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, Skagit County Auditor

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

DOCUMENT TITLE: SHORELINE VARIANCE PERMIT SL 00 0568

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: KIRK FLESHMAN

ASSESSOR PARCEL NO: P69416, P69434

ABBREVIATED LEGAL DESCRIPTION: located directly south of 14430 Channel Drive,  
LaConner, WA; within Section 13, Township 34 North, Range 2 East, W.M., Skagit  
County, Washington.

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

In the Matter of the Application of <b>KIRK FLESHMAN</b>	)	SL 00-0568
	)	
For a Shoreline Variance Permit to Construct a Single-Family Residence Within the Shoreline Setback At 14430 Channel Drive on the Swinomish Channel north of LaConner	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
	)	
	)	
	)	

THIS MATTER, an application for a shoreline variance, came on regularly for hearing on December 20, 2000, after due notice. Brandon Black appeared for the Planning and Permit Center. Kirk Fleshman represented himself. Members of the public were given an opportunity to be heard.

From the testimony taken, exhibits admitted and argument made, the following is entered:

**FINDINGS OF FACT**

1. Kirk Fleshman (applicant) seeks to build a single-family residence incorporating a garage on an approximately 9,000 square foot lot at 14430 Channel Drive adjacent to the Swinomish Channel to the west.
2. The lot is within a portion of Section 13, T34N, R2E, W.M. The shoreline at the site is designated Rural Residential under the Shoreline Master Program (SMP). The property is undeveloped.
3. The lot is typical of the relatively small lots in the Skagit Beach Subdivision along the channel. To the north are subdivision lots that have been developed with residences. On the lot immediately to the north is a house that is setback 25 feet from the Ordinary High Water Mark (OHWM) of the channel. This shore setback follows the dominant development pattern that has been established in the area.
4. For properties along this shoreline the SMP establishes a minimum residential setback of 50 feet from the OWHM. The standard setback from the road on the east side is 25 feet. Side setbacks are eight feet on either side.
5. The applicant wishes to build a 2300 square foot house (about 600 square feet of which is garage) on a lot that is triangular in shape. Because of the shape and lot size,



there is insufficient space to build any reasonably sized house consistent with the required setbacks.

6. The proposed house that would be comparable in size to others in the vicinity. The request is for a setback of 25 feet from the OHWM -- like that of adjacent residential development.

7. A septic system was previously approved for the property, placed across the road on property deeded to the owners of the subject lot for this purpose. Across the road is acreage in active agricultural use. The owner of this farmland supports the proposed variance.

8.. To the south is Tract F, a thin open space tract which the applicant is also acquiring. This area will be retained in an undeveloped state, although some planting there is contemplated as shoreline enhancement in mitigation for the setback variance.

9. The majority of the bank of the channel adjacent to the homesite is lined with riprap. Near the southern end of the lot, the riprap ends and changes with the presence of a small beach area backed by the vertical sides of the dredged channel.

10. A Fish and Wildlife Site Assessment/Habitat Management Plan was prepared for the applicant. The report identified little or no long term impact from the proposal if the following mitigation measures are implemented during and after construction:

- a) Revegetating the disturbed areas on the north, south and east sides of the house with an erosion control grass mixture or native trees, shrubs and ground cover.
- b) Installing an appropriate gutter system for the house and garage that collects runoff from the roof and directs it to a splash block or suitable alternative.
- c) Installation of silt fencing along the side of the slope prior to construction and use of sediment control methods such as straw mulch while the soil is exposed.
- d) Establishing clearing limits around the construction site prior to disturbance of existing vegetation.
- e) Designation and recording of the area landward of the OHWM as a Protected Critical Area (PCA) consistent with the site plan attached to the report..
- f) Continuation of low intensity residential activities.



g) Compliance with the monitoring plan that includes annual review and submission of a report by the applicant or designated agent.

11. The technical team reviewed the Fish and Wildlife assessment, and made no comment.

12. One letter of protest was received from a neighboring property owner. The letter stated that recent buildings on this strip have been set back 50 feet, that the site is inadequate for a structure compatible with the neighborhood and that increased surface runoff would threaten bank erosion.

13. On the basis of the record made, the Examiner does not find that these concerns are well founded.

14. For development landward of the OHWM, the criteria for approval of a variance are set forth at SMP 10.03(1). The applicant must prove:

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 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.

e. That the public interest will suffer no substantial detrimental effect.

In the granting of variance permits, the cumulative impact of additional requests for like in the area is to be considered.

15. The Staff report analyzes the project in light of these criteria and concludes that the project will meet them. The Examiner concurs in the analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.



