

**BEFORE THE HEARING EXAMINER
FOR SKAGIT COUNTY**

In the Matter of the Application of)	No. PL23-0191
)	
)	
Skagit County Parks and Recreation Department)	Skagit Parks and Recreation Critical Areas Variance
)	
)	FINDINGS, CONCLUSIONS, AND
<u>For a Critical Areas Variance</u>)	DECISION

SUMMARY OF DECISION

The request by Skagit County Parks and Recreation Department for a Critical Areas Variance to reduce a riparian shoreline buffer associated with the Skagit River from the standard 200 feet down to 84 feet, to accommodate a replacement restroom facility in Howard Miller Steelhead Park, is **APPROVED**. Conditions are necessary to address specific impacts of the proposed project.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on March 27, 2024, using remote access technology.

Testimony:

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

Laura Jones, Environmental Planner, DCG Watershed
Leah Forbes, Senior Natural Resources Planner
Brian Adams, Director of Skagit County Parks and Recreation
Joseph Shea, Skagit County Parks and Recreation Operations and Lands Manager

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated March 6, 2024
2. Critical Areas Variance Application, dated April 20, 2023
3. Aerial Site Map, dated November 9, 2022
4. Fish and Wildlife Habitat Site Assessment with Buffer Variance Request, prepared by Perteet, Inc., dated January 27, 2023

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5. Addendum to Fish and Wildlife Habitat Site Assessment with Buffer Variance Request, prepared by Perteet, Inc., dated March 24, 2023
6. Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map, dated January 3, 1985
7. Table R – Tabular Shoreline Area Regulations – Recreation
8. Notice of Development Application, published February 8, 2024
9. Notice of Public Hearing, undated

The Hearing Examiner enters the following findings and conclusions based upon the testimony at the open record hearing and on the admitted exhibits:

FINDINGS

Application and Notice

1. Skagit County Parks and Recreation (Applicant) requests approval of a critical areas variance to allow for the replacement of a restroom facility in Howard Miller Steelhead Park along the shoreline of the Skagit River at 52888 Rockport Road. The existing restroom facility is located 84 feet from the Skagit River, within the 200-foot riparian shoreline buffer associated with the river. The replacement facility would be placed within the footprint of the existing facility and would be the same size. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2; Exhibit 3.*
2. The Applicant submitted its critical areas variance application on April 20, 2023. On February 7, 2024, the County issued public notice of the application by emailing it to local tribes and agencies with possible jurisdiction, including the Washington State Department of Fish and Wildlife, the Washington State Department of Ecology, the Skagit River System Cooperative, and the Upper Skagit Indian Tribe. The next day, the County issued public notice of the development application by publishing it in the *Skagit Valley Herald* newspaper and mailing it to property owners within 300 feet of the subject property. The notice of the development application set a deadline for public comment of February 23, 2024. On March 7, 2024, the County caused a notice of public hearing to be posted on the subject property, published in the newspaper, and mailed to property owners. No public comments were received in response to these notices. *Exhibit 1, Staff Report, pages 2, 3, and 14; Exhibit 8; Exhibit 9.*

State Environmental Policy Act

3. The County Planning and Development Services Department determined that the proposal is categorically exempt from review under the State Environmental Policy Act (SEPA), chapter 43.21C Revised Code of Washington (RCW), as provided in Washington Administrative Code (WAC) 197-11-800(6)(e). That provision of the statewide SEPA rules exempts from SEPA review the granting of a variance not related to economic hardship. *Exhibit 1, Staff Report, page 3.*

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Comprehensive Plan, Zoning, and Surrounding Uses

4. The subject property lies in the “Rural Village Residential” designation of the Skagit County Comprehensive Plan. According to the Comprehensive Plan: Rural Reserve, Rural Intermediate, and Rural Village Residential are the main residential land use designations in the Rural area. . . . All lands designated Rural Intermediate and Rural Village Residential are considered to be part of a Limited Area of More Intensive Rural Development (LAMIRD) as described in policy 3B-1.2 and as authorized by RCW 36.70A.070(5)(d)(i). These designations reflect areas that were generally already developed or platted at land use densities of 1 residence (or “dwelling unit”) per 2.5 acres, or greater, when the Growth Management Act was implemented in 1990.

Comprehensive Plan, page 81; Exhibit 1, Staff Report, page 1.

