



Administrative Staff Report

Report Date: 1/11/24

Application Submittal Date: 6/22/2020

Application Complete Date: 7/22/2020

Project Name: Frey Rock Bulkhead

Type of Application: Shoreline Administrative Conditional Use Permit

Permit Number: 20-02682

Project Location

12042 NE Apple Tree Point Lane
Kingston, WA 98346
Commissioner District 1

Assessor's Account

242702-4-052-2004

Applicant/Owner of Record

Sara Frey
12042 NE Apple Tree Point Lane
Kingston, WA 98346

Recommendation Summary

Approved subject to conditions listed under section 13 of this report.

VICINITY MAP



1. Background

The existing single-family residence was within 16 to 40 feet from the top of a 6-8 ft eroding slope above the ordinary high-water line of Puget Sound. This project is for the approval of a shoreline administrative conditional use permit to substantiate actions for installation of an after the fact bulkhead and vinyl sheet pile armor on the Frey property, with permits issued under an emergency Hydraulic Project Approval (HPA). The completed rock bulkhead is a 150-foot long, 8-9-foot-tall granitic quarry rock wall, keyed 5-6 feet below grade and battered at a 6 (horizontal) to 1(vertical) angle. The vinyl sheet wall is also 150 feet long, conveyed adjacent to a concrete structural wall located to the north. The sheet pile wall is to remain in place. The project application is the result of a required and approved Final Short Plat Alteration (Permit 21-00806) which modified 2 conditions of approval to allow construction of shoreline stabilization structures on the property, where previous conditions precluded construction of armoring or protective structures. The Short Plat conditions under SP-6345-1 were altered to revise condition 7 and 8 (which had precluded stabilization and armoring actions and installations of protective stabilization structures) under SP-6345 R2. The approved revision

reads: *Condition 7. Shoreline Armoring may be allowed so long as the armoring is consistent with Kitsap County Shoreline Master Program and all other relevant laws and regulations. Condition 8. This condition shall be removed.*

Further permitting actions follow emergency HPA issued by the Washington State Department of Fish and Wildlife (WDFW), which included emergency approval for the installation of a vinyl sheet pile (2/10/20), and the installation of a rock protective bulkhead in the winter of 2023 after a significant King tide and atmospheric barometric storm event on December 27th and 28th, of 2022. The protective rock bulkhead was installed subsequent to agency site visits with WDFW, Suquamish Tribe, and Department of Ecology staff. Per recommendations by DOE and WDFW staff, a site visit by WDFW shoreline stabilization specialist Corey Morss and Chris Waldbillig (November 2, 2022) concluded that shoreline stabilization protocols would allow stabilization of the Frey property and that a rock protective bulkhead is acceptable as there is no possibility of elevating the residence due to size and construction type (slab on grade), and that the proximity and erosion rates substantiated by the geotechnical report analysis concluded that no other reasonable or practicable alternative was possible. Further, the emergency repair was completed under the guidance of the issued HPA, the geotechnical engineer, and per the previous revised geotechnical engineering reports from Aspect Consulting.

A revised geotechnical report has concluded that this project is necessary to protect the existing single-family residence and is the minimum necessary to protect the residence and associated infrastructure.

2. Project Request

This proposal is for a Shoreline Administrative Conditional Use Permit to substantiate an after the fact bulkhead, as previously described in the project background. The rock bulkhead is a 150-foot long, 8-9-foot-tall granitic quarry rock wall, keyed 5-6 feet below grade and battered at a 6 (horizontal) to 1 (vertical) angle. The vinyl sheet wall is also 150 feet long, located approximately 12 feet from the residence, and is conveyed adjacent and parallel to a concrete structural armoring wall located to the north. The sheet pile wall is to remain in place. In review of the geotechnical engineering reports and the Site Visit memo from Corey Morss with WDFW (11/29/22), the Department of Community Development concludes that no other alternatives are possible and that in conjunction with the retention of the vinyl sheet piles as a required element for continued protection of the residence, is the minimum stabilization system necessary for protection of the Frey residence. The permit is conditioned to follow all elements of the short plat alteration, as previously described, conditions of the issued Hydraulic Project Approval by WDFW, and also conditions for plantings installed under the guidance of the biological report and addendum by Eco Land Services. Drainage systems have been corrected per the recommendation of the Geotechnical Report by Aspect Consultants and maintenance of the drainage system is required. A shoreline stabilization permit (20-02684) is currently in a returned status, awaiting completion of the associated Shoreline Administrative Conditional Use staff report. All work has occurred above the ordinary high-water line, within the 100-year floodplain, with access via barge.

3. 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 Nonsignificance (DNS), Mitigated DNS, or the necessity for an EIS is called a threshold determination. A separate notice of the threshold determination is given by the County. If it is not appealed, it becomes part of the hearing record as it was issued, since it cannot be changed by the Hearing Examiner.

Pursuant to WAC 197-11-355, the optional DNS process was utilized for this project. The SEPA Comment period previously occurred concurrent with the Notice of Application dated September 1, 2020. A Determination of Nonsignificance (DNS) was issued on October 26, 2023. As the original NOA included only a 14-day comment period, the SEPA DNS comment period was extended to 30 Days.

The SEPA appeal period ended on November 27, 2023. No appeals were filed; therefore, the SEPA determination is final.

4. Physical Characteristics

The 1.31-acre generally rectangular parcel lies east of NE Apple Tree point Lane and extends easterly to the shore of Puget Sound. A single-family home is located about 16 to 40 feet back from the top of an 6-7-foot high, steepened shoreline bluff. The bluff is highly eroded and contains previous coir woven fabric with remnant dune grass plantings. There is dune grass vegetation on the banks and in the shoreline and large wood and logs scattered along the drift line. The shoreline of this parcel is currently armored, and we are describing the pre-bulkhead condition.

Table 1 - Comprehensive Plan Designation and Zoning

Comprehensive Plan: Rural Residential Zone: Rural Residential	Standard	Proposed
Minimum Density	NA	NA
Maximum Density	NA	
Minimum Lot Size	5 Acres	1.31 acres*
Maximum Lot Size	NA	NA
Minimum Lot Width	140 feet	50 feet*

Minimum Lot Depth	140 feet	300 feet
Maximum Height	35 feet	NA
Maximum Impervious Surface Coverage	NA	NA
Maximum Lot Coverage	NA	NA

Staff Comment: The minimum lot size and width do not apply as there is no subdivision of this lot of record with this proposal.

Table 2 - Setback for Zoning District

	Standard	Proposed
Front (North)	20 feet	NA
Side (East)	5 feet	NA
Side (West)	5 feet	NA
Rear (South)	10 feet * Abuts Puget Sound, 130-foot buffer and 15-foot building setback for Rural Conservancy Designation (Title 22) applies.	Proposal is for a single-family bulkhead. The placement of the bulkhead within this buffer is the subject of this proposal and review.

Table 3 - Surrounding Land Use and Zoning

Surrounding Property	Land Use	Zoning
North	Single-family residence	Rural Residential (RR)
South	Single-family residence	Rural Residential (RR)
East	Puget Sound	N/A
West	Single-family residence	Rural Residential (RR)

Table 4 - Public Utilities and Services

	Provider
Water	Kitsap PUD #1
Power	Puget Sound Energy
Sewer	On-site Septic
Police	Kitsap County Sherriff
Fire	North Kitsap Fire & Rescue
School	North Kitsap School District #400

5. Access

Access to the property is off a private maintained right of way, NE Apple Tree Point Lane. Access for construction occurred at the shoreline via barge.

6. Site Design

Landscaping and lighting requirements of KCC 17.500 are not applicable.

7. Policies and Regulations Applicable to the Subject Proposal

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

Kitsap County Comprehensive Plan, adopted June 30, 2016 (amended in 2018 and 2020).

The following Comprehensive Plan goals and policies are most relevant to this application: Chapter 3- Environment, incorporates by reference the goals and policies of the Kitsap County Shoreline Master Program.

22.300 General Goals and Policies

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.

Staff Comment: The proposed development is the minimum necessary to afford construction of a normal protective bulkhead to protect an existing single-family residence, while still protecting ecological functions.

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

Staff Comment: Ecological functions, with proposed restoration / mitigation, will still be retained.

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.

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

1. Habitat
2. Water quality maintenance; and
3. Water quantity maintenance.

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.

Staff Comment: With mitigation, the proposed shoreline armor structure will not impact the associated critical areas or shoreline functions. A mitigation plan and associated monitoring and maintenance plan will assure compliance with these requirements.

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.

Staff Comment: 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.

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.

Staff Comment: There are no wetlands or streams on site. A geotechnical report has been provided to address the Geologically Hazardous Areas (KCC 19.400). Work will take place within the FEMA flood zone, but a "no adverse effect" determination has been made. Associated impacts from shoreline buffer intrusions will be mitigated.

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.

Staff Comment: 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, including site design and vegetation management.

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.

Staff Comment: Implementation of the Shoreline Mitigation Plan along with the required monitoring and maintenance of the project area will assure no net loss of ecological functions and processes, including site design and vegetation management. A net gain in native vegetation is expected of this project.

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).

Staff Comment: This project has been reviewed under the current standards in Title 12 (Stormwater Drainage).

22.200.125 Rural Conservancy Designation

A. Purpose. To protect ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource use, achieve natural floodplain processes, and provide recreational opportunities.

B. Designation Criteria. Shorelines outside the UGA or LAMIRD that have any of the following characteristics:

1. Currently support lesser-intensity resource-based uses, such as agriculture, aquaculture, forestry, or recreational uses, or are designated agriculture or forest lands.
2. Currently accommodate residential uses but are subject to environmental limitations, such as properties that include or are adjacent to steep banks, feeder bluffs, or floodplains or other flood-prone areas.
3. Have high recreational value or have unique historic or cultural resources; or
4. Have low-intensity water-dependent uses.

Land designated urban conservancy and from which a UGA boundary is retracted may be designated as rural conservancy, if any of the above characteristics are present.

C. Management Policies.

1. Uses should be limited to those which sustain the shoreline area's physical and biological resources, and those of a nonpermanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area. Developments or uses that would substantially degrade or permanently deplete the physical and biological resources of the area should not be allowed.
2. New development should be designed and located to preclude the need for shoreline stabilization. New shoreline stabilization or flood control measures should only be allowed where there is a documented need to protect an existing structure or ecological functions and mitigation is applied.
3. Residential development standards shall ensure no net loss of shoreline ecological functions and should preserve the existing character of the shoreline consistent with the purpose of the "rural conservancy" environment.
4. Low-intensity, water-oriented commercial uses may be permitted in the limited instances where those uses have been located in the past or at unique sites in rural communities that possess shoreline conditions and services to support the development.

5. Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time, such as boating facilities, angling, hunting, wildlife viewing trails and swimming beaches, are preferred uses, provided significant adverse impacts to the shoreline area are mitigated.
6. Agriculture, commercial forestry and aquaculture, when consistent with the program, may be allowed.

Staff comment: The purpose of this proposal is to protect an existing single-family residence, which is an allowed use in the Rural Conservancy Designation.

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

Code Reference	Subject
Title 12	Storm Water Drainage
Chapter 18.04	State Environmental Policy Act (SEPA)
Chapter 21.04	Land Use and Development Procedures
Chapter 22	Shoreline Master Program

8. Documents Consulted in the Analysis

<u>Applicant Submittals</u>	<u>Dated or date stamped</u>
Shoreline Administrative CUP Application	June 24, 2020
Supplemental Application (JARPA-revised)	March 2, 2023
Environmental (SEPA) Checklist	June 24, 2020
Habitat Management Plan and FEMA report	June 24, 2020
Revised NNL report and HMP	March 31, 2023
Site Plan	June 24, 2020
Revised Site (Engineering) Plan	March 2, 2023
Project Narrative	June 24, 2020
Photos	June 24, 2020
Geotechnical Report	June 24, 2020
Geotechnical Addendum	March 2, 2023

9. Public Outreach and Comments

Pursuant to KCC Title 21, Land Use, and Development Procedures, the Department gave proper public notice for the shoreline substantial development permit. To date, the Department has received 2 public comments on the current proposal (See list of interested parties in Notice of Decision). We received comments from the Department of Ecology, Catherine Tarbill and Dean Tarbill.

Ecology comments have been incorporated in the revised geotechnical report, requiring review using the Washington State Department of Fish and Wildlife WDFW stabilization analysis as part of the Revised Code of Washington (RCW) Section 77.55.231(1)(b) (WSL,

2021) which requires an Alternatives Analysis. See comment matrix under the response to D. Tarbill, response item 2.

The following is a summary of issues the Department received from the public from the 2020 request for the shoreline administrative conditional use permit:

Issue Ref. No.	Summary of Concern (See corresponding responses in the next table)	Comment Letter Exhibit Reference No.
1.	<p>Concerned about the direct and indirect impacts that a future bulkhead will have on the beach and their residence related to high tide and flooding events. 1. In what way would this impact us, the immediate area? 2. Have you or your department visited this site? What factors were met for this permit and what were each factor met justified? Can you share with us the pros and cons of this installation and give reasons as to why it should be approved? 3. Is this a special privilege to this land? Will this affect my property value? 4. If this improvement is permitted will KCDGD assume responsibility in the future if indeed this improvement does affect our property? 5. Will we need to raise the level of our legal bulkhead to protect our property?</p>	Catherine Tarbill
2.	<p>1. Mr. Tarbill references the Apple Tree Point Estates CC&Rs which require Frey's lots be subject to SP 6345R1. Can the County now choose to ignore these further recorded requirements, due to building and lot development violations by the 1994 original owners and developers, associated with the Frey's lots? The vinyl bulkhead installed this past February 2020 without benefit of a Kitsap County process of permitting review, is at least four (4) feet ABOVE the original grade. It is presently (1) foot above my Kitsap County approved concrete bulkhead installed in the late 1970s, with Shoreline Administrator Renee Beam supervising the project. Additionally, a masonry and stucco bulkhead had been constructed in front of the residence's beachside, Short Plat's 6345R1's building envelope during the 1995 development of the residence. This presumably was designed and constructed to prevent potential flooding and turgid tidal inundation. (Apple Tree Point is a County identified 'critical area', a flood plain.) Consequently, the 3 feet of fill improperly added to the lots' beachfront all the way to the ordinary high tide line-the beach logs-and the 1995 stucco/masonry wall running the length of the Frey's beach side of the residence already protects the residence from tide</p>	Dean Tarbill

	<p>erosion. In fact, the present 3 feet higher finished grade that generated the 1995 KCDCCD stop work order and beach restoration is ONLY partially being eroded on the south and east corner of the subject lots, not the original County conditioned Short Plat's 6345R1 'no touch' original beachfront critical area grade (running approximately 200 front feet) that was not to be disturbed.</p> <p>2. Have you and/or your associates investigated the permit files containing all these pertinent documents related to the Frey residence? Will the County process and issue a determination as to the Frey's request in conjunction with the historical file?</p> <p>3. Have you or any KCDCCD officers personally visited and examined the subject property in relation to these clear restrictions and covenants placed on them?</p> <p>4. As indicated above, the only erosion to the 'no touch' beach area of the Frey's lots was in the south and east corner, the shared beachfront footage with the Apple Tree Point LLC neighbor just to the Frey's south. There the old, existing log and piling bulkhead installed many years ago, mostly on the adjoining southern neighbor's property, was deteriorating badly without maintenance or repair. During the winter and early spring months, storms coming from the south along with high tidal action infiltrates the original grade and existing, decaying beach berm made of wood and miscellaneous materials. Why not require the Frey's to install ONLY a 'soft restoration' (beach log) barrier consistent with the County's present shoreline preservation regulations in this area (where the neighbors wood barrier is virtually disintegrated)? Why violate numerous and County regulations recorded against the Frey's lots by allowing the vinyl bulkhead to remain a part of the new permit review? It is important to note: Installing a 'soft restoration', to include logs outside of the Frey's 'no touch and no bulkhead beachfront area' WOULD NOT be in violation of any restrictions or regulations tied to the Frey's lots. And it would surely prevent beachfront erosion, both of the 3 feet illegally filled and the original 'no touch' grades representing the Frey's beachfront.</p> <p>5. What likely 'impacts' should I be made aware of to my property from the existing February 2020 vinyl bulkhead installed in violation of numerous County, plat and homeowner's recorded regulations?</p> <p>6. Finally, can the County itself be held accountable for any zoning/building standards and regulations they generated subject to the Frey's lots and yet choose not to enforce? If so, to whom?</p>	
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Issue Ref. No.	Issue	Staff Response
1.	Bulkhead impacts and flood zone from C. Tarbill	<ol style="list-style-type: none"> 1. Kitsap County DCD has reviewed the geotechnical report, revised report and addendum, and the associated habitat management and No Net Loss reports related to the project. Flood impacts onto adjacent properties are not expected from this project as there is no net change in elevations surrounding this residence; storm surges and King tide events will continue to convey through this bulkhead from the surrounding area. 2. We have visited the site several times with DOE, tribal biologists, and WDFW agency staff and the associated consultants for the Frey property. The related work is the minimum necessary and protections are necessary as analyzed in the associated reports, and per the recommendations set forth in the revised geotechnical evaluation. 3. The project is not considered a privilege, but is deemed necessary due to primary wind direction, ship wake energy and tidal action conveyed into the relic armoring log revetment to the southeast of the property, completed in the past. This log-armored concrete structure directly conveys tidal impacts and boat-wake driven wave energy into the SE corner of this site. 4. Shoreline stabilization for the property is not expected to impact neighbors to the north or south, although there is no assurance nor indemnification provided within the permit by the permitting agency. The geotechnical report and engineering design is required in permits of this nature so that in the event that the project does not perform, the professional engineer and/or geotechnical consultant assumes liability based on the design and implementation of the design. 5. DCD cannot advise you on protection strategies for your own property. We can provide guidance on permitting requirements should you be interested in elevating the shoreline armored structures on

		<p>your property. This can be done through DCD consultation permits, through virtual appointments, hourly rate meeting consultations or staff consultations. Projects of this nature do require that you consult with a geotechnical engineer and biologist, so that any designs or repairs must be completed through professional consultants that specialize in this work. That work must be permitted through DCD in this similar application type (administrative shoreline conditional use permit). If there is an emergency declaration by Kitsap County Emergency Management, or if an event has occurred that is deemed an emergency by the Washington State Department of Fish and Wildlife, you should consult directly with that agency to see about obtaining an emergency Hydraulic Project Application and approval. Further, should you experience any tidal related impacts, it is best to consult with your own geotechnical engineer and contact WDFW directly for further direction. Work completed from an emergency declaration or emergency HPA must obtain an after the fact permit with the Department of Community Development, similar to this project. The new contact for WDFW is Adam Samara adam.samara@dfw.wa.gov or at 360-833-6388.</p>
<p>2.</p>	<p>Short Plat Codes Covenants and Restrictions, response to D. Tarbill comments</p>	<p>1. DCD has required a Short Plat amendment to the SP 6345R1 C, C and R's and have modified the requirements that no longer preclude protections for residential structures. As revised, the conditions now read: <i>Condition 7. Shoreline Armoring may be allowed so long as the armoring is consistent with Kitsap County Shoreline Master Program and all other relevant laws and regulations.</i></p> <p>As the SMP is not able to review violations of the code from past violations, nor is it clear that what the requirements were for filling shoreline properties, we can only review the situation before us, which is an imminent risk to the residential structure. The applicant has demonstrated they meet this qualification.</p>

	<p>DOE and WDFW comments addressed in item 2</p>	<p>2. To detail, the applicant has provided a geotechnical analysis that meets all qualifications and requirements of the Kitsap County SMP, and further has been guided by Department of Ecology and WDFW site reviews and guidance pointing to the stabilization analysis as part of the Revised Code of Washington (RCW) Section 77.55.231(1)(b) (WSL, 2021) which requires an Alternatives Analysis that follows a prescribed flow chart that considers options ranging from complete bulkhead removal to in-kind hard structure replacement. <u>The following analysis is taken directly from the geotechnical report.</u> “The following seven Alternatives are required to be considered: (iv) <i>Remove the structure and replace it with a soft structure constructed of natural materials, including bioengineering.</i></p> <p>(v) <i>Remove the hard structure and construct upland retaining walls;</i></p> <p>(vi) <i>Remove the hard structure and replace it with a hard structure located landward of the existing structure, preferably at or above the ordinary high water line; or</i></p> <p>(vii) <i>Remove the hard structure and replace it with hard shoreline structure in the same footprint as the existing structure.</i></p> <p>The sheet piling system was permitted by WDFW and installed in 2020 behind/above the OHWM to protect the residence from erosion. The existing sheet piling system is in good condition and should remain to protect the residence and life safety of the inhabitants. However, high-energy coastal processes due to concentrated wave impacts from storm-driven waves, vessel wakes, combined with extreme high tides, continue to threaten the residence.</p> <p>Therefore, Sealevel, WDFW, and Kitsap County have discussed this emergency situation and the installation of a gravity rock wall in front (waterward side) of the vinyl sheet piling system, but still behind/above the OHWM. The rock wall will protect the vinyl sheet piling and would be considered an upland retaining wall (Alternative v), not a bulkhead. Soft bulkhead techniques (Alternative iv) are no longer planned along the shoreline, as discussed in our 2022 Addendum, as they would be extremely costly to install and maintain.</p>
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		<ol style="list-style-type: none"> 3. As above, DCD has visited the site several times and does concur with the analysis and findings. 4. The analysis and reports find that the project is the minimum necessary to protect the residence, per the WDFW protocol. We did look into the permit file history and there are no notes regarding past violations regarding fill placed in the shoreline. Code in 1995 allowed fill to be placed to elevate residential structures, with quantities up to 150 cubic yards, but that is no longer the case and any fill elevating the beach front or armoring and stabilization work requires an administrative shoreline conditional use permit, which is the subject of this after the fact permit. The matter is considered addressed in this application package. 5. The answer is detailed in the response to C. Tarbill regarding impacts (#4). 6. Any enforcement actions are based on code requirements for implementation under current standards. This project has been designed to the ASCUP criteria and does require final approval by Washington State Department of Ecology (DOE), Shoreline Division. You will be copied with the County transmittal to DOE. Should you have code compliance concerns, you should direct them to the Kitsap One call center via e-mail kitsap1@kitsap.gov or via phone at 360-337-5777.
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6. Analysis

a. Planning/Zoning

This project has been reviewed for, and found to be consistent with, Kitsap County Code Title 17 Zoning.

b. Lighting

Not applicable. There are no additions to or changes to lighting with this proposal.

c. Off-Street Parking

Not applicable. There are no additions to or changes to parking with this proposal.

Table 5 - Parking Table

Use Identified in 17.490.030	Standard	Required Spaces	Proposed Spaces/Existing Spaces
N/A	N/A	N/A	N/A
Total			

d. Signage

Not applicable.

e. Landscaping

Not applicable as to Title 17 requirements. Vegetation enhancement is proposed as a restoration/mitigation element of this project.

Table 6 - Landscaping Table

	Required	Proposed
Required Landscaping (Sq. Ft) 15% of Site	N/A	N/A
Required Buffer(s) 17.500.025		
North	N/A	N/A
South	N/A	N/A
East	N/A	N/A
West	N/A	N/A
Street Trees	N/A	N/A

f. Frontage Improvements

Not applicable.

g. Design Districts/Requirements

Not applicable.

h. Development Engineering/Stormwater

The need for this proposal is a result of wave action at the toe of the slope. No changes to stormwater management are proposed. The project has been reviewed for, and found consistent with, Kitsap County Code Title 12-Stormwater.

i. Environmental

22.400.105 General Regulations- Proposed Development

(B) Standards for Work Waterward of OHWM

1. Water-dependent in-water structures, activities, and uses are not subject to the shoreline buffers established in this program.
2. Projects involving in-water work must obtain all applicable state and federal permits or approvals, including those from the U.S. Army Corps of Engineers, Ecology, Washington Department of Fish and Wildlife (WDFW), and/or Washington Department of Natural Resources.
3. Projects involving in-water work must comply with timing restrictions as set forth by state and federal project approvals.
4. Protection of Bank and Vegetation.
 - a. Alteration or disturbance of the bank and bank vegetation must be limited to that necessary to perform the in-water work.
 - b. All disturbed areas must be restored and protected from erosion using vegetation or other means.
5. If, at any time, water quality problems develop as a result of in-water work, immediate notification must be made to any appropriate state or federal agency, e.g., Ecology, WDFW, National Marine Fisheries Service, U.S. Fish and Wildlife Service, etc. Affected tribes shall also be notified.

Staff Comment: This proposal is designed, or is conditioned to, meet these standards and requirements.

22.400.110 Mitigation

The shoreline armor proposes to improve the current shoreline functions at the project site and vicinity. The proposed project will incorporate and implement restoration/mitigation elements of the Shoreline Mitigation Plan.

22.400.115 Critical Areas

The site is mapped in Kitsap County GIS as a 'seismic Moderate Hazard Area', as defined in Kitsap County code 19.400. This classification required the submittal of a Geotechnical Report, which has been provided. The report concluded the proposed bulkhead structure was immediately necessary for the protection of the existing home. Toe erosion at the site is worsened by eddying affects from the adjacent concrete structure to the south. The rock bulkhead will not impede or impair the existing coastal processes at the site.

The site is also within the mapped FEMA floodplain. As required, a FEMA Habitat Assessment has been provided and reviewed. A "no effect" determination has been made.

22.400.125 Water Quality and Quantity

This project does not propose any changes to the upland stormwater management, and none is required per the Geotechnical Report. A Hydraulic

Project Approval from the Washington Department of Fish and Wildlife is required for this project. The project has been reviewed under Kitsap County Code Title 12-Stormwater. An HPA has been issued for this after-the-fact project.

22.400.130 Historic, Archaeological, Cultural, Scientific and Ed. Resources

There were no comments provided by the Tribes related to cultural resources. Kitsap County will condition this approval and subsequent building permit(s) for notification of Kitsap County DCD, the Washington State Office of Archaeology and Historic Preservation, and the affected tribes if archaeological resources are uncovered during excavation.

22.400.135 View Blockage

There are no view blockage concerns for this project.

22.400.140 Bulk and Dimension Standards

The proposed residence meets the criteria under this code.

22.500.100(D) Conditional Use Permits (including A-CUP)

1. The purpose of a CUP is to provide flexibility in authorizing uses in a manner consistent with RCW [90.58.020](#). Accordingly, special conditions may be imposed to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Act and this program.
2. CUPs shall be classified as a Type III permit under Chapter [21.04](#). Where administrative CUPs are allowed, they shall be classified as a Type II permit under Chapter [21.04](#). Unless specified otherwise in this program, the CUP criteria apply in addition to the applicable SDP criteria and shall be combined into a single review process.
3. Shoreline CUPs shall be granted only after the applicant can demonstrate compliance with WAC [173-27-160](#) and this section as follows:
 - a. That the proposed use is consistent with the policies of RCW [90.58.020](#) and this program.
 - b. That the proposed use will not interfere with the normal public use of public shorelines and does not conflict with existing water-dependent uses.
 - c. 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 this program.
 - d. That the proposed use will not result in significant adverse effects or a net loss to the shoreline ecosystem functions in which it is to be located.
 - e. That the public interest suffers no substantial detrimental effect.

- f. That consideration has been given to the cumulative impact of additional requests for like actions in the area and shall not result in substantial adverse effects or net loss of shoreline ecosystem functions. For example, if CUPs were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the use preference policies and shall not produce substantial adverse impacts to the shoreline environment. Consideration shall be demonstrated through preparation of a cumulative impacts report, if requested, that substantially conforms to the applicable provisions of Chapter [22.700](#) (Special Reports);
 - g. Other uses which are not classified or set forth in this program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.
 - h. Uses which are specifically prohibited by this master program may not be authorized pursuant to this section.
4. All applications for shoreline CUPs, including administrative CUPs, approved by the county shall be forwarded to Ecology pursuant to WAC [173-27-200](#), for final approval, approval with conditions, or denial. No approval shall be considered final until it has been acted upon by Ecology.

Staff Comment: This proposal is for the necessary protection of an existing single-family residence and will not interfere with the public use of the shoreline. The shoreline armoring is consistent with the neighboring properties, which already have some form of shoreline armoring. Those existing structures have, in part, led to the need for this proposed structure. The proposal will maintain and improve the existing shoreline ecological functions and not interfere with coastal processes.

22.600.175 Shoreline Stabilization

- A. Environment Designations Permit Requirements. Based on the type of shoreline modification proposed, the identified permit requirements shall apply for all designations:
1. SDP for soft shoreline stabilization, unless otherwise exempt.
 2. Administrative CUP for hard shoreline stabilization.
- B. Exemptions from Substantial Development Permit for Shoreline Stabilization.
1. The construction of a normal protective bulkhead common to single-family residences shall not require an SDP if it meets the exemption criteria listed in Section 22.500.100(C)(3)(c), or as further amended in WAC 173-27-040. An exemption from an SDP is not an exemption from a CUP or an administrative CUP where applicable.

2. A “normal protective” bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the OHWM for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion.
3. A letter of permit exemption will be prepared for qualifying shoreline stabilization activities in accordance with Section 22.500.100(C)(4). The county shall track exemption activities in the permit system.

Staff Comment: This proposal is for the retention of the vinyl wall and an elevated shoreline armoring structure which includes a hard rock-wall element. The elevation of the hard shoreline stabilization elements resulted in the need for an Administrative Conditional Use Permit.

C. Application Requirements. In addition to the general application requirements, applications for shore protection and bluff stabilization shall include the following information, when applicable:

1. Upland, on-site improvements and any existing shoreline structures.
2. Type of proposed shore protection and a description of alternatives to hard approaches where proposed, and a thorough discussion of the environmental impacts of each alternative.
3. Habitat survey prepared by a qualified professional biologist that describes the anticipated effects of the project on fish and wildlife resources and marine vegetation.
4. A description of any proposed vegetation removal, and a plan to revegetate the site following construction.
5. Tidal elevations and field verified line of ordinary high water.
6. Ownership of the tidelands, shorelands and/or bedlands.
7. Purpose of shore protection.
8. Direction of net longshore drift (for marine shoreline).
9. Plan and profile of existing bank and beach.
10. Profile of adjacent existing bulkhead.
11. In addition to the general geotechnical report requirements in Section 22.700.120, the following information shall be included for shoreline stabilization proposals:
 - a. Address the need to prevent potential damage to a primary structure through the use of shoreline stabilization measures.
 - b. Estimate time frame and rates of erosion to report on the urgency associated with the specific situation. “Urgent” means:
 - i. That the primary structure will be damaged within three years as a result of natural shoreline erosion in the absence of hard armoring structures; or

- ii. Where waiting until the need is that immediate would foreclose the opportunity to use measures that avoid impacts on ecological functions.
 - c. If the report determines that the need is not as immediate as three years, it still may be used to justify a more immediate authorization to protect against erosion using soft measures.
 - d. The geotechnical analysis shall evaluate on-site drainage issues and address drainage problems away from the shoreline edge.
- 12. Any other information that may be required to demonstrate compliance with the review criteria referenced in this section and the guiding provisions at WAC 173-26-231(3)(a).

Staff Comment: The submitted special reports and plans meet the submittal requirements of this section.

D. Development Standards.

- 1. General Regulations.
 - a. These standards shall be guided by the provisions at WAC 173-26-231(3)(a).
 - b. Applications for shore protection will be reviewed pursuant to comments made by the Washington Department of Fish and Wildlife pertaining to impacts on critical salt and freshwater habitats, and comments made by the Washington Department of Natural Resources for projects proposed on state-owned aquatic lands.
 - c. Soft shoreline stabilization measures shall be utilized unless demonstrated through a geotechnical analysis not to be sufficient to protect primary structures, dwellings and businesses. Alternatives for shoreline stabilization shall be based on the following order of preference:
 - i. No action, increase building setbacks, or relocate structures.
 - ii. Soft shoreline stabilization constructed of natural materials including bioengineering, beach nourishment, protective berms, or vegetative stabilization.
 - iii. Hybrid shoreline stabilization, usually constructed of a mix of rock, logs and vegetation.
 - iv. Hard shoreline stabilization constructed of materials such as rock, riprap or concrete.
 - d. Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the OHWM.
 - e. When hard shoreline stabilization measures are demonstrated to be necessary, they must:

- i. Limit the size of stabilization measures to the minimum necessary.
- ii. Assure no net loss of shoreline ecological functions.
- iii. Ensure that publicly financed or subsidized shoreline erosion control measures do not restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions.
- iv. Where feasible, incorporate ecological restoration and public access improvements into the project.

Staff Comment: The proposal and submitted reports have demonstrated that the project will not result in a net loss of shoreline ecological functions and has provided the necessary mitigation sequencing analysis. Ecological restoration components have been incorporated to the greatest extent feasible.

- f. Shoreline stabilization measures shall not be for the purpose of creating dry land. Leveling or extending property, creating or preserving residential lawns, yards or landscaping shall not be allowed except when otherwise allowed in this section due to health and safety.
- g. Minimize disturbance pertaining to beach access by avoiding switchback trails which require hard stabilization. Where such avoidance is not feasible, mitigation for impacts to shoreline ecological functions shall be required.
- h. Bluff stabilization walls shall be prohibited unless proven necessary through a geotechnical report.

Staff Comment: Not applicable.

- i. Placement of shoreline stabilization methods shall follow the natural contour of the existing shoreline, be parallel to and at or above the OHWM.

Staff Comment: The hard armor element will be at or above Ordinary High Water and will follow the shoreline contour along the base of the slope.

- j. Shoreline stabilization on marine feeder bluffs, when determined necessary pursuant to the standards of this section, may require additional mitigation measures, including those necessary to offset the loss of sediment supply.

Staff Comment: The structure will be located along a marine drift cell, but the structure is necessary to protect the existing single-family residence. Restoration measures are put in place which will improve the existing functions, but also allow for easier, regular maintenance as necessary. Drift logs have been retained which are an ecological benefit.

k. Shoreline stabilization must be designed by a professional engineer licensed in the state of Washington with demonstrated experience in hydraulic activities of shorelines. Alternatively, soft shoreline stabilization may be designed by a habitat biologist or a professional with demonstrated expertise in designing soft shoreline stabilization structures.

Staff Comment: This project has been designed by a professional engineer.

l. Depending on the degree of hard or soft elements to the project, the department, WDFW, and/or U.S. Army Corps of Engineers may require varying degrees of mitigation or other permit conditions.

m. Shoreline stabilization structures shall not result in a net loss of shoreline ecological functions.

Staff Comment: These agencies may provide additional mitigation as they determine necessary. The project has been found to be consistent with Kitsap County Code, Title 22, including a No Net Loss determination.

n. Shoreline stabilization, as applied in this section, is generally distinguished from shoreline restoration activities. However, specific shoreline stabilization elements of restoration activities shall be guided by this section.

Staff Comment: This project does not contain restoration-type activities, but driftwood on site has been encouraged to remain adjacent to the bulkhead.

2. New and Expanded Shoreline Stabilization.

a. If shoreline stabilization is necessary pursuant to a geotechnical analysis, the method, either hard or soft, shall not result in a net loss of shoreline ecological functions. To meet this requirement, on- and off-site mitigation measures may be required.

- b. Shoreline stabilization structures shall not be constructed with waste materials such as demolition debris, derelict vessels, tires, concrete or any other materials which might have adverse toxic or visual impacts on shoreline areas.
- c. New structural stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:
 - i. To protect legally existing primary structures:
 - (A) New or enlarged structural shoreline stabilization measures for the existing primary structure, including residences and their primary appurtenant structures or uses, shall not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the lawfully established, primary structure is in imminent danger from shoreline erosion caused by tidal actions, currents, or waves.
 - (B) Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need.

Staff Comment: A geotechnical engineer has demonstrated that this project as proposed is necessary to protect a primary single-family residence on the property due to continued wave erosion at the toe of the bluff. It was also determined that due to the slab-on-grade building configuration and building size, that moving or elevation the structure was not technically feasible. An assessment has also been completed using the WDFW stabilization design protocol, which has been incorporated in the revised geotechnical report.

- 3. Replacement and Repair of Existing Shoreline Stabilization and Armoring.
Not applicable.
- 4. Shore Stabilization on Streams.
Not applicable.

j. Access, Traffic and Roads

Not applicable.

k. Fire Safety

Not applicable.

l. Solid Waste

Not applicable.

m. Water/Sewer

Not applicable.

n. Kitsap Public Health District

Kitsap Public Health approved an exemption for the bulkhead on July 28, 2020.

7. Review Authority

The Director has review authority for this Administrative Conditional Use Permit application under KCC, Sections 17.540.020 and 21.04.100. The Kitsap County Commissioners have determined that this application requires review and approval of the Director. The Director may approve, approve with conditions, or deny an Administrative Conditional Use Permit. All Shoreline Administrative Conditional Use Permits approved by the County are forwarded to the Washington State Department of Ecology pursuant to WAC 173-27-200 and KCC 22500.100(D) for final approval, approval with conditions, or denial. No approval shall be considered final until it has been acted upon by Ecology.

8. Findings

1. The proposal is consistent with the Comprehensive Plan.
2. The proposal complies or will comply with requirements of KCC Title 22 and complies with or will comply with all of the other applicable provisions of Kitsap County Code and all other applicable regulations, including all applicable development standards and design guidelines, through the imposed conditions outlined in this report.
3. The proposal is not materially detrimental to existing or future uses or property in the immediate vicinity.
4. 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.

9. Recommendation

Based upon the analysis above and the decision criteria found in KCC 22.500.100(D), the Department of Community Development recommends that the Shoreline Administrative Conditional Use Permit request for the Frey bulkhead be **approved**, subject to the following 5 conditions:

a. Planning/Zoning

None.

b. Development Engineering

None.

c. Environmental

1. The placement of the bulkhead is for the protection of the upland property and not for the indirect intent of creating uplands at the expense of tidelands. The placement of the bulkhead shall be subject to the approved site plan and shall follow the natural contours of the shoreline and shall be placed at or above Ordinary High Water.
2. This project will require a Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife prior to start of work.
3. Bulkhead construction shall follow the recommendations contained in the Geologic Report, prepared by Aspect Consultants, dated April 14, 2020, and the addendum thereto dated January 11, 2023.
4. This project shall follow the Habitat Survey and Shoreline Mitigation Plan (Ecological Land Services, 3/31/23), including a 3-year monitoring and maintenance period for control of invasive species and native plant supplementation. Applicant shall provide annual reports over the 3-year period demonstrating compliance with this approved mitigation plan.
5. Should archaeological resources be uncovered during excavation, the responsible contractor or homeowner shall immediately stop work and notify Kitsap County, the Washington State Office of Archaeology and Historic Preservation and the Suquamish Tribe (Dennis Lewarch, Tribal Historic Preservation Officer: dlewarch@suquamish.nsn.us; (360)394-8529).

d. Traffic and Roads

None.

e. Fire Safety

None.

f. Solid Waste

None.

g. Kitsap Public Health District

None.

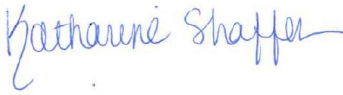
Report prepared by:



Steve Heacock, Staff Planner / Project Lead

1/10/24
Date

Report approved by:



Katharine Shaffer, Planning and Environmental Programs Supervisor

1/10/24
Date

Attachments:

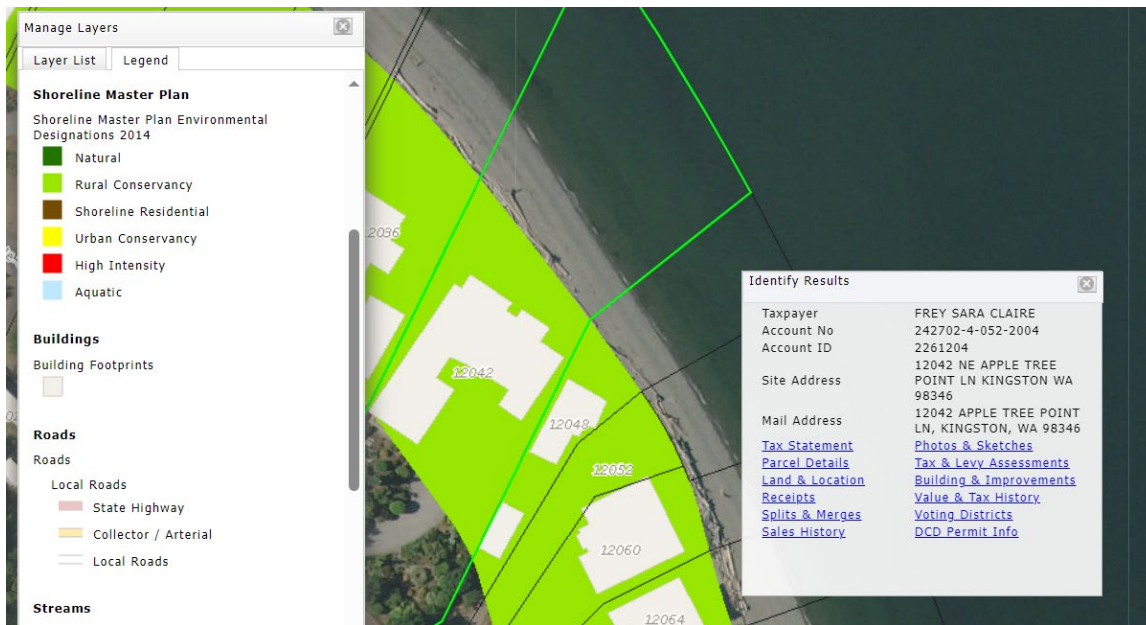
- Attachment A – Shoreline Designation Map
- Attachment B – Zoning Map
- Attachment C – Critical Areas Map

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Washington Department of Ecology, Shoreline Division: Rebekah Padgett,
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Kitsap County Health District, MS-30
DCD Stormwater Reviewer: Cecelia Olsen: colsen@kitsap.gov

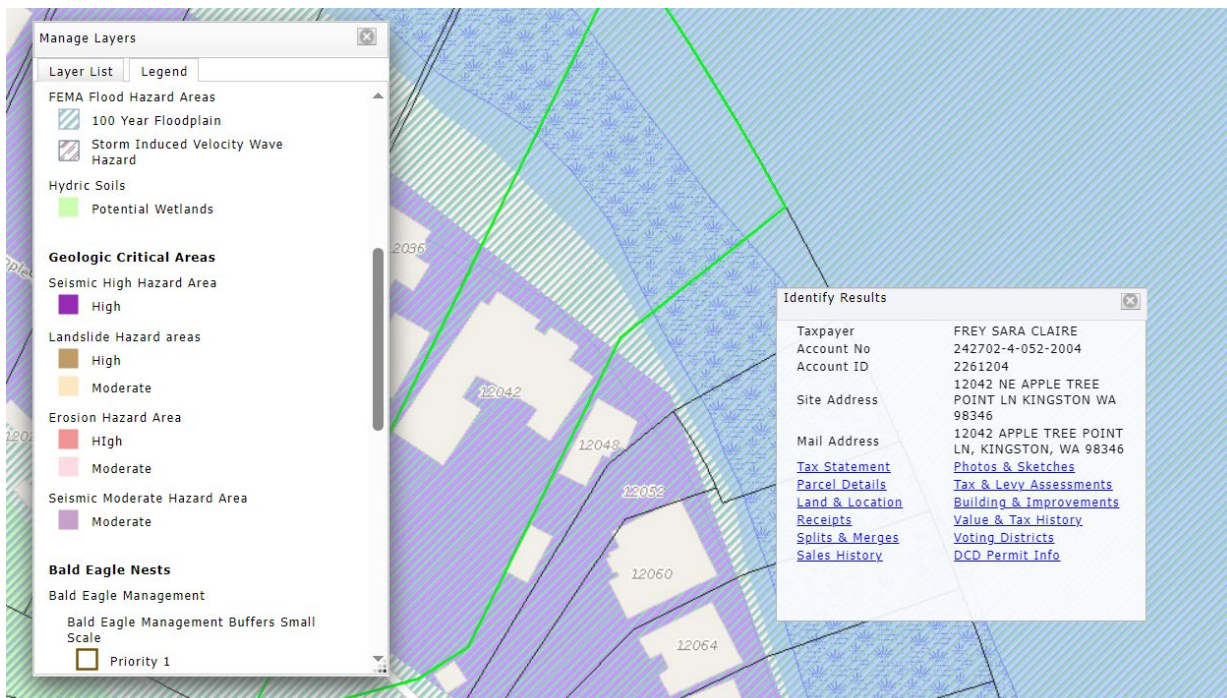
Interested parties:

Catharine Tarbill; cgtarbill@gmail.com
Dean Tarbill: jdtarbill@gmail.com

Attachment A: Shoreline Designation Map



Attachment B: Critical Areas Ordinance



Attachment C: Zoning Map

