



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

6/1/2026

To: Interested Parties and Parties of Record

RE: Project Name: DALEY - Shoreline Type III Variance -  
Wetlands and Streams for Single-Family  
Residence & DALEY - Shoreline  
Substantial Development Project  
Applicant: Paul & Cathy Daley  
PO Box 1655  
Port Angeles, WA 98362  
Application: SVAR & SSDP  
Permit Number: 24-01857 (SVAR) & 25-00205 (SSDP)

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit 24-01857: DALEY - Shoreline Type III Variance - Wetlands and Streams for Single-Family Residence (SVAR) and Permit 25-00205: DALEY - Shoreline Substantial Development Project (SSDP)**, 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](mailto:help@kitsap1.com) or (360) 337-5777.

CC:

Applicant/Owner: Paul and Cathy Daley, [pccd@olympen.com](mailto:pccd@olympen.com)

Authorized Agent: Joanne Bartlett, [joanne@eco-land.com](mailto:joanne@eco-land.com)  
Architect: David Fall, [Davef@buildingart.com](mailto:Davef@buildingart.com)  
Interested Parties: Dale Leighton, [daleeleightoned@gmail.com](mailto:daleeleightoned@gmail.com)  
DCD Staff Planner: Keith Hafner, [khafner@kitsap.gov](mailto:khafner@kitsap.gov)  
Prosecutor's Office  
Assessor's Office  
DCD  
Kitsap Sun  
Health District  
Public Works  
Parks  
Navy  
DSE  
Kitsap Transit  
South Kitsap Fire District  
South Kitsap School District  
Puget Sound Energy  
Water Purveyor: Manchester Water District 11  
Point No Point Treaty Council  
Suquamish Tribe  
Port Gamble S'Klallam Tribe  
Squaxin Island Tribe  
Puyallup Tribe  
Skokomish Tribe  
WA Dept of Natural Resources  
Dept of Archaeological Historic Preservation  
WA Dept of Fish & Wildlife  
WA Dept of Transportation/Aviation  
WA State Dept of Ecology-SEPA  
WA State Dept of Ecology-Wetland Review  
WA State Department of Ecology – Shoreline  
WA State Dept of Transportation

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**BEFORE THE HEARING EXAMINER FOR KITSAP COUNTY**

Emily Terrell, Hearing Examiner

<p>RE: Daley</p> <p>Shoreline Variance, Shoreline Substantial Development Permit and Critical Areas Variances</p> <p>File No. SVAR 24-01857 SSDP 25-00205</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION</b></p>
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**INTRODUCTION**

Paul and Cathy Daley request approval of two critical areas variances (CVAR) for impacts to wetland and stream buffers, a shoreline variances (SVAR) to place utilities in the wetland and across the stream and a shoreline substantial development permit (SSDP) to construct a 3-story, 1,201sf single family residence and attached accessory dwelling unit on their property at 90XX SE Southworth Drive, Port Orchard (APN 342402-4-010-2006). The property is totally encumbered by overlapping critical areas including three wetlands, a fish bearing Type F stream, steep slopes and state regulated shoreline. A septic drainfield is proposed offsite on adjacent property within an easement. A transport line will extend across the stream via a planned I-Beam bridge and up the steep slopes to the south. One CVAR variance request proposes a reduction of the 110-foot buffer of a Category II wetland to 24 feet. The other CVAR variance application proposes to reduce the 150-foot buffer to a Type F stream to a minimum of 15 feet. The SVAR seeks to allow the construction of sewage utilities across the stream and through Wetland B/C. The applications are approved subject to conditions.

**ORAL TESTIMONY**

Kitsap County Planner Keith Hafner summarized the staff report. The Applicant's Architect David Fall explained there will be two living floors above garages for a three story overall accessory dwelling unit. The Applicant's environmental scientist Joanne Bartlett thanked the County staff. The Applicant Paul Daley also thanked the staff. Neighbor Dale Leighton welcomed the Daleys to the neighborhood.

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**EXHIBITS**

Exhibits 1-23 listed in Section 8 of the April 20, 2026 staff report were admitted into the record during the May 14, 2026 hearing.

**FINDINGS OF FACT**

**Procedural:**

1. Applicant. Paul and Cathy Daley, P.O. Box 1655, Port Angeles, WA 98362.
2. Hearing. The Hearing Examiner conducted a virtual and in person hearing on the application at 9:00 am on May 14, 2026.

**Substantive:**

3. Site/Proposal Description. Paul and Cathy Daley request approval of two critical areas variances (CVAR) for impacts to wetland and stream buffers, a shoreline variances (SVAR) to place utilities in the wetland and across the stream and a shoreline substantial development permit (SSDP) to construct a 3-story, 1,201sf single family residence and attached accessory dwelling unit on their property at 90XX SE Southworth Drive, Port Orchard (APN 342402-4-010-2006). The property is totally encumbered by overlapping critical areas including three wetlands, a fish bearing Type F stream, steep slopes and state regulated shoreline. A septic drainfield is proposed offsite on adjacent property within an easement. A transport line will extend across the stream via a planned I-Beam bridge and up the steep slopes to the south. The new residence and ADU will be constructed on the northeastern portion of the site.

The vacant parcel includes shoreline to the north. The main site is separated from the shoreline by SE Southworth Drive. The developable portion of the site slopes up to the south. Vegetation includes forested upland on the steep slopes south of the unnamed stream with bar shrub and herbaceous layers.

The property takes direct access from SE Southworth Drive, a County maintained road. Parking requirements are met as the Applicant will provide four garage spaces.