5. Staff determined that the following Comprehensive Plan goals and policies were relevant to the application:
- Protect the rural landscape, character, and lifestyle by:
 - (a) Defining and identifying rural lands for long-term use and conservation;
 - (b) Providing for a variety of rural densities and housing opportunities;
 - (c) Maintaining the character and historic and cultural roles of existing rural communities;
 - (d) Allowing land uses which are compatible and in keeping with the protection of important rural landscape features, resources, and values;
 - (e) Encouraging economic prosperity for rural areas; and
 - (f) Ensuring that appropriate and adequate rural levels of service are provided. [Goal 3A]
 - Provide for a variety of residential densities and business uses that maintain rural character, respect farming and forestry, buffer natural resource lands, retain open space, minimize the demand and cost of public infrastructure improvements, provide for future Urban Growth Area expansion if needed, and allow rural property owners reasonable economic opportunities for the use of their land. [Goal 3A-2]
 - Standards and plans for structures, roads and utility systems, and other public services and facilities shall be consistent with rural densities and uses. Such facilities and services shall be such designed, constructed, and provided to minimize the alteration of the landscape and the impacts to rural residents and community character, to preserve natural systems, to protect critical areas, to protect important land features such as ridgelines, to retain historic and cultural structures/landscapes, and scenic amenities. [Policy 3A-3.3]

Testimony of Laura Jones.

6. The subject property is zoned “Rural Village Residential” (RVR), which is consistent with its Comprehensive Plan designation. The purpose of the RVR zone is to “preserve the residential character of those portions of Rural Villages designated for residential use, while allowing for limited nonresidential uses appropriate to the village through the special use permit process.” *Skagit County Code (SCC) 14.16.310(1)*. Within the zone, parks are a use permitted with an administrative special use permit. *SCC 14.16.310(3)*.
7. Setbacks in the RVR zone are as follows: front 35 feet, side 8 feet, rear 25 feet. *SCC 14.16.310(5)(a)*. The maximum building height is 40 feet. *SCC 14.16.310(5)(b)*. The project meets these requirements, except for the 35-foot front setback. The existing structure is nonconforming to the required front setback. When a nonconforming building is damaged, the building may be replaced when a complete application for replacement is submitted within one year of the damage and the replacement conforms to the regulations of the applicable zoning district, or, if the applicable regulations cannot physically be met without reducing the size of the building, the replacement does not extend any nonconformity that existed prior to the damage. *SCC 14.16.880(3)(b)*. County staff states that the replacement of the preexisting nonconforming facility would not require a zoning variance because the new facility would be located within the same footprint and location as the existing facility. *Exhibit 1, Staff Report, page 4*.

Existing Conditions and Proposal

8. The subject property, Howard Miller Steelhead Park, is an approximately 100-acre park abutting the north side of the Skagit River. Approximately 15 acres of the park are cleared of native vegetation and developed with year-round recreational day-use and campground facilities. The remainder of the park is a forested mix of uplands and wetlands. Vegetation is typical of Puget lowland forests. The park provides overnight camping and recreational opportunities, including fishing, boating, and picnicking. A network of hiking, biking, and horseback riding trails runs through the park. The property is accessed off of Rockport Park Road, which connects to Washington State Highway 530. Parking stalls are provided on the eastern side of the park. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 3; Exhibit 4*.
9. Park facilities include two shower and restroom facilities and one day-use restroom facility. These facilities have reached their operative lifespan after several decades of use. The day-use restroom facility is the subject of this critical areas variance request. The two shower and restroom facilities will also be replaced. The western facility is located approximately 155 feet from the Skagit River, and the eastern facility is located approximately 165 feet from the Skagit River. These facilities qualify for administrative approval because they are located within the outer 25 percent of the standard 200-foot

riparian shoreline buffer under SCC 14.24.140. *Exhibit 1, Staff Report, page 1; Exhibit 3; Exhibit 4.*

10. The proposal is to replace an existing day-use restroom facility. This facility is located near the eastern entrance of the park, adjacent to the parking stalls associated with the park. The building would be prefabricated off-site and would hook up to the existing water and septic systems. No grading, vegetation removal, changes in stormwater runoff, or changes in the on-site sewage treatment are proposed. Stormwater would be collected and drained to buried downspouts for infiltration into drain rock. Best Management Practices, including temporary sediment and erosion control measures, would be utilized. As noted above, the replacement facility would be located in the footprint of the existing building, which is located 84 feet from the ordinary high water mark (OHWM) of the Skagit River. Approval of a Level II critical areas variance is required because the building would require a reduction of the 200-foot riparian shoreline buffer by more than 50 percent. *SCC 14.24.140(1)(b). Exhibit 1, Staff Report, pages 1 through 3; Exhibit 2; Exhibit 3; Exhibit 4.*