16. Based on the existing home placements in the vicinity and the physical constraints imposed by the lot shape, the channel and the road, the proposal will provide the minimum relief necessary for the applicant to make reasonable residential use of this property.

17. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the parties and subject matter of this proceeding.

2. The proposal is exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6)(b).

3. The proposal, as conditioned, complies with the Critical Areas Ordinance.

4. Residential development is a permitted use in the Rural Residential shoreline designation. SMP 7.13.2(2). The proposed development does not conflict with the policies of either the Shoreline Management Act of the SMP.

5. As conditioned, the proposed development will meet the criteria for a shoreline variance. SMP 10.03(1).

6. The following conditions should be imposed.

(1) The permittee shall strictly adhere to the project information submitted, in particular the site diagram.. The setback from the OHWM to the residence shall be 25 feet.

(2) The permittee shall record a site plan clearly marking the area of the Protected Critical Area (PCA) as shown on Figures 2 and 3 of the Fish and Wildlife Report prepared by Northwest Wetland Solutions and dated October 23, 2000. The site plan must be filed with the County Auditor's Office prior to construction.

(3) The permittee shall comply with the recommendations of said Fish and Wildlife Report, including the monitoring requirements.

(4) Prior to construction the applicant shall obtain a building permit and all other necessary approvals.

(5) If the permittee proposes modifications to the subject proposal, a shoreline permit revision shall be obtained from the Planning and



Permit Center prior to construction of same.

(6) Construction material and other debris shall not be allowed to enter the water.

(7) Approval of this variance shall be obtained from the Department of Ecology. After such approval is obtained, construction shall commence within two years and project completion shall be achieved within five years.

7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

### DECISION

The requested shoreline variance is granted, subject to the conditions set forth in Conclusion 6 above.

*Wick Dufford*

Wick Dufford, Hearing Examiner

Date of Action: January 8, 2001

Copies Transmitted to Applicant: January 8, 2001

Attachment: Staff Report

### RECONSIDERATION/APPEAL

A request for reconsideration may be filed as provided in SCC 14.06.180. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Clerk of the Board within 14 days after the date of the Examiner's decision, or decision on reconsideration if applicable.



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3 **SKAGIT COUNTY PLANNING & PERMIT CENTER**

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5 **FINDINGS OF FACT**

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8 REVIEWING AUTHORITY: Skagit County Hearing Examiner

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10 PUBLIC HEARING DATE: December 20, 2000

11  
12 APPLICATION FOR: Shoreline Variance #PL 00-0568

13  
14 APPLICATION DATE: August 31, 2000

15  
16 APPLICANT: Kirk Fleshman

17 PO Box 1333

18 PARCEL# 69434 Mount Vernon, WA 98273

19  
20 PROJECT DESCRIPTION: The construction of a single-family residence 25 feet from  
21 the OHWM in a Rural Residential shoreline designation that normally requires a 50-foot  
22 minimum setback.

23  
24 The proposal triggers the need for a shoreline variance because:

- 25 1. The minimum shoreline setback from the OHWM in the rural residential shoreline  
26 designation is 50 feet (see SCSMMP 7.13(2)© Table RD).

27  
28 PROJECT LOCATION: The proposed project is located directly south of 14430 Channel  
29 Drive, LaConner, within a portion of Section 13, Township 34 North, Range 2 East,  
30 W.M., Skagit County. The subject proposal is located on the shoreline of the Swinomish  
31 Channel designated Rural Residential under the Shoreline Master Program. P#69416-  
32 69434.

33  
34 RECOMMENDATION: **Approval**, with conditions stated at the end of the report.