The property is constrained by multiple critical areas including steep slopes, Category II and IV wetlands, an unnamed stream, and shoreline on the opposite side of the road. The proposed building site is in a relatively level area between Wetland A and the unnamed stream, with a driveway entering from the northeast corner. The Applicant requests critical areas buffer and setback reductions for the stream and wetlands on the property.

1 The northern wetlands and streams carry a shoreline designation since they directly  
2 connect to the shoreline within the 200 ft shoreline jurisdiction. Due to the property  
3 size, it is infeasible to build outside of the two onsite wetland buffers and stream  
4 buffers. A Category II Depressional Wetland includes a buffer of 110 ft, a Category IV  
5 Slope wetland 40 ft and a Stream Type F 150 ft.

6 One CVAR variance request proposes a reduction of the 110-foot buffer of the  
7 Category II wetland to 24 feet. The other CVAR variance application proposes to  
8 reduce the 150-foot buffer to the Type F stream to a minimum of 15 feet. The SVAR  
9 seeks to allow the construction of sewage utilities across the stream and through  
10 Wetland B/C.

11 Buffer mitigation, primarily removal of invasive non-native plant species, is proposed  
12 in both buffers to improve conditions and compensate for buffer impact. The project  
13 impacts 3,077sf of wetland and stream buffers. The proposal also includes 975 linear  
14 ft of restoration along the septic transport line and totals 975sf, which will take place  
15 in the excavated trench after the soil is placed over the pipe. The proposal includes a  
16 mitigation maintenance and monitoring plan for a period of five years.

17 4. Characteristics of the Area. Yukon Harbor in Puget Sound is to the north of  
18 the project site. To the south, east and west are single-family residences. The entire  
19 area is zoned Rural Residential and designated Residential Shoreline in the Shoreline  
20 Master Program.

21 5. Adverse Impacts. No significant adverse impacts are anticipated from the  
22 proposed variance. A Mitigated Determination of Non-Significance was issued on  
23 December 4, 2025. A condition of approval requires the Applicant to comply with the  
24 SEPA Mitigation measure. Specific issues are addressed below.

25 A. Cultural Resources. As conditioned, no adverse impacts to historical or cultural  
resources are anticipated. The County received no agency or tribal comments  
regarding the proposal. However, at the recommendation of County staff, a  
condition of approval will require the Applicant to notify the Kitsap County  
DCD, the Washington State Staff Office of Archaeology and Historic  
Preservation, and the affected tribes if archaeological resources are uncovered  
during excavation.

B. Views and Aesthetics. As proposed, the project is not anticipated to block views  
and will provide for compatible aesthetics to adjacent uses. The proposed  
single-family use is compatible with the surrounding single-family residences.  
The building will meet the maximum height limit. The planned development is  
located landward of the neighboring view line to the south, and site obscuring  
trees and vegetation block the neighboring view line to the north. As proposed,  
there are no view impacts from the development related to the view line.

1 C. Compatibility. The proposed project will be compatible with surrounding uses.  
2 As noted in Finding of Fact No. 4, the project site is surrounded by similar  
3 single family residential uses. This use is a preferred use in the Residential  
4 Shoreline designation within the SMP. With the exception of the critical areas  
5 buffer area reductions and the placement of a septic transport line within the  
6 critical area subject to the variances, the project will otherwise provide for a  
7 modest footprint residential structure and its appurtenant uses that otherwise  
8 meet all bulk and dimensional standards of the zone and will appear in use,  
9 intensity and function similar to the surrounding uses.

10 D. Critical Areas. As conditioned and mitigated, there will be no adverse impacts  
11 to critical areas. The project site is within the shoreline jurisdiction and is  
12 completely encumbered by steep slopes, wetlands and streams and their buffers  
13 and building setbacks. The entire building area is composed of overlapping  
14 wetland and stream buffers while remainder of the site is either the shoreline of  
15 Yukon Harbor or geologically hazardous steep slopes. There are two wetlands  
16 onsite (Wetland A and Wetland B/C), an unnamed Type F stream, and steep  
17 slopes that qualify as landslide and erosion hazards.

18 1. Wetlands. As mitigated and conditioned, no adverse impacts to  
19 wetlands or their buffers are anticipated. There are two on-site wetlands  
20 impacting on the project site. The Shoreline Assessment and No Net  
21 Loss Report (Ex. 16, page 12) states the proposed homesite has been  
22 placed where it and the driveway/parking apron are centrally positioned  
23 between Wetland A and the unnamed stream, affecting the buffer of  
24 each equally. The total buffer impact from the house and parking is  
25 3,077sf. The proposed mitigation is 5,007sf.

Wetland A is a 376sf category II depressional system that is seasonally  
flooded with water. The Wetland A standard buffer is 110 feet. The  
Applicant requests a critical areas variance to reduce the buffer from the  
driveway to 14 feet and from the house to 24 feet. These represent a  
78% and 87% buffer reduction from the driveway and house,  
respectively (Ex. 16). Ex. 16 states Wetland A appears to have formed  
as a result of roadside runoff and features a high bank up from the  
wetland to the homesite.

Mitigation for Wetland A impacts include removal of invasive species  
while preserving the retaining as many trees as possible. The project  
will replant the buffer at a 1:1 mitigation ratio with native species. The  
buffer will be densely planted with native upland and riparian species to  
allow the narrower buffer to function as well or better than the standard  
required buffers. The terrain along the wetland will remain to provide  
as much protection for the critical area as possible. As noted in Findings  
of Fact 7D and 7G, conditions of approval will require the Applicant to

1 comply with strict stormwater and erosion and pollution control best  
2 management practices.

