

**BEFORE THE HEARING EXAMINER
FOR SKAMANIA COUNTY**

In the Matter of the Application of)	NO. CA-18-03
)	
Yegor Mamontov)	
)	
)	
For Approval of a)	FINDINGS, CONCLUSIONS, AND
<u>Critical Area Variance</u>)	DECISION

SUMMARY OF DECISION

The request for approval of a critical area variance to install a culvert and road crossing a Class V seasonal non-fish bearing stream and the associated buffer in order to provide access to the buildable portion of a single-family residential lot is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

Yegor Mamontov (Applicant) requested a critical area variance to install a culvert and road within a Class V seasonal non-fish bearing stream and associated buffer in order to provide access to the buildable portion of a single-family residential lot. The subject property is located at 12862 Washougal River Road in Skamania County, Washington.

Hearing Date

The Skamania County Hearing Examiner held an open record hearing on the request on March 18, 2019.

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
- Yegor Mamontov, Applicant
- Richard Hansen
- Derek Kaldenberg

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. County Road Approach Permit- August 2, 2018
3. Email from Fish and Wildlife, Sam Kolb pertaining to Hydrologic Project Approval and WDFW Priority and Habitat Species Map
4. Email and review by Evan Carnes, US Army Corp of Engineers
5. Email and Review by Stephanie Jollivette, DAHP

Attachment B: SEPA Determination

1. Mitigated Determination of Non-significance – Dated January 16, 2019
2. Cadastral Map – Vicinity Map
3. SEPA Checklist– Dated December 27, 2018

Attachment C: Publication of Notice

1. SEPA Notice
 - a. MDNS Publish Notice
 - b. Postcard
 - c. Adjacent Property Owner Map – 500 foot radius
 - d. Agency Notice
 - e. Certificate of Mailing
2. Hearing Notice
 - a. Notice of Development Review and Public Hearing – February 19, 2019
 - b. Adjacent Property Owner Map – 500 foot radius
 - c. Public Notice Post Card
 - d. Certificate of Mailing
 - e. Email Notice to Pioneer February 20, 2019

Exhibit 2: Email from Tim Elsea to Andrew Lembrick, dated March 18, 2019 and email from Andrew Lembrick to Tim Elsea, dated March 6, 2019 re: Critical Areas Variance CA-18-03

Exhibit 3: Letter from Washington Department of Ecology, dated January 30, 2019

Exhibit 4: Letter from Judith Bryden, dated March 18, 2019

Exhibit 5: County PowerPoint presentation

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

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FINDINGS

1. The Applicant requested a critical area variance to install a culvert and road within a Class V seasonal non-fish bearing stream and the associated buffer in order to provide access to the buildable portion of a single-family residential lot. The subject property is located at 12862 Washougal River Road in Skamania County, Washington.¹ *Exhibits 1 and 1.A.*
2. The subject property is zoned West End Rural Lands 2 (WE-RL2), a zone which allows single-family residential development at a minimum lot area of two acres. Although the subject property is only 1.06 acres, it is considered a legally buildable lot because it was created prior to adoption of the zoning ordinance. The minimum lot area for purposes of compliance with Washington State Department of Health requirements relating to septic and well is 0.5 acres. *Exhibit 1.*
3. The undeveloped subject property is located on the inside of a curve on Washougal River Road, its only frontage. Surrounding land uses include single-family residences and a campground. *Exhibits 1.A.1.a and 1.A.1.b.*
4. The Washougal River Road borders the western and southwestern boundaries of the subject property and is approximately 30 feet higher in elevation than the subject property. *Exhibits 1 and 1.A.*
5. The southwest corner of the subject property is crossed by a Class V seasonal non-fish bearing stream. The stream is conveyed through culverts immediately west of the subject property (beneath Washougal River Road) and east of the subject property (beneath the roadway providing access to a neighboring parcel). Section 21A.04.030 of the Skamania County Code (SCC) requires a 25-foot undisturbed buffer for Class V streams. For residential uses requiring a reduction of more than 50% of the required buffer width, approval of a critical area variance by the County Hearing Examiner is required. *Exhibits 1 and 2; SCC 21A.04.030.*
6. The flat, buildable portion of the subject property is northeast of the Class V stream, which is on the opposite side of the stream from Washougal River Road. The Applicant proposes to access this buildable area from the southwest property boundary by installing a two-foot by twenty-foot culvert in the stream bed. The Applicant attempted to obtain an easement from the adjacent property owner for use of an existing private drive (Bryden Lane), but the request was denied. While a new access farther north along Washougal River Road could avoid the stream crossing, such access would involve a steeper slope and would have poor entering and existing sight distance due to the steep embankment and a curve in Washougal River Road. The County Public Works Department has approved the proposed access location because it provides the best sight distances of any portion of the subject property's frontage. *Exhibits 1, 1.A and 5; see also Exhibit 4; Andrew Lembrick Testimony.*

