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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: ORDER ON SHORELINE VARIANCE APPLICATION SL 00 0698

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: LEO PALMER

ASSESSOR PARCEL NO: P79571

ABBREVIATED LEGAL DESCRIPTION: The project is located approximately 1/4 mile north of the intersection of Downey Road and Channel Drive, LaConner, WA; a portion of Section 24, Township 34 North, Range 2 East, W.M., Skagit County, Washington

UNOFFICIAL DOCUMENT

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

In the Matter of the Application of )  
**LEO PALMER** )

SL00-0698

For a Shoreline Variance Permit to )  
Construct a Single-Family Residence )  
Exceeding the Lot Coverage Limit )  
and Within the Shoreline Setback )  
on the Swinomish Channel along )  
Channel Drive about ¼ Mile North of )  
Downey Road )

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND DECISION**

THIS MATTER, an application for a Shoreline Variance, came on regularly for hearing on December 5, 2001, after due notice. Daniel Downs, Shoreline Administrator, represented the Planning and Permit Center. David Hough, Land Use Consultant, appeared for the applicant. Members of the public were given an opportunity to be heard.

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

**FINDING OF FACT**

1. Leo Palmer (applicant) seeks a Shoreline Variance to construct a single-family residence that exceeds the applicable lot coverage limit and that would be closer to the shore than the standard shoreline setback.

2. The location is a vacant lot located on Channel Drive approximately ¼ mile north of the intersection of Downey Road and Channel Drive. The waterfront abuts the Swinomish Channel. The site is within a portion of Sec. 24, T34N, R2E, WM. The area is designated as Rural Residential under the County's Shoreline Master Program (SMP).

3. Channel Drive is a County road serving the existing development of Skagit Beach. The subject lot is one of the few vacant lots within the Skagit Beach Subdivisions. Skagit Beach was developed in the 1960's. The majority of homes were built with a 25 foot setback from the Swinomish Channel. This development was prior to the adoption of the SMP, which establishes a 50 foot setback in Rural Residential shorelines. SMP 7.13(2)(C), Table RD.

4. The applicant hopes to build a residence that is set back 34 feet from the Ordinary High Water Mark (OHWM), with a patio 14 feet from the OHWM.



5. The proposed residence/garage will be a one-story structure covering 4,290 square feet, placed on a lot containing 15,705 square feet. Total lot coverage including the residence, patio, sidewalks and driveway will equal 6,920 square feet, or 44% of the total lot. The SMP establishes a maximum lot coverage limitation for single family homes in the Rural Residential district of 30%. SMP 7.13(2)(C), Table RD.

6. The lots of Skagit Beach are for the most part made up of fill dumped along the sides of the channel by dredging operations of the past. Natural growth on this surface has largely been limited to grass and weeds. Development on the lots is constrained by the channel on one side and the County road on the other. The lots are relatively small.

7. The OHWM along this shoreline is, in general, defined by the rip-rap bank along the channel's shore. The pattern of development that has been established in the neighborhood is for building setbacks from the OHWM in the range 25 to 35 feet, with ground level patios often built right up to the bank itself. Side yard requirements (eight feet), road setbacks (25 feet), and the need to fit septic tanks and drainfields into the available space to some degree necessitate this pattern.

8. Similarly, coverage limitations have frequently been exceeded in Skagit Beach because the lots are frequently too small to accommodate all of the impervious surfaces commonly developed (driveways, patios, and sidewalks plus residential footprints) within the 30% limitation.

9. The average shoreline setback of residences within 300 feet of the applicant's proposed home is 28 feet. The proposed home will be further back and will not interfere with anyone's lateral views. Site coverage development percentages in the adjacent area all exceed the 30% maximum.

10. Residential development is permitted outright as a use in this shoreline district. The proposed home will be compatible with the overall pattern of development in the neighborhood. Under all the circumstances, the proposal represents a reasonable use of the property that will be significantly interfered with if the dimensional standards of the Master Program are strictly applied.

11. Because of the proximity to the water, a Fish and Wildlife Site Assessment/Habitat Management Plan was prepared as required by the Critical Areas Ordinance. The report identified little or no impact from the proposal in light of the existing build-out in the area. Nonetheless, two mitigation measures were recommended to minimize negative impacts. These can be imposed as conditions of approval.

12. No adverse impacts have been identified on adjacent parcels or on the shoreline environment from allowing the requested variances.



