by the Kitsap County Department of
Community Development. Extensions of the monitoring period may be required if
original conditions are not met. All maintenance and construction must be done in full
compliance with Kitsap County Code (KCC), including the Kitsap County Critical
Area Ordinance (Title 19 KCC) and Shoreline Master Program (Title 22 KCC). Any
corrections, changes or alterations required by a Kitsap County Development Engineer

1 Inspector shall be made prior to additional inspections. Any assignment of savings,
2 financial surety or other like security for maintenance of the buffer mitigation plan shall
3 only be released if monitoring requirements are satisfied in the final year of the
4 monitoring term.

5 d. Traffic and Roads

6 17. At building permit application, submit Kitsap County Public Works Form 1601 for
7 issuance of a concurrency certificate, as required by Kitsap County Code 20.04.030,
8 Transportation Concurrency.

9 18. Any work within the County right-of-way shall require a Public Works permit and
10 possibly a maintenance or performance bond. This application to perform work in the
11 right-of-way shall be submitted as part of the SDAP process, or Building Permit
12 process, if a SDAP is not required. The need for and scope of bonding will be
13 determined at that time.

14 Additional Conditions Resulting from Hearing – Nichols DOE Recommendations

15 19. Prior to occupancy, the Applicants shall record a covenant prohibiting use of
16 pesticides and fertilizers within 150 feet of the wetland. The wording of the covenant
17 shall be approved by County planning staff. The covenant may allow use of designated
18 pesticides and fertilizers that won't harm the wetland. The covenant may either
19 specifically designate what pesticides/fertilizers are allowed within 150 feet or leave
20 that open for future determination. In either circumstance, the Applicants shall support
21 such use with best available science and/or the opinion of a qualified wetlands
22 biologist.

23 20. Integrated pest management shall be used for landscape maintenance as
24 contemplated in the Wetland Avoidance and Minimization Checklist from the
25 Department of Ecology in Ex. 54. The Applicants shall acquire approval of such a plan
from County planning staff prior to occupancy.

21 21. Grass clippings, yard-waste and other material shall not be dumped in the wetland
22 or its buffers. This prohibition shall be placed on the wetland signs required by
23 Condition No. 9.

24 22. The Applicants' driveway shall be made of permeable surface.

25 Dated this 7th day of February, 2024.



Phil Olbrechts,
Kitsap County Hearing Examiner

Appeal Right and Valuation Notices

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Pursuant to KCC 21.4.100 and KCC 21.04.110, these variance decisions are final land use decisions of Kitsap County and may be appealed to superior court within 21 days as governed by the Washington State Land Use Petition Act, Chapter 36.70C RCW.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

Appendix A

January 11, 2024 Hearing Transcript

Shirley Critical Area and Zoning Variance – 22-03914 and 22-00285

Note: This is a computer-generated transcript provided for informational purposes only. The reader should not take this document as 100% accurate or take offense at errors created by the limitations of the programming in transcribing speech. For those in need of an accurate rendition of the hearing testimony, a hearing recording can be acquired from Kitsap County.

Examiner Olbrechts: [\(00:00:18\)](#):

Alright, for the record, January 11th, 2024, 9:30:00 AM I'm Phil Recording in progress. Oh, sorry. Keep on forgetting that for the record. It is January 11th, 2024, 9:30:00 AM I'm a hearing examiner for Kitsap County. This morning we are moving on from public hearing. We just held on a conditional use permit application. Now moving on to a request for critical areas variance and a zoning variance. These are for file numbers 22 dash 0 3 9 4 and 22 dash 0 2 8 5 and it's the project name is Shirley Variances. The hearing format will be the same as the last hearing that we held. We'll start off with a staff presentation to give us an overview of the project, then we move on to the applicant. After that, we move on to public comments and everyone will have a chance to be heard today whether you are in the hearing room, in person, or just attending virtually.

[\(00:01:13\)](#):

Once we take all those comments, we'll move back to staff rebuttal. That's their chance for staff to answer questions and provide any additional information they think is necessary to complete the record. And then finally, applicant gets final say and I get 10 business days, which usually works out to be a couple of weeks. In this case, I think we have one holiday in between, so it'll be a couple of weeks plus one for me to issue that final decision and that will be distributed to everyone who requests a copy. Also, just like the last hearing, my decision has to be based only on the evidence presented in the record today. I don't review anything else. I'm not allowed to talk to anybody about this project. Everything I know about this project is essentially all the information available to everyone else participating in this hearing as well.

[\(00:02:00\)](#):

So on that basis, I'm going to share the exhibit lists that were put into the staff report. Let me share that right there. There's a lot of documentation and work that goes into these variance requests when it comes with critical areas. And as you can see there on the screen, we've got the staff report, we have the application materials, elevations, floor plans, the notices and that kind of thing that went out. We have a revised wetland delineation and buffer mitigation plan, email communications, information requests. Let's see, a lot of public comments of course involved in this one and site visit photos and that kind of thing. So now I understand we'll just jump straight to Mr. because I know he had some issues with it. Ms. Wilson, you want to promote him up so that we can get his comments on the issues they may have with the documents?

Ms. Lubischer: [\(00:03:00\)](#):

I am ready.

Examiner Olbrechts: [\(00:03:01\)](#):

Okay. And Mr. Vercher, you had some problems with these documents, is that correct?

Ms. Lubischer: ([00:03:08](#)):

Just one. I was going to object to the inclusion of, I believe it's exhibit 24, the health department septic approval, and I don't know if you read my late night email on this

Examiner Olbrechts: ([00:03:25](#)):

Or not. Well, why don't you summarize it so we all know what the issue is.

Ms. Lubischer: ([00:03:28](#)):

Right, so the first part of that email, there were three requests for continuance. One of those was that the proposal is incomplete, the septic approval is for an onsite drain field. The most recent wetland report, I think it was September 25th of last year, says that the drain field is going to be offsite.

Examiner Olbrechts: ([00:03:54](#)):

Okay. Okay.

Ms. Lubischer: ([00:03:55](#)):

So that seems to me the pros is incomplete. The fact that the drain field is offsite completely changes the analysis for avoiding, minimizing and mitigating the development. Okay.

Examiner Olbrechts: ([00:04:10](#)):

Okay. Well yeah, I mean you're essentially, you're contesting the substance of the application as opposed to authenticity or relevance. It's certainly a relevant document. As you mentioned, it's important to the case. So I'm going to, unless there are any other objections, I'm going to allow the documents in. But of course we're going to expect to hear from the applicant and or staff about the septic issue and how that's going to be addressed and that'll affect whether or not the application should be approved or not. So Mr. Lier, anything else you wanted to add at this point? I mean right now we're just talking about admissibility of documents of course,

Ms. Lubischer: ([00:04:48](#)):

Yes sir. No sir. Thank you.

Examiner Olbrechts: ([00:04:49](#)):

Okay, that sounds good. Thank you for your input on that. Does anyone else have any objections over entry of those 49 proposed exhibits by staff? Again, it would really go just to whether the documents are relevant or not, whether they're authentic. Those are the primary basis for objecting. If you disagree with the conclusions, that's something that it doesn't affect admissibility, but it of course affects whether or not the project should be approved or not. So Okay, not seeing any objections, we'll admit those documents one through 49. And who do we have at the podium there?

Ms. Kreifels: ([00:05:26](#)):

Hi, my name is Jenny Kreiff Falls and I'm a planner here with Department of Community Development.

Examiner Olbrechts: ([00:05:31](#)):

Okay, and Ms. Craig Falls, just for the record, could you spell your last name?

Ms. Kreifels: [\(00:05:35\)](#):

Yes, K-R-E-I-F as in Frank, ELS as in Sam.

Examiner Olbrechts: [\(00:05:41\)](#):

Okay, thank you. Ms. Craig Falls. Let me swear in, just raise your right hand. Do you swear Affirm tell the truth, nothing but the truth in this proceeding?

Ms. Kreifels: [\(00:05:48\)](#):

I do.