¹ The legal description of the subject property is a portion of the Northwest corner of the Northeast Quarter of the Northwest Quarter of Section 34, Township 2 North, Range 5 East, W.M.; also known as Tax Parcel Number 02-05-27-0-0-1500-00. *Exhibit 1.*

7. The Skamania County Public Works Department issued a Road Approach Permit for the requested location on August 2, 2018. The conditions of the permit require the Applicant to do the following: cut back brush to maintain sight distances; obtain a critical area variance for the stream crossing; install a new address sign at driveway entrance; obtain required approvals from other agencies; use best management practices from the Department of Ecology Western Washington Stormwater Management Manual to prevent erosion; halt construction if cultural resources are discovered and notify the Community Development Department and tribes; use erosion hazard area best management practices; and provide notice to the County prior to commencing work. *Exhibit 1.A.2.*
8. Installation of the culvert would not require removal of material from the stream bed. After installation, the culvert would be buried with approximately 15 to 20 yards of material taken from the proposed home site, outside of the stream buffer, then covered with road fabric and crushed rock. A twenty-foot width of stream and buffer would be impacted. *Exhibit 1.A.4.* The County recommended as a condition of approval that the Applicant mitigate this unavoidable impact by: retaining natural vegetation to the extent practicable; implementing temporary and permanent erosion control measures during construction; obtaining approval of a planting plan prior to culvert installation; replanting disturbed areas with native plantings; and completing rehabilitation efforts no later than 90 days after alteration, or as soon after as is practicable. *Exhibit 1.*
9. Skamania County evaluated the environmental impacts of the road and culvert installation pursuant to the State Environmental Policy Act (SEPA, RCW 43.21C), and issued a mitigated determination of non-significance (MDNS) on January 16, 2019. The MDNS contains 11 mitigation measures addressing: erosion and stormwater control; geotechnical assessment; dust suppression; revegetation; approval by Washington State Department of Fish and Wildlife (if a Hydraulic Project Approval required); approval by the Skamania County Engineer; and protection of cultural resources. The project would be required to comply with Skamania County Private Road Standards and the Stormwater Management Manual of Western Washington. *Exhibit 1.B.1.* Correspondence in the record establishes that a Hydraulic Project Approval would not be required by the Department of Fish and Wildlife. The County Engineer's approval would require a design consistent with WAC 220-660-190, that has been stamped by a licensed professional engineer.² *Exhibits 1.A.3 and 2.*

Notice of the public hearing on the critical areas variance application was mailed to property owners within 500 feet of the subject property on February 20, 2019, published in the *Skamania County Pioneer* on March 6, 2019, and published on the County website on February 27, 2019. *Exhibits 1 and 1.C.*

²Pursuant to WAC 220-660-190, Water crossing structures, "crossings on nonfish bearing streams must be designed to pass wood and sediment expected in the stream reach to reduce the risk of catastrophic failure of the crossing. Water crossing structures on nonfish bearing streams in the forest environment that are designed to pass the 100-year flood flow and debris likely to be encountered meet this standard."

