



200301130329

Skagit County Auditor

1/13/2003 Page 1 of 22 1:42PM

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

DOCUMENT TITLE: ORDER ON SHORELINE SUBSTANTIAL DEVELOPMENT SL010857
And ADMINISTRATIVE SPECIAL USE SU000699

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: ROSALIND WOLFE

ASSESSOR PARCEL NO: P61844

ABBREVIATED LEGAL DESCRIPTION: The proposed project is located at 11110 Marine Drive, Anacortes, WA; a portion of Section 34, Township 35 North, Range 1 East, W.M., Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Scheffer Family
c/o Rosalind Wolfe
11110 Marine Drive
Anacortes, WA 98221

File Nos: PL01-0857- shorelines
PL00-0699- special use

Requests: Shoreline Substantial Development Permit
Special Use Permit

Location: 11110 Marine Drive on the shores of Burrows
Bay, within a portion of Sec. 34, T35N, R1E, WM.

Summary of Proposal: To use a portion of an existing residence as a Bed and
Breakfast guest house with four guest suites.

Land Use Designations: Shorelines: Rural Residential
Comprehensive Plan/Zoning: Rural Intermediate

Public Hearing: After reviewing the report of the Planning and Permit
Center, the Hearing Examiner conducted a public
hearing on November 27, 2002. The Examiner
visited the site on December 18, 2002.

Decision: The application is approved, subject to conditions.



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FINDINGS OF FACT

1. Rosalind Wolfe, on behalf of the Scheffer family, (applicant) seeks approval for a bed and breakfast guest house at 11110 Marine Drive on the shore above Burrows Bay. Ms. Wolfe is a family member who will reside at the house and run the operation with the help of her daughter.

2. The property is located within a portion of Sec. 34, T35N, R1E, WM. It is designated Rural Residential in the local Shoreline Master Program (SMP). The Comprehensive Plan and zoning designations for the property are Rural Intermediate. The lot is approximately 650 feet south of the Anacortes city boundary.

3. There is a substantial existing residence on the property built above the bay at the top of a steep rock cliff. It has two levels and contains five bedrooms. There is a large deck along the seaward side, extending from the upper level.

4. The proposed bed and breakfast is to be called "Island Breeze." The request is to devote four guest suites in the existing residence to the new use. No new construction is proposed to the structure. A non-illuminated two-square-foot sign is proposed to be located near the driveway entrance.

5. The application was filed on November 5, 2001. Substantial opposition was registered in writing and at the public hearing.

6. On January 24, 2002, the County issued a Mitigated Determination of Non-Significance (MDNS) for this proposal under the State Environmental Policy Act (SEPA). The determination imposed two conditions:

1. The subject proposal shall comply with the Skagit County Shorelines Master Program and the Shoreline Management Act, RCW 90.58.
2. The applicant shall not allow access to the shoreline by the public.

The MDNS was not appealed.

7. In addition to these conditions, the Staff is recommending that the operation be limited to a maximum of eight (8) guests at any one time and that guest vehicles on the premises be restricted to four (4).

8. The proposed conversion of use requires a Shoreline Substantial Development Permit and a Special Use Permit.

9. Shoreline Substantial Development Permits may be issued to projects that are consistent with the policies and regulations of the Shoreline Management Act and with



the policies and regulations of the Skagit County SMP. See SMP 9.02(1). The applicable regulations for Rural Residential areas include the following:

Shoreline dependent and related commercial development is permitted subject to the General and Tabular Regulations and PROVIDED such uses do not significantly alter the character of the Rural Residential shoreline area and are of a community serving nature. Such uses include: cafes, restaurants, and community retail, service and grocery stores. (emphasis added)

As applicable, the General regulations referred to limit commercial developments to those that are related to or dependent upon a shoreline location. The Tabular regulations set forth standard setback and dimensional requirements.

10. The structure in question satisfies the setback and dimensional criteria, as approved by prior variance. The proposed bed and breakfast use satisfies the definition of "shoreline related use" because of the opportunities it will provide to customers for shoreline enjoyment without causing significant adverse impacts on other uses or shore features. See SMP 3.03(S).

11. In this case, then, the critical criteria for shoreline approval are whether the use does or does not "significantly alter the character of the Rural Residential Shoreline area." and whether it is of a "community serving nature. "

12. The shoreline in the vicinity of the proposed bed and breakfast is characterized by a steep rocky bank that affords little or no above-tide beach. Buildings are obliged to be located at the top of the bank. The neighborhood is predominantly developed in upscale residences on large lots, elevated above the sea. From the cliff-top vantage, the view to the west over water and islands is spectacular. The sunsets are extraordinary.

13. Opponents argue, in effect, that a commercial development has no place in this particular setting. The mere existence of such a use is seen as a significant alteration of neighborhood character.

14. This position is, however, more spiritual than factual. In fact, the residence in question is located downgrade from Marine Drive and cannot be seen from the road. The property is heavily wooded and of significant size (1.2 acres), so that the house cannot readily be seen by the near neighbors. The new use will not change in any way the present residential appearance of the house, nor will it be attended by alterations of the lot. The only visible change will be a two-square-foot unlighted sign.

