



Skamania County
Community Development Department
Building/Fire Marshal ♦ Environmental Health ♦ Planning
Skamania County Courthouse Annex
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**CRITICAL AREAS REVIEW / CRITICAL AREAS VARIANCE
APPLICATION & INFORMATIONAL PACKET**

WHAT ARE CRITICAL AREAS?

Critical areas are environmentally sensitive natural resources that have been designated for protection and management. Critical areas in Skamania County include wetlands, critical aquifer recharge areas (CARAs), fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Critical areas serve a valuable function for people and wildlife in Skamania County, but may also pose a threat to human safety and to public and private property. Building in flood prone or geologically hazardous areas can present humans with safety concerns. CARAs are essential to our drinking water supply. Wetlands serve multiple functions, including providing habitat, enhancing water quality, and attenuating flooding. Fish and wildlife habitat conservation areas are vital to the preservation of protected species. The identification, management, and protection of critical areas are, therefore, necessary to protect the public health, safety, and general welfare of the County's citizens.

Skamania County is required by the Washington State Growth Management Act (RCW 36.70A) to designate critical areas and adopt regulations to assure their conservation. Most critical areas within the County are regulated by the County's Critical Areas Ordinance, Title 19. Critical areas located within Shoreline jurisdiction will be regulated by the County's Shoreline Master Program once this goes into effect later in 2020. Within the Columbia Gorge National Scenic Area, these areas are regulated under Title 22.

WHAT PERMITS ARE REQUIRED?

There are two types of critical areas permits that may be required for your development.

- **Critical Areas Review:** Critical areas reviews are required for all regulated activities listed in SCC 19.01.060 when such development is located within critical areas or their buffers. Critical areas review applications are reviewed administratively with a decision made by the Community Development Department. Critical areas reviews are conducted in conjunction with other required County land use application reviews such as short plats, subdivisions, administrative reviews, or conditional use permits. Critical areas reviews may also be required even if no other land use applications are required for your proposal such as for the construction of a single-family dwelling or other building projects.
- **Critical Areas Variance:** Applicants may request a variance from standard critical area protections in accordance with SCC 19.01.050(F)(5).

HOW CRITICAL AREAS REGULATIONS AFFECT MY PROPOSAL?

There are different requirements for developing in or near each type of critical area. How these rules affect your proposal will depend on the nature of your project and what critical areas are located on your site. The following information has been provided as general information for basic development projects and is not intended as a substitute for the requirements in Title 19. Please see Title 19 for all critical areas regulations.

- **Wetlands:** Wetlands are protected by buffers, undisturbed areas undisturbed areas of native vegetation where development is prohibited. Buffer widths range in size based on the wetland category (see SCC 19.03.040(C)):
 - Category I: 50 ft. to 300 ft.
 - Category II: 100 ft.
 - Category III: 50 ft.
 - Category IV: 25 ft.

If your project is located within 300 ft. of a wetland then you will need to obtain a wetland delineation or wetland letter and show that your project is located outside any required wetland buffers.

- **Critical Aquifer Recharge Areas:** CARAs are areas with a critical recharging effect on aquifers used for potable water. Some developments will require the submission of a hydrogeological report showing that the development will not degrade groundwater sources. Residential development is generally exempted from these requirements.
- **Fish and Wildlife Habitat Conservation Areas:** These include both riparian habitats (such as streams) and non-riparian habitats (such as deer wintering range). If your development is located within one of these areas, then a critical areas review will be required to ensure that your proposal will not negatively affect a habitat area. Streams are protected by buffers, determined by the type of stream:
 - Type F: 100 ft.
 - Type Np: 50 ft.
 - Type Ns: 25 ft.
- **Frequently Flooded Areas:** All development within the 100-year floodplain shall comply with standards established in Washington Administrative Code 173-158 for construction within a floodplain or floodway in addition to complying with the development standards identified in SCC 15.18.
- **Geologically Hazardous Areas:**
 - Erosion Hazards: Erosion control plan required.
 - Landslide Hazards: Geotechnical assessment or report required to establish buffers or additional mitigations.
 - Seismic Hazards: Development must conform to seismic code.
 - Volcanic Hazards: Evacuation and emergency management plan required.

