

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE VARIANCE) SHV2010-0004
Application for)
)
Fred Gockel and Rolleen Erickson) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicants request relief of the shore setback from the Strait of Georgia in order to construct a new single-family residence and appurtenant developments in line with existing residential structures to the north and south to obtain a better view from the subject development.

Decision: The requested Shoreline Variance 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

Applicants: Fred Gockel and Rolleen Erickson

Property Location: 4495 Sucia Drive
Ferndale, WA 98248

Legal Description: Section 08 Township 38 North, Range 01 West, W.M.
Parcel No. 380108 447556

Adjacent Water Body: Georgia Strait

Shoreline Designation: Shoreline Residential

Statewide Significance: No

Zoning: Residential Rural

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 – June 10, 2010
Posted – June 9, 2010
Mailed – June 4, 2010

Hearing Date: June 23, 2010

Parties of Record:

Fred Gockel and Rolleen Erickson
5125 -219th Street SE
Woodinville, Washington 98072

Wendy Harris
3925 East Connecticut Street
Bellingham, WA 98226

Laura Leigh Brakke
585 Pleasant Bay Road
Bellingham, WA 98229

Susan Kaun
613 Donovan Avenue
Bellingham, WA 98225

Matt Krogh
North Sound Baykeeper Team
RE Sources for Sustainable Communities
2309 Meridian Street
Bellingham, WA 98225

Chad Yunge
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Supplemental Application
 - 1-2 Project Narrative
 - 1-3 Form Letter to Neighbors
 - 1-4 Determination of Completeness, dated February 17, 2010
 - 1-5 Mailing Labels
- 2 Staff Report, dated June 4, 2010
- 3 Agency Comments
- 4 Aerial Photo
- 5 Proposed Site Plan
- 6 Certificate of Mailing of Notice of Application, not dated
- 7 Certificate of Mailing of Notice of Hearing, dated June 4, 2010
- 8 Certificate of Posting of Notice of Hearing, dated June 9, 2010
- 9 Legal Notice of Public Hearing, Affidavit dated June 10, 2010
- 10 Objection to Shoreline Variance Permit, Revised Comments submitted by Wendy Harris, dated June 21, 2010, with attachments: 10-1 Assessor and Treasurer Info
- 11 Objection to Shoreline Variance, Comments submitted by Laura Leigh Brakke, dated June 21, 2010
- 12 Objection to Gockel-Erickson Shoreline Variance, email comments, submitted by Susan Kaun, dated June 22, 2010

- 13 Email from Wendy Harris, dated June 22, 2010, with attached Futurewise document, "Recommendations on Making Small Shoreline Buffers Work with Buffer Science, dated March 2010"
- 14 Email from Matt Krogh, dated June 22, 2010, re: Objection to Variance, SHV2010-0004
- 15 Email from Chad Yunge, dated June 23, 2010, re: Buffer Condition Sketch, with Buffer Condition Sketch attached
- 16 Site Colored Photos
- 17 Goggle Earth Map of Site

II.

Fred Gockel and Rolleen Erickson are seeking approval of a Shoreline Variance to reduce the shore setback from the Georgia Strait in order to construct a single-family residence and associated appurtenant developments, using a common line with existing residential structures to the north and south in order to obtain a better view from the subject development.

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. 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 June 4, 2010, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

The Shoreline Planner prepared the Staff Report prior to the submission of a number of public comments regarding this application. The Hearing Examiner has reviewed the entire file and concludes that the factual statements contained in the Staff Report are supported by the record as a whole.

IV.

Prior to the hearing, a number of comments were submitted by members of the public, suggesting that the proposed Shoreline Variance was inconsistent with the Shoreline Variance Criteria of Whatcom County Shoreline Management Program and requesting that the Shoreline Variance be denied.

None of the submittals establish any adverse impact on the shoreline or shoreline processes resulting from the granting of this Shoreline Variance. The granting of the variance

will allow construction of the new home approximately five feet closer to the shoreline than the existing home. It will result in the deck structure between the existing home and the shoreline being removed. It will result in planting mitigation which will allow additional natural vegetation within the shoreline buffer. Additionally, a significant area of paved, impervious surfaces along the street side of the property will be removed, resulting in new pervious surfaces on the site.

IV.

