

**SKAGIT COUNTY  
OFFICE OF THE HEARING EXAMINER**

**re:** The application for a Critical Areas Variance permit by **Cassey and Eric Holmgren**

PL23-0034 (CVAR)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

**Application:** The Applicants, Cassey and Eric Holmgren, request to reduce the previously approved buffer on a wetland by more than 50% to accommodate construction of lean-to additions to a pole building and expand impervious surfaces for additional parking.

**Decision:** The requested Critical Area Variance permit is granted, subject to conditions of approval, though the portions dealing with additional gravel parking areas are denied.

**INTRODUCTION**

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at a properly noticed public hearing.

**FINDINGS OF FACT**

**I.**

**Applicant:** Cassey and Eric Holmgren  
16315 Andal Road  
Mt. Vernon, WA 98274

Site Address: 16315 Andal Road, Mount Vernon, WA

Legal Description: Lot 4, Section 26, Township 34 North, Range 4 East, W.M., Skagit County, WA.

Assessor's Parcel No(s): Acct No. - 340426-2-005-0007 / Parcel - P27889

Lot Size: 9.79 Acres

Zoning: Urban Reserve Residential (URR)

Water Supply: N/A

Sewage Disposal: N/A

Application Date: January 18, 2023

Determination of Completeness: February 19, 2023

Requests for Further information: N/A

Adjacent Water Body: N/A

Shoreline Designation: N/A

Statewide Significance: N/A

SEPA Review: Determined Exempt, *date unclear from record*

Notice Information: Notice of Application published, April 13, 2023  
Notice to agencies and tribes with jurisdiction, April 13, 2023  
Comment period ended, April 28, 2023

Primary Authorizing Codes, Policies, Plans, and Programs:

- Revised Code of Washington (RCW)
  - RCW 36.70A, Growth Management Act
  - RCW 36.70B, Local Project Review
  - RCW 90.58, Shoreline Management Act of 1971 ("SMA")
- Washington Administrative Code (WAC)
  - WAC 25, Archaeology and Historic Preservation
  - WAC 173, Department of Ecology
    - 173-22, Designations of Shorelands and Wetlands

- 173-60, Maximum Environmental Noise Levels
- 173-200, Water Quality Standards for Groundwaters
- 173-201A, Water Quality Standards for Surface Waters
- WAC 197-11, SEPA Rules
- Skagit County Code (SCC)
  - SCC 14 – Unified Development Code
    - SCC 14.02 – General Provisions
      - SCC 14.02.070 – Office of the Hearing Examiner
    - SCC 14.06 – Permit Procedures
    - SCC 14.10 – Variances
    - SCC 14.16 – Zoning
      - SCC 14.16.370 - Urban Reserve Residential (URR)
    - SCC 14.24 – Critical Areas Ordinance
    - SCC 14.32 – Stormwater Management
- Skagit County Shoreline Master Program of 6/29/76, as amended by Skagit County Board of Commissioners through 7/10/95 (SMP)
- Skagit County Comprehensive Plan of 6/30/16, as amended by Skagit County Board of Commissioners through 12/19/23 (SCP or “Comprehensive Plan”)
- Skagit County Office of the Hearing Examiner Rules of Procedure for Hearings (SCRPH), as authorized by Skagit County Commissioners per Resolution #R20080511 on 11/24/08

Hearing Date: 10/30/24 at 1:00 PM

Testifying Parties of Record:

Leah Forbes  
 Sr. Natural Resources Planner  
 Skagit County Planning and Development Services

Cassey Holmgren  
 16315 Andal Road  
 Mount Vernon, WA 98274

Hearing Examiner Exhibit List:

1. Staff Report, *dated* 10/21/24
2. Critical Areas Variance Application (PL23-0034) submitted January 18, 2023
3. Critical Areas (Wetlands, HCAs, and Buffers) Assessment Report and Restoration and Mitigation Plan, prepared by AquaTerrSystems, Inc. (ATSI), August 2022
4. Aerial photos of site
5. LIDAR of site
6. Short Plat PL07-0084 AF# 200712050064

7. Protected Critical Area Easement AF# 200712050067
8. Septic Application SW23-0126
9. Notice of Development Application, published April 13, 2023
10. Notice of Public Hearing, published March 7, 2024

## II.

The Applicants, Cassey and Eric Holmgren, own a home with a sizeable Critical Area. On that property, a Protected Critical Area Easement (PCAEE)<sup>1</sup> was established to provide permanent protection for onsite wetlands, streams, and associated buffers. A house, existing barn, and original septic system, all encroach within the well protection zone, but were established prior to 2007 and were recognized as pre-existing nonconforming structures.