Examiner Olbrechts: [\(00:05:49\)](#):

Okay, great. Thank you. Go ahead.

Ms. Kreifels: [\(00:05:50\)](#):

Okay, thank you. Good morning Examiner Brooks staff would like to enter the following into the case file exhibit 50 through 54. We have a corrected staff report as exhibit 50 additional email communications regarding Nichols and Haman emails as exhibit 51, email correspondence between staff and biologists regarding request to report corrections as exhibit 52 and Luer and staff communications regarding hearing exhibits as exhibit 53 and additional comments were received. As we just heard, staff has not had the opportunity to respond to those public comments, but if the examiner approves, then DCD would like to add any additional communications and or public comments from any interested parties after January 8th into one exhibit as exhibit number 54. Unless of course you prefer that staff creates individual exhibits from these communications moving forward.

Examiner Olbrechts: [\(00:07:00\)](#):

So how many communications were we talking about roughly for? 54,

Ms. Kreifels: [\(00:07:06\)](#):

Roughly four to six. Oh,

Examiner Olbrechts: [\(00:07:08\)](#):

Okay. Okay. Alright, and have all those been forwarded to the applicant?

Ms. Kreifels: [\(00:07:14\)](#):

They have not. We received several. We received one late last night, a couple of the evening before, so there's a series that have come through and so that was the question is we wanted to present them, have time to forward them on.

Examiner Olbrechts: [\(00:07:26\)](#):

Okay.

Ms. Kreifels: [\(00:07:27\)](#):

They're just

Examiner Olbrechts: ([00:07:27](#)):

Recent. Well let me ask the, bring

Ms. Kreifels: ([00:07:29](#)):

Them out.

Examiner Olbrechts: ([00:07:29](#)):

Yeah, yeah and of course, I mean I'm assuming most of those are from the neighbors, that kind of thing who had concerns with the project and the applicant probably wants a chance to respond to those. Let me just ask you if the applicant, how they wish to deal with that. I mean I can admit them in the record and leave the record open a few days for the applicant to provide written responses. Will that work with the applicant?

Ms. Kreifels: ([00:07:54](#)):

I believe that well if the applicant here, yeah, I,

Speaker 5 ([00:08:01](#)):

Sorry. We can proceed. I will let the hearing go. We'll see, but as far as any responses, I'll let Jennifer or Jenny take care of that.

Examiner Olbrechts: ([00:08:14](#)):

Okay. I'll just ask, like I said, I'll leave the record open for a response from staff and the applicant on the new communications from the public. With that in mind, are there any objections to the proposed, I believe it was 51 through 54 was it? Those were the additional documents

Ms. Kreifels: ([00:08:33](#)):

50 through 54 with 54 being a combination of all responses and comments from January 8th.

Examiner Olbrechts: ([00:08:42](#)):

Okay. Ms. Walston, do you have a list of that Maybe we can flash on the screen so people can see it.

Ms. Kreifels: ([00:08:49](#)):

I don't have a list of everything broken out at this point.

Examiner Olbrechts: ([00:08:52](#)):

I'll just ask if there are any objections to entry of those documents if we need staff to repeat that list. I certainly can do that, but otherwise just does anyone need to see those documents or have any objections to their entering the record? Alright, hearing seen none, we'll admit those through 54 as well, so, okay, thank you. Go ahead.

Ms. Kreifels: ([00:09:12](#)):

Alright, we'll pull up our presentation and I will test my clicker.

[\(00:09:27\)](#):

Okay, great. Alright, so again, I'm Jennifer Kre Falls. I'm a planner with Kids Up County Department of Community Development and today I am presenting a critical area variance application number 2 2 0 3 9 1 4 along with a zoning variance application number 2 2 0 0 2 8 5 to allow new construction for a single family residence in the North Kitsap County area. This hearing today is continued from September 7th, 2023. A revised staff report in response to updated information within the revised wetland report based on public comments received during September 7th public hearing process does include corrections to the habitat score. The buffer of 225 feet is now required for the onsite wetland increased from the previous 110 foot buffer in the original report and both the original and the new buffer covers the entire upland area of this property extending offsite and beyond RONA Wood Drive.

[\(00:10:42\)](#):

Alright, so the applicant request approval of a critical area variance application to reduce a standard wetland buffer by more than 88%, allowing one single family home on this lot. It is heavily constrained by critical areas. A critical area variance request is subject to a type three process with the hearing examiner approval, the applicant concurrently request approval of a zoning variance to allow a nearly 20% reduction of the required front yard, excuse me, from 50 feet to 41.5 feet pursuant to the zoning variance criteria in cassette county code 17 5 60. This request is a type two process which is administrative and generally under the director's approval. However, since the zoning variance is dependent on the critical area variance approval therefore included in this report for the hearing examiner approval. So both have been combined. Concurrent kits county code 21 0 4 1 8 oh allows for the consolidation of project permit applications to avoid duplication of review and an application for a building permit under 2 1 0 4 8 6 0 for this site was submitted to Kitsap County September 7th, 2021, which remains under review pending this approval.

[\(00:12:12\)](#):

The slide three shows the applicants are Brandon and Jolie Shirley. They purchased the property in 2019. The application was deemed complete March 3rd and the notice of application was distributed March 28th, 2023. A revised notice of application was completed November 8th, 2023 to update the staff report in response to the corrected buffer within the wetland report. Wait, my paper is not making too much noise here. The report did state originally it was 110 foot and now the buffer has become 225 feet. It does cover the entire upland area of this property extending offsite and beyond RNA Wood Drive. As I mentioned earlier, the project is SEPA exempt under Washington Administrative Code 1 9 7 11 801 and six E for single family residents and land use permits and also per Kitsap County Code 1804 public comments were received and are addressed on the following slide.

[\(00:13:27\)](#):

These public comments include topics listed in slide three or slide four I should say. We have critical area protection concerns impacts to habitat wetland Carpenter Creek concerns denial of this permit, but if it is approved, the comment stated monitoring should be required for more than five years assigned posting placement, a comment was received, the timeframe to comment, retention of vegetation critical area ordinance, signage, retention, past behaviors impacting natural vegetation retention, how to concerns about eradicating canary reed grass and then there is a complicated boundary line concern. Here we have slide five, additional public comments included clarifying the habitat score and slope analysis impacts to aquifer well and septic and procedure clarification. The Suquamish tribe has provided comments to replace with only successful species through the monitoring program. Plantings should go into the ground and the winter season and the heights of the vegetation, including canary re grass, should be added into that data collection for the monitoring plan.

[\(00:14:51\)](#):

The site is located in North Kitsap, addressed as 9 6 1 5 Northeast Ron, which drive in Kingston, also known as parcel 4 3 4 4 0 0 0 2 6 0 0 7. The parcel did become illegal. Lot of record under LUT 26 in 1977 through a land division plat called Kingston Country Estates Division two. The site is accessed from Northeast Erna Wood Drive, which is a county maintained public right of way. The property is located on the south side of Joah Wood Drive at its intersection with Parcels Road. It's currently undeveloped and is composed mostly of wetland with an area of the plant about midway along the north property line that follows the grade of Joah Wood Drive, which is a gradual rise in elevation from the west and down onto the east side. The upland area is wooded with a band of maintained grass on all sides and is dominated by young deciduous trees and scattered conover, excuse me, the wetland begins on either side of, I need to change my slide there. Sorry about that. Let's see. The wetland begins on either side of the wooded upland and as part of the large wetland system that extends south to Kingston Farm, the onsite portion is comprised of forest bup, shrub and emergent communities with the emergent area immediately adjacent to the wooded upland. Carpenter Creek is a type F stream that requires 150 foot buffer and flows southerly through the western portion of the lot. The wetland is a category three system with the habitat score of eight, thereby requires that buffer to be 225 feet.

