

**WHATCOM COUNTY HEARING EXAMINER**

RE: SHORELINE VARIANCE ) SHV2010-0007  
Application for )  
 )  
*Jonathan Tuazon* ) FINDINGS OF FACT,  
 ) CONCLUSIONS OF LAW,  
 ) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

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 non-conforming shoreline lot along the Strait of Georgia. If granted, the future single-family residential development would be located 72 to 95-feet landward of the ordinary high water mark (OHWM).

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: Jonathan Tuazon

Property Location: Lot 40, Edwards Drive, Point Roberts, Washington  
Section 10 Township 40 North, Range 03 West, W.M.  
Parcel No. 405310 390345

Adjacent Water Body: Strait of Georgia

Shoreline Designation: Shoreline Residential

Statewide Significance: No

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 and Exemptions
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 – August 2 and December 30, 2010  
Mailed – July 28 and December 17, 2010

Hearing Date: January 12, 2011

Parties of Record:

Jonathan Tuazon  
PO Box 1068  
Point Roberts, Washington 98281-1068

Clive Boomer  
1661 Edwards Drive  
Point Roberts, WA 98281

Chad Yunge  
Planning and Development Services

Exhibits:

1 Land Use Application  
1-1 Fee Responsibility

- 1-2 Supplemental Application
- 1-3 Project Narrative
- 1-4 Comment Letter to Property Owners, July 27, 2010
- 1-5 Determination of Completeness, July 27, 2010
- 1-6 Distribution List
- 1-7 Certificate of Mailing of Notice of Application, July 28, 2010
- 1-8 Legal Notice of Application, August 2, 2010
- 1-9 Mailing Labels
  
- 2 Staff Report, dated December 17, 2010
  
- 3 Shoreline Approved Site Plan with Approved Setback Line highlighted in red
  
- 4 Comment Letters from  
 Washington State Dept of Archaeology, dated September 2010  
 Lummi Indian Business Council, September 15, 2010  
 Email, dated August 20, 2010 from Fiomena Eriman  
 Comment Form: Dwayne Hunt, date stamped received August 10, 2010  
 Letter, dated August 23, 2010, from Clive Boomer  
 Comment Form: Frances Villari, date stamped received August 13, 2010
  
- 5 Aerial Site Photo
  
- 6 Site Plan
  
- 7 Certificate of Mailing: Notice of Public Hearing, dated December 17, 2010
  
- 8 Legal Notice of Public Hearing, dated December 30, 2010

**II.**

The Applicant requests relief from the prescribed 150-foot shore setback/buffer to construct a single-family residence and appurtenant development between 72-feet to 95-feet landward of the Ordinary High Water Mark of the Strait of Georgia.

**III.**

The Applicant 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 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 #2, dated December 17, 2010, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

Written public comments were received prior to the hearing. Staff indicated and the Hearing Examiner concurs that the concerns raised in these comments were addressed by Staff in the review and preparation of the attached Staff Report, dated December 17, 2010.

#### **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.**

Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Variance Permit for the proposed reduction in the shore setback in order to allow for the construction of a single-family residential development to be located between 72-feet and 95-foot landward of the Ordinary High Water Mark.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit No. 2, dated December 17, 2010. 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 Jonathan Tuazon granting relief from the prescribed 150-foot shore setback in order to construct a single-family residence and appurtenant development to be located between 72-feet and 95-foot landward of the Ordinary High Water Mark. The property in question is located on Assessor's Parcel No. 405310 390345, Lot 40, Edwards Drive, Point Roberts, Washington. The permit is granted subject to the following conditions:

1. The waterward edge of future development proposals on the subject property shall be consistent with the modified site plan dated December 17, 2010, and the final size and configuration of the development shall be consistent with all conditions of this shoreline variance including the required mitigation analysis and plan.

