

**WHATCOM COUNTY HEARING EXAMINER**

RE: Shoreline Variance	)	SHV2014-0005
Application for	)	
	)	
<b><i>Recia Weigelt</i></b>	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	AND DECISION

**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting relief of the prescriptive 150-foot marine shore setback/buffer to construct a single-family residence and appurtenant developments on an existing lot along the man-made canal at Sandy Point. If approved, the residential development will be located approximately 60-foot landward of the Ordinary High Water Mark [OHWM] at its closest point.

Decision: The requested Shoreline Variance is granted, subject to conditions.

**FINDINGS OF FACT**

**INTRODUCTION**

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

**I.**

**PRELIMINARY INFORMATION**

Applicant: Recia Weigelt

Property Location: Lots 50 & 51 Plat of Sandy Point Shores Div. No. 4  
0 Saltspring Drive, Ferndale, Washington  
Section 10, Township 40 North, Range 03 West, W.M.

Assessor's Parcel No. 380108555204

Adjacent Water Body: Man Made Canal at Sandy Point

Shoreline Designation: Shoreline Residential

Statewide Significance: No

Authorizing Ordinances: SMP 23.50 Applicability  
SMP 23.70.010 Administration  
SMP 23.70.030 Hearing Examiner

Applicable Shoreline Program Provisions

SMP 23.10 Purpose and Intent  
SMP 23.20 Goals and Objectives  
SMP 23.30 Shoreline Jurisdiction and Area Designations  
SMP 23.50 Applicability  
SMP 23.60 Shoreline Permits  
SMP 23.70 Administration  
SMP 23.80 Legal Provisions  
SMP 23.90 General Policies and Regulations  
SMP 23.100.100 Residential Policies and Regulations  
SMP 23.110 Definitions

SEPA Review: Categorically Exempt pursuant to WAC 197-11-800(1)(b)(i)

Legal Notices: Published – Notice of Application, January 28, 2014;  
Notice of Public Hearing, November 26, 2015

Mailed – Notice of Notice of Application, January 28, 2015

Posted – Notice of Public Hearing, November 23, 2015

Hearing Date: December 9, 2015

Parties of Record

Recia Weigelt  
5528 – 127<sup>th</sup> Place SE  
Snohomish, WA 98296

Heidi Joostens  
JWR Design  
104 Front Street  
Lynden, WA 98264

Sam McDaniel  
Planning and Development Services

Exhibits

1. Land Use Application with attachments
  - 1-1 Fee Responsibility
  - 1-2 Agent Authorization
  - 1-3 Shoreline Variance Supplemental Application
  - 1-4 Statutory Warranty Deed
  - 1-5 Mailing Labels
  - 1-6 Determination of Completeness, December 12, 2014
  - 1-7 PDS Property Owner Comment Form Letter, January 30, 2015
  - 1-8 PDS Distribution List: Notice of Application, January 30, 2015
  - 1-9 PDS Staff & Agency & Hearing Examiner Routing Checklists, Oct 14 & 15, 2015
2. Staff Report, dated December 9, 2015
3. Agency Comments
  - Chad Yunge, DOE, February 18, 2015
  - Andy Wisner, PDS Geologic Hazards, March 5 and September 25, 2015
  - Denise Doezema, Engineering Technician, Sept 30, 2015
  - Amy Dearborn, PDS Critical Areas, September 9, 2015
4. Regulatory Floodplain Habitat Assessment and Critical Areas Assessment Report, prepared by Miller Environmental Services, LLC, June 22, 2015 [Flood Approved stamped September 29, 2015]
5. Tsunami Hazard Area Evaluation, prepared by Sound Geology, LLC, May 5, 2015
6. Site Plan, prepared by JWR Design, October 28, 2014
7. Certificate of Mailing, Notice of Application, January 28, 2015
8. Legal Notice, Notice of Application, January 30, 2015
9. Certificate of Posting, Notice of Public Hearing, November 23, 2015]
10. Legal Notice of Public Hearing, November 26, 2015

**II.**

The Applicant, Recia Weigelt, is seeking relief of the prescriptive 150-foot marine shore setback/buffer to construct a single-family residence and appurtenant developments on two underlying lots of record that were bound via covenant in 2004

along the man-made canal at Sandy Point (Canal). The future single-family residential development would be located approximately 60-feet landward of the OHWM of the Canal to the west. This location will be located landward of the common line setback as established in Appendix F of the SMP.