[\(00:16:44\)](#):

And here we have the corrected habitat score or where it is found actually in our Kitsap County code, which takes our level of function from moderate to high as it still maintains a moderate land use to be the category three wetland. Here's a zoning map on slide nine which indicates the parcel is zoned rural residential, so it's one dwelling unit for five acres. Standard setbacks for the rural residential zone are 50 feet at the front and 20 feet at the sides and rear, which would be 50 feet at the north In this case, the proposed front setback is 41 and a half feet, so that would be 75 feet to the east, 217 feet to the west and 234 feet at the rear. Here's a critical areas ordinance map, which indicates the parcels are within a hydro soil layer. Potential wetlands is way or another way to say hydro soil layer as we now know it is wetlands as well as having mapped wetlands along Carpenter Creek and an F type stream. As I mentioned earlier,

[\(00:18:07\)](#):

Construction of a 1,617 square foot residence with an attached garage is proposed in the small upland area at the north portion nearest the property line. An associated drain field, a driveway accessing from the north are also proposed to be placed further ward from the critical areas beyond the single family residence or the structure. The building site and drain field have been placed so that they will still lie outside the 150 foot buffer from Carpenter Creek. And here we have slide 12, which shows a stream and a wetland delineation map and this is from wetland delineation and buffer mitigation plan conducted by ecological land services dated November 15th, 2021.

[\(00:19:01\)](#):

The upland area is roughly 20 2064 square feet in area and is composed entirely of wetland buffer. The future single family home will be situated on this woodland upland wooded, upland, excuse me, and maintain a 25 foot buffer around the perimeter of the upland. These reductions achieve a building envelope that is approximately 9,910 square foot in size. The 50 foot front yard setback required from Jna wood drive extends across about half of the upland area and a small section of the home is located within the setback. The drain field is located between the home and erno wood drive entirely within the front yard setback. The building side and drain field have been placed so that they lie outside 150 foot buffer. Sorry for my redundancy on that comment. Building setback is 7.5 feet is proposed outside of the wetland buffers as well. Here we have slide 13 historic aerials show the site back to 1994. It doesn't look a whole lot different than today. It's highlighted in green if you can see it there. Somewhat mode and

pastured. All right, so this project proposes to construct the home on the upland, reducing the 225 foot buffer to 25 feet with a slightly lower width on the west side to create the building site. Discussed on the previous slides. It is a 2.52 acre property, so that converts into 109,771 square feet and it represents 9% of the total lot area

[\(00:20:57\)](#):

Directing light away and proposing a smaller footprint are ways to minimize impacts from development in the wetland buffer. And so we have some other compensation and mitigating methods which will include improving the buffer function by increasing the native plant cover within the wetland buffer, controlling the invasive species such as canary reed, grass and blackberry. The area of the buffer enhancement will exceed the building impact area. Continue mowing the buffer area to keep the invasives low and may require mowing just prior to planting installation.

[\(00:21:36\)](#):

Installing the plants during winter to be in the ground for suitable conditions for growth place weeded mat or woody mulch around plantings to control invasives assist recovery, retain moisture in the summer will also be a benefit of doing that. And then our mitigation report, I'm sorry, mitigation report shall be provided in accordance with section 19 700 715 and acceptance of the mitigation report shall be signified by a notarized memorandum of agreement signed by the applicant and the department director or designee, the agreement shall refer to all requirements for the mitigation project. Standard monitoring and maintenance should be conducted for at least five years and so this is a mitigation planting plan showing the proposed area of the buffer reduction and the area of mitigation exceeding the area of buffer impacts by 1.22 times or times 1.22 so that there is showing there would be more buffer improved than impacted mitigation plan proposes 300 plantings. The applicants have met the variance criteria in Kitsap County Code 19 101 3 5 due to having immense site constraints and special circumstances, not self-induced or relating from the previous owner's actions, granting the variance will not result in substantial detrimental impacts to the critical area,

[\(00:23:31\)](#):

Public welfare or injurious to the property or improvements in the vicinity. An area in which the property is situated or contrary to the goals, policies, and purpose of this title and is the minimum necessary to accommodate the permitted use. No other practicable or reasonable alternative exists and a mitigation plan has been submitted and is approved for the proposed use of the critical area. The applicant's met the zoning variance criteria due to having also site constraints and special circumstances which were not created by the applicant or possessed or are also possessed by other properties and are not materially detrimental to the public welfare or injurious to properties in the same vicinity and which is the minimum necessary to grant relief to the applicant. This is demonstrated by the distance and location proposed for the drain field and not encroaching further into the wetland buffer. And staff does find the proposal meets the critical area variance criteria in 19 101 3 5 as well as the zoning variance criteria in 17 560 0 1 0 and recommends approval as conditioned. This concludes staff's presentation and I am available for questions of course. Thank you examiner.

Examiner Olbrechts: [\(00:24:59\)](#):

Okay. Yeah, I didn't catch what you said about the drain field there and Mr. Luer was talking about that as an issue. Could you repeat that and how it fits into Mr. ER's concerns?

Ms. Kreifels: [\(00:25:10\)](#):

So there is a proposed drain field between the proposed single family residence and Rena Wood Drive and because that is further landward from any of the critical areas and where it's being placed and due to the fact that our zoning front setback requirement starts at 50 feet, so that's why they're incorporating the zoning variance request back to approximately 41.5 feet. Still keeping it as far as possible from those critical areas.

Examiner Olbrechts: ([00:25:45](#)):

Okay. And what was Mr. ER's point about the health Department approval? Is it still unclear whether it's going to be allowed there or not or what's going on with that?

Ms. Kreifels: ([00:25:54](#)):

It has been approved by the health district as far as the plan

Examiner Olbrechts: ([00:25:59](#)):

Goes for that location. Okay. Yes. Okay. So staff's not concerned about it being moved elsewhere at this point. The drain field,

Ms. Kreifels: ([00:26:10](#)):

The building submittal, of course we require that they can prove that there is a placement by the time we go to hearing.

Examiner Olbrechts: ([00:26:18](#)):

Okay. Alright. And the one thing I haven't had a chance to do yet is get a, oh, sorry,

Ms. Kreifels: ([00:26:23](#)):

I'm sorry. There was something else added to his comment. I think he was seeing an older version of, there were comments about the drain field in the previous report and I did have a couple requests and you'll see in the exhibit public comments that the older drain report was not switched out because of the naming convention and so staff takes responsibility for that. I did address those concerns to those folks that reached out to me and did send those, the updated report from the biologists.

Examiner Olbrechts: ([00:26:57](#)):

Oh, okay, great.

Ms. Kreifels: ([00:26:58](#)):

But that was an early concern of staff as well.

Examiner Olbrechts: ([00:27:02](#)):

Okay. And one thing I haven't had a chance to do yet was to get the original September 7th hearing transcribed. What was the reason it was continued and how much testimony was it that one

Ms. Kreifels: ([00:27:14](#)):

That was continued due to the fact that the wetland buffer should have been 225 feet versus the original 110 foot buffer because there was a habitat score, a discrepancy that actually came in through a

public comment. It was then forwarded by staff to the biologist and then came back in and was presented as an exhibit. But we felt it was better to continue it to go through the administrative process correctly on our

Examiner Olbrechts: ([00:27:48](#)):

Part. Okay. And was there still a lot of public testimony taken or did you just shut it down? We

Ms. Kreifels: ([00:27:54](#)):

Never got to that

Examiner Olbrechts: ([00:27:55](#)):

Point. Okay. You didn't get to that point.

Ms. Kreifels: ([00:27:56](#)):

Good. We continued it there and so we've had quite a few comments but we've tried to address 'em as quickly as

Examiner Olbrechts: ([00:28:03](#)):

Possible. Oh good. Okay, good. Good to know. Thanks. Yeah, if anyone had said anything I wanted to let them know they didn't have to repeat it, that was be part of this hearing and I would've gotten a transcript of it. Okay, perfect. Thank you. Alright, let's move on to applicant comments at this point. And I believe, were they attending virtually I think, is that correct, Ms. Walton? Correct. Okay. Alright, let's get 'em up. And who do we have on behalf of the applicants at this point?

Ms. Kreifels: ([00:28:32](#)):

It looks like we've got Brandon Shirley, Derek is unmute it now.

