

KATHY HILL  
SKAGIT COUNTY AUDITOR

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RECORDED \_\_\_\_\_ FILED \_\_\_\_\_  
REQUEST OF \_\_\_\_\_

9907010003

AFTER RECORDING RETURN TO:  
SKAGIT COUNTY HEARING EXAMINER  
302 SOUTH FIRST STREET  
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON SHORELINE SUBSTANTIAL DEVELOPMENT VARIANCE  
#SL 99 0145

GRANTOR(S): SKAGIT COUNTY HEARING EXAMINER

GRANTEE: DAVID MARGESON

ASSESSOR PARCEL NO: P65136

ABBREVIATED LEGAL DESCRIPTION: located at 4233 Edens Road, Guemes Island,  
Anacortes, WA; within Section 2, Township 35 North, Range 1 East, W.M., Skagit County,  
Washington.

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SL 99 0145.ORD

**SKAGIT COUNTY HEARING EXAMINER**  
**STATE OF WASHINGTON**

In the matter of:

Application No. SL 99 0145

Of DAVID MARGESON

for a SHORELINE SUBSTANTIAL DEVELOPMENT/

VARIANCE PERMIT for: construction of an addition

to a residence increasing the area by 345 square feet

with no expansion of the building footprint toward

the shoreline.

) Findings of Fact

) Entry of Order

) No. SL 99 0145

THIS MATTER having come regularly before the Skagit County Hearing Examiner for a Public Hearing under an application filed with the Skagit County Planning and Permit Center on behalf of the Applicant requesting a Shoreline Substantial Development/Variance Permit as described in the attached Report and Findings of that Department and located at 4233 Edens Road, Guemes Island, Anacortes, WA; within Section 2, Township 35 North, Range 1 East, W.M., Skagit County, Washington;

Assessor Parcel No: 65136

And, notice having been given to all property owners within 300 feet of said property and all matters in the file having been considered together with the testimony, evidence, and exhibits in open hearing and made a part of the record in this matter; the Hearing Examiner makes the following findings of fact.

**FINDINGS OF FACT**

1. June 9, 1999 was fixed as the date of the public hearing and the Hearing Examiner held a public hearing on that date.
2. All persons present at the Public Hearing were given an opportunity to present evidence and testimony, and all correspondence received was made a part of the record.
3. The Application was advertised in accordance with the requirements of the Skagit County Shoreline Management Program (Section 14.28 of the Skagit County Code) and Chapter 173-14-070 of the Washington Administrative Code. The Public Hearing was advertised in accordance with the requirements of Section 14.01 of the Skagit County Code.
4. The Planning and Permit Center issued a Staff Report and Findings. The Hearing Examiner adopts Findings No. one (1) through nine (9) as presented in that Report.

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5. Section 9.02 of the Skagit County Shoreline Management Master Program establishes criteria and standards for consideration of Shoreline Substantial Development Permits. These criteria and standards are as follows:

**Criteria for Granting Substantial Development Permits:**

1. Upon the effective date of this program, a shoreline substantial development permit or a statement of exemption shall be granted only when the proposed development is consistent with:
    - a. Policies and regulations of the Skagit County Shoreline Master Program; and
    - b. Applicable policies enumerated in RCW 90.58.020 in regard to shorelines of the state and shorelines of statewide significance; and
    - c. Regulations adopted by the Department of Ecology pursuant to the Act (WAC 173-14).
  2. Burden of Proof - The burden of proving that the proposed development is consistent with the above (paragraph 1) shall be on the applicant.
6. Section 10.03 of the Skagit County Shoreline Management Master Program establishes criteria and standards for consideration of Shoreline Variance Permits. These criteria and standards are as follows:
1. Variance permits for development to be located landward of the ordinary high water mark (OHWM), except within areas designated marshes, bogs or swamps pursuant to Chapter 173-22, Washington Administrative Code, may be granted provided the applicant can meet all the following criteria; the burden of proof shall be on the applicant.
    - a. That the strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program.
    - b. That the hardship described above 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 Master Program and not, for example, from deed restrictions or the applicant's own actions:

- c. 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 designation.
  - d. That the variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the same area and will be the minimum necessary to afford relief.
  - e. That the public interest will suffer no substantial detrimental effect.
3. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were to be 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 this Master Program and should not produce substantial adverse effects to the shoreline environment.
7. The Hearing Examiner reviewed this application with respect to the criteria for approval and the requirements of Section 14.28 of the Skagit County Code.