### III.

The Applicant's representative, Heidi Joosten, has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the public hearing. The Findings of Fact and Conclusions of Law of the Shoreline Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit No. 2, dated December 9, 2015, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

### IV.

Any Conclusion of Law 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.

The Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Variance Permit to reduce the prescriptive 150-foot marine shore setback/buffer to approximately 60-feet landward of the Ordinary High Water Mark [OHWM], at its closest point, for the construction of a single-family residence with appurtenant developments on an existing lot along the man-made canal at Sandy Point, Ferndale, Washington.

The Findings of Fact and Conclusions of Law are set forth in the Staff Report,

dated December 9, 2015, Exhibit No. 2 in the Hearing Examiner file. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, and with the Goals and Policies of the Whatcom County Shoreline Management Program. The Conclusions of Law adopted by Staff in the Staff Report are incorporated herein as Conclusions of Law.

## II.

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

### **DECISION**

A Shoreline Variance Permit is hereby granted to Recia Weigelt to reduce the prescriptive 150-foot marine shore setback/buffer to approximately 60-feet landward of the Ordinary High Water Mark [OHWM], at its closes point, to construct a single-family residence, with appurtenant developments on Lots 50 & 51, Plat of Sandy Point Shores Div. No. 4, addressed as 0 Saltspring Drive, Ferndale, Washington, located on Assessor's Parcel No. 380108 555204. The permit is granted subject to the following conditions:

1. The proposed project shall conform to the design, configuration, size and location as approved on the site plan dated November 24, 2015, except as modified by this approval. Any deviation from the approved design shall require additional review by the Whatcom County Shoreline Administrator.
2. The Applicant/Proponent shall obtain a building permit from the Whatcom County Planning and Development Services – Building Services Division prior to any development activity on the subject property. Additional Shoreline Management Program (SMP) review will be required at the time of building permit submittal so that the development actions can be reviewed and approved pursuant to the applicable development policies and regulations pursuant to 23.60.01.A of the SMP. The review will also ensure consistency with the conditions outlined within this variance approval.

3. The proposed single-family residence shall not exceed 30-feet in height as measured from average existing grade to the peak of the structure nor shall any development be located within five-feet of the side property lines.
4. If archaeological materials (bone, shell, midden cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907), LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and Lummi Sche'lan'en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
5. The Applicant shall submit a copy of a Notice on Title that has been filed with the Whatcom County Auditor's Office at the time of Building Permit Application. The Notice on Title form can be found at the Whatcom County Planning & Development Services website.
6. The Applicant shall comply with all of the requirements of the Whatcom County River and Flood Division prior to any development approvals as outlined in the September 30, 2015 memorandum, unless modified by the River and Flood Division, or appealed to the appropriate agency.
7. The recommendations provided in the professional assessment conducted by Sound Geology, LLC, dated May 5, 2015, shall be adopted in its entirety for this Approval and for future development building permits.
8. Authorization to conduct development activities shall terminate five (5) years after the effective date of this Variance Approval, which shall be the final date of approval by the Washington State Department of Ecology. The Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause, if a request for extension has been filed with the Hearing Examiner or Shoreline Administrator, as appropriate, before the expiration date of the shoreline permit and notice of the proposed extension is given to parties of record and the Department of Ecology.

### **NOTICE**

In addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail

for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000. Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.

NOTICE OF ADMINISTRATIVE APPEAL PROCEDURES  
FROM FINAL DECISIONS OF  
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any opponent of record, or any County department. Appeal to County Council. Within ten calendar days of the date of the written decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

Any party of record may request a closed record review of the Hearing Examiner's Decision, issued under SMP 23.60.15.H.4, by the County Council. Such an appeal shall be filed with the County Council on forms supplied by the County within ten (10) calendar days of the written decision. If appeal is made to the County Council, notice of appeal shall be provided to all parties of record at least fifteen (15) days prior to consideration by the County Council. The Council shall meet to review the Hearing Examiner's decision within twenty-one (21) days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830 and Section 23.60.15.H. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 9<sup>th</sup> day of December 2015.