Examiner Olbrechts: ([00:28:36](#)):

Alright.

Speaker 5 ([00:28:37](#)):

Yes, I'm here.

Examiner Olbrechts: ([00:28:38](#)):

Okay. And Shirley, your video's off, do you want to keep it off? You don't have to have it on but

Speaker 5 ([00:28:44](#)):

Let's see, how do I turn that on? I'm using my iPad. I'm on a job site so I'll leave it off.

Examiner Olbrechts: ([00:28:53](#)):

Okay. Alright. Let me swear you in though. I'll just take it on Faith that you're raising your right hand. Do you swear Affirm, tell the truth, nothing but the truth in this proceeding? Yes. Okay, great. Go ahead Mr. Shirley.

Shirley: ([00:29:04](#)):

I have nothing to add. The comment about the septic, it was no, there was no talk or planning of an offsite drain field anywhere else. It was always on site. So other comments, I was going to let it just naturally progress and see what Mrs. Kreel had to offer. I don't know all of 'em, I haven't kept up with all of 'em, I'm just letting the professionals do their work and let this work out.

Examiner Olbrechts: ([00:29:35](#)):

Okay, sounds good. And as I said Mr. Shirley, I'll leave the record open so you can look at those new comments just came in, give you a chance to respond to that since as the applicant, that's your constitutional right and we'll let staff respond to that as well. And I just ask staff and applicant if I forget to leave the record open at the end, please remind me. Sometimes I do forget, so just kind of don't let me log off before I do that. So let's move on to public comments I guess at this point and we'll start off with those in the meeting room first. Ms. Wilson, is there anybody in the meeting room that wants to comment at this point? Do you see anything?

Ms. Lubischer: ([00:30:12](#)):

We actually don't have anyone on site.

Examiner Olbrechts: ([00:30:14](#)):

Okay. Alright, well we have, looks like we have at least one person virtually. Let's start off with Mr. Hammond and if, okay, Mr. Hammond, you unmute yourself there. Let me swear in. Do you swear affirm to tell the truth, nothing about the truth in this proceeding? I do, yes. Okay. And your video's off as well. You have no obligation to turn it on, I just wanted to let you know in case you want to aware. Yeah,

Ms. Lubischer: ([00:30:34](#)):

We don't have a choice at our end. It's just showing Mike on or off.

Examiner Olbrechts: ([00:30:37](#)):

Okay, that's fine. Go ahead.

Mr. Hayman: ([00:30:40](#)):

I previously submitted a few comments on this and I assume Mr. Hearing Examiner, you're able to get access to those later. I just wanted to make a statement today. My name's DA and I live in Indianola, Washington. I'm here today to object to the approval of building permit via variance for this parcel as it's mostly wetland and has Carpenter Creek running through it. I have nothing against the applicant, Mr. Shirley, I do not even know him. I'm here to object to this proposed house build in order to protect the wetland and the creek as it appears the Kita County is not holding a firm line to protect these natural resources and instead allows buffer reductions through variances again and again. In this case it's the 88% reduction in the buffer has proposed here, which is unacceptable and it goes against the intentions of the Growth Management Act and the county's critical area ordinances.

([00:31:35](#)):

Additionally, in looking through some of the comments that I only just got access to a couple of days ago, I noticed there was a person that lives on the same street that mentioned dirt being moved around on the parcel and I went in and looked on Google Earth late last night at sequential images from 2014

forward and there was in August, I think 2020, quite a bit of disturbance. I don't know if it was using a rake or some heavy machinery, but it just seems like a concern in terms of how that would impact protecting the natural buffer that's in that area. And it went as far as 262 feet south of Drone Woods. So that's pretty far into this area that already has this 225 foot buffer. I'd ask the examiner to either look at the Word document I sent in with a couple of those different screenshots or to go on Google Earth Pro when you're done with this hearing and just preview sort of the changes.

[\(00:32:46\)](#):

That image that Ms. Kreel, if I pronounce that right, showed was kind of an old, it looks like something from 1990s. There are some better ones on Google Earth Pro and it seems somewhat problematic. The delineation of Carpenter Creek I see on the Kitsap parcel search, it's fairly off to the west. If you look on some other sources they're indicating that's further to the east and I know historically the county is backlogged in terms of having accurate mapping for streams and creeks. So it seems like that would be important to accurately map that out as well if that's known to not be accurate.

[\(00:33:31\)](#):

And yeah, I think that is about it other than wishing that if this is approved and they're talking about monitoring and taking photographs and sending it into the county, I could take photographs of my backyard and every couple of years send them into the county. It wouldn't indicate what's accurately changed. And it seems like there's needs to be some sort of either a county employee verifying that or a third party that was objective that could accurately represent that. And having, as is mentioned in the list that Ms. Kreel listed something that's a real permanent boundary that's set out. So when the Shirleys sell this as inevitably they will since they live next door, that each subsequent landowner is going to protect that buffer and not just remove the wooden stakes and start filling it in with her. Thank you.

Examiner Olbrechts: [\(00:34:25\)](#):

Thank you Mr. Hammond. Appreciate those. Alright, let's go back to Mr. Lure now. Bring him up. Okay, Mr. Luer, let me swear you in. Do you swear or affirm tell the truth, nothing but the truth in this proceeding? I do. Okay, great. And as the last other two speakers, your video is also not on, again, not required, just wanted you to know that. So go ahead.

Mr. Lubischer:[\(00:34:46\)](#):

Okay, thank you. I don't have an option. Yeah, well let's start with the septic discussion. So I had made an earlier comment that was not listed in the county's list of issues to address, which was that the approval by the health department showed a 10 foot setback from the drain field area that 10 foot setback was not and is not shown in the applicant's site plan. Whether that's problem or not is up to the health department, but it's serious discrepancy. And the reason that that's a discrepancy is because of the large reduction in the buffer that's created here.

[\(00:35:41\)](#):

The intent of the ordinance is that the development minimize and mitigate the impacts and how far you can push the development to the north into the 10 foot drain field setback or into what is now shown as the drain field area is highly relevant to any decisions that are made with respect to the critical areas ordinance. So that situation was never addressed by the county and now it's been turned on its head because as I understand it, the September 25th, 2023 wetland report states that the drain field's going to be moved off site County did not address that though the way it was phrased leaves me wondering if that is or is not the most recent wetland report. I couldn't find it in the exhibit list, but that may be because those often get renamed.

(00:36:58):

But that seems to be a foundational issue that needs to be clarified before we can, before it's even worth earth talking about the rest of the issues. But I'll leave that of course to you as to how you want to handle it, Mr. Examiner. As it is, we have a revised wetland report that says DRAINFIELD is offsite and we do not have an approval of an offsite drain field from the health department. So there's a request for continuance on that because that seems to me to make for an incomplete proposal. And as I said that there's a lot of impacts on the whether or not the DRAINFIELD is on or offsite. Okay.

Examiner Olbrechts: (00:37:50):

Okay, understood. Yeah, I'll let staff address that and we'll figure out what to do with that one issue. Was there anything else Mr. Luer?

Mr. Lubischer: (00:37:57):

Well, I've got a long list of comments

Examiner Olbrechts: (00:37:59):

Here. Okay. Alright, well I'll go back to staff just on that one question. So yes, thank you. Do we have the correct wetland report in the record now and does it reflect the fact that the drainfield is on site?

Ms. Kreifels: (00:38:13):

We do, and it's actually in the exhibit corrected staff report address of it. Okay. Exhibit 41. It's called second revised wetland delineation and buffer mitigation plan.

Examiner Olbrechts: (00:38:38):

All right. Hold on a second,

Ms. Kreifels: (00:38:42):

And it should be a 61 page document.

Examiner Olbrechts: (00:38:48):

Okay. And Mr. Luer, you didn't get a copy of that, is that correct?

Ms. Lubischer: (00:38:55):

This is the

Ms. Kreifels: (00:38:58):

Exhibit 41 should have been in the packet requested.