35 EXHIBITS:

- 36  
37 1. Staff report  
38 2. August 31, 2000, Shoreline Variance application, a narrative, ownership certification  
39 and photos.  
40 3. September 7, 2000 Letter of Completeness.  
41 4. September 14, 2000 & September 21, 2000, Notice of Development Application.  
42 5. October 23, 2000 Fish & Wildlife Site Assessment prepared by Northwest Wetland  
43 Solutions.  
44 6. December 5, 2000 letter of support from Larry Neusen at 15356 Produce Lane,  
45 Mount Vernon 98273.  
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5 STAFF FINDINGS:  
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- 7 1. The application has been advertised in accordance with Section 9.04 of the Skagit  
8 County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.  
9
- 10 2. The subject proposal is located on the shoreline of a property with a single-family  
11 residence on the Swinomish Channel in an area designated as Rural Reserve by  
12 the Skagit County Comprehensive Plan and the Skagit County Zoning Ordinance.  
13 The property is designated as Rural Residential in the SCSMMP.  
14
- 15 3. The property is triangular in shape with an extended narrow "tail" that runs along  
16 the road to the south. North of the project area are numerous homes that are built  
17 within the 50-foot minimum shoreline setback. The entire area is very flat and  
18 was built mainly on dredge spoils from the channel that were deposited over  
19 many years. Channel Drive is the sole access to the property and the entire  
20 residential area is flanked by agricultural land to the east.  
21
- 22 4. A septic permit was granted in 1992 and an easement was obtained to allow the  
23 drain field to be located on the east side of Channel Drive.  
24
- 25 5. Staff determined that the subject proposal required a Fish & Wildlife Site  
26 Assessment/Habitat Management Plan as required in 14.06.510 & .520 of the  
27 Skagit County Critical Areas Ordinance (CAO). The report identified no or little  
28 long term impact from the proposal if the following mitigation measures were  
29 implemented during and after construction:  
30 a) Revegetating the disturbed areas north, south and east sides of the house with  
31 a grass mixture or plant native trees, shrubs and ground cover.  
32 b) An appropriate gutter system should be designed for the house and garage.  
33 Runoff from the roof should be collected by a gutter system and directed to a  
34 splash block or comparable alternative.  
35 c) Silt fencing should be constructed along the side of the slope prior to  
36 construction and sediment control methods such as using straw mulch should  
37 be used while the soil (sand) is exposed.  
38 d) Clearing limits should be established around the construction site prior to  
39 disturbance of the existing vegetation.  
40 e) The area landward of the OHWM should be designated as a Protected Critical  
41 Area (PCA) consistent with the attached site plan and recorded with the  
42 County Auditors office as required in SCC 14.06.145.  
43 f) Low intensity residential activities should be allowed to continue.  
44 g) A monitoring plan has been designed that includes annual review by the  
45 applicant or his/her designated agent who will submit annual progress reports  
46 the Skagit County Planning & Permit Center.



1  
2 The Fish & wildlife site assessment was circulated for Technical Team review  
3 from November 9-24, 2000 per SCC 14.24.530(2). No comments were received.  
4

5 6. The proposal is categorically exempt from the State Environmental Policy Act  
6 (SEPA) as noted in WAC 197-11-800(1)(b)(I) regarding residential structures.  
7

8 7. One letter of support from the farmer east of the property was received regarding  
9 the proposal.  
10

11 8. Staff determined that the proposal is not located on a Shoreline of Statewide  
12 Significance.  
13

14 9. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting Shoreline  
15 Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits  
16 reads:  
17

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

23 a. **That the strict application of the bulk, dimensional or performance**  
24 **standards set forth in this Master Program precludes or significantly**  
25 **interferes with a reasonable use of the property not otherwise**  
26 **prohibited by this Master Program.**

27 *The parcel is triangular in shape and bordered by the Swinomish Channel*  
28 *on the west and Channel Drive on the east. To impose all shoreline*  
29 *requirements would essentially render the lot unbuildable as depicted by*  
30 *the applicant's submitted drawings.*  
31

32 b. **That the hardship described above is specifically related to the**  
33 **property and is the result of unique conditions such as irregular lot**  
34 **shape, size or natural features and the application of this Master**  
35 **Program and not, for example, from deed restrictions or the applicant's**  
36 **own actions.**

37 *The hardship is due to the lot shape and lot location in relation to the*  
38 *channel and the road.*  
39

40 c. **That the design of the project will be compatible with other permitted**  
41 **activities in the area and will not cause adverse effects to adjacent**  
42 **properties or the shoreline environment designation.**

43 *The surrounding area has been developed for rural residential use as*  
44 *demonstrated by the Residential zoning designation. All residences within*  
45 *300 feet of the side property lines are also within the 50 foot setback buffer*



1 *due to pre-shoreline management development patterns. No adverse*  
2 *impacts have been identified on adjacent parcels.*  
3

- 4 **d. That the variance authorized does not constitute a grant of special**  
5 **privilege not enjoyed by the other properties in the same area and will**  
6 **be the minimum necessary to afford relief.**

7 *The issuance of a variance for this proposal would be consistent with the*  
8 *relatively high-density development on Channel Drive. Adjacent homes to*  
9 *the north enjoy similar setbacks from the Channel and the irregular shape*  
10 *of the lot in relation to the channel and the road suggest that the granting of*  
11 *this request would not constitute a “grant of special privilege.” Further, it*  
12 *appears to staff that based on the existing circumstances of home*  
13 *placements and physical constraints such as the channel and the road that*  
14 *the proposal would provide the “minimum relief necessary” for the*  
15 *applicant to build a single family residence in a shoreline location that*  
16 *allows such development.*  
17

