



## Hearing Examiner Staff Report and Recommendation

**Report Date:** June 2, 2022  
**Hearing Date:** June 09, 2022

**Application Submittal Date:** September 15, 2021  
**Application Complete Date:** October 19, 2021

**Project Name:** Olsen - Stream Buffer Reduction Greater than 50% for New Single-Family Residence Construction

**Type of Application:** Critical Areas Variance (CVAR)

**Permit Number:** 21-04994

### Project Location

24495 South Kingston Rd NE  
Kingston, WA  
Commissioner District 1

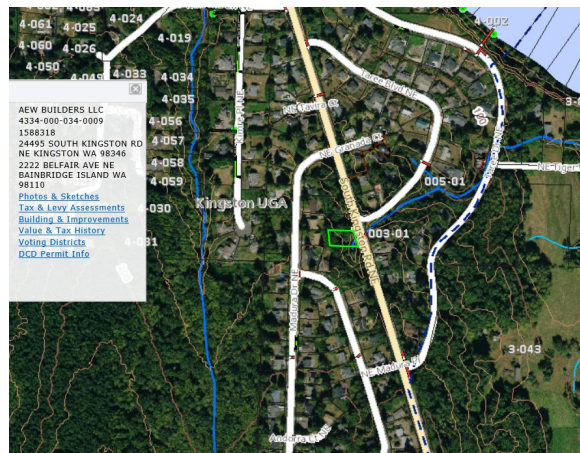
### Assessor's Account #

4334-000-034-0009

### Applicant/Owner of Record

Crosby Olsen, AEW Builders, LLC  
2222 Belfair Avenue NE  
Bainbridge Island, WA 98110

### VICINITY MAP



### Recommendation Summary

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

#### 1. Background

Crosby Olsen with AEW Builders (hereafter, “the Applicant”) proposes to construct a single-family residence, with associated utilities and driveway access, on an approximate 0.22-acre parcel in the Urban low (UL) zoning district. Due to the size of the property and the bounding critical area buffer (See Section 10.i and 10.j of this report), the Applicant requests approval of a Critical Area Variance to reduce the standard buffer of an on-site Type-F stream.

#### 2. Project Request

The Applicant requests approval for a Critical Area Variance to the standard Type-F stream buffer resulting in a variable buffer width of 30 feet to 45 feet with a 5-foot reduced standard building setback. The standard buffer for a Type F stream is 150 feet (KCC 19.300.315); therefore, the reduction request equates to approximately eighty percent (where the smallest buffer is proposed at 30 feet). Per KCC 19.300.315(A)(3)(b), buffer reductions for single-family residences greater than fifty percent shall be pursuant to a variance under

Section 19.100.135.

**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.

The project is SEPA exempt pursuant to KCC 18.04.090 and WAC 197-11-800(6)(e) as it is a variance land use action.

**4. Physical Characteristics**

According to Kitsap County Assessor’s Data, the subject site is approximately 0.22 acres. The property is bound to the west by an adjacent platted residence, and to the east is South Kingston Road. Properties to the north and south are undeveloped (see Exhibit 5, site plan). Along the south-easterly property line is a mapped Type F stream (See Section 10.i). A site investigation was performed by C3 Environmental, LLC. which noted, “The subject property is currently undeveloped and comprised of Big leaf maple and Western red cedar trees. The understory is primarily Himalayan blackberry and English ivy, with some native Salmonberry. Access to the subject site will require an engineered wall permit from the South Kingston Road entrance.

**Table 1 - Comprehensive Plan Designation and Zoning**

Comprehensive Plan: Urban-low density Zone: Urban-low residential	Standard	Proposed
Minimum Density	5 units/acre	1 dwelling unit, lot is existing at 9583 sf.
Maximum Density	9 units/acre	
Minimum Lot Size	4,730 sf	9583 sf., lot is existing
Maximum Lot Size	8,712 sf	0.22 acres, lot is existing
Minimum Lot Width	60 feet	NA, lot is existing platted.

