

NOTICE OF FINAL DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Christopher Burt
15973 Bow Cemetery Road
Bow, WA 98232

Agent: Graham-Bunting Associates
3643 Legg Road
Bow. WA 98232

Request: Critical Areas Variance, PL17-0164

Location: 15973 Bow Cemetery Road, 1.75 acre site within Section 3, T35N, R3E, W.M. Parcel No. P33745

Zoning: Agriculture-Natural Resources Land (Ag-NRL)

Summary of Proposal: To build a 30' x 50' shop and a 20' x 80' gravel driveway. The shop would be 59 feet from the ordinary high water mark (OHWM) of Edison Slough. A 15-foot maintenance corridor would reduce the buffer width to 44 feet at the narrowest point. The driveway would constitute a separate access off Worline Road.

Enforcement Action: This permit application was filed in response to an enforcement case. A building pad for the shop and an associated driveway were built without permits.

Public Hearing: January 10, 2018. Testimony by Planning and Development Services (PDS) staff, applicant, and applicant's consultants.

Remand/Decision: After remanding the matter for further information, the Examiner has determined that the application should be denied.

Date: March 23, 2018.

Reconsideration/Appeal: Reconsideration may be requested by filing with PDS within 10 days of this final decision. Appeal is to the County Commissioners by filing with PDS within 14 days of this decision, or decision on reconsideration if applicable.

Online Text: The entire decision can be viewed at:
www.skagitcounty.net/hearingexaminer

REVISED FINDINGS OF FACT

1. Christopher Burt seeks a variance to allow construction of a 30' x50' shop and 20' x 80' gravel driveway near Edison Slough.
2. The property is a 1.75 acre parcel (P33745) located at 15973 Bow Cemetery Road, within Sec. 3, T35N, R3E, W.M. Worline Road borders the property to the east. Other properties in the vicinity are blueberry farms to the north and east and a field to the west that appears to be seasonally hayed. To the south is Bow Cemetery Road.
3. The zoning of the subject parcel is Agriculture-Natural Resources Land (Ag-NRL). The property is mostly mowed lawn with some landscaping to the east and a few trees to the north. The Edison Slough extends through the parcel north the proposed project site. It is a Type F stream (fish-bearing).
4. On the southeast part of the parcel is an existing modular home, carport and garage, accessed by a driveway off of Bow Cemetery Road. To the north, between the home and the slough, the applicant has placed a 30' x 50' concrete slab accessed by 20' x 80' gravel driveway from Worline Road. The slab and gravel drive are within the 150' critical area setback (buffer) from the slough.
5. The instant application for a Critical Areas Variance was filed in the context of an enforcement action (CE14-0157) initiated in October of 2014. The installation of the concrete slab and associated driveway occurred without critical areas review and without a permit. Likewise, no access permit was obtained from Skagit County Public Works before the driveway from Worline Road was built.
6. By this application Mr. Burt is asking to legitimize the concrete pad and access driveway and for permission build a shop on the pad. To accomplish this he has asked for a Critical Areas Variance, reducing the buffer to exclude the area around the shop, pad and driveway, and enhancing the buffer area parallel to the slough with plantings.
7. Under the application, the new shop building would be within 59 feet of Edison Slough. The proposal also includes a 15-foot maintenance corridor which would reduce the buffer width to 44 feet at the narrowest point. The result would be reduction of the standard buffer width by more than 50%.
8. In December of 2016, Burt signed a Voluntary Compliance Agreement (VCA), admitting to performing development within a critical area without the required review and permit. The corrective action agreed upon was to submit a Fish and Wildlife Site Assessment prepared by a qualified professional and approved by the County, and to complete all mitigation required by the Site Assessment by March 31, 2017.
9. The professional Fish and Wildlife Site Assessment was prepared by Graham-Bunting Associates and submitted on March 31, 2017. The Assessment sets forth a mitigation plan

specifying installation of native trees and shrubs in the reduced buffer area on the south side of the slough between the Ordinary High Water Mark and the proposed shop.

10. Concurrent with the filing of the Fish and Wildlife Site Assessment, an application for a Critical Areas Variance Permit was submitted.

11. A Letter of Completeness on the permit application was issued on April 18, 2017 and a Notice of Development Application was posted, published and mailed on April 20, 2017.

12. One comment letter was received. The Washington State Department of Ecology wrote that the applicant does not appear to have satisfied the mitigation sequence of the Critical Areas Ordinance. In particular there is no showing of the impossibility of avoiding all impacts. The letter stated: "We assume there were other locations on the property to build a shop that didn't require encroaching into the buffer." Ecology recommended that if the County approves the variance, all of the remaining buffer area should be enhanced. This would involve removing invasive species, supplemental planting of native woody species, and installing a fence that protects the enhanced buffer area.

13. The Staff Report states:

"There appears to be sufficient space west of the existing and proposed future single-family residence to locate the proposed shop. The shop could be accessed from Bow Cemetery Road. This location would be outside of the standard 150-foot riparian buffer and would not likely need a zoning variance."

14. The Staff ultimately recommended that the variance be denied, concluding that an alternative location outside the buffer area is feasible. Further the Staff Report found, as follows:

"Without County review or approval, the applicant placed fill material, created an unauthorized access from a County road, and poured a concrete slab in an unauthorized location. As a result, a variance would only be for the economic convenience of the applicant."

15. Applicant Burt testified that use of an alternate site suggested for the shop would not match his plans for future development. He stated that the area proposed would be the site of a future drainfield for a new house that is projected for the property. He also argued that the alternate site would have its own access problems.

16. On remand, the Staff maintained that the record demonstrates there is a feasible building location outside of the critical area buffer. Staff noted that no septic design has been submitted.

17. The Applicant made a supplementary submission but it did not prove that there is insufficient space outside of the Critical Area buffer on the property for locating both a drainfield and the proposed shop.

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

REVISED CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding. SCC 14.06.050(1)(b)(i), SCC 14.24.140(1)(b).

2. The application is exempt from the requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6)(b).

3. The Applicant did not carry his burden of proof to show that there is no space on the subject property outside of the critical area buffer where the shop and its access could reasonably be built.

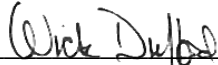
4. The Applicant did not demonstrate compliance with the mitigation sequence under SCC 14.24.080(5)(b). The first step in the sequence is to “avoid the impact altogether.” On the record here, such avoidance is possible.

5. Moreover, the Applicant did not prove that the variance approval criteria of SCC 14.24.140 (d), (e), (h) have been met. After supplementation of the record on remand, the Examiner is unable to conclude that the requested variance is the minimum variance that will make possible the reasonable use of the land. Further, it has not been demonstrated that the variance is justified to cure a special circumstance rather than for the economic convenience of the Applicant.

FINAL ORDER

The application is denied. The requirements for a Critical Areas variance were not proven.

SO ORDERED, this 23rd day of March, 2018.



Wick Dufford, Hearing Examiner

Transmitted to Applicant, Applicant’s agent and Staff, March 23, 2018