

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE CONDITIONAL USE)	SHC2011-0018
Application for)	
)	
<i>Kleindienst Trust</i>)	FINDINGS OF FACT,
<i>Trustees Carol Barnett and Connie Smithhart</i>)	CONCLUSIONS OF LAW,
)	AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicants are requesting approval of a Shoreline Conditional Use Permit to expand a nonconforming single-family residence.

Decision: The requested permit 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: Kleindienst Trust
851 Chuckanut Shore Road
Bellingham, WA 98226

Property Location/Address: 851 Chuckanut Shore Road
Bellingham, WA 98229

Legal Description: Within Section 25, Township 37N, Range 02 East, W.M.
Assessor's Parcel Number: 370225-447468

Adjacent Water Body: Chuckanut Bay

Shoreline Designation: Shoreline Residential

Shoreline of State-Wide Significance: No

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

Applicable Shoreline Program Provisions:
SMP 23.20 Goals and Objectives
SMP 23.30.020 Official Shoreline Map
SMP 23.30.060 Shoreline Residential Area Designation
SMP 23.60.040 Conditional Use Permit Criteria
SMP 23.90 General Policies and Regulations
SMP 23.100.110 Residential

SEPA Review: Categorically Exempt pursuant to WAC 197-11-800

Legal Notices:

Published – Notice of Application, September 1, 2011
Notice of Public Hearing March 1, 2012
Posted – Certificate of Posting, February 28, 2012
Mailed – Notice of Application, September 1, 2011
Notice of Public Hearing, February 23, 2012

Hearing Date: March 14, 2012

Parties of Record:

Carol Barnett and Connie Smithhart
851 Chuckanut Shore Road
Bellingham, WA 98226

Brad Swanson
Belcher Swanson Law Firm
900 Dupont Street
Bellingham, WA 98225

Mr. Sid Nesbit
3429 Robertson Road
Bellingham, WA 98226

Lee Olsen
845 Chuckanut Drive
Bellingham, WA 98226

Delight Green and Michael Newlight
897 Chuckanut Shore Road
Bellingham, WA 98226

Sam McDaniel and Bryan Sehmel
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Supplemental Application, SHC Permit
 - 1-2 Customer Receipt
 - 1-3 Shoreline Document Tracking Checklist
 - 1-4 Determination of Completeness, August 29, 2011
 - 1-5 PDS Property Owner Comment/Notice Letter/Form, September 1, 2011
 - 1-6 Letter dated November 14, 2011, to Kleindienst Trust re: open record hearing determination
 - 1-7 Property Owners Addresses

- 2 Staff Report, February 29, 2012, with attached
 - 2-1 Architectural Floor Plan
 - 2-2 Site Plan

- 3 Agency Comments: Travis Bouma, Flood Review, Sept 23, 2011
Lyn Morgan-Hill, Critical Areas, September 6, 2011
Sanja Barisic, Engineering Services, September 22, 2011

- 4 Public Comment Letters:
Richard and Anne Van Kolken, February 29, 2012 and Sept 6, 2011
Lee and Edie (Holcomb) Olsen, Sept 23, 2011
Karl and Pattie Washburn, September 30, 2011
Alice VolWiler, Sept 13, 2011
RESources for Sustainable Communities, October 3, 2011
Bill and Crystal Trunkey, Sept 8, 2011

- 5 Western Geotechnical Consultants, Inc., December 21, 2011: Addendum to Report, On-Site Stormwater Management

- 6 Certificate of Mailing, Notice of Application, September 1, 2011

- 7 Legal Notice of Application, Sept 1, 2011

- 8 Certificate of Mailing, Notice of Public Hearing, Feb 23, 2012

- 9 Legal Notice of Public Hearing, March 1, 2012

- 10 Large Site Plan, dated August 15, 2011

- 11 Certificate of Posting, February 28, 2012

- 12 Letter in Opposition to proposal, Alice Volwiler, March 3, 2012
- 13 Health Department memorandum, dated March 13, 2010 [sic] re: on-site sewage system
- 14 Language submitted by the Applicant and agreed to by the Shoreline Planner modifying Conditions 3 and 7

II.

