



Rafe Wysham
Director

KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

To enable the development of quality, affordable, structurally safe and environmentally sound communities.

Notice of Hearing Examiner Decision

8/8/2025

To: Interested Parties and Parties of Record

RE: Project Name: RASE - Single Family Residence Critical Area Variance
Applicant: DAVID & GAIL RASE
5320 SEABECK HWY NW
BREMERTON, WA 98312
Application: CVAR
Permit Number: 23-03173

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit 23-03173: RASE - Single Family Residence Critical Area Variance (CVAR)**, subject to the conditions outlined in this Notice and included Decision.

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

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

<https://www.kitsap.gov/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>.

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

The complete case file is available for review by contacting the Department of Community Development; if you wish to view the case file or have other questions, please contact help@kitsap1.com or (360) 337-5777.

CC:

Applicant/Owner: David & Gail Rase, davidrase@q.com

Authorized Agent: Juli Sullivan with Kitsap Permits, juli@kitsappermits.com

Biologist: Joanne Bartlett with Eco Land, joanne@eco-land.com

Interested Parties: Rod Malcom – Suquamish Tribe,
rmalcom@suquamish.nsn.us; Douglas Kitchens,

dougkitchens@gmail.com; Keith Picker, kpicke@juno.com; Jim & Elaine Davis, jim129732@gmail.com; Jorge Nelson, dr.jorgenelson@gmail.com

Prosecutor's Office

Assessor's Office

DCD

Kitsap Sun

Health District

Public Works

Parks

Navy

DSE

Kitsap Transit

Central Kitsap Fire District

Bremerton School District

Puget Sound Energy

City of Bremerton Planning Director

Water Purveyor: City of Bremerton Water Utility

Sewer Purveyor: KPUD 1

Point No Point Treaty Council

Suquamish Tribe

Port Gamble S'Klallam Tribe

Squaxin Island Tribe

Puyallup Tribe

Skokomish Tribe

WA Dept of Fish & Wildlife - SEPA

WA Dept of Transportation/Aviation

WA State Dept of Ecology - SEPA

WA State Dept of Ecology - Wetland Review

WA State Dept of Transportation

WA State Dept of Health

WA State Dept of Natural Resources

WA State Dept of Archaeology and Historic Preservation

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3 **BEFORE THE HEARING EXAMINER FOR KITSAP COUNTY**

4 Phil Olbrechts, Hearing Examiner

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RE: David and Gail Rase Critical Area Variance File No. 23-03173	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION.
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10 **INTRODUCTION**

11 David and Gail Rase request approval of a critical areas variance to reduce a Type F
12 stream buffer from 150 feet and a 15-foot building setback, down to a 42-foot buffer
13 and a 7.5-foot building setback for a lot located at 1930 Northlake Way N.W.
14 Bremerton. The entire lot under consideration is encumbered by the stream and its
buffer. The variance is approved subject to conditions.

15 **ORAL TESTIMONY**

16 A computer-generated transcript of the hearing has been prepared to provide an
17 overview of the hearing testimony. The transcript is provided for informational
18 purposes only as Exhibit 27 and should not be considered part of the administrative
record.

19 **EXHIBITS**

20 Exhibits 1-23 listed in the Index to the Record prepared by County staff were admitted
21 during the hearing. The following exhibits were also separately admitted during the
hearing:

22 Exhibit 24: Written comment from Keith Picker
23 Exhibit 25: Written comment James and Elaine Davis
24 Exhibit 26: Written comment Jorge Nelson
25

FINDINGS OF FACT

Procedural:

1. Applicant. David & Gail Rase, 5509 W Gross Rd, Bremerton, WA 98312
2. Hearing. The Hearing Examiner conducted a virtual hearing on the application at 9:30 am on July 24, 2025.

Substantive:

3. Site/Proposal Description. David and Gail Rase request approval of a critical areas variance to reduce a Type F stream (Kitsap Creek) buffer from 150 feet and a 15-foot building setback, down to a 42-foot buffer and a 7.5-foot building setback for a lot located at 1930 Northlake Way N.W. Bremerton.

Previously, there was a manufactured home located 39 feet from the Type F stream. That home was removed in 2018.

4. Characteristics of the Area. The surrounding area is wooded with rural residential property and sporadic single-family residences.

5. Adverse Impacts. No significant adverse impacts are anticipated from the proposed variance. Pertinent impacts area addressed as follows:

- A. No Net Loss. The proposal will result in no net loss of ecological function. As mitigation, invasive vegetation will be removed and native vegetation planted. The proposed mitigation plan compensates for the proposed buffer impacts at a ratio of 1.38:1. The plan will remove all ivy from the buffer totaling an area of 6,049 square feet, and includes planting 8,439 square feet, which will improve the conditions and functions of the stream buffer, and work to achieve no net loss of functions.

