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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 0689

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: JAMES & KATHRYN JENSEN

ASSESSOR PARCEL NO: P69430

ABBREVIATED LEGAL DESCRIPTION: located directly south of 15210 Channel Drive,  
LaConner, WA; within Section 24, Township 34 North, Range 2 East, W.M., Skagit  
County, Washington.

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

6. The standard eight-foot setback from the side property lines will be met, as will the standard 35-foot setback from the street. The 30-foot height limit will not be exceeded.

7. The southwest corner of the house will be 26 feet from the OHWM, and the northwest corner will be set back 33 feet. The average setback would be 29.5 feet. There are existing houses on either side of the subject lot which are both set back about 25 feet from the OHWM. The average setback of houses 300 feet in either direction is 29.5 feet. The proposed residence will be located behind the line of sight from adjacent residences, so that the proposal will cause no view obstruction.

8. A Fish and Wildlife Habitat Assessment was prepared and identified limited impact from the proposal if recommended mitigation measures are taken. The recommended measures are:

- a) Wet season construction should be accompanied by the implementation of a temporary erosion and sedimentation control plan. While soil composition and slope of the lot do not indicate likely discharge to the Swinomish Channel, site conditions should be monitored by the builder, during construction, and silt fences utilized if needed.
- b) Groundcover vegetation removal should be minimized to the extent practicable during construction. Replacement of ground cover with landscape species should be allowed following construction. Vegetation removed during construction should be replaced with native species in substantial conformance with the attached site plan. Species selection and location should be left to the owner's discretion. Plant survival should be monitored over a five-year period with 100% survival assured over the first year.
- c) The area subject to the planting plan should be designated a protected critical area (PCA) to assure identification and long term protection. The PCA should be recorded on site a plan by the County Auditor. The attached site plan has been prepared in a format suitable for recording.
- d) The recorded PCA should provide that ongoing residential related low impact and non-intensive uses consistent with Section 14.24.530(3)(d) be allowed to continue.

9. The Department of Ecology requested that the proposed mitigation plan be modified to allow only native species within 15 feet of the channel. The applicants provided a revised landscaping plan that conforms to this suggestion.

10. The small parcel size makes it impossible to build the proposal on the property and still comply with all the standard setbacks. But, the proposed residential development is not out of scale or out of character with existing development within the subdivision. The plan represents a reasonable use of the property.



11. The pattern of development in the area has generally been to place houses around 25 feet from the OHWM. This was the minimum established by covenant when the subdivision was originally platted in 1964, prior to the adoption of present shoreline regulations. Many other variances have been approved authorizing in effect the continuation of the pre-existing development pattern.

12. Across Channel Drive to the east of the subject property is agricultural land. The owner of the farm to the east sent in a letter supporting the application.

13. 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.

14. The Staff Report analyzes the project in light of these criteria and concludes that the project will meet them. The Examiner concurs in this analysis and adopts the same.

15. 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 the 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 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 or 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 permittees shall strictly adhere to the project information submitted in connection with the application herein. The project shall not exceed 45% lot coverage. The setback from the OHWM to the residence shall be 26 feet.
  - (2) If the permittees propose any modifications to the subject proposal, they shall request a permit revision from the Planning and Permit Center prior to construction.
  - (3) The permittees shall obtain all other necessary permits.
  - (4) The permittees shall carry out the recommendations of the Fish and Wildlife Habitat Assessment, as set forth in Finding 8 above, except that the Landscape Plan submitted January 4, 2001, shall serve as the site plan and planting plan for the project.
  - (5) The permittees shall record at the County Auditor's office, the January 4, 2001 Landscape Plan showing the lot in question, and the types and location of native vegetation to be planted. The plan as filed shall clearly mark the land waterward of the proposed structure as a Protected Critical Area. The recording shall be done prior to the issuance of a building permit.

(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: February 7, 2001

Copies Transmitted to Applicants: February 7, 2001

Attachment: Staff Report

### RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days of the date of the decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a notice of appeal with the Planning and Permit Center within 14 days of the date of the decision, or decision on reconsideration, if applicable.



