

**BEFORE THE HEARING EXAMINER  
FOR SKAMANIA COUNTY**

In the Matter of the Application of	)	NO. CA-17-06
	)	
<b>Steven and Teresa Hartung</b>	)	
	)	
	)	<b>FINDINGS, CONCLUSIONS, AND</b>
For Approval of a	)	<b>DECISION</b>
<u>Critical Area Variance</u>	)	

**SUMMARY OF DECISION**

The request for approval of a critical area variance to install a culvert, driveway, and utilities within a Class V seasonal non-fish bearing stream buffer in order to provide access to Lot 2 of the preliminarily approved Hartung Acres Subdivision is **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request**

Steven and Teresa Hartung (Applicants) requested a critical area variance to install a culvert, driveway, and utilities within a Class V seasonal non-fish bearing stream buffer in order to provide access to Lot 2 of the Hartung Acres Subdivision. The subdivision received preliminary plat approval on May 23, 2017. The subject property is located at 8732 Wind River Road in unincorporated Skamania County.

**Hearing Date**

The Skamania County Hearing Examiner held an open record hearing on the request on July 16, 2018.

**Testimony**

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

- Andrew Lembrick, Planner, Skamania County
- Alan Peters, Assistant Planning Director, Skamania County
- Steve Hartung, Applicant
- Thomas Linde

**Exhibits**

The following exhibits were admitted into the record:

Exhibit 1: Staff Report, with the following attachments:

- Attachment A: Application
  - 1. Application –
    - a. Supplemental Information
    - b. Joint Aquatic Resources Permit Application Form

2. Engineer Sketches and Culvert Sizing Plan, Mark Peterson Memo, dated July 11, 2017
3. Stormwater Management Plan Revised Dated October 4, 2017 – Includes Road Plan
4. Plat Map
5. County Road Approach Permit- Haven Lane August 29, 2017
6. Email from Fish and Wildlife, Sam Kolb pertaining to Hydrologic Project Approval
7. Engineering Approval of Stormwater and Road Plan

Attachment B: SEPA Determination

1. Mitigated Determination of Non-significance, dated April 19, 2017
2. SEPA Checklist, dated March 01, 2016
3. Preliminary Plat Map, dated February 7, 2017
4. Cadastral Map – Vicinity Map

Attachment C: Publication of Notice

1. Notice of Development Review and Public Hearing, dated June 20, 2018
2. Adjacent property owners within 500 feet – Map
3. Public Notice Post Card
4. Email Notice to Pioneer, dated June 26, 2018

Attachment D: Certificate of Mailing

1. Certificate of Mailing, dated June 25, 2018
2. Email Agency Notice, dated June 20, 2018
3. Adjacent Property Owners within 500 feet and Postcard notice.
4. Notice of Development Review and Public Hearing, dated June 20, 2018

Attachment E: Site visit photos

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

### FINDINGS

1. The Applicants requested a critical areas variance to install a culvert, driveway, and utilities within a Class V seasonal non-fish bearing stream buffer in order to provide access to Lot 2 of the Hartung Acres Subdivision. The subdivision received preliminary plat approval on May 23, 2017. The subject property is located at 8732 Wind River Road in unincorporated Skamania County.<sup>1</sup> *Exhibits 1, 1.A, and 1.A.4; Andrew Lembrick Testimony.*
2. The subject property is zoned Community Commercial (CC) and Residential (R1), with a minimum residential lot area of 12,500 square feet. Land uses in the vicinity of the subject

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<sup>1</sup> The subject property is known as Tax Parcel Number 04-07-23-0-0-0900-00. *Exhibit 1.*

property consist of recreational, community commercial, residential, light industry, and forestry uses. *Exhibit 1.*

3. The preliminarily approved Hartung Acres Subdivision created one 12.36-acre lot (Lot 1) and four 0.75-acre lots (Lots 2, 3, 4, and 5). The smaller lots are clustered near the southeast corner of the subdivision so as to avoid and minimize the development's impact to critical areas. The critical areas include a Class V stream (requiring a minimum 25-foot buffer) that crosses the northern portion of the property, a Class V stream that crosses the southern portion of the property, a Class II Landslide Hazard Area (with the steepest slope in the northeast corner of the subject property, and slopes of 30 percent or greater along the eastern boundary of the subject property), and a Class I Erosion Hazard Area. Further, the subdivision provides for a 50-foot habitat buffer along the eastern property boundary, adjacent to Gifford Pinchot National Forest. The lots are configured such that the streams, steep slopes, and habitat buffer are all within the larger Lot 1, which contains a preexisting residence and accessory structures. *Exhibits 1 and 1.A.4.*
4. Access to the lots would be from Wind River Road via a new internal private road. While the proposed private road would avoid both streams, it would not be possible to construct a driveway from the road to Lot 2 without crossing the southernmost Class V stream. Without the ability to cross the Class V stream, access and utility easements would be required over adjacent property, additional road construction would be required, and the lot would require its own well and a minimum area of two acres. *Exhibits 1, 1.A.3, and 1.A.4.*
5. The culvert would be designed to contain the 100-year storm event. Based on engineering calculations, the required diameter would be 18 inches. After installation, the culvert would be covered by 26 cubic yards of rock and gravel to create the road surface. Per conditions of approval recommended by Planning Staff, temporary and permanent erosion control measures would be implemented at the site (including slope netting, berms, tree protection, sediment barriers, etc.) and disturbed areas would be replanted with native riparian vegetation within 90 days of alteration. *Exhibits 1, 1.A.1, and 1.A.2.*
6. The proposed culvert installation would not require a hydraulic project approval (HPA) from the Washington Department of Fish and Wildlife. *Exhibits 1 and 1.A.6.*
7. The Applicant has obtained a County road permit for the proposed private road. The conditions of the permit require the Applicants to use best management practices to prevent erosion and the discharge of sediment-laden runoff or other pollutants to waters of the state. *Exhibit 1.A.5.* The County Engineer has reviewed and approved the Applicants' stormwater management plan. *Exhibits 1.A.3 and 1.A.7.*
8. Skamania County evaluated the environmental impacts of the subdivision pursuant to the State Environmental Policy Act (SEPA, RCW 43.21C), and issued a mitigated determination of non-significance (MDNS) on April 19, 2017. The MDNS specified that a critical areas variance would be required for the proposed stream crossing and bank restoration. *Exhibit 1.B.1.*