15. Opponents assert that to allow this commercial development at the site proposed will set an adverse precedent for the area. The applicants' consultant testified



that bed and breakfasts represent a benign and essentially non-intrusive use. They are normally sited in interesting residences which are owner-occupied, and their customers tend to be relatively well-heeled adults seeking a quiet get-away. A high standard of property maintenance is necessary in order for a bed and breakfast to attract customers. Even so, the average occupancy is only about 50%.

16. Accepting this testimony, it is arguable whether even multiple bed and breakfast establishments would constitute an adverse precedent with respect to the remainder of the residential development in the neighborhood. The type of use involved is itself a form of residential activity and the intensity is not likely to be substantially different in off-site impact than that of permanent residency. In the instant case, it would be surprising if most of the neighbors would even be aware of when there are guests and when there are not.

17. But, in any event, a multiplication of bed and breakfasts in the area is highly improbable. Most of the properties along the shore in the vicinity are subject to protective covenants that prohibit commercial development. The lot in question just happens to be an exception.

18. The Examiner takes note that some of the uses listed as examples of uses that would not change Rural Residential character (e.g., cafes, grocery stores) are considerably more intensive than the proposed bed and breakfast use.

19. The bed and breakfast is, by standard definition, certainly a service type use. The Staff apparently interprets the "of a community serving nature" terminology as encompassing such a service activity. Lacking any legislative history, the Examiner defers to the Staff on this point.

20. Under all the circumstances, the Examiner finds that the proposed bed and breakfast use is of a community serving nature and will not significantly alter the character of the area.

21. The general criteria for Special Use Permit Approval are set forth in SCC 14.16.900(2)(b)(v). They are:

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standard of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy or surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) For special uses in Industrial Forest-NRL, Secondary Forest-NRL,



Agricultural-NRL, and Rural Resource-NRL, the impacts on long-term natural resources management and production will be minimized.

(g) The proposed use is not in conflict with the health and safety of the community.

(h) The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

22. In addition, SCC 14.16.900(3)(c) provides the following specific requirements for bed and breakfast uses:

(i) They are owner occupied and managed.

(ii) Parking is on-site and a minimum of 10 feet away from neighboring residences.

(iii) All lighting is directed away from neighboring residences.

(iv) It is demonstrated that the impacts will be no more obtrusive than a residence.

(v) 5 bedrooms or less are available for guest use.

23. That Staff Report analyzes the application in light of all of the special use criteria and determines that, as conditioned, the proposal will be consistent with 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.

24. The objections of opponents focus on asserted failures of the proposal to meet requirements for health and safety. Concerns are raised about traffic, emergency access for fire fighting, and septic tank capacity.

25. A professional traffic impact analysis and safety review for the proposal was prepared by Gibson Traffic Consultants, dated June 10, 2002. The report noted that existing paved parking for 10 vehicles will provide for all parking on site without impact to the County road system. The analysis concluded that the bed and breakfast operation would on average generate the equivalent of only eight daily trips more than a typical residence. Of these only 2 to 3 trips would be PM peak hour trips. The road capacity impact of this level of trip generation was characterized as "minimal and imperceptible on the County road systems."

26. The traffic report also analyzed the stopping and entering sight distances for access points to the property. The finding was that the distances measured at the site without any vegetation removal were more than adequate to meet established minimums. Though the posted speed is 25 mph, this would remain true even if the roadway operated at 40 mph. There is no persuasive evidence in the record contradicting the professional traffic analysis.



27. On June 10, 2002, the current Fire Chief of District No. 11, which serves the subject property, wrote to the County Fire Marshal about whether the district could provide adequate fire protection at 11110 Marine Drive, if the property were used as a bed and breakfast. The letter recognized that due to the grade of the driveway, hoses and equipment will have to be hand carried to the structure in case of fire. But it notes, that this is not uncommon among the addresses on Marine Drive. The letter acknowledges the installation of a sprinkler system and concludes that, with several easily accomplished improvements, the District should be able to provide adequate fire protection to the home. The improvements requested can be required as conditions of approval.

28. The worry about the septic system is that it was designed for residential use and therefore may be inadequate to handle the increased laundry and food waste loads of the bed and breakfast. However, the County Health Department's Environmental Health Specialist reviewed the application and concluded that the current system should be adequate. He said that the Health Department normally treats sewage from bed and breakfast establishments as residential sewage and that the five bedroom septic system (a TRD 1000) installed meets Treatment Standard 1 per the state guidelines.

29. The Health Specialist went on to state that the TRD the system is observed on a continual basis through computer monitoring. In addition, he pointed out that the required license for the bed and breakfast with the Health Department food program, requires a yearly septic maintenance review by a certified maintenance person. Any problems would be detected and would have to be corrected before a license renewal.

30. Evidence was provided by the septic system designer that, at the request of the owners, he over-designed the system to insure that it could easily handle the five bedroom requirement. He explained that the TRD 1000 is a type of aeration treatment unit that treats the effluent before it reaches the drain field. The use of the TRD 1000 allows a 50% reduction in drain field size, but in this case the full 100% drain was installed anyway.

31. Beyond the increased level of treatment provided, the soils in the drainfield were retested by the County under wet season conditions. The test showed no evidence of problems with the ability of the soils in the drainfield to handle the anticipated loads.

