

**SKAGIT COUNTY
OFFICE OF THE HEARING EXAMINER**

re: The application for a Critical Areas Variance Permit on High Ridge Drive by **Trinity Blessings Property, LLC**

PL24-0402 (CVAR)

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant, Trinity Blessings Property, LLC, requests a Critical Areas Variance to reduce the standard buffer on a Type F stream to allow for construction of a two-story cabin and septic system, as the entire property is within the 150 foot critical areas buffer.

Decision: The requested Critical Area Variance permit is granted, subject to conditions of approval.

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: Trinity Blessings Property, LLC
3354 Inverness Street
Mount Vernon, WA 98273

Site Address: 63254 High Ridge Drive

Marblemount, WA

Legal Description: LOT 92, CASCADE RIVER PARK NO. 3, AS PER PLAT RECORDED IN VOLUME 9 OF PLATS, PAGES 22, 23 AND 24, RECORDS OF SKAGIT COUNTY, WASHINGTON.

Parcel No: P63965

Assessor No: 3873-000-092-0007

Lot Size: .22 Acre

Zoning: Rural Reserve

Water Supply: Cascade River Community Club, Group A public water system

Sewage Disposal: Onsite septic proposed, soil evaluation approved with file SW24-0260

Law Enforcement Jurisdiction: Skagit County Sheriff's Office

Application Date: Critical Areas Variance Application,

Determination of Completeness: November 20, 2024

Shoreline Designation: N/A

Statewide Significance: N/A

SEPA Review: SEPA is not required for variances based on special circumstances (WAC 197-11-800(6)(e), not including economic hardship, applicable to the subject property, in this case size, shape, topography, location or surroundings and not resulting in any change in land use or density.

Notice Information: Application submitted, October 23, 2024
Notice of Development Application, December 5, 2024
Posting onsite, December 3, 2024
Publication, December 5, 2024
Revised application materials submitted, January 30, 2025
Revised Notice of Development Application, January 30, 2025
Posting onsite, January 28, 2025
Publication, January 30, 2025
Notice of Public Hearing, June 26, 2025
Posting, June 25, 2025
Publication, June 26, 2025

Primary Authorizing Codes, Policies, Plans, and Programs:

- Revised Code of Washington (RCW)
 - RCW 36.70A, Growth Management Act
 - RCW 43.21C – State Environmental policy Act (SEPA)
- Washington Administrative Code (WAC)
 - WAC 197-11, SEPA Rules
- Skagit County Code (SCC)
 - SCC 12 – Health, Welfare, and Sanitation
 - SCC 12.05 - On-site Sewage Code-Rules and Regulations
 - 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 14.16.320, Rural Reserve (RRv)
 - SCC 14.22 – Land Disturbance
 - SCC 14.24 – Critical Areas Ordinance
 - SCC 14.32 – Stormwater Management
- Skagit County Comprehensive Plan, as amended by Skagit County Board of Commissioners through 6/23/25 (SCP or “Comprehensive Plan”)
- Skagit County Hearing Examiner’s Rules of Procedure (SCRE), as authorized by Skagit County Commissioners per Resolution #R20240280 on 12/16/24

Hearing Date: 7/11/25 at 9:00 AM

Testifying Parties of Record:

Leah Forbes
Skagit County Planning & Development Services
1800 Continental Place
Mount Vernon, WA 98273

Jason Cory
3354 Inverness Street
Mount Vernon, WA 98273

Joy Cory
3354 Inverness Street
Mount Vernon, WA 98273

Gail Colfax
PO Box 123
Woodinville, WA
63284 Highridge Drive
Marblemount, WA

Hearing Examiner Exhibit List:

1. Variance Application, 10/23/2024
2. Site plan, 10/23/2024
3. Septic site evaluation SW24-0260, 11/13/2024
4. Site assessment, 03/28/2024
5. Letter of Completeness, 11/20/2024
6. Notice of Development Application, 12/05/2024
7. WDFW comment, 12/19/2024
8. Public comments, 12/9/2024 & 12/16/2024
9. Combined comment letter, 12/26/2024
10. Site assessment addendum, 01/13/2025
11. Revised site plan, 01/2025
12. Revised Notice of Development Application, 01/30/2025
13. Notice of Public Hearing, 06/26/2025
14. Staff Report, 07/11/2025

II.

The project site is 0.22 acre in size; and it is relatively flat and drops down a small bluff that is approximately 11 feet high above the Type F stream channel. The site is approximately 125 feet deep between High Ridge Drive and the Type F stream and also approximately 65 feet wide at the road and 93 feet wide at the creek.¹ There is also a 30-foot geologic hazard buffer associated with the slope of the stream.

The Applicant is proposing to build a 20 foot x 14 foot two-story cabin and septic system. The proposed two-story cabin will be located a minimum of 46 feet from the stream at the closest point. The proposed septic drain field and reserve area will be located a minimum of 50 feet from the stream. Both

¹ Ex. 14 at 7 in Figure 1

the cabin and the septic system will be located outside of the 30-foot geologic hazard buffer associated with the slope to the stream.

III.

The Skagit County Planning and Development Services Staff (the “Department”) have recommended approval of the requested Critical Areas Variance permit in a “Staff Report for Public Hearing” (“Staff Report” **Ex. 14**).

The Applicant has indicated there are no factual or legal inaccuracies in the Staff Report’s findings or conclusions, and that they agreed with the conditions proposed.

The Findings of Fact and Conclusions of Law 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.

IV.

SCHE §14 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 14 exhibits that were admitted into the record.

V.