Minimum Lot Depth	60 feet	NA, lot is existing
Maximum Height	35 feet	<35 feet
Maximum Impervious Surface Coverage	NA	NA
Maximum Lot Coverage	NA	NA

**Table 2 - Setback for Zoning District**

	Standard	Proposed
Front (East)	20 feet	~ 50 feet
Rear (West)	5 feet	~ 40 feet
Side (South)	5 feet 5 feet for accessory structures	~ 20 feet
Side (North)	5 feet; 5 feet for accessory structures	~15 feet

**Table 3 - Surrounding Land Use and Zoning**

Surrounding Property	Land Use	Zoning
North	Single-family residence	Urban-low (UL)
South	Single-family residence	Urban-low (UL)
East	ROW and Single-family Kitsap County Park	Urban-low (UL)
West	Single-family residence	Urban-low (UL)

**Table 4 - Public Utilities and Services**

	Provider
Water	Kitsap PUD 1
Power	Puget Sound Energy
Sewer	On-site septic
Police	Kitsap County Sheriff
Fire	North Kitsap Fire & Rescue
School	North Kitsap School District

**5. Access**

Vehicular access is proposed directly from South Kingston Road NE, on the northeast lot corner (Exhibit 5, Site Plan).

**6. Site Design**

See Site Plan, included as an attachment at the end of this report.

It should be noted that the review of this proposal is strictly limited to compliance with the

variance criteria per KCC 19.100.135, as required per KCC 19.300.315(A)(3) for stream buffer reductions. Approval of the final site design is dependent on the submittal of a site development activity permit, per the associated Stormwater Conditions Memo, (Exhibit 7) and the analysis in Section 10.i of this report.

## **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 amended April 2020.

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

### *Land Use Goal 1*

*Focus current and future planning on infill development of existing Urban Growth Areas.*

### *Land use Policy 2*

*Support innovative, high quality infill development and redevelopment in existing developed areas with Urban Growth Areas.*

### *Housing and Human Services Goal 6.*

*Integrate affordable housing and human services planning with transportation, workforce development, and economic development efforts.*

### *Housing, Human Services Policy 23*

*Promote housing preservation and development in areas that are already well-served by schools, public transportation, commercial facilities, and have adequate infrastructure to support alternative modes of transportation.*

### *Transportation Goal 1*

*Provide a safe and reliable multi-modal transportation system for people of all ages and abilities.*

### *Transportation Policy 2.*

*Approve site design that is supportive of transit Service and its patrons.*

*Environment Policy 13. Use the best scientific information available to direct how functions and values of critical areas are preserved or enhanced.*

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
Title 19	Critical Areas Ordinance
Chapter 18.04	State Environmental Policy Act (SEPA)
Chapter 20.04	Transportation Facilities Concurrency Ordinance
Chapter 21.04	Land Use and Development Procedures

## 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 exhibits 1 through 14.

Exhibit #	Document	Dated	Date Received
1	<b>STAFF REPORT</b>	06/02/2022	
2	Notice of Complete Application	09/15/2021	
3	Submission Application		10/19/2021
4	Habitat Management Plan Report – C3 Habitat	9/12/2021	10/19/2021
5	Site Plan (CAO)		10/19/2021
6	Variance Criteria narrative		10/19/2021
7	Stormwater Conditions Memo	12/21/2021	
8	Health District Approval	08/06/2021	1/04/2022
9	Notice of Application	02/22/2022	
10	Interested Party Comments – Combined	Feb – Jun 2022	Feb – Jun 2022
11	Notice of Public Hearing	05/25/2022	
12	Certification of Public Notice	06/01/2022	
13	Staff Presentation		
14	Hearing Sign In		

## 9. Public Outreach and Comments

There were 2 public comments from property owners in the vicinity of the public notice. The general concern was related to building proximity to potential Bald Eagle perch sites, and also a concern for water quality, should chemical herbicides be used. The concern for aquatic and amphibian uses in the downstream system, and conveyance to Apple Tree cove for water quality.