32. The neighbors to the immediate south raised objections about intrusions on their property caused by lights and potentially by noise. Headlights shine into their house from some points on the applicants' driveway. The record does not show how the proposed change in use will exacerbate this problem. But, the applicants are willing to install whatever additional vegetative screening is needed to mitigate the situation.

33. As to noise, conditions of operation can be added calling for an early end to noise generating outdoor activities and restricting check-in/ check-out hours. Further, the restriction to a maximum of eight guests should help insure that noise does not become a problem for the neighbors.



34. This project has a long history and has been attended by much neighborhood hue and cry. In 1986, a shoreline variance was issued for the placement of a single-family residence on the site at a distance of 25 feet from the Ordinary High Water Mark. In 1999, the Scheffers were issued a residential shoreline exemption for the remodel of this house into a six bedroom structure. This decision was appealed and then reversed by agreement. A special use permit application sought concurrently for a bed and breakfast was withdrawn. The applicants subsequently applied for a revision to the original shoreline variance permit. This revision was approved by the Hearing Examiner on June 6, 2000, after a public hearing.

35. The revision sought a remodel, increasing the bedrooms from three to five and making certain changes to the septic system. At the hearing, the Scheffers asserted that the new bedrooms were for the use of their extended family and they disclaimed any intention to try to open a bed and breakfast.

36. The Examiner then found:

The public testimony at the hearing on the current application expressed continuing doubts about the intentions of the applicants. The fear in the nearby residential community is that this remodel is just a step in an incremental campaign to get a bed and breakfast into operation. The structural improvements proposed closely approximate those submitted in conjunction with the [earlier] bed and breakfast proposal.

37. The Examiner's approval of the structural changes did not authorize commercial activity at the site. He required that any change of use would have to be the subject of a separate application attended by appropriate public notice and public participation procedures.

38. The hearing on the instant application is the public process specifically directed toward the bed and breakfast issue that the Examiner earlier called for. Jerry Scheffer's testimony at this hearing appeared to confirm the neighbors' doubts regarding the intent of the revision granted in 2000.

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

CONCLUSIONS OF LAW

1. The Hearings Examiner has jurisdiction over the persons and the subject matter of this proceeding.
2. Normally an application for a bed and breakfast in a Rural Intermediate zone would be processed as an administrative special use. SCC 14.16.300(3)(a). However,



where, as here, a shoreline permit is also required, the special use approval is consolidated with the shoreline approval into a single hearing before the Examiner. SCC 14.06.060.

3. A Shoreline Substantial Development is needed in this instance because the change to commercial use of the structure removes the activity from the residential exemption. The action is viewed for shorelines approval purposes as though it were a new development, notwithstanding that construction has already taken place. The procedure is a form of after-the-fact permitting. The approach is necessary to prevent bootstrapping around the permit system by taking advantage of an exemption initially and then unilaterally changing the use later.

4. The review conducted for a land-use permit is concerned with whether the proposal is consistent with the applicable provisions of State law and County regulations. It is very disturbing to observe that these applicants do not appear at all times to have been candid about their intentions. However, in the matter at hand, the required application has been made and it has been subjected to appropriate agency review and public comment. There is nothing about the instant application that reflects a hidden agenda.

5. The findings support a conclusion that the proposal, as conditioned, is consistent with the requirements for both a Shoreline Substantial Development Permit and a Special Use Permit for a bed and breakfast. SMP 9.02, SCC 14.16.900.

6. The following conditions should be imposed on the permits:

(a) The permittee shall provide to the Planning and Permit Center a written approval from Fire District 11 that the improvements called for in the Fire Chief's letter of June 10, 2002, have been made.

(b) The permittee shall strictly adhere to the proposal as described in the application materials submitted, except as the same may be modified by these conditions.

(c) The permittee shall comply with the following operational requirements:

(1) The bed and breakfast operation shall not house more than eight guests at any one time.

(2) Guests will be restricted to one vehicle on the premises per two guests, or a limit of four guest cars at any one time.

(3) A "No Beach Access" sign shall be posted on the bluff.

(4) A set of house rules shall be supplied to all new guests, advising them



of site use limitations. Such rules shall include notice to the effect that beach access is prohibited, that trespassing is prohibited, and that outdoor activities with the potential for disturbing neighbors shall cease after 10:00 p.m.

(5) Check in and check out times shall be restricted to between the hours of 7:00 a.m. and 10:00 p.m.

(d) The permittee shall obtain annual inspections from the County Health Department regarding the food program provided at the facility.

(e) All fireplaces must meet the fireplace standards specified in WAC 173-433 and the requirements of the Northwest Air Pollution Authority (NWAPA).

(f) Any permanent lighting installed on the premises shall be shielded or designed so that it is directed away from neighboring residences.

(g) Additional vegetation shall be planted to screen headlights from shining into the neighbors house, as approved by the Planning and Permit Center.

(h) The proposed use shall commence within two years of the effective date of hereof or the permit shall become null and void.

(i) Failure to comply with all conditions may be grounds for revocation of this permit.

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

DECISION

The requested Shoreline Substantial Development Permit and Special Use Permit are approved, subject to the conditions set forth in Conclusion 6 above.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: January 9, 2003

Copies Transmitted to Applicant: January 9, 2003

Attachment: Staff Report



RECONSIDERATION/APPEAL

For purposes of post-hearing procedure, the ruling on the special use permit is to be treated as a separate decision. 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.

