

**BEFORE THE HEARING EXAMINER
FOR SKAMANIA COUNTY**

In the Matter of the Application of)	NO. CU-17-02 ()
)	
Steven Epling,)	Naked Falls Campground
Go River LLC)	
)	
For a Conditional Use Permit)	FINDINGS, CONCLUSIONS, AND
)	DECISION
_____)	

SUMMARY OF DECISION

The request for a conditional use permit to develop and operate a private day use recreation area and campground at Naked Falls is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Steven Epling of Go River LLC (Applicant) requested a conditional use permit (CUP) to develop and operate a private day use recreation area and campground at Naked Falls on the Washougal River.

Hearing Date:

The Skamania County Hearing Examiner held an open record hearing on the request on March 19, 2018.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

- Andrew Lembrick, Land Use Planner, Skamania County
- Alan Peters, Assistant Planning Director, Skamania County
- Steven Epling, Applicant
- Dan Huntington
- Chess Gunderson
- Tim Bobosky
- Brian Haot

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Exhibits:

The following exhibits were admitted in the record:

1. Staff Report and Recommendation to the Hearing Examiner, with the following attachments:
 - A. Project application packet
 - a. Vicinity map
 - b. Project plan
 - c. Application
 - B. Notices
 - a. Notice of Intent to issue SEPA Mitigated Determination of Non-Significance
 - b. Notice of Intent sent to adjacent property owners and parties of interest
 - c. Certificate of mailing
 - C. Public hearing notice
 - a. Vicinity map
 - b. Notice of Public Hearing sent to adjacent property owners and parties of interest
 - c. Certificate of mailing
 - D. Minimum standards for fire pit
 - E. Easement Agreement, Auditor's File Nos. 2017000540, 2017000541

Upon consideration of the testimony and exhibits admitted in the record, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant requested a conditional use permit to develop and operate a private day use recreation area and campground at Naked Falls on the Washougal River. The subject property is located within the southeast quarter and south half of the northeast quarter of Section 1, Township 2 North, Range 5 East, W.M. and is identified as Tax Parcel No. 02-05-00-0-0-0101-00. *Exhibit 1, page 1.*
2. The subject property is 130.98 acres in area and is located on the east side of DNR Road W-2000 at the area known as Naked Falls. The proposed camp sites and associated development would occupy an approximately 20-acre area on the east side of the Washougal River. *Exhibit 1.A.*

3. The Applicant proposes ten tent camp sites with dimensions ranging from approximately 100 to 400 square feet. Each camp site would include a fire pit, a picnic table, and sufficient area for up to three tents and parking for two vehicles. Other campground amenities would include: separate men's and women's restrooms, including a toilet, sink, and shower for each gender (both restrooms would be housed in a single building); a well and septic system; a 576 square foot camp host cabin with bathroom and kitchen; an approximately 200 square foot storage shed/camp office; a 200 square foot camping cabin (as a tent alternative); a tree house; and two 20-space day use parking areas. *Exhibits 1 (page 2) and 1.A.*
4. The historic use of the Naked Falls area, including the subject property, has been for recreation and camping, and the area already contains some cleared tent sites and fire pits. However, in 2016 the former owner - Weyerhaeuser - restricted access due to nuisance complaints, trespassing, and other safety issues. The Applicant submitted that the proposed recreation use, which would require visitors to purchase day use or camping permits and would include the oversight of a camp host, would protect against the problems that occurred when use of the site was unregulated. *Exhibits 1 (page 2) and 1.A; Steven Epling Testimony.*
5. The subject property is zoned West End Commercial Resource Lands 40 (WE-CRL40). The purpose of the WE-CRL40 zone is to protect forest, agricultural, and mineral resource lands of long-term significance. Recreation facilities are allowed in the WE-CRL40 zone with approval of a CUP. However, because residential uses are not allowed, County Planning Staff recommended as a condition of approval that the proposed camp host cabin be limited to use by the camp host in conjunction with the recreation use and not be used as a single-family residence. The cabin would need to remain vacant or would need to be modified to remove the kitchen if the recreation use of the subject property were abandoned. *Exhibit 1, pages 13-15; SCC 21.67.100; Alan Peters Testimony.*
6. Surrounding parcels consist primarily of commercial forest lands, including lands owned by the State of Washington, private timber companies, and private landowners. The Dougan Creek Campground, which is operated by the Washington Department of Natural Resources, is located approximately 1.5 miles south of the subject property. *Exhibits 1 (pages 9-10) and 1.A.*
7. The subject property is located within the West End Community comprehensive planning subarea, and the land use designation is Commercial Resource Lands 40. The West End Community Comprehensive Plan specifies that recreation uses should be conditional uses in the Commercial Resource Lands 40 land use designation and does not contain any policies that conflict with the instant proposal. The Applicant does not intend to remove timber from the property; the natural features of the property would be preserved, with the exception of limited clearing for the septic drainfield and removal of underbrush from campsites. *Exhibits 1 (page 20) and 1.A.*
8. The subject property is located within the Dougan Falls Recreation Safety Corridor and is subject to the requirements of Skamania County Code Chapter 8.60. These regulations

