



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

LARRY KEETON, DIRECTOR

STAFF REPORT

RECOMMENDATION TO THE HEARING EXAMINER

Date: September 24, 2008

Application Date: June 10, 2008

Project: Hubbard Single-Family Residence Shoreline Substantial Development Permit, Shoreline Conditional Use Permit and Critical Area Variance

LIS #: 08 54081

Type of Application and Description of Proposed Project:

William Hubbard has applied for Shoreline Substantial Development (SSDP), Shoreline Conditional Use (SCUP), and Critical Area Variance permits to construct one single family residence on a 1.1 acre lot in the Conservancy shoreline environment. The residence would be constructed approximately 50 feet from the ordinary high water mark (OHWM) on the east shore of Long Lake, 71 feet from the depressional wetland, and approximately 75 feet from the south bank of Curley Creek. The proposed building footprint for the one story residence is approximately 1,800 square feet, and 450 square feet of expanded driveway and parking pad.

Project Location:

The project is located on the northeast shore of Long Lake, at 5560 Long Lake Road, Port Orchard, South Kitsap County; Commissioner District 2 (SW $\frac{1}{4}$ of Section 8, Township 23 North, Range 2 East WM). The nearest road intersection is Long Lake and Lake Valley roads. Under the Kitsap County Shoreline Management Master Program, the shoreline environment designation is Conservancy. The property, zoned Rural Protection, has a minimum density of 1 dwelling unit per 10 acres. At present, there is no development other than some vegetation clearing and minimal expansion of the existing driveway. The property has been used as a recreation retreat by the Hubbard family for 40 years.

Assessor's Account #: 082302-2-018-2005

Applicant: William Hubbard
5606 Long Lake Road SE
Port Orchard, WA 98367

Authorized Representative: Lee Bode, Environmental Engineer
P.O. Box 2854
Belfair, WA 98528

SEPA Status:

A Determination of Nonsignificance (DNS) was issued on September 10, 2008. As of this date, no appeals or comments have been received. The SEPA comment period previously occurred concurrent with the Notice of Application dated August 5, 2008.

Physical Characteristics:

The 1.1 acre property is located on the east shore of Long Lake (Exhibit 11). The May, 2008 Wetland Report and Habitat Management Plan by The Wetland Corps (Exhibit 8) describes a shoreline composed of grass lawn with a fringe of wetland trees and shrubs, transitioning into emergent vegetation extending into open water. The stream/wetland buffer is comprised of dense forested/shrub vegetation. The lot is well vegetated with deciduous trees, shrubs, and grasses. Buffers for the shoreline wetland system require a buffer of 225 feet, with an additional 15 foot building setback. The stream buffer requires a setback of 150 feet with a 15 foot building setback line. The associated Lake fringe wetland requires a 110 foot buffer with a 15 foot building setback. The lot is currently developed for family recreation.

Comprehensive Plan and Zoning Designation:

The property is designated Rural Protection (1 dwelling unit per 10 acres).

Minimum setbacks = 50 feet - front yard
= 20 feet - side and rear yard

Shoreline Environment Designation:

Conservancy

Minimum Critical Area buffer = 50 feet from OHWM

Minimum Critical Area building setback = 15 feet

Surrounding Land Use and Zoning:

The surrounding area is zoned Rural Protection. The intent of the Rural Protection zone is "...to recognize areas which have been committed or developed for rural residential uses on smaller lots" (KCC 17.310.010). The adjacent lots are smaller in size and range from one to 0.03 acres in size. The majority of the adjacent lots are historic lots that do not conform to the 10 acre minimum lot size.

Public Utilities:

Water: Kitsap PUD- Long Lake
Power: Puget Sound Energy
Sewer: On-site septic system

Comments Received:

County Health District:

No comments, an approved BSA is in place for this SFR application.

County Development Engineering: No comments. Drainage review approved in SFR Triage Review

Public Utility District #1: No comments.