For purposes of post-hearing procedure, the ruling on the shoreline permit is to be treated as a separate decision. 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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7
8 REVIEWING AUTHORITY: Skagit County Hearing Examiner

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10 PUBLIC HEARING DATE: November 27, 2002

11
12 APPLICATION FOR: Shoreline Substantial Development #PL 01-0857
13 Administrative Special Use Permit #PL00-0699

14
15 APPLICATION DATE: November 5, 2001

16
17 APPLICANT: Rosalind Wolfe
18 11110 Marine Drive
19 Anacortes, WA 98221

20 PARCEL# 61844

21
22 PROJECT DESCRIPTION: The request is for utilization of a portion of the existing
23 residence as a bed & breakfast guest house with four guest suites. No new construction is
24 proposed to the existing structure however; a two square foot sign is proposed to be
25 located near the driveway entrance.

26
27 PROJECT LOCATION: The proposed project is located at 11110 Marine Drive,
28 Anacortes, within a portion of Section 34, Township 35 North, Range 1 East, W.M.,
29 Skagit County. The subject proposal is located on the shoreline of Burrows Bay which is
30 designated Rural Residential under the Shoreline Master Program. P#61844.

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

34
35 EXHIBITS:

- 36
37 1. Staff report.
38 2. March 25th, 1986 Shoreline Variance Permit 9-86 issued by Skagit County.
39 3. March 24, 1999 Shoreline Exemption issued for a remodel for a single family
40 residence.
41 4. April 6, 1999 PL99-0209 appeal of the shoreline exemption issued by Skagit County
42 on March 24, 1999 (see exhibit #4 to see list of appellants).
43 5. May 2, 1986 letter from Rodney Mack of the Washington State Department of
44 Ecology approving shoreline permit application 9-86.
45 6. May 5, 1999 memorandum from Daniel Downs, Shoreline Administrator of Skagit
46 County to Robert Schofield Skagit County Hearing Examiner.



- 1 7. May 18, 1999 appeal of the May 5 Shoreline Exemption issued by the Shoreline
- 2 Administrator determining that the re-model proposal was "insignificant".
- 3 8. May 26, 1999 Hearing Examiner decision regarding PL99-0209.
- 4 9. July 29, 1999 letter from Tom Karsh Skagit County Planning Director to Tom
- 5 Moser and Elaine Spencer.
- 6 10. August 5, 1999 letter from Tom Moser-Attorney at Law to Tom Karsh Skagit
- 7 County Planning Director.
- 8 11. December 6, 1999 Fish & Wildlife Site Assessment prepared by Aqua-Terr Systems
- 9 Inc.
- 10 12. June 6, 2000 Hearing Examiner decision regarding the shoreline revision to 9-86.
- 11 13. August 24, 2001 e-mail from Joan Velikanje of the Washington State Department of
- 12 Ecology.
- 13 14. November 5, 2001 Shoreline and Administrative Special Use Permit applications
- 14 including SEPA, checklist, site plans, narratives, pictures and assorted information.
- 15 15. January 22, 2002 Mitigated Determination of Non-Significance issued by Skagit
- 16 County.
- 17 16. January 31, 2002 Notice of Development.
- 18 17. February 12, 2002 e-mail from Keith Elefson of the Skagit County Public Works
- 19 Department.
- 20 18. February 14, 2002 comment letter from Don Coughlin at 11272 Marine Lane,
- 21 Anacortes, WA 98221.
- 22 19. February 19, 2002 comment letter from Keith Magee at P.O Box 698, Anacortes,
- 23 WA 98221-0698.
- 24 20. February 19, 2002 comment letter from Al McCrary at 11064 Marine Drive,
- 25 Anacortes, WA 98221.
- 26 21. February 21, 2002 comment letter from Joan L. Magee P.O Box 698, Anacortes,
- 27 WA 98221-0698.
- 28 22. February 22, 2002 comment letter from Theodore Lent of 11320 Marine Drive,
- 29 Anacortes, WA. 98221.
- 30 23. February 22, 2002 comment letter from Tom and Cathy Bay-Schmith at 11260
- 31 Marine Lane, Anacortes, WA 98221.
- 32 24. February 26, 2002 letter from C. Thomas Moser Attorney of law on behalf of Duane
- 33 Knapp.
- 34 25. February 26, 2002 comment letter from Duane Knapp representing the Marine Drive
- 35 Neighbors located at 2415 T Avenue, Suite 210, Anacortes, WA 98221.
- 36 26. February 27, 2002 comment letter from Jones Atterberry.
- 37 27. March 5, 2002 e-mail from Greg Geleynse of the Skagit County Health Department.
- 38 28. May 9, 2002 Letter from Gary Smith of Septic Design Services, Inc, at P.O. Box
- 39 351, Anacortes WA, 98221.
- 40 29. June 1, 2002 comment letter from Vicki Martin of Vicki's Travel Adventures at
- 41 1519 14th Street, Anacortes WA, 98221.
- 42 30. June 10, 2002 letter from Fire Chief Michael A Noyes of the Skagit County Fire
- 43 District 11, located at 14825 Deception Road, Anacortes, WA 98221.
- 44 31. June 10, 2002 Review of Potential Traffic Impacts and Safety – GTC# 02-064
- 45 prepared by Gibson Traffic Consultants of 1712 Pacific Avenue, Suite 100, Everett,
- 46 WA 98201.