Whatcom County Planning and Development Services Staff have recommended approval of the proposed expansion of the single-family residence. A Shoreline Conditional Use Permit is required because the residence does not meet current setback requirements.

The facts set forth in the Staff Report are supported by the record as a whole. The Hearing Examiner hereby adopts the Factual Findings in the Staff Report, Exhibit No. 2 in the Hearing Examiner's file, by this reference. A copy of the Staff Report is attached hereto.

III.

Concerns were expressed by neighboring property owners. These concerns included concerns about the proposed residential expansion on a small lot with only a two-bedroom septic drainfield system and with a unpermitted accessory dwelling on the property. The unpermitted accessory dwelling is currently the subject of an enforcement action by Whatcom County Planning and Development Services.

The Whatcom County Health Department submitted a short memorandum, dated March 13, 2010 [sic] at the public hearing. This memorandum, Exhibit No. 13 in the Hearing Examiner file, reads as follows:

The Whatcom County Health Department (WCHD) has reviewed the project noted above and has the following comments:

SEWAGE:

The on-site sewage system (OSS) for the property is a table VII repair serving a 1 bedroom main house and a 1 bedroom "guest house". In order to approve any building permit WCHD will require that the applicant demonstrate that there will be no added net square footage or water use.

The Applicant has requested that the Health Department issues regarding the sewage system be resolved at the building permit stage. Resolution of sewage issues also involves resolution of the enforcement action regarding the unpermitted one bedroom "guest house."

IV.

The other major issue raised by residents in the area concerned the impact on their views from the proposed 500+ square foot second story addition. This addition would impact views of some neighboring property owners.

It should be noted that the citizens concerned about their view have cited no Ordinance or Regulation which would allow the Hearing Examiner to restrict the second floor addition, so long as the addition remains within the maximum height limit allowed under the Whatcom County Shoreline Master Program and the Whatcom County Zoning Ordinance.

Concerns were also raised about illegal construction activities associated with a bulkhead/retaining wall on-site. This permit application does not involve a bulkhead or retaining wall. The construction activities associated with the existing retaining wall and bulkhead have been addressed via an enforcement action by the Washington State Department of Ecology. Whatcom County is not involved with the permitting or regulating of the work associated with the retaining wall or bulkhead at this point.

V.

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 Master Program allows expansion of existing nonconforming uses through the Shoreline Conditional Use Permit Process. Where the regulation that makes the existing residence nonconforming involves setbacks, expansion can be approved so long as the Applicant obtains a Shoreline Conditional Use Permit and none of the expansion proposed will be closer to the OHWM than the existing residence.

Planning and Development Services Staff have concluded that, subject to eleven proposed conditions, the expansion is consistent with the Shoreline Conditional Use Criteria and should be approved.

II.

The Hearing Examiner concurs with Staff's conclusion that the proposed expansion is consistent with the Shoreline Conditional Use Criteria, subject to conditions. The Hearing Examiner intends to add a condition requiring Health Department approval, prior to the issuance of the building permit. Since the on-site sewage system issues are involved with the enforcement activity regarding the unpermitted one-bedroom guest house, the Hearing Examiner is going to require that

the enforcement action also be resolved prior to the issuance of the building permit.

III.

The Hearing Examiner does not have the authority to protect views of neighboring property owners so long as the height limitations under the Shoreline Management Act and the Whatcom County Zoning Ordinance are complied with.

IV.

The Hearing Examiner should recommend approval of the Shoreline Conditional Use Permit, subject to the conditions recommended by Staff and the additional conditions discussed above.

V.