3 Wetlands B and C are considered together as a complex at the request  
4 of the Department of Ecology. Wetland B/C is a 4,335sf Category IV  
5 slope wetland with a standard 40-foot buffer. The project design  
6 proposes maintaining the standard buffer; however, the Applicant  
7 requests a shoreline variance to allow for the construction of a septic  
8 transport line through the wetland (Ex 13). There is no practicable  
9 alternative to the septic transport line placement because of the  
10 extensive critical areas encumbering the entire site. The impacts will  
11 include vegetation and soil removal from the wetland itself as well as  
12 its buffers. Mitigation for Wetland B/C impacts includes restoration of  
13 the impacted area with soil and the planting of 30 plant species. The  
14 proposed restoration area for the transport line is 975sf, which is the  
15 entire impact area of the transport line.

16 A condition of approval will require the Applicant to implement the  
17 Impact Avoidance and Minimization Measures of the Shoreline  
18 Assessment and No Net Loss Report (Ex. 16) including best  
19 management practices (BMPs). Monitoring will be conducted yearly to  
20 track the success of the plants and will identify any watering or invasive  
21 plant removal needs. Failed plants will be replaced. The monitoring will  
22 be conducted annually for five years. Annual reports will be submitted  
23 to the Kitsap County Department of Community Development by the  
24 calendar end of each year.

- 25 2. Stream. As mitigated and conditioned, no adverse impacts to the on-site  
stream are anticipated. There is an onsite unnamed stream originating  
approximately a mile upslope on the south side of Sedgwick Road and  
flowing through a topographic ravine. The stream crosses two east  
adjacent properties before entering the project site. The stream leaves  
the west line and flows northerly toward Yukon Harbor via a culvert  
under Southworth Drive (Ex. 16). The stream crosses through the center  
of the property. The stream is confined to a shallow channel with a  
defined bank on the north side, which dips down towards the  
development pad. The south stream bank is represented by a steep slope  
down from the south. The proposed septic transport line will cross the  
stream.

The onsite stream is Type F with a standard 150-foot wetland buffer.  
According to the critical areas report (Ex. 16), the stream meets the Type  
F criteria because it is at least two feet wide on average. The Applicant  
requests a critical areas variance to reduce the buffer to 15 feet, a 90%  
reduction (Ex. 16).

1 The Applicant requests a shoreline variance to allow for the construction  
2 of a septic transport line through the wetland (Ex 13). The proposed  
3 stream crossing for the septic transport line will be an I-beam laid across  
4 the top of the stream to carry the transport line. The transport line will  
5 consist of a 1” poly line threaded through a 2” poly sleeve attached to  
6 the I-beam using corrosion resistant straps. Vegetation removal will be  
7 minimal because of the presence of multiple downed trees and the use  
8 of an I-beam rather than a bridge (Ex. 16). The staff report notes the  
9 Washington Department of Fish and Wildlife confirmed the project will  
10 not require a Hydraulic Project Approval permit.

11 Mitigation for the stream impacts will be similar to the wetland  
12 mitigation. Plants will be compensated at a 1:1 ratio and will entail  
13 enhancement of the buffers through removal of invasive species and  
14 planting of native species. Native plants will be installed along the west  
15 property line to serve as a screen for the house’s visual impact and to  
16 protect the off-site portion of the stream. The critical areas report (Ex.  
17 16) states the placement of the transport line will avoid “any and all  
18 impacts” to the stream and Wetland B/C (Ex. 16, page 11).

19 A condition of approval will require the Applicant to implement the  
20 Impact Avoidance and Minimization Measures of the Shoreline  
21 Assessment and No Net Loss Report (Ex. 16) including best  
22 management practices (BMPs). Monitoring will be conducted yearly to  
23 track the success of the plants and will identify any watering or invasive  
24 plant removal needs. Failed plants will be replaced. The monitoring will  
25 be conducted annually for five years. Annual reports will be submitted  
to the Kitsap County Department of Community Development by the  
calendar end of each year.

3. Erosion and Landslide Hazardous Areas. As proposed, no impacts from erosion and landslide hazardous areas are anticipated. The Applicant provided a Geotechnical Report from Envirotech Engineering (Ex. 3). The site is impacted by landslide hazardous and erosion hazard areas. The report states that the slope stability analysis identified critical slopes that could be prone to landslides; however, no critical slopes occur near the proposed development area. The report also noted the presence of erosion hazard areas which will require temporary and permanent erosion control measures (See Finding of Fact 7D and 7G). Envirotech determined engineered erosion control plans are not required. The report concluded that the development could occur subject to recommended conditions. The report also noted any retaining walls should be designed by a structural or geotechnical professional. A condition of approval

1 requires the Applicant to implement the Engineering Recommendations  
2 to the Geotechnical Report (Ex. 3)

3 4. Shoreline. As conditioned and mitigated, no adverse impacts to the  
4 shoreline are anticipated. Additionally, the project will result in no net  
5 loss of ecological function.

6 i. Shoreline Buffer. No impacts to the shoreline buffer are  
7 anticipated. The subject property extends from the subtidal zone  
8 of Yukon Harbor across Southworth Drive and landward to the  
9 south. The buffer width for the harbor's shoreline is 85 feet. The  
10 landward portion of the site on the far side of Southworth Drive  
11 is outside of the shoreline buffer. All construction will be  
12 landward of the shoreline buffer. As noted above in Finding of  
13 Fact 5.D.2 and below in Finding of Fact 7B, the Applicant  
14 requests a shoreline variance because the Kitsap County SMP  
15 prohibits the placement of utilities within critical areas buffers.

