



Kitsap County Hearing Examiner

ADMINISTRATION BUILDING, 619 DIVISION ST, MS-36
http://www.kitsapgov.com/dcd/lu_env/he/

PORT ORCHARD, WA 98366
(360) 337-5777

NOTICE OF HEARING EXAMINER DECISION

October 11, 2016

To: Interested Parties and Parties of Record

RE: Project Name: Hitchman – Shoreline Substantial Development Permit and Preliminary Short Plat
Applicant: Anthony Hitchman
10447 47TH AVE SW
SEATTLE, WA 98146
Application: Shoreline Substantial Development Permit and Preliminary Short Plat
Permit Number: 16 01318 and 16 01319

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at: http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%206-23-09.pdf

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

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 or (360) 337-5777.

CC: Applicant and/or Rep:

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Interested Parties:

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

**Consolidated Decision on
Request for Shoreline Substantial Development Permit, File No. 16 01318, and
Request for Preliminary Short Plat, File No. 16 01319**

October 10, 2016

THIS MATTER came before the Kitsap County Hearing Examiner in a consolidated hearing on September 29, 2016. The Hearing Examiner makes the following Findings of Fact, Conclusions of Law, and Decision on both the shoreline substantial development permit and preliminary short plat:

1. FINDINGS OF FACT

1.1 Proposal. The Applicant requests a Shoreline Substantial Development Permit under the Shoreline Management Master Program, Title 22 of the Kitsap County Code (KCC), in order to subdivide and develop the acreage as two single family residences. For purposes of calculating density requirements, Proposed Lot A will be 5,873 square feet and proposed Lot B will be 3,750 square feet after the division.¹ The existing single family residence is to remain on Lot A and is to be counted as one of the two homes. The future proposed single family residence will be well outside the 85 foot shoreline buffer. The Applicant, authorized representative, site location, and assessor's number are as follows:

Applicant/Property Owner: Anthony Hitchman, 10447 47th Avenue SW, Seattle, WA 98146.

Applicant's Authorized Representative: Robert F. Cousins, Coastal Solutions LLC, 11027 Manitou Beach Drive NE, Bainbridge Island, WA 98110.

Site Location: The site is located at 11009 NE West Kingston Road, Kingston, WA 98346, North Kitsap County; Section 26, Township 27, Range 2E SE Quarter. The nearest road intersection is NE West Kingston Road and Central Avenue NE. South of the subject parcel is Appletree Cove, Puget Sound.

Assessor's Number: 4317-000-012-0006

1.2 Administrative Record. The Hearing Examiner reviewed Exhibits 1-24, which included the Staff Report, along with Exhibit 25 (Power Point prepared by Kitsap County Dept. of Community Development, or DCD). Exhibits 1 through 25 were admitted into the

¹ Lot A includes land below the high-tide mark. This land is included within the legal lot, but is not included for purposes of calculating density requirements. Ex. 26; KCC 17.110.405.

Administrative Record at the hearing. In addition, before the hearing, the Hearing Examiner forwarded three clarifying questions to the Applicant and DCD to consider addressing. The surveyor provided clarification on lot size before the hearing, and the remaining questions were addressed at the hearing. These exchanges are admitted as Exhibit 26.

Following the hearing, DCD provided e-mail clarification on the regulations governing the proposal, as various provisions were re-codified after the application was deemed complete.² Also, the Applicant submitted an e-mail explaining the basis for the proposal. No objections were received to either transmittal. The transmittals clarify where regulatory provisions are codified and provide additional factual background. The Applicant's submittal provides a brief history of the property, with family use of lots within the area dating back to the 1930's, and his hopes for future generations to continue to live and recreate at this location along Puget Sound. The submittals do not alter the substantive legal analysis or change the nature of the proposal, and their admission would not prejudice anyone. As such, the submittals are admitted as Exhibits 27 and 28, respectively.

1.3 Notice. The Notice of Application was mailed to the Applicant and his representative, property owners within an 800 foot radius, as well as the Suquamish Tribe, the Department of Ecology and the Department of Fish and Wildlife. No comments were received. The Open Record Hearing was scheduled for September 29, 2016.

