

**SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON**

In the Matter of:

JAY KOETJE,

Applicant,

Critical Areas Variance Application.

PL10-0281

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

This matter having come regularly before the Skagit County Hearing Examiner for a public hearing on November 17, 2010 under an application filed with the Planning & Development Services Department by the applicant, Jay Koetje, seeking a Critical Areas Variance Permit. The real property is located as follows: 16536 Moberg Road, Mount Vernon, WA. The subject site is located on the shoreline of Skagit Bay within a portion of the Southwest quarter of Section 23, Township 33 North, Range 3 East W.M., Skagit County, WA (Parcel *P16034*).

PROJECT DESCRIPTION: Mr. Jay Koetje filed an application for a level II critical areas variance to construct a two story 2,400 square foot addition on the east side of his existing 4,776 square foot residence. The parcel has been used for both residential and agricultural purposes since purchase of the parcel in 1990. The residence is located on an east-west trending dike that separates Skagit Bay from Fir Island. Skagit Bay is located to the south and west of the residence and a small slough is located immediately to the north of the residence. The residence and proposed addition is located approximately 50-feet north of the ordinary high water mark (OHWM) of Skagit Bay and approximately 165 feet south of the small slough (type Np water). Skagit Bay, at this location, is both a shoreline and a category II wetland. Although the critical areas marine buffer from the shoreline is 100 feet, the category II wetland requires a 225 foot standard buffer. Due to the limited area remaining for development between the shoreline/wetland and the slough, the applicant proposes to reduce the critical area buffer of the wetland (marine shoreline buffer of Skagit Bay) from 225 feet to 50 feet, consistent with the existing residence onsite. The reduction of the buffer will result in approximately 2,400 square feet of critical area buffer impact. As the existing marine dike between the residence and the shoreline/wetland is managed by Dike District 22 and must be maintained clear of vegetation, the applicant has provided mitigation for the project by installing native trees along 700 feet of a drainage course/slough (approximately 10,500 square feet) east of the project site. The applicant has also indicated an intent to manage a portion of the adjoining farmlands (not less than 5 acres) as a grain crop for wintering waterfowl.

Pursuant to Skagit County Code (SCC) 14.24.140, the standard buffer may be reduced by more than 50% through the Level II Variance process as outlined in SCC 14.06.120.

FINDINGS OF FACT

1. **ZONING/COMPREHENSIVE PLAN and SMMP DESIGNATIONS.** The subject property is designated as Agriculture - Natural Resource Lands as indicated on the Comprehensive Plan and Zoning maps. The subject site is designated as Rural in the Skagit County Shoreline Management Master Program.
2. **PROCESSING.** A Notice of Development Application was posted on the subject property and published in a newspaper of general circulation on July 29, 2010 as required by SCC 14.06.150. Notification was provided to all property owners within 300 feet of the subject property. In addition, the Notice of Development Application was sent to local tribes and agencies with possible jurisdiction. There was a 15 day comment period associated with the Notice of Development which ended on August 13, 2010. One comment letter was received from Skagit River Systems Cooperative (SRSC). The comment letter does not oppose the addition, but does provide a recommendation for alternative mitigation. SRSC suggests that mitigation should include native tree plantings adjacent to the Wiley Slough restoration project being implemented by the Washington Department of Fish and Wildlife (WDFW). Skagit County PDS performed a site visit to observe both mitigation locations and concludes that the mitigation proposed by the applicant would expand habitat areas and provide tree canopy coverage for a slough area on the subject site that currently has little vegetation. Observation of the Wiley Slough area indicated that WDFW is currently implementing vegetation enhancement in the Wiley Slough area. PDS concludes that the mitigation proposed by the applicant would result in a greater benefit for fish and wildlife habitat conservation areas than that proposed by SRSC.
3. **STATE ENVIRONMENTAL POLICY ACT.** The variance application has been determined to be exempt from the requirements of SEPA under WAC 197-11-800 (2)(e).
4. **FLOOD AREA REVIEW.** The subject property is located within a flood zone A7 on FIRM map panel 0425 C.
5. **CRITICAL AREA REVIEW:** The criteria for consideration of a variance is found at SCC 14.24.140(3) and consists of the following elements with the Hearing Examiner's findings in italics:
 - a. The issuance of a zoning variance by itself will not provide sufficient relief to avoid the need for a variance to the dimensional setback and other requirements for the critical areas regulated by this chapter.

Issuance of the zoning variance would not provide relief because the proposed addition must be attached to the existing residence. A zoning variance does not address the location of the existing residence and the need to construct an attached addition to the residence.

- b. Preparation of a site assessment and mitigation plan by a qualified professional pursuant to the requirements of SCC 14.24.080. The site assessment and mitigation plan shall be prepared utilizing best available science.

The site assessment has been prepared utilizing best available science by a qualified professional pursuant to the requirements of 14.24.080, 14.24.220 and 14.24.520.

