



Skamania County

Community Development Department

Building/Fire Marshal • Environmental Health • Planning

Skamania County Courthouse Annex

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STAFF REPORT AND RECOMMENDATION TO THE HEARING EXAMINER

PROJECT: PacifiCorp Clear Creek and Crab Creek Acclimation Ponds Decommissioning

FILE NO: CA-19-02

REQUEST: The applicant (PacifiCorp) requests a critical areas variance for the removal of fish acclimation facilities and site restoration at Clear Creek and Crab Creek. The project will remove the artificial infrastructure associated with the acclimation facilities and return the sites to pre-project conditions. Work will occur within critical areas and critical area buffers.

APPLICANT:	Brett Horton, PacifiCorp 825 NE Multnomah Street, Suite 1800, Portland, OR
PROPERTY OWNER:	United States Forest Service 2455 Hwy 141, Trout Lake, WA 98650
LOCATION:	<u>Clear Creek:</u> NW ¼ of Section 37, T8N, R7E of the W.M. in the Gifford Pinchot National Forest near Cougar, WA. <u>Crab Creek:</u> NW ¼ of Section 35, T7N, R7E of the W.M. in the Gifford Pinchot National Forest near Cougar, WA.
PARCEL NO.:	10-10-00-0-0-0000-00
ZONING:	Unmapped (UNM)
COMPREHENSIVE PLAN DESIGNATION:	Conservancy
PARCEL SIZE:	Approximately 600,000 acres

PROJECT DESCRIPTION:

The applicant, PacifiCorp, operates the Lewis River Hydroelectric Project consisting of a linked reservoir, dam, and powerhouse system. The dams along the mainstem of the Lewis River impede fish passage, and the 2004 Lewis River Settlement Agreement required fisheries

enhancements to supplement the reintroduction of anadromous fish in the upper Lewis River watershed. Three acclimation facilities were constructed in Skamania County to increase the likelihood of adults returning to spawn in the upper watershed. The Muddy River and Clear Creek acclimation channels were constructed in 2013, and the Crab Creek acclimation facility was constructed in 2015.

Following construction, several issues were identified with the acclimation facilities, including poor effectiveness, bank/channel erosion, and dissolved oxygen issues at the Muddy River site. It was determined that all three acclimation facilities should be decommissioned and returned to pre-project conditions; the Muddy River site was fully decommissioned in the late summer/early fall of 2018 (a critical areas variance for this project was approved in 2017 in file no. CA-17-05). The applicant now proposes to remove the facilities at Clear Creek and Crab Creek.

The Clear Creek and Crab Creek project sites located within the Gifford Pinchot National Forest (GPNF) in a sparsely populated area of Skamania County, east of the Swift Reservoir. Clear Creek and the Lewis River at the Crab Creek site are likely used for fishing, some boating, and other water sports. The channel at Crab Creek is very narrow and steep and is not used for fishing or boating. There are no commercial or residential uses on the property, and there are no formal campsites or fishing access sites.

Clear Creek:

The Clear Creek acclimation channel was constructed in 2013 within an existing side channel of Clear Creek and included a screened intake box at the upper extent of the channel and a screened outlet box at the downstream extent of the channel. The design included flow deflection in Clear Creek to divert water to the acclimation channel. PacifiCorp also installed riprap along Clear Creek near the intake box and constructed an earthen berm along a section of the acclimation channel. The berm is comprised of sidecast material from the excavation of the acclimation channel, and it was intended to keep higher flows in the channel. PacifiCorp also incorporated habitat logs and stumps in the acclimation channel for cover and hydraulic refugia.

PacifiCorp proposes to remove the control boxes and project-related riprap, leave the acclimation channel in-place as an active side channel, and partially remove the earthen berm, which will re-establish floodplain connectivity in the overall project reach. The temporary construction access and the breached berm will be planted with native woody plants, which will provide higher cover by woody plants compared to existing conditions. As such, the Clear Creek decommissioning will result in net ecological benefits compared to existing conditions.

