



## Notice of Hearing Examiner Decision

09/08/2020

To: Interested Parties and Parties of Record

RE:           Project Name: Friedman Shoreline Conditional Use Permit  
                  Applicant: Kirsten and Richard Friedman  
                                  23361 Ludvick Lake Dr  
                                  Seabeck, WA 98380  
                  Application Type: Shoreline Conditional Use Permit (CUP)  
                  Permit Number: 20-00116

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #20-00116 Friedman Shoreline Conditional Use Permit (CUP)**, 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://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

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

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. 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: Kirsten and Richard Friedman, 23361 W Ludvick Lake Dr, Seabeck, WA 98380  
Project Representatives: Trampush, Aaron, [aaron@shedbuilt.com](mailto:aaron@shedbuilt.com); Chapman, Gary, [gcaes@bainbridge.net](mailto:gcaes@bainbridge.net)  
Engineer: Wnek Engineering, [james@wnekeng.com](mailto:james@wnekeng.com)  
Biologist: McIngalls, Clover, [cmcingalls@watershedco.com](mailto:cmcingalls@watershedco.com)  
Health District  
Public Works  
Parks

Navy  
DSE  
Kitsap Transit  
Central Kitsap Fire District  
Central Kitsap School District  
Puget Sound Energy  
Water Purveyor- Silverdale Water  
Point No Point Treaty Council  
Suquamish Tribe  
Port Gamble S'Klallam Tribe  
Squaxin Island Tribe  
Puyallup Tribe  
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 Dept of Transportation  
Interested Parties: None

**KITSAP COUNTY HEARING EXAMINER  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Shoreline Conditional Use Permit for Two Lot Short Plat  
Friedman, File No. 20-00116**

**September 3, 2020**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** The project subdivides an existing parcel into two residential lots. The existing house and garage are proposed for Lot A, and a single family home is proposed for Lot B. The existing gravel driveway to the structures on Lot A will remain and be the access point for the proposed Lot B. Single family residential development is exempt from a Shoreline Substantial Development Permit.

**Applicant/Property Owner.** Richard and Kirsten Friedman, 23361 W. Ludvick Lake Drive, Seabeck, WA 98380.

**Location.** 9399 Mickelberry Road NW, Silverdale, WA 98383. Assessor No. 212501-2-001-2006.

**1.2 Hearing.** An open record public hearing was held August 13, 2020. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and Applicant calling in. Access information was provided to the public to allow citizens to join via either a video link or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open for a week, through August 20.<sup>1</sup> No comment was received following the hearing. At the hearing, DCD, through Ms. Barnhart, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant’s representative, Mr. Trampush, confirmed there were no concerns with DCD’s proposed conditions. No member of the public indicated a wish to speak.

**1.3 Administrative Record.** The Hearing Examiner admitted Exhibits 1-31, which included the Staff Report, application materials, documentation of agency consultation, public notice documents, and a DCD Power Point presentation.

**1.4 Notice.** Hearing and application notice was provided consistent with KCC requirements.<sup>2</sup>

**1.5 SEPA.** DCD issued an unappealed Determination of Non-Significance,<sup>3</sup> with conditions requiring compliance with Title 12 for stormwater control; compliance with frontage

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<sup>1</sup> Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

<sup>2</sup> Exhibits 17, 28 and 29; KCC 21.04.080, .210.

improvements and off-street parking requirements; and compliance with critical area and shoreline buffers and development requirements.