Ms. Lubischer: (00:39:04):

I did. It was also sent out earlier. Let's see,

Ms. Kreifels: (00:39:09):

We've had quite a few versions. Yes, my apologies there.

Ms. Lubischer: ([00:39:15](#)):

I'm looking at the September revised September 25th, 2023 revision.

Ms. Kreifels: ([00:39:26](#)):

Yes. Unfortunately that name did not get updated. So we have to look at the exhibit list and then refer to that titling.

Ms. Lubischer: ([00:39:37](#)):

I don't that information I don't have, but I'm trying to get my, yeah, so I am looking at page five where the applicant states the drainfield location has not yet been determined but may need to be placed on another property.

Examiner Olbrechts: ([00:40:01](#)):

Right.

Ms. Kreifels: ([00:40:03](#)):

I'm

Examiner Olbrechts: ([00:40:03](#)):

Sorry? Oh, I was going to ask if that was the most current wetlands report or not, then that has that language.

Ms. Kreifels: ([00:40:11](#)):

No, that is not.

Examiner Olbrechts: ([00:40:12](#)):

Okay. So Mr. Luer doesn't have that right now. So what we'll do with that Mr. Luer is like I've been doing on other issues is we'll have staff get you the most recent report so that there's no question you have it, and then we'll give you a reasonable amount of time to respond to that.

Ms. Lubischer: ([00:40:31](#)):

Is there an exhibit number, Mr. Examiner?

Examiner Olbrechts: ([00:40:33](#)):

Oh, I think it's supposed to be Exhibit 41, right? Yes, it is Exhibit 41. Yeah. Yeah. So like I said, we'll Ms. Walston will email you regardless of what you're accessing online, she'll be sure to email you that document. So there's no question you have it and then you'll have a chance to review it and provide written comment.

Ms. Kreifels: ([00:40:54](#)):

And it was emailed on January 9th, Mr. Luer.

Examiner Olbrechts: ([00:40:58](#)):

Oh, okay. So he was okay, which

Ms. Kreifels: [\(00:41:00\)](#):

Is exhibit 53.

Examiner Olbrechts: [\(00:41:05\)](#):

Oh, I see. Okay.

Ms. Kreifels: [\(00:41:06\)](#):

So I'm sorry if I could interject. So due to the size and volume of files, everything was transmitted through a public disclosure request with a link that would've been sent out to Mr. Luer and all the numbers that were outlined were sent. So it was an extensive list of documents. It was in there, but the one that was loaded to that link through the PDR you received would've been exhibit 41. So you should be able to find that document too.

Examiner Olbrechts: [\(00:41:34\)](#):

Well, I mean, just so that there's no more confusion or anything. Ms. Wilson, can you just resend exhibit 41 by itself? Yes, I'll resend that one by itself. Yeah. Okay. So Mr. Luer, we'll get you just that one exhibit by itself. And how much time do you need Mr. Luer to respond to that wetlands report?

Ms. Lubischer: [\(00:41:53\)](#):

It depends on what it says and what the changes are. It'll give me a few days.

Examiner Olbrechts: [\(00:41:59\)](#):

Yeah. Well, okay, let's do this. I'll give you till next Wednesday, 5:00 PM and then if you point out have good reasons that you need additional time, then I'll likely give that to you at that time. So we will have Ms. Walton send that to you. And then if it looks like there's a monumental amount of information you want to address, just let Ms. Walton know why you need more time, and then I'll probably grant you additional time to respond to it.

Ms. Lubischer: [\(00:42:24\)](#):

Thank you.

Examiner Olbrechts: [\(00:42:24\)](#):

Sure. Okay, continue. Yeah, go ahead

Mr. Lubischer: [\(00:42:29\)](#):

All. I also put in a request for continuance due to the difficulty of obtaining documents in this case. And I would like the opportunity to emphasize that point up until the variance goes into a process, documents are posted or are supposed to be posted on the DCD permit page under project notes. After that point, there's no place that you can find documents. I only discovered the September 25th wetland report because I requested information from Amanda that was never made available to interested parties. Likewise, we asked about, or I asked about, well, when do we get to see the staff report? And we were told a week before the hearing, a week before the hearing county sent out a November 15th staff report. So that immediately raised a question about, well, why didn't this submitted to interested parties in a timely fashion? And of course now we know that it was responded with on the sixth by sending out a new staff report dated January 4th. And of course that's at the point at which we could

find the list of exhibits and which we certainly two days is not enough time to even make sense of those, especially as I say, because all the names and documents get changed and you've got to go through 'em one by one to find out which are relevant and of interest. So this is an ongoing issue with how DCD is handling these hearings.

Examiner Olbrechts: [\(00:44:26\)](#):

So at this point, Mr. Luer, beyond the wetlands that's going to be resent to you, do you have all the documents that you need?

Ms. Lubischer: [\(00:44:38\)](#):

I think so, but I have not had a chance to go through 'em

Examiner Olbrechts: [\(00:44:41\)](#):

All. Okay. Well, and I'll extend since this involves just more than the wetlands report, I'll extend your comment deadline to next week from this Friday. And then like I said, if there's a justifiable reason for additional time, I'll give you even some additional time beyond that. But at the least you have until next Friday at 5:00 PM to make any written comments on the records that have been given to you.

Ms. Lubischer: [\(00:45:06\)](#):

Right. That's a very kind view and thank you for the time to press the point that applies to more than just hearing. And then thirdly, I had a request for continuance in regard to the non-ad addressing of Cheryl Davis's October 1st comment in regard to a previous history of the site possible fill and other actions that may or may not have well, that were probably done by both current and previous owners and how that would affect the critical areas variance criteria. Item number two, that these actions are not part of the previous or current owner's actions. I don't have a specific issue here other than the fact that her comment was never thoroughly addressed. And so now I will move on to specific requests that address minimization and mitigation. Okay.

Examiner Olbrechts: [\(00:46:16\)](#):

Okay.

Ms. Lubischer: [\(00:46:20\)](#):

So the first regards, table 19 200, 2 20 F, which is a list of measures in the ordinance that should be implemented. DC staff have clearly stated in the past that these are not just examples, but the agency interpretation is that all of those measures are supposed to be enacted. So the only one in the wetland report is directing lights away from the wetland. And I am requesting additional protection measures. A notice to title forbidding pesticides requiring an integrated pest management plan regarding a good stormwater management plan to avoid routing of untreated runoff into the wetland and to protect against erosion and channelization and to require infiltration treatment, detention, and dispersion of runoff into the buffer. And the point here is that it's supposed to be better than what the stormwater code requires, and that's all that the county is asking is for regular Title 12 actions be taken. And because this buffer is practically non-existent now, I think it's appropriate that the applicant be required to meet a higher standard of protection in those regards. Also in that table is requirements about special fencing and the staff report in condition nine says, put up sign spacing at 50 feet. As you've noted, this buffer is ridiculously complex and it's going to take some special fencing specifications to make this buffer permanent. So all that falls under table 19 202 20 F.

[\(00:48:37\)](#):

Second is a request for a clarification on the revised wetland report. Page six referred to five of six criteria, and that was, I don't know what the ELS staff was talking about there, and I'm requesting some clarification on that. Number three, there's a request that this proposal be remanded because of a lack of reduction of the property line setback. In a recent hearing examiner decision, it was noted that when you're weighing reducing a critical areas buffer versus reducing a zoning setback, that the former is much more important, whereas the latter is somewhat arbitrary. And that decision has not been taken into account in this proposal. And I respectfully request that it should be, and I don't see why it that 41.5 foot setback cannot realistically be further reduced.

[\(00:50:05\)](#):

And then of course, implicit in that is has the app. There is a question as to whether the applicant has done everything possible to minimize the site. They've obviously submitted a, shall we say, reasonable design, but it looks to me like there are probably ways to reduce that, especially by minimizing the impervious road and parking surface. Staff report did not address that question at all. Next request was for denial of the setback reduction. So condition 12 in the staff report is saying change is set back from 15 to seven and a half feet. First of all, I find that just from my personal experience, that's seven and a half feet is impractical and it's just functionally too small for normal home use, normal repairs.