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

The Whatcom County Hearing Examiner hereby approves a Shoreline Conditional Use Permit for the expansion of a nonconforming single-family residence, located at 851 Chuckanut Shore Road, Bellingham, Washington, subject to the following conditions:

1. The proposed shoreline developments shall be consistent with the scope and site plan approved by this shoreline conditional use permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. The Applicant shall obtain a Building Permit(s) from the Whatcom County Planning & Development Services – Building Services Division prior to start of construction and demolition on the subject property. Such Building Permit(s) shall require development review by the Shoreline Administrator and appropriate development permits pursuant to 23.60.01. The building permit submittal shall include site plans consistent with the plans approved by this permit.
3. The Applicant must obtain a Shoreline Substantial Development Permit (SDP) or a Shoreline Exemption prior to building permit approval.
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 (384-2298) 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 LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.

5. The Applicant shall comply with all requirements outlined in the Division of Engineering Services comments, dated September 22, 2011, prior to any development approvals, unless modified by Engineering or appealed to the appropriate agency.
6. Construction and/or demolition debris shall be wholly removed from water/shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including, but not limited to, Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority.
7. Prior to issuance of the building permit, the Applicant shall file a Notice on Title with the Whatcom County Auditor's Office along with a copy of the approved site plan. The language in the Notice on Title shall be mutually agreed by the Applicant and the County, or submitted to the Hearing Examiner for resolution.
8. Issuance of this shoreline permit does not release the Applicant from any other State, regional or Federal statutes or regulations applicable to the proposed development.
9. Future development permits shall comply with all bulk and dimensional setback requirements as required by the Whatcom County Shoreline Management Program.
10. State water quality and all other applicable standards shall be adhered to. Water quality of ground and surface waters shall not be significantly degraded.
11. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.160.
12. The issues raised by the Health Department memorandum, Exhibit No. 13, regarding the on-site sewage system shall be resolved prior to the issuance of a building permit. If the Applicant and the Health Department cannot agree on a resolution of the on-site sewage system issues, the Department should issue a Final Determination. The Applicant can then choose to comply with the Health Department decision or appeal it to the Hearing Examiner.
13. No building permit shall be issued until the enforcement activity instigated by the County regarding the unpermitted guesthouse on-site has been resolved.

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

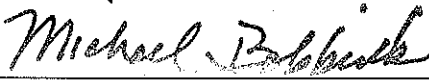
This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any opponent of record, or any County department. Appeal to County Council. Within ten calendar days of the date of the written decision a written notice of 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 29th day of March 2012.



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
RECEIVED
#2
MAR 05 2012
WHATCOM COUNTY
HEARING EXAMINER

February 29, 2012

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

The application of
Kleindienst Trust
For a Shoreline Conditional Use Permit

FINDINGS, CONCLUSIONS
AND RECOMMENDATIONS
for SHC2011-00018

I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant is requesting approval of a shoreline conditional use permit to expand a nonconforming single family residence.

Recommendation: Staff recommends approval of the proposed project subject to the conditions outlined within this staff report.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Kleindienst Trust
851 Chuckanut Shore Road
Bellingham, WA 98226

Applicant Representative: Mr. Sid Nesbit
3429 Robertson Road
Bellingham, WA 98226

Property Location/Address: 851 Chuckanut Shore Rd

Legal Description: Within Section 25, Township 37N, Range 02 East, W.M.
Assessor's Parcel Number: 370225-447468

Adjacent Water Body: Chuckanut Bay

Shoreline Designation: Shoreline Residential

Shoreline of State-Wide Significance: No

B. PROCEDURAL INFORMATION

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

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.020	Official Shoreline Map
SMP 23.30.060	Shoreline Residential Area Designation
SMP 23.60.040	Conditional Use Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.110	Residential

SEPA Review:

Categorically Exempt pursuant to WAC 197-11-800

III. FINDINGS

The applicant is requesting a Shoreline Conditional Use permit to expand a nonconforming single family residence. On October 16, 2010, Whatcom County Planning & Development Services issued a "Notice of Violation" for the unpermitted reconstruction and expansion of a nonconforming single family residence located at 851 Chuckanut Shore Road. Accordingly, this application is a retroactive permit application.

