



Staff Report for the Hearing Examiner

Report Date: December 4, 2019

Submittal Date: December 26, 2018

Hearing Date: December 12, 2019

Application Complete Date: January 07, 2019

Permit Number: 18-03479

Project Name: Hancock Critical Area Variance

Type of Application: Critical Area Variance

This staff report was prepared by Steve Heacock, Planner, based on information available up until the time the report was prepared. New information relevant to review of this application may become available prior to the hearing or at the hearing. Staff may wish to change their analysis based upon that new information and reserves the right to do so.

Proposal Summary:

The Department of Community Development is recommending approval of the applicant's request for a Critical Area Variance to allow for construction of two new single-family residences on two adjacent parcels.

Project Request:

The applicant is proposing to construct individual residences on two adjacent parcels currently constrained by a Category 2 and Category 3 wetland and associated f-type creek. The wetland buffer is 110-feet for both wetlands and the associated creek buffer is 150 feet. Due to on-site septic drainfield and reserve drainfield separation requirements, the applicant is requesting a reduction of the wetland buffer to 50 feet and the associated stream buffer to 75 feet. The request also provides wetland and stream mitigation, through a habitat management analysis of the properties. Residential uses proposed are minimized and will occur within the confines of previous agricultural uses on the parcels.

Project Location:

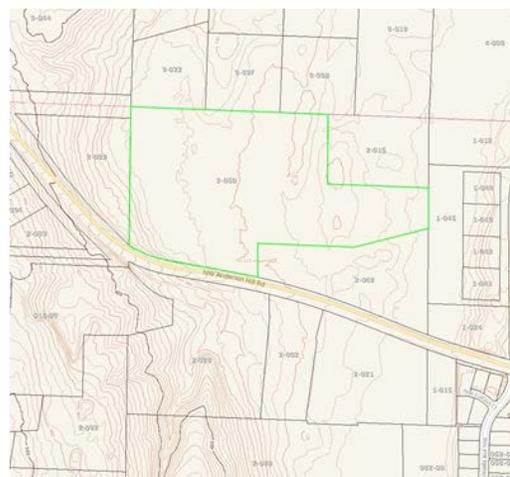
Approximately 800 feet west of the intersection of Olympic View Road NW and NW Anderson Hill Road, Silverdale, WA 98383

Assessor's Account #:

182501-2-050-2001 and 182501-2-049-2005

Applicant/Owner of Record:

Michael and Janele Hancock
1531 E Old Ranch Road
Allyn, WA 98524



SEPA (State Environmental Policy Act):

The State Environmental Policy Act (SEPA), found in Chapter 43.21C RCW (Revised Code of Washington), is a state law that requires the County to conduct an environmental impact review of any action that might have a significant, adverse impact on the environment. The review

includes the completion of an Environmental Checklist by the applicant and a review of that checklist by the County. If it is determined that there will be environmental impacts, conditions are imposed upon the applicant to mitigate those impacts below the threshold of “major” environmental impacts. If the impacts cannot be mitigated, an environmental impact statement (EIS) must be prepared. The decision following environmental review, which may result in a Determination of Non-significance (DNS), Mitigated DNS, or the necessity for an EIS is called a threshold determination. A separate notice of the threshold determination is given by the County. If it is not appealed, it becomes part of the hearing record as it was issued, since it cannot be changed by the Hearing Examiner.

Pursuant to WAC 197-11-800 (6) the application for a variance is considered SEPA-exempt, as it is considered a minor land use decision.

Physical Characteristics:

The two parcels are irregular in shape and include a common driveway access which also serves the northern adjacent property addressed as 5600 NW Anderson Hill Rd. Parcel 1, to the north is 14.78 acres. Parcel 2 is 4.46 acres. The parcels character west of the access road is forested, relatively level with a steepening incline to the west -northwest. The area is mixed mature native deciduous and coniferous canopy with a scrub-shrub and herbaceous understory. It includes wetlands and non-wetland acreages in a mosaic pattern in addition to F- type waters, braided overflows and impounded storages.

Two F-type waters are present to this western region of the two parcels. Both channels were distinct to the landscape, had no discernable criterion-specific surface water connection between them, but physically connected via braided channels and impounding wetland conditions. Resident cutthroat trout have been documented at the culvert along NW Anderson Hill Rd.

The topography on the parcels descend gradually to the south and east. The proposed development area is limited to the east and central area. This portion of the property is disturbed with invasive, noxious Scotts broom and smaller percentages of Himalayan blackberry. Productive fruit trees are intermittent in the landscape in addition to old fence lines and some piled debris from past farming activities. The wetland complex is connected via culverts from west to east. Type-F waters cross the driveway access towards the east and terminate abruptly within Wetland A.

