

**WHATCOM COUNTY HEARING EXAMINER**

RE:	SHORELINE SUBSTANTIAL DEVELOPMENT )	SHR2010-0003
	SHORELINE VARIANCE )	SHV2010-0005
	Application for )	
	)	
	<i>Fred Bonin</i> )	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
	)	AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant requests approval of a Shoreline Substantial Development Permit and Shoreline Variance to relieve the shore setback from the Birch Bay Village Marina basin in order to construct a new single-family residence and appurtenant developments to obtain a better view from the subject development.

Decision: The requested permits are 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: Fred Bonin

Property Location: Lot 9, Division 15A – Birch Bay Village  
Birch Bay, Washington

Legal Description: Section 26, Township 40 North, Range 01 West, W.M.  
Parcel No. 405126 101546

Adjacent Water Body: Birch Bay Village Marina Basin (Birch Bay)

Shoreline Designation: Shoreline Residential

Statewide Significance: Yes

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 – September 2, 2010  
Posted – September 1, 2010  
Mailed – April 23 and August 29, 2010

Hearing Date: September 15, 2010

Parties of Record:

Fred Bonin  
3105 Cowichan Road  
Blaine, Washington 98230

Terry Redden  
5599 Salish Road  
Blaine, WA 98230

Wendy Harris  
3925 East Connecticut Street  
Bellingham, WA 98226

Laura Leigh Brakke  
585 Pleasant Bay Road  
Bellingham, WA 98229

Chad Yunge  
Planning and Development Services

Exhibits:

- 1 Land Use Application
  - 1-1 Supplemental Applications
  - 1-2 Letter dated March 26, 2010 from Terry Redden to Ken Hoffer and ACC
  - 1-3 PDS Form Letter to Property Owners, April 23, 2010
  - 1-4 Determination of Completeness, dated April 23, 2010
- 2 Aerial Site Photo
- 3 Site Plan
- 4 Certificate of Mailing of Notice of Public Hearing, August 29, 2010
- 5 Certificate of Posting of Notice of Public Hearing, September 1, 2010
- 6 Legal Notice of Public Hearing, September 2, 2010
- 7 Staff Report, dated September 10, 2010
- 8 Shoreline Buffer Mitigation Plan, Cantrell & Associates, May 26, 2010
- 9 Certificate of Mailing, Notice of Application, dated April 28, 2010
- 10 Objection to Variance, Comments submitted by Laura Leigh Brakke, September 14, 2010
- 11 Objection to Shoreline Variance and Shoreline Substantial Development Permit, dated September 15, 2010, submitted by Wendy Harris

**II.**

Fred Bonin is seeking approval of a Shoreline Substantial Development Permit and Shoreline Variance to reduce the shore setback from the Birch Bay Village Marina basin in order to construct a new single-family residence in a location which allows him to obtain a better view of the marina from the subject development.

**III.**

The Applicant has indicated that the Staff Report is factually accurate. The Applicant stated no objection to the Conditions of Approval recommended by Staff. The Staff Report accurately describes the subject lot, an approximately 0.36-acre lot, located at the Birch Bay

Village Marina. The requested variance would reduce a 150-foot setback from the marina to 95-feet. The reduction in the setback would allow the Applicant a better view of his dock and the marina basin, which sits well below the building site on the lot.

The Findings of Fact set forth in the Staff Report, Exhibit No. 7, dated September 10, 2010, are supported by the record as a whole, and these Factual Findings are adopted and incorporated herein by this Hearing Examiner. A copy of the Staff Report is attached hereto.

The Shoreline Planner has recommended approval of the permits, subject to modifications in the proposal and the sixteen conditions, set forth in the Staff Report. The most important condition related to the issues raised by this Shoreline Variance Application requires compliance with a Mitigation Plan, consisting of the planting of native vegetation, monitoring, maintenance and surety provisions, prepared by Cantrell and Associates, Inc. The Mitigation Plan will require the converting of approximately 5,000-square feet of lawn abutting the shoreline to a higher functioning shoreline buffer. The Plan requires conversion of this area, currently a lawn, through the planting of native vegetation, and its maintenance, as a shoreline buffer in perpetuity.

The Shoreline Planner concluded, and the Hearing Examiner agrees, that the long-term benefit obtained by converting existing lawn into 5,000-square feet of native shrubs and groundcover provides better habitat and better protection of the shore environment than would applying the normally required 150-foot buffer consisting of the existing lawn.

It should be noted that the 150-foot buffer is regulated pursuant to the Whatcom County Critical Areas Ordinance as a Habitat Conservation Area. Planning Department Staff has reviewed the proposed planting plan, prepared by a qualified professional, and has concluded that, subject to this plan, the proposed reduction in the shoreline setback from 150-feet to 95-feet will actually increase the long-term benefit of the Habitat Conservation Area on this site.