**1.6 Agency Comment.** The proposal was circulated within the County. As long as requirements are met, there were no objections to approval. As the project is in an area with known or potential cultural resources, the Suquamish Tribe requested a Cultural Resources report be completed and reviewed prior to building permit issuance for the proposed Lot B. A condition has been added to require same (Condition 13).<sup>4</sup>

**1.7 Comprehensive Plan and Zoning Designations.** The Comprehensive Plan designation is Urban Low Density Residential (ULDR) and zoning designation is Urban Restricted (UR).<sup>5</sup> Surrounding property zoning and uses include:

|        |   |
|--------|---|
| North: | UR, state-assessed utilities<br>Regional Center (RC) – Waterfront District, convalescent center |
| South: | UR, tidelands, private  |
| West:  | RC – Waterfront District, convalescent center   |
| East:  | UR, single-family residence and open space  |

**1.8 Site Physical Characteristics.** Dyes Inlet, Puget Sound, is on the flat waterfront parcel's south side. The parcel is mostly cleared with lawn, deciduous trees, and shrubs along the perimeter and proposed property line.

**1.9 Environmental/Critical Areas.** The parcel is partially within the FEMA 100-year floodplain along the shoreline. There is a bulkhead along the full length of the parcel. Any development within the FEMA 100-year floodplain will be required to provide a Habitat Assessment at time of building permit and constructed to meet the Flood Hazard code requirements of KCC Title 15. Off-site wetlands are adjacent to proposed Lot A, which is already developed with buffers as shown on the site plan, which will be maintained. A No Net Loss Report was prepared by The Watershed Company.<sup>6</sup> The Applicant will be required to apply for a Site Development Activity Permit, meeting the water quality and quantity requirements of KCC Title 12, Stormwater, and applicable state permits.

**1.10 Utility and Public Services.**

- **Water:** Silverdale Water
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic
- **Police:** Kitsap County Sheriff
- **Fire:** Central Kitsap Fire & Rescue
- **Schools:** Central Kitsap School District #401

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<sup>3</sup> Exhibit 27; Exhibit 30 (Staff Report), p. 2.

<sup>4</sup> Exhibit 18.

<sup>5</sup> Exhibit 30 (Staff Report), pp. 2-3 and Attachment C.

<sup>6</sup> Exhibit 10.

**1.11 Access and Parking.** Access is from the existing driveway off Mickelberry Road NW. The newly created lot will be required to meet parking requirements at the time of building permit for the single family home.

**1.12 Setbacks.** Setbacks meet or exceed requirements, with 20 feet on the east (front), five feet on the north side (four feet for an existing non-conforming garage), 115 feet on the south side (100 foot Shoreline Urban Conservancy Standard Buffer plus additional 15-foot building setback), and 10 on the rear (plus shoreline and wetland buffers).<sup>7</sup> The 35-foot height limit will be complied with.

**1.13 Landscaping.** Within the Silverdale UGA, partial screening buffers along the front of Mickelberry Road NW, as well as the sides and rear, are required. Screening includes existing fencing and mature vegetation, and new deciduous trees and shrubs/groundcovers.

**1.14 Frontage Improvements.** Frontage improvements, including street trees, ten-foot travel lane, vertical curb, gutter and five-foot sidewalk, are conditions of approval.

**1.15 Fire Safety.** The Kitsap County Fire Marshal reviewed and approved the proposal with no conditions.

**1.16 Water/Sewer.** Silverdale Water will provide service to the new lot and residence. The lot will be served by on-site septic, as the sewer main is over 200 feet from the property line and connection to public sewer is therefore not required.<sup>8</sup>

**1.17 Kitsap Public Health District.** Kitsap Public Health District reviewed and approved the proposal, with a condition for a Building Site Application for construction on Lot B (Condition 29).

**1.18 Staff Report and Proposed Conditions.** The Staff Report findings are factually substantiated; the Report is incorporated. The proposed conditions ensure project development consistent with code and address its impacts. The proposed conditions should be imposed without substantive revision.

## **2. CONCLUSIONS OF LAW**

**2.1 Hearing Examiner Review Authority.** The Hearing Examiner has shoreline CUP review authority,<sup>9</sup> which imposes both shoreline and standard CUP criteria,<sup>10</sup> allowing for preliminary short plat review consolidation.<sup>11</sup> The Examiner may approve, approve with conditions, or deny a CUP.<sup>12</sup>

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<sup>7</sup> Exhibit 30 (Staff Report), p. 3.