The applicants have expanded their existing 24' x 60' (1440 square foot) barn with the addition of two lean-tos without first obtaining a building permit. The north lean-to is 20' x 60' (1,200 square feet) and serves as dry storage. The south lean-to is also 20' x 60' and is a proposed Accessory Dwelling Unit (ADU). All these improvements were constructed within a Protected Critical Area Easement (PCAEE) as indicated on Short Plat No. PL07-0084, and without a permit.

After an enforcement action began against the applicants, to permit the barn additions and expanded parking areas the applicants have applied for a Critical Areas Variance pursuant to reduce the 110-foot Category III wetland buffer by more than 50%, as such expansions do intrude into the existing buffer.

## III.

The owners have also placed a 20' x 60' gravel parking pad to the north of the structure and a 6' wide walkway was constructed to the south. These improvements were also constructed within the Protected Critical Area Easement (PCAEE) as indicated on Short Plat No. PL07-0084, and without a permit.

The primary use of the parking pad appears to be for the use of an RV that is approximately 40' long and used as the domicile of Eric Holmgren's mother. Eric Holmgren's mother dines with the applicants and their two children, but the primary home is not large enough for the extended family as a whole to live

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<sup>1</sup> Auditor's file number 200712050067

comfortably. They otherwise behave as an extended family, sharing a life together.<sup>2</sup>

Other properties in the area also have RV parking.<sup>3</sup>

There is not adequate testimony on the record to show that the critically protected area is the only place the RV could be parked, though there was testimony that it is the only place it is flat – whether that flattening came from grading or not, and whether such grading could be done with a permit outside of the critical area is not clear. There was testimony that there is an adequate surface area outside of the critical area on the property that would accommodate an RV of that size.<sup>4</sup>

#### IV.

Additionally, an access road was constructed to the north of the existing driveway and five fruit trees were planted within the wetland buffer. The fruit trees have been removed at this time, and it has been proposed to restore the access road to its pre-disturbance condition.

#### V.

There was no substantive public comment.

#### VI.

The Skagit County Planning and Development Services Staff (the “Department”) have recommended approval of the requested Critical Areas Variance permit in a “Skagit County Planning and Development Services Findings of Fact,” dated October 21, 2024 (“Staff Report” **Ex. 1**).

The Applicant has indicated there are no factual inaccuracies in the Staff Report’s findings or conclusions, and that they agreed with the conditions proposed, except they disagreed with the recommendation to deny the gravel parking lot used for RV parking.

The Findings of Fact in the Staff Report, a copy of which is attached hereto and incorporated herein, are supported by the record as a whole and are hereby adopted and incorporated herein by this reference, except where explicitly contradicted by the findings herein.

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<sup>2</sup> See *generally* testimony of Cassey Holmgren

<sup>3</sup> *Id.*

<sup>4</sup> Testimony of Forbes

## VII.

SCRPH §§2.06 and 2.08 grants parties the right to object to evidence and to cross-examine. In the case at hand, with full knowledge of the evidence being admitted, no objection by the applicant or the Department was made to any of the 10 exhibits that were admitted into the record.

## VIII.

Any Conclusion of Law below which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

### CONCLUSIONS OF LAW

#### I.

##### Critical Areas Variance

Any person wishing to deviate from the terms and standards outlined by the Critical Areas Ordinance,<sup>5</sup> can seek a Critical Areas Variance where the strict application of that ordinance is found to deprive the subject property of rights and privileges enjoyed by other properties in the vicinity, due to special circumstances applicable to the subject property, including size, shape, and topography.<sup>6,7</sup>

Pursuant to SCC 14.24.230(1)(a) the standard category III wetland buffer width (with moderate land use impact) is 110 feet. As indicated in the factual findings, the proposal does not meet that requirement and is in fact in the critical area, and thus a critical areas variance is required for the construction of any of the proposed additions.

Critical area variance proposals that contemplate a 50% or greater reduction of standard buffer widths must be heard by the Hearing Examiner.<sup>8</sup> To approve a Critical Areas Variance, the Hearing Examiner must find:

- 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

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<sup>5</sup> SCC 14.24

<sup>6</sup> SCC 14.24.140

<sup>7</sup> "Provided however, that those surrounding properties that have been developed under regulations in effect prior to the effective date of [SCC 14.24] shall not be the sole basis for the granting of the variance. *Id.*

<sup>8</sup> SCC 14.24.140(1)(b)

- 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.<sup>9</sup>

And, the Hearing Examiner may 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.<sup>10</sup>

In this case, after reviewing the files and testimony, and having made the findings above, the Hearing Examiner finds that with appropriate conditions of approval, the project would be compliant with all of the above applicable Critical Areas Variance criteria, if the parking lot aspects are removed.