  
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Michael Bobbink, Hearing Examiner

**WHATCOM COUNTY**  
**Planning & Development Services**  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-676-6907, TTY 800-833-6384  
360-738-2525 Fax



**J.E. "Sam" Ryan**  
**Director**

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WHATCOM COUNTY  
HEARING EXAMINER

# 2

December 9, 2015

**WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES**

**STAFF REPORT**

The application of <b>Recia Weigelt</b> for a Shoreline Variance Permit	SHV2014-00005 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant requests relief of the prescriptive 150-foot marine shore setback/buffer to construct a single-family residence and appurtenant developments on an existing lot along the Man Made Canal at Sandy Point. If granted, the future single-family residential development would be located approximately 60-feet landward of the ordinary high water mark (OHWM) at its closest point.

Recommendation: Staff recommends approval of the requested Shoreline Variance Permit subject to the conditions outlined within this staff report.

II. PRELIMINARY INFORMATION

**A. BACKGROUND INFORMATION**

Applicant: Recia Weigelt  
5528 1 127<sup>th</sup> Pl. SE  
Snohomish, WA 98296

Property Location: Lots 50 & 51 Plat of Sandy Point Shores Div. No. 4  
0 Saltspring Drive. Ferndale, Washington  
Section 10 Township 40 North, Range 03 West, W.M.  
Parcel #: 380108555204

Adjacent Water Body: Man Made Canal at Sandy Point

Shoreline Designation: Shoreline Residential

Statewide Significance: No



B. PROCEDURAL INFORMATION

Authorizing Ordinances: SMP 23.50 Applicability  
SMP 23.70 Administration

Applicable Shoreline Program Provisions:

SMP 23.10 Purpose and Intent  
SMP 23.20 Goals and Objectives  
SMP 23.30 Shoreline Jurisdiction and Area Designations  
SMP 23.50 Applicability  
SMP 23.60 Shoreline Permits  
SMP 23.70 Administration  
SMP 23.80 Legal Provisions  
SMP 23.90 General Policies and Regulations  
SMP 23.100.100 Residential Policies and Regulations  
SMP 23.110 Definitions

SEPA REVIEW: Categorically exempt pursuant to WAC 197-11-800(1)(b)(i).

III. FINDINGS AND CONCLUSIONS

The applicant requests relief of the prescriptive 150-foot marine shore setback/buffer to construct a single-family residence and appurtenant developments on two underlying lots of record that were bound via covenant in 2004 along the man-made canal at Sandy Point (Canal). The future single-family residential development would be located approximately 60-feet landward of the OHWM of the Canal to the west. This location will be located landward of the common line setback as established in Appendix F of the SMP.

The subject property is located off Saltspring Drive on Sandy Point which was filed in 1968. The site currently consists of two underlying lots that were bound via covenant and is over 22,000 square feet in size. The adjacent properties to the north and south of the subject site are currently developed with single-family residences and appurtenant developments of similar size and scale.

The subject property is located within a shoreline residential shoreline designation. The purpose of this designation is to accommodate residential development and accessory structures that are consistent with the SMP. The SRD area is applied to shoreline if they have been predominantly developed with single-family residential uses or are planned and platted for residential development per 23.30.062.

Shoreline bulk provisions such as required setbacks and ecological buffers are found in Section 23.90.130 of the SMP. Such setbacks are based on the provisions of the Whatcom County Critical Areas Ordinance (CAO) which is incorporated by reference as part of the SMP pursuant to 23.10.060. The marine shoreline of the man-made canal is a Habitat Conservation Area (HCA) pursuant to Article 7 of the CAO. Section 16.16.740.C states that the buffer for marine nearshore habitats shall extend landward 150 feet from the OHWM.