<sup>8</sup> KCC 13.12.020.

<sup>9</sup> KCC 22.500.100(D)(2); KCC 17.550.020; KCC 21.04.100.

<sup>10</sup> KCC 22.500.100(D)(2).

<sup>11</sup> KCC 21.04.180.

<sup>12</sup> KCC 17.550.030.

**2.2 Shoreline Conditional Use Permit.** A shoreline CUP must meet shoreline substantial development criteria, WAC 173-27-160, and these overlapping criteria:

- a. That the proposed use is consistent with the policies of RCW 90.58.020 and this program;
- b. That the proposed use will not interfere with the normal public use of public shorelines and does not conflict with existing water-dependent uses;
- c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this program;
- d. That the proposed use will not result in significant adverse effects or a net loss to the shoreline ecosystem functions in which it is to be located;
- e. That the public interest suffers no substantial detrimental effect;
- f. That consideration has been given to the cumulative impact of additional requests for like actions in the area and shall not result in substantial adverse effects or net loss of shoreline ecosystem functions. For example, if CUPs were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the use preference policies and shall not produce substantial adverse impacts to the shoreline environment. Consideration shall be demonstrated through preparation of a cumulative impacts report, if requested, that substantially conforms to the applicable provisions of Chapter 22.700 (Special Reports);
- g. Other uses which are not classified or set forth in this program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program;
- h. Uses which are specifically prohibited by this master program may not be authorized pursuant to this section.<sup>13</sup>

These criteria are met. Single family homes are a preferred shoreline use<sup>14</sup> and the division into two parcels will not interfere with shoreline use or have significant environmental impacts. Project site and design is compatible with surrounding uses, buffer and setback requirements are met, and there will be no net loss to shoreline ecological functions. There is no detriment to the public interest or concern with cumulative impacts. All development standards will be met.

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<sup>13</sup> KCC 22.500.100(D)(3).

<sup>14</sup> RCW 90.58.020.

**2.3 Conditional Use Permit Requirements.** A CUP must meet four requirements.

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of [Title 17];
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.<sup>15</sup>

These criteria are met. The project supports Plan policies for adequately mitigated and supported residential development, complies with regulatory requirements, is not materially detrimental to uses in the vicinity, and is compatible with surrounding development. As proposed and conditioned, the project meets all CUP criteria and should be approved.

**2.4 Shoreline Policies and Regulations.** The project is consistent with County Shoreline Master Program policies and regulations. It does not require new dredging. An existing shoreline bulkhead protects the property.<sup>16</sup> Mitigation sequencing (KCC 22.400.110(A)) and water quality/quantity criteria (KCC 22.400.125) are met. The plat meets or exceeds the 100-foot standard buffer in the Urban Conservancy shoreline designation, and additional 15-foot building setback (KCC 22.400.120(B)). The 110-foot wetland buffer on Lot A will be maintained. The No Net Loss Report documents preservation of shoreline ecological functions (Exhibit 10). Any development within the FEMA 100-year floodplain will provide a Habitat Assessment at the time of building permit review, and will be constructed to meet Title 15 KCC Flood Hazard requirements.

View blockage is not an issue. The property is within a shoreline cove. The view line is met, using the average setback line of the two adjacent buildings, and meeting the required buffer.

Based on Suquamish Tribe comment, a Cultural Resources Report will be provided with the Site Development Activity Permit application (KCC 22.400.130).

Shoreline residential development standards (KCC 22.600.170), which address environmental impacts, utility supply, and stormwater management, are met. The project meets buffer and setback requirements, and does not have a significant environmental impact; the stormwater code (Title 12) will be complied with, Flood Hazard area requirements (Title 15) will be complied with, water can be provided, and Kitsap Public Health District requirements for septic systems will be complied with.

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<sup>15</sup> KCC 17.550.030(A).

<sup>16</sup> KCC 22.400.105.

