



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

5/22/2025

To: Interested Parties and Parties of Record

RE: Project Name: MORTON - Critical Area Variance Type III
 for 70% Buffer Reduction in Wetland A
 Applicant: MORTON RYAN A
 9389 LAWRENCE DR SE
 PORT ORCHARD, WA 98367
 Application: CVAR
 Permit Number: 24-04433

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit 24-04433: MORTON - Critical Area Variance Type III for 70% Buffer Reduction in Wetland A (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: Ryan Morton, rmorton7577@outlook.com

Biologist: Alex Murphy - Sound View Consultants,
amurphy@soundviewconsultants.com; Sound View Consultants,
info@soundviewconsultants.com

Engineer: Kallie Maas, kallie@mcinnisengineering.com

Interested Parties: Chris Porter, chris.porter021@gmail.com; Dan Bossuyt, danboss_13@yahoo.com; Brian Nathanson, *NO CONTACT INFORMATION PROVIDED*; Brandon Vukelich, bvukelich@gmail.com; Karen Peterson, kpeterston422@gmail.com

Prosecutor's Office
Assessor's Office
DCD
Kitsap Sun
Point No Point Treaty Council
Suquamish Tribe
Skokomish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
Dept of Archaeological Historic Preservation
WA Dept of Natural Resources
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
WA State Dept of Transportation
Health District
Public Works
Parks
Navy
DE & PEP
South Kitsap Fire District
South Kitsap School District
Puget Sound Energy
Water Purveyor KPUD 1
Sewer Purveyor PUBLIC UTILITY DIST NO 1
WA Dept of Transportation/Aviation
WA State Dept of Ecology-Wetland Review
WA State Dept of Ecology-Shoreline Review
Puget Sound Clean Air Agency
Cascade Natural Gas
WA Department of Health

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

4 Emily Terrell, Hearing Examiner

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RE: Morton Critical Areas Variance File No. 24-04433	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
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10 **INTRODUCTION**

11 Ryan Morton has requested a Type III critical areas variance to reduce a 110-foot buffer
12 associated with a Category III wetland by 70% to allow for construction of a 2,300sf
13 single family residence on his property located at 9389 Lawrence Drive SE in Port
Orchard, WA. The application is approved subject to conditions.

14 **ORAL TESTIMONY**

15 Kitsap County Planner Jeff Smith presented the staff report. The applicant's civil engineer
16 Kallie Iverson and their wetlands consultant Casey Lanier both spoke to aspects of the
17 project. Neighbor Rob Daugherty of 9372 Lawrence Drive SE spoke in favor of the project
and welcomed the Morton family to the neighborhood.

18 **EXHIBITS**

19 Exhibits 1-16 listed in the Index to the Record prepared by County staff were admitted
20 during the hearing.

21
22 **FINDINGS OF FACT**

23 **Procedural:**

- 24 1. Applicant. Ryan Morton, 9389 Lawrence Drive SE, Port Orchard, WA
25 98367.
2. Hearing. The Hearing Examiner conducted a remote/hybrid hearing on the
application at 9:00 am on May 8, 2025.

Substantive:

3. Site/Proposal Description. The applicant requests a critical areas variance (KCC 19.200.220.C.1.c and C.7 citing KCC 19.100.135) to reduce the buffer of a Category III wetland to 33 feet at its closest point to allow construction of a modest 2,300sf single-family home, driveway, utilities, extension to the existing septic, and stormwater management facilities. This constitutes a localized 70% reduction of the buffer. The 15-foot building and impervious setback from the outer edge of the wetland buffer would also be partially eliminated in areas of buffer encroachment (KCC 19.200.220.E). The proposed single-family home meets all bulk and dimensional requirements of the zoning code as well as the off-street parking requirements of KCC 17.490.030.

The applicant's property is 3.56 acres and is almost entirely encumbered by a Category III wetland and its associated 110-foot buffers. The wetland itself is 58,060sf, comprising approximately 37% of the subject property. The wetland and buffer cover all but an odd shaped, small portion of the southeast corner of the property. The unencumbered area is insufficient in size and dimension to allow the construction of a single-family home and its associated infrastructure. Neither buffer averaging (KCC 19.200.220.C.2) nor utilization of a standard buffer reduction (KCC 19.200.220.C.1) provide adequate relief to allow for permitted use of the property without a variance. A variance from the bulk and dimensional standards of the zoning code would not provide adequate relief without also requiring a critical areas variance.

The site is currently developed with an 840sf mobile home constructed in 1974, the septic tank servicing the mobile home and a circular driveway. The applicant wishes to construct a 2,300sf home on the property utilizing the existing access and septic tank. The mobile home will remain on site temporarily under permitted use as a Special Care Residence pursuant to KCC 17.415.510. The mobile home is located within the wetlands buffer; however, it is a legally non-conforming structure (KCC 19.100.130.A). No changes to the mobile home are proposed. The mobile home will be removed from the site once it is no longer needed as a special care residence. The existing driveway is circular. The applicant intends to abandon and revegetate a portion of the circular driveway to improve the wetland buffer function.