Critical Areas

11. The Applicant submitted a fish and wildlife habitat site assessment and an addendum to the fish and wildlife habitat site assessment, both prepared by Perteet, Inc. The assessment and addendum analyzed the impacts related to the replacements of both the day-use restroom facility and the two shower and restroom facilities. *Exhibit 4; Exhibit 5.*
12. The fish and wildlife habitat site assessment identified the following critical areas on or near the property:
 - Skagit River is a Type S water of the state. The standard riparian buffer requirement is 200 feet, per SCC 14.24.530. Documented fish use includes coho, steelhead, Chinook, coho, bull trout, cutthroat, sockeye, and chum. Water quality concerns are absent at the site and habitat functions are moderate because of the existing park use.
 - Adjacent lands are within the special flood hazard area (SFHA) designated as Flood Zone A16. Although the park's ongoing uses, structures, and utilities will be maintained according to SCC 14.24.070(3), new building projects are subject to regulations under the Skagit County Critical Areas Ordinance, chapter 14.24 SCC, and Flood Damage Prevention, chapter 14.34 SCC.
13. The fish and wildlife habitat site assessment determined that the replacement projects would not have any detrimental impact on species known to occur in the Skagit River. Temporary erosion and sediment control measures would be implemented prior to construction. Areas around the building would be re-landscaped as needed to ensure no loss of function in the buffer. *Exhibit 4.*

14. The addendum to the habitat site assessment states that:
Projects within protected review areas are required to demonstrate that no adverse effects will occur on species and habitats protected under the Endangered Species Act (ESA) and the Magnuson-Stevens Act. This requirement is consistent with the Flood Damage Prevention Ordinance, Chapter 14.34.220 for Habitat Protection Standards.

The addendum determined that the proposed improvements would not affect listed species in the Endangered Species Act (ESA) or affect Essential Fish Habitat (EFH), which are protected under the Magnus-Stevens Act. The addendum made this determination based on the following information:

- No vegetation is being removed.
- No in-water work of any kind is proposed as part of the subject project.
- Noise resultant from construction is likely to be minimal and of short duration.
- No sedimentation is expected as a result of this project.
- No direct discharges are proposed, as runoff will infiltrate.
- No changes to conforming septic system are proposed.
- No significant floodwater displacement is expected as a result of the new buildings within the floodplain.

Exhibit 5.

15. The County reviewed the fish and wildlife habitat site assessment and addendum and determined that the assessments demonstrated that no permanent impacts are anticipated and that the proposed replacements are expected to have no impact on water quality or fish and wildlife habitat. *Exhibit 1, Staff Report, page 16.*

Critical Areas Variance

16. County staff analyzed the proposal against the County's critical areas variance approval criteria in SCC 14.24.140 and determined the following:
- The entire width of the park property in this location is less than 200 feet. The existing bathroom is located within the standard 35-foot front zoning setback and is immediately adjacent to the parking area. A zoning variance would not alleviate the need for the requested critical areas variance.
 - The habitat site assessment prepared by Pertect, Inc., meets the criteria outlined in SCC 14.24.080.
 - The habitat site assessment cites sources commonly used as Best Available Science, such as the National Wetlands Inventory map, the Washington Department of Fish and Wildlife Priority Habitats and Species map, the United States Department of Agriculture Natural Resources Conservation Service Web Soil Survey, the Washington Department of Natural Resources Forest Practices Application Review System stream mapping database, and the Skagit County iMap GIS database.