9. Notice of the public hearing on the critical areas variance application was mailed to property owners within 500 feet of the subject property on June 25, 2018, published in *Skamania County Pioneer* on July 4, 2018, and published on the County website on June 20, 2018. *Exhibits 1 and 1.C.*
10. At the hearing, public comment was offered by a neighboring landowner concerned that the nearby landslide hazard be included in the record. Thomas Linde testified that his concern related to the proposed stream crossing due to the fact that the property is so near the historic major landslide on nearby forest service land. Mr. Linde clarified that he is not opposed to project; he just wanted the potential landslide hazard to be in the record, as the culvert is to accommodate a seasonal stream leading down from the historic slide. In a rain on snow event, the stream is a flood zone, but otherwise it is pretty much dry. *Thomas Linde Testimony.*
11. At least two roads already cross the stream. *Andrew Lembrick Testimony.* In response to public comment, Planning Staff noted that the proposed culvert would have less impact and pose less threat to private property than do the existing non-culverted stream crossings. *Alan Peters Testimony.*
12. Applicant Steven Hartung testified that they want to preserve as much of the critical area buffer and function as possible and to maintain the area as a pleasant habitat. He submitted that the proposed culvert would be an improvement over the existing condition. The Applicants acknowledge the requirement to submit a landscaping plan prior to culvert installation should their permit be approved and waived objection to the remaining conditions of approval. *Steven Hartung Testimony.*

## CONCLUSIONS

### **Jurisdiction:**

The Hearing Examiner is granted authority to conduct hearings and make decisions on critical areas variances pursuant to SCC 2.80.060(A)(9).

### **Criteria for Review:**

Pursuant to SCC 21A.04.030(3), an applicant for a critical areas variance to reduce a stream buffer by more than 50 percent must demonstrate compliance with the following criteria:

*SCC 21.16.070(B):*

1. Any variance granted . . . shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated;
2. Because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive subject property of rights and privileges enjoyed by

other properties in the vicinity and under identical zone classification and/or special purpose district;

3. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone classification and/or special purpose district in which subject property is situated;

SCC 21A.04.030(3)(c):

4. That no practicable alternative exists to locating the proposed development within a ... buffer area; and
5. That on-site mitigation measures agreed to by the applicant are adequate to avoid significant degradation of the [critical area].

**Conclusion Based on Findings:**

1. The variance would not constitute a grant of special privilege. The stream crossing would facilitate a permitted use of the land. The subdivision design is protective of critical areas and is consistent with the density allowed in the zone. *Findings 1, 2, 3, and 4.*
2. Due to the location of the Class V stream and the presence of other critical areas on site that limit alternate subdivision configurations, strict application of the critical areas code would prevent access to proposed Lot 2. *Findings 3 and 4.*
3. The recommended critical area variance conditions of approval, including implementation of the MDNS mitigation measures and the subdivision conditions of approval, would ensure that approval of the variance would not be materially detrimental to the public welfare or to surrounding properties. The culvert would be sized to contain the 100-year storm event, erosion would be controlled during construction, and disturbed areas would be restored. *Findings 5, 6, 7, 8, 11, and 12.*
4. There is no practicable alternative to locating the culvert/driveway within the Class V stream buffer. *Findings 3 and 4.*
5. The mitigation measures are adequate to avoid significant degradation of the critical area. *Findings 5, 6, 7, and 8.*

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## DECISION

Based upon the preceding findings and conclusions, the request for approval of a critical area variance to install a culvert, driveway, and utilities within a Class V seasonal non-fish bearing stream buffer in order to provide access to Lot 2 of the preliminarily approved Hartung Acres Subdivision is **GRANTED**, subject to the following conditions:

1. The Applicant shall comply with the mitigation measures contained in the April 19, 2017 SEPA Mitigated Determination of Non-significance and the May 23, 2017 Hearing Examiner Decision granting approval of the subdivision to develop the road, culvert and utility infrastructure.
2. The Applicant shall construct the road consistent with the approved Stormwater Management Plan and Road Plan, and shall obtain County Engineer approval to ensure that the roads and culvert crossing of the Class V stream satisfy applicable engineering requirements.
3. The following mitigation for stream buffer impacts shall be required:
  - A. Natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.
  - B. Temporary and permanent control measures shall be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.
  - C. All areas within the stream buffer that are disturbed by construction of the road and culvert installation shall be replanted with native riparian plantings. The Applicants shall submit a planting plan for approval, prior to installation of the culvert.
  - D. Rehabilitation and enhancement efforts shall be completed no later than ninety days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.
4. The Applicants shall schedule a site inspection with the County Engineer and Community Development Staff to demonstrate that the road and culvert crossing the stream and the habitat improvements have been completed as approved.

DECIDED August 1, 2018 by



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Sharon A. Rice  
Skamania County Hearing Examiner

Note: The action by the Hearing Examiner shall be final and conclusive, unless within the timeframe provided in RCW 36.70C, the applicant or adverse party makes application to a court of competent jurisdiction for judicial review of this land use decision.