1.4 SEPA. The SEPA comment period occurred concurrent with the Notice of Application.³ No comments were received. A DNS was issued on May 16, 2016, and not appealed. The DNS states, “[t]he proposal will be conditioned for Stormwater control pursuant to KCC Title 12.”⁴

1.5 Hearing. The Hearing Examiner considered the requested approvals at an open record public hearing on September 29, 2016. After being sworn in, the Kitsap County Department of Community Development (DCD), through Ms. Shaffer, who holds a master's degree in planning, provided a proposal summary. The presentation identified relevant code requirements and how they were met for the two permit requests. As DCD found the proposal consistent with applicable requirements, it recommended approval of both permits. The Applicant was sworn in but had no additional comment beyond DCD's presentation, which the Applicant deferred to. The Applicant did not object to DCD's recommended conditions. Following the hearing, the Applicant provided supplemental background information on the reasons for the proposal.⁵ At the hearing, no person present indicated a wish to submit oral comment and no written public comment was submitted.

² This decision cites to code sections where they are presently codified.

³ See Exhibits 21 and 22.

⁴ Ex. 22. DCD clarified that although titled as an MDNS (mitigated determination of non-significance), this was considered a scrivener's error, and the document is and was intended to be a DNS. As such, the document is referred to as a DNS. However, regardless of terminology, DCD determined the proposal lacked probable, significant adverse environmental impacts, and this decision was not appealed.

⁵ See Exhibit 28.

1.6 Agency Comment. The proposal was circulated within the County, and comment was received regarding regulatory compliance. There were no objections to approval, as long as applicable requirements are met.

1.7 Site Use and Characteristics. The subject parcel is located south on NE West Kingston Road. Surrounding the subject parcel are residential dwellings. Village Green Metro Park is located to the northwest. Measured north to south, north being landward, the parcel length is roughly 206 feet from NE West Kingston Road to the high tide mark of Appletree Cove, Puget Sound, with land extending below the high tide mark. For purposes of assessing density, the parcel is .22 acre.⁶ The property is already developed with a one story cabin located in the central portion of the parcel, a concrete bulkhead, and a recreational dock. The area is relatively level and lightly vegetated with a few trees on the southern portion.

1.8 Land Use Designations/Zoning. The Kitsap County Shoreline Master Program (SMP) shoreline designation is Shoreline Residential. Subdivisions and multi-single family developments may be permitted in this designation subject to a Shoreline Substantial Development Permit. The Comprehensive Plan designation is Urban Low-Density Residential (ULDR) and the zoning designation is Urban Low Residential (UL) (five to nine dwelling units per acre).⁷

1.9 Density. DCD explained how density is calculated at the hearing, as also illustrated through the Power Point presentation.⁸ The maximum density is calculated based on gross site acreage.⁹ If the calculation results in a partial dwelling unit of .5 or more, the number is rounded up.¹⁰ The lot area, for purposes of calculating density, is 9,623 square feet,¹¹ or .22 acre.¹² The figure .22 acre is multiplied by the maximum lot number of nine, resulting in 1.98 lots. That figure is rounded up, resulting in a two lot maximum for the site. Both lots must be at least 2,400 square feet.¹³ As two lots are being proposed, both of which exceed 2,400 square feet, density requirements are met.

1.10 Setbacks. The new structure would be well outside the 85 foot shoreline setback. All standard side, rear and front zoning code setbacks would be complied with.

1.11 Utility and Public Services. The parcel has been developed since 1935 and been fully serviced with standard utilities and public services. This will continue to be the case with development of the additional home. Utility and other services are as follows:

- **Water:** Kitsap Public Utility District

⁶ See footnote 1 above.

⁷ For density, see KCC 17.420.050(A), Table.

⁸ Ex. 25.

⁹ KCC 17.420.020(A); KCC 17.110.405.

¹⁰ KCC 17.420.020(A).

¹¹ See Ex. 26 providing the background on the calculation.

¹² 9,623 square feet divided by 43,560 square feet (one acre) = .22 acre.

¹³ KCC 17.42.050(A), Table.