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<sup>9</sup> SCC 14.24.140(3)

<sup>10</sup> SCC 14.24.140(4)

Consequently, subject to proposed conditions of approval, the Critical Areas Variance Permit should be approved – IF the project also meets the general variance criteria of SCC 14.10, as discussed below.

## II.

### General Variance Criteria

In seeking a Critical Areas Variance, the General Variance criteria must also be met. This is clear because SCC 14.10.020(1)(h) specifically refers to critical area variances at the administrative level and limits them to 50% or under though this is also recited in SCC 14.24; consequently SCC 14.10 is meant to encompass all of SCC Title 14,<sup>11</sup> and also directs additional criteria that may be outlined in SCC §§ 14.16, 14.24, etc.<sup>12</sup>

So, in addition to the Critical Areas Variance Criteria, the project must also meet the General SCC 14.10 Variance Criteria. Whether a separate permit process/application is required is a question not examined by the Hearing Examiner here; or to put a finer point on it, there is enough of a factual record here to make rulings on those criteria without requiring any more applications.

Title 14 encompasses all development in Skagit County in order to “implement the Revised Code of Washington (RCW) and the Skagit County Comprehensive Plan on matters concerning land and building development and other related issues...” as well as other Skagit County policies outlined in Title 14.<sup>13</sup> It is “applicable to all land within unincorporated Skagit County except as allowed by law.”<sup>14</sup>

Any person wishing to deviate from the terms and standards outlined in SCC Title 14, can seek a variance where in specific cases that will not be contrary to the public interest, and where, due to special conditions, literal enforcement of the provisions of this Code would result in unnecessary hardship, that is otherwise permissible in the zoning.<sup>15</sup> There are three levels of variances in Skagit County, Level 1 “Administrative Variances,” Level 2 “Hearing Examiner Variances,” and Level 3 “Board of Commissioner Variances.” To approve a variance, the deciding body must find:

- a. The variance complies with any relevant variance criteria found in other sections of Skagit County Code.

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<sup>11</sup> SCC 14.10.010 “Variances from the terms of this Title” does not mean only Chapter 14.10, but all of Title 14

<sup>12</sup> SCC 14.10.020

<sup>13</sup> SCC 14.02.010

<sup>14</sup> SCC 14.02.040

<sup>15</sup> SCC 14.10.010



- b. The variance is the minimum variance that will make possible the reasonable use of land, building, or structure.
- c. The granting of the variance will be in harmony with the general purpose and intent of this Title and other applicable provisions of the Skagit County Code, and will not be injurious to the neighborhood, or otherwise detrimental to public welfare.
- d. For all Level II variances and all setback variances:
  - i. The requested variance arises from special conditions and circumstances, including topographic or critical area constraints, which are peculiar to the land, structure, or building involved and which are not ordinarily found among other lands, structures, or buildings in the same district.
  - ii. The special conditions and circumstances do not result from the actions of the applicant.
  - iii. Literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Title and SCC Title 15.
  - iv. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this Title and SCC Title 15 to other lands, structures, or buildings in the same district.<sup>16</sup>

As the same basis that requires the Critical Areas Variance is a violation of the standards of Title 14, a satisfaction of the 14.10 variance requirements are required for the proposed use.

In this case, after reviewing the files and testimony, and having made the findings above, the Hearing Examiner finds that with appropriate conditions of approval, the project would be compliant with all of the above applicable general variance criteria, less the parking lot. Consequently, subject to proposed conditions of approval, the underlying Critical Areas Variance should be approved.

