

<b>Critical Areas Permit</b>	) <b>Land Use File LUP24-032</b>
Application of-	) <b>FINDINGS,</b>
BDAD LIVING TRUST	) <b>CONCLUSIONS AND</b>
BRETT P AND ADRIENNE A DAVIS	) <b>FINAL DECISION</b>

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### SUMMARY OF APPLICATION AND DECISION

**Date:** January 27, 2025

**Application:** ***Type II Critical Areas Permit for Wetland/Wetland Buffer Restoration on property owned by Brett and Adrienne Davis.*** Brett Davis submitted LUP24-032 (Exhibit A-1) to address clearing in a wetland buffer following construction of a single-family residence. The Davis property includes a Category III depressional wetland buffer documented in a wetland delineation dated January 31, 2022, by Marine Surveys and Assessments (Exhibit C-1). The applicant submitted a wetland restoration planting plan prepared by Marine Surveys and Assessments on July 6, 2024, as discussed in the Findings, Conclusions and Decision below.

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**Decision:** The application is **CONDITIONALLY APPROVED**.

After respectful consideration of the above referenced application, the Port Townsend Director of Planning and Community Development hereby adopts the following Findings, Conclusions and Decision.

### FINDINGS OF FACT

1. Application: On June 18, 2024, Brett Davis submitted Critical Area Permit Application LUP24-032 (Exhibit A-1) and paid associated permit fees (Exhibit A-2). On July 16, 2024, Davis provided staff with the associated buffer restoration plan (Exhibit B), on July 19, 2024, the applicant provided a title report for noticing requirements (Exhibit B-1). The application for a Type II Critical Areas Permit was deemed complete on July 16, 2024.

- 2. Background and Proposal:** In 2023, Planning and Community Development (PCD) issued Building Permit BLD22-260 for property owner Brett Davis to construct a single-family residence on the west side of his property (lot 1 in Phillips Addition, Block 15) outside of the associated wetland buffer and setback. The permit was issued after Type IA Critical Area Permit LUP22-066 was approved which included a wetland delineation documenting an off-site Category III depressional wetland with a 150-foot buffer extending on to the east half of the Davis property (Exhibit C Wetland Delineation Report by Marine Surveys and Assessment). As approved, the building and critical areas permits restricted development to the west portion of the property and preserved the wetland buffer on the east side. On March 23, 2023, the Davises recorded a Restrictive Covenant regarding the presence of the wetland, its 150-foot minimum buffer “to be retained as is” and a 15-foot building setback from the edge of the buffer (Exhibit C-2).

On April 24, 2024, upon discovering that illegal clearing had occurred within the wetland buffer, the City’s Code Compliance Officer sent a Request for Voluntary Compliance (Exhibit D). Page 2 asks the applicants to retain a qualified wetland specialist to prepare a restoration plan and to submit a Type II critical area permit by May 6, 2024.

The applicants needed more time beyond May 31, 2024, to obtain professional services for the wetland planting restoration. On July 16, 2024, Davis submitted the Marine Surveys and Assessments replanting plan dated July 6, 2024 (Exhibit B).

- 3. Legal Descriptions:** Per Exhibit E-1 *Statutory Warranty Deed*, the subject property consists of one lot legally described as Lot 1 in Block 15 of the Phillips Addition to Port Townsend, as per plat recorded in Volume 2 of Plats, page 2, records of Jefferson County Assessor’s Parcel Number 987001502.
- 4. Existing Conditions and Location:** Prior to construction, the lot consisted of an upland mixed conifer forest and a thick shrub understory. Plant species observed onsite included Douglas Fir, Salal, Pacific Madrone, Sword Fern, Ocean Spray and Western Bracken Fern. Per a submitted site plan received on October 20, 2022 (Exhibit F-1), the lot is 50 feet wide by 129 feet long for a total lot area of 6,450 square feet. The property is located within the southwestern area of the City of Port Townsend between Rainier Street to the west, Howard Street to the east, and 15<sup>th</sup> Street to the north. As shown on Exhibit F-2, the proposed replanting restoration areas are located between the residence and the westerly side of the delineated wetland. Restoration is proposed within the building setback, and the adjacent wetland buffer.
- 5. Zoning and Proposed Use:** The subject property and surrounding properties are zoned R-II Single-Family. The single-family residential use conforms to the use, lot dimension, minimum setbacks and lot coverage of the underlying zone as codified in PTMC Chapter 17.16.

6. Critical Areas and Wetland: As stated above, the wetland has been delineated through LUP22-066 and is documented in Exhibit C-1. The purpose of LUP24-032 is for Planning and Community Development to review the restoration plan (Exhibit B) to restore vegetation removed within the wetland buffer and setback.

### Procedural

#### Administrative Review Required

7. Consistent with City code<sup>1</sup>, all Critical Area permit applications that propose development within a critical area buffer are classified as Type II permits. Type II permits require a Notice of Application comment period followed by administrative review and decision by the PCD Director.<sup>2</sup> No open-record public hearing is required for Type II permits unless the Director's decision is appealed. Appeals of Type II decisions are heard by the City's Hearing Examiner as outlined at the end of this decision.

#### Critical Areas Permit Required:

8. Consistent with the requirements of Section 19.05.040 PTMC, a Type II critical area permit is required. Where the provisions of the critical areas' ordinance conflict with the provisions of any other chapter, that chapter which provides more protection to critical areas shall apply (PTMC 19.05.030).

#### State Environmental Policy Act (SEPA) Review

9. The SEPA Responsible Official has determined that the proposal is exempt from environmental review and threshold determination under the State Environmental Policy Act pursuant to WAC197-11-800(1) *minor new construction* as the clearing occurred associated with single-family residential development.

#### Public Notice

10. On September 4, 2024, public opportunity to comment on the project was sought (Exhibit G-1) in accordance with Port Townsend Municipal Code which included:
  - a. A direct mailing to adjacent property owners within 300 feet of the site (Exhibit G-2) using the information prepared by Jefferson Title Company (Exhibit B-1);
  - b. Posting the *Notice* on or near the project site (Exhibit G-3).

No public comment was received.

11. Category III Wetlands Buffer: As detailed in LUP22-066, per PTMC 19.05.110.G.2.b proposed residential land use of more than one dwelling unit per acre for Category III wetlands is a "high" level of impact with a minimum standard buffer width of 150-feet. The wetland itself is off site

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<sup>1</sup> PTMC 20.01.040, Table 1 Permits/Decisions

<sup>2</sup> PTMC 20.01.040, Table 2- Action Type

(located on parcel number 987001501) and the 150-foot buffer area extends into the easterly portions of the Davis parcel number 987001502 as shown on Exhibit B. While the applicant's home was constructed beyond the 150-foot buffer and additional 15-foot building setback consistent with PTMC 19.05.110, subsequent clearing occurred within the buffer and setback area. Alteration of the buffer requires a Type II Critical Areas Permit and Restoration of the altered buffer as described in Exhibit B, Wetland Replanting Plan.

12. Best Management Practices. The original critical areas permit (LUP22-066) required Best Management Practices be employed during construction of the residence. With implementation of the required conditions, it was determined the wetland would not be significantly impacted by the new single-family home. However, as stated above, due to the unauthorized alterations to the wetland buffer, a Type II critical area permit is required, and the buffer must be restored in accordance with an approved restoration plan.

#### **Critical Areas Performance Standards**

13. Special Study Required: Existing and proposed improvements require a special study prepared by a qualified critical area consultant. In this case, professional wetland scientists with experience delineating wetlands using the federal manuals and supplements, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans (PTMC 19.05.020) have prepared the wetland restoration replanting report (Exhibit B).
14. Category III: Category III wetlands have moderate levels of functions (scores 5-7 points). These are wetlands that are capable of being replaced, and in some cases improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and should be protected.
15. Applicable Critical Areas Policies and Standards: Special Studies: The proposal has been reviewed for conformance with applicable critical areas policies and standards, specifically, general performance standards in 19.05.060 and performance standards for wetland areas in PTMC 19.05.110 and can be summarized as follows:

<b>Code citation 19.05.060</b>	<b>Summary of Performance Standards for Development</b>	<b>Analysis</b>
19.05.060.A.1	Avoiding Impacts to Critical Areas.	The proposal remedies the unauthorized alterations to the wetland buffer by restoring plants within a restoration area that is approximately 2,275 square feet in total size. The plan recommends a total of 953 plant installations as detailed in Exhibit B.
<b>Code citation 19.05.060</b>	<b>Summary of Performance Standards for Development</b>	<b>Analysis</b>
19.05.060.D.6	Alterations and Disturbance <i>c. Protection of Vegetation.</i> <i>i. Areas of previously undisturbed natural vegetation in a critical area that have been damaged by human activity must be replaced with compatible species in accordance with a city-approved site mitigation plan. Native vegetation shall be given preference.</i> <i>ii. Areas infested with noxious weeds may be cleared and replanted in accordance with a city-approved mitigation plan.</i>	As existing vegetation within the 150-foot buffer was disturbed, the applicant submitted the Restoration Plan (Exhibit B) to remedy the error of clearing more property than what was conditioned under the Critical Areas Permit LUP22-066 and in the Restrictive Covenant filed under AFN# 659533 (Exhibit C-2).
<b>Code citation 19.05.110</b>	<b>Summary of Performance Standards for Development</b>	<b>Analysis</b>
19.05.110.C	Regulated Development	A Category III wetland buffer exists on the Davis site. The 2024 buffer restoration plan was conducted by qualified wetlands critical area professionals – Senior Ecologists Meg Amos and Jill Cooper of Marine Surveys and Assessments.
19.05.110.D.1 and D.3, D.4	Activities within Wetlands/Wetland Buffers	The replanting plan proposes to restore vegetation within the westerly edge of the 150-foot wetland buffer and the building setback (Exhibit B) in

		accordance with the Critical Areas Ordinance.
19.05.100.H	Mitigation	Mitigation is not required beyond the restoration plan proposed in Exhibit E. The applicant has fulfilled the requirements of the Request for Voluntary Compliance (Exhibit D). The submitted report (Exhibit B) provides recommendations that Best Management Practices be followed during and after construction.

**CONCLUSIONS**

- 1) Per Findings 7 and 8, City staff has confirmed the alteration of the wetland requires a Type-II Critical Area Permit.
- 2) Per Finding 11, qualified wetland consultants have demonstrated that impacts from the unauthorized buffer alterations can be mitigated through replanting (953 plant installations) and implementation of their recommendations Exhibit B, 2024 Davis Wetland Buffer Restoration Plan dated July 6, 2024, prepared by Marine Surveys and Assessments.
- 3) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site for the reasons stated in Conclusion 2 above.
- 4) Per Finding 15 above, the proposal is consistent with the Critical Areas performance standards contained in Chapter 19.05 PTMC, specifically sections 19.05.060 Performance Standards for Development and 19.05.110 Wetlands.
- 5) The proposal meets the criteria in other applicable regulations and standards. Conditions have been applied to ensure consistency with all laws and ordinances of the City of Port Townsend, including but not limited to the policies and performance standards for Critical Areas contained in Chapter 19.05 PTMC and Chapter 5, Clearing, Grading and Erosion Control of the Engineering Design Standards Manual.

**DECISION**

Based on the foregoing Findings and Conclusions, LUP24-032 is **CONDITIONALLY APPROVED**, subject to compliance with the following conditions:

GENERAL:

- 1) This permit approval allows restoration of the westerly edge of the wetland buffer as proposed in the Davis Wetland Buffer Restoration Plan (Exhibit B).
- 2) There shall be no further modifications without approval of the PCD Director. The Director may approve minor modifications to the approved restoration plan, provided they conform to the analysis and conclusions provided herein. If the plan is significantly modified and/or contingency plans are required, the revised plans may be subject to further review under the Critical Areas Ordinance.

DURING CONSTRUCTION:

- 3) In no case shall the confirmed wetland or its setbacks and buffers identified in Exhibits B-1 and Exhibit C-1 be altered except to replant as specified in Exhibit B.
- 4) Consistent with the Restoration Plan dated July 6, 2024 (Exhibit B), soil amendments, deer fencing, and plantings shall be installed within the time frames specified. The Restoration Plan specified restoration between mid-October and mid-December 2024. As that time frame has lapsed, planting must occur within the other recommended time frame of mid-December 2024 to mid-April 2025. Planting during this time period may require supplemental irrigation due to drier seasonal weather conditions. Any nursery instructions that come with the plants should be read and followed. **All work must be completed and inspected no later than April 15, 2025.**
- 5) All performance standards and restoration goals as detailed in the Restoration Plan dated July 6, 2024, shall be monitored and obtained throughout the restoration period.
- 6) All construction debris shall be properly disposed of in such a manner that it cannot enter the wetland/wetland buffer or cause water quality degradation. During a site visit, city staff noted pile of construction debris along the rear property line and within the wetland buffer. The debris shall be disposed of properly at a location outside of the wetland and wetland buffer.
- 7) Stockpiles of soils and exposed soils shall be immediately developed, covered or revegetated to prevent erosion.
- 8) Pursuant to the Engineering Design Standards, the applicant shall stabilize exposed soils upon completion of construction activities.

PRIOR TO FINAL INSPECTION:

- 9) The applicant shall install permanent signage along the buffer edge regarding “Environmentally Sensitive Area”. Signs shall be provided by the City and installed by the applicant in location(s) specified by the City.
- 10) A qualified biologist shall inspect the site and provide verification that the wetland buffer has been replanted and soils amended as described in the Restoration Plan (Exhibit B) by the planting deadline of April 15, 2025. An email from the qualified biologist detailing the inspection date and verifying whether the plantings occurred as per the Restoration Plan shall be submitted to the City no more than 14 days following the inspection. Annual monitoring must occur no later than the anniversary of the initial planting date.

#### FIVE YEAR MONITORING PERIOD

- 11) A qualified consultant shall implement the monitoring plan described in the Restoration Plan (Exhibit B) including maintenance and preparation of annual monitoring reports. For years 2-5, you can request City staff to perform the annual inspection at the current hourly rate **as an alternative to hiring a qualified consultant.**
- 12) **For any monitoring years where a qualified consultant performs the inspection,** the annual monitoring reports shall be submitted to the city Planning and Community Development Department for review.
- 13) The mitigation monitoring period shall be for a period of five years from the date of the initial planting unless an extended period is found necessary to achieve success.
- 14) City staff shall perform an inspection upon completion of the 5-year monitoring period to ensure plant survival as detailed in Exhibit B. Staff may perform annual inspections if determined necessary based on review of the annual reports. The applicant shall be billed for inspections at the applicable hourly rate.
- 15) Wetland mitigation will be considered successful when 80% native plant coverage in the buffer is achieved, and the plants are found to be healthy and vigorous; further that less than 20% invasive species are present.

#### EXPIRATION:

- 16) Pursuant to PTMC Section 19.05.050(B)(2), critical area permits shall be valid for a period of one year from the date of issuance and shall expire at the end of that time if they are not acted upon. An extension may be requested by the original permit holder or the successor.



**Suspension – Revocation.** In addition to enforcement procedures and penalties provided for in Chapter [1.20](#) PTMC, the director may suspend or revoke a permit if (s)he finds that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in accordance with this chapter, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the approved application.

**ENTERED** this 4th day of February 2025

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**Emma Bolin, AICP**  
**Director of Planning and Community Development**

#### **APPEALS**

Per Table 2 of Subsection 20.01.040 PTMC, Type II permits are afforded an administrative appeal to the City’s hearing examiner; provided, that a written appeal in conformance with Chapter 1.14 PTMC is filed within 14 calendar days after the notice of the decision. The date on which a decision is deemed issued is 3 days after a written decision is mailed by the City. The administrative appeal period ends February 18th 2025.

#### **List of Exhibits:**

- Exhibit A: Critical Area Application (A-1) and Receipt for Fees Paid (A-2);
- Exhibit B: Davis Wetland Buffer Restoration Plan by Marine Surveys and Assessments; Horizon Title Group APO Information (B-1)
- Exhibit C: Wetland Delineation Report Dated July 31, 2022, by Marine Surveys and Assessments (C-1) and Restrictive Covenant AFN 659533 (C-2);
- Exhibit D: Request for Voluntary Compliance Letter April 24, 2024;
- Exhibit E: Statutory Warranty Deed:  
987001502 Lot 1 Block 15 Phillips Addition
- Exhibit F: Site Plan Map (F-1);  
Restoration Map (F-2)
- Exhibit G: Notice of Application (G-1), Statement of Mailing (G-2) and Certificate of Posting (G-3).