The subject property is located at 851 Chuckanut Shore Road along the eastern edge of Chuckanut Bay. The property above OHWM is approximately 11,166 square feet in size and slopes steeply to the west to Chuckanut Bay. According to the Whatcom County Assessor's Office a single family residence has been on site since 1936. A concrete bulkhead retaining wall is located on the western edge of the property.

Based on field indicators, Staff determined the existing residential footprint to be located approximately 35 feet from the ordinary high water mark (OHWM) of Chuckanut Bay. Pursuant to 23.90.13.C, the required shore setback is established by Whatcom County Code 16.16. Pursuant to 16.16.740, the required Habitat Conservation Area buffer is 150-feet from the OHWM. Staff has determined that the residential development is non-conforming as defined by the SMP.

The applicant is proposing to expand the south western corner of the residence laterally with the addition of approximately forty-five square feet. The proposal would also enclose an existing breezeway which would result in 144 square feet of expanded living area on the main floor. Lastly, the applicant is proposing to add a 630 square foot second story expansion. The second story expansion will be wholly contained within the existing residential footprint.

The Chuckanut Bay is a shoreline of the state and thus subject to the provisions of the SMP. According to the Official Shoreline Map (Map) as outlined in 23.30.02.A, the subject site is located within the Shoreline Residential Area shoreline designations. Policies for Shoreline Residential Areas indicate that the scale and density 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. Additionally, residential uses are identified as a permitted use in the Shoreline Residential Area. The proposed reconstruction and expansion of an existing residential development on the site complies with the policies and regulations outlined in the SMA and SMP.

Pursuant to 23.60.130.A the proposal is not exempt from an open record public hearing based on controversial comments received during the required comment period. The comments are identified in the "Public Comment" section of the staff report.

Section 23.50.07.I states that enlargement or expansion of single-family residences by the addition of space to the main structure or by the addition of normal appurtenances as defined in Chapter 11 that would increase the non-conformity and/or encroach further into areas where new structures or developments would not now be allowed under the SMP may be approved by conditional use permit if all of the following criteria are met:

1. The structure must be located landward of the ordinary high water mark (OHWM).

2. The enlargement, expansion or addition shall not extend either further waterward than the existing primary residential structure (not appurtenances), further into the minimum side yard setback, or further into any critical areas established by WCC 16.16 than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into a critical area, or the minimum required side yard setback require a variance.
3. The area between the non-conforming structure and the shoreline and/or critical areas shall meet the vegetation conservation standards of SMP 23.90.06.
4. The expansion will not cause adverse impacts to shoreline ecological functions and/or processes.

Additionally, Section 23.60.04.B states that uses specifically classified or set forth in the SMP as conditional uses may be authorized provided the applicant/proponent can demonstrate all of the following:

1. That the proposed use will be consistent with the policy of RCW 90.58.020 and the SMP.
2. That the proposed use will not interfere with normal public use of public shorelines.
3. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.
4. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.
5. That the public interest suffers no substantial detrimental effect.

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

Shoreline Conditional Use Permit:

In order for a Shoreline Conditional Use Permit to be approved, the proposal must satisfy the criteria of section 23.60.040 of the Program. These criteria are set forth and discussed below.

23.60.04.B.1. That the proposed use will be consistent with the policy of RCW 90.58.020 and this Program.

The Shoreline Management Act of 1971, at RCW 90.58.020 indicates:

"... uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses...."

The project proposal includes a lateral expansion of an existing residential footprint and a vertical expansion. The vertical expansion will be wholly contained within the residential footprint. As stated above, residential use is a preferred use of the shoreline. The proposed residence will be similar size and scale of neighboring residences. Additionally, the project has been reviewed and Critical Areas staff has unconditionally approved the proposal. The development is categorically exempt from SEPA review. Accordingly, staff finds the material on record indicates the project proposal complies with the policies of RCW 90.58.020 and the SMP.

23.60.04.B.2. That the proposed use will not interfere with normal public use of public shorelines.