Issue Ref. No.	Summary of Concern (See corresponding responses in the next table)	Comment Letter Exhibit Reference No.
Comment 1	A question was relayed from a nearby neighbor to the project regarding Eagle use and water quality concerns, summarized: Bald and Golden Eagles are seen perching on a tree on the property. The project HMP description includes "invasive vegetation removal and planting of native species". I am concerned that the use of chemical herbicides will cause damage to amphibians and aquatic life in the creek and downstream to Apple Tree Cove. J Upton	Exhibit 10
Comment 2	A concern was raised regarding project runoff which may pollute or damage the creek, should chemical application use be proposed. D. Meyer	

Issue Ref. No.	Issue	Staff Response
	Bald and Golden Eagle protection	The project biologist completed a thorough investigation and concluded there are no Bald Eagle nesting sites in the vicinity. Occasional perching uses are not subject to required tree protection and retention.
	Water quality and herbicide uses	Although the biologist suggested some chemical treatment systems may help abate the English ivy and Himalayan blackberry controls on the property, the staff report recommends that hand and mechanical means are the preferred weed abatement alternative, and have made that a condition of approval, under the environmental conditions.

**10. Analysis**

**a. Planning/Zoning**

The subject site is a legal lot of record, created by way of the Plat of Taree 2, recorded in October of 1968. The site is located within the Urban-low zoning district (Attachment B). Detached single-family dwellings are a permitted use in the UL zone, subject to footnotes 43 and 101 as applicable. Neither footnote applies, as the provisions are related to elements that are not part of this proposal (ie, special care

and transitory accommodation provisions). Compliance with applicable zoning standards will be reviewed again at the time of development permit submittal.

The recorded plat shows no easement encumbrances. At the time of SDAP submittal, a site plan showing all current easements shall be submitted to ensure the project does not encroach upon and meets setbacks to any easement.

**b. Lighting**

Exterior lighting standards (KCC 17.400.420.030.C) are not applicable to single family residential development.

**c. Off-Street Parking**

The submitted site plan (Exhibit 5) shows a plan for 3 on site parking stalls, satisfying minimum parking requirements.

**Table 5 - Parking Table**

Use Identified in 17.490.030	Standard	Required Spaces	Proposed Spaces/Existing Spaces
Single Family (detached)	For historical lots or lots with no standing requirement, 3 per unit.  Garages are not calculated towards any parking requirement.	3	3
Total		3	3

**d. Signage**

No signage is proposed or required.

**e. Landscaping**

Single-family lots are exempt from landscaping standards (KCC 17.500.010). Mitigation planting is proposed as detailed in Section 10.i of this report.

**Table 6 - Landscaping Table**

	Required	Proposed
Required Landscaping (Sq. Ft.) 15% of Site	NA	NA
Required Buffer(s) 17.500.025		
North	NA	NA
South	NA	NA
East	NA	NA
West	NA	NA

Street Trees	NA	NA
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**f. Frontage Improvements**

Frontage improvements are neither proposed nor required. The property abuts Kitsap County ROW (South Kingston Road NE). Any work within the County ROW shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the ROW shall be submitted as part of the SDAP process (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time of development permit.

**g. Design Districts/Requirements**

Single-family detached dwellings are exempt from design standards per KCC 17.420.030.A and the project is not within a designated design district (KC 17.700 Appendix B1 through C4).

**h. Development Engineering/Stormwater**

The department understands that on-site stormwater management is proposed for the rooftop area and driveway by collecting the rooftop runoff to downspouts and sheet flow to the stream buffer area (~50 foot flow path). The driveway area plans to sheet flow directed easterly through a vegetated flow path.

Development Services and Engineering has reviewed the above land use proposal and finds the concept supportable in its approach to civil site development. These comments are based on a review of the Critical Area Variance permit application materials accepted for review October 19, 2021 to Kitsap County Development Services and Engineering.

Development Services and Engineering accepts the concepts contained in this preliminary submittal and recommends ten conditions as an element of the land use approval.

**i. Environmental**

**19.200 Wetlands**

There are no mapped wetlands on or near the site but wetland hydrology is a likely component of the mapped stream (details in the Habitat Plan, Exhibit 4) and are regulated under KCC Title 19. Associated wetland buffers would be included within the stream analysis, following.

**19.300 Fish and Wildlife Habitat Conservation Areas**

Kitsap County’s Critical Areas Map (Attachment 3) shows a stream running along the subject site’s easterly property line. The stream is mapped as a F-type creek and has been verified by the submitted Habitat Management Plan by C 3 Habitat (Exhibit 4),



indicating the stream meets the criterion for Type F waters. The Type-F water designation, with a minimum 150-ft buffer requirement is analyzed per KCC 19.300.310.