16 ii. No Net Loss. The proposal will result in no net loss of ecological  
17 function. The Applicant submitted a Shoreline Assessment and  
18 No Net Loss Report (Ex. 16) prepared by Joane Bartlett a Senior  
19 Biologist at Ecological Land Services. The report concludes that  
20 as designed, the proposal will result in no net loss of ecological  
21 function for the seven reasons identified on Page 21 of the No  
22 Net Loss Report (Ex. 16). The conclusions of the report are  
23 uncontested with no information in the record reasonably  
24 suggesting a contrary conclusion. Mitigation measures were  
25 proposed for the wetland and stream impacts.

A condition of approval will require the Applicant to implement  
the Impact Avoidance and Minimization Measures of the  
Shoreline Assessment and No Net Loss Report (Ex. 16)  
including best management practices (BMPs).

iii. Navigation. No work will be done within navigable waters and  
the proposal thus will have no impact upon navigation.

6. Shoreline Master Program General Goals and Policies. As mitigated and  
conditioned, the proposal will comply with the Shoreline Master Program Goals and  
Policies. The staff report went into detail describing how the project complies with the  
applicable policies of the County's Comprehensive Plan (Ex. 1, Section 7, pages 4-8).  
Neither the staff report nor any testimony described the project's compliance with the  
Shoreline Master Program goals and policies (KCC 22.300.145). However, there is  
ample evidence within the staff report, primarily due to overlap between the  
Comprehensive Plan and the Shoreline Master Program policies, to describe the

1 project's compliance with the Shoreline Master Program goals and policies. The stated  
2 goal of the Kitsap County Shoreline Master Program is:

3 *To ensure that the statewide interest is recognized and protected over the local*  
4 *interest in shorelines of statewide significance, the county shall review all*  
5 *development proposals within shorelines of statewide significance for consistency*  
6 *with RCW 90.58.020 and the countywide policies enumerated in KCC 22.300.145.*

7 The adopted Kitsap County Shoreline Master program was reviewed by the Department  
8 of Ecology and is therefore found to be in compliance with RCW 90.58.020.

9 The following more specifically address the project's compliance with the Shoreline  
10 Master Program goals and policies (KCC 22.300.145.B):

11 A. Outside Consultation. This project has provided opportunities for adequate  
12 comment from the Washington Department of Fish and Wildlife, the  
13 Department of Ecology, affected tribes, other resources agencies and interest  
14 groups through the notification of application (Ex. 12) and the notice of public  
15 hearing (Ex. 21). No outside comments from agencies or tribes were received.  
16 The County received no comments on the December 4, 2025 SEPA MDNS (Ex.  
17 15).

18 B. Shoreline Character. As mitigated and conditioned, the natural character of the  
19 shoreline will be preserved. No work is proposed near or waterward of the  
20 ordinary high-water mark (OHWM). The planned development will all occur on  
21 the landward side of the intervening County maintained road, SE Southworth  
22 Drive. As described above in Finding of Fact No. 5D, the Applicant has  
23 requested wetlands and stream buffer reductions via critical areas variances to  
24 allow for development of a modest single-family home and attached accessory  
25 dwelling unit. The Applicant also requested a shoreline variance to permit the a  
septic line crossing of the on-site stream and Wetland B/C. Without the critical  
areas and shoreline variances, the project site is unbuildable. The variances  
permit the Applicant the minimum reasonable use of the property in the manner  
enjoyed by surrounding properties within the zone. Impacts will be fully  
mitigated resulting in no net loss of ecological function of the Yukon Harbor  
shoreline or the associated wetlands and stream.

26 C. Long-Term Benefit. As mitigated and conditioned, the project will provide a  
27 long-term benefit. As noted above, no work will occur within at least 85 feet of  
28 the OHWM. The existing shoreline and submerged areas will not be impacted.  
29 There will be no impact on shellfish beds or navigable harbors. As described in  
30 Finding of Fact 5D, the project will not detrimentally alter natural conditions of  
31 the shoreline. As noted in Finding of Fact No. 3, the project will construct the  
32 minimum reasonable footprint for a single-family residence and will comply  
33 with all bulk and dimensional standards of the zoning code. The single-family

1 home will be character, scale and intensity with the surrounding uses (See  
2 Finding of Fact No. 4 and 5C). The requested variances permit the Applicant to  
develop the property with the minimum reasonable use while providing no  
adverse environmental impact to shorelines or critical areas.

3  
4 D. Shoreline Ecology. The project will not result in incremental or cumulative  
impacts to the shoreline. The project is a modestly sized single-family residence  
5 that is the minimum reasonable use for the property under the zoning code and  
SMP. All impacts to critical areas are mitigated and as conditioned and  
6 mitigated, there will be no net loss of shoreline ecosystem processes and  
functions (See Finding of Fact 5D and 7). As conditioned and mitigated, the  
7 project will result in no impact to anadromous fish, forage fish spawning and  
rearing areas, shellfish beds or other unique environments.

8  
9 E. Public Access and Recreation. No public access and recreational requirements  
10 impact the project design and none are required by the zone or shoreline use  
regulations for a single-family residential project. The new residential building  
11 will be located landward and outside of the shoreline buffer. The ordinary high-  
water mark is across a public road from the project site. No public access or  
12 recreational facilities currently exist, and none are required for this project.

13 7. Shoreline Residential Designation Regulations. As mitigated and  
14 conditioned, the project will comply with the Shoreline Residential Development  
Standards (KCC 22.600.170.B). The staff report makes no reference to the Shoreline  
15 Residential Development Standards. However, there is ample evidence in the staff  
report to demonstrate compliance with these standards.

