

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Alice Souders  
8586 Hunts Point Lane  
Hunts Point, WA 98004
- Request:** Critical Areas Variance, PL19-0066
- Location:** 6398 West Shore Road, Guemes Island, within Tracts 12 and 13, Plat of Driftwood tracts of Guemes Island, together with second class tidelands. Parcel no: P65126
- Land Use Designation:** Rural Intermediate (RI) and Guemes Island Overlay
- Summary of Proposal:** To reduce the 100-foot marine buffer to 62 feet, reduce the 150-foot Category III wetland buffer to 0 feet and reduce the 300-foot Category II wetland buffer to 30 feet to accommodate construction of a replacement single-family residence with attached garage and new septic system.
- Public Hearing:** June 26, 2019. Testimony by Planning and Development Services (PDS) staff and applicant. No public testimony.
- DecisionDate:** The application is approved, subject to conditions. July 12, 2019
- Reconsideration/Appeal:** Reconsideration may be requested by filing with PDS within 10 days of this decision. Appeal is to Board of County Commissioners by filing with PDS within 14 days of this decision, or decision on reconsideration if applicable.
- Online Text:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearingexaminer](http://www.skagitcounty.net/hearingexaminer)

## **FINDINGS OF FACT**

1. Alice Souders (applicant) seeks to replace a single-family residence on the west side of Guemes Island looking out on the Bellingham Channel. In so doing she has applied for a variance from critical areas setbacks.

2. The site is at 6398 West Shore Road, Guemes Island. The property is Tracts 12 and 13, Driftwood Tracts of Guemes Island, according to the plat thereof, recorded in Volume 6 of Plats, page 15, records of Skagit County, Washington; Together with second class tidelands fronting and abutting upon said tracts. The property is in Sec. 2, T35N, R1E, W.M. It is one legal lot of record owned by Alice and James Souders.

3. The subject property is zoned Rural Intermediate (RI) and is within the Guemes Island Overlay. The parcel is 0.65 acres in size, rectangular in shape and has generally flat topography. Access is via a driveway from West Shore Road. There is an existing bulkhead and vertical timber wall along the shore that will not be altered. The property is within Flood Zone A4 and a floodplain development permit will be required.

4. The property presently contains 2,240 square feet of coverage by residence, garage and deck/patio. The new home, garage and deck/patio will cover 3,920 square feet. The new development will cover much of the existing building footprint, but will be located 12 feet further landward and will be re-oriented to match the orientation of neighboring homes. The new residence will be 63 feet from the Ordinary High Water Mark (OHWM). There will be a total of 1,680 square feet of new development.

5. The replacement structures will be in character with the highly developed shore side setting. Other residences nearby are of comparable or greater size. The proposal is for a reasonable use of the land.

6. Potable water is provided by the Guemes Island Water Association, a Group B water system. Sewage disposal is provided by an on-site septic system. A new larger septic system will be constructed with the drainfield along the north property line in a non-wetland area.

7. A Wetland Site Assessment, dated March 2, 2018, was prepared by Wetlands Resources, Inc. Two isolated Category III wetlands on the property were identified. One of these is exempt from regulation because it is too small. The other, Wetland B, measuring 3,646 square feet, currently consists of mowed grass with limited plant diversity and habitat value. A third wetland, identified as a Category II wetland, is located off site on adjacent land to the south and on land east of West Shore Road. Its buffer extends over the entire project site.

8. The existing residence is non-conforming to current shoreline and wetland buffer setbacks. Any on-site relocation or expansion requires critical areas variances.

9. The standard regulatory buffers here are a 100-foot marine shoreline buffer, a 150-foot buffer for the regulated Category III wetland (Wetland B) and a 300-foot buffer of the Category

II wetland. The proposal requests variances to authorize reduction of the 100-foot buffer to 62 feet, reduction of the 150 foot buffer to 0 feet and reduction of the 300-foot buffer to 30 feet.