#### **IV.**

There were written submittals and testimony at the public hearing opposing this proposal. The public input received is based on the argument that Whatcom County is inappropriately applying the Shoreline Variance Criteria, but fails to establish or even identify any potential adverse impacts from the granting of the variance, combined with implementation of the proposed mitigation.

#### **V.**

The property in question is a moderately sized single-family lot, located within an existing shoreline development that has been in this location for decades. The setback requested by this property owner is similar to the setbacks enjoyed by other waterfront property owners throughout the Birch Bay Village complex. At most there are only a few undeveloped shoreline lots within this large subdivision.

## **VI.**

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 opposition to this permit raises legal issues regarding the application of Whatcom County's Shoreline Master Program, specifically, SMP 23.60.03.

The Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Substantial Development Permit and Shoreline Variance for the proposed setback reduction from the Birch Bay Village Marina from 150-feet to 95-feet to accommodate the construction of a single-family residence. This approval was specifically based upon the Planner's conclusions that, subject to the implementation of the proposed native vegetation planting plan, monitoring of the installation and maintenance of the native vegetation in perpetuity, the requested reduced buffer, along with the planting plan, would better protect shoreline functions than the imposition of the original 150-foot buffer, and the maintenance of the currently existing lawn in the 150-foot buffer, while enhancing the shoreline views of the Applicant.

#### **II.**

The standard criteria for a Shoreline Variance, including a variance to reduce required setbacks, are set forth in WCC 23.60.03.D, which reads as follows:

23.60.03.D Variances may be authorized, provided the applicant / proponent can demonstrate all of the following:

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;
2. That the hardship described in SMMP 23.60.03.A above is specifically related to the property, and is the result of 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;
3. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects

on adjacent properties or the shoreline environment;

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;
5. That the public interest will suffer no substantial detrimental effect;
6. That the public rights of navigation and use of the shorelines will not be materially interfered with by the granting of the variance; and
7. Mitigation is provided to offset unavoidable adverse impacts caused by the proposed development or use.

The above section must be read with WCC 23.60.03.F, which reads as follows:

- 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 23.60.03.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. [Emphasis added.]

Historically, Whatcom County has approved variance setbacks for new or modified residential construction within an already platted or developed area in order to allow the newly constructed residence to share in the view amenities associated with the shoreline location. The suggestion that a variance requested on view enhancement cannot be the basis for a variance unless all other criteria of WCC 20.60.03 are met, would make the italicized portion of WCC 23.60.03.F superfluous. If, as suggested in the public comments, view enhancement could not in and of itself form the basis for the hardship and denial of reasonable use generally required under WCC 23.60.03, there would be no purpose in including the italicized language above in the ordinance.

The intent of the italicized language set forth above is clearly to allow setback reductions

for the purpose of enhancing the view of a residence located on the shoreline to be granted “... **where there are no likely detrimental effects to existing or future users, other features, or shoreline ecological functions and/or processes, ...**”

For this language to have any effect, it must be read as authorizing a shoreline variance to enhance views when it can be shown there are not detrimental impacts. In this case, the record shows that the granting of the setback variance, combined with implementation of the planting plan proposed, will have an overall beneficial impact on shoreline ecological functions and/or processes and will not have detrimental effects to existing or future users.

The shoreline in question is a lot located on a dredged out marina, accessed from Birch Bay. There is very little native vegetation anywhere within the shorelines of Birch Bay Village. The building location which would be allowed if this variance is granted is similar to other shoreline building sites within this older, shoreline development.

The variance requested is authorized by Whatcom County Shoreline Management Program and simply allows a reasonable access to the view amenities of a shoreline property where there are no adverse impacts from the buffer reduction.

The proposed Shoreline Variance is consistent with the Shoreline Variance Criteria and should be approved, subject to Conditions of Approval recommended by Staff. The Shoreline Substantial Development Permit and Shoreline Variance are 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.

### **III.**

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 Substantial Development Permit and Shoreline Variance Permit are hereby granted to Fred Bonin, allowing reduction from a shoreline setback on the Birch Bay Village Marina, from 150-feet to 95-feet, to allow construction of a single-family residence with enhanced views, to be located on Assessor’s Parcels No. 405126 101546, subject to the following conditions:

1. The Applicant shall obtain a building permit from Whatcom County Planning and Development Services – Building Services Division prior to any development activity on the subject property.

