



Hearing Examiner Staff Report and Recommendation

Report Date: March 4, 2021
Hearing Date: March 11, 2021

Application Submittal Date: 08/20/2020
Application Complete Date: 10/08/2020

Project Name: Lambro Properties – Buffer Reduction of 50%
Type of Application: Critical Area Variance and Zoning Variance (Type III)
Permit Number: 20-03840

Project Location

9193 NE Country Woods Ln,
Kingston, WA
Commissioner District 1 (North)

Assessor's Account

102702-1-015-2002 and 02702-1-016-2001

Applicant/Owner of Record

Lambro Properties LLC
7427 NE Hidden Cove Rd
Bainbridge Island, WA 98110

Recommendation Summary

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

VICINITY MAP



1. Background

Lambro Properties LLC (hereafter, “the Applicant”) proposes to reduce a standard wetland buffer by 50% to allow for one single-family home on two lots that are heavily constrained by critical areas. 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, the applicant is concurrently requesting a zoning variance to the required 50-foot front setback, pursuant to the zoning variance criteria in KCC 17.560.

A building permit was issued in 2008 on this site. At that time a portion of the northeast of the lot was cleared and a well was installed. The applicant acquired the property in 2017, and applied for a building permit in January of 2019 (permit #19-01199), which is still in review pending this approval.

2. Project Request

The proposal is for the combined review of a Critical Area Variance and a Zoning Variance. The Critical Area Variance is to allow the reduction of the standard wetland buffer from 110 feet to 55 feet (50% reduction) and structure setback from 15 feet to 7.5 feet. The Zoning Variance is to allow a reduction of the required front setback from 50 feet to 25 feet and 4 inches. Both requests are to allow for the future construction of a single-family home on a lot that is heavily constrained by wetlands. Both requests are subject to a Type III process with Hearing Examiner approval.

3. SEPA (State Environmental Policy Act)

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

4. Physical Characteristics

The subject site includes two triangular shaped properties, each approximately 5 acres in size. The site is undeveloped except for a driveway along the north end and a cleared area in the northeast corner (location of the future home). The clearing, which is 4,024 square feet in area, was conducted many years ago to install the existing well and has been maintained since it's installation. The clearing was also in association with a building permit that was approved in 2008, which was never built.

The property is generally bowl-shaped with steep slopes along the north and west edges, with low points in the south and east. The property is heavily vegetated with a large open wetland area in the center and south of the property. A stream runs along the southern edge of the property and a Type NS stream was identified running north to south roughly in the center of the combined properties.

The surrounding area is wooded with rural residential property and sporadic single-family residences.

Table 1 - Comprehensive Plan Designation and Zoning

Comprehensive Plan: Rural Residential Zone: Rural Protection (RP)	Standard	Proposed
Minimum Density	N/A	N/A - Subject property is an existing lot.
Maximum Density	1 dwelling unit/10 acres	
Minimum Lot Size	10 acres	N/A
Maximum Lot Size	NA	N/A
Minimum Lot Width	140 feet	N/A
Minimum Lot Depth	140 feet	N/A
Maximum Height	35 feet	N/A

Maximum Impervious Surface Coverage	N/A	N/A
Maximum Lot Coverage	N/A	N/A

Applicable footnotes: None

Staff Comment: The proposal meets applicable standards for the RP zone.

Table 2 - Setback for Zoning District

	Standard	Proposed
Front (East)	50 feet	25 feet 4 inches per variance request
Side (North)	20 feet 5 feet for accessory structures	25 feet
Rear (SW)	20 feet 5 feet for accessory structures	300 feet+

Applicable footnotes: None

Staff Comment: None

Table 3 - Surrounding Land Use and Zoning

Surrounding Property	Land Use	Zoning
North	Single-family residences	Rural Protection (RP)
South	Wooded/ Great Peninsula Conservancy	Rural Protection (RP)
East	Single-family residences	Rural Protection (RP)
West	Single-family residences	Rural Protection (RP)

Table 4 - Public Utilities and Services

	Provider
Water	Onsite system
Power	Puget Sound Energy
Sewer	Onsite system
Police	Kitsap County Sherriff
Fire	North Kitsap Fire & Rescue
School	North Kitsap School District #401

