

Health District
Kitsap Transit
Central Kitsap Fire District
North Kitsap Fire District
North Kitsap School District
Puget Sound Energy
DCD Staff Planner
DCD
DSE
Port Gamble S’Klallam Tribe
Skokomish Tribe
Squaxin Island Tribe
Point No Point Treaty Council
Suquamish Tribe
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
WA State Dept of Fish & Wildlife
WA State Dept of Transportation
WA State Dept of Transportation-Aviation
Interested Parties:
None

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

**Kennedy Preliminary Short Plat, File No. 20-00981
and Shoreline Substantial Development Permit, File No. 20-00983**

May 10, 2021

1. FINDINGS OF FACT

1.1 Proposal. Divide a 1.52 acre parcel in the Keyport Village Low Residential zone into three lots for single-family homes, including an existing home which will remain on one lot. The site is within the Shoreline Residential Environmental Designation and a Shoreline Substantial Development Permit ("SSDP") is required. Plat and SSDP permit application review was consolidated.¹ The proposal includes a single access point, dedication of additional right-of-way, frontage improvements, public water, and on-site septic.

Applicant/Property Owner: Arthur Kennedy, P. O. Box 663, Keyport, WA 98345.

Location: 15478 Cove Point Lane NE, Keyport, WA 98345. Assessor Parcel No. 352601-1-010-2000.

1.2 Hearing. An open record public hearing was held April 22, 2021. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development ("DCD"), and the 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 April 29.² No comment was received following the hearing. At the hearing, DCD, through Ms. Santos, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant, through Mr. Kennedy and Mr. Oak, confirmed there were no concerns with DCD's proposed conditions. No member of the public indicated a wish to speak.

1.3 Administrative Record. At the hearing, the Examiner admitted Exhibits 1-39, 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.³

¹ KCC 21.04.180(A).

² Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

³ Exhibits 20, 37, and 38; KCC 21.04.080, .210.

1.5 SEPA. DCD issued an unappealed Determination of Non-Significance,⁴ with conditions requiring compliance with Title 12 to address stormwater control, Title 19 to address critical areas, and Title 17 to address land use impacts.

1.6 Public Comment. There was no written public comment; there was a public inquiry by Tom Ballard, to which DCD staff responded.⁵

1.7 Agency Comment. The proposal was circulated within the County. As long as requirements are met, there were no agency objections to approval.

1.8 Zoning/Plan Designations. The Comprehensive Plan designation is Limited Area of More Intensive Rural Development and the zoning is Keyport Village Low Residential.⁶ This zone is designed to:

[R]ecognize and encourage redevelopment of the existing residential patterns in the Keyport village area west of Sunset Avenue. Residential densities may approximate historic density maximums of two dwelling units per acre...⁷

1.9 Zoning Code Sizing/Density Requirements. Keyport Village Low Residential zone provides for maximum density of two dwelling units per acre, which equates to three units here.⁸ The plat complies. Lot sizing requirements are also met.⁹

Requirement	Proposed
Minimum Lot Size – 12,500 SF	18,000 SF (Lot A, smallest proposed lot)
Maximum Lot Size – N/A	26,873 SF (Lot C, largest proposed lot)
Minimum Lot Width - 80 feet	80.37 feet (Lot A)
Minimum Lot Depth – 80 feet	144.22 feet (Lot A)
Maximum Height - 35 feet	To be reviewed at time of building permit
Setbacks <ul style="list-style-type: none"> • Front, 10-20 feet • Side, 5 feet • Rear, 5 feet 	Project is conditioned to meet zoning setbacks at time of building permit (Condition 13)

1.10 Surrounding Land Use and Zoning. Surrounding properties have the same zoning and are developed with single-family residences on three sides; with Liberty Bay to the north.

⁴ Exhibit 28; Exhibit 39 (Staff Report), p. 2.

⁵ Exhibits 23 and 24.

⁶ Exhibits 32 and 36; Exhibit 39 (Staff Report), p. 3 and Attachment B.

⁷ KCC 17.360A.010(C).

⁸ KCC 17.110.213 (minimum density calculation based on net developable acreage); KCC 17.110.212 (maximum density calculation based on gross acreage); Exhibit 39 (Staff Report), p. 3.

⁹ Exhibit 39 (Staff Report), p. 3.