10. Public comment on the application included concerns regarding erosion, as the area is prone to landslides, and regarding future single-family residential development. The neighboring property owner who refused to consent to the access easement across her parcel has a history of landslide on her parcel; she is concerned that culvert installation would increase erosion on her lot. Although the stream is dry in the summer, it is wet most of the rest of the year; there is a lot of snow melt in the area seasonally and she was concerned that the Applicant had removed trees. The neighbor to the other side expressed concern about the proposed well to serve the site and any impact on his water, in addition to sharing concerns about erosion. *Testimony of Richard Hansen and Derek Kaldenberg; Exhibit 4.*
11. In its review of the application, the County identified the subject property as being located in a Class I Landslide Hazard Area and recommended as a condition of approval that the Applicant provide a geotechnical/geological assessment prior to development of the residence. *Exhibit 1.* The re-planting recommended by Planning Staff is also designed to protect against erosion. *Alan Peters Testimony.* Planning Staff noted that the Applicant has been clearing the proposed building site of dumped garbage and noxious vegetation. Staff also testified that many single-family residences in the vicinity take access via roads that cross the subject stream, or similar streams, over culverts. *Andrew Lembrick 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. Other single-family residences in the immediate vicinity have access to their residences across the same or similar seasonal streams. The stream crossing would facilitate a permitted use of the land, and the stream is culverted on both sides of the subject property. *Findings 1, 2, 3, 5, and 11.*
2. Due to special circumstances, including the location of the Class V stream, steep embankments along the extent of the property frontage, and sight distance constraints due to curves along Washougal River Road, strict application of the critical areas code would prevent access to the buildable portion of the property. *Findings 4, 5, and 6.*
3. The recommended conditions of critical area variance approval and implementation of the MDNS mitigation measures would ensure that approval of the variance would not be materially detrimental to the public welfare or to surrounding properties. The culvert would be engineered to comply with applicable codes, erosion would be controlled during construction, and disturbed areas would be restored. *Findings 7, 8, 9, and 10.*
4. There is no practicable alternative to locating the road/culvert within the Class V stream buffer. *Findings 4, 5, and 6.*
5. The mitigation measures are adequate to avoid significant degradation of the critical area. A condition of approval would ensure that competent professional geotechnical or geological site assessment is conducted prior to any residential construction. *Findings 8, 9, and 11.*

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DECISION

Based upon the preceding findings and conclusions, the request for approval of a critical area variance to variance to install a culvert and road within a Class V seasonal non-fish bearing stream buffer at 12862 Washougal River Road is **GRANTED** subject to the following conditions:

1. The Applicant shall follow the general inadvertent discovery plan for cultural resources for Skamania County provided by Washington Department of Archaeological and Historic Preservation.
2. The Applicant shall obtain any necessary state or federal permits required for the culvert and road crossing of the stream prior to commencing any work.
3. The Applicant shall provide a geotechnical assessment or geological assessment by a licensed professional in accordance with the above referenced County Code for development of the proposed single-family residence.
4. The Applicant shall use best management practices as outlined within the SEPA mitigated determination of non-significance when developing the property and perform the mitigations that would be provided by a site specific geotechnical or geological assessment as required.
5. The Applicant shall be required to have the culvert and road crossing evaluated and designed by an engineer licensed in the state of Washington.
6. The Applicant shall be required to follow the Skamania County Private Road Standard for development of the driveway approach and installation of the culvert.
7. The Applicant shall be required to obtain all development permits required to develop the culvert and road within the stream buffer.
8. The following mitigations to the stream buffer shall be required:
 - A. Native 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 disturbed by construction of the road and culvert within the stream buffer shall be replanted with native riparian plantings. The Applicant 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.

9. The Applicant shall provide the Community Development Department their planting mitigation plan along with a schedule and communicate to the Department dates to inspect phases of the mitigation as they occur. The planting and mitigation plan shall be required prior to beginning development activities of the culvert and private driveway.

DECIDED April 2, 2019 by



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.