13. Two comment letters were received. One supported the proposal. The other, from the owner of agricultural land to the east, expressed concerns about the adequacy of the water line and the allocations made from it as between residential and agricultural use. These concerns go beyond the responsibility of the applicant for a residence. The applicant must supply proof that adequate potable water is available for his development prior to receiving a building permit. If water is not available he cannot build. But, he has no direct responsibility for upgrading the public water supply system in the area unless required to do so by the purveyor.

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 this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

16. 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 the Shoreline Management or of the SMP.

5. As conditioned, the proposed development will meet the criteria for shoreline variances as to both lot coverage and shoreline setback.

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 34 feet and to the patio shall be 14 feet. The site coverage shall not exceed 44%.

(2) The permittee shall comply with the mitigation measures recommended in the Fish and Wildlife Site Assessment, dated August 12, 2001, namely:

(a) The area between OHWM and the structure shall be designated as a Protected Critical Area (PCA), consistent with the site plan, and recorded at the County Auditor's office.

(b) Any wet season construction shall be accompanied by the implementation of a temporary erosion control plan. Site conditions shall be monitored during construction and silt fences used as appropriate. Vegetation removal shall be minimized to the extent practicable. The PCA shall be planted with native species as specified in the Planting Plan. All bare soils shall be covered with straw and permanently re-vegetated by seeding with a mixture of native grass species.

(3) The permittee shall submit a Planting Plan for the lot, clearly marking the land waterward of the proposed structure as a PCA and shall show the types and location of native vegetation to be planted. This plan must be recorded at the County Auditor's office prior to issuance of a building



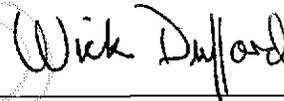
permit.

- (5) The permittee shall provide proof of the availability of adequate potable water prior to obtaining a building permit.
- (6) Prior to construction, the applicant shall obtain a building permit and all other necessary approvals.
- (7) 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.
- (8) Construction material and other debris shall not be allowed to enter the water.
- (9) 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 variances from the dimensional requirements of the Shoreline Master Program are granted, subject to the conditions set forth in Conclusion 6 above.



Wick Dufford, Hearing Examiner

Date of Action: December 12, 2001

Copies Transmitted to Applicant: December 12, 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 after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.



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3 **SKAGIT COUNTY PLANNING & PERMIT CENTER**

4  
5 **FINDINGS OF FACT**

6  
7  
8 REVIEWING AUTHORITY: Skagit County Hearing Examiner

9  
10 PUBLIC HEARING DATE: November 28, 2001

11  
12 APPLICATION FOR: Shoreline Variance #PL 00-0698

13  
14 APPLICATION DATE: September 5, 2001

15  
16 APPLICANT: Leo Palmer

17 P.O Box 429

18 PARCEL# 79571

19 La Conner, WA 98257

20 PROJECT DESCRIPTION: The construction of a single-family residence 35 feet from  
21 the OHWM with a proposed patio 14 feet from the OHWM with a total site coverage of  
22 44% within in a Rural Residential shoreline designation that normally requires a 50-foot  
23 minimum setback and a allows a maximum site coverage of 30%.

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

- 26 1. The minimum shoreline setback from the OHWM in the rural residential shoreline  
27 designation is 50 feet (see SCSMMP 7.13(2)© Table RD).  
28 2. The maximum allowable "developed" site coverage in the Rural Residential shoreline  
29 designation is 30% (see SCSMMP 7.13(2)© Table RD).

30  
31 PROJECT LOCATION: The proposed project is located approximately ¼ mile north of  
32 the intersection of Downey Road and Channel Drive, LaConner, within a portion of  
33 Section 24, Township 34 North, Range 2 East, W.M., Skagit County. The subject  
34 proposal is located on the shoreline of the Swinomish Channel designated Rural  
35 Residential under the Shoreline Master Program. P#79571.