1.11 Site Characteristics and Use. The property is an approximately 797' x 86' rectangle. Portions of the property are tidelands. The site slopes down gradually from south to north at an overall grade of about 4%. The property is developed with a 1,462 square foot single-family residence, a 484 square foot detached garage, and a bulkhead.

1.12 Utility and Public Services.

- **Water:** Kitsap PUD #1
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue
- **Schools:** North Kitsap School District #400

1.13 Access and Transportation. All lots are proposed to be accessed from Cove Point Lane NE, a county-maintained right-of-way. No new streets are proposed and existing roadways will be improved to accommodate anticipated traffic, which will be minimal for two new single-family residences. To accommodate adequate access, the Applicant also proposes to dedicate additional right-of-way along Lot A (on the west and south sides).¹⁰ The on-site access easement includes a portion of the adjacent property, and staff recommends conditions to ensure adequate access rights are granted before final plat approval (Conditions 3, 4, 12, and 26). Frontage improvements are required along NE Petterson Road and Cove Point Lane NE and are included in the proposal (Conditions 28-30).¹¹ The proposal is not anticipated to create adverse impacts to pedestrians.

1.14 Parking. Three parking spaces are required per single-family residence.¹² The existing single-family residence has sufficient parking; the two additional lots have adequate space to provide the required parking on site.

1.15 Landscaping. Landscaping is not required for this project. DCD supports waiving native vegetation and screening buffer requirements¹³ as KCC 17.500.027 authorizes, due to existing lot dimension constraints, existing neighborhood compatibility, and possible concerns of neighboring shoreline view lines.¹⁴ Due to these conditions, waiver is warranted.

1.16 Signage. No signage is required or proposed.

1.17 Lighting/Urban Plats. No lighting is required or proposed.

1.18 Stormwater. Development Services and Engineering reviewed the proposal and based on its review of the Preliminary Drainage Report and Preliminary Engineering

¹⁰ Exhibit 25.

¹¹ Exhibit 25.

¹² KCC 17.490.030.

¹³ KCC 16.48.020(C)(10) and (G); KCC 17.500.027(B)(2).

¹⁴ Exhibit 27.

Plans, found the stormwater management approach supportable.¹⁵

1.19 Water and Sewer Service. Kitsap PUD has adequate water availability to serve the subdivided lots from Keyport Water System #38550J.¹⁶ Condition 14 requires a Binding Water Availability Letter be submitted with the building permits on the proposed two new lots. The on-site septic systems will require an approved Building Site Application at the time of building permit submittal (Condition 32).

1.20 Solid Waste. Individual property owners will be responsible for solid waste collection.

1.21 Fire Protection. The Applicant has opted to install fire sprinklers for all future structures in lieu of a turnaround for fire access.¹⁷ The Fire Marshal has reviewed and approved the proposal with a condition that the face of the final plat must include a note that fire sprinklers will be provided (Condition 31).

1.22 Shoreline Designation/Critical Areas. The site has various critical areas along the north boundary, including a flood area, geologically hazardous area, and marine wetlands.¹⁸ The critical areas are within the boundary of Lot C, which is already developed; the proposed subdivision affects no known critical areas. The site is within the Shoreline Residential designation¹⁹ and is subject to standards in KCC Title 22. An SSDP is required for subdivisions within this designation.²⁰ No new development is proposed within the 200-foot shoreline jurisdiction, and the BGE Environmental Technical Memorandum confirms there is no net loss of shoreline ecological function.²¹

1.23 Conditions. The Staff Report's proposed conditions are necessary to ensure code requirements are met and to achieve consistency with the above findings. The Applicant's representative confirmed there were no objections or concerns with these conditions, other than a minor correction to Condition 28, which the Department did not object to. Except as revised here, the Staff Report is incorporated.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. The Hearing Examiner reviews the shoreline substantial development permit and the preliminary short plat.²² The Examiner may approve, approve with conditions, or deny the permits.

¹⁵ Exhibits 4 and 16; Exhibit 39 (Staff Report), pp. 16-17.

¹⁶ Exhibit 18.

¹⁷ Exhibit 26.

¹⁸ Exhibit 34.

¹⁹ Exhibit 35.

²⁰ KCC 22.600.105.

²¹ Exhibit 19.

²² KCC 21.04.100 (SSDP is Use #12). A short plat is typically a Director's decision, but came under Examiner jurisdiction through consolidation. KCC 21.04.180(A); KCC 22.600.105 (residential use permitted with SSDP).

