



## Staff Report for the Hearing Examiner

Report Date: March 16, 2017

Application Submittal Date: April 13, 2016

Hearing Date: March 23, 2017

Application Complete Date: April 13, 2016

**Permit Number:** 16 01511 and 16 01513

**Project Name:** Wertz Accessory Dwelling Unit (ADU)

**Type of Application:** Conditional Use Permit (CUP), Shoreline Variance

*This staff report was prepared by Katharine Shaffer, Planner, and 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 Conditional Use Permit (CUP) to convert an existing 876 square foot cabin into an Accessory Dwelling Unit (ADU) to allow for construction of a new single-family residence. The applicant is also seeking approval of a Shoreline Variance for the proposed new residence and will be analyzed under the Shoreline Variance criteria under Permit 16 01513, beginning on Page 7.

### **Project Request:**

Judy Wertz is requesting an approval for a Conditional Use Permit and Shoreline Variance to convert an existing 876 square foot cabin into an accessory dwelling unit to allow the construction of a new single-family residence.

### **Project Location:**

6344 Chico Way NW  
Bremerton, WA 98312

### **Assessor's Account #:**

322501-2-053-2000

### **Applicant/Owner of Record:**

Judy A Wertz  
6344 Chico Way NW  
Bremerton, WA 98312



### **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 197-11-355, the optional DNS process was utilized for this project. The SEPA Comment period previously occurred concurrent with the Notice of Application dated May 9, 2017 (Exhibit 14). A Mitigated Determination of Non significance (MDNS) was issued on February 27, 2017 (Exhibit 20). SEPA noted the following information/SEPA mitigation conditions have been imposed and are listed under conditions 36 at the end of this report:

The SEPA appeal period expired March 13, 2017. No appeals were filed; therefore, the SEPA determination is final.

**Physical Characteristics:**

The 0.8-acre parcel is developed historic lot of record located on the shoreline of Dyes Inlet. The parcel is constructed with a small cabin built over the seasonal stream, which is planned to become an accessory dwelling unit upon construction of the primary residence. The existing cabin structure is a permitted activity within the Rural Residential Zone. The parcel consists of a medium bank waterfront on the east, with a steep sloping depression and associated seasonal stream flowing on the north portion of the site from the west to east. The stream is classified as "N," or non-fish bearing.

**Comprehensive Plan Designation and Zoning:**

The subject property's Comprehensive Plan designation is Rural Residential - Density Residential (ULDR) and 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

Because the property is less than one acre, the urban setbacks can be used per Kitsap County Code 17.382.110 Footnote A4.

**Standard UR Zoning Setbacks**

Front - 20 feet  
Side - 5 feet,  
Rear - 5 feet

**Surrounding Land Use and Zoning:**

The surrounding parcels are all zoned Rural Residential. Approximately one mile to the north, the zoning changes to Urban Low. To the south, approximately a half a mile, there is a small enclave of Rural Commercial that is surrounded by Rural Residential. West

approximately 1/8<sup>th</sup> of a mile the zoning changes to Urban Low but the zoning change is separated by Highway 3. East of the subject property is Dyes Inlet.

**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 of Choco Way NW, 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 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.*

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 13 Water and Sewers
- Title 14 Buildings and Construction
- Title 17 Zoning
- Title 19 Critical Areas Ordinance
- Title 22 Shoreline Master Program

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 Exhibits 30.

Exhibit #	Document	Date or date stamped
1	Project Application – Conditional Use Permit (CUP)	4/13/2016
2	Supplemental Application 16 01511 Land Use	04/13/2016