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. Prior to issuance of any development permits or approvals on the subject property, the Applicant/Proponent shall submit a buffer mitigation plan pursuant to the general mitigation requirements outlined within Section 16.16.206 of the SMP as well as the mitigation standards for Habitat Conservation Areas enumerated in Section 16.16.760 of the SMP. The plan shall include an impact analysis of all proposed developments and a compensatory mitigation plan demonstrating that implementation of the plan will not result in a net loss of shoreline functions and processes. The plan shall be completed by a qualified professional as defined in 23.110 of the SMP and shall include construction, maintenance, monitoring, and contingencies including mitigation assurances such as mitigation surety, notice on title etc. At a minimum, the required monitoring period shall be five years. The plan shall be reviewed and approved by the Whatcom County Shoreline Administrator prior to issuance of any development activities.
5. Prior to issuance of any development permit approvals, the Applicant/Proponent shall retain a qualified archaeologist to conduct a professional archaeology survey of the project area as required by the Washington State Department of Archaeology and Historic Preservation (DAHP) in a letter dated September 2, 2010 and the Lummi Nation in a letter dated September 15, 2010.
6. 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.

### **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 18<sup>th</sup> of January 2011.

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Michael Bobbink, Hearing Examiner



December 17, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of <b>Jonathan Tuazon</b> for a Shoreline Variance Permit		SHV2010-00007 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 non-conforming shoreline lot along the Strait of Georgia. If granted, the future single-family residential development would be located 72 to 95-feet landward of the ordinary high water mark (OHWM).

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

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Jonathan Tuazon  
PO Box 1068  
Point Roberts, Washington 98281-1068

Property Location: Lot 40, Edwards Drive. Point Roberts, Washington  
Section 10 Township 40 North, Range 03 West, W.M.  
Parcel #: 405310390345

Adjacent Water Body: Strait of Georgia

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 and Exemptions
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 an existing non-conforming shoreline lot along the Strait of Georgia. The future single-family residential development would be located 72 to 95-feet landward of the ordinary high water mark (OHWM) of Georgia Strait to the south and approximately 100-feet landward of the OHWM as measured from the Point Roberts Marina channel.

The subject property is located off Edwards Drive within the Point Roberts Marina Estates – Addition 1 Plat which was created in the late 1970s and filed in 1978. The site currently consists of a relatively flat, sparsely-vegetated vacant lot measuring approximately 10, 840-square feet in size. The adjacent properties to the east, north and west of the subject site are currently developed with single-family residences and appurtenant developments. The subject property is irregularly-shaped with a “dog leg” to the northwest to provide access to Marine Drive. The property is narrow in this area measuring only 28-feet in width. The entrance to the Point Roberts Marina basin is located approximately 105-feet to the east along with the associated breakwaters extending out into the waters of Georgia Strait. The subject property is bounded to the south by a community beach reserve tract consisting of beach grasses and drift logs beyond which lies the low bank shoreline of Georgia Strait. The subject property is serviced by public water and sewer and located within a Shoreline Residential Designation.

Shoreline bulk provisions such as required setbacks and ecological buffers are found in Section 23.90.13 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 23.10.06. The marine shoreline of Georgia Strait is a Habitat Conservation Area (HCA) pursuant to Article 7 of the CAO. Section 16.16.740.C states that the marine nearshore area, defined as the area between the shoreline and depths of 66-feet, are Locally Important Habitat Areas that should be protected with prescriptive buffer of 150-feet. The marine shoreline of Georgia Strait to the south of the subject property, as well as the dredged marina channel to the east qualify as HCAs and are thus subject to such setbacks/buffers. Additional applicable setbacks for development

include a minimum 5-foot shoreline sideyard setback as measured from both side property lines and a setback from Marine Drive of 5-feet pursuant to the Whatcom County Zoning Ordinance (Title 20). Single-family homes are also required to be setback an additional 10-feet from buffers pursuant to 16.16.265.D.

According to 23.60.03 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.

In order for the requested variance to be approved, the proposal must satisfy the criteria of section 23.60.03 of the SMP. These criteria are set forth and addressed below.

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

As stated previously, the subject property is located within a shoreline residential shoreline designation (SRD). The purpose of the SRD 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 23.30.06.2. There is little question that single-family residential development represents a reasonable permitted use of the subject property, and it is clear that the strict application of the prescriptive bulk and dimensional standards preclude such use as described below:

Application of the 150-foot HCA buffer/setback from OHWM to the south and east, coupled with 5-foot sideyard and road setbacks and the additional 10-foot building setback required pursuant to 16.16.265.D which would apply only to the shore setback measured from the south, would leave approximately 1,600-square feet available to construct a single-family residence and necessary appurtenant developments which at a minimum would include a driveway, parking area and turnaround. A majority of this area is located within the narrow “dog-legged” portion of the subject property which is only suitable for driveway construction leaving no available area for the house itself.