2.2 Short Plat. The two additional lots have limited impact, and meet basic platting requirements, as "appropriate provisions" have been made for their addition.

For all types of land segregations, appropriate provisions shall be made for the public health, safety and general welfare, including but not limited to: open spaces, drainage ways, streets or roads, alleys, other public ways, nonmotorized access, road and pedestrian connectivity, parking, transit stops, fire protection facilities, potable water supplies, sanitary sewage wastes, solid wastes, landscaping, parks and recreation, playgrounds, sites for schools and school grounds, sidewalks or other planning features that assure safe walking conditions for students who only walk to and from school. The public use and interest will be served by the proposed land segregation.²³

Many of these criteria are duplicated in KCC 16.24.050 (rural area standards), KCC 16.48.020(D-H) (additional short plat standards), KCC 17.360A.030 (LAMIRD specific requirements) which are also met.

As detailed in the proposal, with the specified improvements and mitigation, adequate access is provided, County stormwater requirements are met,²⁴ and the Kitsap County Fire Marshal can approve the proposal. The plat is only three lots, so requirements for four or more lot projects do not apply. The added lots do not require additional outdoor lighting or landscaping, and signage is not proposed. The plat is not within a design district, and parking is adequate. More generally, appropriate provisions have been made for non-vehicular access, and water supply and septic systems will meet health district requirements. Supporting infrastructure is adequate to support the new lots, the addition of which is consistent with the public health, safety, and welfare.

2.3 Shoreline Substantial Development Permit. Although the new lots and new construction will be outside shoreline jurisdiction, as the original lot is inside shoreline jurisdiction, the Applicant requested an SSDP for the plat.²⁵ An SSDP is granted if consistent with SMA and SMP policies and procedures, and WAC 173-27-150.²⁶ These criteria are met.

The plat follows the shoreline regulations. New construction is outside shoreline jurisdiction, so has no shoreline impacts, and is not subject to shoreline regulation, and there are no cumulative impacts and no net loss of ecological functioning. Mitigation is not required as new development is outside the standard 85-foot buffer (KCC 22.400.120), and outside shoreline jurisdiction altogether. The existing lot is developed with a bulkhead, but no dredging or shoreline stabilization is needed (KCC 22.400.105). Critical areas are not impacted due to the location of new construction (KCC 22.400.115). No cultural resources have been identified on site,²⁷ and there are no view blockage concerns.²⁸ Bulk and dimension requirements are also

²³ KCC 16.04.080.

²⁴ Title 12 KCC; Exhibit 28 (DNS).

²⁵ KCC 22.600.170(A)(3)(c); KCC 16.24.070.

²⁶ KCC 22.500.100(B)(3).

²⁷ KCC 22.400.130.

met.²⁹ Due to the lack of impact, residential development standards (KCC 22.600.170) are also met.

The use at this location is a preferred shoreline residential use. The proposal follows shoreline policies and regulations. The plat will not cause a net loss to shoreline functioning and will not have significant environmental impacts on the shoreline. The proposal is consistent with the policies and procedures of the SMA, Ch. 90.58, and the County's SMP, and should be approved consistent with WAC 173-27-150.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Preliminary Plat, provided these conditions are adhered to.

Planning/Zoning

1. The decision set forth herein is based upon representations made and exhibits contained in the project application (20-00981 and 20-00983). 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.

2. 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.

3. Proof of rights of use of the easement shown as providing access to the subject property shall be submitted with the Final Plat application materials.

4. 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.

5. A Final Short/Large Lot/Subdivision Plat shall be prepared by a licensed Land Surveyor in compliance with KCC Title 16.

²⁸ KCC 22.400.135.

²⁹ KCC 22.400.140.

6. All private roads shall be labeled as tracts and constructed in accordance with Fire Code requirements. Ten feet for utility easement shall be provided on each side of private road tracts.

7. The names of the roads in this land segregation shall be approved by Community Development prior to final subdivision approval.

8. The final plat shall be recorded in accordance with the provisions set forth at Section 16.04.110.

9. Pursuant to KCC 16.48.060(A), Land in a short subdivision may not be further divided in any manner within a period of five years after the recording of the final short plat without the filing of a final plat pursuant to Chapter 16.40, except that when the short plat contains fewer than four lots, nothing in this section shall prevent the owner who filed the original short plat from filing an alteration within the five-year period to create up to a total of four lots within the original short plat boundaries.