3	Supplemental Application 16 01513 Critical Area Variance	04/13/2016
4	Supplemental Application 16 01511 Concurrency Test	04/13/2016
5	Storm Drainage Report	04/13/2016
6	Health District – Building Clearance	04/13/2016
7	Geotechnical Engineering Report	04/13/2016
8	Habitat Management Plan and No Net Loss Report	04/13/2016
9	Floor Plan and Elevations 1 <sup>st</sup> submittal – Single Family Residence	04/13/2016
10	Floor Plan – Accessory Dwelling Unit	04/13/2016
11	Floor Plan and Elevations – Accessory Dwelling Unit	04/13/2016
12	Photos – Accessory Dwelling Unit	04/13/2016
13	State Environmental Policy Act (SEPA) Checklist	04/15/2016
14	Notice of Application	05/03/2016
15	Communication – From Misty Blair at Department of Ecology	08/31/2016
16	Project Narrative for Variance Criteria	01/06/2017
17	Revised Floor Plan & Elevations – Single Family Residence	01/06/2017
18	Site Plan	01/06/2017
19	Communication – Email from Katharine Shaffer to Misty Blair at Department of Ecology	01/11/2017
20	SEPA Decision - MDNS	02/27/2017
21	Notice of Public Hearing	03/08/2017
22	Map – Zoning	
23	Map – Critical Area	
24	Map – Aquifer Recharge	
25	Map – Comprehensive Plan	
26	Map – Shoreline Designation	
27	Map – Aerial	
28	Map – Assessor Parcel	
29	Certification of Public Notice	
30	Staff Report	

**Public Comments:**

No public comments were received.

**Analysis:**

**Land Use and Zoning Analysis**

**Accessory Dwelling Unit (ADU) Standards**

An ADU is required to meet the provisions and requirements outlined in KCC 17.381.060.B3 – 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 owner of the property, Judy Wertz, currently lives in the cabin to be converted to the ADU. She plans to reside in the primary residence once it is permitted and constructed.

- 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.*

The primary residence's habitable area is approximately 1,776 square feet (according to the floor plans (Exhibit 17)). Fifty percent of its habitable area would be over 900 square feet. The ADU would be limited to 900 square feet as determined by exterior measurements. The existing cabin to be converted to an ADU is 876 square feet according to the floor plans (Exhibit 11) which makes it under the 900 square foot threshold.

- 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 proposed ADU will be 30 feet from the newly constructed single-family residence.

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

The primary residence and ADU are similar in appearance. The buildings both have a pitched, type roof, type siding, type windows and the same or similar color. The ADU's residential architectural design and building materials are similar and complementary to the appearance of the primary residence (Exhibits 11 & 17).

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

Due to the property's size, 0.60 acres, Kitsap County Code 17.382.110 Footnote A4 allows to use the zone that most closely relates which is Urban Restrictive (UR). Setbacks are as follows:

Standard UR Zoning Setbacks

Front 20 feet  
Side 5 feet,  
Rear 5 feet

The proposed ADU building is existing. The front yard setback, along Chico Way, is approximately 65 feet exceeding the front setback requirement. The side yard setback, along the northern property line, is approximately 17 feet to the building wall and the other side yard, along the southern property line, is approximately 22 feet. The rear yard setback is governed by the shoreline designation setback. The shoreline designation is Shoreline Residential which require an 85 foot setback from ordinary high watermark. A Shoreline Variance to this setback is addressed later in this report.

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

The subject property is on sewer and public water. The Health District has submitted approval for this project (Exhibit 6).

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

The proposed ADU and proposed single-family residence are both stick built.

- 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 will use the same existing driveway from Chico Way NW.

Two parking spaces are required for the single-family residence (SFR) and could be accommodated on the existing driveway. One parking space is required for the ADU. At least one parking space is available in front of the ADU building (Exhibit 18).

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

There are no accessory living quarters present or proposed on the subject lot.

## **Wertz Shoreline Variance Permit 16 01513**

### **ANALYSIS**

#### **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 December 11, 2006 (Amended December 2012)

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

Shorelines  
Policy SH-1

*Encourage and support shoreline diversity through planned and coordinated development, which gives preference to water-dependent uses, traditional and historic use patterns, resource values, and environmental protection.*

Policy SH-3

*Uses and activities along shorelines and in the waters of Kitsap County should not have a significant adverse effect on water quality.*

Policy SH-8

*Land use activities shall be sited and designed to minimize conflicts with and impacts on the shoreline environment.*

### **22.200.115 Shoreline Residential Designation**

A. Purpose. To accommodate residential development and appurtenant structures that are consistent with this program, and to provide appropriate public access and recreational uses.

B. Designation Criteria.

1. Shoreline areas that are predominately single-family or multifamily residential development or are planned or platted for residential development;
2. Does not include shorelines supporting existing residential development that may not support higher densities of development due to potential cumulative impacts to sensitive environments or safety, such as steep slopes or floodplains. Such shorelines shall be designated rural or urban conservancy, whichever applies.