Crab Creek:

The Crab Creek acclimation facility was constructed in 2015. It consists of a low-head, concrete impoundment in the Crab Creek channel (impoundment dam) that, in conjunction with a flow control and cleanout box, was designed to provide a steady supply of water for an acclimation tank that was proposed adjacent to the Lewis River. To support the acclimation tank, PacifiCorp constructed a bare earth tank pad adjacent to the Lewis River, which was constructed of imported fill material. To support the tank pad and separate it from the river channel, PacifiCorp constructed a gabion wall adjacent to the river above the ordinary high-water mark (OHWM).

PacifiCorp proposes to remove the impoundment dam, flow-control/cleanout box, the tank pad (including the PacifiCorp gabion wall), and all associated water conveyance infrastructure. PacifiCorp will then restore all affected areas to pre-project conditions. Removing the impoundment dam will entail excavating the impounded sediment behind the dam. The contractor will place the excavated sediment along the lower banks and within the channel of Crab Creek just downstream from the impoundment, which will reestablish channel roughness in the scoured reach and facilitate the natural deposition and sorting of sediment. Also, the removal of the impoundment will allow for the natural transport of sediment from reaches upstream of the project area. Site restoration will include planting an assemblage of woody plantings along the gabion/tank pad area, which is currently void of woody plantings. As such, the project will provide net ecological benefits compared to existing conditions.

The Lewis River, Clear Creek, and Crab Creek are designated as Class I or Class II streams by Skamania County's Critical Areas code. They are not designated Shorelines under the County's Shoreline Master Program. The proposed decommissioning work will create temporary impacts within the required 100 ft. buffers and below the OHWM. A critical areas variance is required.

The County also designated both project sites as fish and wildlife habitat conservation areas. Per the Washington State Department of Fish and Wildlife, the project area is also located within Priority Habitat areas for bull trout, northern spotted owl, elk, rainbow trout/steelhead trout, resident cutthroat trout, and dolly varden. However, the project will provide a net benefit to fish habitat, and the project will be implemented after the critical nesting period for northern spotted owl (i.e., after July 16). PacifiCorp initiated informal consultation with the USFWS regarding bull trout, LCR chinook, LCR coho, LCR steelhead, and northern spotted owl in January 2019; the consultation proposes effects determinations of no effect and not likely to adversely affect species or critical habitats. While the WDFW Priority Habitat database did not indicate that either project site contained habitat or known occurrences of Townsend's big-eared bat (*Corynorhinus townsendi*), according to the GPNF the Clear Creek bridge adjacent to the work area is known to provide night time roosting habitat for the bat. As such, the project contractor will not begin work until one hour after sunrise and will cease all work one hour prior to sunset.

The project site is also located within a volcanic hazard area for Mt. St. Helens and an erosion hazard area. The proposal will not affect volcanic hazards and proposed erosion and sediment control plan and restoration planting plan will not pose any additional erosion hazards.

A cultural resource survey was conducted prior to the installation of the existing acclimation facilities in October 2010. This survey is documents in a survey report prepared by Historical Research Associates, Inc., titled "Archaeological Survey for the Lewis River Fish Acclimation Sites Project". The survey report determined that the projects would not affect archaeological resources or historical properties. The survey report was submitted to the Washington Department of Archaeology and Historic Preservation and tribes. No comments have been received as of the date of this report. Staff recommends the following inadvertent discovery provisions be included as a **condition of project approval**:

1. The following procedures shall be effected in the event that cultural resources are discovered during construction activities:

- a. Halt Construction: All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
- b. Notification: The project applicant shall notify the Community Development Department and the Native American Tribal governments within 24 hours.

The subject property is located in the Unmapped (UNM) zone, which allows any land uses which have not been declared a nuisance by statute, resolution, ordinance, or court of jurisdiction.