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2  
3 **SKAGIT COUNTY PLANNING & PERMIT CENTER**

4  
5 **FINDINGS OF FACT**

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7  
8 REVIEWING AUTHORITY: Skagit County Hearing Examiner

9  
10 PUBLIC HEARING DATE: January 24, 2001

11  
12 APPLICATION FOR: Shoreline Variance #PL 00-0689

13  
14 APPLICATION DATE: October 25, 2000

15  
16 APPLICANT: James & Kathryn Jensen  
17 11620 NE 144<sup>th</sup> Pl

18 PARCEL# 69430&79575 Kirkland, WA 98034  
19

20 PROJECT DESCRIPTION: The construction of a single-family residence 26 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 2. The maximum allowed "developed" site coverage in the rural residential shoreline  
28 designation is 30% (see SCSMMP 7.13(2)© Table RD) and the applicant requests  
29 45%.  
30

31 PROJECT LOCATION: The proposed project is located directly south of 15210 Channel  
32 Drive, LaConner, within a portion of Section 24, Township 34 North, Range 2 East,  
33 W.M., Skagit County. The subject proposal is located on the shoreline of the Swinomish  
34 Channel designated Rural Residential under the Shoreline Master Program. P#69430-  
35

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

37 EXHIBITS:

- 38  
39 1. Staff report  
40 2. October 25 2000, Shoreline Variance application, a narrative, ownership  
41 certification and photos.  
42 3. November 6, 2000 Letter of Completeness.  
43 4. November 9, 2000 & November 16, 2000, Notice of Development.  
44 5. November 16, 2000 Fish & Wildlife Site Assessment prepared by Graham-Bunting  
45 & Associates.



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1 6. December 20, 2000 letter from Joan Velikanje of the Washington State Department  
2 of Ecology.

3 7. January 4, 2001 letter form James Jensen to Daniel Downs.  
4  
5  
6

7 STAFF FINDINGS:  
8

9 1. The application has been advertised in accordance with Section 9.04 of the Skagit  
10 County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.  
11

12 2. The subject proposal is located on the shoreline of a property on the Swinomish  
13 Channel in an area designated as Rural Reserve by the Skagit County  
14 Comprehensive Plan and the Skagit County Zoning Ordinance. The property is  
15 designated as Rural Residential in the SCSMMP.  
16

17 3. The 9,840 square foot property is rectangular in with dimensions of 116 feet on  
18 the south property line and 130' on the north property line by 80' wide. The entire  
19 area is very flat and was built mainly on dredge spoils from the channel that were  
20 deposited over many years. Channel Drive is the sole access to the property and  
21 the entire residential area is flanked by agricultural land to the east.  
22

23 4. Staff determined that the subject proposal required a Fish & Wildlife Site  
24 Assessment/Habitat Management Plan as required in 14.06.510 & .520 of the  
25 Skagit County Critical Areas Ordinance (CAO). The report identified limited  
26 impact from the proposal if the following mitigation measures were implemented  
27 during and after construction:

28 a) Wet season construction should be accompanied by the implementation of a  
29 temporary erosion and sedimentation control plan. While soil composition and  
30 slope of the lot do not indicate likely discharge to Swinomish Channel, site  
31 conditions should be monitored by the builder, during construction, and silt  
32 fences utilized if needed.

33 b) Groundcover vegetation removal should be minimized to the extent  
34 practicable during construction. Replacement of ground cover with landscape  
35 species should be allowed following construction. Vegetation removed during  
36 construction should be replaced with native species in substantial  
37 conformance with the attached site plan. Species selection and location should  
38 be left to the owner's discretion. Plant survival should be monitored over a  
39 five-year period with 1000% survival assured over the first year.

40 c) The area subject to the planting plan should be designated as a protected  
41 critical area (PCA) to assure identification and long term protection. The PCA  
42 should be recorded on a site plan by the County Auditor. The attached site  
43 plan has been prepared in a format suitable for recording. (Attachment C:  
44 Mitigation Site Plan).