- c. The conclusions of the site assessment utilized best available science to support the modification of the dimensional requirements of SCC 14.24.

The site assessment has utilized best available science to support modification of the dimensional requirements.

- d. The site assessment and mitigation plan demonstrate that the proposed project allows for development of the subject parcel with the least impact on critical areas while providing a reasonable use of the property.

The site assessment with the mitigation plan allows for reasonable development of the property. The department concludes that by attaching the addition to the existing residence, the proposed project will have the least impact on the nearby critical areas.

- e. The reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

The reasons included in the application support granting of the variance and reasonable use of the land.

- f. The granting of the variance will be consistent with the general purpose and intent of SCC 14.24 and will not create a significant adverse impact to the associated critical areas or otherwise be detrimental to the public welfare.

The proposal will not create a significant adverse impact to critical areas or be detrimental to the public welfare.

- g. The inability of the applicant to meet the dimensional standards is not a result of the actions by the current or previous owners in subdividing or adjusting a boundary line after the effective date of SCC 14.24.

The inability of the applicant to meet the standard 225 foot setback is not a result of the actions by the current or previous owners in subdividing or adjusting a boundary line after the effective date of SCC 14.24. No subdivision or boundary

line adjustment has occurred since Mr. Koetje's purchase of the property. The existing residence, constructed prior to critical areas regulations, is located between a slough and a category II wetland/shoreline. The distance between the shoreline/wetland and the slough ranges from 185 feet to 275 feet, which does not provide any area for residential expansion utilizing standard critical area buffers. The Department concludes that an addition to the east side of the existing residence would result in the least environmental impact to critical areas.

- h. The granting of this variance is justified to cure a special circumstance and not simply for the economic convenience of the applicant.

The applicant is proposing an addition to the existing residence. There is no other possible location for its placement.

- 2. **MITIGATION SEQUENCING:** Buffer Width Decreasing, SCC 14.24.540(3) & SCC 14.24.240 (3), allows for the reduction of a standard buffer when the project has been shown to have used the mitigation sequencing found in SCC 14.24.080. The sequencing requirements with the Hearing Examiner findings in italics are as follows:

- a. The mitigation sequence requires a project to first avoid all impacts if possible.

Complete avoidance is not possible in this instance without removing all reasonable use of the parcel.

- b. Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.

The applicant proposes to add on to the existing residence. An addition to the east side of the existing residence would result in the least environmental impact to critical areas.

- c. Any impacts must be rectified by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity.

The existing residence, existing agricultural buildings and the area proposed for the addition are located on a dike constructed prior to the 20th century. The dike was lawfully developed prior to critical areas regulations with a residence and agricultural buildings. Although the critical areas buffers have been developed or landscaped in this area, the proposal includes a mitigation plan to restore some habitat adjacent to drainage ditches on the eastern portion of the parcel.

- d. The impacts must be reduced or eliminated over time by preservation and maintenance operations during the life of the action.

The proposal includes placing the remaining shoreline/wetland buffer into a Protected Critical Area (PCA) pursuant to SCC 14.24.090. This will ensure the area will be left undisturbed, in a natural state in perpetuity, except for those portions of the PCA that require dike maintenance for flood protection.

- e. The final step in the mitigation sequence is to compensate for any impacts by replacing, enhancing, or providing substitute resources or environments.

The project includes the installation of native tree species along 700- feet of a slough on the eastern portion of the subject site. The mitigation is anticipated to provide habitat in an area which previously had little vegetation. In all circumstances where a substantial portion of the remaining buffer is degraded, the buffer reduction plan shall include replanting with native vegetation in the degraded portions of the remaining buffer area and shall include a five year monitoring plan. The project proposal includes enhancing the buffer areas outside of the dike maintenance areas by adding native vegetation to the slough on the eastern portion of the property.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this application and has authority to make a decision.
2. This project complies with the requirements of the criteria for granting a Critical Areas Variance application.

DECISION AND ORDER

The Hearing Examiner now **approves** the Critical Areas Variance Application for the proposed building expansion with the following conditions:

1. The project shall follow all of the recommendations of the Critical Areas Site Assessment prepared by Graham-Bunting and Associates, dated July 5, 2010.
2. The mitigation required shall be completed prior to final inspection of the building permit.
3. A Protected Critical Area (PCA) site plan shall be recorded with the County Auditor's office prior to approval of the building permit application.
4. Silt fences should be erected immediately downgradient of all land disturbances and should remain in place until site vegetation is reestablished.
5. Disturbed areas of the construction site should be revegetated utilizing grass seed that is native to the Pacific Northwest.
6. This variance shall expire if the use or activity for which it is granted is not commenced within three years of final approval. Knowledge of the expiration date is the responsibility of the applicant. (SCC 14.24.140(6)).

Dated this ____ day of November, 2010.

C. Thomas Moser
Skagit County Hearing Examiner, Pro Tem