*The proposed new residence is compliant with the Shoreline Residential designation criteria.*

C. Management Policies.

1. Standards for buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality should be set to assure no net loss of shoreline ecological functions.

2. Multifamily and multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities. If public access is not feasible on site, off-site options such as an in-lieu fee may be recommended.

*The proposal will provide water access for enjoyment to the residence and occupant of the Accessory dwelling Unit and conforms to this requirement.*

3. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.
4. Commercial development should be limited to water-oriented uses. Water-oriented includes water-dependent, water-related and water-enjoyment uses.

*The proposal is not a commercial project and therefore the water-oriented and water dependent use is not applicable.*

### **22.300.100 Critical Area and Ecological Protection**

Goal: Protect and conserve shoreline natural resources, including protection of critical areas, while accommodating reasonable and appropriate uses which will assure, at a minimum, no net loss to shoreline ecological functions and processes.

- A. Policy SH-1. Protect and conserve shoreline areas that are ecologically intact and minimally developed or degraded. Develop incentives and regulations for privately owned shorelines that will protect and conserve these areas while allowing reasonable and appropriate development.

*The proposed development is the minimum necessary to afford construction of an ADU (existing building), while still protecting ecological functions.*

- B. Policy SH-2. Recognize that nearly all shorelines, even substantially developed or degraded areas, retain important ecological functions.

*Ecological functions, with proposed mitigation, will still be retained.*

- C. Policy SH-3. Utilize transfer of development rights as allowed by Chapter 17.580, or as now or hereafter amended, as an option to protect ecological functions.

*The proposal will not implement the TDR program.*

- D. Policy SH-4. Permitted uses and developments should be designed and conducted in a manner that protects the current ecological condition, and prevents or mitigates adverse

impacts. Mitigation measures shall be applied in the following sequence of steps listed in order of priority:

1. Avoid the impact altogether by not taking a certain action or parts of an action;
2. 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;
3. Rectify the impact by repairing, rehabilitating or restoring the affected environment;
4. Reduce or eliminate the impact over time by preservation and maintenance operations;
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments, including utilization of the in-lieu fee process where appropriate; and
6. Monitor the impact and the mitigation projects and take appropriate corrective measures.

*With mitigation, the proposed residence will not impact the associated critical areas on site. A mitigation plan and associated monitoring and maintenance plan will assure compliance with these requirements.*

E. Policy SH-5. Shoreline ecological functions that should be protected include, but are not limited to:

1. Habitat (space or conditions for reproduction; resting, hiding and migration; and food production and delivery);
2. Water quality maintenance; and
3. Water quantity maintenance.

*Impacts to shoreline ecological functions are not anticipated, and habitat enhancement will offset any temporary disturbance through implementation of the required mitigation, monitoring and maintenance plans.*

F. Policy SH-6. Shoreline processes, both freshwater and marine, that should be protected to support the above functions include but are not limited to the delivery, loss and movement of:

1. Sediment;
2. Water;
3. Nutrients;
4. Toxins;
5. Pathogens; and
6. Large woody material.

*Impacts to shoreline and freshwater processes are not anticipated, and habitat enhancement will offset any temporary disturbance through implementation of the required mitigation, monitoring and maintenance plans.*

G. Policy SH-7. In assessing the potential for new uses and developments to impact ecological functions and processes, the following should be taken into account:

1. On-site and off-site impacts;
2. Immediate and long-term impacts;
3. Cumulative impacts, from both current and reasonably foreseeable future actions, resulting from the project; and
4. Any mitigation measures or beneficial effects of established regulatory programs to offset impacts.

*Implementation of the mitigation plan along with the required monitoring and maintenance of the project area will assure no net loss of ecological functions and processes.*

H. Policy SH-8. Critical areas in the shoreline jurisdiction shall be protected in a manner that results in no net loss to shoreline ecological functions. Pursuant to RCW 36.70A.030(5), critical areas include:

1. Wetlands.
2. Frequently flooded areas.
3. Fish and wildlife habitat conservation areas.
4. Geologically hazardous areas.
5. Critical aquifer recharge areas.