[\(00:51:10\)](#):

But secondly, under the code, any reduction of that 15 foot is supposed to be for minor structural or impervious surface intrusions. And the department has to determine that such intrusions are not an adverse impact of the well land. So there's no determination of that in the record. And really what's going on is that that modification effectively reduces the buffer down to 17.5 feet and that clearly another 30% loss of what is already very minimal is clearly an adverse impact. So both from practical and code reasons that setback reduction does not appear appropriate. Next point, and last one today is the request for denial. Because of this complex buffer, it's just ridiculous. It's totally impractical. If you look at properties in Kita County where people have built close to buffers and wetlands, what you repeatedly see is little bits of fill. Today we bring in a couple of yards because our garden needs expansion. Now over here we're going to dump in five yards of fiddle because it's just too darn wet. And over time, that buffer just gets pushed back and back. So here we have a minimal buffer and it's just the way it's being set up, it's just impractical that the lines should be smoothed out. And in a way that future, not just future owners, but future residents can recognize that that buffer boundary exists.

[\(00:53:14\)](#):

Putting wooden fence posts in the ground, those are going to be gone probably 10 years. It's going to take some thinking on part of the staff as to what is an appropriate way to permanent the boundary itself. And it's got to be obvious to all the future users. I will acknowledge staff is requiring a notice to title, which I think is totally appropriate for this. But we need some on the ground realization, some on the ground rules that are really going to be effective and available for any questions on those?

Examiner Olbrechts: [\(00:54:04\)](#):

Okay. Thank you Mr. Luke. For sure. Appreciate your comments. Very thorough. So let's move on to anyone else who wants to speak on this application. Now is your chance, looks like Mr. Nichols or Ms. Nichols. Excuse me. Alright. Ms. Nichols, let me swear you in. Just raise your right hand. Do you swear affirm to tell the truth, nothing but the truth in this proceeding?

Speaker 6 [\(00:54:27\)](#):

I

Examiner Olbrechts: (00:54:27):

Do. Okay. And your video is off too. I guess that's the trend today. Nothing wrong with that. We don't have an option. Yeah, yeah, most people don't. Sounds like. Okay, go ahead.

Ms. Nichols (00:54:35):

A short comment. Thank you for taking a testimony. I just want to say that there's a lot of public comment from people that don't live right in the immediate vicinity. And I just want you to be aware that many of us are volunteers with other full-time job commitments, and we're taking a lot of time because we care deeply about the health and protection of our critical areas such as this wetland and type S stream. The community has put a lot of energy into the restoration of the Carpenter Creek watershed. And a development like this cuts a hole into many of the protections that supposedly the county upholds, but we as citizen see over and over again, they don't protect our critical areas consistently. So I just wanted to say that is why there's so many people commenting on this because it isn't a really, really sensitive watershed, and we're very concerned about this kind of development that we see far too often in Kitsap County. So that's all I wanted to say.

Examiner Olbrechts: (00:55:44):

Okay, thank you Ms. Nichols. Alright, anyone else at this point? So the last chance for public comments, we've got a couple there. Ms. Price bring you up. Okay, Ms. Price, let me swear you in. Ms. Price, do you swear Affirm tell the truth, nothing but the truth in this proceeding?

Speaker 7 (00:56:01):

Yes, I do.

Examiner Olbrechts: (00:56:02):

Okay, great. Go ahead. You're free to speak now. Ms. Price. Oh, there you go. Okay.

Speaker 6 (00:56:13):

Did you hear

Examiner Olbrechts: (00:56:13):

Me? Yeah, I can hear you now. Yeah. Okay.

Speaker 7 (00:56:16):

Some 80% of the Shirley property is wetland or stream, and I can't imagine a

Speaker 6 (00:56:21):

Prospective homeowner

Speaker 7 (00:56:22):

Would be too excited to invest in a property with a house purchased so very close to wetlands and Carpenter Creek. Creek beds and wetlands fluctuate. They move over time making this a problematic

site to build on. Can we be assured that this project will not result in runoff or pollution into surrounding water races like Carpenter Creek? The northern portion of Carpenter Creek and associated wetlands have been encroached on by housing and by Parcels Road itself. During the rainy season, there is often water coming over the roadway. The headwaters per Carpenter Creek are literally across the street from the Shirley property. Downstream is the Carpenter Creek estuary. Over \$17 million has been spent to manage and restore this estuary for Salmon and wildlife. The entire watershed is vulnerable due to increasing development, reduced habitat and accelerating climate change. CAO regulations provide the only barrier the county has to protect our vulnerable waterways. I urge property owners in the county to accept and respect their responsibility to the environment and the larger community. Please deny this permit for the Surely Property. Thanks for your time.

Examiner Olbrechts: ([00:57:54](#)):

Okay, thanks Ms. Price. Alright, next we have David V.

Speaker 8 ([00:58:04](#)):

Okay, I'm unmuted now and I guess I can't be on camera. I guess maybe I need to be requested to have my video on or something like that if I wanted to be, but I guess I don't need to be.

Examiner Olbrechts: ([00:58:13](#)):

I think that you should have a video icon at the bottom of your screen if you want your video on. Right. Ms. Walston, there's nothing there. That's fine. No, it's okay. We can just talk. Yeah. Well I just need to swear you in. Do you swear Affirm tell the truth, nothing but the truth in this proceeding? I do. And can you share your last name with us, how to spell it?

Speaker 8 ([00:58:33](#)):

V as in Victor, LIET.

Examiner Olbrechts: ([00:58:36](#)):

Okay, great. Alright, go ahead Mr. Vallee.

Speaker 8 ([00:58:38](#)):

And thanks so much for having this hearing today. And first I want to thank staff. I realize that Kitsap County is well understaffed and well underfunded for things like this. So I just wanted start off with that and I truly believe that and hopefully that gets rectified someday. So I am an interested party in this process and live in the area of the proposed variance request. I want to speak out against the buffer reductions today. I think somebody, one of the earlier speakers said that it's just not acceptable basically, and I feel the same way. It's right near the headwaters of Carpenter Creek. I think it's maybe just one property over from that, maybe two. This is a critical area. We have a critical area ordinance and there's a reason they're called critical.

([00:59:38](#)):

This is just a little bit frustrating to me, I guess because on a simple search of properties adjoining, I learned that the applicant for this lives right next door and has lived next door, I believe since the mid nineties. So when this property was purchased for \$35,000 for two plus acres, I mean this applicant knew what they were buying. There's a reason there's not a house there. I mean the from staff prideful, put that map on there. You see where the wetland map is. It is so constrained today that five, that

would've never have been broken up and that would not have been a two point whatever acre parcel that would've been connected probably to the current property, which has the house on it.

[\(01:00:35\):](#)

And I guess if this variance goes forward, it's going to set precedent. There's already two other properties down Carpenter Creek on the same side of the road that are just as constrained. So I'm very, and they're for sale. Last time I checked for \$140,000, basically about the same size property as this, it was purchased for 35. They're just as constrained. I'm just really afraid this is going to send precedent down this creek. They're trying to restore the watersheds around here. Yes, there's a lot of houses that were built a long time ago. This creek needs a lot of work up and down. But if we're having any possibility in the future to bring this back to more of a natural setting and be the critical area that it is, we can't be approving things such as this. So sorry about, sorry, I'm getting a little bit emotional there if I am, but it's just very frustrating.

[\(01:01:30\):](#)

It's also very frustrating to find all the new documentation that comes out. Apparently you have to make some kind of public disclosure request even if you are an interested party. I do not understand that. How am I supposed to be able to find out what new information's coming to life to be able to come to this meeting? We all have lives and jobs. Another one is the signage for this. I know there's a few people on the call today. I bet there'd be five times as many people if there was a sign actually on Parcels Road, which is actually the main thing affected by this sign is on Drono wood, which I guess may be it is how it's done because that's where the house in front, but it's this tiny little sign with Reed Canary grass around it. So anyway, it is there and it has been for a long time. So probably according to the code, that's fine. But it just seems like in the future, this should be on the main road where the applicant is hoping to do this.