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- This variance request only applies to the day-use facility because the two shower and restroom facilities are located within the outer 25 percent of the 200-foot buffer and do not require a variance for the minor buffer reduction. The day-use facility will be of equal size as the existing structure, will be placed in the existing footprint, and will have little to no impact on the site.
- The existing facilities are in need of replacement. The proposed replacement structure will replace the existing day-use bathroom in kind, with no expansion or ground disturbance. The reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land.
- The Critical Areas Ordinance was adopted to assist in conserving the value of property, safeguarding the public welfare, and providing protection for critical areas. The replacement restroom building will conserve the value of this site as a public park and safeguard the public welfare. The addendum to the habitat site assessment provides rationale for showing that the proposed day-use facility will have no effect on the ESA-listed species found in the Skagit River, nor will it have an impact on the Essential Fish Habitat protected under the Magnuson-Stevens Act.
- Howard Miller Steelhead Park was established in the 1960s, prior to the adoption of the Critical Areas Ordinance. The necessity of the variance is not due to a subdivision or boundary line adjustment from the current or previous owner.
- The granting of this variance is justified to cure a special circumstance and not simply for the economic convenience of the Applicant. This property is owned and operated by Skagit County and is open to the public for day-use recreational activities and overnight camping. The existing day-use bathroom was constructed before the adoption of the Critical Areas Ordinance. There is no other location within the day-use area of the park that the replacement can be located outside of the standard 200-foot buffer.
- County staff has recommended conditions to be placed on the permits along with their recommendation to the Hearing Examiner.

Exhibit 1, Staff Report, pages 10 through 14.

17. In addition to the critical areas variance criteria, County staff also considered the rules for mitigation set forth in SCC 14.24.080 and determined the following:
- Based on the habitat site assessment, the building placement within the buffer cannot be avoided because the park's facilities pre-date the current buffer restrictions, which encumber a significant area. Adhering to strict buffer requirements to avoid any in-buffer activities would preclude the restroom replacement project from taking place. Moreover, there are no reasonable alternative locations that would adequately serve the day-use area and campground areas. Therefore, the work cannot be avoided at their proposed locations in the buffer.

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- Several actions will be taken to limit or avoid impacts. The habitat site assessment states that
 - the new buildings will be placed in developed areas over the footprints of the old buildings with only slight increases in the footprint sizes of the two shower and restroom facilities. No native vegetation or buffer habitat is being impacted. In addition, before work starts, temporary erosion and sediment control measures will be implemented and functioning according to the approved construction stormwater pollution prevention plans, to ensure protection of water resources.
- According to the habitat site assessment, the areas around the new buildings will be re-landscaped after construction, as needed, resulting in no loss of function of value within the developed areas of the buffer.
- Because the project is taking place in existing landscaped and developed areas, and revegetation will occur, the Skagit County Parks and Recreation Department will be responsible for the parks ongoing maintenance and preservation.
- The habitat site assessment has demonstrated that no permanent impacts are anticipated and that the proposed replacement project is expected to have no impact on water quality or fish and wildlife habitat.

Exhibit 1, Staff Report, pages 14 through 16.

Shoreline Regulations

18. The subject property lies within the “Rural” shoreline environment. County staff determined the following shoreline regulations were relevant to the proposal:
- Recreation development is permitted subject to the General and Tabular Regulations. *Shoreline Master Program (SMP) § 7.14.2.A.3.*
 - Recreational development structures and facilities of a permanent nature except for officially approved accessory uses shall be located out of the officially mapped floodway of the Skagit River, its tributaries, and the Samish River. *SMP § 7.14.2.B.1.*
 - Recreational development shall be located and designed to avoid or minimize the need for structural shore defense and flood protection works. *SMP § 7.14.2.B.2.*
 - Recreational developments shall be designed so as not to conflict with on-site and adjacent or nearby shoreline characteristics and existing developments and uses. *SMP § 7.14.2.B.3.*
 - Shoreline resources such as but not limited to fresh and saltwater marshes, estuaries and fresh and saltwater accretion beaches, if part of a recreation development, shall be utilized only for non-intensive, non-structural and non-extractive recreation activities. Such resources may qualify as meeting open space requirements of Table R. *SMP § 7.14.2.B.4.*