allow camping and fire pits in County approved private campgrounds such as the one proposed. Otherwise, activities in the Safety Corridor are restricted to daytime only. Discharge of firearms and use of fireworks is prohibited, as is alcohol use unless the private campground establishes and enforces rules concerning the use and possession of alcohol. County Planning Staff recommended as a condition of approval that the Applicant develop camp rules consistent with SCC 8.60. *Exhibit 1, pages 15-17.*

9. The Applicant proposes policies to limit the camping check in/check out hours to occur between 9:00 a.m. and 10:00 p.m., to require advance booking, to limit the number of day use passes sold to the number of parking spaces available, and to install signs restricting fires to designated fire pits. County Planning Staff submitted minimum standards for fire pits as a reference. *Exhibits 1.A and 1.D.*
10. Access to the site would be from Road W-2000, which has a 60-foot wide right-of-way easement in the area of the subject property and has capacity to accommodate additional traffic. Due to the historic recreational use of the subject property, however, the proposal is not expected to add a significant amount of traffic. The day use parking areas are expected to improve road conditions; in the past, visitors would park on W-2000 and cause blockages. *Exhibits 1 (page 11), 1.A, and 1.E.*
11. There are several different categories of environmentally sensitive areas on the subject property, including a Class II Landslide Hazard Area, a Class I Erosion Hazard Area, a Class III stream (Reeder Creek) requiring a 100-foot buffer, an unnamed Class V stream requiring a 25-foot buffer, and the Washougal River, which is regulated under the Shoreline Management Act and requires a 100-foot buffer. Development activities exceeding \$6,412 within 200 feet of the Washougal River are subject to shoreline substantial development permit review. *Exhibit 1; Alan Peters Testimony.* With the instant proposal, all development would be outside of required critical area buffers or would be exempt from the buffer restrictions (i.e., maintenance of existing established tent camp sites). The proposed septic drainfield would be more than 200 feet from the Washougal River and from Reeder Creek. County Planning Staff recommended several conditions of approval designed to ensure critical area protection and which require the Applicant to submit a geotechnical assessment for structures exceeding 120 square feet, use best management practices to minimize erosion, and obtain critical areas permits for any non-exempt development within the stream buffers. *Exhibits 1 and 1.A; Alan Peters Testimony; Steven Epling Testimony.*
12. The Applicant obtained a well permit and, as of the date of the hearing, the well had already been drilled. *Steven Epling Testimony.*
13. Pursuant to the State Environmental Policy Act, Skamania County assumed the role of lead agency for review of the proposal's potential adverse environmental impacts. After reviewing the SEPA environmental checklist and other information on file, the County's Responsible Official determined that, with conditions, the proposal would not have a probable significant adverse impact on the environment and issued a mitigated determination of non-significance (MDNS) on February 21, 2018. The MDNS contains

measures to prevent erosion, comply with applicable critical area buffering requirements and water/septic system requirements, and protect any cultural resources encountered during site development. *Exhibit 1.B.*

14. Notice of the public hearing was published in the *Skamania County Pioneer* on February 28, 2018 and mailed to property owners within 500 feet and posted on the County's website on February 21, 2018. *Exhibits 1 (page 3) and 1.C.*
15. Public comment was in favor of the application, due to interest in the use of the recreation site and the potential for improved conditions (e.g., less litter, less parking in the roadway, sanitation, etc.). *Testimony of Dan Huntington, Chess Gunderson, Tim Bobosky, and Brian Haot.*

CONCLUSIONS

Jurisdiction:

Pursuant to SCC 21.16.070(A) and SCC 21.16.080(A), the Hearing Examiner has jurisdiction to hear and decide applications for conditional use permits.

Criteria for Approval:

The criteria for approval of a conditional use permit are set forth in SCC 21.16.080(A):

Conditional uses are those uses which may or may not be compatible with permitted uses in a specific zoning designation. If the hearing examiner determines that the use is not compatible with permitted or existing uses in the specific area of the proposed use, then the proposed use shall be denied. Alternatively, if the hearing examiner determines that the proposed use is compatible with permitted and existing uses in the specific area of the proposed use, then the proposed use may be approved or approved with conditions to make it compatible with the area.