[\(01:02:33\):](#)

And yeah, I guess there's going to be other things that I'm going to think about after this. But all I know is that this has been the warmest year on record 2023. There's a reason we have critical areas and we need to actually speak. We need to actually make, think of these as critical areas as we move forward as the county grows. Yes, we need housing, but I don't agree that we need a house on this. We live in a 1200 foot farmhouse in the area. This applicant, I mean, if this goes forward, this applicant, this house should be as tiny as possible, maybe even two stories to have less impact on the impervious cover. So anyway, thanks for letting me talk. I don't know the applicant, I have no hard feelings towards them, but I also do not believe that this vari should go forward. And I appreciate your time today. Thank you.

Examiner Olbrechts: [\(01:03:34\):](#)

Thank you Mr. Blee. Okay. Anyone else? Let's see. Not seeing any takers now. I think we've got most of the people that we're participating. Yeah, it looks like that's it. We go back to staff. A few questions and then whatever other information you want to provide. Mr. Luer was talking about a 10 foot setback for the drain field. Is that going to be accommodated here in the front yard? Is there room for both the drain field and the setback or how's that going to work?

Ms. Kreifels: [\(01:04:05\):](#)

As far as the help district paperwork shows, that's exactly what would fit. And probably why a further reduction for the zoning setback was not requested because they do need to meet and place the drain field somewhere. And that is sized dependent on the need. So that's really in the hands of the health

District. And again, the health district has approved the design for that already. That's where we're at. Okay. Correct.

Examiner Olbrechts: (01:04:29):

And then I saw the home is going to be about 1600 square feet. Can you comment on it? Is that pretty consistent with the home sizes in the surrounding area? Do you know? Are they about that same size?

Ms. Kreifels: (01:04:48):

I believe so. They do have an attached garage on there and so that would hopefully reduce any additional need for garage.

Examiner Olbrechts: (01:04:59):

Okay.

Ms. Kreifels: (01:05:01):

Most of houses do have garages either detached or attached.

Examiner Olbrechts: (01:05:06):

Okay. And I just want to request as the examiner, I guess, for reasonable or these kind of variance requests in the last five years, see what kind of precedent has been set in the county for approval or disapproval? I mean, do you know off the top of your head, have there been many requests for these kind of buffer encroachments and

Ms. Kreifels: (01:05:26):

Well, I assume yes, because we do have a lot of critical areas in Kitsap County. I've only been with the county 11 months, but I do see a lot come through. There's been a lot of precedence.

Examiner Olbrechts: (01:05:37):

Okay. Yeah, I guess maximum of let's say a 10 or five years, whatever is the most, I guess there, does that make sense for past decisions?

Ms. Kreifels: (01:05:50):

Maybe an average per year?

Examiner Olbrechts: (01:05:52):

No, I mean a total either. Just go back far enough so that I get 10 and if all you have are four decisions in the last five years, then just give me four. Does that make sense?

Ms. Kreifels: (01:06:03):

Okay. Yeah. You would like that sent to you?

Examiner Olbrechts: (01:06:05):

Yes, yes. If I could. Yeah, I think it's important to be consistent with past decisions and that kind of thing.

Ms. Kreifels: [\(01:06:11\)](#):

Okay. So just to clarify, four years or

Examiner Olbrechts: [\(01:06:14\)](#):

No, no, five years. A maximum of 10. Just go back until you hit 10 and if you've hit five years back, then stop there. That's what I mean.

Ms. Kreifels: [\(01:06:23\)](#):

Do you want all approvals or all decisions or just approvals?

Examiner Olbrechts: [\(01:06:27\)](#):

Oh, decisions. Sorry. Yeah, I'm trying to, yeah, that's the most important is I want to see how many are denied too.

Ms. Kreifels: [\(01:06:34\)](#):

And just in comparable cases for single family

Examiner Olbrechts: [\(01:06:37\)](#):

Residents, single family residents on a lot zone for single family use. Yeah. Perfect. Thank you. Yeah, that would be great. Thanks. Let's see what else we got. I think that's the questions I had. Any other comments you want to make, Ms. Er? I'm sorry, to who? Any other comments you want to make this one cry? Yes,

Ms. Kreifels: [\(01:06:57\)](#):

I think staff is complete for now. I do have some responses for some of the comments, but I don't know that this is the correct time. Okay.

Examiner Olbrechts: [\(01:07:07\)](#):

Okay. Well, I mean this is the last chance for the staff to speak on this, so

Ms. Kreifels: [\(01:07:13\)](#):

Good point. I did make, just jot down a couple things. Mr. Hayman's concerns because concerning the presentation, we did show a 2021 aerial and a 1994 Ariel. I'm not sure if that's even a relevant response or if maybe that was missed, but it should be in the exhibits too. If they make a request and we not able, staff is not able to rely on the parcel mapping a hundred percent, which is why we request the professionals reports. And so that Kitsap County parcel search, we would love to update, but we're just not there yet with the technology. So we do have to use those reports to our advantage and for the information, that's

Examiner Olbrechts: [\(01:08:10\)](#):

All. Okay, great. Thanks. Very helpful. Thank you. Alright, applicant. Do you want to make any final comments, Shirley?

Speaker 5 [\(01:08:19\)](#):

Yes, can you hear me? Yeah.

Shirley: [\(01:08:21\)](#):

Yeah. I would just like to say I don't know those people either that are denying the application. I just want them to know that the original owner who did Kingston Country Estates, I met in 1988, an older gentleman, became close friends with him, purchased our property from him, and then the people that own the property, we're talking about Carol Batia. We have a shared well with her. It has never been a developed property. It has been a dumping ground for washers, dryers, RVs, whatever you can think of. And I have been the person who has maintained it since then, since I moved there in 91. Actually, I lived up the road in a rental house in 91, only because it never got taken care of. Actually, after her husband passed away, her real estate agent in Renton where she resides, contacted me about the property and said, do you want to purchase the property?

[\(01:09:25\)](#):

And I said, that was the only reason I have maintained it all these years. Tried to keep everything clear, only because I liked my neighborhood to look clean and my property next door, she came to me. I did not go to her looking to build or develop or anything, bought the property from her at the agreed price. And then out of curiosity, I asked the professionals, do you think I could build here? For one reason only for my in-laws who are now 74 years old, that need a place to live. That's the only reason it isn't. I am a builder in Kitsap County. I build all over between here and Idaho. I'm not building a spec home. This is not a place where I would, this isn't prime land to build a spec home. This is a small home. It's only one story because of their disabilities that they have no stairs except one step to the small garage.

[\(01:10:28\)](#):

That's the only reason we purchased the property and to control our neighbors. We didn't know who would develop her. As far as the machinery on the property, there has been only one small machine to clean up debris. And then the mowing of that field for my dog and I to walk, there's a mowed path out there. That property was hayed by a neighbor down the road, off Rash Road for a year after year after year, cut and hayed. And it hasn't been, that has not happened in at least 20 years or since Carol Vaio owned the property 30 years, I guess. But that's my only response. This isn't something to make money or it was a low cost at that point. 35,000. Yes. But the cost since then, just trying to get a permit, it was issued in September of 2021. Far exceeds the purchase price of the time and effort.

[\(01:11:35\)](#):

Biologist, engineers, everything. Permits of the actual purchase price. So yeah, I'm not looking to make money on this or turn it over or sell it to someone else. I will be the guy who maintains all the wetlands, the mitigation, the planting. And that's all obvious to me. I'm working on several projects now that are waterfront where we have to do that. We have to manage all that native plantings that's all done in the wintertime and scrutinized and pictures taken and reported to the county. So I'm familiar with all that process, but that's all I have to say.