WHAT EXEMPTIONS ARE THERE?

A limited number of developments may be exempt from critical areas reviews. Some common exemptions are listed below. See SCC 19.01.070 for a full list of exemptions.

- Forest practices, except Class IV developments and conversions
- Existing and ongoing agricultural activities
- Repair and maintenance of existing structures
- Some expansions or replacements of existing single-family dwellings
- Structures under 200 sq. ft. in area that are also exempt from a building permit
- Removal of invasive vegetation and hazard trees
- Emergency actions

WHAT IS THE APPROVAL PROCESS?

- Submit a **complete** Critical Areas Review or Variance Application. Incomplete applications will not be accepted. Upon receipt of an application, the Count will review the application submittal and notify the applicant within 28 days whether additional information is required. If the application is deemed incomplete, the applicant shall provide all information requested within 90 days. Once the applicant resubmits all information, the County will review the application for completeness within 14 days. The

determination of completeness does not preclude the County from requesting additional information or studies during application review.

- Critical areas review generally occurs in conjunction with other land use applications such as Short Plats, Subdivisions, or Conditional Uses. Your Critical Areas Review application will be reviewed concurrently with those applications and a will be issued at the same time.
- If required, the County will issue a **public notice** of application within 14 days after the determination of completeness to adjacent property owners and interested parties, or within the timeline required by any other associated land use applications.
- **Decisions** on Critical Areas Reviews are made by Community Development Department Staff, except when requested in conjunction with other land use approvals that require a decision by the Hearing Examiner after a public hearing. Decisions on Critical Areas Variances are made by the Hearing Examiner after a public hearing. Permit Decisions are valid for two years.

Critical Areas Application Checklist

PLEASE NOTE: Staff will review the application and check for completeness before accepting any application. Review will not begin on your proposal until all of the required information listed below has been submitted.

STAFF APPLICANT

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| <input type="checkbox"/> | <input type="checkbox"/> | A non-refundable fee payable to Skamania County Treasurer:
<input type="checkbox"/> Critical Areas Review - \$625 (not applicable when submitted <u>at the same time</u> as a Short Plat, Subdivision, Administrative Review, or Conditional Use Permit application)
<input type="checkbox"/> Critical Areas Variance - \$950 |
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PLEASE NOTE: If development is started prior to an application being submitted, the application fee will be three times (3x) the normal application fee.

Fees are subject to change by resolution of the County Commissioners.

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|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | A complete application form. |
| <input type="checkbox"/> | <input type="checkbox"/> | Site Plan: A scaled site map or set of maps of the project, including:
<input type="checkbox"/> Reference streets and property lines.
<input type="checkbox"/> Existing and proposed easements, rights-of-way, trail corridors, and structures.
<input type="checkbox"/> Contour lines.
<input type="checkbox"/> All critical areas and their buffers.
<input type="checkbox"/> All mitigation areas.
<input type="checkbox"/> Hydrology. Surface water features both on and adjacent to the site, showing any water movement into, through, and off the project area; all stream and wetland classifications (e.g., hydrogeomorphic class, Cowardin class, etc.); seeps, springs, and saturated soil zones; and wetlands not found on the county inventory maps labeled "un-inventoried."
<input type="checkbox"/> Identification of all site preparation, grading activities, and dimensioned location of proposed structures, roads, stormwater facilities, impervious surfaces, and landscaping.
<input type="checkbox"/> All drainage plans for discharge of stormwater runoff from developed areas.
<input type="checkbox"/> Location of critical area tract and/or easement. |