2. The proposed single-family residence shall not exceed 30-feet in height as measured from average existing grade to the peak of the structure.
3. Required mitigation shall be consistent with the planting plan, monitoring, maintenance and surety provisions outlined within the Shoreline Buffer Mitigation Plan, dated May 26, 2010, prepared by Cantrell and Associates, Inc.
4. The owner shall record a notice on title with the County Auditor real estate records in a format approved by the Shoreline Administrator and provide a copy of the filed notice to WCPDS prior to issuance of a building permit. The notice shall state the general presence of the marina basin and the remaining buffer on the subject property, and the fact that limitations on actions in or affecting the areas exist. A copy of the approved site plan illustrating the areas shall also be filed with the notice on title.
5. Prior to issuance of a building permit, the Applicant/Proponent shall submit a TESC Plan identifying what BMPs will be implemented to control erosion and sedimentation throughout the duration of the construction phase of the project.
6. Prior to issuance of a building permit, the applicant/proponent shall submit a Stormwater Management Plan consistent with the Washington State Department of Ecology (DOE) Stormwater Manual. The design shall incorporate infiltration systems that mimic the natural infiltration to the maximum extent possible.
7. Exterior surfaces of the proposed residence shall employ materials that minimize reflected light.
8. The proposed flagstone walkway from the patio area to the existing joint-use dock shall not exceed four-feet in overall width. Areas between the flagstone shall remain vegetated or pervious.
9. Vegetation clearing shall be limited to the minimum necessary to accommodate the proposed residential development. Clearing limits have been established on the approved site plans. Wire-backed exclusion/silt fencing shall be installed at such locations prior to start of construction and maintained throughout the construction process.
10. No clearing of the existing vegetation between the existing maintained lawn area to the OWHM of the marina basin. This area is relatively well-functioning and shall remain intact and allowed to mature. This includes the young maple trees currently located in this area.

11. In the event that archaeological materials are encountered during the development of the property, an archaeologist should immediately be notified and work halted in the vicinity of the find until the materials can be inspected and assessed. At that time the appropriate persons are to be notified of the exact nature and extent of the resource so that measures can be taken to secure them. In the event of inadvertently discovered human remains or indeterminate bones, pursuant to RCW 68.50.645 all work must stop immediately and law enforcement should be contacted. Any remains should be covered and secured against further disturbance, and communication established with the Whatcom County Sheriff's Department, an Assistant State Archaeologist at DAHP, the Lummi Nation Tribal Historic Preservation Office and the Nooksack Tribal Historic Preservation Officer.
12. The proposed driveway and parking areas shall be constructed using pervious technologies. In addition, the at-grade rear patio area shall also be constructed of pervious materials and decking installed above the area spaced appropriately to allow the passage of water to the pervious surfaces below. Prior to issuance of a building permit, manufacturer's specifications on the type of pervious surface to be utilized and construction details shall be submitted for review and approval by County water quality inspectors. These pervious areas shall be maintained in perpetuity pursuant to manufacturer's specifications.
13. Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties, prevent glare on adjacent properties and to prevent hazards.
14. No development shall be located within the requisite 5-foot side yard setbacks as measured from the north and south property lines that intersect the shoreline.
15. Authorization to conduct development activities shall terminate five (5) years after the effective date, as defined in 23.60.19.A.3, of this shoreline variance, provided that 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. Construction shall commence within two years of the effective date of the Shoreline Variance as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date 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 29<sup>th</sup> day of September 2010.

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Michael Bobbink, Hearing Examiner

**WHATCOM COUNTY**  
**Planning & Development Services**  
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**David Stalheim**  
**Director**  
  
**J.E. "Sam" Ryan**  
**Assistant Director**

September 10, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of <b>Fred Bonin</b> <u>for a Shoreline Substantial/Variance Permit</u>		SHR2010-00003 / SHV2010-00005 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant requests approval of a shoreline substantial development permit and variance to relieve the shore setback from the Birch Bay Village Marina basin in order to construct a new single-family residence and appurtenant developments to obtain a better view from the subject development.

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

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Fred Bonin  
3105 Cowichan Road  
Blaine, Washington 98230

Property Location: Lot 9, Division 15A – Birch Bay Village

Legal Description: Section 26 Township 40 North, Range 01 West, W.M.  
Parcel #: 405126101546

Adjacent Water Body: Birch Bay Village Marina Basin (Birch Bay)

Shoreline Designation: Shoreline Residential

Statewide Significance: Yes

## 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 is requesting approval of a shoreline substantial development permit to construct a single-family residence and appurtenant developments. The applicant is also requesting relief from the full shoreline setback/buffer from the Birch Bay Village Marina (BBVM) basin to obtain a better view from the subject development. The proposed residential development would be located approximately 95-feet from the ordinary high water mark (OHWM) of the BBVM basin; a reduction of 55-feet from the prescribed 150 – foot setback/buffer.

