



## KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

614 DIVISION STREET MS-36, PORT ORCHARD WASHINGTON 98366-4682  
(360) 337-7181 FAX (360) 337-4925 HOME PAGE - [www.kitsapgov.com](http://www.kitsapgov.com)

LARRY KEETON, DIRECTOR

# STAFF REPORT and INFORMATION FOR THE HEARING EXAMINER

**Report Date:** January 6, 2016

**Application Submittal Date:** October 26, 2015

**Hearing Date:** January 14, 2016

**Application Complete Date:** October 28, 2015

## Project: Westphal Accessory Dwelling Unit (ADU)

*This staff report was prepared by Meg Sands, Planner, Steve Heacock, Environmental Planner, and Candy Mursell, Development Engineering Specialist, 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.*

### Project Summary:

The Department of Community Development is recommending approval of the applicant's request for a Conditional Use Permit to construct an 897 square foot accessory dwelling unit (ADU). The 6.39-acre parcel is zoned Rural Protection (RP) and located at 8531 NE State Highway 104 in Kingston. The project will be served by an on-site septic and an on-site private two-party well.

**Application Number:** 15 04259

**Type of Application:** Conditional Use Permit (CUP)

### Project Request:

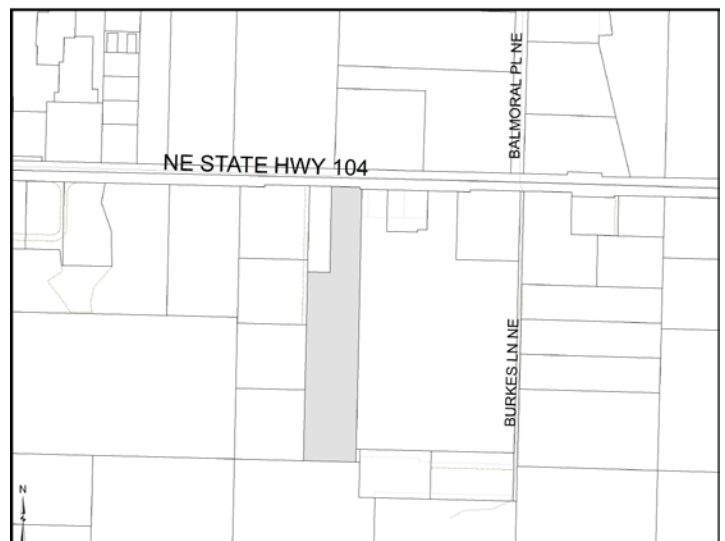
The applicant requests Conditional Use Permit approval to construct an 897 square foot ADU.

### Project Location:

8531 NE State Highway 104  
Kingston, Washington  
North Kitsap County

### Assessor's Account #:

272702-2-006-2002



**Applicant/Owner of Record:**

Derek & Katherine Westphal  
8531 NE ST HWY 104  
Kingston, WA 98346

**Project Representative:**

Sheldon Smith  
CBay Consulting  
4001 72<sup>nd</sup> Street East  
Tacoma, WA 98443

**State Environmental Policy Act (SEPA) Status:**

*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 (Exhibit 9), 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 Nonsignificance (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 197-11-355, the optional DNS process was utilized for this project. The SEPA comment period previously occurred concurrent with the Notice of Application dated December 9, 2015 (Exhibit 16). A Determination of Nonsignificance (DNS) was issued December 18, 2015 (Exhibit 31). SEPA noted the following conditions which have been imposed and are listed under conditions 1, 2, 5 and 6 at the end of this report: The proposal has been reviewed for consistency with KCC Title 19 Critical Areas and is conditioned for Stream buffers per KCC Title 19.300. The proposal will also be conditioned for Stormwater control per KCC Title 12.

The SEPA appeal period expires January 4, 2016. No appeals were filed; therefore, the SEPA determination is final.

**Property Characteristics:**

The irregular-shaped 6.39-acre lot is developed with a single-family residence (SFR). There is a Type F stream that runs east-west on the property and the property gradually slopes from the east downward towards the west. There is also a mapped indication of hydric soils, but no wetlands are present in the mapped vicinity of the northern third of the property (within 200 feet of the proposed ADU).

**Comprehensive Plan and Zoning Designations:**

The Comprehensive Plan designation is RP (Exhibit 22) and the Zoning designation is RP (Exhibit 23).