According to 23.60.030 of the Whatcom County Shoreline Management Program (SMP), the purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in the SMP and any associated standards appended to the SMP such as critical areas buffer requirements where there are extraordinary or unique circumstances relating to the property such

that the strict implementation of the SMP would impose unnecessary hardships on the applicant or thwart the policy set forth in RCW 90.58.020.

Pursuant to 23.60.030.F, "...In addition, variance requests based on the applicant's proponent's desire to enhance the view from the subject development may be granted where there are not likely detrimental effects to existing or future users, other features or shoreline ecological functions and/or processes, and where reasonable alternatives of equal or greater consistency with this Program are not available. In platted residential areas, variances shall not be granted that allow a greater height or lesser shore setback than what is typical for the immediate block or area."

In the granting of all shoreline variance requests consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline variances were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

In order for the requested variance to be approved, the proposal must satisfy the criteria of section 23.60.030 of the SMP. These criteria are set forth and addressed below.

**23.60.030.D.1 That the strict application of the bulk or dimensional criteria set forth in this Program precludes or significantly interferes with reasonable permitted use of the property.**

The subject property is zoned Rural Residential 3 - 3 Units/Acre (RR3), and as stated previously, is located within the Shoreline Residential Designation. Construction of a single-family residence and appurtenant developments is considered a reasonable permitted use of the property. It is important to note that the overall guiding policy of the State Shoreline Management Act (SMA), RCW 90.58.020, identifies residential development as a preferred use of shorelines of the state.

Application of the non-conforming lot development provisions found in 23.50.070.N would result in a 2,500 square foot building area located approximately 80-90 feet landward of adjacent residential structures to the north and south. At this distance, it is the opinion of staff that a view hardship would exist given that a significant number of residences in the area along the man-made canal are developed at a similar distance from OHWM as the proposed residence.

While denial of the requested variance may not preclude the construction of a residential development on the subject property, Section 23.60.030.F enables an applicant or proponent to seek relief of shore setbacks for the sole purpose of view enhancement from the subject development as long as the proposal does not create hazardous conditions for future users of the development and no adverse impact to the shoreline environment occurs as a result of the development. It is clear from the reading of the above provision that an applicant does not have to demonstrate preclusion of all reasonable permitted use on a property to seek relief of a shore setback with no adverse environmental and physical harm can be identified. As such, it is this Administrator's determination that the proposal is consistent with this criterion given the context of the proposal.

**23.60.030.D.2 That the hardship described in 23.60.030.A is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this Program, and not, for example, from deed restrictions**

**or the applicant's/proponent's own actions.**

The subject property was originally platted in the 1968 and was purchased by the applicant in 2014. The lot size is over 20,000 square feet in size and is approximately 160 feet in length as measured from the OWHM to the road.

**23.60.030.D.3 That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.**

The request by the applicant to reduce the shore setback is compatible with the existing permitted developments in the area. Within the subject plat, existing lots fronting on the man-made canal are developed with single-family residential developments located at a similar distance from the shoreline as that requested by the applicant. The existing residences were either constructed prior to the adoption of the SMP or constructed following approval of the first Whatcom County SMP in 1976 and thus were reviewed for consistency with past versions of the SMP. Two similar variance requests have been approved by Whatcom County and the Department of Ecology (SHV2009-00006 & SHV2013-00002).

No adverse effects to adjacent properties or the shoreline environment were identified during staff review of the proposed variance. As conditioned, the variance request will not cause adverse effects to the shoreline environment. Please refer to staff analysis associated with variance criterion 23.60.030.D.7 for further discussion.

**23.60.030.D.4 That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.**

As stated previously, many of the developed waterfront lots within the Sandy Point Shores Plat No.4 are constructed at a similar distance or closer to the shoreline than that requested by the applicant. In this case, construction of a future single-family residence at the proposed location would result in a development comparable in size and scale as the adjacent waterfront structures within the Sandy Point Plat. Such a configuration is compatible with the policies for Shoreline Residential Areas enumerated in 23.30.063 which state that the scale of new development should be compatible with, and protect or enhance, the existing residential character of the area while sustaining shoreline ecological functions and processes. The criteria for creation of a Shoreline Residential Area are made based on shoreline areas that have been predominantly developed with single-family or multi-family residential uses or are planned and platted for residential development which is clearly the case on Sandy Point. With required mitigation in the form of buffer enhancement, no net loss of shoreline ecological functions and processes were identified during staff review. Future development permits will address other factors such as stormwater controls, site planning, landfill and excavation and compliance with the remaining unvaried bulk and dimensional criteria outlined within the SMP.