The subject property is located at the southeast corner of Chehalis and Comox Roads within the Birch Bay Village Development. The site currently consists of a relatively flat, grass-covered lot measuring approximately 0.36-acres in size. The eastern boundary of the subject property drops approximately 10 to 15-feet to the BBVM; an artificially dredged basin constructed prior to modern shoreline regulations in the late 1960s and early 1970s. A relatively functioning buffer exists along the 20 to 25-feet of sloped area immediately landward of OHWM; however underlying substrate consists predominately of imported quarry spalls associated with stabilization of the artificial marina basin. A joint-use dock is constructed on the southern property line extending into the marina basin and fronting the subject property and adjacent vacant lot to the south. The site is served with public water and sewer infrastructure and a sewer line and associated easement bisect the central portion of the subject property. The adjacent property to the north of the subject property is currently developed with a single-family residence and appurtenant developments located approximately 20 to 25-feet landward of the OHWM. Chehalis and Comox Roads bound the western property boundary beyond which numerous single-family developments are present.

The proposed single-family development consists of a two-story residence with an attached, three bay garage. In order to meet Birch Bay Village covenants restricting overall height, the structure has been designed to be partially subsurface which requires 445-cubic yards of excavation and 55-cubic yards of backfill to construct the residential foundation. The total development footprint of the residence and garage is 3,589-square feet. In addition, a 1,835-square foot asphalt driveway is proposed connecting the garage to Chehalis Road. The proposal also includes a 158-square foot covered entry and a 777-square foot elevated deck over a 772-square foot, at-grade patio

connected to the eastern exterior of the residence. According to the application materials, the proposed developments will result in 5,296-square feet of new impervious surfaces to the subject property.

The subject property is located within a Shoreline Residential Designation (SRD). Guiding policies for development within the SRD are found in 23.30.06.3. Such policies generally state that new residential development in the SRD should be compatible with the scale and density, as well as protect or enhance the existing residential character while sustaining shoreline ecological functions and processes.

Shoreline bulk provisions such as required setbacks and ecological buffers are found in Section 23.90.13 of the SMP. According to 23.90.13.A, compliance with such standards should ensure no net loss of shoreline ecological functions and/or processes and preserve the existing character of the shoreline consistent with the purposes of the Shoreline Area Designation. The subject development is consistent with such standards with exception of the shore setback, of which is the subject of the requested variance. 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 BBVM basin is classified as part of the marine shoreline and thus subject to the SMP/CAO. The marine shoreline 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. Section 16.16.740.D gives the Shoreline Administrator (Administrator) the authority to reduce the prescriptive buffer widths up to 25% which in this case would be 112.5-feet when certain criteria can be demonstrated. This Administrator determined early in the review process that a 112.5-foot buffer would meet the reduction criteria with an approved enhancement plan by a qualified professional as defined by 23.110 as long as the relevant structures also met the additional 10-foot building setback for the residence required by 16.16.265.D. The applicant sought relief of the required private Birch Bay Village Development covenants requiring a minimum road setback from Chehalis and Comox Roads to move the development back to meet the required buffer and additional building setback. This request was denied by the Birch Bay Village Community Club in a letter dated April 9, 2010 included in the permit file. Following such denial, the applicant submitted a variance application to reduce the buffer to 95-feet. Section 23.60.03.F enables an applicant/proponent to seek relief of a variance for the sole purpose of the desire to enhance a view from a subject development.

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 for 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/proponent 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.**

The subject property is zoned Urban Residential - 4 Units/Acre (UR4), and as stated previously, is located within a SRD. Construction of a single-family residence and necessary appurtenant

developments is considered a reasonable permitted use of the property according to this Administrator. 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 prescriptive 150-foot buffer and additional 10-foot building setback would not preclude development of a single-family residence nor significantly interfere with construction of a single-family residence. The footprint of the proposed residence is well over the threshold the SMP recognizes as reasonable which is 2,500 – square feet for the entire development area. The applicant states that the proposed residence has already been reduced and would not meet the needs for his family if a smaller structure is required.

While denial of the requested variance would not preclude the construction of a smaller residential development somewhere else on the subject property, Section 23.60.03.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.

**23.60.03.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 measures 17, 476.75-square feet in size and meets the definition of a non-conforming lot pursuant to 23.110. The lot was created prior to modern shoreline regulations. As such, the inability to construct a new residence with a view of the marina basin is due to historical development patterns and not from the applicant's own actions.

**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 proposed residence is similar to the size and configuration of adjacent residential structures located along the marina basin but will be setback substantially further from the OHWM of the marina basin. A majority of the existing residences along the marina basin are constructed approximately 45-feet from the OHWM, the former shore setback prior to CAO regulations enacted in the early 1990s in Whatcom County. Most of these developments include impervious decks, patios and other accessory developments to within 20-feet of OHWM where the elevation drops to the marina channel consistent with the conditions of the subject property. Staff reviewed assessment records for the closest developed properties to the north and south of the subject property. Taxed developments occupy a construction footprint of approximately 3,500 to 4,200 square feet not including driveway and parking areas.