Alternatively, the application of the non-conforming provisions of 23.50.07.K would significantly interfere with the construction of a reasonable single-family development. These provisions allow an applicant to pursue construction of a new single-family development on lots less than 20,000 – square feet in size. Specifically, a new single-family development with a building area of not more than 2,500-square feet in size, may be permitted as far back on the lot as feasible without the need to reduce the prescriptive shore setback/buffer via the variance process. Building area is defined by 23.50.07.K.1 as the entire area that will be disturbed to construct the home, normal appurtenances and landscaping. When applied to the subject property, a majority of the allowable building area would be located within the narrow “dog-legged” portion of the site where it is obvious that only a driveway for ingress/egress can be executed. Application of these provisions leaves inadequate space to construct a reasonably-sized home with the necessary appurtenant developments for use and enjoyment of such a structure.

**23.60.03.D.2 That the hardship described in 23.60.03.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 own actions.**

The subject property was originally platted in the late 1970s and was purchased by the applicant in 2004. As previously discussed, the subject property has an irregular lot shape and its size is considered non-conforming pursuant to 23.110 of the SMP. The property is located in close proximity to the marine shoreline of Georgia Strait both from the south and to the east as measured from a dredged marina channel. Prescriptive setbacks from the shoreline and the small and irregular configuration of the subject property as the basis of the stated hardship and clearly are not based on the applicant's own actions; consistent with this variance criterion.

**23.60.03.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 plat, a majority of the existing lots fronting on Georgia Strait are developed with single-family residential developments at a similar distance from the shoreline as that requested by the applicant. All of the existing structures were constructed following approval of the first Whatcom County SMP in 1976 and thus were reviewed for consistency with past versions of the SMP. The most recent shoreline variance was approved by Whatcom County and the Washington State Department of Ecology (DOE) in 2005 at 1587 Edwards Drive to the west of the subject property (SHV2005-00006). This variance authorized a new residence to be constructed in line with adjacent residences for the purposes of view enhancement.

No adverse effects to adjacent properties were identified during staff review of the proposed variance. As stated previously, the adjacent properties to the east and west are currently developed with single-family residences and appurtenant/accessory structures similar in the same proximity to the shoreline as proposed by the applicant. WCPDS received a letter dated August 23, 2010 from Mr. Clive Boomer, who owns the adjacent property to the west of the subject site. Mr. Boomer raises numerous reasons as to why the requested variance should be denied; however none of the reasons demonstrate direct adverse effects to his property.

As conditioned, the variance request will not cause adverse effects to the shoreline environment. Please refer to staff analysis associated with variance criterion 23.60.04.D.7 for further discussion.

**23.60.03.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, all of the developed waterfront lots within the Marina Estates Plat are constructed at an equal distance or closer to the shoreline than that requested by the applicant. Most recently, a variance was granted by DOE permitting a home to be constructed in common line with the adjacent structures based on a hardship of view. The decision cited in SHV2005-00006 referred to the common-line setback being the minimum necessary to afford relief.

In this case, construction of a future single-family residence at the staff-modified "common-line" setback would result in a development comparable in size and shape as the adjacent waterfront structures within the plat. Such a configuration is compatible with the policies for Shoreline Residential Areas enumerated in 23.30.06.3 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 within the Marina Estates Plat. 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.

**23.60.03.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. The following written comments were received from property owners within 300-feet of the subject property:

On August 10, 2010, Dwayne Hunt of 1657 Edwards Drive stated that he had no objection to the proposed project provided that the structure is no closer to the shoreline then the existing houses in the Marina Estates Plat.

On August 13, 2010, Frances Villari, who owns a vacant lot located on Harbor Seal Drive to the northeast of the subject property along the marina channel, stated that they were opposed to the variance. No reason was given.

On August 20, 2010, Filomena Eriman, who owns a vacant lot located on Harbor Seal Drive to the north of the subject property, stated that she had concerns regarding the height of the future development on the subject property and that it would ultimately block the ocean view from her property and thus decreasing the market value.