Comprehensive Plan Designation and Zoning:

The subject property’s Comprehensive Plan designation is Rural Residential. The Zoning designation is Rural Residential (RR) (one dwelling unit per 5 acres). The intent of this zone is to promote low-density residential development consistent with rural character.

- Minimum Lot Area - 5 acres
- Minimum Lot Width - 140 feet
- Minimum Lot Depth - 140 feet
- Maximum Height - 35 feet

Standard Rural Residential Zoning Setbacks

- Front - 50 feet
- Side - 20 feet
- Rear - 20 feet

Surrounding Land Use and Zoning:

The surrounding parcels are all zoned Rural Residential. Approximately one mile to the east, the zoning changes to Urban Low.

Public Utilities and Services:

Water: Silverdale Water District
Power: Puget Sound Energy
Sewer: Onsite sewage
Police: Kitsap County Sheriff
Fire: Central Kitsap Fire District
Schools: Central Kitsap School District

Access:

Access to the site is off NW Anderson Hill Rd, a County-maintained right of way.

Policies and Regulations Applicable to the Subject Proposal:

The Growth Management Act of the State of Washington, RCW 36.70A, requires that the County adopt a Comprehensive Plan, and then implement that plan by adopting development regulations. The development regulations must be consistent with the Comprehensive Plan. The Comprehensive Plan process includes public involvement as required by law, so that those who are impacted by development regulations have an opportunity to help shape the Comprehensive Plan which is then used to prepare development regulations.

Kitsap County Comprehensive Plan, adopted June 30, 2016

The following Comprehensive Plan goals and policies are most relevant to this application:

Land Use Policy 50

Limit the designated rural area to low residential densities that can be sustained by minimal infrastructure improvements, cause minimal environmental degradation, and that will not cumulatively create the future necessity or expectation of urban levels of service.

Land Use Policy 51

Permit residential uses in rural areas consistent with the planned rural character of the surrounding area.

Land Use Policy 53

Outside of the Type III Limited Area of More Intensive Rural Development (LAMIRD), limit development only to that which serves rural residential or resource needs and does not draw population from Urban Growth Areas. This policy is implemented through Comprehensive Plan Land Use designations, zoning designations, and zoning code provisions.

Housing and Human Services Policy 5

Use regulatory strategies to incentivize and provide flexibility for development of affordable and special needs housing.

*Housing and Human Services Policy 7
Adopt regulatory changes to allow non-traditional housing types.*

*Housing and Human Services Policy 11
Promote fair housing to ensure that all residents of Kitsap County have an equal and fair opportunity to obtain safe and sanitary housing suitable to their needs and financial resources, regardless of race, religion, gender, sexual orientation, age, national origin, family status, income, disability, or other protected class.*

*Housing and Human Services Policy 12
Identify and remove regulatory barriers that limits access to or the provision of a diverse affordable housing supply.*

*Housing and Human Services Policy 14
Disperse affordable housing opportunities throughout the County*

*Environment Policy 13.
Use best scientific information available to direct how functions and values of critical areas are preserved and enhanced.*

*Environment Policy 18.
Compensatory mitigation shall be the last option of resort in mitigation sequencing, following documentation of avoidance and minimization of any impact to the natural environment that triggers compensatory mitigation. Replacement of altered or displaced natural environments (including critical areas and buffers) must be mitigated either on-site, within the watershed, or service area as defined through an approved mitigation bank or in-lieu fee program.*

The County's development regulations are contained within the Kitsap County Code. The following development regulations are most relevant to this application:

Kitsap County Code (KCC)

- Title 12 Storm Water Drainage
- Title 13 Water and Sewers
- Title 14 Buildings and Construction
- Title 17 Zoning
- Title 19 Critical Areas Ordinance

Chapter 18.04 State Environmental Policy Act (SEPA)

Chapter 20.04 Transportation Facilities Concurrency Ordinance

Chapter 21.04 Land Use and Development Procedures

Documents Consulted in the Analysis:

A complete index of exhibits is located in the project file. To date, the index to the record consists of 32 Exhibits.