*There are no wetlands on site and no flood zone impacts are proposed. A seasonal stream is located on site which may have temporary impacts from construction activities. A slope on-site has been addressed for stability through geotechnical investigations and reports. Associated Impacts from buffer intrusions will be mitigated.*

### **22.300.105 Vegetation Conservation Buffers**

Goal: Conserve, protect and restore shoreline vegetation to provide for ecological and habitat functions as well as human health and safety. These functions include, but are not limited to, variable shading of the nearshore, food and shelter for terrestrial and aquatic organisms, and slope/soil stabilization.

A. Policy SH-9. Preserve native plant communities on marine, river, lake and wetland shorelines. In order to maintain shoreline ecological functions and processes, development along the shoreline should result in minimal direct, indirect, or cumulative impacts. This includes:

1. Keeping overhanging vegetation intact along the shoreline edge to provide shading and other ecological functions;
2. Preserving established areas of native plants and minimizing clearing and grading near bluff edges and other erosion or landslide-prone areas in order to maintain slope stability and prevent excess surface erosion and stormwater runoff;
3. Designing and placing structures and associated development in areas that avoid disturbance of established native plants, especially trees and shrubs; and
4. Removal of noxious weeds in accordance with WAC [16-750-020](#).

B. Policy SH-10. Shoreline landowners are encouraged to preserve and enhance native woody vegetation and native groundcovers to stabilize soils and provide habitat. When shoreline uses or modifications require a planting plan, maintaining native plant communities,

replacing noxious weeds and avoiding installation of ornamental plants are preferred. Nonnative vegetation requiring use of fertilizers, herbicides/pesticides, or summer watering is discouraged.

C. Policy SH-11. Maintaining native or ecologically functional vegetation is preferred over clearing to provide views or lawns. Limited and selective clearing may be allowed when slope stability and ecological functions are not compromised. Limited trimming and pruning is generally preferred over removal of native vegetation.

*Existing native vegetation on site is essentially intact and further tree removal related to future construction is minimized to removal of one Douglas fir tree and two Big-leaf maple trees. Some shoreline vegetation has been trimmed in the past for view enhancements, but these altered plantings will be augmented and enhanced through implementation of the planting plan at time of the building permit. Noxious weeds, including non-native ivy is growing onto the site from the property to the north and is part of a comprehensive vegetation management plan for removal.*

### **22.300.110 Water quality and quantity**

Goal: Provide regulations and voluntary incentives to encourage practices which protect water quality and reduce stormwater runoff and erosion in order to protect against adverse impacts to the public health, to the land and its vegetation and wildlife, and to the waters of the state and its aquatic life.

A. Policy SH-12. Shoreline use and development should minimize impacts that contaminate surface or ground water, cause adverse effects on shoreline ecological functions, or impact aesthetic qualities and recreational opportunities, including healthy shellfish harvest.

B. Policy SH-13. Ensure mutual consistency with other regulations that address water quality and stormwater quantity, including standards as provided for in Title [12](#) (Storm Water Drainage) and Chapter [173-201A](#) WAC (Water Quality Standards).

C. Policy SH-14. Utilize pervious materials and other appropriate low impact development techniques where soils and geologic conditions are suitable and where such practices could reduce stormwater runoff.

D. Policy SH-15. All shoreline use and development shall be conducted in accordance with Title [15](#) (Flood Hazard Areas). The subdivision of land should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. When evaluating alternate

flood control measures or floodplain restoration opportunities, consider the removal or relocation of structures in flood-prone areas.

*The proposed residential construction will use low impact development techniques for both the control of water on-site, and the treatment of water quality through implementation of water quality rain gardens. The rain garden planting plan uses all-native plants and will also enhance the property for wildlife use.*

### **22.300.125 Shoreline Use and Site Planning**

Goal: Preserve and develop shorelines in a manner that allows for an orderly balance of uses by considering the public and private use, along with the development of shorelines and adjacent land areas with respect to the general distribution, location and extent of such uses and development.

- A. Policy SH-20. For shoreline use and development activities, including plats and subdivisions at full build-out, employ innovative development features to achieve no net loss of ecological functions, such as sustainable and low impact development practices where appropriate.
- B. Policy SH-21. Give preference to water-dependent uses and single-family residential uses that are consistent with preservation of shoreline ecological functions and processes. Secondary preference should be given to water-related and water-enjoyment uses. Non-water-oriented uses should be limited to those locations where the above-described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Act. For use preference within shorelines of statewide significance, see Section [22.300.145\(B\)](#).
- C. Policy SH-22. Designate and maintain appropriate areas for protecting and restoring shoreline ecological functions and processes to control pollution and prevent damage to the shoreline environment and/or public health.
- D. Policy SH-23. Through appropriate site planning and use of the most current, accurate and complete scientific and technical information available, shoreline use and development should be located and designed to avoid the need for shoreline stabilization or actions that would result in a net loss of shoreline ecological functions.