The applicant submitted a Shoreline Buffer Mitigation Plan, by Cantrell and Associates, Inc (CAI) dated May 26, 2010. As part of the variance request, the applicant proposes to permanently remove approximately 4, 850 – square feet of maintained lawn area and enhance the area with native shrubs and groundcovers. According to CAI, the existing conditions found on the subject property are not providing significant ecological function due to the existence of maintained lawn. The enhancement proposal would increase shading, attenuation of water temperatures, production of woody debris and input of organic inputs for aquatic purposes:

*“Because of the setting in a built environment of the Birch Bay Marina and the existing condition of mowed lawn, it is our opinion that the proposed reduction in buffer width will not have a significant impact on the character or functions and values of the shoreline environment. With planting of native vegetation, the wildlife habitat functions will be improved and water quality functions will be increased from the greater separation from the house provided by the native vegetation zone.”*

Based on review of the proposed enhancement plan, together with the recommended modifications and conditions of approval, the Administrator has determined that no adverse effects to the shoreline environment will occur as a result of the proposed development consistent with this variance criterion.

**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.**

Authorization of the proposed variance does not constitute a grant of special privilege not enjoyed by other properties in the area. Numerous residential structures are located at distances much closer to the marina basin than the proposed residence. As such, allowing the proposed residential development to be located 95-feet from the shoreline does not represent a grant of special privilege.

The applicant is requesting a 55-foot reduction in the shore setback. According to the applicant, this is the minimum amount necessary to accommodate a development similar in size and scope to existing developments within the area while converting nearly 5,000 – square feet of low functioning maintained lawn to native shrubs and groundcovers in perpetuity. In this case, the long-term benefit in functional lift to the HCA outweighs that of a maintained lawn at a distance of 150-feet.

**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 nor were written comments received in objection to the proposed project.

**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.**

A variance would not be required if the applicant located the residential development a minimum of 150-feet from the OHWM of the BBVM basin. The applicant has proposed mitigating measures that will exceed the impacts of the requested variance in terms of numerous buffering functions as discussed previously within this staff report.

**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 proposed mitigation in the form of buffer enhancement that exceeds the ratio necessary to compensate for the proposed impact if the variance is granted. As such, numerous buffering functions are expected to increase over the long term on the subject property. If additional variance requests are granted in the area where similar circumstances exist and similar mitigating measures proposed, the total of the variances would result in an increase in shoreline function.

**23.60.03.F States that variance requests based on the applicant'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 the SMP are not available.**

The subject property is located within a Geologically Hazardous Area (GHA) according to Section 16.16.300 of the Whatcom County Critical Areas Ordinance (CAO) which is adopted by reference within the SMP. Specifically, the site is located within a seismic hazard area based on available County CAO maps. In addition, a portion of the site immediately adjacent to the marina basin is located within a Frequently Flooded Area (FFA) pursuant to Section 16.16.400 of the CAO.

No residential development is located within or near the portions of the property within the FFA. The seismic hazards are associated with liquefaction and ground shaking due most likely to the fact that the Birch Bay Village Development is built upon a historical tidal marsh and fill material. Such GHAs require structural engineering at the time of building permit review to demonstrate that such forces can be overcome through proper construction tactics that ensure safety of future occupants.

The proposed variance request is consistent with 23.60.03.F and should be granted. There is no increased detriment to future users of the residence by locating the livable structure 55-feet further waterward. Identified geohazardous conditions will be addressed during building permit review through structural engineering. Staff identified no features in the area of the subject property that will be adversely affected by the granting of the variance. Shoreline ecological functions will be increased as a result of the mitigation that will be installed in granting the variance. Existing shoreline processes will remain unchanged.

In this case, the applicant could construct nearly the same size development further from the shoreline than that which is proposed; however this Administrator would question if such alternative is actually more consistent with the SMP. The proposed project is consistent with the guiding policies of the SRD in that it's both compatible with the scale, density and character of the existing Birch Bay Village Development. In addition, the proposal will not only sustain, but enhance shoreline ecological functions at the site.

A shoreline substantial development permit was required to review the construction of the proposed single-family residential development. The subject development does not meet one or more of the listed exemptions from such permitting process outlined in Section 23.60.02.2.

In order to be approved, the decision maker must find that the proposal is consistent with the following criteria:

**23.60.01.B.1 All regulations of the SMP appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under**

### **SMP 23.60.03.**

#### **23.60.01.B.2 All policies of the SMP appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.**

The following policies and regulations have been determined to be applicable to the subject development:

#### Land Use

23.90.02.A.1 – Single-family residences should be given preference for location on shorelines in those limited instances when an alteration of the shorelines is authorized (RCW 90.58.020).