ATTACHMENTS:

(This report will be considered Exhibit 1)

Exhibit 2: Application Materials – *Complete May 21, 2019*

Attachment A – Project Figures and Plans

Attachment B – Photo Pages

Attachment C – Biological Assessment

Attachment D – Cultural Resource Assessment

Attachment E – State Environmental Policy Act (SEPA) Checklist

Attachment F – Critical Areas Variance Application

Attachment G – In-Water Work Protection Plan

Exhibit 3: Notice of Public Hearing – *Published in the Skamania County Pioneer on July 3, 2019*

Exhibit 4: Notice of Development Review and Public Hearing – Mailed to agencies and adjacent property owners – *July 1, 2019*

Exhibit 5: SEPA Determination of Nonsignificance – *June 26, 2019*

SEPA:

Skamania County issued a State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) for the project on June 26, 2019. (Exhibit 5)

NOTIFICATION:

The Notice of Public Hearing was sent to the Skamania County Pioneer, the County's legal paper of record, for publication on July 3, 2019 (Exhibit 3). Notice of the Hearing was sent to all adjacent property owners within 300 ft. of the project area and interested parties on July 1, 2019, and posted on the Community Development Department's webpage on that same day (Exhibit 4).

The following agencies were contacted:

- Washington State Department of Ecology
- Washington State Department of Fish and Wildlife
- Washington State Department of Natural Resources
- Washington State Attorney General
- US Army Corps of Engineers
- Yakama Indian Nation
- Nez Perce Tribe
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of Warm Springs Reservation
- Cowlitz Indian Tribe
- Lower Columbia Fish Recovery Board

COMMENTS FROM THE PUBLIC AND AGENCIES:

As of the date of this report, no agency or public comments have been received.

COMPREHENSIVE PLAN:

The subject property is located within the Conservancy land use designation. According the land use element of the County's Comprehensive Plan, this designation is intended to provide for the conservation and management of existing natural resources in order to achieve a sustained yield of these resources and to conserve wildlife resources and habitats.

The proposal is consistent with the Comprehensive Plan.

STAFF ANALYSIS OF APPLICABLE CODE CRITERIA:

TITLE 21A **CRITICAL AREAS**

21A.03.010. ADMINISTRATION - CRITICAL AREA DEVELOPMENT PERMITS REQUIRED

- A. No building, structure or land shall be used, and no building, structure or road shall be hereafter erected, altered or enlarged, including those proposed by state or federal agencies, in any designated critical area governed by this Title, except as allowed by this Title.*
- B. The issuance of a critical areas permit under this Title shall be in addition to, and not a substitute for, any other development permit, review or authorization required by Skamania County. Issuance of a critical areas permit under this Title shall not be interpreted as an approval of any other permit or authorization required for a development or use.*

Finding:

The purpose of the proposal is to remove the artificial infrastructure associated with the acclimation facilities at Clear Creek and Crab Creek and return the sites to pre-project conditions. The Lewis River, Clear Creek, and Crab Creek are designated as Class I or Class II streams and the proposed decommissioning work will create temporary impacts within the required 100 ft. buffers and below the OHWM. A critical areas variance is required.

The applicant has also applied for a required Clearing and Grading permit from the County.

21A.03.030 APPLICATION REQUIREMENTS

- A. Two types of applications are established under this Title:
 - 1. Applications for variances to the buffers established under CHAPTER 21A.04 governing watershed protection areas; and*
 - 2. Applications for development reviews under CHAPTER 21A.05 (Fish and Wildlife Habitat Areas) and CHAPTER 21A.06 (Geologically Hazardous Areas).**
- B. Applications for both variances and development reviews under this Title shall be made on forms provided by the Department. An application shall be accompanied by the required application fee, if any, together with the following:
 - 1. The applicant's name, address and telephone number;**

