



200201310114

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 Permit Application SL 01 0724

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: LES and JILL VANDER VOET

ASSESSOR PARCEL NO: P#61753

ABBREVIATED LEGAL DESCRIPTION: The proposed project is located at 5377 Guemes Island Road, Padilla Bay, within a portion of Section 36, Township 36 North, Range 1 East, W.M., Skagit County, Washington.

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

In the Matter of the Application of )  
**LES & JILL VANDER VOET** ) SL01-0724

For a Shoreline Variance Permit to )  
Construct a Single-Family Residence ) **FINDINGS OF FACT,**  
Within the Shore Setback at 5377 Guemes ) **CONCLUSIONS OF LAW,**  
Island Road on Northeast Shore of ) **AND DECISION**  
Guemes Island )

THIS MATTER, a request for a Shoreline Variance, came on regularly for hearing on December 12, 2001, after due notice. Daniel Downs represented the Planning and Permit Center. Les and Jill Vander Voet represented themselves. 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. Les and Jill Vander Voet seek to locate a single-family residence about 20 feet from the ordinary high water mark (OHWM) on the shores of Guemes Island.

2. The property is at 5377 Guemes Island Road on the northeast side of the island, within a portion of sec. 36, T36N, R1E, WM. The lot is a part of Alverson's Camping Tracts, platted about 90 years ago. The shoreline designation is Rural Residential.

3. The local Shoreline Master Program (SMP) establishes a 50-foot shore setback for single-family residences in areas designated Rural Residential. SMP 7.13(2)(C) Table RD.

4. The lot is small, measuring only 6,275 square feet (.13 acre). The waterfront dimension is about 75 feet. The bay lies to the north. The road is to the south. There is an existing bulkhead at the OHWM. A mobile home now sits on the property.

5. Both the County and the Department of Ecology approved a Shoreline Variance for a residence on this property in 1994. This permit expired on July 12, 1999 without construction having taken place.

6. The prior permit did not state that construction was required within five years. The expiration occurred as a result of a State permit regulation. The regulation says that



where the local government does not provide a time limit as part of action on a permit, the authorization to conduct development activities shall expire five years after the effective date of the permit. See WAC 173-27-090.

7. The present applicants owned the property during the life of the prior permit, but were unaware that there was any time limit for commencing and completing development. The present application requests essentially the same development as was previously approved.

8. A Fish and Wildlife Site Assessment was performed for the current application by Earth Sciences, Inc., pursuant to the Critical Areas Ordinance. The report identified no significant temporary or long-term adverse environmental impact from this proposal in light of the substantial build out and bank armoring already present in the neighborhood.

9. However, the Fish and Wildlife Assessment did recommend the following mitigation measures to reduce such impacts as might occur:

(a) The area landward of the OHWM should be designated as a Protected Critical Area (PCA) consistent with the site plan. The PCA should be recorded with the County Auditor's office.

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

10. Earth Sciences presented a Planting Plan on December 3, 2001, and recommended a three-year monitoring program to insure plant survival in the PCA. An 80% survival rate is considered successful upon completion of a three-year review.

11. The Department of Ecology commented on the proposal, requesting planting and monitoring provisions that have essentially been accepted by the applicants.

12. The property is flat and the existing vegetation is sparse. The adjacent property on the east is undeveloped and its shoreline is unarmored. To the west are lots developed in single-family homes with bulkheads. Two houses are located within 300 feet of the applicants' property. The average setbacks of these neighboring structures is 18.25 feet from the OHWM, with low level decks located an average of 9.3 feet from the OHWM.



13. The applicants propose to remove the mobile home from the lot and to build a modest home, approximately 1,350 square feet in size. The proposed 20-foot setback from the OHWM is necessitated by the lot size and the constraints imposed by driveway and septic system development on the landward side of the house.

14. If built as proposed, the applicants' house will be consistent with previous development in the neighborhood.

15. 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.

16. 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.

17. There was no adverse public comment or testimony on this application. A number of neighbors filed statements of support.

18. 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 persons 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. As conditioned, the proposal will comply 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 Act or with the policies of the SMP.
5. As conditioned, the proposed development will meet the criteria for a variance from the shore setback. SMP 10.03(1). Under the circumstances, the requested variance represents the minimum reasonably necessary to afford relief.
6. The following conditions should be imposed.
  - (1) The permittee shall strictly adhere to the project information submitted, including the site diagram. The nearest point of the residence to the OHWM shall be 20 feet.
  - (2) The permittee shall comply with the mitigation measures recommended in the Fish and Wildlife Site Assessment dated September 26, 2001 (See Finding 8 above).
  - (3) The permittee shall comply with the Planting Plan, dated December 3, 2001. An annual report on the success of the Planting Plan shall be presented to the County Critical Areas staff, the first report being due a year after occupancy of the residence has been obtained.
  - (4) Prior to construction, the applicant shall obtain a building permit and any 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 permit is approved, subject to the conditions set forth in Conclusion 6 above.