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

38 EXHIBITS:

- 39  
40 1. Staff report  
41 2. September 5, 2001, Shoreline Variance application, a narrative, ownership  
42 certification and photos.  
43 3. September 20, 2001 & September 27, 2001, Notice of Development Application.  
44 4. August 12, 2001 Fish & Wildlife Site Assessment prepared by Earth Systems  
45 Science Inc.  
46



1  
2  
3 STAFF FINDINGS:  
4

- 5 1. The application has been advertised in accordance with Section 9.04 of the Skagit  
6 County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.  
7  
8 2. The subject proposal is located on the shoreline of a property with a single-family  
9 residence on the Swinomish Channel in an area designated as Rural Reserve by  
10 the Skagit County Comprehensive Plan and the Skagit County Zoning Ordinance.  
11 The property is designated as Rural Residential in the SCSMMP.  
12  
13 3. The property is rectangular in shape measuring 172 feet on the south property line  
14 and 158 feet along the northern property line. The west property line adjacent to  
15 the Swinomish Channel is 95 feet long and 85 feet on the east property line. The  
16 entire area is very flat and was built mainly on dredge spoils from the channel that  
17 were deposited over many years. Channel View Drive is the sole access to the  
18 property and the entire residential area is flanked by agricultural land to the east.  
19  
20 4. Staff determined that the subject proposal required a Fish & Wildlife Site  
21 Assessment/Habitat Management Plan as required in 14.24. 510 & .520 of the  
22 Skagit County Critical Areas Ordinance (CAO). The report identified little  
23 temporary or long-term impact of the proposal due to the existing "build-out" of  
24 the area. The following mitigation measures were recommended to minimize  
25 negative impacts:  
26 a) The area landward of the OHWM should be designated as a Protected Critical  
27 Area (PCA) consistent with the attached site plan and recorded with the  
28 County Auditors office as required in SCC 14.06.145.  
29 b) Any wet season construction shall be accompanied by the implementation of a  
30 temporary erosion control plan. Site plan conditions should be monitored  
31 during construction and silt fences utilized as appropriate. Vegetation removal  
32 should be minimized to the extent practicable. The PCA should be replanted  
33 with native species as specified in the Plant Plan. All bare soils should be  
34 covered with straw and permanently re-vegetated by seeding with a mixture of  
35 native grass species. This can be accomplished by hand.  
36

37 The Fish & wildlife site assessment was circulated for Technical Team review  
38 from September 26, 2001 to October 11, 2001 per SCC 14.24.530(2). No  
39 comments were received.  
40

- 41 5. The proposal is categorically exempt from the State Environmental Policy Act  
42 (SEPA) as noted in WAC 197-11-800(1)(b)(I) regarding residential structures.  
43  
44 6. No comments were received regarding the proposal.  
45



1 7. Staff determined that the proposal is not located on a Shoreline of Statewide  
2 Significance.  
3

4 8. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting Shoreline  
5 Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits  
6 reads:  
7

8 Variance permits for development to be located landward of the ordinary high  
9 water mark (OHWM), except within areas designated marshes, bogs or swamps  
10 pursuant to Chapter 173-22 WAC, may be granted provided the **applicant can**  
11 **meet all the following criteria; the burden of proof shall be on the applicant.**  
12

13 a. **That the strict application of the bulk, dimensional or performance**  
14 **standards set forth in this Master Program precludes or significantly**  
15 **interferes with a reasonable use of the property not otherwise**  
16 **prohibited by this Master Program.**

17 *The parcel is bordered by the Swinomish Channel on the west and*  
18 *Channel Drive on the east. Side yard (8feet) and road setbacks (25 feet) to*  
19 *the east as well as allowing space for drain field placement and driveway*  
20 *access make it difficult to meet the required shoreline setbacks.*  
21

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

27 *The hardship is due to the lot shape and lot location in relation to the*  
28 *channel and the road.*  
29

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

33 *The surrounding area has been developed for rural residential use as*  
34 *demonstrated by the Residential zoning designation. All residences within*  
35 *300 feet of the side property lines are also within the 50-foot setback buffer*  
36 *due to pre-shoreline management development patterns. Site coverage*  
37 *development percentages in the adjacent area all exceed the 30% maximum*  
38 *required by the SCSMMP. No adverse impacts have been identified on*  
39 *adjacent parcels or on the shoreline environment.*  
40

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

44 *The issuance of a variance for this proposal would be consistent with the*  
45 *relatively high-density development on Channel Drive. Adjacent homes*  
46 *enjoy similar setbacks from the Channel and it appears that granting of this*



1 request would not constitute a "grant of special privilege." Further, it  
2 appears to staff that based on the existing circumstances of home  
3 placements and physical constraints such as the channel and the road that  
4 the proposal would provide the "minimum relief necessary" for the  
5 applicant to build a single family residence in a shoreline location that  
6 allows such development.  
7

- 8 e. **That the public interest will suffer no substantial detrimental effect.**  
9 *Any possible detrimental effects however how remote, should be mitigated*  
10 *through compliance with the conditions placed on the development as*  
11 *recommended by staff and the environmental consultant.*  
12  
13

## 14 REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.

15  
16 The proposal has been reviewed for consistency with SMP Chapter 7.13 Residential  
17 Development as defined in Chapter 3.03. The entire chapter 7.13 of the SCSMMP regarding  
18 Residential Development is included as Attachment "A" of the staff report, staff has  
19 summarized the policies involved.