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| <input type="checkbox"/> | <input type="checkbox"/> | Critical Areas Report: Critical Areas reports must include all information identified in SCC 19.09.100 and as required for each individual critical area:
- Wetlands, see SCC 19.03.060
- Critical Aquifer Recharge Areas, see SCC 19.040.060
- Fish and Wildlife Habitat Conservation Areas, see SCC 19.05.050
- Geologically Hazardous Areas, see SCC 19.07.040 |
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| <input type="checkbox"/> | <input type="checkbox"/> | Critical Areas Variances: Requests for variances from standard critical areas protection regulations must provide responses to the following criteria in SCC 19.01.050(F)(5):
<input type="checkbox"/> Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands in the same district;
<input type="checkbox"/> That the special conditions and circumstances do not result from the actions of the applicant;
<input type="checkbox"/> That literal interpretation of the provisions of this title would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this title, and the variance requested is the minimum necessary to provide the applicant with such rights;
<input type="checkbox"/> That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings under similar circumstances; |
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- That the granting of the variance is consistent with the general purpose and intent of this title, and will not further degrade the functions or values of the associated critical area or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property; and
- That the decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat.

- Any additional information:** Other information may be submitted or required which may aid the Planning Department in making an informed decision on the application.
- SEPA (if required) and non-refundable \$400 fee:** SEPA is required for all proposals not exempt from State Environmental Policy Act review under WAC-197-11-800.
- The applicant/owner has read and understands the Hearing Examiner process.**

FOR DEPARTMENT USE ONLY		
Reviewed By:	Complete: <input type="checkbox"/> Yes <input type="checkbox"/> No	Date:

Critical Areas Application

(Please complete application in ink)

APPLICANT:		E-mail:	
Address:		Phone:	
PROPERTY OWNER:		E-mail:	
Address:		Phone:	
PROJECT SITE ADDRESS:			
Tax Lot/Parcel #		Total acres:	
Section:	Township:	Range:	Milepost (if known):
Zoning Designation:			
PROJECT DESCRIPTION (Provide a summary of your proposal. More detail should be provided in a Critical Areas Report):			
APPLICANT SIGNATURE(S):			Date:
OWNER SIGNATURE(S)*:			Date:
<i>*Signature of the property owner(s) authorizes the Community Development Department and other Agency personnel reasonable access to the site in order to evaluate the application. Please notify Staff if you would like to request notification prior to any site visits.</i>			
FOR DEPARTMENT USE ONLY			
Date received:			
Date complete:			
File #:			
Notes:			

Skamania County Land Use Hearing Examiner Process

The following information explains the fundamental role of the Land Use Hearing Examiner and the process by which the Examiner renders land use decisions. ***This is not a complete description of the rules and laws governing the hearing process, but rather an overview to prepare applicants, appellants, and members of the public for participation in public proceedings.*** The land use hearing process is described in more detail in Chapter 2.80 of the Skamania County Code (SCC) and in the Land Use Hearing Examiner Rules of Procedure. Copies of the relevant ordinances and rules are available through the Skamania County Community Development Department.

The Hearing Examiner system assures fairness and due process protection for all persons involved in the land use hearing process. It is the Examiner's responsibility to render land use decisions in an efficient manner. County ordinances authorize the Hearing Examiner to conduct hearings on certain land use permit applications and appeals of administrative decisions. The specific applications and appeals under the Hearing Examiner's jurisdiction are listed in SCC 2.80.060.

Overview of the Process

Hearings before the Hearing Examiner are usually "open record hearings." The purpose of the open record hearing is to allow parties to present evidence as to whether the application or appeal under review satisfies the County's criteria for approval and other applicable state and local laws. The evidence submitted at the hearing, which may consist of oral testimony or written documents, is known as the "record" of the hearing. Because the Hearing Examiner's decision - and a court's decision on appeal of a Hearing Examiner's decision - is based on the record, **it is important that parties present all relevant information and arguments at the open record hearing.** When the hearing is concluded, the record is "closed", and no new evidence may be submitted.