*The implementation of the Habitat Management Plan and No-Net-Loss Report (Exhibit 8) and associated planting plan, along with the minimization of the building size and limitation to buffer and shoreline access, and incorporation of the proposed water quality rain garden will meet the associated goals and policies.*

### **22.400.105 Proposed Development**

#### **A. Location.**

1. New development shall be located and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
2. New development shall be located and designed to avoid the need for future shoreline stabilization for the life of the structure. Likewise, any new development which would require shoreline stabilization which causes significant impacts to adjacent or down-current properties shall not be allowed.
3. New development on lots constrained by depth, topography or critical areas shall be located to minimize, to the extent feasible, the need for shoreline stabilization.
4. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis.
5. Subdivision shall be planned to avoid the need for shoreline stabilization for newly created lots, utilizing geotechnical analysis where applicable.
6. Non-water-oriented facilities and accessory structures, except for preferred shoreline uses, such as single-family residences and single-family residential appurtenances when consistent with buffer provisions in this chapter, must be located landward of buffers and adjacent water-oriented uses, or outside shoreline jurisdiction, unless no other location is feasible.

*The proposed development for a new residence and re-defined and existing Accessory Dwelling Unit is a permitted use (conditionally approved) as outlined in the CUP application materials. As such, the proposed new residence meets all aspects of location, and will not require shoreline armoring. His criteria will be further analyzed in the shoreline variance criteria.*

### **22.400.110 Mitigation (Sequencing and Mitigation Options)**

*The planned new residence proposes mitigation through incorporation and implementation of the No-Net-Loss report (Exhibit 8) and meets all qualifications for mitigation sequencing and options. Per 22.400.100 B (3) the proposed variance his will be analyzed under the shoreline variance criteria under 22.500.100 (E).*

### **22.400.115 Critical Areas**

*As the associated critical areas located on the property are entirely within the 200 foot shoreline zone, review of the associated critical areas ordinance will be completed under the variance criteria and analyzed under 22.500.100 (E).*

### **22.400.120 Vegetation Conservation Buffers**

*The associated vegetation conservation buffer standards for this proposal are analyzed under the Shoreline Residential buffer criteria in 22.400.120 (B) requiring an 85 foot buffer. As the proposed development requires review under the variance criteria of 22.500.100 ( E), review of this code falls under that analysis.*

### **22.400.125 Water Quality and Quantity**

*The proposal is located outside of the urban census area, and as such is creating less than 10,000 square feet of impervious surfaces. However as stormwater mitigation is required due to the proximity to critical areas, a Site Development Activity Permit (SDAP) is required.*

#### **22.400.130 Historic Archeological, Cultural, Scientific and Educational Resources**

A. Applicability and Other Regulations.

1. This section applies to archaeological and historic resources either recorded by the Department of Archaeology and Historic Preservation, local jurisdictions or applicable tribal databases or predictive models.
2. HASCE sites shall comply with Kitsap County Contract KC 442-07 (Agreement with Department of Archaeology and Historic Preservation), Chapter 25-48 WAC (Archaeological Excavation and Removal Permit), Chapter 27.44 RCW (Indian Graves and Records), and Chapter 27.53 RCW (Archaeological Sites and Resources).

*Members of the Suquamish Tribe's Cultural Resources and Archeological Division visited the site to determine if there were concerns related to prior occupancy by tribes or potential remains on site. The shoreline and entire site was analyzed and the Tribe had no concerns related to the proposed development. Kitsap County recommends that should any middens or remains be found during work, that the applicant or representative notify Kitsap DCD staff and the Suquamish Tribe.*

#### **22.400.135 View Blockage**

*There is no view blockage concern for the proposed new residence.*

#### **22.400.140 Bulk and Dimension Standards**

*The proposed new residence meets the criterial under this code.*

#### **22.500.100 Shoreline Variance Criteria**

Variance permits for development that will be located landward of the OHWM, except within those areas designated as marshes, bogs, or swamps pursuant to Chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following per KCC 22.500.100.E.4:

- a. That the strict application of the bulk, dimensional or performance standards set forth in Chapters 22.400 and 22.600 precludes, or significantly interferes with, reasonable use of the property;
- b. That the hardship described in subsection (E)(1) of this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this program, and for example, not from deed restrictions or from the actions of the applicant or a predecessor in title;

c. That the 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 this program, will not cause net loss to shoreline ecological functions and does not conflict with existing water-dependent uses;

d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

e. That the variance requested is the minimum necessary to afford relief; and

f. That the public interest will suffer no substantial detrimental effect.