2. *The land owner's name, address and telephone number, if different from the applicant's;*
3. *The section, quarter section, township and range in which the proposed use or development would be located;*
4. *The tax lot number(s) of the of parcel(s) on which the development or use would occur;*
5. *The size (number of acres) of the parcel(s) involved;*
6. *A description of the current land use(s) of the parcel(s) involved;*
7. *A written description of the proposed use or development;*
8. *A map of the project area, prepared at a scale of 1-inch equals 200 feet, or one providing greater detail, shall include the following elements:*
 - a. *boundaries, dimensions and size of the subject parcel;*
 - b. *existing and proposed structures;*
 - c. *existing and proposed services, including wells or other water supplies, sewage disposal systems, power and telephone poles and lines;*
 - d. *groupings and species of trees or other vegetation on the parcel;*
 - e. *location and species of vegetation that would be removed;*
 - f. *proposed excavation and fill;*
 - g. *existing and proposed drainage facilities and/or natural drainage channels;*
 - h. *topography and significant terrain features or landforms;*
 - i. *the location and width of existing and proposed roads, driveways and trails;*
 - j. *slopes on the site; and*
 - k. *streams, creeks, rivers, lakes, ponds, or wetlands located within 300 feet of any proposed use or development.*
9. *Any additional information which the applicant feels will assist in evaluating the proposal;*
10. *The signature of the applicant and property owner; and*
11. *The signature of any renters, lessees or caretakers living on the property, authorizing the Director or the Director's designees reasonable access to the site to evaluate the application.*

Finding:

A complete application (Exhibit 2) was submitted on May 21, 2019.

21A.03.040 REVIEW PROCESS.

A. Applications For Development Reviews And Variances.

1. General Provisions

- a. *Upon submittal of an application for a critical areas variance or development review under this Title, the Department shall have ten working days within which to determine if the application is complete.*
- b. *If an application is incomplete, Department staff shall notify the applicant, in writing, of all deficiencies in the application.*
- c. *Upon submittal of a complete application, the Director shall make every effort to complete the project evaluation within twenty working days, unless the review and approval procedures of another applicable development permit necessitates a longer evaluation period.*

- d. *Development reviews conducted under this Title shall be coordinated with other reviews administered by either the Department of Planning and Community Development or the Building Code Enforcement Section of the Skamania County Public Works Department.*
- e. *In almost every instance, the evaluation will include a site investigation of the property by Department staff.*

Finding:

A complete application was submitted on May 21, 2019. The applicant also submitted a SEPA checklist and an application for a Clearing & Grading Permit. Project review could not be completed within twenty working days due to the requirements of SEPA and the need for a public hearing.

- 2. *Notice of Variance or Development Review Applications.*
 - a. *If public notice and comment is required under other County requirements affecting the proposed development or use, then notice of a critical areas variance or review shall be combined with notice of the other development review.*
 - b. *If no public notice and comment period is required under other County laws affecting the proposed development or use, then the Director shall issue notice of a proposed development review or variance to all persons owning property within 300 feet of the parcel(s) on which the development or use would occur and any other interested persons.*
 - c. *The notice shall provide the following information:*
 - i. *The name of the applicant.*
 - ii. *The location of the subject property as set out in the application.*
 - iii. *A brief description of the proposed action.*
 - iv. *The deadline for filing comments on the proposed action.*
 - d. *The notice shall state that the application and supporting documents are available for inspection at Department offices during regular business hours.*
 - e. *If a hearing is held before the Hearing Examiner, then notice shall be published in a newspaper of general circulation in the County at least ten calendar days prior to the date of hearing.*
 - f. *Persons receiving notice of an application under this Title shall be given fourteen (14) calendar days from the date upon which the notice of a variance or development review application is mailed to them by the Department within which to comment upon the proposed action.*

Finding:

The Notice of Public Hearing was sent to the Skamania County Pioneer, the County's legal paper of record, for publication on July 3, 2019, 12 days before the hearing date. Notice of the Hearing was also sent to all adjacent property owners within 300 ft. of the project area and interested parties on July 1, 2019, 14 days prior to the hearing, and posted on the Community Development Department's webpage on that same day. The notice requirements have been met.