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

CONCLUSIONS OF LAW

I.

The Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Variance Permit for the proposed reduction from Georgia Strait for the construction of a single-family residence and associated appurtenant developments.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #2, dated June 4, 201009. 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. The Hearing Examiner has carefully reviewed the Staff Report, the record as a whole, and the Shoreline Variance Criteria applicable to this application. The Hearing Examiner concurs with the Conclusions of Law reached by the Shoreline Planner in the Staff Report, Exhibit No. 2. To properly interpret and apply the Shoreline Variance Permit Criteria, all of SMP 23.60.03 must be read and considered. 23.60.03F specifically allows approval of a variance request, based on view enhancement:

“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 ...”

Whatcom County has consistently approved setbacks for new or modified residential construction within an already platted and developed area. The general rule has always been that a line is to be drawn between the structures on either side and the newer, modified structure will use that line as a shoreline setback.

Suggestions that a variance request based on view enhancement cannot be the basis for a variance would make this language meaningless and superfluous. The intent is clearly to allow a variance for view enhancement “where there are no likely detrimental effects to existing or future users, other features or shoreline ecological functions and/or processes” This language incorporates into the Shoreline Variance Criteria the principle that interfering with the views of a shoreline residential property is a significant interference with a reasonable permitted use where no detrimental effects can be shown.

The shoreline in question is a long developed shoreline containing narrow, relatively small, waterfront lots. It is an older shoreline development which would no longer be approved. A Shoreline Variance allowing this property owner to move the proposed house five feet closer to the shoreline, when compared with the existing structure, combined with the requirement for a mitigation plan and the reduction of other impervious surfaces onsite, and subject to the Conditions of Approval recommended by Staff, will have no significant detrimental effects on either the shoreline environment or current or future users.

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

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 Fred Gockel and Rolleen Erickson granting shore setback relief from the Strait of Georgia to construct a single-family residence and associated appurtenant developments and to be located on Assessor’s Parcel No. 380108 447556, at 4495 Sucia Drive, Ferndale, Washington. The permit is granted 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. In addition, a Demolition Permit shall also be obtained prior to removal of the existing structure. The Building and Demolition Permits shall require additional review by the Shoreline Administrator, pursuant to 23.60.01, to ensure consistency with the modifications and conditions of this Variance Approval.
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. Prior to submittal of the Building Permit Application, the Applicant shall contact Travis Bouma of Whatcom County Public Works – River and Flood Division to determine how to delineate the VE and AO flood boundaries on the subject property. The proposed single-

family residence shall be located at or landward of the VE Zone boundary as delineated based on the requirements of River and Flood. Any construction conditions required by River and Flood shall be incorporated into the design of the proposed single-family residence.

In addition, a Habitat Assessment is required to demonstrate that there are “no impacts” to endangered species pursuant to the Endangered Species Act (ESA). The assessment shall be submitted to, and approved by, the Whatcom County Public Works – River and Flood Division for approval prior to Building Permit Application. Included in this requirement is that any fill brought in that will displace flood waters and reduce flood storage will require compensatory floodplain storage. Please contact Travis Bouma of River and Flood (360-676-6876) for assistance in compliance with the above conditions.

4. A Mitigation Plan shall be submitted prior to issuance of above-required Building Permit Application to restore vegetation disturbed during construction and to re-vegetate the areas of the removed deck. The plan shall be consistent with 16.16.260 and 16.16.760 of the Whatcom County Critical Areas Ordinance (CAO).
5. The design of the proposed residence shall be designed by a qualified professional to minimize risk to health and safety and protect the building and occupants from the identified Geologically Hazardous Areas (GHAs) including seismic hazards, tsunami inundation, and coastal erosion hazards. Please contact Doug Goldthorp – Staff Geologist for Whatcom County Planning and Development Services – Natural Resource Permitting Division (360-676-6907) for assistance in compliance with the above condition.
6. The Applicant shall obtain a Revocable Encroachment Permit from Whatcom County Public Works - Engineering Services for the proposed access prior to issuance of a Building Permit. A paved apron is required for the access point pursuant to Whatcom County Road Standards.
7. The proposed driveway to the single-family residence shall be a minimum of 12-feet in width and topped with at least two-inches of compacted crushed rock pursuant to Whatcom County Road Standards for Single-Family Residential Development. Low impact development techniques are also acceptable.
8. A detailed drainage proposal and Temporary Erosion and Sediment Control (TESC) Plan shall be submitted for review by Engineering Services in association with the required Building Permit.
9. The Applicant shall obtain an address from Engineering Services for the proposed residence prior to issuance of the required Building Permit.
10. Prior to authorization of any ground disturbing activity on the subject property, the Applicant

