

**NOTICE OF DECISION**

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**Appellant:** Christopher J. Barnes  
17549 Valentine Road  
Mount Vernon, WA 98273

**Counsel:** John P. Livingston  
Attorney at Law  
119 N. Commercial Street, Suite 1345  
Bellingham, WA 98225

**Applicants/Respondents:** Sam Bryant & Jane Beshore  
2255 Cove Drive  
Oak Harbor, WA 98277

**File No:** PL11-0263

**Summary of Case:** Appeal of administrative variance, approved July 26, 2011, reducing standard marine buffer (Critical Areas Ordinance) from 100 feet to 50 feet on shore of Yokeko Point (Deception Pass).

**Location:** 15877 Yokeko Drive within E1/2 Lot 5 and all of Lot 6, Deception Pass Waterfront Tracts, Recorded in Vol. 5 of Plats, page 26. Parcel No. 64868.

**Issues:** Impact of proposed development on view and property value.

**Public Hearing:** A trial-type hearing open to the public was held on due notice on September 28, 2011. Appellant was represented by John P. Livingston, Attorney at Law; the Applicants represented themselves; the County was represented by Leah Forbes, Senior Planner.

**Decision/Date:** The appeal is denied. The variance is affirmed. October 11, 2011

**Reconsideration/Appeal:** A Request for Reconsideration may be filed with Planning and Development Service (PDS) within 10 days of this decision (SCC 14.06.180). The decision may be appealed to the Board of County Commissioners within 14 days of the date of decision, or decision on reconsideration if applicable (SCC 14.06.110(13)).

**Online Text:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearingexaminer](http://www.skagitcounty.net/hearingexaminer)

## **FINDINGS OF FACT**

1. Ms. Christopher J. Barnes appeals the approval of an administrative variance reducing the marine buffer from 100 feet to 50 feet on the applicants' property.
2. The variance was granted to accommodate a single family residence, garage, septic drainfield and reserve area on a substandard parcel (Parcel No. 64868) on Yokeko Point on the north shore of Deception Pass.
3. The approval requires buffer enhancement using native vegetation.
4. The applicants' (Bryant/Beshore) property is located at 15877 Yokeko Drive, within the E1/2 of Lot 5 and all of Lot 6, Deception Pass Waterfront Tracts, recorded in Vol. 5 of Plats, page 26. The parcel includes second class tidelands in front of the property.
5. The parcel comprises approximately 0.44 acres and is designated Rural Intermediate in the Comprehensive plan. The shoreline designation is Rural Residential.
6. The applicants propose to construct a 1,638 square-foot single family residence, and 864 square-foot garage, along with placing a septic drainfield and reserve areas. Historically the parcel has been used for recreation and, until recently, contained a small storage shed.
7. The applicants' lot is narrow and on its east side extends toward the water onto a rocky point that supports some grass but no other vegetation. This same feature lies in front of the appellant's (Barnes) house immediately to the east.
8. The Barnes property contains a cottage built around 1953. The cottage is located near the lot's west side property line and closer to the shore than the applicants' proposed new residence. There is a stand of mature trees between the Barnes' cottage and the marine buffer lying seaward of the applicants' proposed house.
9. The structures the applicants intend to build will all be located northwest of the Barnes' cottage and further inland than the Barnes' cottage. The Barnes' water views are to the south and west. No views to the water from the Barnes' house will be affected by the structures the applicants propose.
10. The waterfront neighborhood in the immediate vicinity is extensively developed with houses, many of them, like Barnes', built years ago. All of the homes along the shore, to some degree, block the lateral views of their neighbors.
11. At the hearing it became apparent that the appellant was concerned not with view blockage by the applicants' proposed structures, but by the possibility that vegetation required to be planted in the marine buffer will grow to block her view.

12. The plantings required as a condition of approval of the variance are described in a Fish and Wildlife Assessment prepared by Edison Engineering and issued on February 28, 2011. The report determines that 3,942 square feet of fish and wildlife habitat will be displaced. As mitigation the report calls for planting 158 native shrubs in the remaining buffer. All of the species identified are low growing.