Per KCC 19.300.315(A)(3)(b), Buffer reductions for single-family residences greater than fifty percent, shall be reviewed pursuant to variance standards shown in KCC Section 19.100.135 which are copied and underlined below, with staff comments provided *in italics*.

KCC 19.100.135 says:

A. A variance in the application of the regulations or standards of this title to a particular piece of property may be granted by Kitsap County, when it can be shown that the application meets all of the following criteria:

1. Because of special circumstances applicable to the subject property, including size, shape, or topography, the strict application of this title is found to deprive the 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 regulations in force prior to the adoption of this ordinance shall not be the sole basis for the granting of a variance.

*Staff Comment: The subject site was platted prior to stream buffer considerations (1968 plat), and was therefore never considered as a constraint to the plat or property. The Type-F stream buffer of 150 feet encompasses the entire property. Due to the size of the property, location of critical areas, and standard buffer requirements strict application of KCC Titles 19 would result in no possibility to build on a legally established, platted parcel. In addition, other properties in the immediate vicinity are also built very near (or at a similar distance) from this stream feature.*

**Figure 1: Excerpt from Project Narrative**

2. The special circumstances referred to in subsection (A)(1) of this section are not the result of the actions of the current or previous owner.

*Staff Comment: The circumstances referred to in subsection (A)(1) above are not the result of the actions of the current or previous owner. The lot is a legal lot of record, created by way of a plat in 1968.*

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.

*Staff Comment: The applicant has provided a habitat management plan and no net loss report that adequately demonstrates that this proposal, with mitigation, will not result in substantial detrimental impacts (Exhibit 4). The report recommends enhancement of the stream corridor with in-fill of native trees and shrubs, as well as the eradication of invasive Himalayan blackberry and English ivy from the established stream corridor. The reports also outline a five-year monitoring plan. We recommend that hand and mechanized eradication methods be deployed due to the proximity of the creek to Apple Tree Cove.*

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

*Staff Comment: The granting of the variance is the minimum necessary to accommodate the reasonably sized (1,600-square-foot) single-family residence and supporting facilities. If the proposed structure is moved in any direction, it would result in an impact to either a zoning setback, or further critical area buffer encroachment by required residential facilities. The Applicant's Environmental Consultant also found that "the requested buffer reduction is the minimum necessary to establish a setback around the residence while optimizing the stream buffer function." The department agrees with this finding.*

5. No other practicable or reasonable alternative exists. (See Definitions, Chapter 19.150.) Applicant response:

*Staff Comment: KCC 19.150.510 defines Reasonable Alternative as "an activity that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation". As noted above, alternative locations would require encroaching into other required setbacks.*

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

*Staff Comment: The applicant has submitted a mitigation plan (Exhibit 4) that meets the goals and standards outline in KCC 19.300 and the project is required to follow the recommendations of that report, including mitigation and five-year monitoring.*

**19.500 Frequently Flooded Areas**

The proposed development is outside of mapped flood hazard areas.

**19.600 Critical Aquifer Recharge Areas**

The site is within a Category I Critical Aquifer Recharge Area; however, single-family development is not a listed activity with potential threat to groundwater quality. No further review is required.

**j. Access, Traffic and Roads**

Vehicular access is proposed via direct access to South Kingston Road NE.

**k. Fire Safety**

Fire Safety review is not required for this permit type. The proposal must demonstrate compliance with all applicable building and fire codes at the time of development permit application.

**l. Solid Waste**

Solid Waste review is not required for this project.

**m. Water/Sewer**

Potable water is proposed to be provided by PUD 1. Sanitary sewage disposal is proposed to be provided by an on-site septic system. The applicant submitted a Building Site Application to the Kitsap Public Health District for approval. The final approved BSA is required to be submitted at the time of development permit application.

**n. Kitsap Public Health District**

The Kitsap Public Health District has reviewed and approved the application with no comments.

**11. Review Authority**

The Hearing Examiner has review authority for this Critical Areas Variance application under KCC 21.04.100. The Hearing Examiner may approve, approve with conditions, or deny a Critical Areas Variance. 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 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 19 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.

### **13. Recommendation**

Based upon the analysis above and the decision criteria found in KCC 19.100.135, the Department of Community Development recommends that the Critical Area Variance request for the Stream Buffer Reduction be **approved**, subject to the following 16 conditions:

#### **a. Planning/Zoning**

1. Permit approval is subject to conditions in the Hearing's Examiner Decision.
2. The proposal shall be compliant with the applicable zoning standards of the Urban Low (UL) zoning district.
3. At the time of SDAP submittal, the site plan shall show all current easements to ensure the project does not encroach on required setbacks or the easement(s) itself.

#### **b. Development Engineering**

4. 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.
5. The information provided demonstrates that, due to the proximity of critical areas, this proposal will require a Site Development Activity Permit (SDAP) from Development Services and Engineering.
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 of development permit application. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of SDAP application.
7. The Washington State Department of Fish and Wildlife may require a Hydraulic Project Approval for the work required near the stream.
8. If the project proposal is modified from that shown on the submitted site plan accepted for review October 19, 2021, Development Services and Engineering will require additional review, potentially new conditions, and potentially a revision to this decision.

**c. Environmental**

9. The proposal shall follow the recommendations and the five-year monitoring plan outlined in the Habitat Management Plan dated September 1, 2021, by C3 Habitat.
10. Recommended noxious weed management shall be performed by hand and mechanical means. The use of chemical herbicides, pesticides and fertilizers is not recommended due to the proximity of the creek.
11. Hydraulic Project Approval (HPA) may be required for the proposed dispersion facility. Prior to SDAP approval, the applicant shall submit an approved HPA from the Washington State Department of Fish and Wildlife (WDFW) or documentation from WDFW specifying that an HPA is not required.

**d. Traffic and Roads**

12. Submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW 1601 form reserves road capacity for the project.
13. The required Site Development Activity Permit application shall include documentation of rights of use of the access easement indicated as providing access to this parcel.
14. The required Site Development Activity Permit shall include plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the Kitsap County Code. Existing approaches may need to be improved to meet current standards.
15. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the SDAP process (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time.