32. July 10, 2002 letter from Julian Sayers, planning consultant for Island Breeze Guest House located 1133-37th Avenue, Seattle, WA 98122.
33. September 13, 2002 e-mail from Bob Fritzen of the Washington State Department of Ecology (DOE), Bellingham Field Office.
34. October 2, 2002 fax from Joel Haggard of Haggard Law Office at Suite 1200, IBM Building 1200 Fifth Avenue, Seattle, WA 99101.
35. October 8, 2002 letter from Jim Wiggins-Aqua Terr Systems Inc, to Julian Sayers from 21993 Grip Road, Sedro Woolley, WA 98284.
36. October 25, 2002 revised site plans of the proposal.
37. November 13, 2002 letter from Theodore and Geraldine Lent of 11320 Marine Drive.
38. November 15, 2002 letter from Tobias van Rossum of 161 Caribe Isle, Novato, CA 94949-5349.
39. November 18, 2002 letter from Read Archibald of 11290 Marine Drive.

STAFF FINDINGS:

1. The application has been advertised in accordance with Section 9.04 of the Skagit County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070. Numerous comments have been received regarding the proposal that were submitted during the original Notice of Development comment period as well as during the SEPA (State Environmental Policy Act) comment period. The numerous comments will be addressed at length below.
2. The subject proposal is located on the shoreline of Burrows Bay in an area designated as Rural Intermediate by the Skagit County Comprehensive Plan and the Skagit County Zoning Ordinance. The property is designated as Rural Residential in the SCSMMP.
3. In 1986, a shoreline variance SHL 9-86 (see exhibit #2) was issued to John Hancken for the placement of a single family residence at a distance of 25 feet from the Ordinary High Water Mark (OHWM)). On March 24, 1999 Skagit County issued a Shoreline Exemption for a remodel of an existing residence. This exemption was appealed to the Skagit County Hearing Examiner who remanded the exemption back to staff and directed that the appropriate application(s) be obtained. Prior to September 1999, the applicants withdrew the special use permit for a Bed & Breakfast and subsequently applied for a shoreline revision to the original shoreline permit (99-0594). The Skagit County Hearing Examiner approved the shoreline revision application on June 6, 2000 with the following conditions:
 - a) This permit revision is limited to the structural changes proposed for the purposed of a single family residential use. No commercial activity on the site is authorized.
 - b) This approval is not intended to function as a basis for or support of any future proposals to change the use of the property to a commercial use.



- 1 c) Prior to construction, the applicant shall obtain all other required
2 permits and approvals.
3 d) If, at any time a change in use of this property is contemplated,
4 application must be made to the Planning & Permit Center and appropriate
5 public notice and public participation procedures must be followed.
6 e) Replanting of disturbed areas shall follow the recommendations
7 contained in the letter of Aqua-Terr Systems, Inc, dated 25 March 2000.
8 f) Any rock bolting carried on at the site shall be conducted under the
9 supervision of a qualified geological engineer.
10 g) Construction shall be commenced within two years of issuance of this
11 permit revision. Authorization to conduct development activities pursuant
12 hereto shall terminate five years after issuance hereof.
13 h) Failure to conform with the limitations and conditions imposed hereby
14 may result in revocation of this permit.
15

16 The Washington Administrative Code (WAC) in 173-27-100(2) (e) states in
17 regards to an existing shoreline permit that a change in use (in this case from a
18 residential use to part/commercial use) would not be considered within the "scope
19 and intent" of the original permit and would require a new shoreline permit per
20 WAC 173-27-100(4).
21

- 22 4. The property is a west facing 1.2 acre parcel located on the salt water shoreline of
23 Burrows Bay. The topography is moderate to steep with grades ranging from 13%
24 to near vertical. The parcel is heavily forested providing a good deal of visual
25 separation from adjacent homes.
26
- 27 5. The Rural Intermediate zone requires an Administrative Special Use to be
28 obtained per SCC 14.16.300(3)(a) in order permit the proposed activity.
29 Determination of whether a Bed and Breakfast application should be approved are
30 located in the criteria for review of an Special Use permit per 14.16.900(2)(v)(a-
31 h) and the special requirements for a Bed & Breakfast per SCC 14.16.900(3)(c)(i-
32 v).
33 Review of the Special Use Permit criteria per SCC 14.16.900(2)(v)(a-h).
34
- 35 a) **The proposed use will be compatible with existing and planned use and**
36 **comply with the Comprehensive Plan.** Objective 19 (per page 4-78-80) of
37 the Skagit County Comprehensive Plan encourages the formation of home
38 based businesses within homes to provide economic and limited employment
39 opportunities in the rural area that are compatible with surrounding land uses.
40 b) **The proposed use complies with the Skagit County Code.** The proposed
41 use satisfies all Skagit County Code requirements based on the findings
42 articulated below.
43 c) **The proposed use will not create undue noise, odor, heat, vibration, air**
44 **and water pollution impacts on surrounding, existing, or potential**
45 **dwelling units, based on the performance standards of SCC 14.16.840.** No
46 undue impacts have been identified on surrounding residences due to the



controlled nature of the project (i.e. no beach access, no detrimental traffic impacts identified and the large amount of forested vegetation separating the property from neighboring properties).