23.90.02.B.1 Single-family residential uses shall be allowed on all shorelines not subject to a preference for commercial or industrial water-dependent uses and shall be located, designed, and used in accordance with applicable policies and regulations of the SMP.

The proposed use and development on the subject property is residential and is located within an area designated for such use; consistent with the above policies and regulations.

#### Ecological Protection and Critical Areas

23.90.03.A.1 Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts so that the resulting ecological conditions does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas designated in WCC 16.165, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, in so far as practical, any resultant damage to the ecology and environment (90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to water flow, littoral drift; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.

23.90.03.A.2 In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.

23.90.03.A.3 Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the Administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

23.90.03.B.1 To comply with the policies above, a shoreline permit applicant or project proponent shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts.

23.90.03.B.2 Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to the SMP and WCC 16.16.

As discussed previously within the variance review portions of this staff recommendation, mitigation has

been proposed that will be consistent with the above policies and regulations. The following conditions are also recommended based on the above provisions:

- Required mitigation shall be consistent with the planting plan, monitoring, maintenance and surety provisions outlined within the Shoreline Buffer Mitigation Plan dated May 26, 2010 by Cantrell and Associates, Inc.
- The owner shall record a notice on title with the County Auditor real estate records in a format approved by the Shoreline Administrator and provide a copy of the filed notice to WCPDS prior to issuance of a building permit. The notice shall state the general presence of the marina basin and the remaining buffer on the subject property, and the fact that limitations on actions in or affecting the areas exist. A copy of the approved site plan illustrating the areas shall also be filed with the notice on title.

#### Water Quality and Quantity

23.90.04.A.1 The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality of surface and ground water over the long term.

23.90.04.A.2 Shoreline use and development should minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.

23.90.04.A.3 Appropriate buffers along all marine water bodies should be provided and maintained in a manner that avoids the need for chemical treatment.

23.90.04.B.1 Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws.

23.90.04.B.2 New development shall provide stormwater management facilities designed, constructed, and maintained in accordance with the current stormwater management standards. Deviations from these standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.

23.90.04.B.3 Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control (TESC) plan, or administrative conditions.

With the following recommended conditions, the proposed project is consistent with the above-referenced policies and regulations:

- Prior to issuance of a building permit, the applicant/proponent shall submit a TESC plan identifying what BMPs will be implemented to control erosion and sedimentation throughout the duration of the construction phase of the project.
- Prior to issuance of a building permit, the applicant/proponent shall submit a stormwater management plan consistent with the Washington State Department of Ecology (DOE) Stormwater Manual. The design shall incorporate infiltration systems that mimic the natural infiltration to the maximum extent possible.

## Views and Aesthetics

23.90.05.A.1 Shoreline use and development activities should be designed and operated to minimize obstructions of the public's visual access to the water and shoreline.

23.90.05.A.2 Shoreline use and development should not significantly detract from shoreline scenic and aesthetic qualities that are derived from natural or cultural features, such as shoreforms, vegetative cover and historic sites/structures.

23.90.05.A.3 Aesthetic objectives should be implemented through regulations and criteria for site planning, maximum height, setbacks, siting of buildings and accessories, screening, vegetation conservation, architectural standards, sign control regulations, appropriate development siting, designation of view corridors and maintenance of natural vegetative buffers.

23.90.05.B.2.b Buildings shall incorporate architectural features that reduce scale such as setbacks, pitched roofs, offsets, angled facets, and recesses.

23.90.05.B.2.d Building surfaces on or adjacent to the water shall employ materials that minimize reflected light.

23.90.05.B.3 Stairs and walkways located within the shoreline or critical area buffers shall not exceed 4-feet in width. Stairways shall conform to the existing topography to the extent feasible and minimize impervious surfaces.

Overall, the proposed residential development is consistent with the above referenced policies and regulations. The following recommended conditions will ensure compliance with such provisions:

- Exterior surfaces of the proposed residence shall employ materials that minimize reflected light.
- The proposed flagstone walkway from the patio area to the existing joint-use dock shall not exceed four-feet in overall width. Areas between the flagstone shall remain vegetated or pervious.

## Vegetation Conservation

23.90.06.A Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible.

23.90.06.B.1 Shoreline developments shall comply with the vegetation conservation policies of the SMP through compliance with the critical area standards of WCC 16.16.335, 16.16.360, 16.16.630, and 16.16.740 for protection and maintenance of critical area and buffer vegetation.

23.90.06.B.4 Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.

The following conditions capture the above referenced policies and regulations:

- Vegetation clearing shall be limited to the minimum necessary to accommodate the proposed residential development. Clearing limits have been established on the approved site plans. Wire-backed exclusion/silt fencing shall be installed at such locations prior to start of construction and maintained throughout the construction process.