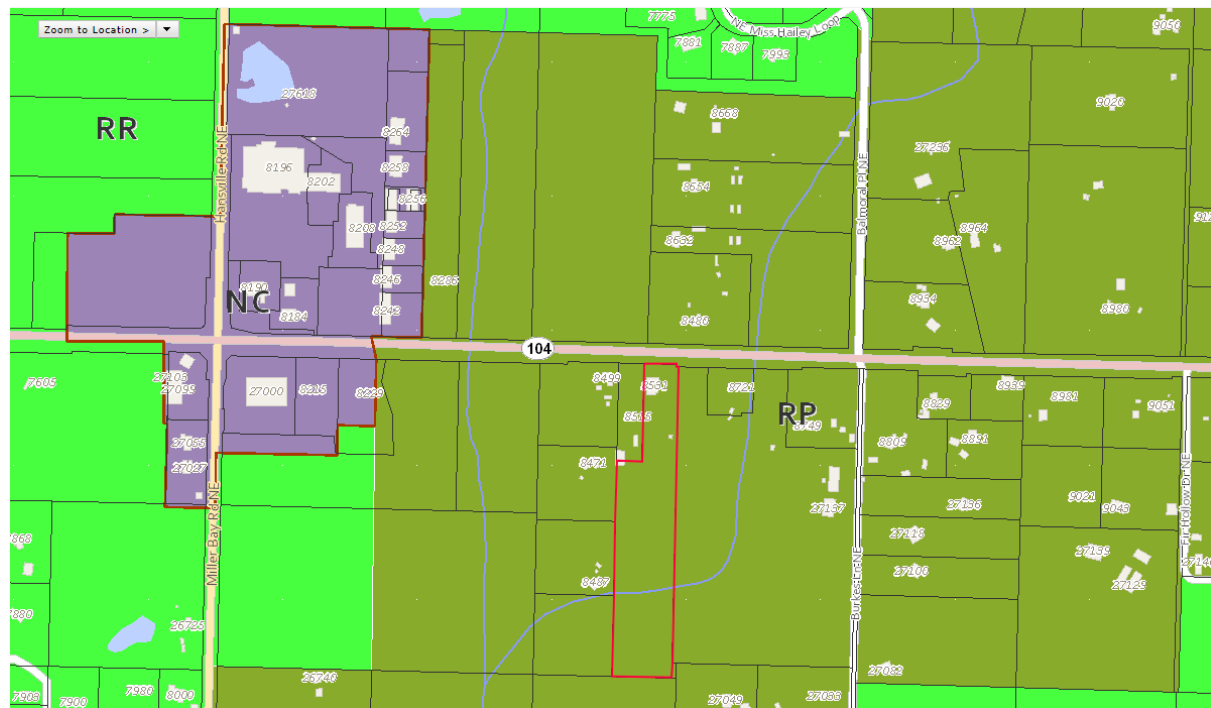
Base/Maximum Density	not applicable
Minimum Lot Size	10 acres
Lot Width	140 feet
Lot Depth	140 feet
Maximum Height	35 feet

**Standard Zoning Setbacks**

- Front 50 feet
- Side 20 feet, 5 feet for an accessory structure
- Rear 20 feet, 5 feet for an accessory structure

**Surrounding Land Use and Zoning:**

The surrounding area is generally acreage lots, but there are some lots in the general vicinity that are less than an acre. The area is predominately developed with a single-family residence on each lot and there are many lots that are undeveloped; however, there is also some commercial development including a gas station and mini-mart, an Albertson's grocery store, restaurants and a Starbucks, Rite Aid, and other retail in the vicinity of the intersection of State Highway 104 and Hansville Road NE to the north and Miller Bay Road NE to the south. The white spots on the lots below represent buildings. The subject property and near vicinity is zoned RP, but further to the north, south, east and west there is Rural Residential (RR) zoning; and Neighborhood Commercial (NC) zoning near the intersection of State Highway 104 and Hansville Road NE/Miller Bay Road NE.



