

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Dale O'Brien
Skagit Transit
600 County Shop Lane
Burlington, WA 98233

Agent: Stephanie Hansen
Perteet, Inc.
2707 Colby Avenue
Everett, WA 98201

Request/File No: Critical Areas Variance for Alger Park and Ride PL12-0100

Location: Lake Samish Road on Patrick Lane to the east of Interstate 5;
Parcel 4, a portion of Short Plat 11-85, within Sec 7, T36N, R4E,
W.M. Tax Parcel #P101560

Land Use Designation: Rural Freeway Service

Summary of Proposal: To upgrade an existing informal lot by creating a developed park and ride facility for commuter carpooling, vanpooling and regional Skagit Transit services. The paved lot will include 54 parking stalls and a bus island equipped with shelters.

SEPA Compliance: Determination of Non-Significance (DNS) issued July 6, 2012. No appeals.

Public Hearing: November 28, 2012. Testimony by applicant and two neighboring landowners. Planning and Development Services (PDS) recommended approval.

Decision: The application is approved, subject to conditions.

Reconsideration/Appeal: A Request for Reconsideration may be filed with PDS within 10 days of this decision. The decision may be appealed to the Board of County Commissioners by filing an appeal with PDS within 14 days of this decision or the decision on reconsideration, if applicable.

Online Text: The entire decision can be viewed at:
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

FINDINGS OF FACT

1. Skagit Transit seeks a Critical Areas Variance in order to upgrade an informal lot near the Alger freeway exit, converting it into a formal park and ride facility.

2. The lot is located close to the Whatcom-Skagit County Line and to Interstate 5 on Patrick Lane at Lake Samish Road. The site is on Parcel 4, a portion of Short Plat 11-85, within Sec. 7, T36N, R4E, W.M. The tax parcel number is #P101560.

3. The site is relatively constrained, containing just 2.36 acres. The Comprehensive Plan designation is Rural Freeway Service. Currently the property is partially forested with parking available on gravel accessed by a driveway from Patrick Lane. To the west of the site is a gas station. To the east is a storage facility.

4. The proposal is to create a 54-stall paved park and ride facility with a bus island equipped with bus shelters. The facility will serve commuter carpooling, vanpooling and regional Skagit Transit services.

5. The project will require approximately 10,700 cubic yards of imported material including gravel borrow, crushed base course, asphalt and concrete. Utilities will be water for irrigation and power for lighting the parking area.

6. Owing to the small lot size, the project will fill a 3,339 square-foot Category IV wetland and 980 square feet of a Category III wetland. A sizable portion of the Category III wetland will be left intact, but the 150-foot buffer will need to be reduced below 75%. The buffer of an onsite Type F stream will also be affected. A variance is being sought to allow the buffer reductions. (See SCC 14.24.140.)

6. The applicant proposes the use of low impact development (LID) techniques, onsite buffer enhancement and the purchase of wetland mitigation bank credits as compensation for the impacts to critical areas.

7. The LID design will provide continued hydrologic support to both the Category III wetland and the stream. Free draining gravel will be placed under the impervious parking surface in an infiltration gallery and rain gardens will be constructed. The idea is to mimic nature in downstream releases. The released water will leave the site cleaner than it arrived at rates that approximate pre-construction flows.

8. The majority of the Type III wetland and the Type F stream will be preserved with their remaining buffers restored by the plantings of native trees and shrubs. In addition, retaining walls will be provided to limit wetland impacts resulting from filling on the site.

9. The project originally contemplated 75 parking stalls but was scaled back to 54 to reduce critical area impacts. The improved park and ride facility was designed with the smallest footprint possible while still being able to meet the project purposes.

10 A Wetland Site Assessment Mitigation Plan (dated May 17, 2012, revised September 11, 2012) was prepared by Perteet, Inc., using best available science. The report finds that wetland mitigation must occur off-site because the subject property is too small to allow the sensitive area impacts to be fully compensated for in the area remaining after construction of the project. Buffers for the existing wetlands on the site are already deficient in dimension. Thus, any wetland created there for mitigation purposes would have even more inadequate buffers.

11. The report concludes that the purchase of wetland banking credits (coupled with restoration of remaining on-site buffers) is the most practical mitigation alternative. The Nookachamps Wetland Mitigation bank will be used. Credits are available there for purchase and the impact site occurs within the service area of the bank.

12. The proposal is an outright permitted use in the Rural Freeway Service zone. A critical areas variance is needed because a variance from the zoning setback requirements will not provide sufficient relief.

13. The Site Assessment provides for reasonable development of the property. The park and ride proposed has the smallest possible footprint that will still meet the project's purpose. The variance sought is the minimum that will make reasonable development possible. On-site mitigation will be pursued to the extent possible. Off-site mitigation will insure no net loss of functions and values.

14. When the various mitigating strategies are implemented, the variance sought will not create a significant adverse impact on either the Category III wetland or the Type F stream. The need for the variance does not result from the actions of the property owner and is not simply for the economic convenience of the applicant.

15. Reductions in the standard buffer width here were justified by use of the mitigation sequencing analysis provided for in the Critical Areas Ordinance.

16. Skagit Transit conducted environmental review of the proposal pursuant to the State Environmental Policy Act (SEPA). A Determination of Non-Significance (DNS) was issued on July 6, 2012. The DNS was not appealed.

17. The application was reviewed by the various County departments who, in general, had no objections. The applicant has received a National Permit from the United States Army Corps of Engineers (NWS-2012-00503) for a minor discharge of fill into waters of the United States.

18. The Staff Report analyzes the application using the critical areas variance criteria and the standards for decreasing buffer widths and concludes that the proposal, as conditioned, meets the criteria and standards. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

19. Two public comment letters were received and two members of the public testified at the hearing. The environmental concerns expressed related to impacts on water quality and water quantity. The presentation by the applicant provided re-assurance on both counts.

20. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. SCC 14.24.140(1)(b)

2. The requirements of SEPA have been met.

3. The proposal, as conditioned, meets the criteria of the Critical Areas Ordinance for the issuance of a variance. SCC 14.24.140(3):

4. The proposal, as conditioned, meets the criteria of the Critical Areas Ordinance for decreasing buffer widths. SCC 14.24.240(3). 14.24.540(3).

5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The project shall be carried out as described in the application materials, except as the same may be modified by these conditions.

2. The applicant shall comply with Nationwide Permit 18 from the United States Army Corps of Engineers (NWS-2012-00503).

3. The applicant shall obtain all other required permits and abide by the conditions of same.

4. The applicant shall comply with all applicable State and County regulations.

5. A grading permit is required. In connection therewith the applicant shall consult with the owner of Alger Mini-Storage to the east in regard to improvement of the shared driveway.

6. The applicant shall follow all recommendations of the Wetland Site Assessment and Mitigation Plan (dated May 17, 2012, revised September 11, 2012) prepared by Perteet, Inc.

7. Proof of purchase of the needed mitigation banking credits shall be provided to PDS prior to approval of the grading permit.

8. A copy of the DNS shall be included with any development application.

9. A Protected Critical Area (PCA) site plan shall be prepared and recorded with the Count Auditor's office prior to approval of the grading permit.

10. This variance shall expire if the use or activity for which it is granted in not commenced within three years of final approval.

11. Failure to comply with any permit condition may result in permit revocation.

DECISION

The requested Critical Areas Variance (PL12-0100) is approved, subject to the conditions set forth above.

DONE, this 6th day of December, 2012.



Wick Dufford, Hearing Examiner

Transmitted to Applicant on December 6, 2012

See Notice of Decision, Page 1, for Reconsideration and Appeal information.