shall retain a professional archaeologist to conduct a Cultural Resource Assessment Report. The fee for the service of the professional archaeologist shall be paid by the landowner. The Applicant shall provide a copy of the assessment with the Building Permit Application for distribution to the Washington State Department of Archaeology and Historic Preservation (DAHP) and affected Tribes unless otherwise not required by DAHP and said Tribes.

11. 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 13th day of July 2010.

Michael Bobbink, Hearing Examiner

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



David Stalheim
Director

J.E. "Sam" Ryan
Assistant Director

June 4, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of Fred Gockel & Rolleen Erickson for a Shoreline Variance Permit		SHV2010-00004 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
--	--	--

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicants request relief of the shore setback from the Strait of Georgia in order to construct a new single-family residence and appurtenant developments in line with existing residential structures to the north and south 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 Gockel and Rolleen Erickson
5125 219th Street Southeast
Woodinville, Washington 98072

Property Location: 4495 Sucia Drive

Legal Description: Section 08 Township 38 North, Range 01 West, W.M.
Parcel #: 380108447556

Adjacent Water Body: Georgia Strait

Shoreline Designation: Shoreline Residential

Statewide Significance: No

Zoning: Residential Rural

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 variance to replace and expand an existing single-family residence closer to the shoreline than the existing structure. The variance request would authorize the applicant to construct the waterward edge of the structure to be in line with adjacent residences to the north and south to obtain a better view the subject development. The proposed residence would be located approximately 25-feet landward of the ordinary high water mark (OHWM) of Georgia Strait at its closest point.

The subject property is currently developed with a single-family residence located approximately 30-feet from the OHWM with a large prow overhang extending the roofline to approximately 22-feet landward of OHWM. An at-grade wood deck, measuring approximately 350-square feet in size is located waterward of the existing residence at a distance of approximately 15 to 18-feet from OHWM. Remaining portions of the property consist of a small storage shed structure and a graveled parking area/driveway between the residence and Sucia Drive along the southern property boundary.

The existing residence on the subject property pre-dates the State Shoreline Management Act (SMA) and the development of the first Whatcom County Shoreline Management Program (SMP) enacted in 1976. As such, the residence is legally non-conforming in its present location. Section 23.50.07.1 of the current SMP allows replacement and expansion of existing non-conforming single-family residence and necessary appurtenances through review via a shoreline conditional use permit. In order to qualify for this review, the proposed expansion can not be waterward of the existing residential foundation wall. In this case, it is the applicant's desire to construct a portion of the new residence waterward to obtain a better view due to the location of adjacent residential structures to the north and south which are also non-conforming. As such, a variance is required as enumerated in 23.50.07.1.2.

According to 23.60.03, 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 Shoreline Management Program (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 for residential use and therefore development of a single-family residence and necessary appurtenances represents a reasonable permitted use of the subject property. Application of the full 150-foot prescribed shore setback leaves inadequate space to construct a residence and appurtenant developments due to the limited lot size. Alternatively, 23.50.07.K.1 allows new residential development as far away from the shoreline as feasible for such development on non-conforming lots such as the subject property. A third option would allow replacement and expansion of the current residential footprint through review of a conditional use permit pursuant to 23.80.07.K.I. In both alternative permitting paths above, the new residence would be located further inland than the adjacent existing homes to the north and south resulting in diminished views according to the applicant.

While denial of the requested variance would not preclude the construction of a single-family residence somewhere on the subject property, Section 23.60.03.F enables an applicant or proponent to seek 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. While the term view is not defined in the regulation and somewhat of a subjective subject, staff does concur that the size and location of the adjacent residences does impair the degree of potential view from the subject development if constructed inland. Therefore, some view hardship can be argued on the subject property and thus application of 23.60.03.F overrides the above variance criterion that the hardship would have to preclude the ability to construct a residence on the subject property.