- d) **The proposed use will not generate intrusions on privacy of surrounding uses.** Due to the restriction of beach access for customers and the heavily vegetated side of the property no privacy intrusions have been identified.
- e) **Potential effects regarding the general public health, safety, and general welfare.** Staff notes that no substantive threat to the general public health has been demonstrated by any interested parties and none have been identified by staff.
- f) **For special uses in Industrial Forest – Natural Resource Lands, Secondary Forest – Natural Resource Lands, Agricultural – Natural Resource Lands, and Rural Resource – Natural Resource Lands, the impacts on long term natural resource management and production will be minimized.** NA
- g) **The proposed use is not in conflict with health and safety of the community.** No substantiated health or safety conflict has been identified regarding the proposal upon review of the septic system, the most recent transportation plan estimates or fire hazard concerns.
- h) **The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.** The proposal is a public facility, and will not likely adversely affect local public services.

SCC 14.16.900(3)(c)(i-v) states:

- i) **They are owner occupied and managed.** The applicants have stated that a family owner will reside full time and serve as innkeeper staff.
- ii) **Parking is onsite and a minimum of 10 feet from neighboring residences.** Existing parking areas range from 18 to 111 feet from the south property line.
- iii) **All lighting is directed away from neighboring residences.** No existing exterior lighting fixtures exist or are proposed that would be directed toward the neighboring residences.
- iv) **It is demonstrated that the impacts will be no more obtrusive than a residence.** The subject site is already developed as a five bedroom residence in a heavily forested area so construction activities in order to commence operation are minimal. Potential areas of concern of a Bed & Breakfast operation would most possibly occur in the areas of beach use, noise generation and traffic access. These areas of concern seem to be alleviated by: 1) conditioning permit approval by restricting beach access to the public as already done in the SEPA threshold determination. 2) Permitting no more than the usage of four bedroom suites for guest which will restrict the average daily traffic to an average of only 8 ADT (Average Daily Trips) more than a standard residence. 3) restricting hours of operation to those most normally used by residents such as 7AM to 10



PM would seem to reduce most if not all concern regarding noise generation.

v) **5 bedrooms or less are available for guest use.** The current proposal is for the use of four bedroom suites. In addition, Skagit County allows a maximum of 5 bedrooms for a Bed & Breakfast via Special Use whereas the request is for less thereby assisting in reducing the total impact.

6. Although the proposal does not include expansion of the building or other improvements within shoreline jurisdiction, an amended Critical Areas review per SCC 14.24 pertaining to the proposed use was required for the property. An updated report dated October 8th, 2002 was submitted for the Bed & Breakfast by Aqua-Terr Systems Incorporated. The report was an addendum to the December 6, 1999 report submitted for their initial building permit. The report found that the change in use was not likely to cause increased use to the shoreline. Technical team review occurred between October 23 to November 4, 2002. No response was received.

7. Skagit County issued a Mitigated Determination of Non-Significance on January 22, 2002. The following conditions were listed as required for permit approval:

(i) The subject proposal shall comply with the Skagit County Shorelines Master Program and the Shoreline Management Act RCW 90.58.

(ii) The applicant shall not allow access to the shoreline by the public.

No appeals were filed. Numerous comments have been made either in the original 30 day comment period or from the SEPA comment period. Due to the common nature of some of the comments staff will address the numerous issues by subject of the comments (staff notes in italics).

1) **Protest of any zoning change:** The applicant has made legal application for a administrative special use permit which potentially allows an Bed & Breakfast in a Rural Intermediate zoning designation. Skagit County Code (SCC) allows such a application per SCC 14.16.300(3) (a).

2) **The owners have violated nearly every County requirement in attempting to obtain a Bed & Breakfast:** The applicants were forced to stop work for not obtaining a building permit during extensive remodeling of the existing residence. Also, the applicant had been advertising the future potential availability of a Bed & Breakfast prior to seeking the appropriate permits necessary such as a administrative Special Use Permit and a Shoreline Permit. All of this activity ceased shortly upon discovery by County officials, and the Bed & Breakfast is not allowed to commence until the appropriate permits (i.e. a Shoreline permit and a Administrative Special Use permit) are obtained.

3) **The owners were granted a expanded septic system for use of a single family residence not commercial loads.** The May 9, 2002, report from Gary Smith of Septic Design Services Incorporated has stated that the existing septic system is a viable and suitable system for the current proposal. This has



also been concurred with by Greg Geleynse, Environmental Health Specialist II of the Skagit County Health Department. In addition, Mr. Geleynse states that all Bed & Breakfast establishments are required by the Health Department to be licensed via the food program which includes a yearly maintenance review.