The finding of no net loss is primarily based upon the conclusions of the Applicants' habitat management plan (HMP), Ex. 16, p. 16. That report finds that with recommended mitigation the proposal will result in no net loss of ecological function. It's no net loss analysis was based upon the following:

¹ The letter from Rod Malcolm was inadvertently not included in the exhibit list for the project. However, the Applicant clearly had an opportunity to respond to the letter since a response from its project biologist was included in the exhibit list as Exhibit 9.

1 *Buffer plantings are proposed to compensate for the buffer reduction*
2 *and increase the function of the buffer to achieve the county's goal of*
3 *no net loss of critical area functions and values and to maintain viable*
4 *fish and wildlife populations and habitat over the long term. By*
5 *focusing buffer enhancement closest to the stream, additional human*
6 *exclusion and wildlife habitat will be provided to the riparian corridor*
7 *and the plantings will provide increased noise and light screening*
8 *from upland development. The plantings, buffer fence, and buffer will*
9 *be installed prior to construction to account for any temporal loss of*
10 *buffer function. The project will not directly affect federal, or state*
11 *listed plants or animals because there are no listed species or habitat*
12 *identified within the vicinity of the site. The project will not directly*
13 *affect the condition or habitat available within the watershed and will*
14 *not remove or reduce habitat features available to local wildlife*
15 *species. There will be no negative effect on the stream system or its*
16 *use by wildlife*

17 HMP, p. 12.

18 Several reports were consulted to assess whether the proposed buffer mitigation
19 plan will increase the function of the buffer. These reports include the
20 Washington Department of Fish and Wildlife Management Recommendations
21 for Washington's Priority Habitats: Riparian (Knutson and Naef 1998) and
22 Washington Department of Ecology Wetland Buffers: Use and Effectiveness
23 (Castelle et al 1992) in addition to professional knowledge and experience in
24 assessing buffer conditions and functions. From these sources the HMP was able
25 to conclude that available wildlife habitat will increase as well as overall buffer
function.

In Ex. 27 the Suquamish Tribe identifies that the proposed buffer width is not
consistent with current best available science. However, the Tribe fails to
establish or even contest the findings of the Applicant's biologist that buffer
functions will improve as a result of the proposed mitigation. Consequently, it
must be concluded that even though the buffer width isn't consistent with best
available science, the removal of invasive species as proposed by the Applicant
will still result in an improvement to buffer function. One point the Applicant
fails to address, however, is that the invasive species are likely to return after the
proposed five-year monitoring period. Although five year monitoring periods
may be currently specified by Kitsap County regulations, that generic
requirement doesn't support the conclusion that the unique invasive species
conditions of the project will be significantly improved by a combination of
invasive removal and five year monitoring. Five years is not adequate mitigation
for such a significant buffer encroachment if reintroduction of the invasive
species as likely as asserted by the Tribe. For these reasons the monitoring
period is extended to 20 years.

1 The habitat management plan was written by a biologist and the report
2 thoroughly assesses project impacts. The recommendations of the habitat
3 management plan are made conditions of approval.

- 4 B. Geological Hazards. Geologic impacts are adequately mitigated. Kitsap
5 County GIS critical-area mapping indicates a stream and floodplain along the
6 east property line, moderate seismic hazard off-site (and within 200-ft) to the
7 west, and moderate landslide hazard off-site (and within 200-ft) to the east. A
8 geologic assessment report by Wnek Engineering, dated November 21, 2021,
9 included presents the results of a soil and slope assessment directed at
10 evaluating geologic conditions at the referenced parcel.

11 There are no indicators of high hazard geologic areas within the parcel area,
12 and there is no proposed construction that will require engineering design
13 recommendations or mitigation measures to successfully construct the proposed
14 project. This geologic assessment report satisfies the intent of the Kitsap County
15 critical areas ordinance for geologically hazardous areas, KCC 19.400.440, for
16 this proposed project and is provided to comply with KCC 19.400.440.D.2
17 “Geologic Report”. A full geotechnical engineering investigation is not
18 warranted (Wnek, 11/21/21). A geologic assessment report addendum provided
19 by Wnek, dated October 31, 2022, was issued with some recommendations to
20 assure slope stability. Those recommendations are implemented as conditions
21 of approval.

- 22 C. Compatibility. The proposal is found compatible with the surrounding
23 residential development as it is composed of a modest sized home.

- 24 6. Minimum Necessary. The requested variance is the minimum necessary to afford
25 relief. As shown in Figure 2 of the HMP, the entire lot is encumbered by Kitsap Creek
and its 150-foot buffer. The SFR proposes a footprint of 1,215 square feet, which is
very modest for a single-family home.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. KCC 19.300.315A5aiii provides that
stream buffer reductions for single-family homes greater than 50% shall be subject to
Type III variance approval. KCC 21.04.100 provides that Type III variances are
subject to Hearing Examiner review and approval.