1. In determining whether the use is compatible with the area, the proposed use shall:
 - a. Be either compatible with other uses in the surrounding area or be no more incompatible than are other outright permitted uses in the applicable zoning district;
 - b. Not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with other permitted uses in the applicable zoning district;
 - c. Not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with other permitted uses in the applicable zoning district;
 - d. Be supported by adequate service facilities and would not adversely affect public services to the surrounding area;
 - e. Not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height

- of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district
- f. Not be in conflict with the goals and policies expressed in the current version of the county's comprehensive plan.
2. Criteria for determining conditions to be imposed on conditional uses shall be based on the health, safety and general welfare of the public, any environmental standards in force in Skamania County, and other applicable provisions set forth in this title and shall be subject to conditions which may include, but are not limited to, the following:
- a. Limiting the manner in which the use is conducted including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.
 - b. Establishing a special yard, open space, lot area or lot dimensions.
 - c. Limiting the height, size, or location of a building or other structure.
 - d. Designating the size, number, location, and nature of vehicle access points.
 - e. Increasing the amount of street dedication, roadway width or improvements within the street right-of-way.
 - f. Limiting or otherwise designating the number, size, location, height and lighting of signs.
 - g. Limiting the location and intensity of outdoor lighting and requiring it to be shielded.
 - h. Requiring berming, screening, landscaping or another facility to protect adjacent or nearby properties and designating standards for its installation and maintenance.
 - i. Designating the size, height, location and materials for a fence.
 - j. Protecting and preserving existing trees, vegetation, water resources, wildlife habitat or other significant natural, historic, or cultural resources.

Additional Applicable Code Sections:

SCC Chapter 8.60: Dougan Falls Recreation Safety Corridor

8.60.010 Creation of Dougan Falls recreation safety corridor.

In the interest of public safety and in order to create a safe recreational opportunity, the Dougan Falls recreation safety corridor is created. (Ord. 2005-03 (part))

8.60.020 Boundaries.

The boundaries of the Dougan Falls recreation safety corridor includes one thousand feet on either side from the centerline of the Washougal River beginning at Milepost 15.45 on the Washougal River Road continuing north to Milepost 15.75 on the Washougal River Road (Washougal River fish hatchery) and beginning again at the southern end of the Dougan Falls bridge and extending north by northeast to the area commonly known as the

“Three Corner Rock” trailhead, inclusive of the Washington Department of Natural Resources (DNR) 2000 Road. (Ord. 2005-03 (part))

8.60.030 Prohibited activities.

Notwithstanding conduct that is already prohibited by local ordinance, rule, or state statute, the following activities are expressly prohibited within this safety corridor:

- A. Use and/or possession of alcoholic beverages (except within county-approved private campgrounds where the private campground has established and enforces rules concerning the use and possession of alcoholic beverages at the campground);
- B. Discharge of firearms;
- C. Use of fireworks;
- D. Any activity including stopping or standing from one hour after sunset to one hour before sunrise (day use only);
- E. Camping (except within the designated DNR campground and county-approved private campgrounds);
- F. Campfires (except in DNR-approved fire pits within the DNR campground and approved fire pits within county approved private campgrounds). (Ord. 2017-04, 8-8-17; Ord. 2005-03 (part))

8.60.040 Fires allowed.

Other fires are permitted within the safety corridor only with a local fire department or DNR permit, upon privately owned property by the property owner, and must comply with all regulations attached thereto. (Ord. 2005-03 (part))

8.60.050 Penalty.

Any violation of this chapter is a misdemeanor and the punishment shall be as provided by Section 1.16.020 of the Skamania County Code. (Ord. 2005-03 (part))

8.60.060 Preservation of private property rights.

Nothing in this chapter shall abridge the rights of a private property landowner in the legitimate use of their property within the safety corridor except as to the discharge of firearms. (Ord. 2005-03 (part))

8.60.070 Discharge of firearms by law enforcement officers.

Discharge of firearms shall not apply to law enforcement officers in the performance of their official duty. (Ord. 2005-03 (part))

8.60.080 Severability clause.

If any provision of this chapter or its application to any person or circumstance is declared unconstitutional or invalid for any reason, such declaration shall not affect the validity of the remainder of this chapter or its application. (Ord. 2005-03 (part))

Conclusions Based on Findings:

1. As conditioned, the proposed use is compatible with the area, since private recreation use is historically associated with the subject property as well as the nearby Dougan Falls campground. The Naked Falls campground would likely offer health and safety improvements over former recreational use of the property as a result of the proposed off-road parking availability, restroom facilities, implementation of a parking and camping permit system, oversight by a camp host, and enforcement of campground rules. The anticipated traffic would not conflict with existing traffic in the area, particularly with the addition of proposed parking facilities. The use would be served by a well and septic system. The proposal would be consistent with the applicable subarea plan and would not hinder or discourage development of permitted uses; the scale and number of permanent structures would be small. If campground use were to cease, the area could easily be converted back to forestry use. There was no public comment opposing the application. *Findings 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, and 14.*
2. The conditions of approval address the requirements of the critical areas ordinance (e.g., ensuring that buffers are maintained where applicable and that geologic hazards are considered in construction of non-exempt structures); the Dougan Falls Recreation Safety Corridor regulations (e.g., enforcing day use restrictions for those not camping on-site and limiting fires to approved fire pits); and the Zoning Ordinance (e.g., ensuring that the camp host cabin is not converted to single-family residential use); and would protect the health, safety, and general welfare of the public. The conditions ensure that parking is limited to designated areas, that an emergency response plan is developed, and that the scale of the use remains consistent with the application materials. *Findings 5, 8, 9, 10, 11, and 13.*

DECISION

Based upon the preceding findings and conclusions, the request for a conditional use permit to develop and operate a private day use recreation area and campground at Naked Falls on the Washougal River on Tax Parcel No. 02-05-00-0-0-0101-00 is **GRANTED**, subject to the following conditions which apply to the Applicant and successors in interest:

1. The Applicant shall be required to submit a geotechnical assessment report for any buildings or structures within geologic hazard areas that exceed 120 square feet or require a building permit, per SCC 21A.06.
2. The Applicant shall use industry standard best management practices during development to minimize the potential for erosion.
3. The Applicant shall maintain all required critical area buffers or shall obtain a critical areas variance and/or appropriate shoreline permitting for new non-exempt development within the on-site buffers and shoreline setback.
4. The Applicant shall apply for and obtain approval for a new on-site septic system through the Skamania County site evaluation application and OSS system design and permit application process.

5. The Applicant shall apply for a water adequacy verification application and contact the Skamania County Environmental Health Division to determine if they are exempt under the State code for public water systems if the Applicant decides to provide customers with a restroom with public amenities.
6. The campground and associated facilities may only be operated in association with recreation at the Naked Falls recreational area. The campground host cabin shall only be used to accommodate lodging for an on-site campground host. The host cabin (or other structures on the property) may not be utilized as a single-family residence. In the event that the campground use is abandoned, the host cabin must remain vacant or be modified to remove the kitchen.
7. The Applicant shall be required to develop rules in accordance with Skamania County Code 8.60 as applicable to camping and recreation within the Dougan Falls Safety Corridor.
8. The day use area shall only be available from dawn until dusk. All persons and vehicles not associated with the campground will not be permitted on the premises after these hours. Rules set forth in SCC 8.60 shall apply.
9. The campground shall adhere to a policy of admission between the hours of 7 a.m. and 10 p.m. A camping reservation booked ahead of time will be required.
10. The number of camping sites shall be limited to 10, accommodating a maximum of two cars per camping space.
11. Campfires shall be restricted to designated approved fire pits (see Exhibit 1.D of hearing record - Minimum standards for fire pit). Signs will be posted stating that fires outside of approved campfire pits shall not be allowed.
12. The Applicant shall establish separate, visible permits for vehicles associated with conditional use for camping and day use.
13. The day use area will be limited to 40 vehicles per day, and the camping area will be limited to 20 vehicles per day, as proposed. A daily log shall be maintained for review by the Community Development Department and submitted within a reasonable timeframe of their request.
14. The Applicant shall apply for all necessary permits required for building and development of the campground. In conjunction with the Fire District and Sheriff, the Applicant shall develop an emergency response plan for fire, medical, and police emergencies at the parcel.

15. The Applicant shall ensure that vehicles associated with the conditional use do not block or hinder the movement of logging trucks, heavy equipment, the public, and other emergency services through the area associated with the conditional use.
16. The Applicant shall require that camping equipment be removed within 24 hours if left unattended and limit camping by any individual or group to fourteen continuous days.
17. The Applicant shall apply the minimum development standards for structures within the WE-CRL40 zone per SCC Section 21.67.100.
18. The Applicant shall ensure that parking in the day use parking area is limited to the designated parking areas, and that parking for camping is limited to two cars per site within the designated camping parking area.

Decided April 4, 2018.

By:



Sharon A. Rice
Hearing Examiner for Skamania County