- No clearing of the existing vegetation between the existing maintained lawn area to the OWHM of the marina basin. This area is relatively well-functioning and shall remain intact and allowed to mature. This includes the young maple trees currently located in this area.

#### Archaeological, Historic and Cultural Resources

Review of archaeological resources was conducted in accordance with the process outlined within the SMP. As such information is confidential, it is not explained here. The following condition has been recommended by the applicant's consultant who was subsequently approved by the Washington State Department of Archaeology and Historic Preservation (DAHP):

- In the event that archaeological materials are encountered during the development of the property, an archaeologist should immediately be notified and work halted in the vicinity of the find until the materials can be inspected and assessed. At that time the appropriate persons are to be notified of the exact nature and extent of the resource so that measures can be taken to secure them. In the event of inadvertently discovered human remains or indeterminate bones, pursuant to RCW 68.50.645 all work must stop immediately and law enforcement should be contacted. Any remains should be covered and secured against further disturbance, and communication established with the Whatcom County Sheriff's Department, an Assistant State Archaeologist at DAHP, the Lummi Nation Tribal Historic Preservation Office and the Nooksack Tribal Historic Preservation Officer.

#### Public Access

No nexus exists in this case to require public access as a result of the project proposal.

#### Site Planning

23.90.09.A.1 Development and use should be designed in a manner that directs land alteration to the least sensitive portions of the site to maximize vegetation conservation; minimize impervious surfaces and runoff; protect riparian, nearshore and wetland habitats; protect wildlife and habitats; protect archaeological, historic and cultural resources; and preserve aesthetic values. This may be accomplished by minimizing the project footprint, the use of clustering or other design approaches.

23.90.09.A.2 Low impact and sustainable development practices such as rain gardens, and pervious surfacing methods including but not limited to, porous paving blocks, porous concrete and other similar materials, should be incorporated in developments where site conditions allow to maintain shoreline ecological functions and processes. Topographic modification, vegetation clearing, use of impervious surfaces and alteration of natural drainage or other features should be limited to the minimum necessary to accommodate approved uses and development. An engineering geologist should be consulted prior to using infiltration practices on shore bluffs.

23.90.09.B.4 Impervious surfacing for parking lot/space areas shall be minimized through the use of alternative surfaces where feasible, consistent with the May 2005 Low Impact Development Technical Guidance Manual for Puget Sound.

23.90.09.B.7 Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate.

23.90.09.B.12 Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties, prevent glare on adjacent properties and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light

shields, setbacks, buffer areas and screening.

With the following conditions of approval, staff believes the project is consistent with the above-referenced policies and regulations.

- The proposed driveway and parking areas shall be constructed using pervious technologies. In addition, the at-grade rear patio area shall also be constructed of pervious materials and decking installed above the area spaced appropriately to allow the passage of water to the pervious surfaces below. Prior to issuance of a building permit, manufacturer's specifications on the type of pervious surface to be utilized and construction details shall be submitted for review and approval by County water quality inspectors. These pervious areas shall be maintained in perpetuity pursuant to manufacturer's specifications.
- Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties, prevent glare on adjacent properties and to prevent hazards.

#### Landfill and Excavation

23.90.10.A.1 Landfill and excavation should only be permitted to the minimum necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat are encouraged.

23.90.10.A.4 Landfills and excavation should be located and developed so that water quality, hydrologic and runoff patterns are not altered.

23.90.10.B.1 Landfill and excavation shall be minimized to the maximum extent practicable and allowed only along with approved shoreline use and development activities that are consistent with the SMP.

23.90.10.A.8 A temporary erosion and sediment control (TESC) plan shall be provided for all proposed landfill and excavation activities.

Recommended conditions listed previously within this staff report adequately satisfy the above policies and regulations associated with excavation and landfill.

#### Shoreline Bulk Provisions

The following conditions ensure consistency with the remaining bulk and dimension requirements other than the shore setback which is subject to the proposed variance:

- No development shall be located within the requisite 5-foot side yard setbacks as measured from the north and south property lines that intersect the shoreline.
- The proposed single-family residence shall not exceed a maximum height of 30-feet as measured from average existing grade to the peak of the structure.

#### Residential Use and Development

23.100.11.A.1 Single family residences are designated in RCW 90.58 as a priority use in those limited instances when authorization is given for alterations of the natural condition of shorelines of the state.

23.100.11.A.6 New residential development should be planned and built in accordance with the policies and regulations in SMP 23.90.03 and to minimize the need for shoreline stabilization and flood hazard reduction measures.

23.100.11.A.7 Measures to conserve native vegetation along shorelines should be required for all residential development. Vegetation conservation may include avoidance or minimization of clearing or grading, restoration of areas of native vegetation, and/or control of invasive or non-native vegetation.