- Roads, access, and parking for automobiles, trucks, campers, trailers, and other recreational vehicles shall meet the setback requirements of Table R. *SMP § 7.14.2.B.5.a.*
- Licensed and unlicensed recreational motor vehicles and all forms of all-terrain vehicles are allowed only on roads, trails, or developments consistent with this Master Program. *SMP § 7.14.2.B.5.b.*
- All vehicle use for recreational purposes is prohibited on tidelands, shorelands, beaches, marshes, or in and through streamways, EXCEPT for emergency and maintenance purposes, boat launching, and the on and off loading of handicapped persons. *SMP § 7.14.2.B.5.c.*
- Recreational developments shall meet all state and local guidelines and standards for solid waste and sewage disposal. *SMP § 7.14.2.B.6.*
- All plumbing, wiring, and other utility lines shall be installed underground or otherwise rendered inconspicuous. *SMP § 7.14.2.B.7.*
- Recreational developments requiring the use of fertilizers, pesticides, and herbicides shall leave a chemical free swath at least twenty-five (25) feet in width from water bodies and wetlands. *SMP § 7.14.2.B.8.a.*
- Herbicides and pesticides shall not be applied or allowed to directly enter water bodies or wetlands unless approved for such use by appropriate agencies (State Departments of Agriculture or Ecology, U.S. Department of Agriculture, EPA). *SMP § 7.14.2.B.8.b.*
- Relationship with other recreation areas - Recreational developments requiring the use of fertilizers, pesticides, and herbicides shall not unduly burden nor create use conflicts with adjacent and nearby public or private recreation facilities and areas. *SMP § 7.14.2.B.9.*
- Public health, safety, and use - Recreational developments shall be located, constructed, and operated so as not to be a hazard to public health and safety nor should they materially interfere with the normal public use of the water and shorelines. *SMP § 7.14.2.B.10.*

Exhibit 1, Staff Report, pages 1, 4, and 6 through 9; Exhibit 7.

19. In response to these requirements of the SMP, County staff provided the following analysis:

- The existing and proposed developments are compliant with the General and Tabular Regulations in Table R.
- The proposed development is not located within the officially mapped floodway per the FEMA FIRM map. The site is located within a special flood hazard area (SFHA) labeled as Zone A16. Areas within a SFHA meet the definition of a protected review area, as defined in SCC 14.34.055
- The proposed facility will not create a need for structural shore defense and flood protection works.

- The proposed day-use facility will replace an existing structure, in kind. It will be located on developed areas and requires no grading, vegetation removal, changes in stormwater runoff, or changes in the on-site sewage treatment. Therefore, impacts are negligible.
- The subject property has been owned and operated by Skagit County as a public park since the 1960s. There are no plans for further development or significant expansion. No impacts to native vegetation or buffer functions are expected. Shoreline resources and fragile or unique areas should be retained in their current condition.
- The proposal does not include the construction of new roads, access, or parking for vehicles. The day-use facility is directly adjacent to Rockport Park Road and a designated parking lot. Construction of this facility is not anticipated to conflict with this regulation.
- The new building is prefabricated and will hook up to existing, conforming water and septic systems.
- The proposed replacement structure will connect to the existing utilities, which are located underground.
- Howard Miller Steelhead Park is organically maintained. Parks and Recreation staff does not use fertilizers, pesticides, or herbicides.
- The park encourages public use of the water and shoreline.

Exhibit 1, Staff Report, pages 6 and 9.

Testimony

20. Laura Jones, Environmental Planner, DCG/Watershed, testified generally about the application and its relation to the critical areas variance criteria. She affirmed that the County had not received any public comments. She stated that the park provides a variety of recreational opportunities, including overnight camping, a boat launch, fishing, and a network of biking, hiking, and horseback riding trails.

Ms. Jones testified that the replacement facility would result in a minimum disturbance of the site. She testified about the conditions of the property, including surrounding land uses, which include residential development to the north, a state highway to the east, undeveloped conservation land to the west, and the Skagit River to the south.

Ms. Jones testified that the replacement facility would not conform with the required 35-foot front setback, but that it would be replacing a preexisting nonconforming restroom within the same footprint, so a zoning variance is not required.

Ms. Jones testified that, although approval of a shoreline substantial development permit (SSDP) is not required, the proposal must comply with the policies of the SMP because the site is located within a shoreline of statewide significance.

Ms. Jones testified that the project site is located in a special flood hazard area (SFHA), but not in a floodway. The facility is located within FEMA's 100-year floodplain area. The location of the facility complies with floodway requirements of the SMP, but the Applicant will be required to submit a flood development application if the variance is approved. Ms. Jones testified that the Health Department reviewed the proposal and determined that no additional connections are required and that the on-site sewage system is conforming.

Ms. Jones testified that the review conducted by Perteet, Inc., demonstrated that the proposal would not have adverse impacts on species and habitats protected by the Endangered Species Act (ESA) and the Magnuson-Stevens Act.

She testified that the County Comprehensive Plan designates the property as Rural Village Residential, which is intended to allow for residential uses within incorporated areas at lower densities. The rural character of the area is characterized by large areas of relatively undeveloped land, in which natural features and vegetation predominant over the built environment: the scattered unincorporated rural communities and villages, isolated rural businesses and industries, and regionally important recreational areas.