10. Pursuant to KCC 16.48.060(C), **the following condition shall be added to the face of the final plat:** No lot in a short subdivision can be divided further without following Kitsap County Code in effect at the time of application for said further division.

11. Pursuant to KCC 17.360A.030(F), **the following conditions shall be added to the face of the final plat:** No grading of more than seventy-five cubic yards of earth may occur unless a site development activity permit (SDAP) is first obtained. Drainage review is required prior to issuance of any SDAP or building permit.

12. The final short plat may need adjacent property owners' signature and parcel number if the access or the existing easement is modified.

13. At the time of building permit, each lot will be required to meet the requirements from KCC 17.420.056.

14. A binding water letter from Kitsap Public Utility District will be required at the time of building permit for the newly created undeveloped lot.

Stormwater

15. Building permits submitted for development of lots within this Short Subdivision shall include construction plans and profiles for all roads, driveways, storm drainage facilities and appurtenances. No construction shall be started prior to said plan acceptance.

16. 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.

17. The information provided demonstrates this proposal is a Small Project as defined in KCC Title 12, and is within 200' of a mapped critical area; as such future building permit(s) shall include a storm drainage design demonstrating compliance with Minimum Requirements #1-5, as outlined in the Kitsap County Stormwater Design Manual.

18. Stormwater quantity control, quality treatment, and erosion and sedimentation control, as required for the lot development, shall be designed in accordance with KCC Title 12 effective at the time the Preliminary Short Subdivision application was deemed complete, April 8, 2020. If lot development meets the thresholds for engineered drainage design, the drainage plans and supporting 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 Building Permit Application. The available impervious area for each lot shall be determined by dividing the allowable impervious area between the lots created. Information shall be provided in a table as shown below.

Allowable Impervious Area	5,000 square feet
Available Impervious Area, Lot A	
Available Impervious Area, Lot B	
Available Impervious Area, Lot C	

19. **The following condition shall be added to the face of the Final Short Plat:** If any proposed impervious area exceeds the allowable square footage as designated per the table, then an engineered Site Development Activity Permit (SDAP) will be required for that lot.

20. **The following condition shall be added to the face of the Final Short Plat:** The maximum impervious surface allowed is 50% for residential properties less than or equal to 0.50 acres and 40% for residential properties greater than or equal to 0.51 acres.

21. **The following condition shall be added to the face of the Final Short Plat:** At the time of building permit application and/or any additional road construction or site work, the property owner shall comply with KCC Title 12 effective at the time the Preliminary Short Subdivision Application was deemed complete, April 8, 2020.

22. **The following condition shall be added to the face of the Final Short 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.

23. If the project proposal is modified from that shown on the submitted site plan dated October 1, 2020, Development Services and Engineering will require additional review and potentially new conditions.

Traffic and Roads

24. At the time of building permit, submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the KCC. The KCPW 1601 form reserves road capacity for the project.

25. 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.

26. All rights of access for adjoining properties currently in existence shall be preserved and documented on the face of the final plat. Any amendment to the existing easement rights of adjoining property owners shall be properly executed and recorded prior to recording the Final Short Plat.

27. At the time of building permit application, 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.

28. The Final Short Plat shall depict dedication of right of way along the property frontage of Cove Point Lane NE to provide for 8-foot travel lane and a 3-foot gravel shoulder. The right of way dedication shall be 15 feet in width, along the portion of the property fronting Cove Point Lane NE.

29. The Final Short Plat shall depict dedication of right of way along the entire property frontage along NE Petterson Road; the right of way dedication shall be 15 feet in width.

30. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the SDAP process (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time.

Fire Safety

31. In lieu of turnaround access requirement, automatic fire sprinklers are required. The following condition shall be added to the face of the plat: "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."

Kitsap Public Health District

32. At the time of building permit application, a Building Site Application (BSA) from the Kitsap Public Health District is required.

Absent a timely appeal or grant of reconsideration, this Decision is final.³⁰

DECISION entered May 10, 2020.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

³⁰ Ch. 36.70C RCW (providing requirements for appeal within 21 days to superior court); Ch. 90.58.140 (providing requirements for appeal within 21 days to Shorelines Hearings Board); HE Rule 1.9.1.