**e. Kitsap Public Health District**

16. An approved Building Site Application (BSA) shall be submitted at the time of building permit application.

**Report prepared by:**

  
\_\_\_\_\_  
Steve Heacock, Staff Planner / Project Lead

6/2/2022  
\_\_\_\_\_  
Date

**Report approved by:**



6/2/2022

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Scott Diener, DSE Manager

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Date

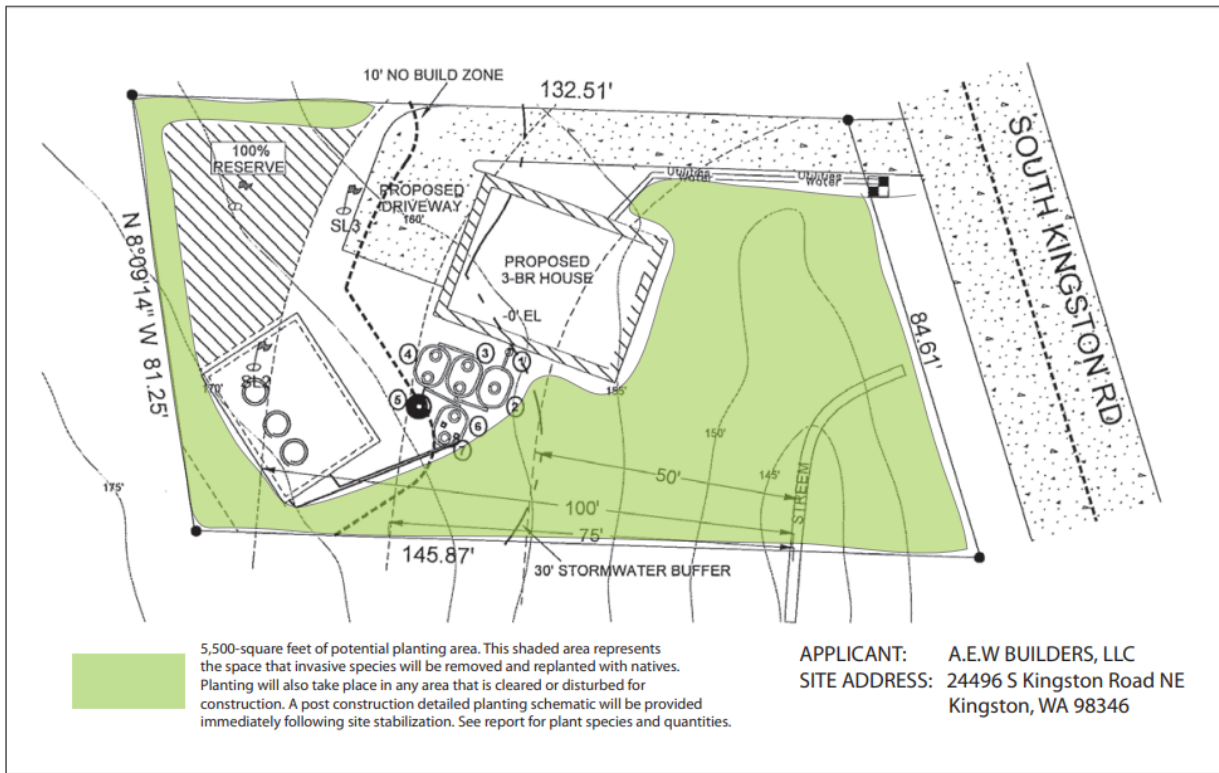
**Attachments:**

- Attachment A – Site Plan
- Attachment B – Zoning Map
- Attachment C – CAO Map

CC: Applicant/Owner: Crosby Olsen [crosbyolsen@gmail.com](mailto:crosbyolsen@gmail.com)  
Project Representative: Christy Christensen, [Christy@c3habitat.com](mailto:Christy@c3habitat.com)  
Kitsap County Health District, MS-30  
Kitsap County Public Works Dept., MS-26  
DCD Staff Planner: Steve Heacock  
Interested Parties:  
Deborah Meyer, [debmeyer12@hotmail.com](mailto:debmeyer12@hotmail.com); Dan Upton, [lauraupton@centurytel.net](mailto:lauraupton@centurytel.net);  
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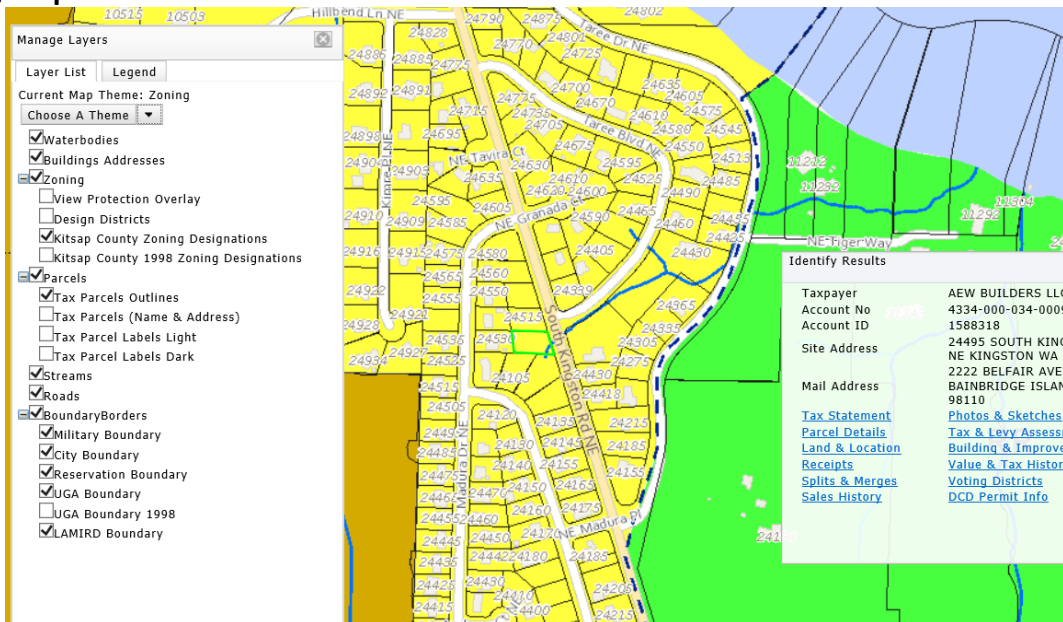
### Attachment A

#### Site Plan



### Attachment B

#### Zoning Map



### Attachment C

### CAO Map