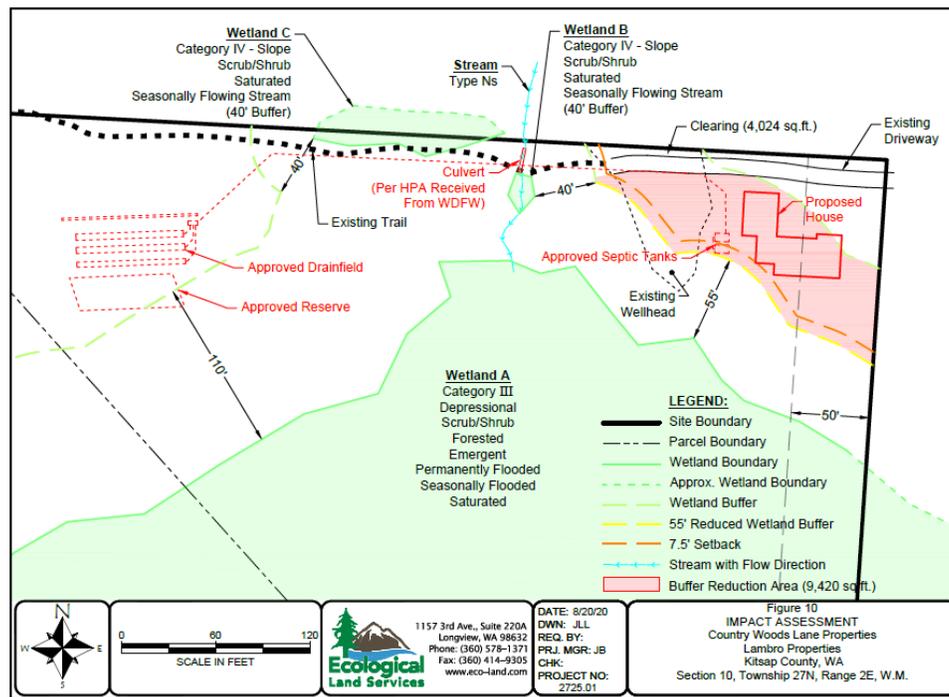
5. Access

An existing driveway exists on the north-east end of the site which will be used for access to the proposed home.

The driveway extends to the west to the type NS stream, where the applicant previously received a Hydraulic Project Approval from the Department of Fish and Wildlife to install a culvert at this location (exhibit 6). This then extends as a walking path along the northern edge of the property in the area of an old logging road. The applicant intends to improve this area with a gravel path so that the septic drain field in the northwest can be accessed during construction and occasional maintenance. After that, the path will be used for passive activities and enjoyment of the property.

6. Site Design

The image below shows the proposed footprint of the 2,134 square-foot home and associated drainfield as well as the existing driveway.



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 27, 2020.

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

Land Use Policy 50

Limit the designed rural area to low residential densities that can be sustained by minimal infrastructure improvements, cause minimal environmental degradation, and that will not cumulatively create the future necessity or expectation of urban levels of service.

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 designation, zoning designation, and zoning code provisions.

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
Title 19	Critical Areas
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 1-14.

Exhibit #	Document	Dated	Date Received
1	Permit Questionnaire		10/08/2020
2	Authorization Form		10/08/2020
3	Variance Criteria – Zoning (Title 17)		10/08/2020
4	Variance Memo		10/08/2020
5	Geological Assessment		10/08/2020
6	Hydraulic Project Approval		10/08/2020
7	HPA Extension		10/08/2020
8	Site Plan		10/08/2020
9	Revised Notice of Application	11/10/2020	
10	Memo (response to comments)		2/16/2021
11	Revised Wetland Delineation Report		2/16/2021
12	Variance Criteria - Wetland (Title 19)		2/16/2021
13	Notice of Public Hearing	2/23/2021	
14	Certification of Public Notice	3/03/2021	

9. Public Outreach and Comments

A Notice of Application was distributed pursuant to Title 21 land use and development procedures, which provided recipients with project information and an opportunity for public comment. No comments were received by the department.

Issue Ref. No.	Summary of Concern (See corresponding responses in the next table)	Comment Letter Exhibit Reference No.
	N/A	N/A

Issue Ref. No.	Issue	Staff Response
	N/A	N/A

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 majority of the subject site is encumbered by critical areas and associated buffers, leaving approximately 0.72 acres of upland outside the buffers for home construction. The area of the property for single-family development that would impact critical areas the least is in the northeast corner, which includes a very small upland area for development, requiring a setback variance. The presence of wetlands was not created by the applicant and are unique to this property.

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 Protection (RP) 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

50% 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 50%.

b. Lighting

Lighting was not analyzed as part of this proposal.

c. Off-Street Parking

Per KCC 17.490.030, a single-family dwelling requires 3 parking spaces. The proposal provides adequate parking per the table below.

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 proposed.
Total	3	3	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	NA
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. Condition #4 has been added in relation to stormwater design requirements.

i. Environmental

Critical Area Variance Criteria

Per KCC 19.100.135, 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 two properties are a combined 9.92 acres in size. 9.2 acres of this are encumbered by wetlands and associated buffers, leaving approximately 0.72 acres of upland for potential development. The northeast corner of the site is the most appropriate and least impactful area for single family construction, but consists of only 2,056 square feet of upland area, further reduced by required setbacks. Strict regulation of wetland buffers would make residential development in this area infeasible.

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 site conditions were not created by the applicant or previous owner, and the land was in the current configuration when purchased by the Lambro Properties in 2017. The environmental constraints requiring a variance were not the result of the applicant's actions.

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: Of the 9.92 acre property, only a small portion is proposed for single-family development. The proposal limits impacts to critical areas to the extent allowed by this site. Further, the proposal would leave the remaining 9.61 acres of this property undeveloped. Although comprising two parcels, the applicant has stated that the southern parcel will not be developed, avoiding potential detrimental impacts that would be caused by a second home, drainfield, and access.

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

Staff Comment: Single-family home development could not be achieved using buffer averaging. An administrative 25% buffer reduction would also not be feasible to create a large enough area to accommodate a single-family home. Even with a 50% buffer reduction, the applicant requested a 50% reduction to the front setback to allow suitable building area for a new home.

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

Staff Comment: The proposed 50% variance to allow for a home in the northeast portion of the lot is a preferable alternative to other options, as it will avoid direct wetland impacts as well as avoid the need for a larger driveway were the home to be built at other upland areas on the property. A variance request for a home at another location on the property could result in a greater impact to habitat function and water quality.

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

Staff Comment: The submitted Wetland Report characterizes the wetland buffer functions as well as upland areas outside of the buffer. The report states that avoidance is not possible and lists various minimization methods. The Report states that there are few opportunities to improve existing buffer functions, and therefore the applicant will provide preservation of upland area as compensation for the impacts. The project will result in 9,399 square feet in buffer reduction and proposes a 37,041 square foot preservation area (see Attachment B). Preservation will effectively alleviate development pressure for another home on the southern lot, which would have led to greater impacts to buffers and also may require filling of Wetlands B and C. The mitigation plan is approved for the proposed buffer reduction and this permit is conditioned to

adhere to the recommendations of the Report.

Wetlands and Stream:

A wetland delineation report was provided by Ecological Land Services, revised August 20, 2020, that identified the following critical areas on site:

CRITICAL AREA	CATEGORY	REQUIRED BUFFER	PROPOSED IMPACT
Wetland A	III	110 feet	Reduce portion of buffer from 110 feet to 55 feet (9,399 square feet in total buffer reduction).
Wetland B	IV	40 feet	None
Wetland C	IV	40 feet	None
Unnamed Stream	NS	50 feet	None

Geological Hazards:

A Limited Geological Reconnaissance was submitted, prepared by Resolve Environment & Geotechnical, Inc., dated March 7, 2020. Per the report, slopes near the construction area measure between 9 and 18 percent and appear to be a significant distance from a steep slope to the south leading to the wetlands. In the proposed septic area, slopes average between 18 to 23 percent.