20 Staff determined that the proposal does not conflict with the **general policies** regarding  
21 residential development, coordination, optimum use, joint use, public access, public use,  
22 natural resource processes, hazardous areas, water quality & quantity, PUD's, floating  
23 homes, community services, Shoreline Management jurisdiction, location and design and  
24 construction and impacts. Staff has further determined that the proposal complies with all  
25 **SCSMMP regulations** regarding shoreline designation, general regulations, accessory uses,  
26 hazardous areas, shore defense works, landfilling, public access, fragile areas, utilities, roads  
27 and parking areas, drainage, sewage and screening **except** shoreline setbacks.

28 The following inserts from the Regulation section are considered below with staff notes  
29 in italics:  
30

### 31 2. REGULATIONS

#### 32 A. Shoreline Area

##### 33 (2) Rural Residential

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

##### 35 B General

##### 36 (9) Shoreline setback;

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

40 *All of the residences within 300 feet of the side property lines are located within 50 feet*  
41 *of the OHWM, and the minimum setback is 50 feet from the OHWM in the Rural*  
42 *residential shoreline designation, therefore, the "whichever is greater" in this case*  
43 *would be the 50 foot minimum required in Table RD. Hence, the total variance sought*  
44 *from the OHWM for the new residence is 15 feet for the residence.*

##### 45 C. Tabular Regulations

##### 46 (1) Shore setbacks (in feet)



1 (d) Accessory uses – Rural Residential- 35 feet.  
2 *The proposal request placement of a patio as close as 14 feet to the OHWM, thereby*  
3 *requiring a variance for an accessory use of 21 feet.*

4 (4) Site coverage –Maximum percent of the shoreline area of the site to be developed for:  
5 (a) Single family and duplex units. *In the Rural Residential designation the maximum*  
6 *percentage is 30%. The applicant has requested a total of 44%.*  
7  
8

9 RECOMMENDATION

10  
11 Based on the above findings, the Skagit County Planning and Permit Center would  
12 recommend for approval of a Shoreline Variance Permit subject to the following  
13 conditions:  
14

- 15 1. The applicant shall submit a planting plan for the lot in question, clearly marking  
16 the land waterward of the proposed structure as a Protected Critical Area and shall  
17 show the types and location of native vegetation to be planted. The site plan must  
18 be recorded by the County Auditor's (SCC 14.06.145(2)-office prior to issuance  
19 of a building permit.  
20
- 21 2. The applicant must obtain a Skagit County Building Permit and receive all the  
22 necessary approvals.  
23
- 24 3. The subject proposal shall comply with the Skagit County Shorelines Management  
25 Master Program and the Shoreline Management Act RCW 90.58.  
26
- 27 4. The applicant shall strictly adhere to the project information (site diagram) submitted  
28 for this proposal. If the applicant proposes any modifications of the subject proposal,  
29 he/she shall request a shoreline permit revision from this office prior to the start of  
30 construction.  
31
- 32 5. The applicant shall comply with the Fish & Wildlife Site Assessment  
33 recommendations in regards to utilizing proper sedimentation and erosion control  
34 measures during construction. The recommendations included:  
35
  - 36 a) The area landward of the OHWM should be designated as a Protected Critical  
37 Area (PCA) consistent with the attached site plan and recorded with the  
38 County Auditors office as required in SCC 14.06.145.
  - 39 b) Any wet season construction shall be accompanied by the implementation of a  
40 temporary erosion control plan. Site plan conditions should be monitored  
41 during construction and silt fences utilized as appropriate. Vegetation removal  
42 should be minimized to the extent practicable. The PCA should be replanted  
43 with native species as specified in the Plant Plan. All bare soils should be  
44 covered with straw and permanently re-vegetated by seeding with a mixture of  
45 native grass species. This can be accomplished by hand.  
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Prepared By: DD  
Approved By:  
Date: November 15, 2001  
Amended:



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Skagit County Auditor