21A.03.050 APPEALS.

D. Appeals From Decisions Of The Hearing Examiner.

A signed written Final Order of the Hearing Examiner shall be final and conclusive, unless within the timeframe provided in RCW 36.70C, the applicant or any adverse party makes application to a court of competent jurisdiction for judicial review of the land use decision.

Finding:

The Hearing Examiner's Decision is appealable within the guidelines of RCW 36.70C.

21A.04.010 WATERSHED PROTECTION AREAS - GENERAL PROVISIONS.

A. Relationship To Shorelines Management Master Plan And Shorelines Management Act Permits Ordinance.

In the event of any conflict between this Title and regulations contained in the Shorelines Ordinance, those regulations which provide greater protection of Critical Areas shall apply.

Proposed new development on residential properties located adjacent to any Watershed Protection Area shall be setback according to the provisions contained herein, unless it can be demonstrated that within 300 feet up and down stream of the subject property, the average setback of existing structures is less. If less, new structures may be setback from the water body the same distance as the average distance that the existing structures are setback from the ordinary high-water mark.

Finding:

The purpose of the proposal is to remove the artificial infrastructure associated with the acclimation facilities at Clear Creek and Crab Creek and return the sites to pre-project conditions. The proposal will impact critical areas or critical areas buffers of Lewis River, Clear Creek, and Crab Creek. These are each designated as Class I or Class II streams but are not designated Shorelines under Skamania County's Shoreline Master Program.

21A.04.030

C. Streams, Creeks and Rivers.

- 1. Definition of Regulated Streams, Creeks and Rivers. Rivers, streams and creeks that are naturally occurring bodies of periodic or continuously flowing water contained within a channel (an open conduit either naturally or artificially created); except artificially created irrigation, return flow or stockwatering channels.*

Finding:

The Lewis River, Clear Creek, and Crab Creek each satisfy this definition.

- 2. Allowed Uses in Streams, Creeks and Rivers and their Buffers. The following uses are allowed within streams, creeks and rivers and their buffer areas, without review by the department:*
 - a. Fish and wildlife management;*
 - b. Research;*
 - c. Boating;*
 - d. Fishing;*
 - e. Hunting;*

- f. *Swimming;*
- g. *Repair, maintenance and operation of existing serviceable structures, trails, roads and utility facilities;*
- h. *Structures under one hundred twenty square feet in area which are not subject to building permit requirements;*
- i. *Existing structures already located within watershed protection area buffers that expand one hundred percent or less of the original footprint;*
- j. *All other new uses and developments within streams, creeks and rivers and their buffer areas will require a variance under subsection (C)(3) below.*

Finding:

The proposed removal of fish acclimation facilities and site restoration at Clear Creek and Crab Creek are not allowed uses in streams or stream buffers. The proposed work requires a variance under subsection (C)(3).

3. *Variances.*

- a. *The buffer widths established in subsection (C)(4) below, may be varied by not more than fifty percent for residential uses by the director administratively, under Section 21A.03.040.*
- b. *Variances to buffer widths in excess of fifty percent for residential uses and all variances for commercial or industrial uses may be granted by the hearing examiner, after public hearing thereon, as set out in Section 21.16.060(B) of the Skamania County Code.*

Finding:

Clear Creek, Crab Creek, and the Lewis River each have buffers of 100 ft. Work will occur within Clear Creek and Crab Creek and the buffers of Clear Creek, Crab Creek, and the Lewis River.

Clear Creek

Stream Impacts: The applicant will remove the concrete intake box, the concrete outlet box, and project-related riprap from the Clear Creek channel, as well as portions of the 30-foot berm breach that are below the OHWM of Clear Creek. Following the berm breach, the toe of the berm will be densely planted with live willow cuttings to improve stability and habitat functions. In total, there will be 850 square feet (0.02 acres) of impact to the critical area associated with the Clear Creek channel.