- **Power:** Puget Sound Energy
- **Sewer:** On-site public sewer
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue District No. 10
- **Schools:** North Kitsap School District No. 400

1.12 Transportation Impacts. The existing driveway will provide lot access through an access and utilities easement from NE West Kingston Road. The project will be a nominal generator of traffic as only one new home will be created. As conditioned, projected traffic from the new and existing home is not expected to significantly impact local traffic conditions.

1.13 Stormwater. Design for stormwater quantity and quality management for Lot B will be addressed with the associated Site Development Activity Permit due to the associated critical area (shoreline). Stormwater impacts are thus addressed, and are not likely to be significant.

1.14 Preliminary Short Plat. The preliminary short plat application includes a map addressing KCC 16.48.020, which requires, among other things, that lot lines, structures, and access points be demarcated.¹⁴ Land segregation requirements are set forth in Ch. 16.24 KCC, which includes a requirement that plats within shoreline jurisdiction obtain a shoreline substantial development permit, which is being requested here.¹⁵ Other requirements are designed to ensure the adequacy of infrastructure, including adequate provision of utilities, transportation facilities, and access. As noted above, and as conditioned, utilities are available to serve the site; the plat map identifies the access points to ensure both properties can be reached; and, the proposal is conditioned to ensure County road and transportation concurrency requirements are met. The proposed preliminary short plat is consistent with applicable platting requirements.

1.15 Shoreline Substantial Development Permit. The SMP provides for residential development at this location, if consistent with applicable regulations and shoreline policies.¹⁶ The proposal complies with shoreline setbacks, is adequately served by utilities, stormwater impacts are mitigated, and the use is unlikely to have significant environmental impacts on the shoreline. As further addressed below, the proposal is consistent with SMP development standards.¹⁷

- The new residence is located on the far north side of the property, well outside the shoreline buffer, and is mitigated to ensure no net loss of shoreline ecological functions.
- With sewer and water service to the site, all state and local health regulations will be complied with.

¹⁴ See Ex. 17.

¹⁵ KCC 16.24.070.

¹⁶ See KCC 22.600.170(A)(3) and (B).

¹⁷ See KCC 22.600.170(B).

- No structural improvements, including bluff walls and other stabilization structures, are required to protect the new structure and use.
- The proposal is not for an over-water residence.
- Applicable code requirements for stormwater quality and quantity measures will be complied with.
- The development area and property are not within a flood zone.
- This is not a multi-unit residential development.
- On site access is not an issue.
- Lot area for purposes of determining density is calculated using only those lands landward of the ordinary high water mark.
- As the proposal is developed consistent with control of pollution and prevention of damage to the natural environment, the proposed single-family residential use is considered a "priority use" under the County's SMP.

At the hearing, and in DCD's Staff Report, additional analysis on proposal consistency with the Shoreline Management Act, WAC 173-27-050, and the County's shoreline regulations was provided. Based on the entirety of the record, the Hearing Examiner finds the proposal will not cause a net loss to shoreline ecological functions, is consistent with all applicable shoreline policies and requirements, and is a "priority use" the SMP specifically authorizes.

2. CONCLUSIONS OF LAW

2.1 The Hearing Examiner reviews Shoreline Substantial Development Permit applications under KCC 21.04.080 and KCC 22.500.105(E), and Preliminary Short Plat Applications under KCC 21.04.080 and KCC 16.48.020. Consolidated review for all project permit applications related to the same proposal provides for an integrated review process.¹⁸ This process was followed, which resulted in a consolidated hearing. While the resulting decisions need not be consolidated, given the factual background is nearly identical for both permits, and the same conditions apply to both permits, the Hearing Examiner determined it was more efficient to issue a single decision.

2.2 As addressed above, the use proposed is authorized in the zoning code. Shoreline and zoning code setbacks, as well as density requirements, would be complied with.