1 d) The recorded PCA should provide for ongoing residential related low impact  
2 and non-intensive uses consistent with Section 14.24.530(3)(d) be allowed to  
3 continue.  
4

5 The Fish & wildlife site assessment was circulated for Technical Team review  
6 from December 7-22, 2000 per SCC 14.24.530(2). One comment was received  
7 from Joan Velikanje of the Washington State Department of Ecology (WSDOE).  
8 WSDOE requested that the mitigation plan be modified to allow only native  
9 species within the 15 feet closet to the channel. Mr. Jensen provided a new  
10 landscaping plan dated January 4, 2001 on January 5, 2001 in order to address  
11 WSDOE concerns. It is the second Landscape Plan dated January 4, 2001 that  
12 will be utilized per staff recommendation.  
13

14 5. The proposal is categorically exempt from the State Environmental Policy Act  
15 (SEPA) as noted in WAC 197-11-800(1)(b)(I) regarding residential structures.  
16

17 6. Staff determined that the proposal is not located on a Shoreline of Statewide  
18 Significance.  
19

20 7. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting Shoreline  
21 Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits  
22 reads:  
23

24 Variance permits for development to be located landward of the ordinary high  
25 water mark (OHWM), except within areas designated marshes, bogs or swamps  
26 pursuant to Chapter 173-22 WAC, may be granted provided the applicant can meet  
27 all the following criteria; the burden of proof shall be on the applicant.  
28

29 a. **That the strict application of the bulk, dimensional or performance**  
30 **standards set forth in this Master Program precludes or significantly**  
31 **interferes with a reasonable use of the property not otherwise**  
32 **prohibited by this Master Program.**

33 *The parcel is small in size (approximately 123' X 80') and bordered by the*  
34 *Swinomish Channel on the west and Channel Drive on the east. To impose*  
35 *all shoreline and zoning requirements, which include a 50-foot shoreline*  
36 *buffer, two 8-foot side yard setbacks and a 35 foot in Rural Reserve zoning*  
37 *per S.C.C.14.16.320(5) from Channel Drive would only allow an envelope*  
38 *64' X 38' for a total of 2,432 square feet for all development on a*  
39 *approximately 9,840 square foot lot or 25% of the total lot.*  
40

41  
42 b. **That the hardship described above is specifically related to the**  
43 **property and is the result of unique conditions such as irregular lot**  
44 **shape, size or natural features and the application of this Master**  
45 **Program and not, for example, from deed restrictions or the applicant's**  
46 **own actions.**



1           *The hardship is due to the lot size and lot location in relation to the channel*  
2           *and the road.*

- 3  
4           c.       **That the design of the project will be compatible with other permitted**  
5           **activities in the area and will not cause adverse effects to adjacent**  
6           **properties or the shoreline environment designation.**

7           *The surrounding area has been developed for rural residential use as*  
8           *demonstrated by the Residential zoning designation. All residences within*  
9           *300 feet of the side property lines are also within the 50-foot setback buffer*  
10          *due to pre-shoreline management development patterns. No adverse*  
11          *impacts have been identified on adjacent parcels. Site coverage in the area*  
12          *is generally greater than 30% due to the small size of the lots.*

- 13  
14          d.       **That the variance authorized does not constitute a grant of special**  
15          **privilege not enjoyed by the other properties in the same area and will**  
16          **be the minimum necessary to afford relief.**

17          *The issuance of a variance for this proposal would be consistent with the*  
18          *relatively high-density development on Channel Drive. Adjacent homes to*  
19          *the north enjoy similar setbacks from the Channel and the size of the lot in*  
20          *relation to the channel and the road suggest that the granting of this request*  
21          *would not constitute a "grant of special privilege." Site coverage's in the*  
22          *area appear to be all greater than 30% per the definition of the SCSMMP*  
23          *and as such the proposal would not be an grant of special privilege.*  
24          *Further, it appears to staff that based on the existing circumstances of home*  
25          *placements and physical constraints such as the channel and the road that*  
26          *the proposal would provide the "minimum relief necessary" for the*  
27          *applicant to build a single family residence in a shoreline location that*  
28          *allows such development.*

- 29  
30          e.       **That the public interest will suffer no substantial detrimental effect.**

31          *Any possible detrimental effects however how remote, should be mitigated*  
32          *through compliance with the conditions placed on the development as*  
33          *recommended by staff and the environmental consultant.*

34  
35  
36       **REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.**

37  
38       The proposal has been reviewed for consistency with SMP Chapter 7.13 Residential  
39       Development as defined in Chapter 3.03. The entire chapter 7.13 of the SCSMMP regarding  
40       Residential Development is included as Attachment "A" of the staff report, staff has  
41       summarized the policies involved.