16 A. Shoreline Function. As described in Finding of Fact No. 5.D.4, the Applicant  
17 has provided a Shoreline No Net Loss and Mitigation Plan (Ex. 16) that  
demonstrates there will be no net loss of ecological functions. A condition of  
18 approval requires the Applicant to follow the recommendations of this report.

19 B. Sewage Disposal and Water Systems. As conditioned, the project will comply  
20 with all state and local health regulations. The property will be provided with  
potable water by Manchester Water. The site is outside of the service area for  
21 the Kitsap County Public Works Sewer Utility Division and therefore will  
require a private septic system. The Kitsap Public Health District has approved  
22 the proposed onsite sewage system. This satisfies KCC 22.600.170.B.2 with  
respect to the Shoreline Residential Development Standards.

23  
24 The Applicant provided a septic design prepared by Nathan Cleaver and  
reviewed by Envirotech. The septic drainfield will be located on the adjacent  
25 parcel to the southwest of the project site. The transport line will cross the on-  
site stream, wetland A/B and traverse an 80% slope with a vertical relief of  
about 20 feet. The primary and reserve drainfields are planned to be located at

1 least 25 feet from the top of the bank. Envirotech's engineers found this design  
2 to be acceptable if the geotechnical recommendations are implemented (Ex.  
3 13).

4 The septic tank will be located adjacent to the residential structure (Ex. 17). A  
5 septic drainfield is proposed offsite on adjacent property within an easement.  
6 According to the staff report, a transport line will extend across the stream (via  
7 the future proposed I-Beam bridge) and up the steep slopes to the south. Figure  
8 8 of Ex. 16 the Shoreline No Net Loss and Mitigation Plan shows the septic  
9 transport line crossing over the stream and through Wetland B/C and its buffer.  
10 Exhibit 16 on page 12 cites KCC 19.200.225.G which permits the placement of  
11 utilities within wetlands and their buffers provided certain standards are met.  
12 The critical areas code permits utilities in critical areas buffers, but the SMP  
13 does not. The SMP General Regulations with respect to critical areas in KCC  
14 22.400.115.F.4 prohibits utility placement within wetlands or their buffers as  
15 otherwise permitted in KCC 19.200.225.G. However, strict application of this  
16 provision would deny the Applicant reasonable use of the property as  
17 contemplated by KCC 22.500.100.E.4.a. Conditions of approval will ensure  
18 that the critical areas impacts are mitigated and that the line is constructed in  
19 such a manner as to prevent future damage to the stream and wetland habitat.

20 C. Shoreline Stabilization. The project will not require shoreline stabilization  
21 measures. The new residential building will be located landward and outside of  
22 the shoreline buffer. The ordinary high-water mark is across a public road from  
23 the project site.

24 D. Stormwater. As conditioned, the project will comply with the County's  
25 stormwater code. The Applicant submitted a Stormwater Pollution Prevention  
Plan Narrative (Ex. 8) and a Stormwater Infeasibility and Best Management  
Practices Worksheet (Ex. 18). The Applicant's geotechnical engineer found the  
site infeasible for infiltration (Ex. 3). The site will be designed with positive  
drainage for all buildings including sloping the ground surface, driveways and  
sidewalks away from the buildings. Temporary erosion control measures must  
remain in place until permanent erosion control has been established via  
vegetation. Long term maintenance of erosion control measures is required (Ex.  
3). The County issued a Stormwater Conditions Memo (Ex. 19). Conditions of  
approval ensure the project will comply with Kitsap County Code Title 12.

E. Floodplain. All construction will comply with floodplain regulations. The staff  
report does not mention any flooding issues or regulated floodplains on the site.  
However, the Geotechnical Report notes that there is a runoff convergence on  
the property and recommends the construction of finish floor elevations at least  
one foot above base flood elevations (Ex. 3). A condition of approval requires  
the Applicant to implement the recommendations of the Geotechnical Report.

1 F. Public Access. No new public access to the shoreline is required. The new  
2 residential building will be located landward and outside of the shoreline buffer.  
3 The ordinary high-water mark is across a public road from the project site. No  
4 public access is currently provided, and none is required.

5 G. Pollution Control and Prevention. As conditioned, the project will provide for  
6 pollution control and prevent damage to the natural environment. The project  
7 will provide best management practices for pollution control and will provide  
8 mitigation measures for stormwater (Ex. 8). Critical areas will be protected as  
9 described in Finding of Fact No. 5. Conditions of approval require  
10 implementation of the recommendations of the geotechnical report (Ex. 3), the  
11 Stormwater Pollution Prevention Plan (Ex. 8) and the Critical Areas Report (Ex.  
12 16).

13 8. Minimum Necessary. The requested variance is the minimum necessary to  
14 afford relief. As described in Finding of Fact No. 3, the property is totally encumbered  
15 by overlapping critical areas including three wetlands, a fish bearing Type F stream,  
16 steep slopes and state regulated shoreline. There is no developable portion of the project  
17 site without a variance from the setback requirements of the wetlands and critical areas.  
18 Additionally, there is no feasible location for the septic drainfields on site. A transport  
19 line and an easement are required to place the drainfields on an adjacent property. The  
20 SMP prohibits the placement of utilities within wetlands. Without the variance  
21 allowing the placement of the septic transport line in the wetland, the project site could  
22 not be developed. The Applicant proposes a minimal footprint for a residential structure  
23 that otherwise meets zoning code bulk and dimensional standards. As noted in the  
24 Shoreline No Net Loss and Mitigation Plan (Ex. 16), there will be no impacts to the  
25 ecological functions of the shoreline.