Exhibit #	Document	Date or date stamped
1	SEPA Checklist	07/16/18
2	EMAIL – Approval to Cancel Permit	08/27/18
3	EMAIL – Approve Request to Reinstate	12/17/18

4	Engineered Drainage Report	12/24/18
5	Health District (HD) Documentation – not yet submitted	12/24/18
6	Project Narrative	12/24/18
7	Photos	12/24/18
8	Project Application	12/24/18
9	REVISED SEPA Checklist	12/24/18
10	Site Plans – HD not yet submitted	12/24/18
11	Wetland Delineation Report	12/24/18
12	Site Plan Submittal Waiver	12/26/18
13	Intake Triage Agenda	01/07/19
14	Notice of Complete Application	01/08/19
15	Notice of Application	01/11/19
16	EMAIL – Shaffer RE CVAR Condition	01/29/19
17	Comments - WA Dept Fish & Wildlife (WDFW) RE: NOA	02/01/19
18	EMAIL – Response to Myers Request for WDFW Comments	02/04/19
19	Comments – Suquamish Tribe RE: NOA	02/05/19
20	EMAIL – Shaffer_Myers – RE: Request for Site Visit	02/13/19
21	EMAIL – Shaffer RE: Site Visit Coordination	02/13/19
22	Preliminary Conditions Memo	02/21/19
23	Step Deficiency Report/Info Request	02/26/19
24	EMAIL – Myers RE: Draft Response to Info Request	04/12/19
25	EMAIL – Shaffer RE: Follow Up to Site Visit	04/16/19
26	Approval to Extend Permit	05/21/19
27	Response to Info Request	06/20/19
28	REVISED Wetland Delineation Report	06/20/19
29	Notice of Public Hearing – All revisions	10/30/19
30	Certification of Public Notice	
31	Staff Report	
32	Staff Presentation	

Public Comments:

No public comments were received at the time of this writing.

Analysis:

Land Use and Zoning Analysis

Residential Development Standards

New residential development is required to meet the provisions and requirements outlined in KCC 17.420 density, dimensions and design standards.

- a. *All setback requirements for the zone in which the residential development is located shall apply.*

Standard Zoning Setbacks

Front 50 feet
 Side 20 feet,
 Rear 20 feet

The proposed residential development is met for both residential development proposals.

- b. *The residential uses shall meet the applicable health district standards for water and sewage disposal.*

The subject property development proposes individual on-site septic systems and will use public water. The Health District has submitted approval for this project (to be presented at the hearing).

- c. *The proposed residence shall provide additional off-street parking.*

Three parking spaces are required for each single-family residence (SFR) and can be accommodated on both properties.

Critical Area Ordinance and Variance Analysis

Kitsap County Code 19.100.135

Project Impacts:

The proposed project is the construction of residential development to both Parcel 1 and Parcel 2. Strict application of the standard wetland (110 ft) and stream (150 ft) buffers grossly limit the net developable area, see Exhibit A in the revised wetland report (Index Exhibit 28). The estimated net developable acreage is roughly 14,000 sq. ft (0.32 acres) minus critical areas and buffer. Parcel acreages to the west will remain natural.

Design and planning for site development to include living space and drainfield, necessitate the reduction of critical area buffers on the parcels, see Exhibit B (Index Exhibit 28). The restrictive circumstance is the landscape position of wetlands and type-F water and the engulfing standard buffer requirements. Avoidance of buffer impacts is necessary for conformance with all Titles of the Kitsap County Code.

Due to the size and shape of the two parcels, strict application of standard buffers and buffer width modification alternatives, deprive the parcels rights and privileges of use common to the vicinity ownerships. The proposed development requests a wetland buffer reduction to 50-ft or a stream buffer reduction of 75-ft, whichever is most restrictive, see Exhibit D in the revised wetland report (Index Exhibit 28). for delineation of the established buffer.

Development of both parcels respectfully requests an exception to the standards and requirements for administrative buffer modifications. A Critical Area Variance (CVAR) for the wetland reduction greater than twenty-five percent of the total 110 ft is unavoidable to have a feasible and viable project. The stream buffer conforms to the standards for an administrative reduction maintaining a minimum of fifty percent of the total 150 ft buffer (Type II decision Chapter 19.800, Appendix F).

The resultant impact for single-family development to Parcel 1 and Parcel 2 is an established buffer having a minimum wetland buffer width of 50 ft and a minimum stream buffer width of 75 ft. The established 15 ft building and impervious surface setback applies.

Buffer Assessment

All critical area buffers within the investigation area are compromised. The character is either grass, orchard trees, or Scotts broom. In consideration of any applicable protection of high-quality buffer to the wetland, there is none present. To date the buffers have been brush hogged and currently mowed to manage Scotts broom. Mitigation potential is applied to all non-wetland areas of the two parcels.