*The applicant has provided a comprehensive analysis of the variance criteria to DCD staff, including a project narrative, which is provided as (Exhibit 16). We have reviewed the document and find that it meets all of the variance criteria under items a through f. In addition to meeting the project variance criteria, the associated Habitat Management plan and No-Net-Loss report prepared by BGE Environmental provides for and meets the expectations under the Kitsap County Code, and we find that the proposed actions, with the implemented mitigation meets the intent of the shoreline code and Critical Area Ordinance.*

## **22.600.170 Residential Development**

### **A. Environment Designations Permit Requirements**

#### **3. Shoreline residential and high intensity:**

- a. Primary single-family residences are exempt pursuant to criteria in Section 22.500.100(C);
- b. SDP if exemption criteria not met.
- c. SDP for multifamily units, accessory dwelling units, and subdivisions.

*The proposal is for approval of a new primary residence and conversion of an existing small chalet residence into an accessory dwelling unit. This proposal is addressed under a shoreline substantial development permit and the associated shoreline variance.*

#### **4. Aquatic: prohibited.**

*Not applicable*

### **B. Development Standards.**

1. All new residential development, including subdivision of land, shall be designed, configured and developed in a manner that ensures no net loss of shoreline ecological function.

2. All sewage disposal and water systems shall be in compliance with state and local health regulations including but not limited to Kitsap County board of health Ordinance 2008A-01 for on-site sewage requirements.

3. 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.

*No armoring is required and the permit is conditioned to indicate that no armoring shall be allowed for residential protection purposes. A small rock wall is proposed but is needed due to the narrow driveway and is required to meet the associated land use parking requirements.*

4. New over-water residences, including floating homes, are prohibited. Where such homes exist as of the adoption date of this program, they shall be reasonably accommodated to allow improvements associated with life safety matters and property rights.

*Not applicable.*

5. Stormwater quality and quantity measures for residential development must comply with current codes.

*The proposal meets the stormwater control guidelines for Kitsap County under Title 12.*

6. Flood hazard reduction measures for residential development shall comply with Chapter 19.500, as incorporated here by Section 22.400.115 (Critical areas), and Section 22.400.150 (Flood hazard reduction measures) of this program and shall be designed to prevent net loss of shoreline ecological functions.

*Not applicable.*

7. New multi-unit residential development, including the subdivision of land for five or more parcels, shall provide for joint or community and/or public access, except where demonstrated to be infeasible due to any of the following:

- a. Incompatible uses;
- b. Safety;

- c. Security;
  - d. Impact to the shoreline environment;
  - e. Constitutional or other legal limitations that may be applicable.
8. In cases where on-site access is infeasible, alternate methods of providing public access shall be considered, such as off-site improvements.
  9. Lot area shall be calculated using only those lands landward of the OHWM.
  10. Single-family residential uses are a priority use only when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.

*This is not a subdivision proposal. Not applicable.*

#### **Agency Recommendation**

Development Engineering recommends approval of this project with 10 conditions  
Environmental Review recommends approval with 7 conditions. Planning recommends approval of this project with 19 conditions

#### **Staff Evaluation of Decision Criteria**

1. The Hearing Examiner has review authority for this Conditional Use Permit and the associated Shoreline Substantial development and Variance permit application under KCC, Sections 17.410.010(C) 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, and this is also applicable to the associated Shoreline Substantial and Variance permits. 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 and the Shoreline Master Program.
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 SMP.
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 and the associated Shoreline Substantial and Shoreline Variance permit request for Wertz Accessory Dwelling Unit be **approved**, subject to the following 36 conditions:

**Planning/Zoning**

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. The accessory dwelling unit (ADU) is 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 (not including cosmetic work such as painting, papering and similar finish work), remodel or expansion of the accessory dwelling unit (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.
4. Only one accessory dwelling unit (ADU) shall be permitted on the subject property.
5. The owner of the property must reside in either the primary residence or the accessory dwelling unit (ADU) and only one of the structures may be rented at any one time.
6. The accessory dwelling units (ADU) habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 876. Any future expansion of the ADU will require a building permit and would have to comply with all code requirements in place at the time of the new building permit application.
7. The accessory dwelling unit (ADU) shall be designed to maintain the appearance of the primary residence.
8. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.
9. No mobile home or recreational vehicle shall be allowed as an accessory dwelling unit (ADU).
10. The accessory dwelling unit (ADU) shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
11. An accessory living quarters (ALQ) or guest house (GH) is not permitted on the same lot unless the accessory dwelling unit (ADU) is removed and the ALQ or

GH complies with all requirements imposed by the Kitsap County Code (KCC).

12. 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
13. The accessory dwelling unit (ADU) cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
14. 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 immediately after recording. The Binder shall be recorded within 30 days of notification from the Department that the Binder is ready to be recorded.
15. 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.
16. 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.
17. The decision set forth herein is based upon representations made and exhibits contained in the project application (insert #). 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.
18. This Conditional Use 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.

19. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.

### **Development Engineering**

20. At building permit application, submit KCPW Form 1601 for issuance of a concurrency certificate, as required by KCC Section 20.04.030, Transportation Concurrency.
21. 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.
22. The information provided demonstrates this proposal contains critical areas, and as such will require a Site Development Activity Permit (SDAP) from Development Services and Engineering.
23. 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, April 13, 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 of SDAP application.
24. The Washington State Department of Ecology (Ecology) may require registration of the infiltration trench as a Underground Injection Control (UIC) well in accordance with the Underground Injection Control Program (Chapter 173-218 WAC). The applicant shall contact Ecology to determine if the facility is regulated under the UIC program.
25. The design of the infiltration facilities will be accordance with Section 7.3.4 of the Kitsap County Stormwater Design Manual.
26. The infiltration facilities shall remain off line until the drainage areas are stabilized and the water quality treatment facility is adequately established. Temporary erosion and sedimentation ponds shall not be located over infiltration facilities. In addition, retention ponds shall not be utilized as temporary erosion and sedimentation control ponds.
27. During the construction of the proposed infiltration facilities, the Project Engineer shall provide an inspection to verify that the facilities are installed in accordance with the design documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer's stamp to Development Services and Engineering.
28. All retention facilities shall be a minimum of 200 feet from any slope steeper than 30%. This distance may be reduced based on a geotechnical engineering

report. That analysis will be prepared by a Civil Engineer licensed in the State of Washington, knowledgeable in the practice of soils engineering and mechanics. The analysis will address the effects of groundwater infiltration, seepage, potential slip planes, and changes in soil bearing strength. The proposed facilities will be designed following the recommendations of the geotechnical analysis.

29. 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.

### **Environmental**

30. Follow the recommendations of the Habitat Management Plan and No Net Loss Report of BGE, LCC's March 16, 2016 report. Please provide an addendum to the report to include tree species. The current plan only includes shrubs.
31. Mitigation plan will be monitored for a minimum of 5 years to ensure survival.
32. Submit a shoreline exemption for the trail, beach stairs, and deck within the shoreline buffer. Show how these items are consistent with Kitsap County Code 22.400.120.D.a, b, and c. The stair block system must be reconfigured for a more permanent solution.
33. 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.
34. The application requires that no new shoreline armoring is proposed, and that no armoring will ever be needed for the protection of any facilities on site.
35. 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.
36. 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.

\_\_\_\_\_  
Katharine Shaffer, Staff Planner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steve Heacock, Staff Planner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Scott Diener, Development Services and Engineering Manager

\_\_\_\_\_  
Date

CC: Applicant/Owner: Judy Wertz  
Engineer: Mark Kuhlman, Team 4 Engineering  
Interested Parties:  
    Jennifer Tammen  
    Larry and Lenore Stanfel  
    Annie Fitzgerald  
Kitsap County Health District, MS-30  
Kitsap County Public Works Dept., MS-26  
DCD Staff Planner: Katharine Shaffer and Steve Heacock  
DCD File (16 01511, 16 01513)