There were 2 public comments received during the public comment period for the application. One comment was concerned with variances being allowed in a spot near a small fragile creek and the encroachment on the creek and recommended denial of the new use. The other comment was significant interest from an adjacent property owner requesting notification of the public hearing and the Hearing Examiners decision.

The only public comment received in the public hearing itself was supportive of the conditioning and thoroughness of the Department in this process.

VI.

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.

Scope of Hearing, Jurisdiction, & Concurrency

Whenever possible, development applications are consolidated and reviewed according to the highest standard of all of the permits, with some exceptions outlined in the law.² In this case the highest application level is Critical Area Variance proposal that contemplate a 50% or greater reduction of standard buffer widths, which must be heard by the Hearing Examiner as a Type III decision.³

Zoning

Residential development is a permitted use with the Rural Reserve zoning designation.⁴

II.

Critical Areas Variance

Any person wishing to deviate from the terms and standards outlined by the Critical Areas Ordinance (“CAO”),⁵ 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.^{6, 7}

The proposed two-story cabin would be located a minimum of 46 feet from the stream at the closest point, and the proposed septic drainfield and reserve area would be located a minimum of 50 feet from the stream; though both the cabin and the septic system would be located outside of the 30-foot geologic hazard buffer associated with the slope to the stream. A critical areas variance is required

² SCC 14.06.160

³ SCC 14.24.140(1); SCC 14.06.150 – Table 1

⁴ SCC 14.16.320 (2)(f)

⁵ SCC 14.24

⁶ SCC 14.24.140

⁷ “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.*

for the construction of any proposal on this property as the entire property falls within the entire 150 foot critical areas buffer associated with a Type F stream wider than 5 feet.

Critical area variance proposals that contemplate a 50% or greater reduction of standard buffer widths must be heard by the Hearing Examiner as a Type III decision.⁸ 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
- 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.⁹

⁸ SCC 14.24.140(1)

⁹ SCC 14.24.140(3)

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.¹⁰

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. Consequently, subject to 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.

IV.

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 14,¹¹ and also directs additional criteria that may be outlined in SCC §§ 14.16, 14.24, etc.¹² So, in addition to the Critical Areas Variance Criteria, the project must also meet the General SCC 14.10 Variance Criteria.

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 14.¹³ It is “applicable to all land within unincorporated Skagit County except as allowed by law.”¹⁴

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.¹⁵ There are three levels of variances in Skagit

¹⁰ SCC 14.24.140(4)

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

¹² SCC 14.10.020

¹³ SCC 14.02.010

¹⁴ SCC 14.02.040

¹⁵ SCC 14.10.010

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.
- 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.¹⁶

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.

Specifically, this project would utilize the property as a single-family residence with a permissible accessory use, which will be consistent with the existing Rural Reserve zoning designation; and embraces and carries forwards the goals in the SCP of using RRv zoning “Provide for a variety of rural residential land use densities while retaining the rural landscape, character, and lifestyles.”¹⁷

Consequently, subject to conditions of approval, having met the General Variance criteria, the underlying Critical Areas Variance should be approved.

¹⁶ SCC 14.10.040

¹⁷ SCP at Chap. 3 “Rrual Residential Designations”, Goal 3C

V.

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 as described in the Staff Report shall be granted to the applicant Trinity Blessings Property, LLC, for the reduction of the standard 150-foot buffer on a Type F stream to a minimum of 46 feet to allow for construction of a 20' x 14' two-story cabin and septic system, at a site addressed as 63254 High Ridge Drive, Marblemount, WA, subject to the following conditions:

- 1.** The applicant will obtain a building permit and a septic permit.
- 2.** Prior to approval of the building permit application, a Protected Critical Area (PCA) site plan will be recorded at the County Auditor's office.
- 3.** The mitigation recommendations of the Fish & Wildlife and Geotechnical Report prepared by Edison Engineering dated March 28, 2024, with modifications January 2025, are considered conditions of approval.
 - a.** A minimum of 1962 square feet of gravel will be removed from the site.
 - b.** A minimum of 3,008 square feet of buffer will be enhanced with native vegetation.
 - c.** A detailed planting plan must be approved prior to the issuance of the building permit application. Native trees must be planted 10 feet on center and native shrubs must be planted 5 feet on center. This will include approximately 30 trees and 90 shrubs.
 - d.** The mitigation planting will be completed prior to final inspection of the building.
 - e.** All mitigation plants must maintain a survival rate of 100% following the first year and 80% following years three and five. If the plants do not meet that survival rate, a qualified professional must assess the site and determine the best method to improve the rate of survival for additional native plants.
 - f.** All development will be located a minimum of 30 feet from the top of the slope onsite.
- 4.** 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)).
- 5.** 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

Sauk-Suiattle Indian Tribe
5318 Chief Brown Lane
Darrington, WA 98241
tgrs@sauk-suiattle.com
Phone: (360) 436-0131

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.¹⁸

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE 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 a hearing examiner.

- A.** Type 1 decisions are appealed to Skagit Superior Court, pursuant to the provisions of SCC 14.06.150-1; Appeals to the Superior Court must be filed with the Superior Court within 21 calendar days of the final decision of a hearing examiner pursuant to RCW 36.70C.040(C).
- B.** Type 2 and 3 decisions are appealed to the Skagit County Board of Commissioners, pursuant to the provisions of SCC 14.06.150-1; Appeals to the Skagit County Board of Commissioners require filing of a written notice of appeal within 14 calendar days of the final decision of a hearing examiner for most decisions, *but* Shoreline permit decisions

¹⁸ SCC 14.24.140(6)

require filing a notice of appeal within five days of the decision per the same ordinance as provided in SCC 14.06.410(3).

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 July 13, 2025



Rajeev D. Majumdar
Skagit County Hearing Examiner