The subject site is located on privately owned property, and does not abut any upland community or public access or park. The development will be limited to the currently nonconforming residential

footprint. Therefore, staff has determined the development proposal does not interfere with public use of public shorelines.

23.60.04.B.3. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.

The subject property is located within the Residential Rural Zone and is surrounded with residences of similar size and scale. Staff finds that the proposal is compatible with permitted residential use of the area and consistent with existing structures along the shoreline in this area.

23.60.04.B.2. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.

The project has been reviewed and approved by the Whatcom County Critical Areas staff, who found there were no negative environmental impact from further development within the footprint of the existing house and the expansion of the residence. The applicant has submitted an engineered stormwater report to address stormwater associated with the proposal. Additionally, the proposed expansion is categorically exempt from SEPA review. Based on these findings, staff determines the proposed development demonstrates compliance with the requirements of this criterion of the SMP.

23.60.04.B.2. That the public interest suffers no substantial detrimental effect.

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

Expansion of Nonconforming Residence Criteria:

Section 23.50.07.I states that enlargement or expansion of single-family residences by the addition of space to the main structure or by the addition of normal appurtenances as defined in Chapter 11 that would increase the non-conformity and/or encroach further into areas where new structures or developments would not now be allowed under the SMP may be approved by conditional use permit if all of the following criteria are met:

1. The structure must be located landward of the ordinary high water mark (OHWM).
2. The enlargement, expansion or addition shall not extend either further waterward than the existing primary residential structure (not appurtenances), further into the minimum side yard setback, or further into any critical areas established by WCC 16.16 than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into a critical area, or the minimum required side yard setback require a variance.
3. The area between the non-conforming structure and the shoreline and/or critical areas shall meet the vegetation conservation standards of SMP 23.90.06.
4. The expansion will not cause adverse impacts to shoreline ecological functions and/or processes.

Comment:

The proposed structure is located landward of the OHWM. The vertical expansion is located within the existing residential footprint; a portion of the north eastern corner of the residence currently encroaches into the required minimum side yard site and is nonconforming with that respect. The proposal will not result in further encroachment into the nonconforming side yard setback. The applicant is not proposing any vegetation removal as part of this proposal. Additionally, this recommendation of approval has been conditioned that a "NOTICE OF SHORELINE CRITICAL AREAS AND RESTRICTION ON USE AND ALTERATION" be filed with the Whatcom County Auditor's Office prior to issuance of the future development permit. This condition complies with the vegetation conservation standards of SMP 23.90.06. Whatcom County Critical Area Staff reviewed the proposal and determined that there will be no impacts on habitat conservation area impacts as a result of the proposal. As such, it is the opinion of staff that the expansion will not cause adverse impacts to shoreline ecological functions and/or processes.

In the granting of all shoreline conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits and conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts should also remain consistent with the policy of RCW 90.58.020 and should not produce a significant adverse effect to the shoreline ecological functions and processes or other users.

Pursuant to 23.60.01.C the project was reviewed to determine for consideration of potential cumulative effects that would result if similar developments were permitted in the area of the subject property. The location of the proposed expansion is located landward of the OHWM of Chuckanut Bay. The project will not result in additional loss of functional buffer. No detrimental impacts were identified to the shoreline environment during the course of this permit review. The proposal as conditioned appears to comply with the density standards, development standards, bulk and dimensional setbacks, vegetation conservation standards, and critical area requirements. As such, additional approvals for additional developments where similar circumstances exist, are not likely to represent a cumulative environmental impact to the shoreline. It is the opinion of staff that this project as proposed and conditioned meets the ecological protection policies of the Whatcom County Shoreline Management Program resulting in no net loss of ecological functions and process and that the sum of similar permitted actions appears to comply with the policy of RCW 90.58.020.

V. PUBLIC COMMENTS

Six comments were received during the required comment period. Three of the six comments were opposed to the project. The opposing comments objections include; 1) Potential view blockage, 2) Existing hedge along railroad right of way that possibly exceeds allowable height limit, 3) Presence of possible Accessory Dwelling Unit on site, 4) Illegal construction activities associated with a bulkhead/retaining wall on site.