42       Staff determined that the proposal does not conflict with the **general policies** regarding  
43       residential development, coordination, optimum use, joint use, public access, public use,  
44       natural resource processes, hazardous areas, water quality & quantity, PUD's, floating  
45       homes, community services, Shoreline Management jurisdiction, location and design and  
46       construction and impacts. Staff has further determined that the proposal complies with all



SCSMMP regulations regarding shoreline designation, general regulations, accessory uses, hazardous areas, shore defense works, landfilling, public access, fragile areas, utilities, roads and parking areas, drainage, sewage and screening **except** shoreline setbacks.

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

## 2. REGULATIONS

### A. Shoreline Area

#### (2) Rural Residential

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

### B. General

#### (9) Shoreline setback;

Residential structures shall be setback common to the average of setbacks for existing dwelling units within 300 feet of side property lines or a minimum setback distance as Required in Table RD, whichever is greater.

*All of the residences within 300 feet of the side property lines are located within 50 feet of the OHWM, and the minimum setback is 50 feet from the OHWM in the Rural residential shoreline designation, therefore, the "whichever is greater" in this case would be the 50 foot minimum required in Table RD. Hence, the total variance sought from the OHWM for the new residence is 25 feet from the OHWM.*

### C. Tabular Regulations

(4) Site coverage –Rural Residential – Site coverage maximum is 30%.

## RECOMMENDATION

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

1. The applicant shall record the January 4, 2001 Landscape Plan site plan showing the lot in question, clearly marking the land waterward of the proposed structure as a Protected Critical Area and shall show the types and location of native vegetation to be planted. The site plan must be recorded as a PCA at the County Auditor's (SCC 14.06.145(2))-office prior to issuance of a building permit.
2. The applicant must obtain a Skagit County Building Permit and receive all the necessary approvals.
3. The subject proposal shall comply with the Skagit County Shorelines Management Master Program and the Shoreline Management Act RCW 90.58.
4. The applicant shall strictly adhere to the project information (site diagram) submitted for this proposal. If the applicant proposes any modifications of the subject proposal, he/she shall request a shoreline permit revision from this office prior to the start of construction.



1 5. The applicant shall comply with the Fish & Wildlife Site Assessment  
2 recommendations in regards to utilizing proper sedimentation and erosion control  
3 measures during construction. The recommendations included:

4  
5 A) Wet season construction shall be accompanied by the implementation of a  
6 temporary erosion and sedimentation control plan. While soil composition and  
7 slope of the lot do not indicate likely discharge to Swinomish Channel, site  
8 conditions shall be monitored by the builder, during construction and silt  
9 fences utilized if needed.

10 B) Groundcover vegetation removal shall be minimized to the extent practicable  
11 during construction. Replacement of ground cover with landscape species  
12 shall be allowed following construction. Vegetation removed during  
13 construction shall be replaced with native species in substantial conformance  
14 with the attaché site plan. Species selection and location shall be left to the  
15 owner's discretion. Plant survival shall be monitored over a five-year period  
16 with 100% survival assured over the first year.

17 C) The area subject to the planting plan shall be designated as a protected critical  
18 area (PCA) to assure identification and long term protection. The PCA shall  
19 be recorded on a site plan by the County Auditor. The attached site plan has  
20 been prepared in a format suitable for recording. (Attachment C: Mitigation  
21 Site Plan).

22 D) The recorded PCA shall provide for ongoing residential related low impact  
23 and non-intensive uses consistent with Section 14.24.530(3)(d) be allowed to  
24 continue.

25  
26 6. Construction shall be commenced, or where no construction is involved, the use  
27 or activity shall be commenced within two years of the effective date of the  
28 shoreline permit. Provided that, local government may authorize a single  
29 extension for a period not to exceed one year based on reasonable factors, if a  
30 request for extension has been filed before the expiration date and notice of the  
31 proposed extension is given to parties of record.

32 7. Authorization to conduct development activities shall terminate five years after  
33 the effective date of a shoreline permit. Provided that, local government may  
34 authorize a single extension for a period not to exceed one year based on  
35 reasonable factors, if a request for extension has been filed before the expiration  
36 date and notice of the proposed extension is given to parties of record.  
37  
38

39 Prepared By: DD

40 Approved By:

41 Date: December 11, 2000.

42 Amended:



200102140061

, Skagit County Auditor