Buffer Impacts: The proposed temporary construction access is entirely within the critical area buffer for Clear Creek, and it will be temporarily impacted due to heavy machinery access and foot traffic. There are also portions of the proposed berm breach that extend above the OHWM elevation of the acclimation channel and therefore are within the critical area buffer. Following project construction, the contractor will apply native seed, mulch, and install an assemblage of native woody plants in all affected areas to complete site restoration. Also, the contractor will plant a mix of native trees and shrubs in the unaffected portion of the berm that is in the buffer area. In total, there will be 2,100 square feet (0.048 acres) of temporary impact to the buffer.

Crab Creek

Stream Impacts: The applicant will permanently remove the low-head concrete impoundment at the Crab Creek intake and all associated in-water infrastructure. The contractor will need to

excavate coarse sediment from the forebay of the impoundment in order to fully remove the concrete. The contractor will redistribute the excavated coarse sediment to a scoured reach immediately below the impoundment outfall. As such, there will be impacts to the critical area associated with the Crab Creek channel. In total, there will be 900 square feet (0.021 acres) of impacts to the Crab Creek critical area.

Buffer Impacts: A small water tank and conveyance pipe in the buffer be removed, but this removal will not necessitate significant ground disturbance, damage to existing vegetation, or site restoration.

Lewis River

Buffer Impacts: The critical area buffer for the Lewis River extends through the proposed removal/restoration areas for the gabion wall and the tank pad. Currently, this area is void of native vegetation. PacifiCorp will fully remove the gabion wall associated with the Crab Creek project and remove the artificial fill that was imported to construct the tank pad. Following removal, PacifiCorp will return the area to pre-project contours and restore the area with native herbaceous and woody vegetation. The removal/restoration will constitute a total of 8,700 square feet (0.2 acres) of impact to the critical area buffer for the Lewis River.

- c. In addition to the criteria set out in Section 21.16.060(B) of the Skamania County Code, any applicant for a variance under this chapter must further show:
 - i. That no practicable alternative exists to locating the proposed development within a pond, lake or buffer area; and**

Finding: The original construction of the project was a water dependent development concentrated on the reintroduction of fish into the watershed. The acclimation facilities were necessarily located within The removal of the infrastructure is located in the same location it was originally permitted, which is within the water resource buffer. Strict application of the zoning ordinance in this case would be detrimental to the natural environment and the public's ability to enjoy the forest in its natural state.

- ii. That on-site mitigation measures agreed to by the applicant are adequate to avoid significant degradation of the pond or lake.*

Finding: The purpose of this project is to decommission and remove the installed infrastructure associated with the Clear and Crab Creek acclimation facilities. All disturbed areas will be returned to pre-project contours and restored with native herbaceous and woody plantings. By breaching a berm at Clear Creek and removing the gabion/tank pad along the Lewis, PacifiCorp is expanding the area that could potentially function as critical area at this site.

As such, additional critical areas mitigation is not being proposed, because the project is designed to provide net benefits to the aquatic/riparian environments of Clear Creek, Crab Creek, and the Lewis River.

Staff recommends the following **conditions of approval** to ensure that this requirement is satisfied:

- The contractor shall follow the erosion and sediment control plans, demolition site plans, and restoration site plans submitted with the permit application. No work shall occur outside of areas indicated on the project plans.
- All fuel and chemicals shall be kept, stored, handled and used in a fashion which assures that there will be no opportunity for entry of such fuel and chemicals into the water.
- All demolished materials shall be disposed of at an approved off-site facility. Any construction debris such as fuel and oil containers and barrels and other miscellaneous litter shall be removed from the project area at the conclusion of the project.