13. The plants will be of types that maintain themselves naturally. No monitoring plan is proposed.

14. The location of the required plantings is shown on a Critical Area Site Plan (Exhibit H). The planting areas, as depicted, will not be on the rocky point on the eastern portion of the applicants' property. In general, the new shrubs will be placed landward of the existing retaining wall. This means that none of the plantings will be in the area that contains water views from the Barnes cottage. The plantings, to the extent visible through the trees from the Barnes' home, will, at most, occupy a portion of the viewscape that runs laterally along the shore.

15. There is no evidence that either the structures or the plantings to be added to the applicants' property will have any effect whatsoever on the appellant's property value.

16. Owing to soils characteristics, the applicants' septic drain field and reserve areas are located in the only part of the lot that is acceptable. Therefore, any buildings located on the property must be squeezed into the area seaward of these necessary sanitary waste features. On behalf of Barnes, it was argued that the applicants could have considered building a two-story house on a smaller footprint, thus avoiding the need for using a portion of the standard marine buffer. However, nothing in the record suggests that such a plan would substantially reduce the view or value impacts of interest to the appellant.

17. The applicants' proposed home will be a reasonable use of the property. As proposed, it will be somewhat smaller than the average-sized home along this portion of Yokeko Drive. Enforcing the standard marine buffer would result in a building envelope for applicants of approximately 900 square feet, less than half the size of the average home in the neighborhood. The average setback from the water of nearby homes is 22 feet. With the variance, the applicant will have a 50-foot setback.

18. The occupation of a portion of the marine buffer by the project will not result in disturbance to four of the five buffer functions (recruitment of large woody debris, shade, bank integrity, runoff filtration). The modest loss of wildlife habitat will be offset by the planting program required. Adverse impacts to the critical area will be minimal.

19. 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 subject matter of this proceeding. SCC 14.06.110(7).

2. This appeal relates to a 100-foot setback required by the Critical Areas Ordinance. SCC 14.24.530(2). The project fully complies with the setback required by the local Shoreline Master Program. (SMP 7.13(2)(C), Table RD).

3. The standard CAO marine buffer may be reduced by up to 50% through an administrative variance. SCC 14.24.140(1)(a). The reduction here is to 50 feet.

4. The criteria for CAO variances in SCC 14.24.140 do not relate to view preservation, but appellant's central interest as expressed in the appeal document is to preserve views. Accordingly, the relevance of the variance criteria here is in relation to whether non-compliance with any of them would adversely affect views. No such effects were shown

5. Under the facts, the absence of a monitoring plan for the new plantings is irrelevant to the issue of views. Furthermore, SCC 14.24.080(4)(c)(vii) merely states that a mitigation plan includes "maintenance and monitoring responsibilities." This language is construed to mean "maintenance and monitoring responsibilities" should be spelled out if any such responsibilities are assigned. Whether such responsibilities are assigned depends on the factual situation, as analyzed by professionals. Such assignment is not a blanket legal requirement.

6. The appellant asserted a violation of the intent of the CAO which includes "conserving the value of property." SCC 14.24.020. However, no adverse property value impacts were shown. Because of this the Examiner need not and does not address whether PDS is obligated to consider property value impacts in evaluating CAO variances.

7. The reduction in setback approved was not shown to be inconsistent with any of the criteria for the granting of CAO variances, including SCC 14.24.140(3)(d)(e) (f) and (h).

8. In appeals of this kind, the burden is on the appellant to prove that the administrative decision is clearly erroneous. SCC 14.06.110(11). In the instant case, the appellant failed to carry this burden.

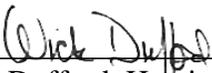
9. If the appellant feels that her property is improperly assessed, she may appeal to the Board of Equalization and ask that the valuation be lowered.

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

**DECISION**

The appeal is denied. Variance PL 11-0148 is affirmed.

**DONE**, this 11th day of October, 2011.

  
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Wick Dufford, Hearing Examiner

Transmitted to Appellant, Applicants, PDS on October 11, 2011

See Page 1, Notice of Decision, for Reconsideration and Appeal information.