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 view hardship discussed in 23.60.03.A is a result of historic property development patterns starting prior to the adoption of the SMA in the early 1970s and prior to the adoption of the first Whatcom County SMP enacted in 1976. The small lot size and proximity of adjacent developments is clearly not due to 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 to the north and south of the subject property. While this is the first variance processed on Sandy Point

due to a stated hardship of view under the 2008 SMP, the concept has been present within Whatcom County shoreline regulations and other examples in similar situations have historically been permitted in the area. As stated previously, in order for a view variance to be approved, no 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 shoreline of the subject property is relatively intact and consists of a natural storm berm made up of drift logs and beach gravels. The area is well-vegetated with dune grasses and other native marine species that typically occupy this environment. No bulkheads, revetments or other shore defense structures are located on the subject property or adjacent sites. According to the applicants, the existing single-family residence was the original model home associated with the Sandy Point Development and is presumed to be of 1960s vintage.

The applicant proposes removal of an existing at-grade wooden deck on the waterward side of the existing residence as part of the project which will result in an overall reduction of structures within the remaining buffer area. This permit recommendation has been conditioned that a shoreline mitigation plan be developed for review prior to building permit issuance to restore this area following construction of the new residence. Exclusion/silt fencing shall be installed as illustrated by staff on the final site plan submitted for building permit review. Such measures will assist in protection of existing vegetation and siltation of the adjacent water bodies throughout the construction phase of the project. Based on staff review, such conditions should result in a no net loss of shoreline ecological functions during the short and long term.

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, a coastal erosion hazard area and a tsunami and seiche hazard area based on available County CAO maps. In addition, the site is located within a Frequently Flooded Area (FFA) pursuant to Section 16.16.400 of the CAO.

In order for the decision maker to grant relief of a variance for view enhancement, no detrimental effects to existing or future users must be demonstrated. Section 16.16.320.A, developments within GHAs shall be directed toward portions of the subject property that are not subject to, or at risk from, GHAs. In this case, none of the aforementioned GHAs can be avoided on the subject property meaning that the design of the future development will required engineering in order to withstand such hazards.

In regard to FFAs, Section 16.16.420.B states that development within FFAs is allowed but only after opportunities for avoidance of such risks is followed pursuant to the hazard mitigation sequence enumerated in 16.16.260. The proposed variance was reviewed by the County Public Works Department – River and Flood Division for review pursuant to 16.16.420. The following comments were provided by Travis Bauma of River and Flood on March 3, 2010:

“The subject permit to build a new house and attached garage with the west side of the house aligned in common with residence (sic) to the North and South appears to be located within 2-Flood Zones (VE-13 and AO-3, see attached). Prior to applying for the building permit, the applicant will need to provide an updated site map that has the flood zone boundaries delineated on it in order to determine what flood conditions will apply. The proposed structure as shown on the submitted site plan is situated very close to being either in or out of the Coastal High Hazard Area (Flood Zone VE-13). It is recommended the applicant avoid building within the Flood Zone VE boundary otherwise more stringent coastal construction standards will apply to

the structure. Regardless, the project will be subject to the flood conditions as outlined in Whatcom County Flood Damage Prevention Ordinance (Title -17). When development proposed within the regulatory floodplain, the County must assure that all Federal, State and local regulations are being met. Therefore, a Habitat Assessment for this project will be required in order to demonstrate that there are “no-impacts” to Endangered Species in regards to the Endangered Species Act (ESA). The assessment will need to be submitted and approved by the County Flood Division and/or Planning & Development Services prior to issuing the final flood conditions and review sign-off on the building permit. Included in this requirement is that any fill brought in that will displace flood waters and reduce flood storage will require compensatory floodplain storage. A copy of FEMA’s Draft Guide for Floodplain Habitat Assessment is available at the County Flood Division office (address shown below). I hope this information is helpful, feel free to contact us with any questions.”

According to the Federal Flood Insurance Map (FIRM) for the area of the subject property, the entire subject property is located within a flood zone. As such, there are no areas of the subject property to relocate the proposed development to avoid the flood hazard. As stated above by Mr. Bauma, the boundary delineating the higher velocity VE flood zone and lower velocity AO flood zone appears to lie very close to the area where the westernmost portion of the proposed structure is located. Prior to conducting a formalized review to determine what type of construction standards is necessary, Mr. Bauma has required that the flood zones be mapped. Mr. Bauma also recommends that the proposed structure be located outside of the VE flood zone to avoid the strict construction standards required for developments in such areas.