Tribe: Inquired generally about the proposal, but had no comments.

Public Input: No comments.

Analysis:

The existing historical lot is constrained by its shallow depth. Current Shoreline setbacks and critical area constraints do not allow sufficient buildable area for a moderate single family residence and appurtenances without Shoreline Conditional Use Permit approval, and Critical Area Variance approval. The proximity to the Lake environment is the most significant limitation to site development. The current 50 foot front yard and 20 foot side yard zoning setbacks will be met for the proposal.

The applicable criteria for shoreline conditional use permit found in Title 22 and variance criteria found in Title 17 (Zoning) are similar, but not identical. The criteria and analysis of each are listed below, with cross-referencing where applicable.

Staff has reviewed the proposal and offers the following analysis of the project. Kitsap County Code citations are followed by staff comments.

Documents Consulted in the Analysis:

Wetland Report and Habitat Management Plan with associated building permit application (Exhibits 8 and 4)
Joint Aquatic Resource Permit Applications, April 16, 2008 (Exhibit 6)
Environmental (SEPA) Checklist, April 17, 2008 (Exhibit 7)
Letters from...
Bald Eagle Management Plan received August 8, 2008 (Exhibit 5)

Policies and Regulations Applicable to the Subject Proposal:

The proposed project has been reviewed for compliance with the following policies and regulations from Kitsap County Code (KCC).

KCC Title 19 Critical Areas Ordinance
KCC Title 21 Land Use Procedures Ordinance
KCC Title 22 Shoreline Management Master Program

KCC Title 19 Critical Areas Ordinance Standards

KCC 19.100.135 (Variances). A variance may be granted when it can be shown that the application meets all of the following criteria:

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

Staff Comment: The surrounding Long Lake neighborhood was historically platted into small, generally environmentally constrained lots. The platting process did not account for topography or water features, including the many hillside seeps that drain to Long Lake and low wetland areas along the lake fringe. The subject parcel contains such a wetland, rated as a Category II by the applicant's wetland consultant (Exhibit 8). The wetland, generally influenced by the lake level, occurs in an approximate 15-foot wide band along the lake edge, and wraps around the north side of the parcel, intersecting into Curley Creek, designated Type F fish stream, and associated wetlands to the north.

Under the 2005 Critical Areas Ordinance, Category II wetlands with high habitat value (habitat function score equal to or greater than 29) require 225-foot buffers and 110 foot buffers along the lake fringe wetland, and 150 foot buffers in association with Curley Creek. Due to the shallow lot width between Long Lake Road and the wetland edge, the proposed residence and drainfield would need to be sited within 50 ft from the shoreline wetland, 71 foot from the lake fringe wetland, and 75 feet from the stream (at its nearest point). As such, strict application of these buffers would prohibit construction on the subject parcel, and therefore deprive the landowner of rights and privileges enjoyed by other property owners in the vicinity.

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

Staff Comment: The small, historic lots in the Long Lake vicinity were created prior to adoption of Kitsap County Critical Areas and Zoning regulations. The special circumstances in item A above are not the result of any action by the current or previous owner.

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

Staff Comment: Even with the limited 1,800 square foot building envelope and 1,800 square foot drainfield proposed by the applicant, the proposed structure and drainfield will encroach more than 50% into the required shoreline, wetland and stream buffers. However, the wetland report indicates that there will be no substantial detrimental impacts from the proposed residence to the shoreline, wetland or stream as a result of site development (Exhibit 7). The report analysis indicates that due to the existing use of the

property as a recreational and vacation lot, the associated shoreline, wetland and stream buffer encroachment will not see any adverse impacts. Proposed Habitat Management plans will fully compensate for buffer function losses.

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

Single-family residential development is a permitted use in the Rural Protection zone. The variance, if granted, would permit construction of one single-family residence on the parcel. The footprint would be limited to 1,800 square feet in order to minimize wetland impacts. In addition, an approved alternative type of drainfield system is proposed in order to minimize required drainfield area.