- 4) **On April 26, 2000 the Skagit County Hearing Examiner concluded (see exhibit #) that shoreline revision request condition #a stated that "no commercial activity on the site is authorized":** This was correct for the revision of the existing permit which allowed a continued residential use within the structure. Now, the applicant has come forth through the legally required County process to potentially obtain permission to operate a Bed & Breakfast based on Skagit County regulations. Staff notes that in exhibit #27 Greg Geleynse of the Skagit County Health Department states that the current system meets all water and septic requirements required by the County Health Department. In addition, he states that all Bed & Breakfast establishments are required by the Health Department to be licensed via the food program which includes a yearly maintenance review.
- 5) **The driveway is not 18 feet wide but more like 11 feet.** The driveway is 11 feet wide, but the road easement crosses an adjacent parcel in an arc that extends 18 feet north of the common property line per the submitted site plan.
- 6) **The traffic increase will result in 6-12 additional trips per day plus utility trucks would actually increase trips per day to 8 to 14 additional trips per day at half capacity.** The Skagit County Public Works Department concurs with the June 10, 2002 Review of Potential Traffic Impacts and Safety -GTC# 02-064 study prepared by Gibson Traffic Consultants (exhibit #31), which estimates the total increase of traffic to the site at a maximum of 26 ADT while on average at 50% occupancy of the four suites a average of 18 ADT or 8 additional trips per day.
- 7) **Five fire places instead of 1.** Staff notes that Fire Chief Michael Noyes (exhibit) noted several concerns that will be required as conditions of approval. In addition, the four new fire places will utilize natural gas and not firewood. All fireplaces must meet WAC 173-433 and Northwest Air Pollution Authority requirements Section 480, no matter what number per residence.
- 8) **The SEPA checklist does not note a Bald Eagles nesting site adjacent to the north property line.** The December 6, 1999 Fish & Wildlife Site Assessment prepared by Aqua-Terr Systems Inc identified no nesting sites. No eagle nesting sites are noted in the vicinity of the site on the Washington State Department of Fish & Wildlife Site Priority Habitat Species map.



- 1 9) **Fire and Police safety concerns per comments from Fire Chief Jim**
2 **Stewart.** Fire Chief Michael Noyes who has replaced the former fire chief and
3 as commented with recommended conditions per (exhibit#30) which will be
4 required for approval.
5
6 10) **Previous guests have already accessed the beach, and how would that be**
7 **restricted or enforced in the future?:** Skagit County issued a Mitigated
8 Determination of Non-Significance for the proposal on January 22, 2002. This
9 determination which was not appealed' conditioned the proposal to restrict
10 access from the upland property to the beach. Violation of this condition at a
11 future date could jeopardize the validity of the permit as Skagit County has
12 the right to rescind the permit. Skagit County generally does not "monitor"
13 every permit upon issuance but responds to requests for investigation if
14 notified by the public of illegal activity.
15
16 11) **It is unreasonable for the applicant to supervise 15-20 quests from**
17 **accessing the shoreline.** The maximum number of guests that will be allowed
18 is 8. Removal of the existing pipe hand rail accompanied with instuctins for
19 guests that beach access is not allowed and that a violation of that provision
20 could result in eviction from the premises.
21
22 12) **The applicant has not substantiated that the proposal is shoreline related**
23 **or dependent.** The SCSMMP defines Shoreline dependent use as "Any
24 reasonable use that requires a shoreline or water surface location because of
25 its functional nature, including but not limited to navigation, ports, marinas.
26 docks, piers, floats, boat fueling stations, shipyards, seafood harvest,
27 aquaculture, recreational boating and swimming, and research and observation
28 of natural shoreline phenomena". The applicant has argued and staff concur,
29 that a major element in the potential success of the proposal is the observation
30 of natural phenomena from the existing deck.
31
32 13) **The proposal conflicts with SCC 14.26.7.03(2)(B)(4) which states**
33 **Commercial developments, especially resort and recreational**
34 **campgrounds, shall provide aquatic access to shoreline and water areas**
35 **for members and users.** Aquatic access to the shoreline is restricted in this
36 proposal in order to reduce any potential negative impact to the shoreline.
37
38 14) **Access and parking development appears to be within the shoreline**
39 **setback for commercial development.** The parking area and the access road
40 is existing, and no expansion is proposed thereby not facilitating a dditional
41 review under the variance criteria.
42
43 15) **The applicants must seek modification of the originally granted shoreline**
44 **variance that now prohibits commercial use of this property.** The original
45 permit was only for a residential use which is why the applicant has been
46 required to apply for a shoreline permit to partially alter the use of the site.



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- 16) **The County must review the new application with suspicion in light of “continuing doubts about the intentions of the applicants”.** The County must review all applications as fairly as possible. The County has no legal right or mechanisms to discriminate prior enforcement applications.
 - 17) **SEPA checklist errors regarding whether the existing facility is a single family residence, multi family and has separate apartment entrances.** The applicant’s representatives have argued that the checklist was not in error regarding the nature of the multi-use proposal. The individual units to be in fact multi-family in nature would require kitchen facilities separately (see 14.04-12 Definition – Dwelling Unit).
 - 18) **SEPA checklist errors regarding the need for police and fire services.** Per exhibit # 30 fire services are available.
 - 19) **Levels of noise will be greater than those of a “residential nature”.** The commenter has stated that the increase in traffic will cause greater than “residential levels” of noise. (See item number #20 below).
 - 20) **A 1999 traffic study concluded that the new use would increase traffic generation 21-36 trips per day.** An additional study, the June 10, 2002 Review of Potential Traffic Impacts and Safety –GTC# 02-064 study prepared by Gibson Traffic Consultants (exhibit #31), which estimates the total increase of traffic to the site at a maximum occupancy of 26 ADT while on average at 50% occupancy of the four suites a average of 18 ADT or 8 additional trips per day.
 - 21) **A letter of support from Vicki Martin of Vicki’s Travel Adventures stating that a nice Bed & Breakfast is needed in the Anacortes area.**
 - 22) **The October 2, 2002 fax from Joel Haggard of Haggard Law Office argues that the proposal is both shoreline dependent and shoreline related in which staff concur. However, Mr. Haggard also states that it his legal understanding that no shoreline permit should be required because of the lack of Substantial Development. Staff disagree with that assessment based on the code language previously cited (Washington Administrative Code (WAC) in 173-27-100(2) (e).**
 8. Staff determined that the proposal is not located on a Shoreline of Statewide Significance.
 9. The Administrative Official approves Administrative Special Use Permit #PL00-0699 as of this hearing date based on the proposal meeting the criteria specified in SCC14.16.900(2)(v)(a-h) and the special requirements for a Bed & Breakfast per SCC 14.16.900(3)(c)(i-v).