Mitigation Sequencing. (Exhibit 28 report detail)

Permitted developments shall be designed and conducted in a manner that protects the current ecological condition and prevents or mitigates potential impacts. Impacts shall be mitigated according to Title 19.200.250 KCC, in a sequential analysis to avoid, minimize and mitigate. The mitigation analysis sequence is provided below for both Parcel 1 and Parcel 2. All impacts associated with the proposed single-family redevelopments are considered.

MITIGATION MEASURE	MITIGATED ACTION(S)
AVOID the impact altogether by not taking a certain action or parts of an action	<ul style="list-style-type: none">• Due to the size of standard buffer requirement, impacts to the wetland and stream buffers cannot be avoided.
MINIMIZE impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts	<ul style="list-style-type: none">• The proposed buffer reduction is the minimum necessary to accommodate lawful use and development of the two parcels.• Proposed building envelopes are aligned off historic use features and to the highest elevations located on the properties.
RECTIFY the impact by repairing, rehabilitating, or restoring the affected environment	<ul style="list-style-type: none">• Structural impacts are permanent.• Prior converted wetlands have recovered naturally, use rectified.• Degraded buffers to be restored with native vegetation.
REDUCE or eliminate the impact over time by preservation and maintenance operations	<ul style="list-style-type: none">• Proposed use is permanent.
COMPENSATE for the impact by replacing, enhancing, or providing substitute resources or environments	<ul style="list-style-type: none">• Restoration of the established buffers proposed.
MONITOR the impact and the compensation project and take appropriate corrective measures	<ul style="list-style-type: none">• Details of monitoring for success, performance, maintenance and contingencies are proposed under a five-year monitoring plan.

Critical Area Variance Criteria

A variance in the application of the regulations or standards of Title 19 KCC to a piece of property may be granted by Kitsap County, when it can be shown that the application meets all the following criteria. Both parcels are equally limited in unencumbered developable area, neither of more significance to the other. Therefore, the criterion provide below is applied to both Parcels, 1 and 2, seeking a variance to reduce the standard wetland buffer from 110 ft to 50 ft. The variance criterion are also applicable to the provision for decreasing the stream buffer (Chapter 19.300.315, KCC) in which any and all special conditions to uncontrollable conditions such as size, shape, topography, and critical areas shall be interrelated to the same cause and standard, despite the limits of the necessary buffer reduction.

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

The subject parcels include significantly more wetland area than non-wetland. Application of the standard 110 ft buffer further deprives the property of reasonable development for single-family residential use. Strictly applied, compliance with all Kitsap County Titles for building, drainfield, and stormwater is not achievable. A wetland buffer reduction to 50 ft allows for the parcels establishment as single-family. As the wetland buffer is most restrictive and the 150 ft stream buffer at the interior, no reasonable alternative to avoid stream buffer impacts is available for a feasible project.

2. The special circumstances referred to in subsection 1 above are not the result of the actions of the current or previous owner.

Special circumstances outside of the large encumbered wetland area includes the existing access road and degraded critical area buffers from historic prior converted agricultural use. The building footprints are within the old agriculture area, homesteaded over 30 years ago.

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

The proposed residential developments are over existing degraded conditions, to include critical area buffers. All acreages to the west of the existing access road are encumbered by mosaic wetland complexes and F Type waters. As proposed, the residential use areas are the best alternative for lawful development of the two parcels. Sensitive to watershed function, the degraded landscape has restoration potential with any proposed development. Conceptually, this alternative is consistent with the goals, policies and purpose of the County Critical Area Ordinance.

Existing use is improved fallow prior converted agricultural land use, substantial or adverse impacts to the associated critical areas is not anticipated.

4. The granting of the variance is the minimum necessary to accommodate the permitted use.

The requested buffer reduction allows for three-bedroom residence, drainfield, and reserve. It includes use areas at and around the structures. For ease of accounting and delineating the impacts as proposed, the most restrictive buffer [50 ft wetland or 75 ft stream] is applied as standard with a 15 ft impervious surface setback. Only minor encroachments into the setback are unavoidable and limited to the drainfield.

5. No other practicable or reasonable alternative exists.

Potential alternative development sites identified would require clearing mature trees. This alternative was deemed impracticable with the existing degraded landscape currently proposed for building envelopes. Mitigation need, and potential is to this historically degraded critical area buffers, therefore, the reasonable alternative is to legally define the residential development to existing use, mitigating lost function and value with the change of use.

6. A mitigation plan has been submitted and is approved for the proposed use of the critical area.

Staff Evaluation of Decision Criteria

1. The Hearing Examiner has review authority for this Critical Area Variance Permit application under KCC, Sections 19.100.135 and 21.04.100. The Kitsap County Commissioners have determined that this application requires review and approval of the Hearing Examiner. The Hearing Examiner may approve, approve with conditions or deny a Critical Area Variance Permit. The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision. The powers of the Hearing Examiner are at KCC, Chapter 2.10.
2. The proposal is consistent with the comprehensive plan.
3. The proposal complies with or will comply with requirements of Title 17 and complies with or will comply with all of the other applicable provisions of the KCC and all other applicable regulations, including all applicable development standards and design guidelines, through the imposed conditions outlined in this report. The proposal is consistent with the code and provisions of the Kitsap County Critical Area Ordinance.
4. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity.
5. 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.

Agency Recommendation

Planning recommends approval of this project with 9 conditions. Development Engineering recommends approval of this project with 11 conditions. Environmental Review recommends approval with 5 conditions.

Planning/Zoning

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

2. The future residential developments are subject to the payment of impact fees. Impact fees must be paid at time of permit issuance, or if deferred, must be paid prior to final inspection. No certificate of occupancy will be granted until all impact fees are paid.
3. Any proposed modification of the site plan or expansion of accessory buildings, regardless of whether a building permit is required, shall be reviewed by the Department of Community Development and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
4. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.
5. The uses of the subject property are limited to the uses proposed by the applicant and any other uses will be subject to further review pursuant to the requirements of the Kitsap County Code (KCC). Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not, and is not, to be construed as approval for more extensive or other utilization of the subject property.
6. 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.
7. The decision set forth herein is based upon representations made and exhibits contained in the project application (Exhibits 1-32, to-date). 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.
8. This Critical Area Variance Permit approval shall automatically become void if no development permit application is accepted as complete by the Department of Community Development within three years of the Notice of Decision date or the resolution of any appeals.
9. Any violation of the conditions of approval shall be grounds to initiate revocation of this Critical Area Variance Permit.

Development Engineering

10. 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.

11. The information provided demonstrates this proposal is below the hard-surface thresholds to require a Site Development Activity Permit. However, due to the critical areas on the site, an engineered drainage plan will be required at the time of submittal of building permits for each lot.
12. The engineered drainage plan shall meet the requirements of the level of drainage review and the stormwater Minimum Requirements revealed by completion of the Stormwater Worksheet submitted with the building permit application.
13. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time the Critical Area Variance application was deemed complete, January 18, 2019. 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.
14. If the project proposal is modified from that shown on the submitted site plan dated December 23, 2018, Development Services and Engineering will require additional review and potentially new conditions.
15. Submit an application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW 1601 form reserves road capacity for the project.
16. All rights of access for adjoining properties currently in existence shall be preserved. Any amendment to the existing easement rights of adjoining property owners shall be properly executed and recorded prior to SDAP acceptance or building permit approval.
17. 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 Kitsap County Code. Existing approaches may need to be improved to meet current standards.
18. 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. The need for and scope of bonding will be determined at that time.
19. If the project includes the construction of rock walls or other retaining facilities that either exceed four feet in height or sustain a surcharge, a separate building permit with an engineered design is required for such walls. This note shall be placed on the face of the final construction drawings.
20. Rock and retaining walls shall meet all applicable setback requirements of Kitsap County Stormwater Design Manual, Volume II, Chapter 9.

Environmental

21. Follow the recommendations of the Critical Area Assessment and Mitigation Report of BGE, LCC's revised June 10, 2019 report.
22. Mitigation plan will be monitored for a minimum of 5 years to ensure survival.
23. The newly created single-family residence will be limited to 35 feet in height per Kitsap County Code 22.500.100. a.2. Building height is defined in Kitsap County Code 17.110.140.
24. Permit approval 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.
25. There shall be no clearing of vegetation or grading in the buffer area, as is depicted on the approved site plan. Prior to any clearing or development, please contact Development Services and Engineering Environmental staff at (360)337-5777 to confirm buffer boundaries.



Steve Heacock, Staff Planner

12/05/2019

Date



Scott Diener, Development Services and Engineering Manager

12/06/2019

Date

CC: Applicant/Owner: Michael and Janele Hancock
Engineer: Pat Fuhrer
Interested Parties:
Jack Stanfill
Kitsap County Health District, MS-30
Kitsap County Public Works Dept., MS-26
DCD Staff Planner: Steve Heacock
DCD File (18-03479)