9. Special Circumstances. Special circumstances necessitate the proposal  
because the property size is much smaller than that contemplated by the zoning and the  
entire site is encumbered by critical areas including a stream, wetlands, geologically  
hazardous areas, the shoreline and their associated buffers. The property cannot be  
developed under strict application of the code.

10. Practicable Alternatives. No practicable alternatives exist for the proposal.  
The Applicant has altered the proposal to ensure there is no net loss of ecological  
function by drastically reducing the footprint of the building and providing for  
mitigation measures to the extent feasible. The size of the lot and the 100%  
encumbrance by critical areas and buffers prohibit any other design while still meeting  
the requirements of the underlying zone. Without the proposed modifications to buffers  
and standards, the Applicant could not develop the property with the minimum  
reasonable use permissible by code.

## CONCLUSIONS OF LAW

### Procedural:

1. Authority of Hearing Examiner. Shoreline variances are classified as Type III review processes pursuant to KCC 21.04.100.13 and KCC 22.500.100.E.2. Critical areas variances are classified as Type III review processes pursuant to KCC 21.04.100.5. As outlined in KCC 21.04.110, the Type III process authorizes the hearing examiner to issue a final land use decision for the County after holding a public hearing. The shoreline substantial development permit is a Type II review process (KCC 21.04.100.12). The critical areas variances, shoreline variance and the shoreline substantial development permit have been consolidated for review as authorized by KCC 21.04.180.A and KCC 22.500.100.A.3.

### Substantive:

2. Zoning/Shoreline Designation. The subject property is located within the Rural Residential zoning district, as well as the Shoreline Residential Shoreline Designation of the Shoreline Master Program.

3. Review Criteria. Kitsap County Code Title 19 is the County's critical areas codes. Title 19 variances apply to the wetland and fish and wildlife buffers because the SMP adopts critical area regulations by reference. KCC 22.400.115.A adopts Chapters 19.200 (fish and wildlife), 19.300 (wetlands) and 19.400 geologically hazardous areas KCC.

KCC 22.400.115.F.2-3 prohibit administrative approval of requests for wetland buffer averaging in excess of 25% of the standard buffer width applied in KCC 19.200.220.B.1. The code referenced in KCC 22.400.115.F.2 appears to be incorrect as KCC 19.200.220.B refers to Increased or Enhanced Wetland Buffer Width, not the reduction of buffers. The provisions for decreasing the wetland buffer width are located in KCC 19.200.220.C. KCC 19.200.220.C.1.c requires the reduction of wetland buffers by greater than 50% for a single-family residence to obtain a CVAR pursuant to KCC 19.100.135. KCC 19.300.315.A.2 also references KCC 19.100.135 and requires a CVAR for the reduction of fish and wildlife conservation area buffers.

The Applicant intends to place a septic transport line under a bridge crossing the stream and through Wetland B/C. The SMP General Regulations with respect to critical areas in KCC 22.400.115.F.4 prohibits utility placement within wetlands or their buffers as otherwise permitted in KCC 19.200.225.G. No alternative is available that allows for reasonable use of the subject property. Therefore, a SVAR is required.

KCC 22.500.100.E.4 governs the criteria for SVAR for projects landward of the ordinary high-water mark. The review criteria for CVAR are set by KCC 19.100.135.A. The project requires a SSDP because it is not exempt pursuant to KCC

1 22.600.170.A.3.b. KCC 22.500.100.B.3 sets the criteria for approval of shoreline  
2 substantial development permits. Applicable criteria are quoted below in italics and  
3 applied via corresponding conclusions of law.

### 3 **Critical Areas Variance**

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

7 **KCC 19.100.135.A.1.** *Because of special circumstances applicable to the subject*  
8 *property, including size, shape, or topography, the strict application of this title is*  
9 *found to deprive the subject property of rights and privileges enjoyed by other*  
10 *properties in the vicinity; provided, however, the fact that those surrounding properties*  
11 *have been developed under regulations in force prior to the adoption of this title shall*  
12 *not be the sole basis for the granting of a variance.*

13 4. Criterion met. As described in Findings of Fact No. 3, 4 and 8, the property  
14 is totally encumbered by overlapping critical areas including three wetlands, a fish  
15 bearing Type F stream, steep slopes and state regulated shoreline. There is no  
16 developable portion of the project site without a variance from the setback requirements  
17 of the wetlands and critical areas. Additionally, there is no feasible location for the  
18 septic drainfields on site. A transport line and an easement are required to place the  
19 drainfields on an adjacent property. The SMP prohibits the placement of utilities within  
20 wetlands. Without the variance allowing the placement of the septic transport line in  
21 the wetland, the project site could not be developed. The Applicant proposes a minimal  
22 footprint for a residential structure that otherwise meets zoning code bulk and  
23 dimensional standards. As noted in the Shoreline No Net Loss and Mitigation Plan (Ex.  
24 16), there will be no impacts to the ecological functions of the shoreline.

18 **KCC 19.100.135.A.2.** *The special circumstances referred to in subsection (A)(1) of*  
19 *this section are not the result of the actions of the current or previous owner.*

20 5. Criterion met. This criterion is satisfied for the reasons stated in Finding of  
21 Fact No. 9.

22 **KCC 19.100.135.A.3.** *The granting of the variance will not result in substantial*  
23 *detrimental impacts to the critical area, public welfare or injurious to the property or*  
24 *improvements in the vicinity and area in which the property is situated or contrary to*  
25 *the goals, policies and purpose of this title.*

24 6. Criterion met. As mitigated and conditioned, this criterion is satisfied for  
25 the reasons stated in Findings of Fact No. 5D, 6, and 7. As described in Findings of  
Fact 5D and 7, as mitigated and conditioned, the project will result in no substantial  
detrimental impacts of critical areas and will result in no net loss of ecological functions

1 of the shoreline. As described in Finding of Fact No. 6, the project will protect the  
2 shoreline character and ecological function while providing a long-term public benefit.  
As such, the project meets the goals, policies and purpose of the County's critical areas  
code.