Examiner Olbrechts: [\(01:12:15\)](#):

Okay. Thanks Mr. Shirley. Yeah. And there was a little testimony. The property costs \$35,000. Investment backed expectations are a factor in a legal analysis of whether you're getting reasonable use of your property, which can be pertinent to variance review. So I mean, was that kind of accurate testimony about the purchase price? And is that kind of less per acre than you would typically see with property that doesn't have wetlands on it?

Mr. Shirley [\(01:12:43\)](#):

Yes, it's a lot less. Okay. Alright. I mean, the only reason we purchased it was for those two reasons. One, if we could build a little place for my parents or two, just extend our boundary line as far as I was already maintaining the property. So I just wanted to have complete control of it if I could. Okay. That was,

Examiner Olbrechts: ([01:13:04](#)):

Yeah. Okay. I appreciate your direct response to that. Alright, I see Mr. Luer and Mr. Lee both have their hands up. Like I said before, I'm going to leave the record open until next Friday for Mr. Luer to, because I recognize there's a lot of documentation here and there's been some maybe miscommunications or whatever about getting full access. And that same access will be granted to Mr. Ble or anyone else who's had trouble seeing the documents. Just email Ms. Walston for how to access the documents and work that out with her. And then you'll have a chance to respond to that. So I don't know what the comments are from Mr. Lier and Mr. Vallee right now, but unless you can't wait to just make that part of your response to the documents. I mean, you're kind of out of order at this point, but Mr. Lier, did you still need to say something or can you just wait until next Friday to submit those comments? Okay, I see. Oh, there he is. Okay. Mr. Luer.

Speaker 5 ([01:14:06](#)):

Yes, Mr. Since there was mention made of your receiving new documents,

Ms. Lubischer: ([01:14:11](#)):

Can you require the county to distribute any new or revised documents to all the parties of interest?

Examiner Olbrechts: ([01:14:19](#)):

Yeah, I'm just asking for copies of prior decisions. That's like me looking at the county code. I'm allowed to what they call judicial notice of past decisions and the county code. But certainly Ms. Walton, if you can forward those decisions to Mr. Luer as well, that's fine. But yeah, the reason I want to look at that is I just want, it's important, especially with variance decisions, I think to be consistent in how variance decisions are applied so that there's predictability in how the code is put together and that kind of thing. So I just wanted to see how the past county hearing examiners have addressed variance requests for critical area buffers. So that's what it's there for. But we'll get copies to you of whatever I get. Is there anything else, Mr. Luer?

Ms. Lubischer: ([01:15:08](#)):

No, I just made that specific request because of the four way county has handled the wetland reports.

Examiner Olbrechts: ([01:15:16](#)):

Okay. Yeah, we'll get that to you then. So with that, I can't, normally at the end of a hearing, I, I'll kind of share my at least preliminary opinions of how I think I'm going to rule it. Since we're still going to wait for comments from the public. I have to keep an open mind until all the evidence is in. So as I said, anyone who needs to see any of those documents, go ahead and email Ms. Walton and Ms. Walton, if you could put your email address in the chat, I think for anybody who needs to contact you for that, then we can take care of it that way. And then I'll say the county has, how much time would you need to respond to the comments, Ms. Felder?

Ms. Lubischer: ([01:16:03](#)):

I would say if they are due by end of business day on Friday the 17th?

Examiner Olbrechts: (01:16:10):

I think it's the 19th actually. Yeah, next Friday 19th. Yeah. Okay.

Ms. Lubischer: (01:16:13):

I would say by the end of Monday.

Examiner Olbrechts: (01:16:16):

Oh, okay. On the 22nd. Alright. And then Mr. Shirley? For myself, yes. Sure. Okay. Understood. And then Mr. Shirley, I'll give you at least till the 24th and if a lot of comments come in, of course I'll extend that to a reasonable amount of time for you to respond to all that. Is that fair, Mr. Shirley? You there? Does that work for you? There he is.

Ms. Lubischer: (01:16:40):

There came,

Examiner Olbrechts: (01:16:42):

Yeah, that's fine. Alright, sounds good. I think that we're wrapped up for today. I deal a lot with these wetland requests, been doing this or reasonable use and variance requests. Been doing this for 30 years. Just one note for people wondering why these are approved so often, and again, I don't know how they do it in Kitsap County. So I'm going to take a look at past decisions to be consistent. I mean, I know generally across the state, people are given a right to build a single family home on a lot that's zoned for that purpose. If the lot is of a reasonable size for that. The reason why is that if it's denied, the property owner then has a constitutional takings claim against the county and can be compensated for the fact that they can't use their property. So that's the reason why these are often approved.

(01:17:31):

But sometimes you can still deny if the environmental constraints are significant enough, that kind of stuff. So I'll take a close look at that. I'll take a close look at how these decisions have been issued in the past, but it's more than just an issue of dealing with protecting wetlands. It's also property rights, unfortunately. And the federal courts are very restrictive about that and our state courts are as well. So we have to keep that in mind. And the Growth Management Act, one of their goals is to protect private property rights. So it's a balancing factor. It's a difficult situation and I'm going to be looking at this very closely and addressing all the concerns that were raised today. So thank you all for all the tremendous time you put into this. Everyone's done great work on this and the staff reports very thorough. Appreciate that. I know the applicant's had to jump a lot of hoops and this has taken a lot of time and as some of the members of the public bench. And I realize too, you're just volunteers concerned about the environment and I'm always appreciate that it's inspiring to see people care about their communities and work on this so hard. So with that, I'm going to adjourn for this afternoon. I do,

Ms. Kreifels: (01:18:40):

I do have a couple of questions. Sorry, just to clarify, I want to make sure I have dates right. So we have, the record will be kept open until Friday the 19th for public comments and then a staff response. And is a staff response regarding the requested information from you hearing Examiner about the five to 10 years of historical

Examiner Olbrechts: [\(01:19:00\)](#):

Information? No, that's a response to the public comments and I'd just like to get a copy of the decisions as soon as staff can get that together, hopefully within the next week or so. And then a copy of that should be, I guess, sent to Mr. Luer, wanted to see a copy of those as well.

Ms. Kreifels: [\(01:19:14\)](#):

Okay. And maybe, I don't know if I misheard, if Ms. Kreiff did You mean the following Monday as in

Examiner Olbrechts: [\(01:19:23\)](#):

22nd?

Ms. Kreifels: [\(01:19:23\)](#):

22nd or the, okay,

Examiner Olbrechts: [\(01:19:26\)](#):

22nd. Yeah. And Mr. Shirley has till the 24th after

Ms. Kreifels: [\(01:19:28\)](#):

That you had applicant comments due by the

Examiner Olbrechts: [\(01:19:32\)](#):

24th.

Ms. Kreifels: [\(01:19:33\)](#):

24th. Yeah. And also, sorry, just to clarify, for requests for folks that are emailing me for exhibits, what I would be able to send them is what is in the record, which you have admitted this point as one through 54,

Examiner Olbrechts: [\(01:19:49\)](#):

Right? That's correct, yes. Yeah.

Ms. Kreifels: [\(01:19:51\)](#):

Alright. And then also, once staff gets the report with the information you've requested, I'll also forward that to Mr. Luer. Okay. And anybody else that's requested copies of the exhibits?

Examiner Olbrechts: [\(01:20:02\)](#):

Yeah,

Ms. Kreifels: [\(01:20:03\)](#):

Yeah. Does that sound correct?

Examiner Olbrechts: [\(01:20:04\)](#):

Yes. Yeah. Yeah. And Ms. Kreer, again, just a maximum of 10 decisions, go back, whichever is less 10 decisions or going back five years. So no more than 10. Thank you for

Ms. Kreifels: ([01:20:17](#)):

That clarification. And my Monday deadline that was responding to any additional public comments coming in by the end of closed business day on Friday. That's

Examiner Olbrechts: ([01:20:27](#)):

Right. So

Ms. Kreifels: ([01:20:28](#)):

I just want to clarify that.

Examiner Olbrechts: ([01:20:29](#)):

Thank you. Okay, perfect. Okay, I think we're all set. Alright. Thanks again for everyone's patience. We're adjourned for today. Have a great day.