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6 **REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.**
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8 The proposal has been reviewed for consistency with SMP Chapter 7.03 Commercial
9 Development as defined in Chapter 3.03. Staff determined that the proposal does not
10 conflict with the **general policies** regarding space, location, access, design, conflicts and
11 Impacts. Staff has further determined that the proposal complies with all SCSMMP
12 **regulations** regarding shoreline areas, bulkheading combined with landfilling, permitted
13 uses, shoreline access, design and all Tabular regulations.
14

15 The following inserts from the Regulation section are considered below:
16

17 **2. REGULATIONS**

18 **A. Shoreline Area**

19 **(2) Rural Residential**

20 Shoreline dependent and related commercial development is permitted subject to the
21 General and Tabular Regulations and PROVIDED such uses do not significantly alter the
22 character of the Rural Residential shoreline area and are of a community serving nature.
23 Such uses include: cafes, restaurants, and community retail, service and grocery stores.
24

25 Staff notes that the restrictive measures such as no beach access and only the utilization
26 of four bedrooms with a maximum capacity of 8 persons at any given time that the
27 proposal will not significantly alter the character of the rural residential shoreline area.
28 Staff further notes that the potential impact of the proposal in comparison to seemingly
29 allowed and far more intensive uses such as hotel and motels suggest the compatibility
30 of a benign well regulated Bed & Breakfast as such a use as a in the rural residential
31 shoreline.

32 This finding is also supported by the June 10, 2002 Review of Potential Traffic Impacts
33 and Safety –GTC# 02-064 study prepared by Gibson Traffic Consultants (exhibit #31).

34 The SEPA review process and lack of appeal, and the large of amount of existing natural
35 screening between the Bed and Breakfast and adjoining properties. The uses noted above
36 clearly demonstrate that the proposed Bed & Breakfast would be clearly be of less
37 intensity than those noted state above (i.e. cafes, restaurants etc..)

38 The SCSMMP defines Shoreline dependent use as "Any reasonable use that requires a
39 shoreline or water surface location because of its functional nature, including but not
40 limited to navigation, ports, marinas. docks, piers, floats, boat fueling stations, shipyards,
41 seafood harvest, aquaculture, recreational boating and swimming, and research and
42 observation of natural shoreline phenomena". The applicant has argued that a major
43 element in the *potential success* of the proposal is the observation of natural phenomena
44 from the existing deck. Staff concurs that this final use is clearly a key component to the
45 proposal as stated by the applicant's representatives thereby qualifying the proposal as
46 "shoreline dependent" in the SCSMMP.



1
2 **RECOMMENDATION**
3

4 Based on the above findings, the Skagit County Planning and Permit Center would
5 recommend for approval of Shoreline Substantial Development Permit (PL01-0857)
6 subject to the following conditions:
7

- 8 1. The applicant shall provide written authorization from Fire District 11 and or the
9 Skagit County Fire Marshal to the Shoreline Administrator that all suggested
10 improvements (see exhibit #40) have been made prior to beginning operation of
11 the Bed & Breakfast.
12
13 2. The subject proposal shall comply with the Skagit County Shorelines Management
14 Master Program and the Shoreline Management Act RCW 90.58.
15
16 3. The applicant shall strictly adhere to the operation information provided and
17 maintain the following operational procedures:
18 a) The business shall not house more than 8 guests at any time.
19 b) Beach access by guests is not allowed at any time.
20 c) The owners shall supply new guests with a handout that clearly explains site use
21 limitations including those stated in this permit upon check in.
22 d) Guests will be restricted to the use of one vehicle on the premises per 2 (4 total
23 parking spaces) guests.
24 e) Check in/Check out times will be restricted to day time hours form 7AM to
25 10PM.
26 f) The applicants are to obtain annual inspections from the Skagit County Health
27 Department in regards to the food program provided at the facility.
28 g) All fire places must meet the fire place standards as specified in WAC 173-433
29 and the Northwest Air Pollution requirements per Section 480 of the said code.
30

31 **DECISION**
32

33 Based on the above findings, the Skagit County Planning and Permit Center approves
34 Administrative Special Use Permit (PL00-0699) subject to the conditions just previously
35 stated for the Shoreline Substantial Development Permit (PL01-0857).
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41 Prepared By: DD
42 Approved By: LK
43 Date: 11/20/02.
44 Amended:



200301130329
Skagit County Auditor