Occasionally, the Hearing Examiner may leave the record open for submission of specific information that was not provided prior to or at the hearing. This can happen when the Examiner has questions that the parties need time to answer or when interested parties at the hearing bring up relevant issue not addressed to the Examiner's satisfaction. If the Hearing Examiner determines the information is necessary for making a decision on the matter, the record will be "held open" for the specific information. When this occurs, the Hearing Examiner will be admitted. Typically, both the specific information requested and the deadline are spelled out in a Post-Hearing Order for Submission of Additional Evidence. The Order will usually state when the record will close. Generally, no new evidence may be submitted after the close of record, even on appeal.

Hearings on permit applications typically proceed in the following order:

- Introductory comments by the Hearing Examiner;
- Presentation by County staff, including staff's analysis of the application and recommendation;
- Presentation by the applicant;
- Public testimony, which may include questions for County staff or the applicant; and
- County and applicant responses to the issues and questions that have been raised.

Hearings on appeals typically proceed in the following order:

- Introductory comments by the Hearing Examiner;
- Presentation by the appellant, and any witnesses the appellant calls;
- Presentation by the County, and any witnesses the County calls;
- Presentation by the applicant, if different from the appellant, and any witnesses the applicant calls;
- Rebuttal testimony and/or concluding remarks by the parties.

Each hearing is audio recorded in order to establish a verbatim record of the testimony and procedures. All testimony is given under oath, and each person who testifies must identify him or herself for the record. The Hearing Examiner may establish time limits for testimony.

At the conclusion of the hearing, the Hearing Examiner closes the record and sets the due date for rendering his or her decision. No decision is issued at the hearing itself. The Hearing Examiner takes the case under advisement and prepares a written decision including findings of fact and conclusions of law.

The Hearing Examiner's final decision is mailed to parties of record (i.e., individuals who submit written or oral testimony, the applicant or appellant, and the County) and to other individuals who request a copy.

How to Participate Effectively

- Limit testimony and/or written documentation to the specific case at hand. Testimony about desired changes in the code is not relevant and will not be considered. Land use applications are required to be decided according to the rules in effect at the time of application. Changes to the code are more properly addressed to the Board of County Commissioners.
- Focus on facts that have some tendency to show that the project does or does not satisfy the County's criteria for approval or other applicable laws. The most persuasive testimony or written documentation is that which is based on the speaker's or writer's first-hand observations and, for technical issues, is within the speaker's or writer's area of expertise.
- To the extent possible, review the project documents and the relevant codes prior to the hearing.
- Be courteous and respectful to each participant.
- Direct your comments to the Hearing Examiner and not to members of the audience.

Due Process Considerations

- Land use hearings before the Hearing Examiner are quasi-judicial proceedings, which means that certain due process protections apply. Not only must quasi-judicial proceedings be fair; they must appear to be fair. Accordingly, the Hearing Examiner may not participate in any matter in which he or she has financial or personal interest. Any person who has grounds to believe the Hearing Examiner may be influenced by a consideration outside the public record should promptly bring that concern to the attention of the Hearing Examiner prior to or at the hearing.
- If written testimony is submitted, it must be received prior to or at the public hearing for it to be considered by the Hearing Examiner. Written testimony should be addressed to the Hearing Examiner in care of the Community Development Department; should contain the writer's name and mailing address (the mailing address is needed to ensure the writer receives notice of the decision); should reference the application file number;

and should be legible. Comments should contain the specific reasons why the application should be approved, denied, or conditioned.
- The Hearing Examiner may not be contacted directly about specific applications. To ensure that the Hearing Examiner will remain free from bias or prejudice in the decision-making process, any contact with the Examiner must be through testimony or written statements submitted at the hearing, or through material submitted to Community Development Department staff for transmittal to the Hearing Examiner. Material submitted in an inappropriate manner will not be considered part of the record.

Appeals from Hearing Examiner Decisions

- Section 2.80.140 of the Skamania County Code contains information on appealing a Hearing Examiner's decision. To be considered, appeals must be filed by one of the parties of record with the appropriate decision-making body (Superior Court, Shorelines Hearings Board, or Columbia River Gorge Commission) within the time limits specified in the applicable statutes.