*Wick Dufford*

Wick Dufford, Hearing Examiner

Date of Action: December 31, 2001

Copy Transmitted to Applicants: December 31, 2001

Attachment: Staff Report

### RECONSIDERATION/APPEAL

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with the Planning and Permit Center within five (5) days after the date of this decision. 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 five (5) days after the date of 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 12, 2001

11  
12 APPLICATION FOR: Shoreline Variance #PL 01-0724

13  
14 APPLICATION DATE: September 12, 2001

15  
16 APPLICANT: Les & Jill Vander Voet  
17 1354 N. Balda Road

18 PARCEL# 61753 Oak Harbor, WA 98277

19  
20 PROJECT DESCRIPTION: To allow construction of a single-family residence 20 feet  
21 from the OHWM. This structure will replace an existing mobile home.

22  
23 The proposal triggers the need for a shoreline variance because:

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

26  
27 PROJECT LOCATION: The proposed project is located at 5377 Guemes Island Road,  
28 Padilla Bay, within a portion of Section 36, Township 36 North, Range 1 East, W.M.,  
29 Skagit County. The subject proposal is located on the shoreline of Padilla Bay designated  
30 Rural Residential under the Shoreline Master Program.

31  
32 RECOMMENDATION: **Approval**, with conditions stated at the end of the report.

33 EXHIBITS:

- 34  
35 1. Staff report  
36 2. September 12, 2001, Shoreline Variance application, a narrative, ownership  
37 certification, 1994 Hearing Examiner decision for PL#94-005 and photos.  
38 3. October 4, 2001 & October 11, 2001, Notice of Development Application.  
39 4. October 8, 2001 Fish & Wildlife Site Assessment prepared by Earth Systems  
40 Science Inc.  
41 5. October 10, 2001 letter of support from several neighbors: Beverly Elaebak, 5412  
42 Guemes Island Road; Sylvie Eates, 5470 Guemes Island Road; Tamara Seaton, 5376  
43 Guemes Island Road; Edwin Brown, 5426 Guemes Island Road; Verla Brown, 5426  
44 Guemes Island Road..  
45 6. October 31, 2001 letter of support form Cathy & Bob Betz of 5365 Guemes Island  
46 Road, Anacortes, WA.



- 1 7. November 28, 2001 E-mail from Joan Velikanje from the Washington State  
2 Department of Ecology.  
3 8. December 3, 2001 Planting Plan submitted by Earth Systems Science Inc.  
4 9. Skagit County Protected Critical Area Site Plan filing form.  
5

6 STAFF FINDINGS:  
7

- 8 1. The application has been advertised in accordance with Section 9.04 of the Skagit  
9 County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.  
10  
11 2. The subject proposal is located on the shoreline of a property with a single-family  
12 residence on Samish Bay in an area designated as Rural Intermediate by the  
13 Skagit County Comprehensive Plan and the Skagit County Zoning Ordinance.  
14 The property is designated as Rural Residential in the SCSMMP.  
15  
16 3. The property is rectangular in shape with a total square footage of 6,025 square  
17 feet. The north property line is adjacent to the Bay and an existing mobile home is  
18 currently located on the property. The entire area is very flat with a bulkhead  
19 located on the north side of the property. Access is provided by Guemes Island  
20 Road to the south.  
21  
22 4. A shoreline variance was previously obtained to by Michael Smith on this  
23 property under PL# 94-005 and was approved by the Skagit County Hearing  
24 Examiner on May 17, 1994 (see exhibit #2). The permit was granted final  
25 approval by the Washington State Department of Ecology (DOE) on July 11,  
26 1994 (see exhibit #2). Unfortunately, this variance was allowed to expire on July  
27 12, 1999 causing the necessity of re-application by the current applicant's.  
28  
29 5. Staff determined that the subject proposal required a Fish & Wildlife Site  
30 Assessment/Habitat Management Plan as required in 14.24. 510 & .520 of the  
31 Skagit County Critical Areas Ordinance (CAO). The report identified little  
32 temporary or long-term impact of the proposal due to the existing "build-out" of  
33 the area. The following mitigation measures were recommended to minimize  
34 negative impacts:  
35 a) The area landward of the OHWM should be designated as a Protected Critical  
36 Area (PCA) consistent with the attached site plan and recorded with the  
37 County Auditors office as required in SCC 14.24.170.  
38 b) Any wet season construction shall be accompanied by the implementation of a  
39 temporary erosion control plan. Site plan conditions should be monitored  
40 during construction and silt fences utilized as appropriate. Vegetation removal  
41 should be minimized to the extent practicable. The PCA should be replanted  
42 with native species as specified in the Plant Plan. All bare soils should be  
43 covered with straw and permanently re-vegetated by seeding with a mixture of  
44 native grass species. This can be accomplished by hand.  
45



1 6. The Fish & Wildlife Site Assessment was circulated for Technical Team review  
2 from November 6, 2001 to November 21, 2001 per SCC 14.24.530(2). Joan  
3 Velikanje from the Washington State Department of Ecology (DOE) commented  
4 via a November 28, 2001 e-mail. Joan expressed concerns regarding site history  
5 (see exhibit #7), and the PCA conditions stated in the October 8, 2001 Fish &  
6 Wildlife Site Assessment prepared by Earth Systems Science Inc. Ms Velikanje  
7 stated that that DOE could accept the proposed PCA proposal if the following  
8 measures were initiated: a) a provision was made that within the PCA no further  
9 development would be allowed. b) That the PCA be entirely planted with native  
10 species. C) Monitoring would occur over a three-year period with 80% plant cover  
11 the goal.

12 Staff responses to the three issues raised are as follows:

- 13 a) The Skagit County Critical Area Ordinance (SCC 14.24) does not require  
14 statements of "prohibiting future development" as certain low impact/necessary  
15 uses are allowed per SCC 14.24.100. However, the PCA form (see exhibit #9)  
16 which is required to be filled out by the landowners prior to recording of the  
17 PCA document at the County Auditors office contains language that explicitly  
18 states that a PCA is to be left in a undisturbed natural state and that no  
19 construction or replanting of nonnative vegetation is allowed except as  
20 specifically permitted in a case-by case basis per SCC 14.24. If the DOE is of the  
21 legal opinion that such a requirement can be implemented via the Shoreline  
22 Management Act or through the SCSMMP then that of course is that agencies  
23 prerogative.
- 24 b) The applicants have submitted a Planting Plan that demonstrates that the PCA  
25 will be planted by native species per exhibit #8.
- 26 c) The environmental consultant for the applicant's, Earth Systems Science Inc has  
27 recommended in a December 3, 2001 letter that a 3-year monitoring program be  
28 implemented to insure plant survival. An 80% plant survival rate is considered  
29 successful upon completion or the 3-year review.

30  
31 7. The proposal is categorically exempt from the State Environmental Policy Act  
32 (SEPA) as noted in WAC 197-11-800(1)(b)(I) regarding residential structures.

33  
34 8. Staff determined that the proposal is not located on a Shoreline of Statewide  
35 Significance.

36  
37 9. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting Shoreline  
38 Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits  
39 reads:

40  
41 Variance permits for development to be located landward of the ordinary high  
42 water mark (OHWM), except within areas designated marshes, bogs or swamps  
43 pursuant to Chapter 173-22 WAC, may be granted provided the applicant can meet  
44 all the following criteria; the burden of proof shall be on the applicant.  
45



1 a. **That the strict application of the bulk, dimensional or performance**  
2 **standards set forth in this Master Program precludes or significantly**  
3 **interferes with a reasonable use of the property not otherwise**  
4 **prohibited by this Master Program.**

5 *The lot size is very small (6,025 square feet), and constrained by the Bay*  
6 *to the north as well as the road directly to the south. The area nearest to*  
7 *the road also must include driveway access, the drain field and septic*  
8 *tank.*

9  
10 b. **That the hardship described above is specifically related to the**  
11 **property and is the result of unique conditions such as irregular lot**  
12 **shape, size or natural features and the application of this Master**  
13 **Program and not, for example, from deed restrictions or the applicant's**  
14 **own actions.**

15 *The hardship is due to the lot size and lot location in relation to the Bay and*  
16 *the road.*

17  
18 c. **That the design of the project will be compatible with other permitted**  
19 **activities in the area and will not cause adverse effects to adjacent**  
20 **properties or the shoreline environment designation.**

21 *The surrounding area has been developed for rural residential use as*  
22 *demonstrated by the Residential zoning designation. All residences within*  
23 *300 feet of the side property lines are also within the 50-foot setback buffer*  
24 *due to pre-shoreline management development patterns. No adverse*  
25 *impacts have been identified on adjacent parcels or on the shoreline*  
26 *environment.*

27  
28 d. **That the variance authorized does not constitute a grant of special**  
29 **privilege not enjoyed by the other properties in the same area and will**  
30 **be the minimum necessary to afford relief.**

31 *The issuance of a variance for this proposal would be consistent with the*  
32 *relatively high-density development in the area. Adjacent homes enjoy*  
33 *similar setbacks and it appears that granting of this request would not*  
34 *constitute a "grant of special privilege." Further, it appears to staff that*  
35 *based on the existing circumstances of home placements and physical*  
36 *constraints such as the Bay and the road that the proposal would provide*  
37 *the "minimum relief necessary" for the applicant to build a single family*  
38 *residence in a shoreline location that allows such development.*

39  
40 e. **That the public interest will suffer no substantial detrimental effect.**

41 *Any possible detrimental effects however how remote, should be mitigated*  
42 *through compliance with the conditions placed on the development as*  
43 *recommended by staff and the environmental consultant.*  
44  
45  
46



1 **REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.**

2  
3 The proposal has been reviewed for consistency with SMP Chapter 7.13 Residential  
4 Development as defined in Chapter 3.03. The entire chapter 7.13 of the SCSMMP regarding  
5 Residential Development is included as Attachment "A" of the staff report, staff has  
6 summarized the policies involved.

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

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

17  
18 **2. REGULATIONS**

19 A. Shoreline Area

20 (2) Rural Residential

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

22 B General

23 (9) Shoreline setback;

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

27 *All of the residences within 300 feet of the side property lines are located within 50 feet*  
28 *of the OHWM with a average of 18.25 feet, and the minimum setback is 50 feet from the*  
29 *OHWM in the Rural Residential shoreline designation, therefore, the "whichever is*  
30 *greater" in this case would be the 50 foot minimum required in Table RD. Hence, the*  
31 *total variance sought from the OHWM for the new residence is 30 feet.*

32 C. Tabular Regulations

33 (1) Shore setbacks (in feet)

34 (a) Single Family, Duplex – Rural Residential- 50 feet.

35  
36  
37 **RECOMMENDATION**

38  
39 Based on the above findings, the Skagit County Planning and Permit Center would  
40 recommend for **approval** of a Shoreline Variance Permit subject to the following  
41 conditions:

- 42  
43 1. The applicant shall comply with the Fish & Wildlife Site Assessment  
44 recommendations in regards to utilizing proper sedimentation and erosion control  
45 measures during construction. All recommendations **shall be required** even though  
46 the consultant did not state them in this manner. The recommendations included:



- 1 a) The applicants shall record the submitted Planting Plan that demonstrates that  
2 the PCA will be planted by native species per exhibit #8.  
3 b) The PCA shall be recorded by the County Auditor's (SCC 14.06.145(2)-office  
4 prior to issuance of a building permit.  
5 c) A 3-year monitoring program shall be implemented to insure plant survival. An  
6 80% plant survival rate is considered successful upon completion or the 3-year  
7 timetable. A annual report detailing implementation and success rates of the  
8 Planting Plan shall be submitted to Skagit County critical areas staff with the  
9 first annual report to be submitted within one year after occupancy of the  
10 residence has been obtained.  
11 d) Any wet season construction should be accompanied by the implementation of a  
12 temporary erosion and sedimentation control plan. Site conditions should be  
13 monitored during construction and silt fences utilized as appropriate. Vegetation  
14 removal shall be minimized to the extent practicable. All bare soils shall be  
15 covered with straw and permanently re-vegetated by seeding with a shrub &  
16 herb mixture.

- 17  
18 2. The applicant must obtain a Skagit County Building Permit and receive all the  
19 necessary approvals.  
20  
21 3. The subject proposal shall comply with the Skagit County Shorelines Management  
22 Master Program and the Shoreline Management Act RCW 90.58.  
23  
24 4. The applicant shall strictly adhere to the project information (site diagram) submitted  
25 for this proposal. If the applicant proposes any modifications of the subject proposal,  
26 he/she shall request a shoreline permit revision from this office prior to the start of  
27 construction.  
28  
29 5. The project must be started within two (2) years of the date of the Department of  
30 Ecology's approval and shall be finished within 5 years or the shoreline permit  
31 will become void.  
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42 Prepared By: DD  
43 Approved By:  
44 Date: 12-3-01



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