- 18 **e. That the public interest will suffer no substantial detrimental effect.**

19 *Any possible detrimental effects however how remote, should be mitigated*  
20 *through compliance with the conditions placed on the development as*  
21 *recommended by staff and the environmental consultant.*  
22  
23

## 24 **REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.**

25

26 The proposal has been reviewed for consistency with SMP Chapter 7.13 Residential  
27 Development as defined in Chapter 3.03. The entire chapter 7.13 of the SCSMMP regarding  
28 Residential Development is included as Attachment “A” of the staff report, staff has  
29 summarized the policies involved.

30 Staff determined that the proposal does not conflict with the **general policies** regarding  
31 residential development, coordination, optimum use, joint use, public access, public use,  
32 natural resource processes, hazardous areas, water quality & quantity, PUD’s, floating  
33 homes, community services, Shoreline Management jurisdiction, location and design and  
34 construction and impacts. Staff has further determined that the proposal complies with all  
35 **SCSMMP regulations** regarding shoreline designation, general regulations, accessory uses,  
36 hazardous areas, shore defense works, landfilling, public access, fragile areas, utilities, roads  
37 and parking areas, drainage, sewage and screening **except** shoreline setbacks.

38 The following inserts from the Regulation section are considered below with staff notes  
39 in italics:  
40

### 41 **2. REGULATIONS**

#### 42 **A. Shoreline Area**

##### 43 **(2) Rural Residential**

44 *(a) Residential development is permitted subject to the General and Tabular Regulations.*

#### 45 **B General**

##### 46 **(9) Shoreline setback;**



1 Residential structures shall be setback common to the average of setbacks for existing  
2 dwelling units within 300 feet of side property lines or a minimum setback distance as  
3 Required in Table RD, whichever is greater  
4 *All of the residences within 300 feet of the side property lines are located within 50 feet*  
5 *of the OHWM, and the minimum setback is 50 feet from the OHWM in the Rural*  
6 *residential shoreline designation, therefore, the "whichever is greater" in this case*  
7 *would be the 50 foot minimum required in Table RD. Hence, the total variance sought*  
8 *from the OHWM for the new residence is 25 feet from the OHWM.*  
9

10  
11 RECOMMENDATION

12  
13 Based on the above findings, the Skagit County Planning and Permit Center would  
14 recommend for **approval** of a Shoreline Variance Permit subject to the following  
15 conditions:

- 16  
17 1. The applicant shall record a site plan showing the lot in question, clearly marking  
18 the land waterward of the proposed structure as a Protected Critical Area and shall  
19 show the types and location of native vegetation to be planted. The site plan must  
20 be recorded by the County Auditor's (SCC 14.06.145(2))-office prior to issuance  
21 of a building permit.  
22  
23 2. The applicant must obtain a Skagit County Building Permit and receive all the  
24 necessary approvals.  
25  
26 3. The subject proposal shall comply with the Skagit County Shorelines Management  
27 Master Program and the Shoreline Management Act RCW 90.58.  
28  
29 4. The applicant shall strictly adhere to the project information (site diagram) submitted  
30 for this proposal. If the applicant proposes any modifications of the subject proposal,  
31 he/she shall request a shoreline permit revision from this office prior to the start of  
32 construction.  
33  
34 5. The applicant shall comply with the Fish & Wildlife Site Assessment  
35 recommendations in regards to utilizing proper sedimentation and erosion control  
36 measures during construction. The recommendations included:  
37  
38 a) Revegetating the disturbed areas north, south and east sides of the house  
39 with a grass mixture or plant native trees, shrubs and ground cover.  
40 b) An appropriate gutter system shall be designed for the house and garage.  
41 Runoff from the roof should be collected by a gutter system and directed  
42 to a splash block or comparable alternative.  
43 c) Silt fencing shall be constructed along the side of the slope prior to  
44 construction and sediment control methods such as using straw mulch  
45 should be used while the soil (sand) is exposed.



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- d) Clearing limits shall be established around the construction site prior to disturbance of the existing vegetation.
- e) The area landward of the OHWM shall be designated as a Protected Critical Area (PCA) consistent with the attached site plan and filed with the County Auditors office as required in SCC 14.06.145.
- f) Low intensity residential activities should be allowed to continue.
- g) The monitoring plan has been designed that includes annual review with annual reports that will be provided to the staff of the Skagit County Planning & Permit Center.

Prepared By: DD  
Approved By:  
Date: December 11, 2000.  
Amended:

