



Hearing Examiner Staff Report and Recommendation

Report Date: December 1, 2022
Hearing Date: December 8, 2022

Application Submittal Date: November 19, 2021
Application Complete Date: January 27, 2022

Project Name: Jochimsen/Conner – Zoning Variance – Hearing Examiner (> 25%)
Type of Application: Type III
Permit Number: 21-05876

Project Location

Nearest Intersection – Ansell Rd & NW
Seclusion Cove Way
Lofall, WA
Commissioner District 1 (North)

Assessor's Account

282701-1-048-2004

Applicant/Owner of Record

Diane Jochimsen & Michael Conner
10404 124th St NE
Arlington, WA 98223

Recommendation Summary

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

VICINITY MAP



1. Background

The applicant wishes to establish a dwelling, single family detached, which is allowed in the Rural Residential (RR) zoning designation. However, a landslide occurred on January 4, 2021 at the property and immediately west, and the parcel is constrained by critical areas, most notably steep slopes and landslide potential. Establishing a structure on the parcel requires locating it within the minimum front zoning setback of 50 feet to reduce the disruption to these critical areas and address public health, safety, and welfare (see Attachment A – Site Plan). The proposal uses these site constraints and historic geological activity to meet the criteria in KCC Section 17.560.010 Conditions for granting a variance.

2. Project Request

The applicant proposes to reduce the front setback from 50 feet to 17 feet 7 inches (66% variance) which will allow for the construction of a new single-family home on parcel with a Rural Residential zoning (RR) designation (see Attachment B – Zoning Map). The request for

a 50% reduction of the zoning setback requires a Type III process with Hearing Examiner approval per KCC Section 21.04.100 Review Authority Table.

3. SEPA (State Environmental Policy Act)

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

4. Physical Characteristics

The site is an undeveloped somewhat rectangular-shaped 3.26-acre lot. Approximately 25% of the southeastern portion of the site slopes slightly down to the northwest. The remaining 75% of the site slopes down to the Ordinary High Water Mark (OHWM) with a much greater angle of repose than the upper 25% (see Attachment C – Washington State Department of Ecology Shoreline Photo and Attachment D – Site Exploration Plan).

Table 1 - Comprehensive Plan Designation and Zoning

Comprehensive Plan: Rural Residential Zone: Rural Residential (RR)	Standard	Proposed
Minimum Density	N/A	N/A - Subject property is an existing lot.
Maximum Density	1 dwelling unit/5 acres	
Minimum Lot Size	5 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

Table 2 - Setback for Zoning District

	Standard	Proposed
Front (South)	50 feet	17 feet 7 inches
Side (East)	20 feet 5 feet for accessory structures	20 feet 5 feet for accessory structures
Side (West)	20 feet 5 feet for accessory structures	20 feet 5 feet for accessory structures
Rear (North)	20 feet 5 feet for accessory structures	20 feet 5 feet for accessory structures

Table 2 - Applicable Footnotes:

The following sub-section of KCC 17.420.060.A applies to this request:

48. Shoreline properties are subject to Title 22 and may have additional buffers and setbacks requirements not listed in the density and dimension tables. Properties constrained by critical areas are subject to Title 19 and may have additional buffers and setbacks requirements not listed in the density and dimension tables. Cornices, canopies, eaves, belt courses, sills, bay windows, fireplaces or other similar cantilevered features may extend up to twenty-four inches into any required yard area. In no case shall a habitable area be considered for encroachment into a required yard through any land use process. Additionally, fire escapes, open/uncovered porches, balconies, landing places or outside stairways may extend up to twenty-four inches into any required side or rear yards. Open/uncovered porches, balconies, landing places, or outside stairways shall not extend more than six feet into any required front yard and shall be a minimum of five feet from the front property line.

Table 3 - Surrounding Land Use and Zoning

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

Table 4 - Public Utilities and Services

	Provider
Water	Private well
Power	Puget Sound Energy
Sewer	Onsite septic
Police	Kitsap County Sherriff
Fire	North Kitsap Fire & Rescue
School	North Kitsap School District #400

5. Access

Ansell Road NW, a County-maintained road, provides direct access to Seclusion Cove Way NW, a private easement, which provides direct access to the project site.

6. Site Design

The attached site plan shows the primary dwelling, garage, septic fields, well location,

and topography of the site. The proposed construction exists more than 200 feet from the approximate Ordinary High Water Mark (OHWM). Generally the site design locates a proposed single family dwelling within approximately 16 feet from the southern property line. This variance request allows the applicant to shift the design such that the structures are further from the top of the steep slopes and shoreline.

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 Goal 13. Protect Kitsap County's unique rural character.

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.

Land Use Policy 54. In accordance with RCW 36.70A.070(5)(c):

- *to preserve rural character of the County, emphasize controlling rural development; assuring visual compatibility of rural development with the surrounding rural area,*

- *reduce the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area,*
- *protect critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources, and,*
- *protect against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.*

This policy is implemented through Comprehensive Plan Land Use designations, zoning designations, and zoning code provisions.

Land Use Policy 55. Encourage development practices and design standards for the rural area, such as minimizing changes in grade from pre-development site conditions in order to maximize native vegetation retention.

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
Title 22	Shoreline Management Program
Chapter 18.04	State Environmental Policy Act (SEPA)
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. The index to the record consists of exhibits 1-16.

Exhibit #	Document	Dated	Date Received
1	STAFF REPORT		
2	SFR Elevations and Floor Plans Waiver		01/27/2022
3	Permit Questionnaire	11/19/2021	01/27/2022
4	Landslide Description		01/27/2022
5	Health Department Waiver		01/27/2022
6	Notice of Application	04/12/2022	
7	Public Comment: Beverly Higgins	04/18/2022	04/20/2022
8	Public Comment: Duane Delong	04/24/2022	04/25/2022
9	Public Comment: Rich Sardov	04/26/2022	04/26/2022
10	Updated Project Narrative		10/19/2022
11	Updated Site Plan	09/06/2022	10/19/2022

12	Geotechnical Report	07/22/2022	10/19/2022
13	Notice of Public Hearing	11/02/2022	
14	Certification of Public Notice	11/08/2022	
15	Staff Presentation		
16	Hearing Sign In		

9. Public Outreach and Comments

A Notice of Application (Exhibit 6) was distributed pursuant to Title 21 *Land Use and Development Procedures*, which provided recipients with project information and an opportunity for public comment.

The Department received three public comments (see Exhibits 7-9).

Issue Ref. No.	Summary of Concern (See corresponding responses in the next table)	Comment Letter Exhibit Reference No.
1	Did not receive a notice of application.	9
2	Disapprove of the zoning variance.	7, 8, 9
3	The slopes are destabilized in this area and the development of this parcel will increase the risk to this property and surrounding properties. Past assessments revealed that development should not occur on the parcel. Currently the slopes are cracking at the surface which indicates that development will become a safety factor.	7, 8, 9
4	Tree removal will reduce the ability of vegetation to remove water from the soil, thus increasing the risk to slope integrity. Past slides occurred after large trees were removed from parcel.	9
5	Ospreys use the trees on and near the site, cutting them down will affect the wildlife.	11

Issue Ref. No.	Issue	Staff Response
1	Noticing	The notice of application is sent to neighbors in the immediate vicinity of the project site (within 800’).
2	Disapprove the variance	The proposal meets Kitsap County Code (KCC) KCC Section 17.560.010 Conditions for granting a variance. See Section 10.a. of this report for specific answers regarding response to the criteria.

3	The site should not be developed due to the geological hazards present.	Kitsap County Code (KCC) Chapter 17.410 ‘Allowed Uses’ allows for the construction of a single family dwelling, detached (Categorical Use 120). The Department recognizes the geological hazards, from past and current evidence, and requires that construction meet all mitigation measures proposed in the geotechnical report (see section 10.i of this report).
4, 5	Tree and brush removal, slope stability and wildlife	<p>Tree and brush removal must comply with KCC Title 19 ‘Critical Areas Ordinance’ and KCC Title 22 ‘Shoreline Management Program’. In critical areas, including shorelines, tree removal can only occur through danger tree removal performed by a certified arborist. In advance of removal, the Department conducts a site evaluation to confirm danger trees meet the definition established by KCC 19.150.230.</p> <p>19.150.230 Danger trees. “Danger trees” means any tree of any height, dead or alive, that presents a hazard to the public, public utility, or permanent structure because of rot; root, stem or limb damage; lean; or any other observable condition created by natural process or manmade activity determined by a certified arborist, or by the department through a danger tree site evaluation permit.</p>

10. Analysis

a. Planning/Zoning

Per KCC 17.560.010 requests for a variance must meet four criteria to be considered for approval. Analysis of the criteria and the applicant’s responses is included below:

A. 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.

Applicant response: We are requesting the setback due to a landslide that occurred at NW Seclusion Cove Way on our property and on the western adjacent property on January 4, 2021. The landslide reduced the buildable area on our property to one-third of an acre.

Prior to the slide, the 3+ acre property had a building site area that is no longer available. Current buildable area is triangular with the NW side facing the water. The base of the triangle (closest to the road) is 215’ from the SE property corner westward. The right side of the triangle is 165’ long from the SE corner point. The left side of the triangle is 190’. The angle between the base of the triangle and the right side is 56 degrees. The approximate area of this triangle is 15,080, or .3462 of an

acre. From the SE corner of the triangle to the NW the lot slopes down from 170' to 150'. The scarp follows, approximately, the left side of the triangle. We would like to build as far away from the scarp and as close to the south (SE property corner) as possible. A geotechnical inclinometer, 100 ft. deep, was installed at approximately the 164' topographical interval from the SE corner of the property and has shown no movement to date. Thus, the farther southeast, into this corner we can place the residence, the safer the building will be, and less foundation improvements would be needed.

Staff comment: The developable area of this property is severely restricted by critical areas, easements, and other buffers imposed by the zoning and development of the property. About 75% of the property is encumbered by steep slopes and landslide potential. Washington State and Kitsap County prioritize maintaining critical areas with associated vegetative buffers and building setbacks over zoning setbacks. Critical areas on the project site justify the requested reduction to the front zoning setback.

B. 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.

Applicant response: We are in the process of retiring and purchased the property to construct an adequately size safe home with peaceful scenery and a relaxing atmosphere. The allowance of the variance would us to construct a home to fit our needs as they age-in-place. The variance would provide additional distance from the scarp given that the house could be built further from the steep slope. The variance would furthermore ensure that they can enjoy the view from their property during their retirement and feel safe. The home will not be as grandiose as some of the homes in the NW Seclusion Cove Way neighborhood nor as modest as some.

Staff comment: A reduced front setback allows the applicant to construct a single family detached dwelling and garage, which are allowed uses in the Rural Residential zoning designation. Adjacent properties are developed with single family detached residences and garages as well. Therefore, this variance allows development consistent with owners of other properties in the vicinity.

C. 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.

Applicant response: Access to the property is via a private easement for road purposes: reference Kitsap County Auditor's File No 3129769. Due to the easement, a variance allowance for the proposed building site would not be intrusive to the neighbor across the road south of the property #1751. The road is to the south of the

easement. The variance would not infringe on the building site of the neighbor on the NE side (#1720).

Prior to building, the owners will install a soldier pile wall at the recommendation of the their (sic) Geotech engineer. Without the variance, to protect the building will require more technical expertise and engineering and would cause considerable additional cost to the owners. The owners have had several conversations with their geotech engineer and she has said that not being able to move the house as far from the scarp as possible would make building the house cost prohibitive. Additionally, it would add a measure of security and peace of mind. Currently the owners are trying to protect additional slide problems by removing non-native blackberries and planting numerous native plants. This is requiring a lot of time and effort as most of this is done by hand.

Staff comment: The reduced setback for this use reduces the potential hazards to public welfare or other property in the vicinity. Without the variance, development must occur closer to areas where landslides occurred which could increase the geological hazard risk to public welfare or other property in the vicinity.

D. The variance is the minimum necessary to grant relief to the applicant.

Applicant response: Our property, parcel # 282701-1-048-2004, is considered rural residential and currently requires a 50-foot setback from the front lot line for a residential building. We (the owners) are requesting a 50-foot setback from the road. Per Brochure # 47, page 2, Front Yard Requirements Exceptions, Lots Served by Private Easements: Parcel # 282701-1-048-2004 may have the front yard setback measured from the edge of the road easement and not the property line. This variance request is for a 64.6% variance reduction (a 17.7' setback) from the property line. A reduction will not be needed for the side setbacks. We are requesting the setback due to a landslide that occurred at NW Seclusion Cove Way on our property and on the western adjacent property on January 4, 2021. The landslide reduced the buildable area on our property to one-third of an acre.

Staff comment: This variance request to reduce the zoning setback will be the minimum necessary to construct the proposed single family detached dwelling and garage. The property is severely encumbered by easements, no-build areas, and critical area buffers.

b. Lighting

Lighting was not analyzed as part of this proposal.

c. Off-Street Parking

Off-street parking of three parking spaces is consistent with KCC Section 17.490.

Table 5 - Parking Table

Use Identified in 17.490.030	Standard	Required Spaces	Proposed Spaces/Existing Spaces
Single Family Dwelling, Detached	3 spaces per dwelling unit	3 spaces per dwelling unit	3 spaces per dwelling unit
Total	3 spaces per dwelling unit	3 spaces per dwelling unit	3 spaces per dwelling unit

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.

i. Environmental

The project site includes shoreline and geological critical areas.

Kitsap County Geographic Information Systems (GIS) allow the Department to determine the approximate location of an Ordinary High Water Mark (OHWM). The proposed structure is located more than 200 feet away from the OHWM. Therefore, KCC Title 22 ‘Shoreline Management Program’ does not apply other than to further incentivize moving the proposed development towards the front property line (south). Furthermore, no streams or wetlands exist within 200 feet of the proposed development.

According to the geotechnical report submitted with the permit (Exhibit 12):

“The steep slope north of the Project area is about 125 feet tall. The County’s Critical Areas Ordinance (CAO) standard buffer and building setback associated with a steep slope would be a 125-foot buffer plus a 42-foot building setback for a total standard setback of 167 feet from the top of the slope (19.400.435(A)(2)(a); County, 2019).”

“Based on current observations of the areas of failure on the Site, we estimate the current landslide extends about 550 feet east-to-west and 100 feet north-to-south and covers an area about 3 acres in size covering the northwestern portion of the Site and the western adjacent parcel (1881). Our review of aerial photographs of the Site local area from 1951 through 2018 (Ecology, 2020; Google, 2022; NETR, 2021) indicates that failures have been ongoing throughout this time period by evidence of areas of fallen trees and exposed soils. This area will continue to experience landslide movements and the failures will likely propagate further to the south. The timeframe and magnitude of the next failure is unknown.”

Only a geotechnical report can allow construction within areas with landslide or seismic hazards. Per KCC Section 19.700.725 A.1. Geotechnical reports shall be prepared by a geotechnical engineer (defined at Section 19.150.365).

Kitsap County Code (KCC) Section 19.150.365 “Geotechnical engineer” means a practicing geotechnical/civil engineer licensed as a professional civil engineer with the state of Washington, with professional training and experience in geotechnical engineering, including at least four years’ professional experience in evaluating geologically hazardous areas.

A geotechnical engineer-prepared report ensures that the structural engineering needed to maintain the health, safety, and welfare is included in the report as conditions of approval to develop a given area. As a condition of approval, this project must comply with all mitigation measures of the geotechnical report prepared by Aspect Consulting (see Exhibit 12). The conditions of approval identified in the report include construction methods and materials, property use constraints, detailed monitoring and contingency plans to address slope instability as a result of this development. For example:

- a soldier piling wall with tie back anchor supports.

- structural reinforcements of various types within the residence and garage.
- importing structural fill.
- notifying the engineer if certain conditions are encountered during construction.
- Installation of necessary equipment to monitor during and after construction occurs.
- A monitoring program and activity plan should additional land movement occur.

j. Access, Traffic and Roads

Ansell Road NW, a County-maintained road, provides direct access to Seclusion Cove Way NW, a private easement Kitsap County Auditor's File No 3129769, which provides direct access to the project site. The applicant proposes a driveway within the access easement which enters the site from the southern property line.

k. Fire Safety

No comments at this time.

l. Solid Waste

No comments at this time.

m. Water/Sewer

Potable water is provided by a private well; sanitary sewage disposal is provided by an on-site septic system.

n. Kitsap Public Health District

No comments at this time.

11. Review Authority

The Hearing Examiner has review authority for this Zoning Variance application under KCC 21.04.100. The Hearing Examiner may approve, approve with conditions, remand, or deny a Zoning 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 in KCC Chapter 2.10.

12. Findings

1. The proposal is consistent with the Comprehensive Plan and the zoning standards for the Rural Residential (RR) zone in KCC Title 17.
2. The proposal meets the criteria for a critical area 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, the Department of Community Development (DCD) recommends the Zoning Variance be **approved**, subject to the following conditions:

a. Planning/Zoning

1. Review the linked Hearing Examiner decision for conditions of approval. The Staff Report conditions below are only recommended conditions to the Hearing Examiner and may not be valid.
2. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
3. This Variance approval shall automatically become void if no building permit application is accepted as complete by the DCD within four years of the Notice of Decision date or the resolution of any appeals.
4. The decision set forth herein is based upon representations made and exhibits contained in the project application. 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.
5. 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.
6. Approval is subject to the conditions of the geotechnical report associated with this permit and on file at the Department of Community Development (Aspect Consulting July 27, 2022).
7. A Notice to Title shall be recorded with the Kitsap County Auditor prior to issuance of a final occupancy associated with any subsequent building permits.