The proposal has been reviewed and approved by the Kitsap County Health District with respect to water supply and on-site septic.

4. Characteristics of the Area. The subject property is bordered on all sides by lots that are developed with single-family residences. The subject and all surrounding properties are zoned Rural Protection (RP) because of the presence of extensive critical areas in the region.

5. Adverse Impacts. No significant adverse impacts are anticipated from the proposed variance. Potential project impacts are limited to the wetland and its

1 associated 110-foot buffer. The project is SEPA exempt. As mitigated, there will be no
2 net loss of wetland or wetland buffer functions.

3 The proposal is not found to adversely affect the wetland of the project site because the
4 impacts to the proposal have been fully mitigated as required by the County's wetland
5 regulation, as verified by County planning staff. To establish adequate mitigation, the
6 Applicant submitted a mitigation plan prepared by Soundview Consultants, Inc., Ex. 9.
7 The mitigation plan, prepared by wetland biologists, concluded that with recommended
8 mitigation the proposal would result in no net loss of ecological function. Ex. 9, p. 8.
9 As required by KCC 19.100.155.D, the proposal employed mitigation sequencing,
10 which applied the following steps of mitigation in order of priority:

- 11 i. Avoidance. No direct impacts to the wetland are proposed. Avoiding
12 impacts on the buffer is not feasible given the limited area of the project
13 site that is outside the wetland or wetland buffer. There is insufficient
14 space outside of the critical areas buffer to allow for either buffer
15 averaging or a standard buffer reduction. Additionally, portions of the
16 property have steep slopes. There is also an existing septic system in the
17 southeast corner of the property.
- 18 ii. Minimization. The project has been designed to minimize the impact by
19 locating the proposed home in the least impactful portion of the property
20 and through the re-use of existing infrastructure. The proposed homesite
21 is in a previously disturbed area with second-growth vegetation. This
22 placement avoids impacts to mature, higher-functioning coniferous
23 forest habitat. To minimize potential water quality and hydrologic
24 impacts to the wetland and buffer, stormwater generated from the new
25 impervious surfaces will be collected and dispersed as sheet flow within
the buffer area (Ex. 6 and 9). Conditions of approval will require best
management practices (BMPs) and temporary erosion and sediment
control (TESC) measures will be implemented throughout construction
to further reduce the risk of environmental impact.
- iii. Rehabilitation. The majority of the wetland will remain in its present
state which is largely untouched. There will be temporary impacts to
237sf of the wetland itself for removal of an existing hog wire fence.
This area will be completely restored and re-planted with native
vegetation (Ex. 9). The closest point between the new dwelling and its
associated setback and the wetland is 45 feet. A portion of the existing
driveway is within 33 feet of the wetland (Ex. 3).

There are also temporary and permanent impacts to the wetland buffer.
Temporary impacts include fence removal (2,403sf), driveway removal
(1,409sf) and utility installation (1,192sf) for a total of 5,004sf of
temporary buffer impacts. These areas of temporary impact to the buffer
will be restored. Permanent impacts to the wetland buffer will result

1 from construction of the single-family dwelling and a 15-foot building
2 setback surrounding the home. To offset these permanent impacts, the
3 applicant will remove 260 linear feet of existing hog wire fence and
4 remove 1,409sf of the existing concrete driveway. The new driveway
5 will be gravel.

6 The project also includes enhancement of over an acre of wetland buffer
7 (49,838sf) through the removal of non-native and invasive vegetation
8 and the interplanting of native shrubs and groundcover to improve
9 habitat quality and provide visual screening between the wetland and
10 the proposed development.

11 iv. Monitoring. As conditioned, the restoration and enhancement areas will
12 be monitored for a period of five years consistent with the requirements
13 of KCC 19.200.230.E.

14 6. Necessity of Variance. The variance is necessary because without it there is no
15 room on the property to build a reasonably sized home. As noted above in
16 Finding of Fact No. 3, the applicant's property is almost entirely encumbered by
17 a Category III wetland and its associated 110-foot buffers. The applicant
18 submitted a Mitigation Plan prepared by Peninsula Environmental Group, Inc
19 (Ex. 9). The wetland itself is 58,060sf, comprising approximately 37% of the
20 subject property. The wetland and buffer cover all but an odd shaped, small
21 portion of the southeast corner of the property. The applicant requests a critical
22 areas variance to reduce the buffer to 33 feet at its closest point to allow
23 construction of a modest 2,300sf single-family home, driveway, utilities,
24 extension to the existing septic, and stormwater management facilities.

25 CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. KCC 19.100.135, KCC 19.200.220.C.1.c
and C.7, and KCC 21.04.100 authorize the hearing examiner to issue decisions on
applications for Type III critical areas variances. As outlined in KCC 21.04.110, Type
III processes involve 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 Protection (RP).