Substantive:

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

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

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

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

4. Criterion met. The criterion is met. The property is subject to special circumstances because it is completely encumbered by stream buffers as outlined in Finding of Fact No. 6. That circumstance deprives the Applicants of property rights and privileges enjoyed by others in the vicinity because without the variance the Applicants would not be prohibited from building a home or any other critical area nonexempt structure on their property. The construction of a single-family home is a right that would be generally available to any other property of similar size that would not be encumbered by critical area limitations.

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

5. Criterion met. The criterion is met. The circumstances are a natural condition of the property resulting from application of the County's critical area regulations to the wetlands and stream of the project site.

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

6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No. 5. Approval of the variance is consistent with the policies and purposes of Title 19 as identified in KCC 19.100.105 because there will be no net loss of ecological function under the mitigation plan proposed by the Applicants.

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

1 7. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
2 6.

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

5 8. Criterion met. The criterion is met. KCC 19.150.510 defines Reasonable
6 Alternative as “*an activity that could feasibly attain or approximate a proposal’s*
7 *objectives, but at a lower environmental cost or decreased level of environmental*
8 *degradation*”. As determined in Finding of Fact No. 6, there is no other reasonable
9 alternative available to the Applicants.

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

12 9. Criterion met. The criterion is met by the applicant’s mitigation plan and habitat
13 management plan, Ex. 4 and 5.

14 **DECISION**

15 Based upon the conclusions of law above, the variance application is approved subject
16 to the following conditions:

17 **a. Planning/Zoning**

18 1. Review the linked Hearing Examiner decision for conditions of approval. The Staff
19 Report conditions below are only recommended conditions to the Hearing Examiner
20 and may not be valid.

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

23 3. This Variance approval shall automatically become void if no building permit
24 application is accepted as complete by the Department of Community Development
25 within four (4) years of the Notice of Decision date or the resolution of any appeals.

1 The authorization granted herein is subject to all applicable federal, state, and local
2 laws, regulations, and ordinances. Compliance with such laws, regulations, and
3 ordinances is a condition to the approvals granted and is a continuing requirement of
4 such approvals. By accepting this/these approvals, the applicant represents that the
5 development and activities allowed will comply with such laws, regulations, and
6 ordinances. If, during the term of the approval granted, the development and activities
7 permitted do not comply with such laws, regulations, or ordinances, the applicant
8 agrees to promptly bring such development or activities into compliance.

9 5. The decision set forth herein is based upon representations made and exhibits
10 contained in the project application Permit #23-03173. Any change(s) or deviation(s)

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

3 6. A current Building Site Application from Health District for onsite septic must be
4 provided prior to building permit approval.

5 **b. Development Engineering**

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

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

17 3. If the project proposal is modified from that shown on the site plan approved for
18 this permit application, Development Engineering will require additional review and
19 potentially

20 **c. Environmental**

21 4. All development activity shall conform to the recommendations of the Geologic
22 Assessment Report and Geologic Assessment Addendum, Ex.11 and 12.

23 5. Permit approval subject to chapter 19.300.315 of Kitsap County Code, which states
24 that buffers or setbacks shall remain undisturbed natural vegetation areas except where
25 the buffer can be enhanced to improve its functional attributes. Refuse shall not be
placed in buffers.

6. There shall be no clearing of vegetation or grading in the buffer area, as is depicted
on the approved site plan. Prior to any clearing or development, please contact
Development Services and Engineering Environmental staff at (360)337-5777 to
confirm buffer boundaries.

7. A 42-foot native vegetation buffer shall be retained along the perimeter of the
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.

8. Prior to occupancy, the common boundary between the STREAM buffer and the
adjacent land shall be permanently identified with critical area buffer signs. Critical

Area Ordinance (CAO) signs shall be placed along the designated boundary spaced approximately 50 feet apart, visual from sign to sign, and as recommended by the biologist. Signs must be attached to existing trees with diameter breast height greater than 4 inches. Alternative methods include 4x4 posts, metal posts or split rail fencing. Signs are provided at issuance and installation of the signs is required prior to final inspection and Certificate of Occupancy (CO).

9. Monitoring and maintenance permit is required. Monitoring and maintenance of the planted area shall be conducted for twenty years, and extended, if necessary, after DCD staff approves planting. Monitoring includes live and dead vegetation counts and records of all maintenance activities. Maintenance activities can be defined as, but are not limited to, removal practices on invasive or nuisance vegetation and watering schedules. Monitoring information shall be summarized in a letter with photographs depicting the conditions of the vegetation and overall site. Monitoring reports are due to Kitsap County Department of Community Development Services and Engineering Division annually. If more than 20 percent of 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. 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, 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 Inspector shall be made prior to additional inspections. Any assignment of savings, financial surety or other like security for maintenance of the buffer mitigation plan shall only be released if monitoring requirements are satisfied in the final year of the monitoring term.

Dated this 6th day of August, 2025.

Phil Olbrechts

Phil Olbrechts,
Kitsap County Hearing Examiner

Appeal Right and Valuation Notices

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.