Comment:

According to the submitted plans, the proposed vertical expansion will comply with the height restriction set forth in the bulk and dimensional requirements contained in the SMP. The height restriction in this particular reach of Chuckanut Bay is 30 feet as measured from the existing average grade to the highest point of the structure.

Section 23.90.13.B.5 states "Table 23.90.13.C establishes the maximum allowed building height for all primary and accessory structures. Height is measured according to the definition in SMP 23.110.H.7...provided further that, pursuant to RCW 90.58.320, no permit may be issued for any new or expanded building or structure more than 35 feet above average grade level that will obstruct the view of a substantial number of residences on or adjoining such shorelines except where the Program does not prohibit such development and only when overriding considerations of the public interest will be served. The applicant/proponent shall be responsible for providing sufficient information to the Administrator to determine that such development will not obstruct the view of a substantial number of residences on or adjoining such shorelines." This particular code provision is applicable in urban reaches of shoreline structures larger up to 75 feet tall via shoreline conditional use permit may be authorized when the necessary analysis has been completed. Single family residences are subject to the bulk and dimension requirements found in 23.90.13.C and not subject to this particular provision.

In response to the potential hedge violation, according to information obtained from the Whatcom County Assessor's Office the applicants are utilizing a parcel of property that is not in their ownership for parking (APN# 370225456475). Staff was unable to locate a recorded easement via the Whatcom County Auditor's Office. The subject parcel is owned by the Burlington Northern Santa Fe Railway Company (BNSF). Questions and concerns regarding the BNSF right-of-way and vegetation maintenance should be forwarded to BNSF for follow up. The applicant's proposal includes two off street parking spaces at 851

Chuckanut Shore Rd. that meets the requirements of the Whatcom County Zoning Ordinance and Whatcom County Development Standards.

It does appear that an accessory dwelling is located on site. This information has been forwarded to Whatcom County Enforcement Staff for follow up.

The referenced illegal construction activities associated with the existing retaining wall and bulkhead have been addressed via an enforcement action with the Washington State Department of Ecology. Whatcom County is not involved with permitting or regulating the work associated with the retaining wall and bulkhead.

RE Sources, a local non-profit environmental education organization submitted the following comment on October 3, 2011.

The North Sound Baykeeper, a project of RE Sources, has a mission to safeguard marine and freshwater water quality and habitat in Whatcom and Skagit Counties. RE Sources is a membership based organization with approximately 700 members; it is on their behalf that we share our concerns with you in regard to the proposed construction of a single family residence and driveway expansion at 851 Chuckanut Shore Rd.

Upon reviewing the file there were a few concerns that are worthy of more in depth examination. These are especially relevant due to the fact that the building proposal is within the 150ft marine buffer. Please address these concerns, with consideration of the proximity of the marine nearshore.

- Any applicable impervious surface restrictions for the shoreline residential zone should be taken into consideration before approval of the proposed 42'x10' concrete driveway is granted.
- Restrictions on building coverage should be addressed within the designated zone and in conformance with 20.32.450.
- History of the destruction of the building previously existing on the foundation should be identified to insure conformance with 20.50.07.

Thank you for accepting these comments on 851 Chuckanut Shore Rd.

Comment:

There are currently no limitations contained in applicable Whatcom County Regulations or Development Standards that limit the amount of impervious surface that can cover a lot. Pursuant to WCC 20.32.450, "No structure or combination of structures shall occupy or cover more than 2,500 square feet or 35 percent, whichever is greater of the total area." The subject parcel above OHWM is approximately 11,166 square feet in size. Per the above referenced code citation, the combination of structures shall be limited to less than 3,908 square feet to comply with 20.32.450. According to the submitted site plan the combination of structures on the lot total 2,637 square feet, thus complying the limitations set forth in 23.32.450. The subject lot is subject to the requirements of the National Pollution Discharge Elimination System (NPDES) Phase II Permit. The NPDES Permit is intended to help mitigate the impacts of current development activities. Pursuant to the requirements of NPDES the applicant has submitted an engineered stormwater report to address stormwater associated with the proposal.