5. No other practicable or reasonable alternative exists (See Definitions, Chapter 19.100.170).

The Critical Areas Code defines a reasonable alternative as “an activity that could feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation.” The applicant has proposed a building location that provides a balance between wetland, stream and shoreline protection, as well as accommodation of the permitted residential use. No alternative building location exists that would result in less impact to the wetland system.

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

A mitigation plan has been submitted in conjunction with the wetland delineation report (Exhibit 8). The mitigation plan includes enhancement of the reduced buffer, and installation of native shrub cuttings in the wetland area. County staff have reviewed and approved the plan.

KCC 22.16.060 The Conservancy Shoreline Environment Designation

Purpose. The purpose of the conservancy environment is to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization. Another purpose is to protect fish and wildlife habitat and environmentally sensitive areas.

Designation Criteria. A conservancy environment is an area intended to protect, conserve, and maintain its existing character. Nonconsumptive uses which can utilize resources on a sustained-yield basis while minimally reducing opportunities for future uses are preferred. Such areas may be identified by one or more of the following:

(a) Areas that can be managed on a sustained-yield basis while minimally reducing opportunities for other future uses of the resources of the area.

(b) Areas presenting severe biophysical limitations. Typical biophysical limitations include steep slopes, biological wetlands, areas prone to flooding, areas prone to landsliding, and areas with inadequate water supply or sewage disposal capabilities.

(c) Areas which present potential for current or future community recreational needs and are located near existing or potential population centers.

(d) Areas important to regional ecological balance, such as areas rich in quality and quantity of life forms, areas important to the maintenance of natural water quality and flow, or areas important to maintaining the food chain process such as estuaries, riparian corridors, and wetlands.

Management Policies. The following policies should be applied to any permissible uses occurring in the conservancy environment:

(a) Uses of a non-permanent nature which do not substantially degrade the existing character of the areas should be encouraged.

(b) Nonconsumptive uses should be encouraged.

(c) Development should be limited to those proposals which demonstrate preservation of environmentally sensitive features.

Staff Comment: Single family residential development is permitted in the Conservancy shoreline environment subject to an SSDP and SCUP. At the same time, one of the stated purposes of the Conservancy shoreline designation is "...to protect fish and wildlife habitat and environmentally sensitive areas." The subject parcel contains environmentally sensitive areas, critical areas including steep slopes and a relatively undisturbed freshwater shoreline. Management Policy 3.c above requires that development be limited to those proposals which demonstrate preservation of such features. Staff finds the application to be in compliance with the applicable SCUP requirements, subject to conditions of approval listed elsewhere.

In order to address critical area protection requirements pursuant to KCC 19.300 (Fish and Wildlife Habitat Conservation Areas), the applicant will be required to maintain a non-clearing shoreline buffer of 50 feet.

22.28.230 Use Activities – Residential Development

Policies.

a. Residential development should be compatible with the character of the shoreline environment.

Staff Comment: The applicant has proposed construction of an approximately 1,800 square foot single family residence with associated small parking area. Consistent with the existing character of the Long Lake shoreline environment, site clearing is generally limited to the area surrounding the proposed residence. The development is not out of character for residential development elsewhere in the vicinity.

b. Adequate distance between the ordinary high water mark and residential development should be maintained to protect water quality, protect natural systems, and

insure preservation of the integrity of the shoreline environment. Placement of structures should be located on property so as to avoid the necessity for shore protection structures.

Staff Comment: Development will comply with the minimum 50 foot Conservancy Shoreline buffer as specified at KCC 19.300.315, Installation of shore protection structures is not proposed and the prohibition of these will be a recommended condition of approval.

c. Residential development shall be consistent with the purpose and intent of the applicable environment designation.

Staff Comment: Please refer to staff comments under KCC 22.16.060 above (Conservancy Environment).

d. Sewage disposal, storm drainage, and water supply facilities should be in compliance with local and state health regulations.