Report prepared by:



Darren Gurnee / Project Lead

November 22, 2022

Date

Report approved by:



Scott Diener, DSE Manager

November 28, 2022

Date

Attachments:

Attachment A – Site Plan

Attachment B – Zoning Map

Attachment C – Washington State Department of Ecology Shoreline Photo

Attachment D – Site Exploration Plan (source - Geotechnical report)

CC: Applicant

Interested Parties:

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Kitsap County Health District, MS-30

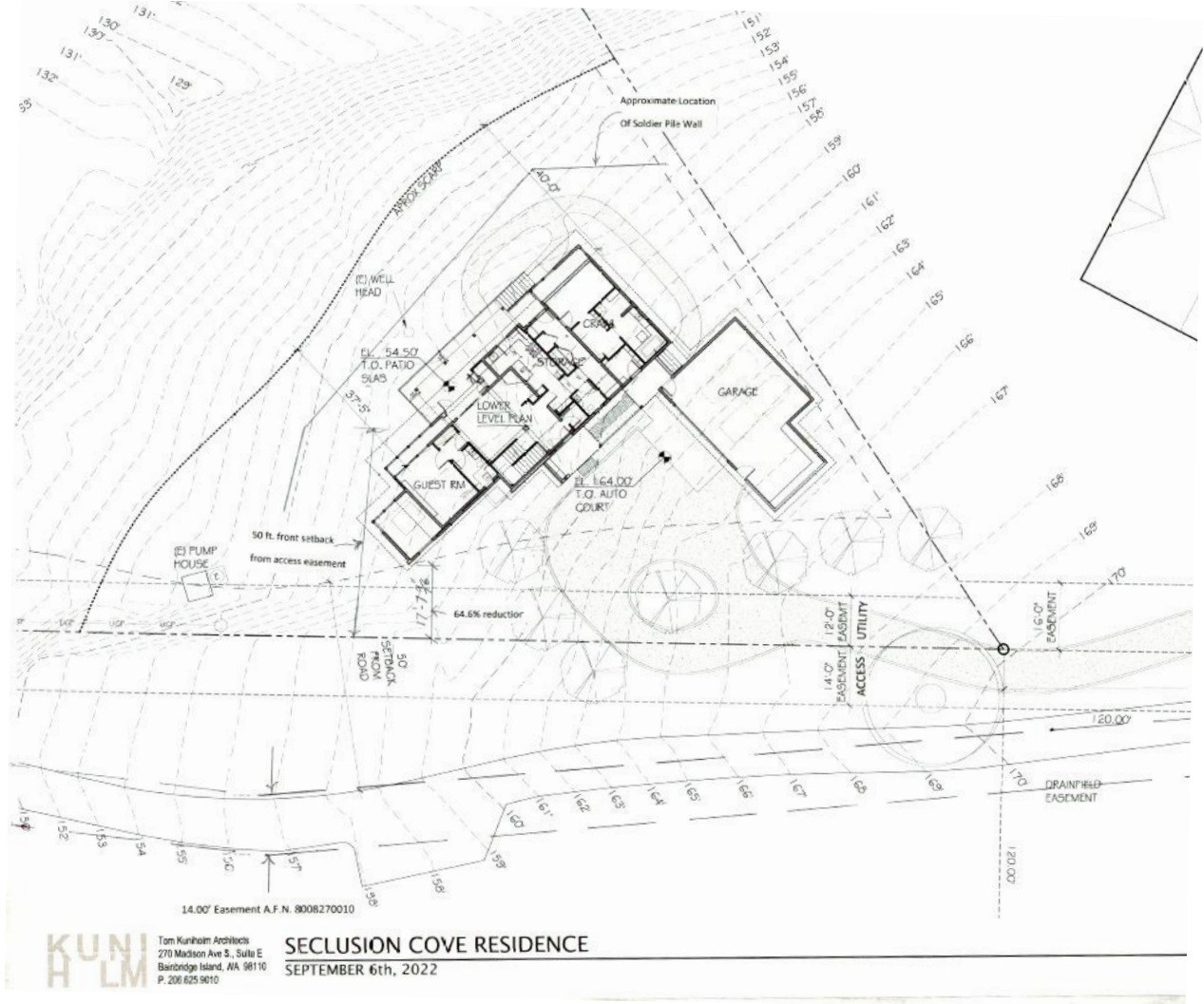
Kitsap County Public Works Dept., MS-26

DCD Staff Planner: Darren Gurnee

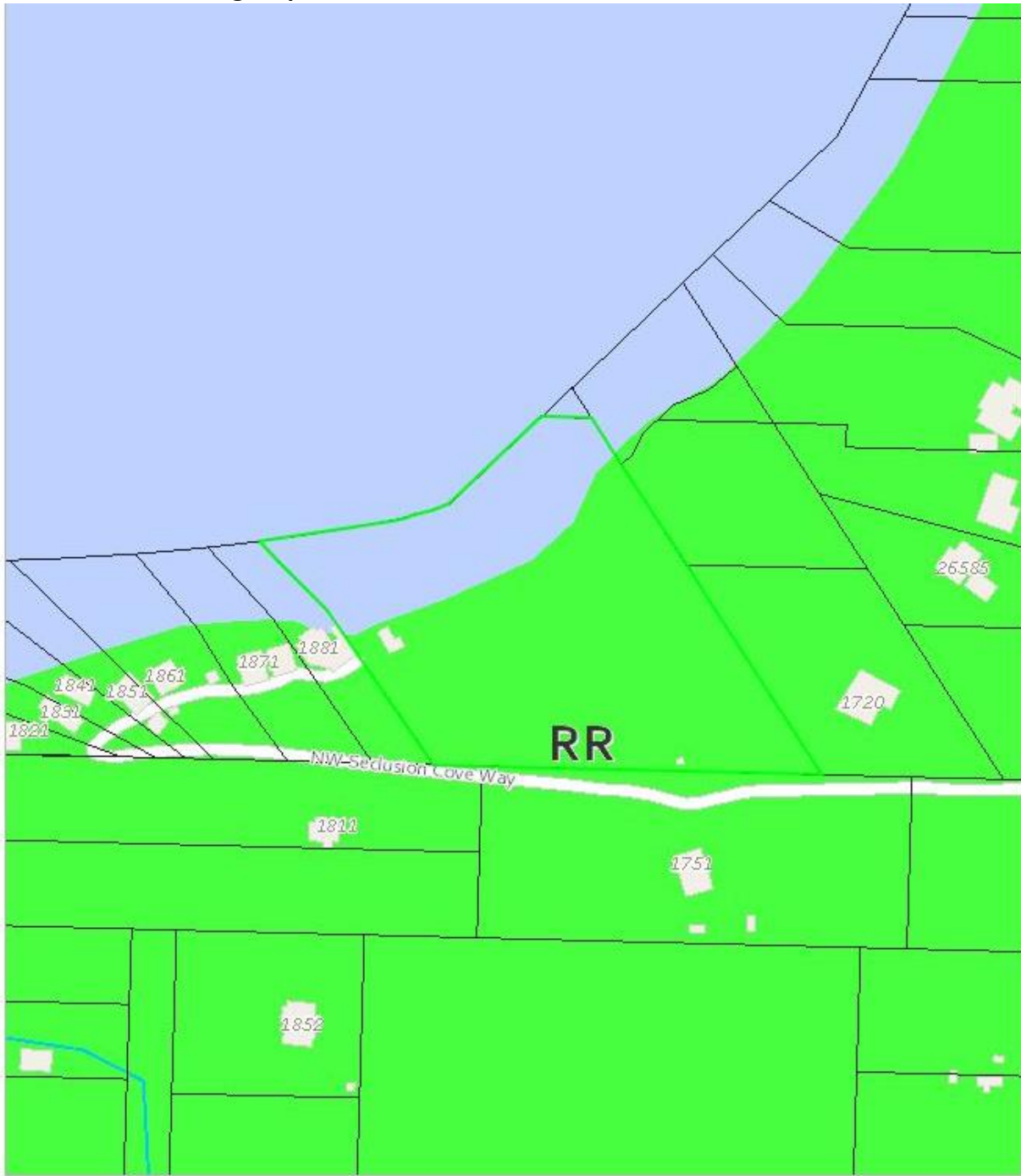
DCD File

DCD Building Permit File

Attachment A – Site Plan



Attachment B – Zoning Map



** This map is not a substitute for field survey **

0 100 200ft

Attachment C – Washington State Department of Ecology Shoreline Photo



Attachment D – Site Exploration Plan (source - Geotechnical report)