Staff was unable to locate the referenced 20.50.07 code provision in Title 20. However, 20.83.050 states "If a nonconforming use or physical feature of a building or group of buildings on one site is damaged or destroyed, by any means, that use shall be permitted to be rebuilt equal to the square footage of damaged or destroyed building(s), and for the same use and location on the site."

Staff believes the commenter was referring to WCC 23.50.07 of the SMP. This code section discusses nonconforming structures/uses. Section 23.50.07.1 clearly allows for expansion of nonconforming single family residences if the proposal meets the criteria outlined (contained in the findings section of the staff

report). Staff has determined the proposal complies with the criteria and as such is recommending approval.

WCC 23.50.07.A, states "The lawfully established use of any building, structure, land or premises existing on the effective date of initial adoption of the Program (August 27, 1976), or any subsequent amendment thereto or authorized under a permit or approval issued, or otherwise vested, prior to the effective date of initial adoption of the Program or any subsequent amendment thereafter shall be considered nonconforming and may be continued, subject to the provisions of this section..." The Whatcom County Assessor's Office has documentation that a residence has been on site since 1936. Therefore the subject residence is a lawfully established nonconforming structure.

VI. AGENCY COMMENTS

The Whatcom County **Department of Engineering Services** submitted the following comments regarding the proposal on September 22, 2011:

The following requirements apply to the proposed project:

1. All developments shall comply with Whatcom County Development Standards.
2. The proposed development is subject to a stormwater review. Detailed drainage proposal and TESC Plan shall address all clearing activities associated with a fill and grade permit or building permit.
3. The applicant shall obtain a Revocable Encroachment Permit prior to any construction work in the county right-of-way.

****All appropriate permits must be obtained before construction. Obtaining a county permit does not replace or over-ride other state and federal statutes and regulations that may apply to this project.**

VII. RECOMMENDATIONS

Based on the above findings and technical review, **Staff recommends approval** of the request for a shoreline conditional use permit subject to the following conditions of approval:

1. The proposed shoreline developments shall be consistent with the scope and site plan approved by this shoreline conditional use permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. The applicant shall obtain a Building Permit(s) from the Whatcom County Planning & Development Services – Building Services Division prior to start of construction and demolition on the subject property. Such Building Permit(s) shall require development review by the Shoreline Administrator and appropriate development permits pursuant to 23.60.01. The building permit submittal shall include site plans consistent with the plans approved by this permit.
3. The applicant must also obtain a shoreline substantial development permit (SDP) since the exemption from the SDP process is only for "...an owner, lessee, or contract purchaser of a single-family residence for their own use or for the use of their family..." Alternatively, the applicant may provide legal documentation that they are the owner, lessee, or contract purchaser of the subject single family residence for their own use or for the use of their family. This documentation shall be provided prior to issuance of the future development permit.

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 (384-2298) 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 LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
5. The applicant shall comply with all of the requirements outlined in the Whatcom County Department of Engineering Services comments prior to any development approvals as outlined in the September 22, 2011 comments unless modified by the Department of Engineering or appealed to the appropriate agency.
6. Construction and/or demolition debris shall be wholly removed from water/shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority.
7. Prior to issuance of the building permit, the applicant shall file a Notice on Title with the Whatcom County Auditor's Office along with a copy of the approved site plan.
8. Issuance of this shoreline permit does not release the applicant from any other State, regional or Federal statutes or regulations applicable to the proposed development.
9. Future development permits shall comply with all bulk and dimensional setback requirements as required by the Whatcom County Shoreline Management Program.
10. State water quality and all other applicable standards shall be adhered to. Water quality of ground and surface waters shall not be significantly degraded.
11. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.160.

Report prepared by:

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Whatcom County Planning and Development Services