Ms. Jones testified that the use of the area and facility are in line with rural character of the Comprehensive Plan. Goal 3A of the Comprehensive Plan calls for the protection of the rural landscape character and lifestyle. Goal 3A(d) calls for this protection by allowing land uses that are compatible and in keeping with the protection of important rural landscapes, resources, and values.

Goal 3A-2 provides for a variety of residential densities and business uses that maintain rural character, respect farming and forestry, buffer natural resource lands, retain open space, minimize the demand and cost of public infrastructure improvements, provide for future Urban Growth Area expansion if needed, and allow rural property owners reasonable economic opportunities for the use of their land. She testified that the public park retains open space and minimizes the demand and cost of public infrastructure. By replacing this failing facility, it could potentially protect critical areas and the aesthetic value and recreational value of the park.

By placing the replacement facility in the existing facility footprint, the proposal is consistent with Goal 3A-3.3 because it minimizes alteration of the landscape and impacts to rural residents. *Testimony of Laura Jones.*

21. Leah Forbes, Senior Natural Resources Planner, testified that the application is only for a critical areas variance and that neither an SSDP nor a shoreline variance is required. The restroom facility is considered an essential structure under the Shoreline Master Program,

with a 50-foot minimum setback from the ordinary high water mark. She testified that the County would issue a shoreline exemption as part of the building permit process.

Ms. Forbes testified that floodplain development permits are generally reviewed in conjunction with the development application building permit or the building permit process. She testified that development within a protected review area, which is 200 feet from the river and in the floodplain, must be reviewed for consistency with the ESA and any Essential Fish Habitat requirements. This review is included as part of the critical areas variance process.

Ms. Forbes clarified that the restroom facility would be connected to an on-site septic system. *Testimony of Leah Forbes.*

22. Brian Adams, Director of Skagit County Parks and Recreation, testified that, if the park were to be built now, it would probably not be located in the same area because of current regulations. He stated that additional trails and salmon projects were added to the area.

Mr. Adams testified that a flood of record occurred in the area approximately three years ago. He stated that there is no evidence that past floods have eroded the elevation where the restroom facility is located. He testified that the septic system is in the best location it could be on the property. The septic system would be more vulnerable in other locations on the property. The septic system location is elevated above much of the property. Most of the surrounding area is privately owned, which constrains placement of a septic system. The boat ramps are more vulnerable to deposition and erosion. The facility location is protected, and there have been no issues in the 20 years he has worked with Parks and Recreation.

Mr. Adams testified that, if there is flooding potential, the campground is closed, and there is no use of the restroom facilities. The septic tank is pumped at the end of the summer, before flooding season. *Testimony of Brian Adams.*

23. Joseph Shea, Skagit County Parks and Recreation Operations and Lands Manager, testified that the restroom facility is at an elevation equal to the footing of the bridge and at least 20 feet above the Skagit River. *Testimony of Joseph Shea.*

Staff Recommendation

24. Ms. Jones testified that County staff recommends approval of the variance, with conditions. The Applicant Representative did not object to the County's proposed conditions. *Testimony of Laura Jones; Testimony of Brian Adams.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide requests for a critical areas variance when a variance seeks to reduce a required buffer by more than 50 percent. Here, the requested reduction in the buffer is from the standard 150 feet down to 75 feet in one instance and 60 feet in the other, placing the variance application within the jurisdiction of the Hearing Examiner. *SCC 14.06.050(1)(b)(i); SCC 14.06.120; SCC 14.10.020(3); SCC 14.24.140(1)(b).*

Criteria for Review

The Hearing Examiner may approve a request for a variance from the setback and buffer requirements of the County's Critical Areas Ordinance, chapter 14.24 SCC, if the Hearing Examiner determines that each of the following requirements would be met:

- (a) The issuance of a zoning variance by itself will not provide sufficient relief to avoid the need for a variance to the dimensional setback and other requirements for the critical areas regulated by this Chapter; and
- (b) Preparation of a site assessment and mitigation plan by a qualified professional pursuant to the requirements of SCC 14.24.080 and all other applicable sections of this Chapter. The site assessment and mitigation plan shall be prepared utilizing best available science; and
- (c) The conclusions of the site assessment must utilize best available science to support a modification of the dimensional requirements of this Chapter; and
- (d) The site assessment and mitigation plan demonstrate that the proposed project allows for development of the subject parcel with the least impact on critical areas while providing a reasonable use of the property; and
- (e) The reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and
- (f) The granting of the variance will be consistent with the general purpose and intent of this Chapter, and will not create significant adverse impacts to the associated critical areas or otherwise be detrimental to the public welfare; provided, that if the proposal is within the special flood hazard area (SFHA), the applicant must demonstrate that the proposal is not likely to adversely affect species protected under the Endangered Species Act, or their habitat; and
- (g) The inability of the applicant to meet the dimensional standards is not the result of actions by the current or previous owner in subdividing the property or adjusting a boundary line after the effective date of the ordinance codified in this Chapter; and
- (h) The granting of the variance is justified to cure a special circumstance and not simply for the economic convenience of the applicant.

SCC 14.24.140(3).

In granting any variance, the Approving Authority shall prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts and to ensure that impacts to critical areas or their buffers are mitigated to the extent feasible utilizing best available science. The Approving Authority shall consider and incorporate, as appropriate, recommendations from Federal, State and Tribal resource agencies.

SCC 14.24.140(4).

Where a variance involves the reduction of a critical areas buffer, the mitigation sequence shall be applied. *SCC 14.24.240(3)*. The mitigation sequence requires the proposal to select the least harmful feasible alternative from the sequence of possible mitigation measures, which are, in order of least harmful to most harmful:

- (i) Avoid the impact altogether by not taking a certain action or parts of an action;
- (ii) Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- (iii) Rectify the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;
- (iv) Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;
- (v) Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.

SCC 14.24.080(5)(b).

The criteria for review adopted by the Skagit County Board of County Commissioners are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with their own development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

Conclusions Based on Findings

With conditions, the proposed use would comply with the criteria for a critical areas variance. The County provided reasonable notice of the application and public hearing. No SEPA review was required because the variance is categorically exempt. No public comments were received by the County.

The Hearing Examiner is satisfied that the replacement facility will result in no risk to the environment, including ESA-listed species and Essential Fish Habitats because it will be placed within the footprint of the existing facility. The proposed improvements would not intrude waterward of preexisting development. Temporary impacts can be mitigated by following the suggestions of the Perteet, Inc., fish and wildlife habitat site assessment. The Hearing Examiner will incorporate those suggestions as conditions of approval, just as recommended by County staff. All other critical areas variance criteria and mitigation sequencing requirements are met.

The proposal will not be injurious to the neighborhood because the scale and siting of the facility is consistent with the existing structure. There will be no detriment to the public welfare. On the contrary, the replacement facility will replace a failing facility that could pose a risk to the riparian environment. The replacement facility would conserve the value of this site as a public park and safeguard the public welfare. Literal application of the critical areas ordinance would preclude development of the facility because most of the property is located within the standard 200-foot riparian shoreline buffer. For this reason, a zoning variance cannot afford sufficient relief. The need for a variance was not caused by any action of the Applicant because the use of the property as a park and the restroom facilities predate the Critical Areas Ordinance. The variance is necessary to cure the hardship imposed by the lot location, not due to the economic convenience of the Applicant. *Findings 1 – 24.*

DECISION

Based on the preceding findings and conclusions, the request by Skagit County Parks and Recreation Department for a Critical Areas Variance to reduce a riparian shoreline buffer associated with the Skagit River from the standard 200 feet down to 84 feet, to allow for the construction of a replacement restroom facility in Howard Miller Steelhead Park, is **APPROVED**, with the following conditions:¹

1. The Applicant will be required to adhere to the mitigation approach outlined in Section 6.0 Mitigation Sequencing of the January 27, 2023, Perteet Fish and Wildlife Habitat Site Assessment with Buffer Variance.
2. The critical areas variance shall expire if the use or activity for which it is granted is not commenced within three years of final approval. Knowledge of the expiration date is the responsibility of the Applicant. (SCC 14.24.140(6)).
3. The Applicant and its contractors shall comply with the State Water Quality Criteria, Surface Water WAC 173-201A and Ground Water WAC 173-200, and WAC 173-60 Maximum Environmental Noise Levels for noise and light.

¹ This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by the County code.

4. Temporary erosion/sedimentation control measures shall be utilized in accordance with the Skagit County Code 14.32 Stormwater Management.
5. The Applicant shall comply with all relevant provisions of Skagit County Code 14.16 the Zoning Ordinance.

DECIDED this __ day of April 2024.



ALEX SIDLES
Hearing Examiner