**Public Utilities and Services:**

Water: On-site well  
Power: Puget Sound Energy  
Sewer: On-site septic system  
Police: Kitsap County Sheriff  
Fire: Fire Protection District No. 18  
Schools: North Kitsap School District #400

**Policies and Regulations Most 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 December 11, 2006 (Amended December 2012)

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

Rural and Resource Lands

Policy RL-1

*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.*

Policy RL-2

*Provide a variety of densities in the rural areas to make more efficient use of land, maximize the return on public infrastructure investment, and provide for affordable housing opportunities.*

Policy RL-3

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

Policy RL-4

*Outside of Type III LAMIRDs, limit development only to that which serves rural residential or resource needs and not draw people from UGAs.*

Policy RL-14

*Provide road and access standards that enable all-weather access for emergency response vehicles while preserving and enhancing rural character.*

Policy RL-15

*Ensure proper installation, use and maintenance of on-site septic systems.*

Natural Systems

Policy NS-21

Require native vegetation buffers along streams and wetlands to protect the function and values of those surface waters.

Policy NS-22

Strive to achieve no net loss of wetland function in the short term, and a measurable gain of wetland function in the long term, in the following manner: Avoid direct impacts on wetlands and buffers; minimize direct impacts to wetlands and buffers; and mitigate impacts through creation, restoration, or enhancement of wetlands or buffers.

Policy NS-40

Require vegetative buffers along surface waters to protect fish and wildlife habitat. Larger or enhanced buffer areas may be required to adequately protect priority fish and wildlife species. Buffer enhancement, restoration, and/or mitigation shall be required where buffers have been degraded or removed during new development.

Policy NS-42

Encourage developers to protect continuous corridors of native vegetation wherever possible, to disturb as little natural vegetation as feasible, and to enhance or restore wildlife habitat by transplanting or planting native vegetation in the developed landscape.

Policy NS-45

Encourage best management practices in the use of herbicides and pesticides near surface waters or drainage ditches.

Housing

Policy HS-6

*Ensure that a broad range of housing types are available through innovative planning, efficient and effective administration of land and building codes and financial assistance.*

Policy HS-8

*Encourage and facilitate development of a variety of housing types, including single-family residential, multi-family, mobile, modular, and manufactured homes. Doublewide mobile, modular and manufactured homes should be considered a single-family dwelling.*

Policy HS-9

*Encourage innovative land use practices and development standards that will have the effect of minimizing housing costs.*

Policy HS-11

*Permit and encourage the development of residential accessory dwelling units (mother-in-law apartments) in all residential zones with sufficient public facilities to support such*

*development. Subject accessory dwelling units to development standards and design guidance that facilitates their compatibility with existing neighborhood character.*

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 14 Buildings and Construction
- Title 17 Zoning
- Chapter 18.04 State Environmental Policy Act (SEPA)
- Title 19 Critical Areas Ordinance
- Chapter 20.04 Transportation Facilities Concurrency Ordinance
- Chapter 21.04 Land Use and Development Procedures

**Relevant 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 Exhibits 1 – 31.

**Applicant submittals:**

<u>Document</u>	<u>Exhibit #</u>	<u>Dated or date stamped</u>
ADU Building Elevations (Sheet A3)	14	October 27, 2015
ADU Floor Plans (Sheet A1)	14	October 27, 2015
Building Site Application (BSA)	7	October 26, 2015
Condition Use Permit ADU Application	2	October 26, 2015
Critical Area Buffer Reduction/ CA Variance	6	October 26, 2015
Environmental (SEPA) Checklist	9	October 26, 2015
Habitat Management Plan (HMP)	10	September 2015
Mobile Home Location/ADU Location Photo	4	October 26, 2015
Project Application	1	October 26, 2015
Project Narrative (revised)	19	December 16, 2015
SFR Building Elevation Photos	11	October 26, 2015
SFR Floor Plans	11	October 26, 2015
Site Plan	12 & 13	October 26, 2015

**Staff communication:**

<u>Document</u>	<u>Exhibit #</u>	<u>Dated or date stamped</u>
Development Engineering Memo	18	November 24, 2015
Determination of Nonsignificance	31	December 18, 2015
Health Officer Decision	17	November 9, 2015

**Public comments:**

No comments received to date.

**Analysis:**Land Use, Planning and Zoning

An accessory dwelling unit within the RP zone requires a Conditional Use Permit as specified in KCC Table 17.381.040(E) Parks, Rural and Resource Zones, subject to footnote 1. Footnote 1 indicates an ADU is subject to compliance with Section 17.381.060 Provisions applying to special uses.