Construction within the high velocity VE flood zone is inherently more hazardous than construction within the lower velocity AO flood zone. As such, the higher velocity VE should be avoided in this case pursuant to the hazard mitigation sequence enumerated in 16.16.260.1.a. Although the exact location of the VE zone boundary has not been delineated on the subject property, the County FIRM maps show that the boundary will not likely result in a significant change in the proposed house location. A similar view will likely result. This approval recommendation has been conditioned that prior to application of a building permit, the applicant shall have the flood boundaries mapped on the subject property so that River and Flood can conduct a formal review pursuant to Title 17 to determine what coastal construction standards will be required to protect the residences from flood forces on the subject property. In addition, an ESA checklist shall be filled out and reviewed and approved by River and Flood prior to approval of the building permit pursuant to Title 17. Additional mitigating conditions may apply depending on the extent of flood storage functions as a result of the proposed construction.

The project was review by the Whatcom County Public Works – Engineering Division to review site distance and proposed vehicular circulation in order to enter and exit Sucia Drive in a safe manner. . The driveway configuration was revised through the review process to include a turnaround area so that vehicles can enter Sucia Drive in a forward-moving direction. Such measures will improve the existing circulation and overall safety other roadway users.

The project has been reviewed by the County Staff Geologist who made the following comments to staff on April 1, 2010:

“Because the subject shoreline is accretionary and stable, no shoreline stabilization should be necessary if shore conditions remain unchanged over the life of the structure. As a consequence, no professional assessment is necessary. The site is subject to tsunami inundation up to 6-feet, which can be addressed at the building permit phase.”

As stated above, construction of the new residence is not believed to need structural shore stabilization for the life of the structure which is defined by the SMP as 100 years. The shoreline is currently stable and appears to be slowly growing in size. Construction of shore defense structures oftentimes results in adverse effects to neighboring properties by deflecting wave energy onto adjacent downdrift properties. As no such structures are necessary here, no such impacts to adjacent structures are likely.

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 similar to the proposed structure from OHWM. As such, allowing the proposed residence to be located in the same general location does not represent a grant of special privilege.

Utilizing the common line setback concept has been generally supported by shoreline decision makers in numerous view variance requests to represent the minimum necessary setback reduction for the purposes of view enhancement. In this case, the exact common line may not be realized depending on the location of the high velocity VE flood zone as conditioned. Such boundary will likely allow an equivalent, but not necessarily the same view as the adjoining residences.

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.

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 of Georgia Strait.

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

This variance recommendation has been conditioned that a mitigation plan be developed for review and approval by Whatcom County Planning and Development Services prior to issuance of the required building permit. The plan shall outline restoration measures to be implemented to replant affected buffer areas disturbed during construction and re-vegetation of areas currently covered with the deck.

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.

With and approved and properly implemented mitigation plan as conditioned by this variance recommendation, no adverse impacts were identified in association with the proposed residential

construction. As such, approval of additional projects were similar circumstances exist should not result in cumulative environmental impacts to the shoreline environment.

V. PUBLIC COMMENTS

No public comments were received by this Administrator during the course of permit review.

VI. AGENCY COMMENTS

The following agency comments were received in addition to those already mentioned within this staff report:

On March 11, 2010, the following comments and conditions of approval were provided by Sanja Barisic of Whatcom County Public Works – Division of Engineering:

- *The applicant shall obtain a Revocable Encroachment Permit from Engineering Services for the proposed access prior to issuance of a building permit. A paved apron is required for the access point pursuant to Whatcom County Road Standards.*
- *The proposed driveway to the single-family residence shall be a minimum of 12-feet in width and topped with at least two-inches of compacted crushed rock pursuant to Whatcom County Road Standards for Single-Family Residential development. Low impact development techniques are also acceptable.*
- *A detailed drainage proposal and temporary erosion and sediment control (TESC) plan shall be submitted for review in association with the required building permit.*
- *The applicant shall obtain an address from Engineering Services for the proposed residence prior to issuance of the required building permit.*

The above conditions have been incorporated into this staff recommendation.