**2.5 Platting Requirements, Ch. 16.48 KCC, see also Urban Standards, KCC 16.24.040 and .070.** As the Findings and Staff Report detail, the plat meets both preliminary short plat requirements and applicable urban standards requirements. Water and sewer are provided. A 20-foot access and utility easement is provided along the north of the lot, along the existing access driveway. There are no vacant lands abutting the parcel where utilities would need to be expanded to. The Kitsap County Fire Marshal's Office has approved the submittal. Improvements to address pedestrian access and landscaping are provided. Adequate services and facilities support the plat.

## **DECISION**

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Shoreline CUP, provided these conditions are adhered to:

### **Planning/Zoning**

1. The following condition shall be placed on the face of the Final Plat: Access for both lots is limited to the access easement depicted hereon.
2. A Final Short Plat shall be prepared by a licensed Land Surveyor in compliance with KCC Title 16.

### **Development Engineering**

3. 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.
4. Approval of the preliminary plat shall not be construed to mean approval of the total number of lots or configuration of the lots and tracts. These parameters may be required to be revised for the final design to meet all requirements of KCC Titles 11 and 12.
5. The information provided demonstrates this proposal is a Large Project as defined in KCC Title 12, and as such will require a Full Drainage review Site Development Activity Permit (SDAP) from Development Services and Engineering, demonstrating how the project meets Minimum Requirements 1-9, as outlined in the Kitsap County Stormwater Design Manual.
6. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the Preliminary Short Subdivision (first complete Land Use permit submittal for the project) application was deemed complete, January 22, 2020. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of SDAP application.

7. Any project that includes off-site improvements that create additional impervious surface such as lane widening, sidewalk or shoulder installation or intersection channelization shall provide stormwater mitigation in accordance with KCC Title 12 effective at the time the Preliminary Short Subdivision application was deemed complete, January 22, 2020.
8. The owner shall be responsible for maintenance of the storm drainage facilities for this development following construction. Before issuance of the Site Development Activity Permit for this development, the person or persons holding title to the subject property for which the storm drainage facilities were required shall record a Declaration of Covenant that guarantees the County that the system will be properly maintained. Wording must be included in the covenant that will allow the County to inspect the system and perform the necessary maintenance in the event the system is not performing properly. This would be done only after notifying the owner and giving him a reasonable time to do the necessary work. Should County forces be required to do the work, the owner will be billed the maximum amount allowed by law.
9. The impervious area per lot accounted for in the overall drainage facilities installed shall be indicated on the face of the final plat. Additional impervious surfaces created on an individual lot beyond the amount accounted for in the overall drainage facilities shall be mitigated in accordance with KCC Title 12.
10. The following condition shall be added to the face of the Final Plat: At the time of submittal of a building permit for any lot within this plat, soil amendment is required for all disturbed areas not covered by hard surface.
11. If the project proposal is modified from that shown on the submitted site plan accepted for review January 22, 2020, Development Services and Engineering will require additional review and potentially new conditions.

### **Environmental**

12. At the time of site development application, the project will be required to meet the standards of KCC Title 15, Flood Hazard Areas. This will include a Flood Elevation Certificate to meet building requirements and a FEMA Habitat Assessment.
13. A cultural resources report shall be provided at the time of SDAP application due to the project's proximity to known or potential cultural resources.
14. The 100-foot shoreline buffer and 15-foot building setback shall be maintained. No refuse shall be placed in the buffer. Any future clearing, grading, or building in the buffer will require separate review and appropriate permits.
15. The 110-foot wetland buffer on Lot A shall be maintained as shown on the approved site plan.

16. The Washington State Department of Fish and Wildlife may require a Hydraulic Project Approval for the work required at the proposed outfall. Prior to SDAP approval, the Applicant shall submit an approved HPA from the Washington State Department of Fish and Wildlife (WDFW) or documentation from WDFW specifying that an HPA is not required.

17. Per KCC 22.400.140, the maximum building height shall be 35 feet and the maximum impervious surface of each lot shall be 25% of the lot area.