Accessory Dwelling Unit (ADU) Standards

An ADU is required to meet the provisions and requirements outlined in KCC 17.381.060.B.3 – Provisions applying to special uses; Accessory Dwelling Unit (ADU). In order to encourage the provision of affordable and independent housing for a variety of households, an accessory dwelling unit may be located in residential zones. Criteria from KCC 17.381.060.B.3 are listed below (*italics*), with a discussion of the individual standard immediately following:

- a. *An ADU shall be allowed as a permitted use in those areas contained within an urban growth boundary.*

The proposed ADU is not within an urban growth boundary. Therefore, the ADU cannot be permitted in conjunction with a building permit as an outright use. Land use approval is required for this ADU.

- b. *An ADU shall be subject to a conditional use permit in those areas outside an urban growth boundary.*

The subject property is outside an urban growth boundary. As a result, the applicant has applied for and is requesting approval of a conditional use permit as required by the KCC.

- c. *Only one ADU shall be allowed per lot.*

Only one ADU is proposed for the subject lot.

- d. *Owner of the property must reside in either the primary residence or the ADU.*

The owners of the property, Derek and Katherine Westphal, currently live in single-family residence (SFR). After construction of the ADU the owners plan to live in the SFR (Exhibit 19).

- e. *The ADU shall not exceed fifty percent of the square footage of the habitable area of primary residence or 900 square feet, whichever is smaller.*

According to the floor plans, the primary residence's habitable area is over 2,400 square feet (Exhibit 11). Fifty percent of its habitable area would be over 900 square feet (2,400 square feet X 50% = 1,200 square feet). The ADU would be limited to 900 square feet as

determined by exterior measurements. The ADU building as proposed would be 897 square feet according to the floor plans (Exhibit 14, Sheet A1).

- f. *The ADU shall be located within 150 feet of the primary residence or shall be the conversion of an existing detached structure (i.e., garage).*

The ADU building would be located approximately 105 feet from the primary residence (Exhibit 13).

- g. *The ADU shall be designed to maintain the appearance of the primary residence.*

The ADU's planned residential architectural design and building materials would be similar and complementary to the appearance of the primary residence. Both buildings would have a pitched, composite roof, lap siding, vinyl windows and the same body and trim color. (Exhibits 11 & 14).

- h. *All setback requirements for the zone in which the ADU is located shall apply.*

The proposed ADU building would comply with the RP zone setback requirements. The front yard setback as proposed, along the north property line and State Route 104, would be at least 200 feet. The side yard setbacks as proposed, along the east property line, would be at least 20 feet to the building wall and the other side yard, along the west property line, would be over 80 feet. The rear yard setback, along the south property line, would be over 900 feet to the building wall (Exhibit 12).

- i. *The ADU shall meet the applicable health district standards for water and sewage disposal.*

The Health District recommends approval of the project subject to no conditions (Exhibit 17).

- j. *No mobile homes or recreational vehicles shall be allowed as an ADU.*

The proposed ADU will be a stick-built structure.

- k. *An ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking.*

Both the primary residence and the ADU would use the same existing driveway. The driveway is gravel, but the apron is paved.

Two parking spaces are required for the single-family residence (SFR) and could be accommodated on the existing gravel driveway.



One parking space is required for the ADU. At least one parking space would be available next to the ADU building (Exhibit 13).

- I. *An ADU is not permitted on the same lot where an accessory living quarters exists.*

Based on the SFR floor plan the structure does not have accessory living quarters (Exhibit 11).

### Critical Areas

There is a Type F stream designated on the critical areas map that runs east-west on the southern third of the property and north-south off-site to the east (Exhibit 24). The geographic information system (GIS) registration of mapped critical areas for the off-site portion of the stream is off slightly. Steve Heacock, Environmental Planner, visited the site and confirmed the location of the stream and it is consistent with the location shown on the site plan (Exhibit 13). A Type F stream requires a 150-foot standard buffer with an additional 15-foot construction setback. The buffer may be modified by the implementation of a Habitat Management Plan (HMP) under the provision of KCC 19.300.315 A-4. The implementation of the HMP will mitigate for the off-site stream buffer proximity. There is an indication of hydric soils, but no wetlands are present within the designated vicinity of the northern third of the property (within 200 feet of the proposed ADU).

The ADU is proposed to be constructed in the same area as a previous mobile home location. No native vegetation will be removed or disturbed to construct the ADU. The previous home was setback approximately 75 feet from the off-site portion of the stream to the east; the previous home and ADU location is over 200 feet from the on-site portion of the stream. Because the ADU is proposed in virtually the same location as the previous mobile home, a reduced stream buffer of 75 feet is warranted without a formal buffer reduction or variance. However, habitat enhancement is warranted and a habitat management plan (HMP, Exhibit 10) was required as part of the ADU application. The total impacted building area is limited to 2,500 square feet. To mitigate for the proposed development, an area of 2,500 square feet located southwest of the building site has been identified where invasive species of Himalayan blackberry will be removed and replanted with native vegetation (Exhibit 13). This project has been conditioned to comply with the HMP. Monitoring and maintenance is also required.