Staff Comment: The applicant has submitted a septic drainfield design to the Kitsap Health District for sewage disposal and water supply (Exhibit 4).

e. Residential development should provide, preserve, or restore shoreline vegetation for control of erosion, slope stability, and habitat.

Staff Comment: With the exception of the manufactured home and driveway extension, clearing will be limited.

f. Joint use of shoreline access and shoreline facilities should be encouraged.

Staff Comment: The site currently provides shoreline access via a small boat landing on the lake front.

g. Lot area should be calculated using only those lands landward of the ordinary high water mark.

Staff Comment: The application complies with this requirement. No subdivision of land is proposed.

h. Proposed residential developments should be consistent with the adopted comprehensive development plan.

Staff comment: Single family residential use is consistent with the “Rural Protection” Comprehensive Plan designation for the surrounding vicinity.

Environmental and Permit Requirements.

c. Single-family residential developments may be permitted subject to a SSDP and SCUP in the conservancy.

Staff Comment: The subject lot occurs within the conservancy environment. The applicants have properly applied for an SSDP and SCUP.

General Regulations.

a. Adequate distance between the ordinary high water mark and residential development shall be maintained to protect water quality, protect natural systems, and insure the integrity of the shoreline environment.

Staff Comment: Please refer to response under policy a, above.

b. Residential development shall be consistent with the purpose and intent of the applicable environment designation.

Staff Comment: Please refer to response under KCC 22.16.060 (Conservancy Environment), above.

c. Setback and buffer requirements for residential development shall be based on the minimum criteria set forth within the Critical Areas Ordinance (Title 19 of this code) in addition to the site specific critical areas requirements.

Staff Comment: The proposal is in compliance with this regulation. Critical area development standards require a minimum 50 foot buffer and additional 15 foot construction setback from the ordinary high water line in the Conservancy environment. The proposed building site will meet this setback. As depicted on the site plans (Exhibit 4, and associated septic design), the residence would be approximately 50 horizontal feet from ordinary high water.

d. The placement of residential development on property shall be designed so as to make the installation of shore protection structures unnecessary.

Staff Comment: No shoreline erosion has been documented on the property.

e. Sewage disposal and water systems shall be in compliance with state and local health regulations.

Staff Comment: The applicant has Kitsap Health District approval for sewage disposal and water supply.

f. Septic systems shall not occur within one hundred feet of a biological wetland.

Staff Comment: The application complies with this regulation.

g. Surface water drainage shall comply with the Kitsap County Storm Water Management Ordinance (Chapters 12.04 through 12.32 of this code).

Staff Comment: The applicant has drainage approval from Kitsap County Development Engineering.

- h. Where applicable, the following shall be submitted with permit applications.
- (1) All applications shall provide for a silt and erosion control plan during construction;
 - (2) When applicable, all applications shall include a plan for permanent drainage and erosion control;
 - (3) When applicable, all applications shall include a geological or geotechnical report pursuant to the Critical Areas Ordinance (Section 19.700.010, Special Reports).

22.08.40 Shoreline Permit Procedure, Application Procedure for permits

An application for a permit shall be made on forms prescribed by the shoreline administrator. The application shall be made on behalf of the property owner, lessee, contract purchaser or other person entitled to possession of the property.

Staff comment: The applicant, who is also the property owner, has properly filed a Joint Aquatic Resource Permit Application (JARPA) for the proposed development.

22.28.20 Shoreline Conditional Use Permit

Shoreline conditional use permits shall be granted only after the applicant can demonstrate all of the following:

- (1) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;

Staff Comment: RCW 90.58.020 enunciates the State's policy "...to provide for management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses...". Shoreline management is implemented through the local master program (KCC Title 22), which was updated and adopted by the Board of County Commissioners in February 1999. Based on the preceding analysis, staff finds that the proposal is consistent with applicable policies and the Shoreline Master Program.