On March 23, 2010, the following comments were received from Gretchen Kaehler, Assistant State Archaeologist for the Washington State Department of Archaeology and Historic Preservation (DAHP):

We have reviewed the materials forwarded to our office for the proposed project referenced above. The area has a high probability for archaeological resources. A large shell midden has been recorded approximately 400-feet north of the project area. In addition, there are multiple archaeology sites within 1.0 mile of the project area. The construction of a single-family home may damage or destroy archaeological resources that have not yet been identified. Identification during construction is not a recommended detection method because inadvertent discoveries often result in costly construction delays and damage to the resource. Therefore, we recommend a professional archaeological survey of the project area be conducted prior to ground disturbing activities. We also recommend consultation with the concerned tribes' cultural committees and staff regarding cultural resource issues.

These comments are based on the information available at the time of this review and on behalf of the State Historic Preservation Officer. Should additional information become available, our assessment may be revised.

This variance recommendation has been conditioned that a archaeological assessment be required prior to application of the required building permit for the residence unless otherwise determined by

DAHP and the affected tribes.

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. In addition, a Demolition Permit shall also be obtained prior to removal of the existing structure. The building and demolition permits shall require additional review by the Shoreline Administrator pursuant to 23.60.01 and to ensure consistency with the modifications and conditions of this variance approval.*
- 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. Prior to submittal of the building permit application, the applicant shall contact Travis Bauma of Whatcom County Public Works – River and Flood Division to determine how to delineate the VE and AO flood boundaries on the subject property. The proposed single-family residence shall be located at or landward of the VE Zone boundary as delineated based on the requirements of River and Flood. Any construction conditions required by River and Flood shall be incorporated into the design of the proposed single-family residence.*

In addition, a Habitat Assessment is required to demonstrate that there are “no impacts” to endangered species pursuant to the Endangered Species Act (ESA). The assessment shall be submitted to, and approved by the Whatcom County Public Works – River and Flood Division for approval prior to building permit application. Included in this requirement is that any fill brought in that will displace flood waters and reduce flood storage will require compensatory floodplain storage. Please contact Travis Bauma of River and Flood (360-676-6876) for assistance in compliance with the above conditions.

- 4. A mitigation plan shall be submitted prior to issuance of above-required building permit application to restore vegetation disturbed during construction and to revegetate the areas of the removed deck. The plan shall be consistent with 16.16.260 and 16.16.760 of the Whatcom County Critical Areas Ordinance (CAO).*
- 5. The design of the proposed residence shall be designed by a qualified professional to minimize risk to health and safety and protect the building and occupants from the identified Geologically Hazardous Areas (GHAs) including seismic hazards, tsunami inundation, and coastal erosion hazards. Please contact Doug Goldthorp – Staff Geologist for Whatcom County Planning and Development Services – Natural Resource Permitting Division (360-676-6907) for assistance in compliance with the above condition.*
- 6. The applicant shall obtain a Revocable Encroachment Permit from Whatcom County Public Works - Engineering Services for the proposed access prior to issuance of a building permit. A paved apron is required for the access point pursuant to Whatcom County Road Standards.*
- 7. The proposed driveway to the single-family residence shall be a minimum of 12-feet in width*

and topped with at least two-inches of compacted crushed rock pursuant to Whatcom County Road Standards for Single-Family Residential development. Low impact development techniques are also acceptable.

- 8. A detailed drainage proposal and temporary erosion and sediment control (TESC) plan shall be submitted for review by Engineering Services in association with the required building permit.*
- 9. The applicant shall obtain an address from Engineering Services for the proposed residence prior to issuance of the required building permit.*
- 10. Prior to authorization of any ground disturbing activity on the subject property, the applicant shall retain a professional archaeologist to conduct a cultural resource assessment report. The fee for the service of the professional archaeologist shall be paid by the landowner. The applicant shall provide a copy of the assessment with the building permit application for distribution to the Washington State Department of Archaeology and Historic Preservation (DAHP) and affected tribes unless otherwise not required by DAHP and said tribes.*
- 11. 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.*

Report prepared by:

Chad J. Yunge

Whatcom County Shorelines Administrator

Planning and Development Services – Land Use & Natural Resource