### Stormwater

The information provided demonstrates the proposed ADU is within the buffer area of a designated Critical Area (stream), and as such will require an Engineered Small Site Review (ESSR) to provide stormwater quantity control and quality treatment. This aspect of review will take place with the ADU building permit application.

### Agency Recommendations

All reviewing entities recommend approval of the proposed project and any required conditions are stipulated at the end of this report.

**Staff Evaluation of Decision Criteria:**

1. The Hearing Examiner has review authority for this Conditional Use Permit application under KCC, Sections 17.421.020 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 Conditional Use 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.
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.

**Recommendation:**

Based upon the information above, the Department of Community Development recommends that the Conditional Use Permit (CUP) request for Westphal Accessory Dwelling Unit (ADU) be approved, subject to the following 25 conditions:

Development Services and Engineering

Development Engineering

1. The information provided demonstrates this proposal is within the buffer area of a designated Critical Area (stream), and as such will require an Engineered Small Site Review (ESSR) from Development Services and Engineering. This aspect of review will take place with the building permit application.
2. 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 Conditional Use Permit application was deemed complete, October 28, 2015. 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 Building Permit application.

3. At building permit application, submit KCPW Form 1601 for issuance of a concurrency certificate, as required by KCC Section 20.04.030, Transportation Concurrency.
4. Any work within the County right-of-way requires a Public Works permit to perform work in the right-of-way and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the building permit application. The need for and scope of bonding will be determined at that time.

#### Environmental Review

5. A 75-foot F-type stream buffer shall be provided through the buffer averaging provision of KCC 19.300.315 A-4 and as guided by the Habitat Management Plan (Exhibit 10).
6. The project shall comply with the implementation and monitoring requirements as outlined in the Habitat Management Plan (Exhibit 10).

#### Planning/Zoning

7. All required permits shall be obtained prior to construction and/or occupancy.
8. An approved and issued building permit is required to construct the proposed ADU.
9. All building permits shall be subject to impact fees pursuant to the *Kitsap County Code* in effect on the date of a complete building permit application.
10. Any proposed modification (not including cosmetic work such as painting, papering and similar finish work), remodel or expansion of the ADU building, 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.
11. Only one ADU shall be permitted on the subject property.
12. The owner of the property must reside in either the primary residence or the ADU and only one of the structures may be rented at any one time.
13. The ADU is limited in size to that proposed by the applicant in Exhibit 14 and no greater than 900 square feet.
14. The ADU shall be designed to maintain the appearance of the primary residence.

15. The ADU shall meet the applicable health district standards for water and sewage disposal.
16. No mobile home or recreational vehicle shall be allowed as an ADU.
17. The ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking.
18. An ADU is not permitted on the same lot where an accessory living quarters exists.
19. A property with a primary residence and an accessory dwelling unit (ADU) cannot be segregated to create two separate legal lots unless it complies with all subdivision, zoning and density requirements in place at the time of a complete subdivision application.
20. The accessory dwelling unit (ADU) cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
21. The recipient of any conditional use permit shall file a Notice of Land Use Binder with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The Notice of Land Use Binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared by the Department and recorded at the applicant's expense. The applicant shall provide recorded copies of the Binder to the Department. The Binder shall be recorded within 30 days of the final land use decision and notification by the Department.
22. 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 KCC. Unless in conflict with the conditions stated above 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.
23. This Conditional Use Permit approval shall become void if no building permit application to build the ADU is accepted as complete, by the Department of Community Development, within three years of the date of the Notice of Decision and resolution of any appeals.
24. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.

Health District

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

c: Derek & Katherine Westphal, westphal.derek@gmail.com  
Sheldon Smith, sheldon@cbayconstruction.com  
Interested Parties: none identified to date  
Kitsap County Health District, MS-30  
Kitsap County Public Works Dept., MS-26  
DCD Staff Planner: Meg Sands  
DCD Code Compliance  
DCD File 15 04259  
DCD Building Permit File  
DCD Development Engineering  
DCD Fire Marshal  
Hearing Examiner  
Clerk of Hearing Examiner