10. The project will offset wetland and buffer impacts with plantings in the remaining area of the shoreline buffer and the Wetland B buffer. The mitigation plan is set forth in a Fish and Wildlife Habitat Conservation and Floodplain Habitat site assessment by Miller Environmental Service, dated January 28, 2019.

11. Approximately 4,827 square feet of the shoreline buffer and 1,680 square feet of the Wetland B buffer will be enhanced with native vegetation. The buffer areas will be identified as a Protected Critical Area to ensure long-term protection of buffer functions and values.

12. The application was deemed complete on March 4, 2019. Notice of Development Application was posted on the subject property, published, and mailed to property owners within 300 feet of the property. Local tribes and agencies with possible jurisdiction were also notified. A Revised Notice of Development was published on May 30, 2019, and also posted and mailed to property owners within 300 feet. The revision clarified the project description and noted the location of the off-site wetland to the south.

13. Two comment letters were received. One expressed support for the proposed buffer reductions. The other expressed concern over whether the reduced buffers could cause flooding to nearby properties. The Staff Report states that increased flooding is not likely. The wetland itself provides water storage, while the buffer function is to protect water quality and habitat.

14. The application was circulated to interested departments and agencies. Their comments are reflected in conditions of approval.

15. At the hearing the Staff described the project and the applicant expressed no objections to the Staff's analysis. The applicant noted that particular attention has been paid to providing for drainage. She said that the plan is to build an underground storage tank for stormwater which will, after capture, be pumped into an irrigation system for the mitigation planting area. She noted that three years were spent in developing and honing the project.

16. The Staff analyzed the project for compliance with the variance criteria of the Critical Areas Ordinance and the requirements for mitigation sequencing. They determined that the project, as conditioned, is consistent with the applicable variance criteria. The Hearing Examiner concurs with these findings and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

17. Any conclusion herein which may be deemed a findings is hereby adopted as such.

## **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over this proceeding. SCC 14.24.140(1)(b).
2. The proposal is exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(1)(d).
3. As conditioned the requested project meets the relevant variance criteria. SCC 14.24.140.
4. Any finding herein which may be deemed a conclusion is hereby adopted as such.

## **CONDITIONS**

1. The project shall be carried out as described in the application materials, except as the same may be modified by these conditions.
2. All required permits shall be obtained and their conditions adhere to.
3. The recommendations of the Miller Environmental Services report dated January 28, 2019, shall be deemed conditions of approval.
4. Prior to final inspection of the new residence, all mitigation recommended in the January 28, 2019 plan prepared by Miller Environmental Services must be completed.
5. Within 30 days of plant installation, the applicant shall submit an as-built site plan of the mitigation plantings as well as provide photographs of the installed plants.
6. All mitigation plants shall maintain a survival rate of 100% following the first year and 85% following years two, three and five.
7. The site must be maintained to exclude non-native English ivy, Himalayan blackberry, Japanese knotweed and Scotch broom within the mitigation areas.
8. The applicant shall comply with all relevant County regulations, including but not Chapter 14.32 SCC; SCC 16.300, and SCC 14.16.630. Temporary erosion and sedimentation control shall be provided during construction. Stormwater design, to be accomplished at the building permit stage, may require an engineer.
9. All development shall comply with the Skagit County Shoreline Master Program (SMP)
10. A Protected Critical Area (PCA) site plan shall be recorded with the County Auditor's office prior to submittal of the building permit application.

11. The variance shall expire if the uses or activities for which it is granted are not commenced within three year of final approval. Knowledge of the expiration date is the responsibility of the applicant.

12. If the applicant proposes any modification of the subject proposal, she shall notify Planning and Development Services prior to the start of construction.

13. Failure to comply with any condition of approval may result in permit revocation.

### **DECISION**

The application for a Critical Areas Variance (PL19-0066) is approved subject to the conditions set forth above.

  
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Wick Dufford, Hearing Examiner

Transmitted to applicant and staff, July 12, 2019.