The following hazards are mapped on the property:

- Erosion Hazard Area: Per KCC 19.400.420, the parcel is mapped as a High Erosion Hazard along the western half of the site, and Moderate Erosion Hazard area along the eastern portions. The Reconnaissance found that all observed slopes did not appear to be hazardous to health and human safety, or to be likely to have any significant effect on the construction site.
- Landslide Hazard Area: Per KCC 19.400.425, the parcel is mapped as having a potential for Shallow Landslide Hazards on the western margins. The Reconnaissance finds that the slopes should be stable for the foreseeable future, and mentions that if slopes are drained properly around the new home and are vegetated or otherwise mitigated, it will further preclude potential sliding or sloughing.

A condition of approval has been added to adhere to recommendations provided in the Geological Reconnaissance.

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

Potable water is proposed to be provided by an on-site well; sanitary sewage disposal is proposed to be provided by an on-site septic system. Prior to site development activity the applicant must provide approval for water and sewer from Kitsap County Health Department.

n. Kitsap Public Health District

No comments at this time.

11. Review Authority

The Hearing Examiner has review authority for this Critical Area Variance and Zoning Variance application under KCC Sections 19.100.135, 17.560, 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, remand, or deny a Conditional Use 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 and the zoning standards for the Rural Protection (RP) zone in Title 17.
2. The proposal meets the criteria for a critical area variance in KCC 19.100.135, as analyzed in section 10.i of this report.
3. The proposal meets the criteria 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 17.560.010, and in KCC 19.100.135, the Department of Community Development recommends that the Critical Area Variance and Zoning Variance for the Lambro Properties Buffer Reduction be **approved**, subject to the following ## conditions:

a. Planning/Zoning

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. 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.
3. The decision set forth herein is based upon representations made and exhibits contained in the project application Permit #20-03840. 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

4. Building permit applications are subject to Kitsap County Code Title 12 Stormwater Drainage and shall include a stormwater design in compliance with the provisions of the Kitsap County Stormwater Design Manual.

c. Environmental

5. The applicant shall record a Notice to Title for the proposed preservation area in the northwest 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.
6. 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.
7. Stage equipment in the previously cleared area in the west of the proposed building. Avoid staging further within the critical area buffer.
8. 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.
9. 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.

10. Unless otherwise allowed through this variance, a 110-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 15 feet is required from the edge of the buffer, unless otherwise approved by this variance.
11. The variance to the wetland buffer shall be the minimum necessary to accommodate the proposed development and in no case may exceed 50% of the required buffer.
12. The project shall adhere to the mitigation measures and recommendations within the approved Wetland Delineation Report dated August 2020.
13. The project shall adhere to recommendations of Geological Reconnaissance dated March 7, 2020. Areas on slopes or within critical area buffers which are disturbed for utilities shall be revegetated using the recommended plantings provided within the report, or as otherwise recommended by the habitat biologist.

d. Traffic and Roads

14. At building permit application, submit KCPW Form 1601 for issuance of a concurrency certificate, as required by KCC Section 20.04.030, Transportation Concurrency.

e. Fire Safety

15. None at this time.

f. Solid Waste

16. None at this time.

g. Kitsap Public Health District

17. None at this time.

Report prepared by:



Colin Poff / Project Lead

March 3, 2021
Date

Report approved by:



March 3, 2021

Scott Diener, DSE Manager

Date

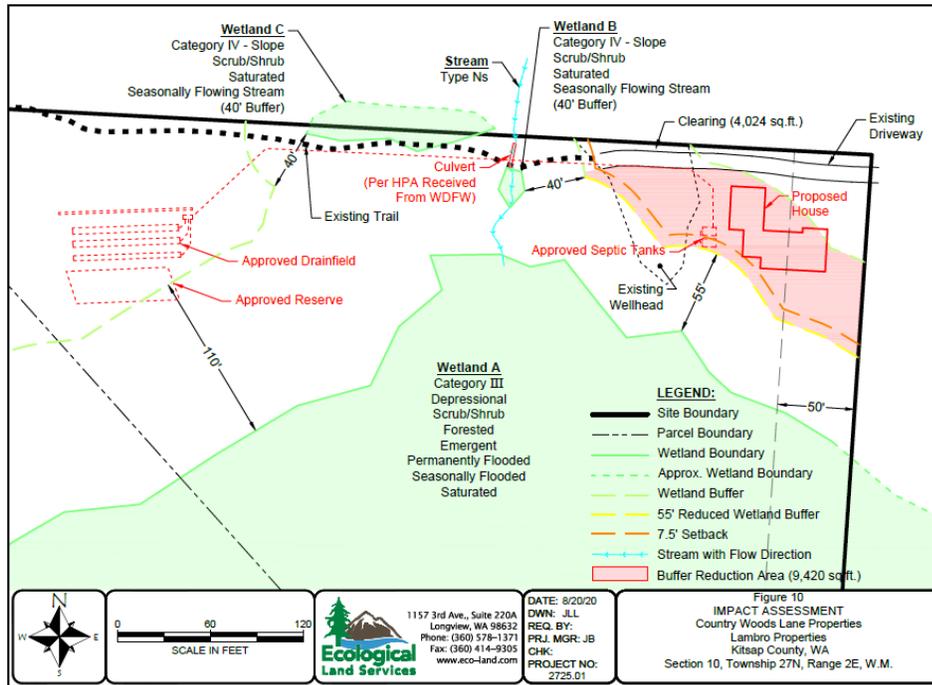
Attachments:

Attachment A – Zoning Map

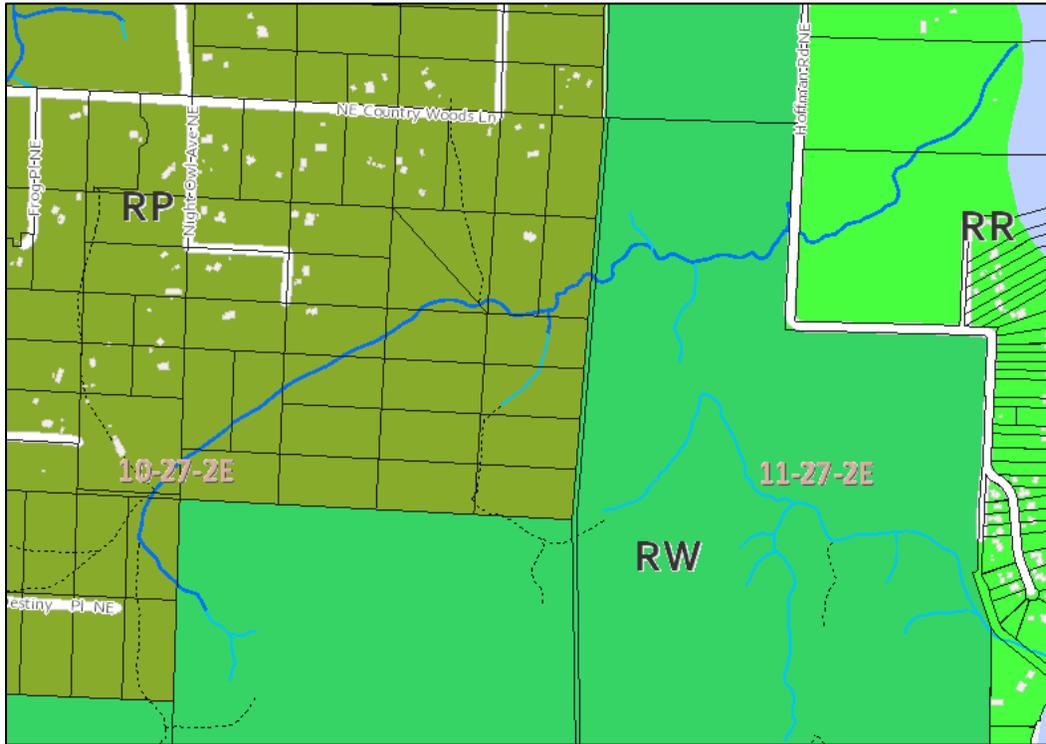
Attachment B – Proposed Preservation Area

CC: Lambro Properties LLC: mike@lambroconstruction.com
ADM Architecture: Aaron Murphy: aaron@adm-architecture.com
Ecological Land Services: Joanne Bartlett: Joanne@eco-land.com
Interested Parties: N/A
Kitsap County Health District, MS-30
Kitsap County Public Works Dept., MS-26
DCD Staff Planner: Colin Poff

Site Plan



Attachment A – Zoning Map



Attachment B – Proposed Preservation Area