3 **KCC 19.100.135.A.4.** *The granting of the variance is the minimum necessary to*  
4 *accommodate the permitted use.*

5 7. Criterion met. This criterion is satisfied for the reasons stated in Finding of  
6 Fact No. 8.

7 **KCC 19.100.135.A.5.** *No other practicable or reasonable alternative exists. (See*  
8 *Definitions, Chapter 19.150.)*

9 8. Criterion met. This criterion is satisfied for the reasons stated in Finding of  
10 Fact No. 10.

11 **KCC 19.100.135.A.6.** *A mitigation plan that meets the requirements of Chapter 19.700*  
12 *(where required) has been submitted and is approved for the proposed use of the*  
13 *critical area.*

14 9. Criterion met. As described in Finding of Fact 5D, the Applicant provided  
15 a mitigation plan that meets the requirements of Chapter 19.700 KCC. The staff report  
provides extensive analysis of the compliance requirements (Ex. 1, pages 13-14) and  
the proposed mitigation measures (Ex. 1, pages 14-17) and recommends approval of  
the variance for the proposed use in the critical areas as conditioned and mitigated.

### 16 **Shoreline Substantial Development Permit**

17 The proposal necessitates a shoreline substantial development permit because it  
18 qualifies as substantial development within the shoreline jurisdiction. *See* KCC  
19 22.500.100.B.1. KCC 22.150.605 defines substantial development as any development  
that exceeds a fair market value of \$7,047.00. The proposal for a three-story mixed  
20 primary residence and attached accessory dwelling unit presumably exceeds this value.  
KCC 22.500.100.B.3 sets the criteria for SSDPs, providing that an SSDP be granted  
21 only when "*the applicant can demonstrate that the proposed development is consistent*  
22 *with the policies and procedures of the Act [Shoreline Management Act] and this*  
*program, as well as criteria in WAC 173-27-150.*" As pertinent, WAC 173-27-150  
23 requires conformance to the use regulations of the County's shoreline master program  
in addition to its policies.

24 10. Criteria met. The proposal is found to comply with all applicable SSDP  
25 criteria. It is found to comply with SMP policies for the reasons identified in Finding  
of Fact No. 6. It's found to comply with general SMP regulations for the reasons  
identified at Pages 17-23 of the staff report, adopted herein as if set forth in full, and

1 Finding No. 5 of this decision. The project is a single-family residence with attached  
2 accessory dwelling unit, permitted uses in the Shoreline Residential shoreline  
3 designation. This type of use is subject to the specific “residential” SMP use regulations  
4 of KCC 22.600.170.B development standards for residential development. The  
5 proposal conforms to KCC 22.600.170.B for the reasons identified Findings of Fact  
6 No. 5 and 7. The findings of the staff report in support of these conclusions are adopted  
7 by this reference. The proposal is found to conform to the policies of the Shoreline  
8 Management Act because it creates no significant adverse impacts as determined in  
9 Finding of Fact No. 5, including because it results in no net loss of ecological function,  
10 has no impact on navigation and creates no adverse aesthetic impacts.

### 7 **Shoreline Variance**

8 **KCC 22.500.100.E.4.a:** *That the strict application of the bulk, dimensional or*  
9 *performance standards set forth in Chapters 22.400 and 22.600 precludes, or*  
10 *significantly interferes with, reasonable use of the property;*

11 11. Criterion met. The criterion is met. For the reasons identified in Findings  
12 of Fact No. 8-10, the proposed critical areas buffer decreases are the only means of  
13 developing the project to its least impactful use - a single-family residential  
14 development of modest size. The placement of the sewer line in multiple critical areas  
15 is the only feasible route on the project site to allow for the utility. As described in  
16 Finding of Fact No. 7B, the Applicant has provided measures to ensure long-term  
17 protection of the affected habitats. Without the variance to allow for the sewer  
18 placement, the property cannot be developed to its minimum reasonable use. The  
19 project has been designed to provide no net loss of ecological function.

20 **KCC 22.500.100.E.4.b:** *That the hardship described in subsection (E)(1) of this*  
21 *section is specifically related to the property, and is the result of unique conditions*  
22 *such as irregular lot shape, size, or natural features and the application of this*  
23 *program, and, for example, not from deed restrictions or from the actions of the*  
24 *applicant or a predecessor in title;*

25 12. Criterion met. The criterion is met for the reasons identified in Conclusion  
of Law No. 3 and 5D.

**KCC 22.500.100.E.4.c:** *That the design of the project is compatible with other*  
*authorized uses within the area and with uses planned for the area under the*  
*Comprehensive Plan and this program, will not cause net loss to shoreline ecological*  
*functions and does not conflict with existing water-dependent uses;*

13. Criterion met. The criterion is met for the reasons identified in Finding of  
Fact No. 5C and 5D.

1 **KCC 22.500.100E4d:** *That the variance will not constitute a grant of special*  
2 *privilege not enjoyed by the other properties in the area;*

3 14. Criterion met. The criterion is met. Without the variance, the subject  
4 property could not be developed. The proposal will result in no net loss of ecological  
5 functions while also allowing for a 1,201sf footprint in three stories residential home  
6 with attached accessory dwelling unit. That is a right entitled to others either as a  
7 permitted use or via variances and modifications.