### CONCLUSIONS

The Hearing Examiner, having duly considered the matter, including all the testimony and evidence presented at the Public Hearing and on file including the application, the Environmental Information required by the State Environmental Policy Act Guidelines and other environmental information, information from other interested persons, information from other County Departments affected, and independent studies of the Skagit County Planning and Permit Center finds that:

1. The proposed development, with the appropriate conditions, modifications, and/or restrictions which, if necessary and applicable, are listed below as conditions of approval is consistent and/or compatible with the following policies, regulations, and statutes:
  - a. The Policies and Regulations of the Skagit County Shorelines Management Master Program; and
  - b. Applicable policies enumerated in R.C.W. 90.58.020 in regard to shorelines of the state and shorelines of statewide significance; and



- c. Regulations adopted by the Washington State Department of Ecology pursuant to the Shorelines Management Act and contained in Chapter 173-14, Washington Administrative Code.
2. That the proposed project substantially meets the criteria for granting variance permits as set forth in Section 10.03 of the Skagit County Shoreline Management Master Program.

**DECISION**

The Hearing Examiner APPROVES the application for a Shoreline Substantial Development/Variance Permit subject to the following conditions:

1. All construction debris shall be properly disposed of on land in such a manner that it cannot enter into the waterway or cause water quality degradation.
2. The project shall be started within two (2) years of the date of this order and completed within five (5) years of the date of this order of the shoreline permit shall become void.
3. The applicant shall obtain a Skagit County Building Permit and obtain all necessary approvals incorporated within the said permit.

This decision shall become final five (5) days from the date of this order unless appealed in accordance with Sections 9.11 or 13.01 of the Skagit County Shoreline Management Master Program.

SKAGIT COUNTY HEARING EXAMINER

  
BRADFORD E. FURLONG, PRO TEM

Date of Action: June 29, 1999

Date of transmittal: June 29, 1999

Attachment: Staff Report and Findings

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REVIEWING AUTHORITY: Skagit County Hearing Examiner  
PUBLIC HEARING DATE: June 9, 1999  
APPLICATION FOR: Shoreline Substantial Development/Variance #SHL  
99-0145  
APPLICATION DATE: March 8, 1999  
APPLICANT: David Margeson  
536 Walnut #102  
Edmonds, WA 98020

PROJECT DESCRIPTION: The construction of a "L" shaped addition on the north and east side of the existing residence with a total square footage increase of 345 sq. ft. No expansion of the building footprint will occur towards the shoreline.

PROJECT LOCATION: The proposed project is located at 4233 Edens Road, Guemes Island, within a portion of Section 2, Township 35 North, Range 1 East, W.M., Skagit County. The subject proposal is located on the shoreline of Bellingham Channel designated Rural Residential under the Shoreline Master Program.

RECOMMENDATION: Approval, with conditions stated at the end of the report.  
EXHIBITS:

1. Staff Report
2. March 8, 1999, Shoreline Substantial Development application, Critical Area Review Form with a narrative, ownership certification and maps, photos:
3. April 1, 1999, Notice of Development Application.
4. March 11, 1999 Letter of Completeness.
5. April 27, 1999 letter of support from Mrs. C.L Boles & Mrs Barbara Escandon.
6. April 30, 1999 letter of support from the Killinger family.

STAFF FINDINGS:

1. The application has been advertised in accordance with Section 9.04 of the Skagit County Shoreline Master Program (SMP) and WAC 173-14-070.
2. The subject proposal is located on the shoreline of a property with a single-family residence on Bellingham Channel in an area designated as Rural Intermediate under the Skagit County Comprehensive Plan and within the Residential District under the Skagit County Zoning Ordinance. The property is designated as Rural Residential in the SMP.
3. No objections have been received regarding this proposal.