On an unknown date, Clive Boomer of 1661 Edwards Drive submitted a letter dated August 23, 2010 outlining three reasons why the proposed variance should be denied:

1. Mr. Boomer outlines a scenario for future development on the subject property that he opines would not require review via a shoreline variance. The development includes a 40-foot wide by 75-foot development (3,000-square feet) located 10-feet from the Edwards Drive right-of-way.

Mr. Boomer is likely referring to the process outlined within 23.50.07.K of the SMP that allows new residential development to occur as far from the shoreline as feasible while not exceeding a development area of 2,500-square feet without a variance request. As discussed previously within this staff report, due to the configuration of the subject property, the in-lieu variance provisions in the SMP are not feasible on the subject property.

2. Mr. Boomer concludes that denial of the proposed variance would assist the neighbors in enforcement of private covenants associated with the Marine Estates Plat.

The County can not enforce private covenants. This permit review is limited to applicable Whatcom County codes. The property owner is aware of the private covenants on the subject property.

3. Mr. Boomer states that granting of this variance is not inline with the intent of the SMP and that approval will enable others to seek the same relief sought by the applicant.

The variance provisions are part of the SMP and specifically designed to be utilized in situations where the prescriptive regulations impose extraordinary hardships to the property owner in terms of executing a reasonable use and development of the subject property. The subject property is a lot of record created prior to modern shoreline regulations. As such, application of the current

regulations presents a case for the applicant to seek relief through the variance process which is the subject of this staff report. Variance reviews are conducted on a case-by-case basis depending on property configuration and circumstances present on each individual lot in question. If similar circumstances exist on another lot within the existing plat, that property owner would have the same option to seek relief subject to the codified variance procedure.

**23.60.03.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.

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

This permit recommendation has been conditioned that no development can occur on the subject property without a mitigation plan demonstrating that no net loss of shoreline ecological functions or processes will occur as a result of the development. Staff has determined that there is adequate mitigation potential on the subject property to achieve compliance with this variance criterion at this time. The subject property is sparsely vegetated and maintained with low growing grasses, providing low habitat, water quality and water quantity functions. Enhancement of areas between the future residential development and the southern property boundary nearest to the OHWM of Georgia Strait, can only increase such functions consistent with the mitigation standards outlined in Section 16.16.760 – Habitat Conservation Areas. Although there is not a specific development proposal at this time, there appears to be numerous future configurations that will allow enough space between the development and the southern property line to compensate for the areas of low functioning buffer that will be altered permanently as a result of a final approved project.

**23.60.03.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, the applicant has ample opportunity to mitigate for a future residential development. This approval recommendation has been conditioned that a qualified professional must demonstrate no net loss through a later approved mitigation plan prior to issuance of future development permits. If similar circumstances exist on other vacant properties within the area of the subject property, such mitigation would also be a requirement. And no cumulative environmental impacts would occur.

## 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 waterward edge of future development proposals on the subject property shall be consistent with the modified site plan dated December 17, 2010 and the final size and configuration of the development shall be consistent with all conditions of this shoreline variance including the required mitigation analysis and plan.*

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. *Prior to issuance of any development permits or approvals on the subject property, the applicant/proponent shall submit a buffer mitigation plan pursuant to the general mitigation requirements outlined within Section 16.16.206 of the SMP as well as the mitigation standards for Habitat Conservation Areas enumerated in Section 16.16.760 of the SMP. The plan shall include an impact analysis of all proposed developments and a compensatory mitigation plan demonstrating that implementation of the plan will not result in a net loss of shoreline functions and processes. The plan shall be completed by a qualified professional as defined in 23.110 of the SMP and shall include construction, maintenance, monitoring, and contingencies including mitigation assurances such as mitigation surety, notice on title etc. At a minimum, the required monitoring period shall be five years. The plan shall be reviewed and approved by the Whatcom County Shoreline Administrator prior to issuance of any development activities.*
5. *Prior to issuance of any development permit approvals, the applicant/proponent shall retain a qualified archaeologist to conduct a professional archaeology survey of the project area as required by the Washington State Department of Archaeology and Historic Preservation (DAHP) in a letter dated September 2, 2010 and the Lummi Nation in a letter dated September 15, 2010.*
6. *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:

Chad J. Yunge

Whatcom County Shorelines Administrator

Planning and Development Services – Land Use & Natural Resource