**23.60.030.D.5 That the public interest will suffer no substantial detrimental effect.**

No substantial detrimental effects to the public interest were identified by staff during review of the project. No public comments were received during the review of the proposal.

**23.60.030.D.6 That the public rights of navigation and use of the shorelines will not be materially interfered with by the granting of the variance.**

The proposed residential development has no impact on rights of navigation or other use of the shoreline.

**23.60.030.D.7 Mitigation is provided to offset unavoidable adverse impacts caused by the proposed development or use.**

The subject property is currently maintained lawn with various low growing grasses, providing low habitat, water quality and water quantity functions. The applicant is proposing to include 6,600 square feet of mitigation that includes native trees, shrubs, and herbs with approximately 6,000 square feet of the planting area located between the residence and the OHWM. The applicant has submitted a compensatory mitigation plan as required in 23.90.030.B; the mitigation plan was reviewed and unconditionally approved. This recommendation of approval has been conditioned that the applicant provides notice on file prior pursuant to 23.90 prior to issuance of the building permit.

**23.60.030.F. Other factors that may be considered in the review of variance requests include the conservation of valuable natural resources and the protection of views from nearby roads, surrounding properties and public areas; provided, the criteria of SMP 23.60.030.D are first met. In addition, variance requests based on the applicant's/proponent's desire to enhance the view from the subject development may be granted where there are no likely detrimental effects to existing or future users, other features or shoreline ecological functions and/or processes, and where reasonable alternatives of equal or greater consistency with this Program are not available. In platted residential areas, variances shall not be granted that allow a greater height or lesser shore setback than what is typical for the immediate block or area.**

The applicant requests approval of the shoreline variance based on desire to enhance the view from the future single-family residence. The proposed location is in an area already impacted lawn. No mature or native vegetation would require removal in order to construct the home and a mitigation plan will be developed to enhance other areas of the property to compensate for any lost shoreline ecological function. Based on the above, no detrimental effects to shoreline ecological functions or processes will occur.

**23.60.030.G States that in the granting of all variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of RCW 90.58.020 and should not produce significant adverse effects to the shoreline environment or other users.**

As stated previously within this staff recommendation, no net loss of ecological functions or processes is anticipated as a result of the proposed residential development as conditioned. As such, approvals for additional requests where similar circumstances exist should not produce significant adverse effects to the shoreline environment or other users.

#### IV. PUBLIC COMMENTS

No comments were received from during the comment period.

## V. AGENCY COMMENTS

The **Whatcom County Department of River & Flood** submitted the following comments via memo on September 30, 2015

The subject permit to construct a new Single Family Residence (SFR) has been reviewed for compliance with the Whatcom County Flood Damage Prevention Code (Title-17) and the associated requirements of the Endangered Species Act (ESA). According to the attached Digital Flood Insurance Rate Map (DFIRM) and the submitted site map the proposed development is located within a Special Flood Hazard Area (SFHA) or specifically Flood Zone AE with a Base Flood Elevation (BFE) of 8.0 feet (NGVD29).

### Flood Conditions for Approval:

- Flood proofing requirements WCC 17.16.010 through 17.16.040, and 17.16.080, (link below) for the proposed development will be required and must be met prior to approval of a building permit. We advise that the project agent/representative and architect/engineer work with us throughout the design process to assure all necessary requirements are being met prior to submitting the final drawings for a building permit.
- Section A on the attached Flood Hazard Zone Development Review Form must be completed by a licensed professional surveyor and submitted prior to acceptance of a building permit.
- A Floodplain Habitat/Critical Areas Assessment (HA) was completed and submitted by Miller Environmental Services, LLC dated June 22, 2015 with a Not Likely to Adversely Affect (NLAA) determination. The Habitat Assessment documents compliance with the ESA.
- The conditions associated with mitigation case MIT2015-00048 must be met.