23.100.11.B.1.b New residential development shall assure that the development will not require shoreline stabilization. Prior to approval, geotechnical analysis of the site and shoreline characteristics shall demonstrate that shoreline stabilization is unlikely to be necessary.

23.100.11.B.1.d Low impact development techniques may be required where appropriate to minimize physical and visual impacts on shorelines in accordance with policies and regulations of SMP 90.09.

23.100.11.B.1.e Residential structures, accessory uses and related facilities shall be designed and located so as to minimize view obstructions to and from shorelines and water bodies.

The proposed development as conditioned, is consistent with the above-referenced policies and regulations associated with residential development.

**23.60.01.B.3 For projects located on shorelines of statewide significance, the policies of Chapter 4 shall be also be adhered to.**

Birch Bay is listed as a shoreline of statewide significance pursuant to RCW 90.58.030 and Section 23.40.02.C of the SMP. Policies for shorelines of statewide significance are listed in 23.40.03.A through 23.40.03.N.

Staff has reviewed such policies and has determined that the proposed development is consistent with the applicable policies subject to the recommended conditions of approval.

**23.60.01.C In the granting of all shoreline substantial development 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 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.**

Cumulative impacts are addressed previously within this staff report in discussing the requested variance.

## 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 applicant 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.*

2. *The proposed single-family residence shall not exceed 30-feet in height as measured from average existing grade to the peak of the structure.*
3. *Required mitigation shall be consistent with the planting plan, monitoring, maintenance and surety provisions outlined within the Shoreline Buffer Mitigation Plan dated May 26, 2010 by Cantrell and Associates, Inc.*
4. *The owner shall record a notice on title with the County Auditor real estate records in a format approved by the Shoreline Administrator and provide a copy of the filed notice to WCPDS prior to issuance of a building permit. The notice shall state the general presence of the marina basin and the remaining buffer on the subject property, and the fact that limitations on actions in or affecting the areas exist. A copy of the approved site plan illustrating the areas shall also be filed with the notice on title.*
5. *Prior to issuance of a building permit, the applicant/proponent shall submit a TESC plan identifying what BMPs will be implemented to control erosion and sedimentation throughout the duration of the construction phase of the project.*
6. *Prior to issuance of a building permit, the applicant/proponent shall submit a stormwater management plan consistent with the Washington State Department of Ecology (DOE) Stormwater Manual. The design shall incorporate infiltration systems that mimic the natural infiltration to the maximum extent possible.*
7. *Exterior surfaces of the proposed residence shall employ materials that minimize reflected light.*
8. *The proposed flagstone walkway from the patio area to the existing joint-use dock shall not exceed four-feet in overall width. Areas between the flagstone shall remain vegetated or pervious.*
9. *Vegetation clearing shall be limited to the minimum necessary to accommodate the proposed residential development. Clearing limits have been established on the approved site plans. Wire-backed exclusion/silt fencing shall be installed at such locations prior to start of construction and maintained throughout the construction process.*
10. *No clearing of the existing vegetation between the existing maintained lawn area to the OWHM of the marina basin. This area is relatively well-functioning and shall remain intact and allowed to mature. This includes the young maple trees currently located in this area.*
11. *In the event that archaeological materials are encountered during the development of the property, an archaeologist should immediately be notified and work halted in the vicinity of the find until the materials can be inspected and assessed. At that time the appropriate persons are to be notified of the exact nature and extent of the resource so that measures can be taken to secure them. In the event of inadvertently discovered human remains or indeterminate bones, pursuant to RCW 68.50.645 all work must stop immediately and law enforcement should be contacted. Any remains should be covered and secured against further disturbance, and communication established with the Whatcom County Sheriff's Department, an Assistant State Archaeologist at DAHP, the Lummi Nation Tribal Historic Preservation Office and the Nooksack Tribal Historic Preservation Officer.*
12. *The proposed driveway and parking areas shall be constructed using pervious technologies. In addition, the at-grade rear patio area shall also be constructed of pervious materials and decking installed above the area spaced appropriately to allow the passage of water to the*

*pervious surfaces below. Prior to issuance of a building permit, manufacturer's specifications on the type of pervious surface to be utilized and construction details shall be submitted for review and approval by County water quality inspectors. These pervious areas shall be maintained in perpetuity pursuant to manufacturer's specifications.*

- 13. Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties, prevent glare on adjacent properties and to prevent hazards.*
- 14. No development shall be located within the requisite 5-foot side yard setbacks as measured from the north and south property lines that intersect the shoreline.*
- 15. The proposed single-family residence shall not exceed a maximum height of 30-feet as measured from average existing grade to the peak of the structure.*
- 16. Authorization to conduct development activities shall terminate five (5) years after the effective date, as defined in 23.60.19.A.3, of this shoreline variance, provided that 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. Construction shall commence within two years of the effective date of the Shoreline Variance as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.*

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