### III.

#### Specific Findings about the Parking Lot

It is generally considered reasonable for an extended family to live together and not an unusual situation; it is not a special privilege, and often it is a necessary and reasonable use that allows adult children to take care of their aging relatives. However, given that an RV is environmentally self-contained and mobile, and that there is evidence in the record that there is land on the property outside of the critical area that *could* be developed without intruding into the critical area,<sup>16</sup> there is not a basis to grant a variance. There is not enough evidence in the record to show this has been investigated and

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<sup>16</sup> SCC 14.10.040

not possible. That proposed use does not meet the critical variance criteria, nor would it be in “harmony with the general purpose and intent of this Title and other applicable provisions of the Skagit County Code...”<sup>17</sup>

#### IV.

Any Conclusion of Law deemed to be a Conclusion of Fact is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

#### **DECISION**

*A Critical Areas Variance permit shall be granted to the applicant to reduce the previously approved buffer on a wetland to accommodate the construction of additions of lean-tos to a pole building and impervious surfaces as described in the evidentiary log, at a site addressed as 16315 Andral Road, Skagit County Washington, subject to the following conditions:*

1. All of the conditions below referring to pre-existing studies and documents should be understood (and modified if required by the Department) from the context of approval without the parking lot areas.
2. A new building permit application will be required for the construction of the lean-tos for compliance with applicable building codes, if determined necessary by the Department.
3. Per SCC 14.24.090(2)(b) permanent buffer edge markers are to be placed prior to any onsite construction. They must be maintained along the outer limits of the delineated PCAE, and their presence confirmed by a qualified professional.
4. As outlined in Section 5.1 of the ATSI report the paved access road north of the central driveway (approx. 3,573 sf) must be restored and the 5 cultivated fruit trees will be removed or relocated from the buffer no later than March 30, 2025.
5. The proposed ADU must be reduced to a size in compliance with SCC 14.16.710.
6. The outdoor gravel parking located within the PCAE must be removed and those areas revegetated no later than March 30, 2025.
7. The applicant must apply for a modification of the final plat pursuant to SCC 14.18.200(8). That plat modification must be approved prior to submittal of the building permit application(s).
8. Following approval and recording of the final plat modification, building permits will be obtained for the expansions of the existing barn. The building permit applications must be submitted within 30 days of the plat modification being recorded.

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<sup>17</sup> SCC 14.10.040(1)©

9. The applicant must adhere to the mitigation approach outlined in Section 6.0 Proposed Mitigation of the August 2022, ATSI Critical Areas (Wetlands, HCAs, and Buffers) Assessment Report and Restoration and Mitigation Plan.
10. The applicant must adhere to the enhancement and monitoring measures described in Section 7.0 of the August 2022, ATSI Critical Areas (Wetlands, HCAs, and Buffers) Assessment Report and Restoration and Mitigation Plan.
11. The applicant is required to contract with a qualified biologist to monitor the mitigation as recommended in Section 7.6 of the ATSI, Critical Areas (Wetlands, HCAs, and Buffers) Assessment Report and Restoration and Mitigation Plan.
12. 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)).
13. Inadvertent Discovery Plan. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Local Government Archaeologist, 360-586-3088) and the following Nations' Tribal Historic Preservation Offices should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s):

Upper Skagit Indian Tribe  
Scott Schuyler, Cultural Resources  
sschuyler@upperskagit.com  
Phone: 360-854-7009

Swinomish Indian Tribal Community  
Josephine Jefferson, THPO  
jjefferson@swinomish.nsn.us  
Phone: (360) 466-7352

Samish Indian Nation  
Jackie Ferry, THPO  
jferry@samishtribe.nsn.us  
Phone: 360-293-6404 ext. 126

Compliance with all applicable laws pertaining to archaeological resources is required. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will

assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

### **NOTICE OF POTENTIAL REVOCATION & PENALTIES**

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation.

Complaints regarding a violation of this permit's conditions should be filed with Skagit County Planning and Development Services. Violations of permit conditions may result in revocation (or modification) of the permit, administrative action under SCC 14.44 (including monetary penalties), and the violations being declared a public nuisance.

### **Critical Areas Variance Warnings**

A variance shall expire if the use or activity for which it is granted is not commenced within three years of final approval by the Approving Authority. Knowledge of the expiration date is the responsibility of the applicant.<sup>18</sup>

### **NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE SKAGIT COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to the Skagit County Board of Commissioners pursuant to the provisions of SCC 14.06.110. The appellant shall file a written notice of appeal within 14 calendar days of the final decision of the hearing examiner, as provided in SCC 14.06.110(13) or SCC 14.06.120(9), as applicable; for shoreline permit applications, by filing notice of appeal within five days of the decision.

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<sup>18</sup> SCC 14.24.140(6)

More detailed information about reconsideration and appeal procedures are contained in the Skagit County Code Title 14.06 and which is available at <https://www.codepublishing.com/WA/SkagitCounty/>

DATED this 2<sup>nd</sup> day of November 2024



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Rajeev D. Majumdar  
Skagit County Hearing Examiner