If a mortgage will be involved with the proposed development, flood insurance will be required. We advise that the owner/applicant contact an insurance company to better understand the coverage requirements and what the premiums may be.

The **Whatcom County Geologist** submitted the following comments via memo on September 25, 2015.

I have reviewed the Tsunami Hazard Area Evaluation Report prepared in support of the referenced shoreline case by Sound Geology, dated May 5, 2015. All recommendations presented shall be incorporated in the design of the proposed single family residence. In addition, the property owner shall read and become familiar with risks associated with living in a in a mapped tsunami inundation zone, and shall become familiar with all emergency management procedures and evacuation routes.

Specific to design of the proposed single family residence, the following elements, paraphrased from the Tsunami Hazard Area Report, shall be incorporated into the project design. Design criteria will be reviewed for conformance at the time of building permit submittal.

To save review time and avoid revisions, please request that the project plans and supporting engineering (including foundation engineering) explicitly state that the following conditions have been incorporated or addressed by the respective project engineers:

- a.) The top of stem wall or finish floor elevation, if a slab-on-grade foundation is designed, shall be a minimum of 10 feet above mean sea level (msl).
- b.) Minimum 24-inch footing embedment for scour protection.
- c.) The foundation shall be designed to withstand wave velocities up to 6.9 miles per hour, which may include debris impacts such as driftwood/logs, boats, docks, decks, sheds and other small structures that may be uplifted and transported by the tsunami.
- d.) Adequately anchor wood-framing to the foundation stem wall.
- e.) Include flood water breakouts when applicable to alleviate the development of hydrostatic pressure beneath the proposed single family residence.
- f.) Site improvements and landscaping shall be designed in consideration of tsunami wave impacts and shall minimize the potential for improvements to become dislodged and act as a floating debris hazard.

## VI. RECOMMENDATIONS

Based on the above findings and technical review, Staff recommends approval of the request for a Shoreline Variance, subject to the following modifications and conditions of approval:

1. *The proposed project shall conform to the design, configuration, size and location as approved on the site plan dated November 24, 2015, except as modified by this approval. Any deviation from the approved design shall require additional review by the Whatcom County Shorelines Administrator.*
2. *The applicant/proponent shall obtain a building permit from the Whatcom County Planning and Development Services – Building Services Division prior to any development activity on the subject property. Additional Shoreline Management Program (SMP) review will be required at the time of building permit submittal so that the development actions can be reviewed and approved pursuant to the applicable development policies and regulations pursuant to 23.60.01.A of the SMP. The review will also ensure consistency with the conditions outlined within this variance approval.*
3. *The proposed single-family residence shall not exceed 30-feet in height as measured from average existing grade to the peak of the structure nor shall any development be located within five-feet of the side property lines.*
4. *If archaeological materials (bone, shell, midden cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907), LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and Lummi Sche'lan"en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.*

5. *The applicant shall submit a copy of a notice on title that has been filed with the Whatcom County Auditor's Office at the time of building permit application. The Notice on Title form can be found at the Whatcom County Planning & Services website.*
6. *The applicant shall comply with all of the requirements of the Whatcom County Department of River and Flood prior to any development approvals as outlined in the September 30, 2015 memorandum unless modified by the Department of River and Flood or appealed to the appropriate agency.*
7. *The recommendations provided in the professional assessment conducted by Sound Geology, LLC, dated May 5, 2015 shall be adopted in their entirety for this approval and future development building permits.*
8. *Authorization to conduct development activities shall terminate five (5) years after the effective date of this variance approval which shall be the final date of approval by the Washington State Department of Ecology. The Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause, if a request for extension has been filed with the Hearing Examiner or Administrator, as appropriate, before the expiration date of the shoreline permit and notice of the proposed extension is given to parties of record and the Department of Ecology.*

Report prepared by:

Sam McDaniel

Whatcom County Shorelines Administrator

Planning and Development Services – Land Use & Natural Resource