2.3 The proposal is consistent with applicable shoreline regulations and policies, as addressed in detail above, and elaborated on in the Staff Report. The County's updated Shoreline Master Program was approved in 2014. Under the SMP, the use is an authorized shoreline residential use, meets all shoreline setback requirements, is adequately served by utilities, and stormwater impacts are mitigated. The use will not cause a net loss to shoreline functioning and is unlikely to have significant environmental impacts on the shoreline, a conclusion supported by the unappealed DNS. Also, conditions are included with the approval to ensure same. As such,

¹⁸ KCC 21.04.180(A).

the proposal is consistent with the policies and procedures of Ch. 90.58, the SMP, and should be approved consistent with WAC 173-27-150.¹⁹

2.4 The preliminary short plat meets all platting requirements, including lot size, setbacks, and infrastructure requirements. Conditions are imposed to ensure these requirements, along with the shoreline regulations and policies, and other relevant code requirements, are complied with.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Shoreline Substantial Development Permit and the requested Preliminary Short Plat, provided the following 24 conditions are adhered to.

General.

1. 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 plan acceptance.

2. 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.

Stormwater.

3. This parcel is within the mandatory setback of Puget Sound, and as such will require a Site Development Activity Permit (SDAP) from Development Services and Engineering.

4. 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 application was deemed complete, April 5, 2016. 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 the SDAP application is deemed complete.

5. Kitsap County will not be responsible for any damage to any private roads, tracts, and/or easement areas that may occur during routine maintenance activities and that in Kitsap County's judgment occur, in whole or in part, because of any construction materials or techniques, or any maintenance materials or techniques. This includes, but is not limited to, damage to pavement or vegetated areas caused by maintenance trucks.

¹⁹ See also section 1.15 above.

6. The allowable impervious area for the site is 5,000 square feet. The allowable impervious area per lot shall be determined by dividing the total allowable impervious area between the lots. The allowable impervious area per lot shall be indicated on the face of the final short plat, in a table as shown below, along with the following condition: Impervious surfaces created on an individual lot beyond the amount shown in the table shall be mitigated in accordance with Kitsap County Code Title 12.

Total site area, in the Urban Growth Area = 9,583 square feet	Total Allowed Impervious Surface Area = 5,000 square feet
Allowed Impervious Area, Lot A	
Allowed Impervious Area, Lot B	

Traffic and Roads.

7. An Application for Concurrency Test (KCPW Form 1601) shall be submitted as required by Chapter 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW Form 1601 reserves road capacity for the project.

8. The following note shall appear on the face of the final plat map. “All interior roads shall remain private.”

9. All lots shall access from interior roads only. This note shall appear on the face of the final plat map.

10. The Applicant shall 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 KCC Chapter 11.22. Existing approaches may need to be improved to meet current standards.

11. 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.

12. Prior to completion of this permit with DCD, the Applicant shall apply for and 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. The Applicant may contact Kitsap County Public Works, Right-of-Way Division at (360) 337-5777 to obtain a Right-of-Way permit.

Survey.

13. 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.

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

15. Easement shall be labeled with purpose and benefitted property.

Wastewater.

16. Sewer line to serve Lot B shall be 6" diameter (not 4" as shown) with a cleanout to grade at the property line.

17. Kitsap County sanitary sewer currently serves the project parcel. The project will have additional impacts on the sewer system and will be assessed additional newcomer fees.

18. Kitsap County sanitary sewer is available for the project. Applicant needs to submit an "Application to Construct Sanitary Sewer" to KCPW Sewer Utility Division.

Land Use.

19. The decision set forth herein is based upon representations made and exhibits contained in the project application (16 01318 and 16 01319). 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.

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

21. 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, or the conditions included herein, the Applicant agrees to promptly bring such development or activities into compliance.

Fire.

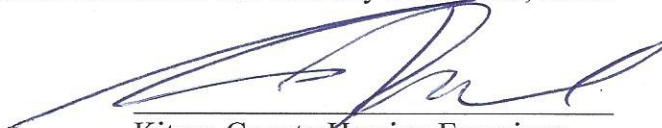
22. The minimum fire flow requirements for one and two family dwellings in subdivisions shall be 500 gallons per minute for thirty (30) minutes. A letter of water availability indicating available fire flow from the water purveyor is required to be submitted to the Kitsap County Fire Marshal's office prior to the approval of any building permits.

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

Environmental.

24. New and remodeled residential development and new subdivisions shall be designed, located and constructed so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses.

THIS DECISION is entered this 10th day of October, 2016.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond