



Hearing Examiner Staff Report and Recommendation

Report Date: August 31, 2023

Application Submittal Date:

CVAR, August 12, 2022/ ZVAR, January 21, 2022

Hearing Date: September 7, 2023

Application Complete Date:

CVAR, March 3, 2023 / ZVAR, February 1, 2022

Project Name: Shirley-Wetland Buffer Reduction for Single Family Residence (SFR)

Type of Application: Critical Area Variance (Type III) and Zoning Variance (Type II)

Permit Number: 22-03914 and 22-00285

Project Location

9615 N.E. Dronawood Dr.
Kingston, WA 98346
Commissioner District 1

VICINITY MAP



Assessor's Account

4344-000-026-0007

Applicant/Owner of Record

Brandon & Jolie Shirley
Po Box 1015
Kingston, WA 98346-1015

Recommendation Summary

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

1. Background

The proposal is for the combined review of a Critical Area Variance (CVAR) and a Zoning Variance (ZVAR). The CVAR is to allow the reduction of the standard wetland buffer from 110 feet to 25 feet (88% reduction) and structure setback from 15 feet to 7.5 feet. A Critical Area Variance may be granted when criteria in KCC 19.100.135 are met. Due to the limited buildable area on the lot. Both requests are to allow for the future construction of a single-family home on a lot acquired by the applicant in 2019. An application for a building permit (21-04860) for this site, was submitted to Kitsap County, September 7, 2021, and is still in review pending this approval.

2. Project Request

The applicant requests approval of a CVAR application to reduce a standard wetland buffer by more than 50% to allow for one single-family home on a lot, heavily constrained

by critical areas. A CVAR request is subject to a Type III process with Hearing Examiner approval.

The applicant concurrently requests approval of a Zoning Variance (ZVAR) to allow a 20% reduction of the required front yard setback from 50 feet to 40 feet, pursuant to the zoning variance criteria in KCC 17.560. This request is a Type II process, which is administrative and generally under Director’s approval, however, is dependent on the CVAR approval therefore included in this report for Hearing Examiner approval.

Kitsap County Code 21.04.180 allows for the consolidation of project permit applications to avoid duplication of review.

3. SEPA (State Environmental Policy Act)

The project is SEPA Exempt under KCC 18.04 State Environmental Policy Act.

4. Physical Characteristics

The property is located on the south side of Dronawood Dr. at its intersection with Parcels Rd. in the Kingston area of Kitsap County. It is currently undeveloped and is composed mostly of wetland with an area of upland about midway along the north property line that follows the grade of Dronawood Drive, which is a gradual rise in elevation from the west and down on the east side. The upland area is wooded with a band of maintained grass on all sides and is dominated by young deciduous trees and scattered conifers. The wetland begins on either side of the wooded upland and is part of a large wetland system that extends south to Kingston Farm. The onsite portion is composed of forest, scrub/shrub, and emergent communities with the emergent area immediately adjacent to the wooded upland. Carpenter Creek is a Type F stream that requires a 150-foot buffer and flows southerly through the western portion of the lot. The wetland is a Category III system that requires a buffer of 110 feet.

Table 1 - Comprehensive Plan Designation and Zoning

Comprehensive Plan: Rural Residential (RR) Zone: RR	Standard	Proposed
Minimum Density	NA	NA- Subject property is an existing lot.
Maximum Density	1 dwelling unit/5 acres	
Minimum Lot Size	NA	NA
Maximum Lot Size	NA	NA
Minimum Lot Width	140	NA
Minimum Lot Depth	140	NA
Maximum Height	35 feet	SFR to be <35 feet
Maximum Impervious Surface Coverage	NA	NA

Maximum Lot Coverage	NA	NA
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Applicable footnotes: NA

Staff Comment: The proposal meets applicable standards for the RR zone. The parcel became a legal lot of record (Lot 26) in 1977, through a land division plat called Kingston Country Estates Division 2.

Table 2 - Setback for Zoning District

	Standard	Proposed
Front (North)	50 feet	41.5 feet
Side (East)	20-feet	75 feet
Side (West)	50-feet (Can be reduced to 20-feet if not accessing and/or abutting arterial)	217 feet
Rear (South)	20 feet	234 feet

Table 3 - Surrounding Land Use and Zoning

Surrounding Property	Land Use	Zoning
North	Single-family residence (SFR)	Rural Residential (RR)
South	SFR	RR
East	SFR	RR
West	SFR beyond Parcels Rd. N.E. County ROW	RR

Table 4 - Public Utilities and Services

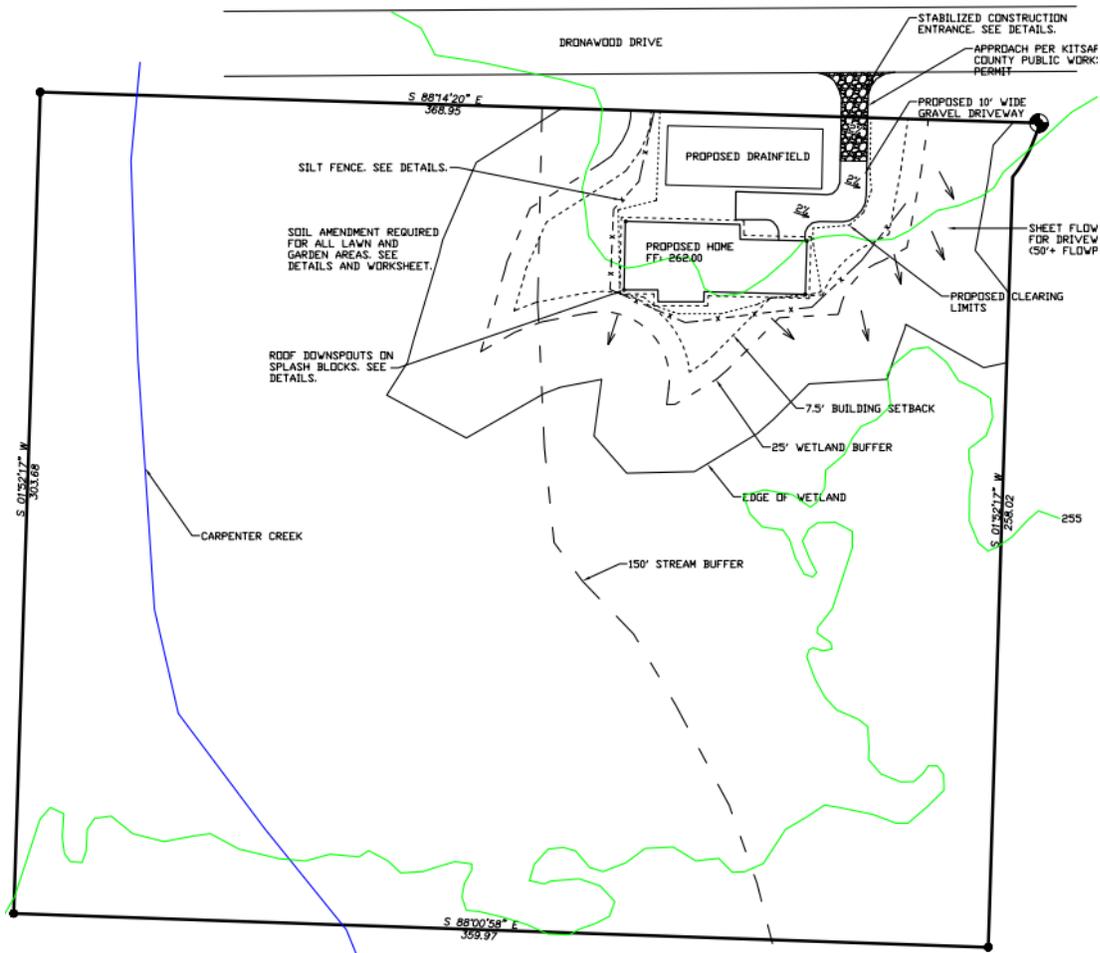
	Provider
Water	Kitsap PUD #1
Power	Puget Sound Energy
Sewer	Onsite Septic
Police	Kitsap County Sheriff
Fire	North Kitsap Fire & Rescue
School	North Kitsap School District #400

5. Access

The site is accessed via N.E. Dronawood Dr., which is county maintained, public right of way (ROW).

6. Site Design

The image below shows the proposed footprint of the 1,617 square-foot home with attached garage, an associated drainfield, and the proposed driveway accessing from the north.



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, and as amended thereafter.

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

Land Use Policy 50:

Limit the designated rural area to low residential densities that can be sustained by minimal infrastructure improvements, cause minimal environmental degradation, and

Land Use Policy 51:

Permit residential uses in rural areas consistent with the planned rural character of the surrounding area.

Land Use Policy 53:

Outside of the Type III Limited Area of More Intensive Rural Development (LAMIRD), limit development only to that which serves rural residential or resource needs and does not draw population from Urban Growth Areas. This policy is implemented through Comprehensive Plan Land Use designations, zoning designations, and zoning code provisions.

Housing and Human Services Policy 5:

Use regulatory strategies to incentivize and provide flexibility for development of affordable and special needs housing.

Housing and Human Services Policy 7:

Adopt regulatory changes to allow non-traditional housing types.

Housing and Human Services Policy 11:

Promote fair housing to ensure that all residents of Kitsap County have an equal and fair opportunity to obtain safe and sanitary housing suitable to their needs and financial resources, regardless of race, religion, gender, sexual orientation, age, national origin, family status, income, disability, or other protected class.

Housing and Human Services Policy 12:

Identify and remove regulatory barriers that limits access to or the provision of a diverse affordable housing supply.

Housing and Human Services Policy 14:

Disperse affordable housing opportunities throughout the County

Environment Policy 13:

Use best scientific information available to direct how functions and values of critical areas are preserved and enhanced.

Environment Policy 18:

Compensatory mitigation shall be the last option of resort in mitigation sequencing, following documentation of avoidance and minimization of any impact to the natural environment that triggers compensatory mitigation. Replacement of altered or displaced

natural environments, (including critical areas and buffers) must be mitigated either on-site, within the watershed, or service area as defined through an approved mitigation bank or in-lieu fee program.

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
Title 13	Water and Sewers
Title 14	Buildings and Construction
Title 17	Zoning
Chapter 18.04	State Environmental Policy Act (SEPA)
Chapter 19	Critical Areas Ordinance
Chapter 20.04	Transportation Facilities Concurrency Ordinance

8. 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 38 Exhibits.

Exhibit #	Document	Dated	Date Received / Accepted
1	STAFF REPORT	8/31/2023	
2	Permit Application/Submission Form (22-00285)	1/21/2022	1/28/2022
3	Exterior Elevations (22-00285)		1/28/2022
4	Floor Plan (22-00285)		1/28/2022
5	Notice of Application (22-00285)	4/12/2022	
6	Information Request (22-00285)	06/01/2022	
7	Revised Wetland Delineation & Buffer Mitigation Plan (22-00285)	6/8/2022	7/5/2022
8	Response to Information Request (22-00285)	6/21/2022	7/5/2022
9	Email Communication - Staff to Applicant RE CVAR (22-00285)	7/22/2022	
10	Permit Application/Submission Form (22-03914)	12/12/2022	
11	Information Request (22-03914)	1/4/2023	
12	Site Plan (22-03914)	7/27/2022	3/3/2023
13	Authorization Form (22-03914)	7/28/2022	3/3/2023
14	Letter of Response CVAR (22-03914)		3/3/2023
15	3258.01 Shirley Variance Criteria (22-03914)		3/3/2023
16	Letter of Response (22-00285)		3/3/2023

17	Notice of Application (22-03914)	3/28/2023	
18	Public Comment – Beal (22-03914)		4/3/2023
19	Public Comment – Hayman (22-03914)	4/14/2023	
20	Public Comment – Lewis (22-03914)		6/2/2023
21	Stormwater Conditions Memo	6/22/2023	
22	Public Comment – Hayman (22-03914)	7/7/2023	
23	Public Comment – Nichols (22-03914)	7/8/2023	7/10/2023
24	Approved Health Binding Site Application	2/24/2021	7/11/2023
25	Public Comment - Price & Staff Response (22-03914)		7/13/2023
26	Public Comment – Parsons (22-03914)		7/17/2023
27	Notice of Public Hearing	7/26/2023	
28	Agency Comment - Suquamish Tribe (22-03914)		7/31/2023
29	Public Comment - Vliet RE Noticing & Response (22-03914)	8/1/2023	8/1/2023
30	Public Comment - Vliet RE Sign Posting & Response (22-03914)	8/2/2023	8/2/2023
31	Public Comment - Blanchard RE Critical Areas Report & Response (22-03914)	8/11/2023	8/11/2023
32	Public Comment - Lubischer RE Sign Posting & Response (22-03914)	8/4/2023	8/4/2023
33	Email Correspondence Staff & Biologist	8/11/2023	
34	Applicant/Biologist Response to Public Comment from Blanchard	8/21/2023	8/22/2023
35	Revised Notice of Public Hearing	8/21/2023	
36	Certification of Public Notice	8/3/2023	
37	Staff Presentation		
38	Hearing Sign-In		

9. Public Outreach and Comments

Issue Ref. No.	Summary of Concern (See corresponding responses in the next table)	Comment Letter Exhibit Reference No.
1.	Critical area protections for wetlands, streams and their buffers should be strongly enforced with few, if any, variance approval. Early research to determine if adjacent lot is a buildable lot and/or for any restrictions, since they have a home adjacent already. Letter to protect wetlands by strict adherence to monitoring and mitigation plan.	18, 22, 19

2.	Impacts and definition of Reduced Zoning Setback.	18,
3.	Habitat and Wetland Impacts Due to Development.	20
4.	Permit should be denied but if approved should require monitoring for more than 5 years.	23, 26
5.	Reinforce successful vegetation observed during monitoring plan. Seasonal planting. Monitor height data of vegetation.	28
6.	Impacts to Carpenter Creek.	25
7.	Sign posting location and timeframe	29, 30
8.	Human behavior, setback is too minimal, challenges of vegetation removal & signage retention along boundary	31, 32

Issue Ref. No.	Issue	Staff Response
1	Critical Areas and Buffer Protection	Regulatory compliance is reviewed and conditioned for approval for critical area buffer reductions. Impacts and monitoring recommendations and mitigation plans must be addressed and implemented by the Wetland Delineation & Buffer Mitigation Plan pursuant to Kitsap County Code Title 19 requirements and standards.
2	Zoning Setback Variance	If approved, the variance request would allow the applicant to set the primary residence 41.5 ft back from the road instead of the standard 50ft requirement. The reason for the request is based on the challenges of buildable area on the property due to the wetlands present and the associated buffer wetland requirements.
3	Habitat/Wetland Impacts	Same as Staff Response #1 and similar to #4.
4	Deny permit, but if approved should require monitoring for more than 5 years.	The applicants are requesting approval for a zoning variance (22-00285) to reduce the front setback from 50' to 41.5'. The septic design was approved 2/24/21, see attached. Regulatory compliance is reviewed and conditioned for approval for critical area buffer reductions. Impacts and monitoring recommendations and mitigation plans must be addressed and implemented by the Wetland Delineation &

		Buffer Mitigation Plan pursuant to Kitsap County Code Title 19 requirements and standards. B. Mitigation Report. Where mitigation is required under the sequencing in subsection (A) of this section, a mitigation report shall be provided in accordance with Section 19.700.715. Acceptance of the mitigation report shall be signified by a notarized memorandum of agreement signed by the applicant and department director or designee. If approved, posted signage and a split rail fence are typically made a condition of approval, so that the wetland boundaries are visibly delineated. The applicant shall record a Notice to Title for the proposed preservation area(s) of the site. The Notice to Title shall be submitted with the associated building permit and is required prior to approval of the building permit.
5.	Height of grasses, winter planting, No unsuccessful species.	Will be added as a condition of approval for building permit.
6.	Creek impacts	Impacts and monitoring recommendations and mitigation plans must be addressed.
7.	Sign posting/Noticing and comment period	Staff suggested sending photo of posting to verify accurate placement. County determines and performs the placement.
8.	Boundary signs, Veg. retention	Comments received and Interested Party noticing.
9.	Biologist report clarification	Staff forwarded concerns to Biologist. Biologist sent response 8/21/2023, which is now added to file as exhibit #34.

10. Analysis

a. Planning/Zoning

Front Setback Variance Criteria

Per KCC 17.560.010, a variance may be granted to any numerical standard of this title, excluding housing density, only when unusual circumstances relating to the property cause undue hardship in the application of this title. The granting of such a variance shall be in the public interest. A variance shall be made only when all of the following conditions and facts exist:

1. *There are special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, that were not created by the applicant*

and do not apply generally to other property in the same vicinity or zone;

Staff Comment: The subject parcel includes significantly more wetland area than non-wetland. Application of the standard 110 ft buffer further deprives the property of reasonable development for single-family residential use. Strictly applied, compliance with all Kitsap County Titles for building, drainfield, and stormwater is not achievable. A wetland buffer reduction to 50 ft allows for the parcels establishment as single-family. *As the wetland buffer is most restrictive and the 150 ft stream buffer at the interior, no reasonable alternative to avoid stream buffer impacts is available for a feasible project.*

2. *Such variance is necessary for the preservation and enjoyment of a substantial property right or use of the applicant possessed by the owners of other properties in the same vicinity or zone;*

Staff Comment: The surrounding area is similarly zoned as Rural Residential (RR) and includes rural properties of varying sizes sporadically developed with single-family residences. The variance is necessary to allow this property to be developed in a similar manner to surrounding properties.

3. *The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which property is located; and*

Staff Comment: The home will be more than 200 feet from the nearest residence and is not expected to have any impact on existing or future development in this area. The granting of the setback variance will not cause adverse impacts or be materially detrimental to neighboring properties or general area.

4. *The variance is the minimum necessary to grant relief to the applicant.*

Staff Comment: Given that the upland portion in this area of the site is small, a 20% reduction of the front setback is the minimum necessary. A smaller reduction may also require a greater impact to the adjacent wetland, which could not be supported by this variance as it would require a wetland buffer reduction of greater than 20%, in order to build the 1,617 square foot home.

b. Lighting

Lighting was not analyzed as part of this proposal.

c. Off-Street Parking

The proposed residence shall provide additional off-street parking. Three parking spaces are required for each single-family residence (SFR) and can be accommodated on both properties.

Table 5 - Parking Table

Use Identified in 17.490.030	Standard	Required Spaces	Proposed Spaces/Existing Spaces
Single-Family (attached or detached)	3 for single-family home	3	3
Total			3

d. Signage

No signage is proposed or required.

e. Landscaping

Per KCC 17.500.010, single-family lots are exempt from landscaping requirements.

Table 6 - Landscaping Table

	Required	Proposed
Required Landscaping (Sq. Ft.) 15% of Site	NA	Plantings per Mitigation Plan and added to the conditions at the end of the report.
Required Buffer(s)		
North	NA	NA
South	NA	NA
East	NA	NA
West	NA	NA
Street Trees	NA	NA

f. Frontage Improvements

No frontage improvements are required or proposed as part of this application.

g. Design Districts/Requirements

The subject property is not within a design district.

h. Development Engineering/Stormwater

Development Services and Engineering has reviewed the land use proposal and finds the concept supportable in its approach to civil site development. Further review will occur with associated site development or building permits. Conditions have been added to the end of this report, in relation to stormwater design requirements.

i. Environmental

Critical Area Ordinance and Variance Analysis

Kitsap County Code 19.100.135

Project Impact Assessment: (ELS report detail)

This property is significantly constrained by wetland and buffer necessitating a reduction of the buffer by greater than 50 percent. The only area available for building on this property is confined to the north end where there is a raised area of upland that is currently wooded with young red alder and Douglas fir trees. The upland area is roughly 22,064 square feet in area and is composed entirely of wetland buffer. The future single-family home will be situated on the wooded upland and maintain a 25-foot buffer around the perimeter of the upland. These reductions achieve a building envelope that is approximately 9,910 square foot in size. The 50-foot front yard setback required from Dronawood Drive extends across about half of the upland area and a small section of the home is located within the setback. The drainfield is located between the home and Dronawood Drive, and entirely within the front yard setback. The building site and drainfield have been placed so that they lie outside the 150-foot buffer from Carpenter Creek. A building setback of 7.5 feet is proposed outside the wetland and stream buffers. In the Wetland Delineation & Buffer Mitigation Plan, conducted by Ecological Land Services (ELS), revised date, November 15, 2021.

Buffer Assessment (ELS report detail)

The wetland is a Category III system that requires a buffer of 110 feet, which covers the entire wooded upland area, and Carpenter Creek is a Type F water that requires a 150-foot buffer. KCC Chapter 19.200 specifies wetland buffers based on wetland category, scores for habitat functions on the rating form, and the intensity of the proposed land uses in accordance with the 2014 wetland rating system. Moderate intensity land use buffers are shown in Table 2 as the property is at least 1 acre in size and proposes one single-family home. KCC Chapter 19.300 specifies stream buffer widths based on the water type.

The KCC allows wetland buffer reductions through two administrative processes. Chapter 19.200.220 Wetland Buffer Requirements Section C. Modification of Buffer Widths outlines buffer averaging and administrative buffer reduction criterion. Buffer averaging involves reducing the buffer width in one location and increasing it in another by the same square footage so that the buffer averages the required width. The averaged buffer cannot be reduced by greater than 75 percent of the original width nor can it be less than 30 feet wide. When buffer averaging is not feasible, the next avenue of reduction is an administrative buffer reduction, which allows a reduction of up to 25-percent of the original width. Enhancement is required to compensate for reduction of the buffer and includes removal of invasive species and installation of native shrubs to create a buffer that functions as good as or better than the buffer at the original width.

Buffer width reductions between 25 and 75 percent are permitted through the Type II and III variance processes. The Type III requires public notice and a public hearing. This property is entirely composed of Category III wetland and its 110-foot buffer, which necessitates obtaining a buffer reduction through the Type III variance process.

Mitigation Sequencing, (ELS report detail)

Permitted developments shall be designed and conducted in a manner that protects the current ecological condition and prevents or mitigates potential impacts. Impacts shall be mitigated according to Title 19.200.250 KCC, in a sequential analysis to avoid, minimize and mitigate. The following mitigation analysis sequence is provided. All impacts associated with the proposed single-family developments are considered.

MITIGATION MEASURE	MITIGATED ACTION(S)
1. AVOID the impact altogether by not taking a certain action or parts of an action	This project proposes to construct a home on the only area of upland available on the property by reducing the 110-foot buffer to 25 feet to create a building envelope of roughly 9,910 square feet out of the 2.52-acre property (109,771 square feet), which represents 9 percent of the total lot area and less than 50 percent of the entire onsite upland. The project is avoiding all direct impacts to the onsite wetland but cannot avoid the impacts to the buffer, however, impacts to the stream buffer was avoided.
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	The magnitude of the action has been minimized to the extent possible by placing the home at the very north end of the upland area to permit a buffer width of at least 25 feet along the wetland boundary. The impacts to the buffer are further minimized by placing the home in an area where minimal native vegetation cover is present and there is very low buffer function. Additional measures will be implemented in order to minimize the impacts to the wetland and include: <ul style="list-style-type: none">• Direct outdoor lighting away from the wetland and buffer.• Reduce the front yard setback to allow the home to be sighted as far from the wetland as possible.• Proposing a small footprint to create minimal onsite of impervious surfaces.

3.a. RECTIFY the impact by repairing, rehabilitating, or restoring the affected environment	The project represents a permanent impact to the buffer so there is no opportunity to rectify the proposed reduction to reestablish, rehabilitate, or restore the affected environment.
3.b. COMPENSATING for the impact by replacing or providing substitute resources or environments.	Compensation for the buffer reduction is proposed to improve the function of the current buffer by controlling the cover by reed canary grass and installing native vegetation. The total area of buffer mitigation exceeds the area of the building envelope so there will be a greater area of buffer compensation than impact, which will provide a significant lift in buffer function.
OR 3.c. COMPENSATING for the impact, improving the environmental processes that support wetland systems and functions	
MONITORING the impact and compensation and taking appropriate corrective measures.	Monitoring is required to track the success of the buffer mitigation plan for a period of five years. The monitoring plan, which includes performance standards, is described in the Buffer Mitigation Plan section of this report.
B. Mitigation Report. Where mitigation is required under the sequencing in subsection (A) of this section, a mitigation report shall be provided in accordance with Section 19.700.715. Acceptance of the mitigation report shall be signified by a notarized memorandum of agreement signed by the applicant and department director or designee. The agreement shall refer to all requirements for the mitigation project.	Mitigation is proposed to compensate for the reduced wetland buffer and will include removal of invasive plants including blackberry and reed canary grass and installation of native trees, shrubs, and ferns. The mitigation area will be maintained and monitored for a period five years to ensure that the goals and objectives of the plan, which include development of a multi-story buffer to increase buffer functions, are met. The area of mitigation exceeds the area of the buffer impacts by 1.22 times so there will be more buffer improved than impacted.

Critical Area Variance Criteria

1. *Because of special circumstances applicable the subject property, including size, shape, or topography, the strict application of this title is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity, provided, however, the fact that those*

surrounding properties have been developed under regulation is in force prior to the adoption of this ordinance shall not be the sole basis for the granting of a variance.

This 2.5-acre property is composed almost entirely of wetland with a relatively small area of upland available at the north end. This area of upland is composed entirely of the 110-foot buffer required from the Category III wetland. The extent of wetland and buffer represents a special circumstance, and the strict application of Title 19 will deprive the property owner the right to construct a single-family home on an existing platted lot, which has been granted to other properties in the vicinity.

- 2. The special circumstances referred to in subsection 1 above are not the result of the actions of the current or previous owner.*

This parcel represents Lot 26 of the Plat of Kingston Country Estates, Division 2, and was recorded in January of 1977. It has been undeveloped since that time and no actions were taken by the current owner to create the special circumstances.

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

This variance will allow a 1,617 square foot, modestly sized single-family home with attached garage, and onsite septic system drainfield within the only area of upland on this property. It has been designed to place the drainfield as far from the wetland as possible, which will reduce potential negative water quality impacts to the wetland or Carpenter Creek. The project is maintaining the required buffer from Carpenter Creek, which will be protected from impacts by the associated wetlands and the improvement of the wetland buffer. The upland is also located directly along Dronawood Drive so will not require a long driveway that would introduce additional pollutions sources. The home itself will introduce new impervious surfaces to the property and adjacent to wetland but it will not generate significant pollutants or excess water that would negatively impact the wetland and/or Carpenter Creek.

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

There is approximately 22,064 square feet of upland (~0.5 acres) on this 2.52-acre property at the north end and immediately adjacent to Dronawood Drive. The building site and drainfield will impact less than half of the available area of upland (9,910 square feet (0.23 acres)). The remainder of the upland is composed of buffer (12,154 square feet (0.27 acres)), which will be enhanced with native trees, shrubs, and ferns. Based on the small area of upland available on this property and the small area of proposed impact, the project proposal is the minimum necessary to accommodate the single-family home and drainfield.

5. *No other practicable or reasonable alternative exists.*

As described in Criterion #4, this property is composed entirely of critical areas and buffers with a small, 22,064 square feet of upland at the north end. The project is able to accommodate a modest sized home and drainfield within the upland, which totals 9,910 square feet, without directly impacting the Category II wetland or Carpenter Creek. Therefore, no other practicable or reasonable alternative exists for single family development on this existing platted property that will avoid impacts to the wetland buffer.

6. *A mitigation plan has been submitted and is approved for the proposed use of the critical area.*

A buffer mitigation plan (where required) has been prepared to improve the function of the existing maintained grass vegetation by installing native trees, shrubs, and ferns within an area that is 1.23 times the area of the impact. The mitigation plan has been designed to compensate for the loss of buffer function and area as a result of the proposed development.

Staff Comments: The Specifications for Site Preparation section on page 8 of the ELS Report reads *"Install plants during the winter months while they are dormant and so that they are in the ground when growth conditions are suitable"*, while Planting Methods on page 10 reads, *"Install the specified plants as listed in Table 3 at any time of the year but is best conducted during the winter months"*. Staff has added the first option into the conditions at the end of this report.

In addition, staff is adding a condition that the height of the planted vegetation and the reed canary grass be added to the information collected during each vegetative monitoring visit, and as stated on page 11 of the ELS report.

The proposed additional monitoring requirement should not be onerous due to the small number of plants (65) being planted in the buffer and the height of the reed canary grass can be taken from monitoring locations established during the planting. This additional monitoring would document the progression the planted vegetation is making towards overtopping and shading out the reed canary grass and could provide feedback as altering the planted species in case the dead or failed plants are disproportionately represented by a couple of species.

As currently written on page 11, the plan is to *"Replace dead or failed plants as described for the original installation to meet the minimum annual survival rate and percent cover performance standards."* This could result in reinforcing failure. Staff suggest that if the proposed additional collected information indicates species specific problems, that the permit allow for replacement with species that demonstrated greater success.

j. Access, Traffic and Roads

No comments at this time.

k. Fire Safety

No comments at this time.

l. Solid Waste

No comments at this time.

m. Water/Sewer

Site is outside the service area for KCPW Sewer Utility Division.

n. Kitsap Public Health District

The KPHD approval for onsite sewer was dated November 30, 2020, and approval for the water supply on February 24, 2021, in the Building Site Application.

11. Review Authority

The Hearing Examiner has review authority for this Critical Area Variance Permit application under KCC, Sections 19.100.135 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 Critical Area Variance Permit. 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.

12. Findings

1. The proposal is consistent with the Comprehensive Plan.
2. The proposal complies or will comply with requirements of KCC Title 17 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.

Staff Comments: The proposal is consistent with the Comprehensive Plan and the zoning standards for the Rural Protection (RP) zone in Title 17. The proposal meets the applicable requirements for a critical area variance in KCC 19.100.135, as analyzed in section 10.i of this report. The proposal meets the criteria and applicable requirements for a zoning variance in KCC 17.560.010, as analyzed in section 10.a of this report.

13. Recommendation

Based upon the analysis above and the decision criteria found in KCC 19.100.135 and KCC 17.560.010, and under KCC 21.04, the Department of Community Development recommends that the Critical Area Variance and Zoning Variance request for Shirley be **approved**, subject to the following 18 conditions:

a. Planning/Zoning

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. This Variance approval shall automatically become void if no building permit application is accepted as complete by the Department of Community Development within four years of the Notice of Decision date or the resolution of any appeals.
3. 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.
4. The decision set forth herein is based upon representations made and exhibits contained in the project application Permit #22-03914 and #22-00285. 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.

b. Development Engineering

5. 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.

6. 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 SDAP (or Building Permit if no SDAP required) application is deemed fully complete. 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 Code in effect at the time of SDAP application, or Building Permit if an SDAP is not required.
 7. The owner shall be responsible for maintenance of the storm drainage facilities for this development following construction. Before requesting final inspection for the SDAP (or for the Building Permit if an SDAP is not required) 22-03914, Shirley, Critical Area Variance Page 2 for this development, the person or persons holding title to the subject property for which the storm drainage facilities were required shall record a Declaration of Covenant that guarantees the County that the system will be properly maintained. Wording must be included in the covenant that will allow the County to inspect the system and perform the necessary maintenance in the event the system is not performing properly. This would be done only after notifying the owner and giving him a reasonable time to do the necessary work. Should County forces be required to do the work, the owner will be billed the maximum amount allowed by law. 4. If the project proposal is modified from that shown on the site plan approved for this permit application, Development Services and Engineering will require additional review and potentially new conditions.
- c. Environmental**
8. The applicant shall record a Notice to Title for the proposed preservation area(s) of the site. The Notice to Title shall be submitted with the associated building permit and is required prior to approval of the building permit.
 9. Prior to occupancy, the common boundary between the wetland buffer and the adjacent land shall be permanently identified with critical area buffer signs. Critical Area Ordinance (CAO) signs shall be placed along the designated boundary spaced approximately 50-feet apart, visual from sign to sign. Signs must be attached to existing trees with diameter breast height greater than 4 inches. Alternative methods include 4x4 posts, metal posts or split rail fencing.

10. Permit application approval is 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. Clearing and tree removal within the established wetland buffer shall be the minimum necessary to support the proposed improvements. Clearing limits must be clearly shown on the site plan with the associated building permit and clearing outside of the approved limits will require prior County approval.
11. A 150-foot native vegetation buffer shall be retained along the perimeter of the stream as depicted on the approved site plan. In addition, a building or impervious surface setback line of 7.5-feet is required from the edge of the buffer.
12. Unless otherwise allowed through this variance, a 25-foot native vegetation buffer must be maintained along the delineated wetland boundary of Wetland 'A' as depicted on the approved plans. In addition, a building or impervious surface setback line of 7.5 feet is required from the edge of the buffer, unless otherwise approved by this variance.
13. The project shall adhere to the mitigation measures and recommendations within the approved Wetland Delineation & Buffer Mitigation Plan, dated September 21, 2020, and revised June 8, 2022, prepared by Ecological Land Services (ELS).
14. In addition to the ELS Mitigation/Monitor Plan, information collected during each vegetative monitoring visit shall include the height of planted vegetation as well as height of reed canary grasses.
15. Install plants during the winter months as proposed on page 8 (not page 11) of the ELS Plan.
16. Monitoring and maintenance of the planted area shall be conducted for five years, and extended, if necessary, after DCD staff approves planting. Monitoring includes live and dead vegetation counts and records of all maintenance activities. Maintenance activities can be defined as, but are not limited to, removal practices on invasive or nuisance vegetation and watering schedules. Monitoring information shall be summarized in a letter with photographs depicting conditions of the vegetation and overall site. Monitoring reports are due to Kitsap County Department of Community Development Services and Engineering Division annually. If more than 20 percent of the plantings do not survive within any of the monitoring years, the problem areas shall be replanted, and provided with better

maintenance practices to ensure higher plant survival. The construction of the permitted project is subject to inspections by the Kitsap County Department of Community Development. Extensions of the monitoring period may be required if original conditions are not met. All maintenance and construction must be done in full compliance with Kitsap County Code (KCC), including the Kitsap County Critical Area Ordinance (Title 19 KCC) and Shoreline Master Program (Title 22 KCC). Any corrections, changes or alterations required by a Kitsap County Development Engineer Inspector shall be made prior to additional inspections. Any assignment of savings, financial surety or other like security for maintenance of the buffer mitigation plan shall only be released if monitoring requirements are satisfied in the final year of the monitoring term.

d. Traffic and Roads

17. At building permit application, submit Kitsap County Public Works Form 1601 for issuance of a concurrency certificate, as required by Kitsap County Code 20.04.030, Transportation Concurrency.

18. 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 process, if a SDAP is not required. The need for and scope of bonding will be determined at that time.

e. Fire Safety

19. None at this time.

f. Solid Waste

20. None at this time.

g. Kitsap Public Health District

21. None at this time

Report prepared by:



Jenny Kreifels, Staff Planner

July 25, 2023

Date

Report approved by:

Katharine Shaffer

Katharine Shaffer, Planning Supervisor

August 2, 2023

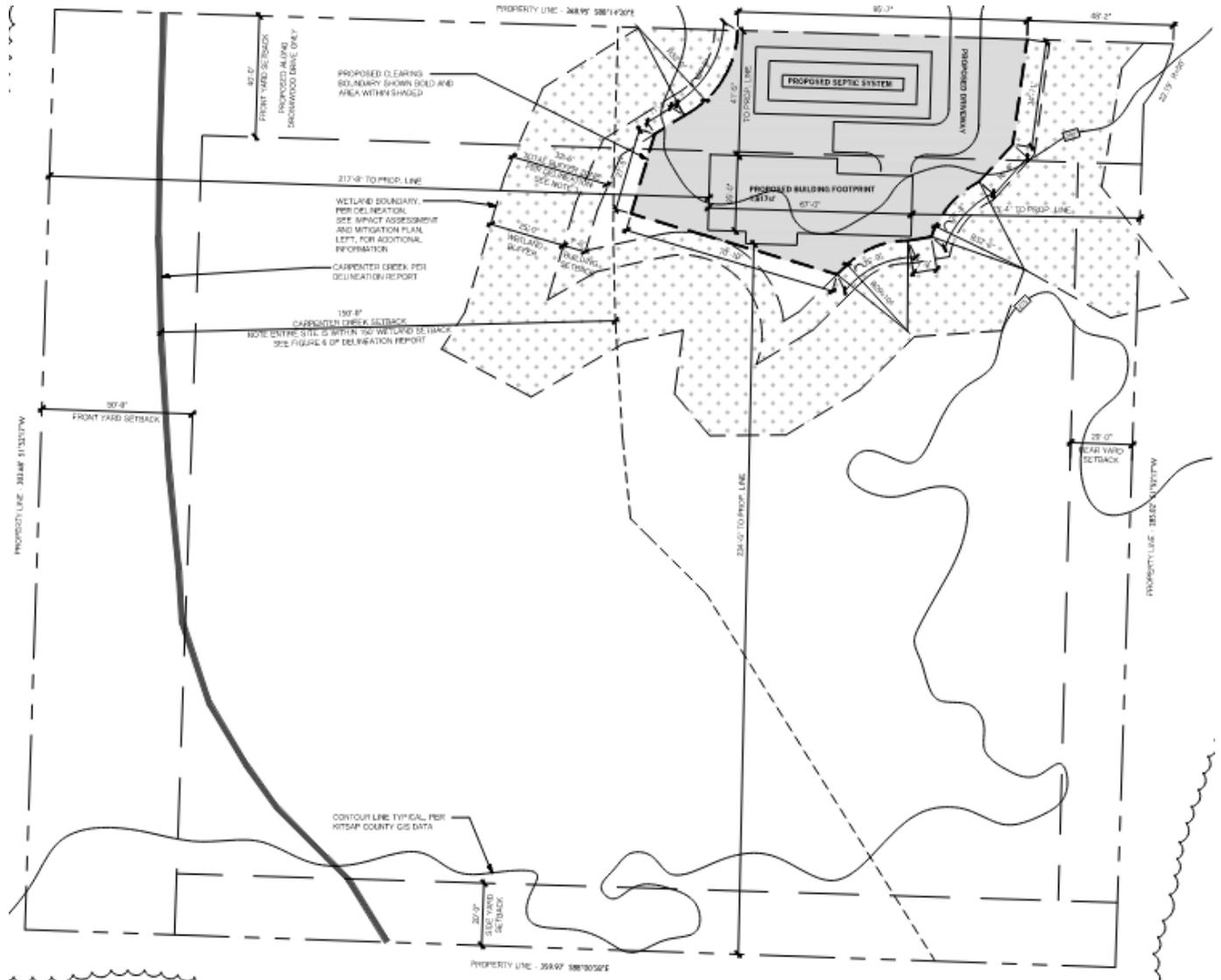
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Attachments:

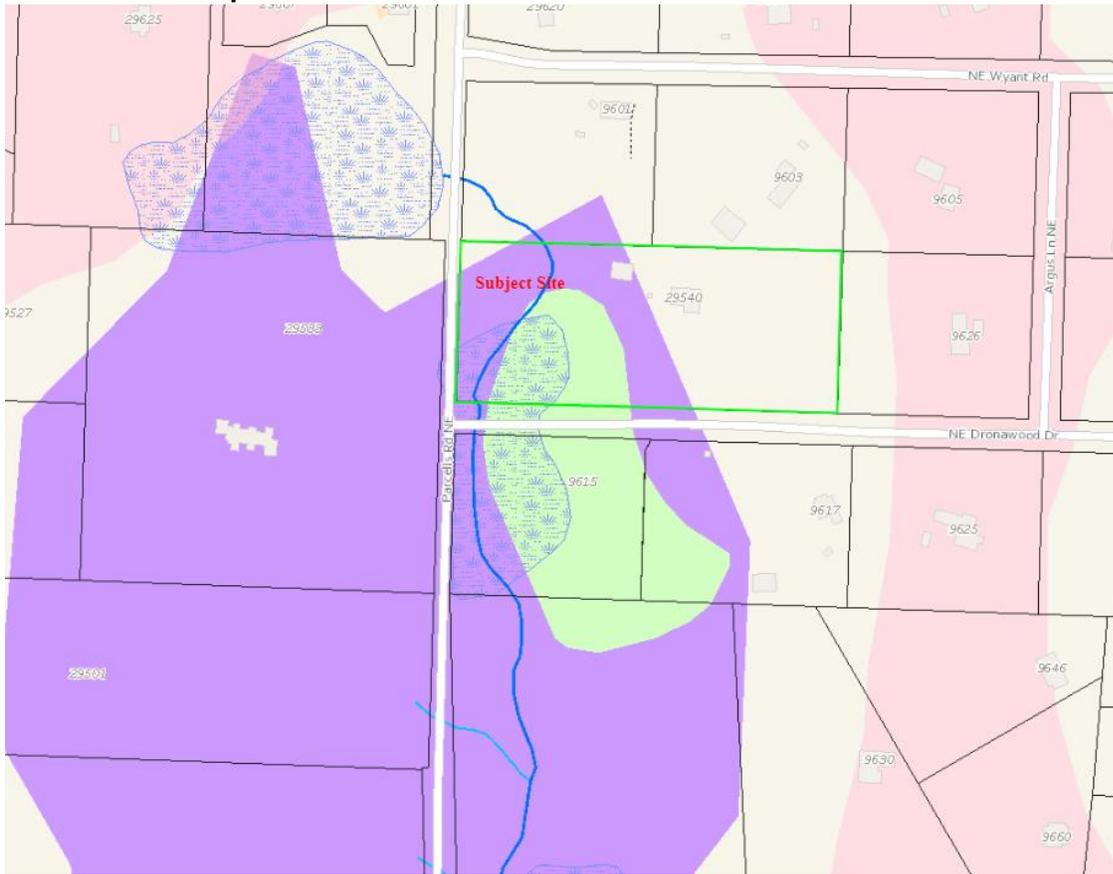
- Attachment A –Site Plan
- Attachment B –Critical Areas Map
- Attachment C –Zoning Map
- Attachment D –Buffer Impact Assessment
- Attachment E –Buffer Mitigation Plan

CC: Applicant/Owners: Brandon & Jolie Shirley, brsdesignbuild@gmail.com Engineer or Project Representative email
Biologist/Ecological Land Services: Joanne Bartlett, joanne@eco-land.com
Architect: Richard Lyman, rlyman@rb-a.net
Kitsap County Health District, MS-30
Kitsap County Public Works Dept., MS-26
DCD Staff Planner: Jenny Kreifels
Interested Parties: Garrett and Melissa Blanchard, reed.blanchard@gmail.com; Tia Schwarz, tia@fasttrackci.com; David Vliet and Kristel Dillon, dpvliet@hotmail.com; Beverly Parsons, bevandpar@gmail.com; Doug Hayman, seattleguitarman@hotmail.com; Carol Price, carol9price@comcast.net; Elizabeth Nichols, dbnichols@centurytel.net; Doug Beal and Michael Pouncil, acupt@comcast.net; Joe Lubischer, jslubischer@gmail.com; Katherine Lewis Rose, katherine12lewis@yahoo.com; Rod Malcom - Suquamish Tribe, rmalcom@suquamish.nsn.us

Site Plan



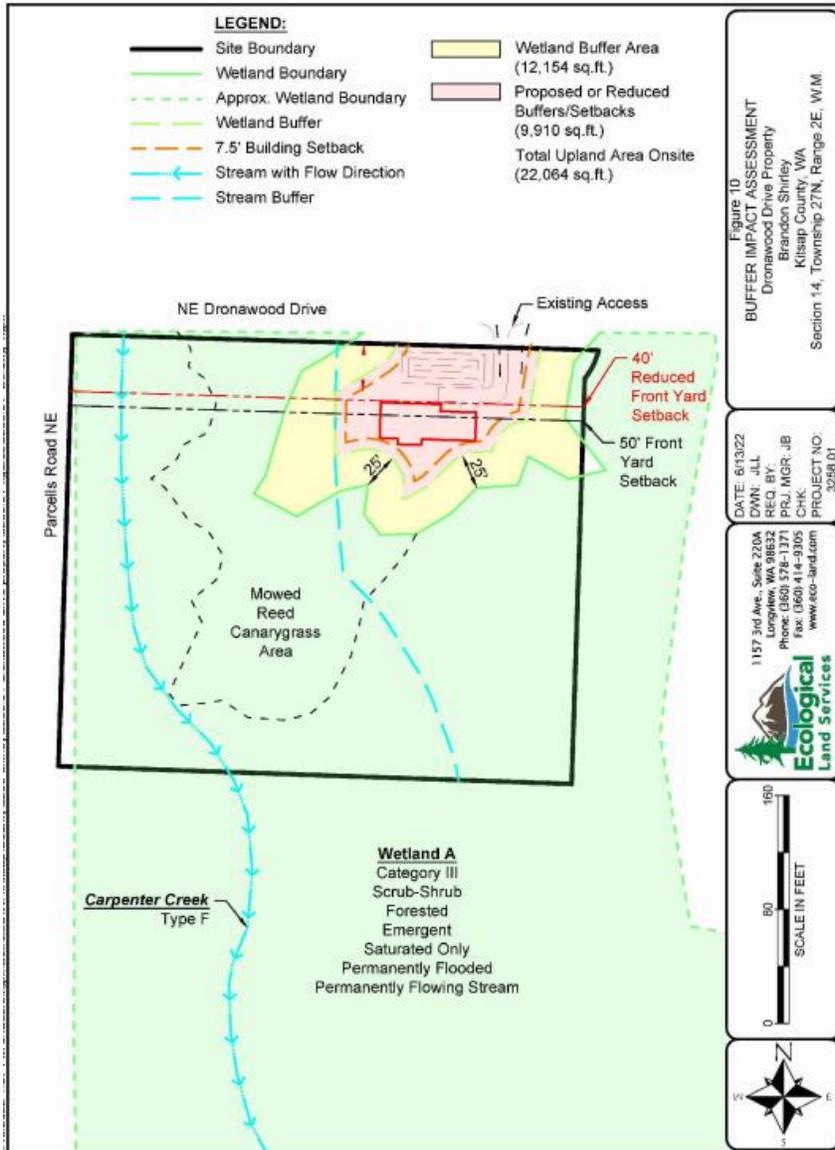
Critical Areas Map



Zoning Map



Buffer Impact Assessment



Buffer Mitigation Plan