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4. Staff determined that the subject proposal required a Fish & Wildlife Site Assessment/Habitat Management Plan as required in 14.06.520 of the Skagit County Critical Areas Ordinance. A report dated January 22, 1999 was submitted by Foster Wheeler Environmental Corporation and found no direct or indirect adverse impacts to the site.

5. Staff has determined that the subject proposal shall be reviewed for consistency with SMP Chapter 7.13 Residential Development.

5.13 (B) Single Family Residences

Although single family residences are exempt from shoreline permit procedure (RCW 90.58.030 (3-e-vi)), the county, for the benefit of the lot owner, adjacent properties, and other shoreline and water body users, should review all proposals for construction to determine if:

- (1) The proposal is or is not exempt from permit procedures

*This proposal is not exempt because the original structure is 32 feet away from the OHWM of the channel and the addition would be as close as 38' thereby requiring a variance for the addition*

- (2) The proposal is suitably located and designed and that all potential adverse impacts to the shoreline and water bodies have been recognized and mitigated.

*The Fish & Wildlife site assessment that was prepared identified no adverse impacts.*

7.13 (C) Location

- (1) Existing and designated areas - New substantial developments should locate in existing developed areas or in officially designated residential areas providing development in these areas is consistent with this program.

*The area was designated as Rural Intermediate in the 1997 Skagit County Comprehensive Plan. The assessors map visibly demonstrates the number of small lots located in the general area.*

- (2) Geohydraulics - Residential development should be located:

- so as not to interfere with geohydraulic processes.
- Inland from feeder bluffs, drift sectors, and accretion shore forms.
- To avoid or minimize the need for shore defense, stabilization, and flood protection works.
- To utilize and protect the integrity of the shore resources for the benefit of present and future residents and users.

*The current proposal will not require shoreline stabilization or flood protection works.*

6. Staff has determined the subject proposal is not within a "Shorelines of Statewide Significance." The statewide interest should not be adversely affected by this proposal.

7. The Skagit County Planning and Permit Center has determined that the subject request is consistent with the criteria for granting Shoreline Substantial Development Permits.
8. Master Program, Chapter 10 Variances, sets forth the criteria for granting Shoreline Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits reads:

Variance permits for development to be located landward of the ordinary high water mark (OHWM), except within areas designated marshes, bogs or swamps pursuant to Chapter 173-22 WAC, may be granted provided the applicant can meet all the following criteria; the burden of proof shall be on the applicant.

  - a. That the strict application of the bulk, dimensional or performance standards set forth in this Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program. *The lot is only 51' wide with an existing structure and a existing drain field immediately behind the home.*
  - b. That the hardship described above 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 Master Program and not, for example, from deed restrictions or the applicant's own actions. *The hardship is specifically related to the dimensional features of the lot that were not caused by the applicant. The applicant is not responsible for the location adjacent homes or the narrow configuration of the lot.*
  - c. 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 designation. *Adjacent homes are closer to the shoreline and the proposal should not cause adverse effects to the area.*
  - d. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the same area and will be the minimum necessary to afford relief. *Due to the narrow width of the parcel and the existing location of adjacent homes the proposal does not constitute a special privilege.*
  - e. That the public interest will suffer no substantial detrimental effect. No detrimental effect has been identified.
9. The Skagit County Department of Public Works has no comment on the proposal.

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### RECOMMENDATION

Based on the above findings, the Skagit County Planning and Permit Center would recommend for approval of a Shoreline Permit, subject to the following conditions:

1. All construction debris shall be properly disposed of on land in such a manner that it cannot enter in to the waterway or cause water quality degradation.
2. The project must be started within two (2) years of the date of this order and completed within (5) years of the date of this order or the shoreline permit will become void.
3. The applicant must obtain a Skagit County Building Permit and receive all the necessary approvals incorporated within the said permit.

Prepared By: DD

Approved By:

Date:

May 7, 1999