4. *Buffer Widths.*

- a. *Classes I, II, III, and IV streams, creeks and rivers are described in Appendix C.*
- b. *Except as specifically allowed under subsection (C)(3) above, undisturbed buffers shall be preserved around all regulated streams, creeks and rivers.*
- c. *The required width of undisturbed buffer areas shall depend upon the class of water represented by the stream, creek or river protected, the type or scale of use or development proposed by an applicant and the vegetative community adjacent to the water body.*
 - i. *For Class I streams, creeks and river, the standard buffer zone width shall be one hundred feet.*
 - ii. *For Class II streams, creeks and rivers, the standard buffer zone width shall be one hundred feet.*
 - iii. *For Class III streams, creeks and rivers, the standard buffer zone width shall be one hundred feet.*
 - iv. *For Class IV streams, creeks and rivers, the standard buffer zone width shall be fifty feet.*
 - v. *For Class V streams, creeks and rivers, the standard buffer zone width shall be twenty-five feet. (Ord. 2007-02 (part): Ord. 1996-03 (part))*

Finding: The project will occur within Clear Creek and Crab Creek and the buffers of Clear Creek, Crab Creek, and the Lewis River. The Lewis River and Clear Creek are Class I streams and Crab Creek is a Class II stream. The standard buffer zone is 100 ft. for both Class I and Class II streams.

Staff recommends a **condition of approval** to state that except as authorized by this variance, a 100 ft. undisturbed buffer shall be preserved around the Lewis River, Clear Creek, and Crab Creek.

TITLE 21
ZONING

21.16.070 HEARING EXAMINER - DUTIES AND RESPONSIBILITIES

The Hearing Examiner shall hear and decide:

- B. *Application for variances from the terms of this title, with the exception of minimum lot size/density; provided, that any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized 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, and that the following circumstances are found to apply;*

- 1) *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;*

Finding:

The original construction of the project was a water dependent development concentrated on the reintroduction of fish into the watershed. The removal of the infrastructure is located in the same location it was originally permitted, which is within the water resource buffer. Strict application of the critical areas ordinance in this case would be detrimental to the natural environment and the public's ability to enjoy the forest in its natural state.

- 2) *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;*

Finding:

There are no new structures proposed. There will, however, be changes to contours and drainage patterns associated with restoring the side channel connectivity to the surrounding floodplain at the Clear Creek site and removing the gabion wall and tank pad at the Crab Creek site. Also, the removal of the concrete impoundment at Crab Creek will reestablish normal fluvial processes and sediment transport in the project reach. These changes are part of a restoration plan that returns these sites to pre-project conditions and includes USFS-approved seeding and woody plantings appropriate for the restored areas. In summary, the project will provide a net benefit to ecological goods and services, and over time the riparian area adjacent to the Lewis River will become re-established. As such, the project will not be detrimental to the public welfare or injurious to the property. The proposal occurs in the Unmapped (UNM) zone, which does not prohibit these land uses.

CONCLUSIONS:

With the recommended conditions of approval, the proposal meets the criteria for granting a Shoreline Substantial Development Permit and Critical Areas Variance.

RECOMMENDATION:

Staff recommends that the request for a Shoreline Substantial Development Permit and Shoreline Variance be approved with the following conditions:

1. The following procedures shall be effected in the event that cultural resources are discovered during construction activities:
 - a. Halt Construction: All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
 - b. Notification: The project applicant shall notify the Community Development Department and the Native American Tribal governments within 24 hours.
2. The contractor shall follow the erosion and sediment control plans, demolition site plans, and restoration site plans submitted with the permit application. No work shall occur outside of areas indicated on the project plans.
3. All fuel and chemicals shall be kept, stored, handled and used in a fashion which assures that there will be no opportunity for entry of such fuel and chemicals into the water.
4. All demolished materials shall be disposed of at an approved off-site facility. Any construction debris such as fuel and oil containers and barrels and other miscellaneous litter shall be removed from the project area at the conclusion of the project.
5. Except as authorized by this variance, a 100 ft. undisturbed buffer shall be preserved around the Lewis River, Clear Creek, and Crab Creek.

Alan Peters

Alan Peters, AICP
Assistant Planning Director

July 3, 2019
Date

Please 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.