8 **KCC 22.500.100E4e:** *That the variance requested is the minimum necessary to*  
9 *afford relief; and*

10 15. Criterion met. The criterion is met for the reasons identified in Finding of  
11 Fact No. 8.

12 **KCC 22.500.100.E.4.f:** *That the public interest will suffer no substantial detrimental*  
13 *effect.*

14 16. Criterion met. The criterion is met for the reasons identified in Findings of  
15 Fact No. 5 and 7.

## 16 **DECISION**

17 Based upon the conclusions of law above, the shoreline variance and shoreline  
18 substantial development permit applications are approved subject to the following  
19 conditions:

### 20 **Planning/Zoning**

- 21 1. The applicants shall file a Notice to Title which states the garages shall be  
22 used for parking only.
- 23 2. The project shall meet the required zoning setbacks of 20' from the front  
24 (North) and 5 ft from the sides (East and West). Critical area and shoreline  
25 setbacks shall preside over zoning setbacks except for the eastern zoning  
setback.
3. All required permits shall be obtained prior to commencement of land  
clearing and construction.
4. 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 these approvals, the  
applicant represents that the development and activities allowed will comply

1 with such laws, regulations, and ordinances. If, during the term of the  
2 approval granted, the development and activities permitted do not comply  
3 with such laws, regulations, or ordinances, the applicant agrees to promptly  
4 bring such development or activities into compliance.

- 5 5. The decision set forth herein is based upon representations made and exhibits  
6 contained in the project application Permit #24-01857 and 25-00205. Any  
7 change(s) or deviation(s) in such plans, proposals, or conditions of approval  
8 imposed shall be subject to further review and approval of the County and  
9 potentially the Hearing Examiner and Washington Department of Ecology.

10 **Development Engineering**

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

- 15 7. A Hydraulic Project Approval (HPA) permit may be required for work below  
16 the ordinary high water mark or associated with the pipe over the stream. Prior  
17 to building permit approval, the applicant shall submit an approved HPA from  
18 the Washington Department of Fish and Wildlife (WDFW), or documentation  
19 from WDFW specifying that a HPA is not required<sup>1</sup>.

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

9. If the project proposal is modified from that shown on the site plan approved  
for this permit application, Development Engineering will require additional  
review and potentially new conditions.

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<sup>1</sup> Information regarding HPA's can be found by calling the Aquatic Protection  
Permitting System at (360) 902-2422 or online at:  
<https://wdfw.wa.gov/licenses/environmental/hpa>.

**Environmental**

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10. Construction techniques shall implement best management practices to ensure protection of the shoreline, its associated buffer, and local water quality. Such best management practices shall include protective silt fencing, protective orange construction fencing along defined work areas, working during periods of limited rainfall or potential for adverse erosion, and seeding of exposed soils as needed to prevent adverse erosion
11. The project is required to follow the mitigation and monitoring plan as provided in the Critical Area Report and No Net Loss Report (Ecological Land Services, Revised January 15, 2026). The habitat biologist shall flag the buffer location prior to start of construction. An as-built report of the mitigation from the biologist is required prior to final inspection of building permit.
12. A maintenance and monitoring permit is required after compliance with the mitigation plan is confirmed. The owner is responsible for maintenance of the planting area for 5 years, including removal of invasive plant species, reinstalling failed plantings, and irrigation. Monitoring shall occur for 5 years, with reports submitted to KCDCD by December 31 of each monitored year.
13. The vegetated buffer and additional building setback, as well as additional habitat features as depicted in the approved Wetland and Stream Mitigation Plan and No Net Loss Report, contained in the Critical Area Report shall be maintained. No additional clearing, structures, storage, or debris is permitted within the buffer or below Ordinary High Water without additional review and permitting by Kitsap County Department of Community Development, and state permits as necessary
14. Upon final permit issuance, all construction for the project must commence within two years and be completed within five years. A one-time, one-year extension is available but only if requested on or before ninety days of original permit expiration. No exceptions are allowed unless provided for by law
15. Subject to the conditions of the Geotechnical report, submitted by Envirotech dated 10/22/2024 and amended on 07/21/2025 associated with this permit and on file at the Department of Community Development.
16. Prior to occupancy, the common boundary between the STREAM and WETLAND buffers and the adjacent land shall be permanently identified with critical area buffers signs. Critical Area Ordinance (CAO) signs shall be placed along the designated boundary spaced approximately 50-feet apart, visual from sign to sign. Signs must be attached to existing trees with diameter breast height greater than 4 inches. Alternative methods include 4x4 posts, metal posts or

1 split rail fencing. Signs are provided at issuance and installation of the signs is  
2 required prior to final inspection and Certificate of Occupancy (CO).

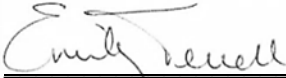
3 **Traffic and Roads**

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

9 **Kitsap Public Health District**

10 18. An approved Building Site Application (BSA) from Kitsap Public Health  
11 shall be provided with the DCD building permit application.

12 Dated this 29<sup>th</sup> day of May 2026.

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Emily Terrell,  
15 Hearing Examiner Pro Tem  
16 Kitsap County

17 **Appeal Right and Valuation Notices**

18 The shoreline variance decision is a final land use decision of Kitsap County and after  
19 approval or denial by the Washington State Department of Ecology may be appealed to  
20 the Washington State Shoreline Hearings Board as governed by RCW 90.58.180.

21 The shoreline substantial development permit decision is a final land use decision of  
22 Kitsap County and may be appealed to the Washington State Shoreline Hearings Board  
23 as governed by RCW 90.58.180.

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