### **Traffic and Roads**

18. Sidewalk ramps shall conform to the current requirements of the Americans with Disabilities Act per WSDOT standard plans at the time of construction.

19. The property owners within the plat shall be responsible for maintenance of all landscaping within the existing and proposed right-of-way including any structures other than roadway, storm drainage facilities, and traffic signage. Maintenance shall include, but not be limited to, mowing of lawn areas. A note to this effect shall appear on the face of the final plat map and the accepted construction plans. In addition, Development Services and Engineering reserves the right to require that covenants be recorded to address special maintenance requirements depending on final design.

20. Frontage improvements, consisting of ten-foot travel lane and vertical curb, gutter and five-foot sidewalk, are required along the property frontage on Mickelberry Road NW.

21. The Site Development Activity Permit plans shall include surveyed cross-sections at 50-foot intervals along the parcel frontage on Mickelberry Road NW. The cross-sections should show existing and proposed pavement, shoulders, ditches and slopes. The cross-sections should also depict centerline of pavement and right-of-way, the right-of-way lines, and easements.

22. Submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the KCC. Existing approaches may need to be improved to meet current standards.

23. Any required sidewalk shall be constructed prior to roadway paving. This note shall appear on the face of the final construction drawings.

24. Prior to issuance of the required Site Development Activity Permit with the Department of Community Development, the Applicant shall satisfy all conditions of a Right-of-Way Permit through the Department of Public Works for any and all work performed in the county Right-of-Way associated with this project. Apart from the Site Development Activity Permit (SDAP), the Right of Way permit may require extra work to comply with current Washington State Department of Transportation or Kitsap County Road Standards. You may contact Kitsap County Public Works, Right-of-Way Division at (360) 337-5777 to obtain a Right-of-Way permit.

25. A Road Maintenance Agreement will be required for the access easements shown on the face of the plat. This may be in the form of a note on the face of the Final Plat that addresses ownership and maintenance responsibilities of the access easement, or in the form of a Road Maintenance Agreement document to be recorded separately and referenced on the face of the Final Plat.

#### **Fire Safety**

26. The minimum fire flow requirements for one and two family dwellings in subdivisions shall be 500 gallons per minute for thirty (30) minutes.

27. Add this note to the face of the plat: "If fire flow is not available, automatic fire sprinklers, as approved by the Kitsap County Fire Marshal, shall be installed throughout homes here and after constructed on lots created by this land division.

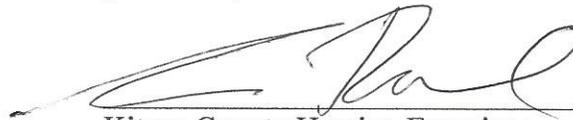
#### **Solid Waste**

28. Prior to SDAP approval, Waste Management (360) 674-3166 shall be contacted for information on implementing the solid waste/recycling storage requirements influenced by the service provider (e.g. dumpster size and location) for the project. Pay particular attention to the access requirements of collection trucks. Documentation shall be provided from the solid waste/recycling service provider that their requirements for this project have been met.

#### **Kitsap Public Health District**

29. A building site application will be required prior to building permit issuance for Lot B.

DECISION entered September 3, 2020.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond

#### ***Decision Finality***

*With respect to the preliminary short plat, absent a timely appeal or grant of reconsideration, this Decision is final.<sup>17</sup> With respect to the shoreline conditional use permit, absent a grant of reconsideration, or timely appeal following Department of Ecology approval, this Decision is final.<sup>18</sup> As set forth in WAC 173-27-190, construction is not authorized until 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until review proceedings initiated within 21 days of the filing date have terminated.*

<sup>17</sup> Ch. 36.70C RCW (providing requirements for appeal within 21 days to superior court); HE Rule 2.12.1.

<sup>18</sup> Ch. 90.58 RCW, RCW 90.58.180 (appeal within 21 days of filing); HE Rule 2.12.1.