3. Review Criteria. KCC 19.100.135 governs the criteria for approval of a
critical areas variance. Pertinent criteria are quoted below and applied via
corresponding conclusions of law.

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

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

10 4. Criterion met. The criterion is met for the reasons identified in FOF No. 6.

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

13 5. Criterion met. The criterion is met. The circumstances are a natural condition of the
14 property and are in no way the result of actions of the current or previous owner.

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

19 6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
20 5. Approval of the variance is consistent with the policies and purposes of Title 19 as
21 identified in KCC 19.100.105 because there will be no net loss of ecological function
22 with implementation of required mitigation.

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

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

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

8. Criterion met. The criterion is met. Without the variance, the applicant would not be
able to build a reasonably sized single-family home.

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

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

DECISION

Based upon the conclusions of law above, the critical areas variance is approved subject to the following conditions:

Planning/Zoning

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. This variance approval shall automatically become void if no building permit application is accepted as complete by the Department of Community Development within four (4) years of the Notice of Decision date or the resolution of any appeals.
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. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.
5. Issuance of the permit certifies that the applicant has read and examined this application and knows the same to be true and correct. All provisions of Laws and Ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state/local law regulating construction or the performance of construction.

Development Engineering

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

- 1 7. The information provided demonstrates this proposal is a Large Project as
2 defined in Kitsap County Code Title 12, and as such will require a Full
3 Drainage Site Development Activity Permit (SDAP) from Development
4 Engineering.
- 5 8. Stormwater quantity control, quality treatment, and erosion and
6 sedimentation control shall be designed in accordance with Kitsap County
7 Code Title 12 effective at the time the SDAP (or Building Permit if no
8 SDAP required) application is deemed fully complete. The submittal
9 documents shall be prepared by a civil engineer licensed in the State of
10 Washington. The fees and submittal requirements shall be in accordance
11 with Kitsap County Code in effect at the time of SDAP application or
12 Building Permit if an SDAP is not required.
- 13 9. The owner shall be responsible for maintenance of the storm drainage
14 facilities for this development following construction. Before requesting
15 final inspection for the SDAP (or for the Building Permit if an SDAP is
16 not required) for this development, the person or persons holding title to
17 the subject property for which the storm drainage facilities were required
18 shall record a Declaration of Covenant that guarantees the County that the
19 system will be properly maintained. Wording must be included in the
20 covenant that will allow the County to inspect the system and perform the
21 necessary maintenance in the event the system is not performing properly.
22 This would be done only after notifying the owner and giving him a
23 reasonable time to do the necessary work. Should County forces be
24 required to do the work, the owner will be billed the maximum amount
25 allowed by law.
- 26 10. If the project proposal is modified from that shown on the site plan
27 approved from this permit application, Development Engineering will
28 require additional review and potentially new conditions.

29 **Environmental**

- 30 11. Construction techniques shall implement best management practices to
31 ensure protection of the wetland, associated buffers, and local water quality.
32 Such best management practices shall include protective silt fencing to
33 define work areas, protective orange construction fencing along defined
34 work areas, work during periods of limited rainfall or potential for adverse
35 erosion and seeding of exposed soils as needed to prevent adverse erosion.
- 36 12. There shall be no clearing of vegetation or grading in the buffer area, as is
37 depicted on the approved site plan. Prior to any clearing or development,
38 please contact Development Services and Engineering Environment staff at
39 360.337.5777 to confirm buffer boundaries.


13. The applicant shall record a Notice of Title for the proposed preservation area(s) of the site. The Notice of Title shall be submitted with the associated building permit and is required prior to approval of the building permit.
14. Prior to occupancy, the common boundary between the wetland 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 space approximately 50-feet apart, visual from sign to sign. Signs must be attached to existing trees with diameter breast height greater than four inches. Alternative methods include 4/4 posts, metal posts or split rail fencing.
15. Permit application approval is subject to Chapter 19.300.315 of Kitsap County Code, which states that buffers or setbacks shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes. 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.
16. The project shall adhere to the mitigation measures and recommendations within the approved Conceptual Mitigation Plan, dated September 13, 2024, prepared by Soundview Consultants, LLC.
17. Monitoring and maintenance of the planted area shall be conducted for five 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 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 (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 Engineering Inspector shall be made prior to additional inspections. Any assignment of savings, financial surety or other like security for

1 maintenance of the buffer mitigation plan shall be only released if
2 monitoring requirements are satisfied in the final year of the monitoring
term.

3 **Kitsap Public Health District**

4 18. This permit shall comply with all Kitsap Public Health District regulations
5 and conditions of approval.

6 Dated this 21st day of May 2025.

7 

8 Emily Terrell
9 Kitsap County Hearing Examiner

10 **Appeal Right and Valuation Notices**

11 Pursuant to KCC 21.04.100 and KCC 21.04.110, this conditional use permit decision is
12 a final land use decision of Kitsap County and may be appealed to superior court within
13 21 days as governed by the Washington State Land Use Petition Act, Chapter 36.70C
RCW.

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