- (2) That the proposed use will not interfere with the normal public use of public shorelines;

Staff Comment: The applicant has not proposed any activity that will interfere with normal use of public shorelines. The proposed residences would be located approximately 71 feet landward of the ordinary high water mark.

- (3) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and Shoreline Management Master Program;

Staff Comment: Based on the analysis above, the proposed use of the lots for single-family development is compatible with the Rural Protection zoning and Comprehensive plan designations, and the Residential Use activities allowed in the Shoreline Management Master Program.

(4) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

Staff Comment: The proposal will not result in adverse effects to the shoreline environment and the project will be conditioned for compliance with Title 19 (Critical Areas and Wetlands) and per conditions outline in the Habitat Management Plan (Exhibit 8) in order to prevent significant adverse effects to the shoreline environment and critical areas. The applicant's conditions and the WDFW Hydraulic Project Approval process will ensure that impacts are appropriately mitigated. Shoreline bulkhead construction is prohibited. Structures shall be sited such that a hard shoreline bulkhead structure is not required to protect the residences.

(5) That the public interest suffers no substantial detrimental effect.

Staff Comment: It is staff's opinion that the development will have no substantial detrimental effect on the public interest if compliant with the recommended conditions of approval.

Conclusion:

The proposal has been reviewed for consistency with Kitsap County Code Title 19 (Critical Areas) and Title 22 (The Shoreline Management Master Program), including policies and regulations relating to the Conservancy shoreline environment, single-family residential development, and the Shoreline Conditional Use Permit criteria. Staff finds the proposal to be in conformance with the referenced policies and regulations.

Recommendation:

Based upon the above findings and conclusions, it is recommended that the Hubbard Single-Family Residence Shoreline Substantial Development Permit, Shoreline Conditional Use Permit and Critical Area Variance be **APPROVED** subject to the following 9 conditions:

1. Site development shall comply with the recommendations of the May 2008 Wetland Report and Habitat Management Plan by Lee Boad and Heather Lane, The Wetland Corps.
2. Vegetation shall be maintained on the property. During construction, clearing shall be kept to a minimum and shall be re-vegetated after the foundation and base course materials have been placed.
3. A non-clearing native vegetation buffer shall be retained within 50 feet of ordinary high water of Long Lake. An unpaved shoreline access trail, not exceeding four feet width, is permitted in the buffer.
4. Approval is subject to obtaining Building Site Application approval from the Kitsap County Health District.

5. Site development shall comply with applicable Washington Department of Fish and Wildlife Bald Eagle Habitat Plan requirements.
6. Shoreline bulkhead construction is prohibited. Structures shall be sited such that a hard shoreline bulkhead structure is not required to protect the residences.
7. A Hydraulic Project Approval (HPA) shall be obtained from Washington Department of Fish and Wildlife prior to installation of the proposed stormwater outfall at the shoreline. Information regarding an HPA can be found at <http://www.wa.gov/wdfw/hab/hpapage.htm>, or by calling the Office of Regulatory Assistance at (360) 407-7037. This permit is required prior to issuance of the Building Permit.
8. Upon final permit issuance by the Department of Ecology, all construction must commence within two years and be completed within five years. A one-time one year extension is available but only if requested on or before ninety days of the original permit expiration. No exceptions allowed unless provided for by law.

cc: Hearing Examiner
Clerk of the Hearing Examiner, Karen Ashcraft
Applicants
Interested Parties
Suquamish Tribe, Alison O'Sullivan
Skokomish Tribe, Marty Ereth
Kitsap County Health District, MS-30
Kitsap County Development Engineering
DCD Staff Planner, Steve Heacock
DCD File

Site development activities will be conditioned pursuant to KCC Title 22 (Shoreline Management Master Program), and KCC 19.200 (Wetlands) and KCC 19.300 (Fish and Wildlife Habitat Conservation Areas). Site development shall comply with applicable Bald Eagle Management Plan, Wetland Delineation Report and Habitat Management recommendations, including recommendations on vegetation buffers and appropriate building setbacks.