

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicants:** Melvin and Deanna Elvebak  
2312 North Shamrock Lane  
Oak Harbor, WA 98277
- Request:** Critical Areas Variance, PL19-0605
- Location:** 5406 Guemes Island Road within Gov. Lot 3, Sec. 36,  
T36N, R1E, W.M. Parcel No. P46861
- Land Use Designation:** Rural Intermediate
- Summary of Proposal:** To reduce the standard 150-foot buffer on a Category III wetland to a minimum of 60 feet to allow for an addition to an existing cabin.
- Public Hearing:** By telephone on July 8, 2020. Testimony by Planning and Development Services (PDS) staff, the applicants, and two members of the public
- Decision/Date:** The application is approved, subject to conditions. July 21, 2020
- Reconsideration/Appeal:** Reconsideration may be requested by filing with PDS within 10 days of this decision. Appeal is to the 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. Melvin and Deanna Elvebak seek a variance from the standard 150 foot buffer on a Category III wetland. They seek a reduction to 60 feet to allow for an addition to an existing cabin.
2. The property is located at 5406 Guemes Island Road which is within Gov't Lot 3, Sec. 36. TN36, R1E, W.M. The parcel number is P46861.
3. The parcel is .25 acre in size and is designated Rural Intermediate. Presently it contains the existing cabin and a small outbuilding. These are elevated approximately 3.5 feet above the adjacent wetland and appear to have been placed on historic fill. The parcel extends across Guemes Island Road toward the Padilla Bay shoreline. The bayside portion is maintained in grass.
4. The applicants also own P46857 which comprises 24.48 acres southwest of the cabin and contains a portion of a large wetland. Near the project site the wetland is dominated by reed canary grass, but it also includes scrub/shrub and forest.
5. The wetland has been affected by clearing and ditching, but it is rated Category III because of its size and proximity to adjacent habitats and to the shore.
6. The existing cabin covers 520 square feet with about 400 square feet in decks surrounding the cabin. An 80 square-foot storage shed is located southwest of the house, The subject project would add about 164 square feet of living space. The average size of homes in the area is approximately 1648 square feet.
7. The existing cabin includes two bedrooms, a bathroom with shower, a small living room and a very small kitchen. Standard sized appliances will not fit into the kitchen. The bedrooms can only accommodate a bed with no other furniture.
8. The addition proposed would enlarge the kitchen and bedrooms to accommodate standard sized appliances, larger beds and typical furniture. The result will be living space less of than 700 square feet.
9. A Wetland, Fish and Wildlife Assessment was prepared by a qualified professional. The assessment concluded that the total project (house addition—164 square feet, gravel drive addition—475 square feet) will occupy 639 square feet of wetland buffer, and that this can be mitigated by recommended plantings of trees and shrubs.
10. The site is partially located within a Rural Residential shoreline environment, but will meet all dimensional standards of the County's Shoreline Management Master Program.
11. The parcel lies within an A4 designated flood hazard area, so a floodplain development permit will be required.

12. Notice of Development was published, posted and mailed as required by law. Notice of the Public Hearing was properly given.

13. Comments were received from David, Lowell and Howard Ashbach, Jack and Diane Rosellini, Bob Betz, Steve and Didi Funk, Tim Riordan and Steve Orsini. The Rosselini, Betz, Funk and Riordan comments were all in support of the project. The Ashbach and Orsini expressed opposition. All of the opponents focused on water usage.

14. No government agencies or departments expressed concerns.

15. The need for the spatial variance sought results from the special circumstances of small lot size and critical area constraints, not from actions of the applicants. The modest residential enlargement proposed is a reasonable use of the property, resulting in a residence still smaller than the neighborhood average. No special privilege will be conferred.

16. The Staff evaluated the application in light of the critical areas variance criteria and found that, as conditioned, the reduction sought in the buffer for the Category III wetland will be consistent with these criteria. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

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

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over these proceedings. SCC 14.24.140(1)(b).
2. The proposal is exempt from the requirements of the State Environmental Policy Act (SEPA) WAC 197-11-800(1).
3. The proposed variance complies with the relevant criteria for approval of a critical areas variance. SCC 14.24.140(3).
4. The proposed variance is the minimum variance that will make possible the reasonable use of the property.
5. The granting of the variance will be in harmony with the general purpose and intent of the Unified Development Code.
6. The proposed variance meets the criteria of SCC 14.10.040(d).
7. Representations about water supply are not relevant to this application. The subject proposal relates to solely to spatial concerns.
8. Any finding which may be deemed a conclusion is hereby adopted as such.

## CONDITIONS

1. The project shall be located and constructed as described in the application materials, except as the same may be modified by these conditions.
2. The applicants shall obtain all required permits and abide by the conditions of same.
3. The applicants shall comply with all applicable State and local regulations.
4. The recommendations of the Wetland and Fish and Wildlife Assessment prepared by Edison Engineering, dated July 9, 2019 shall be considered conditions of approval.
5. The mitigation plantings shall be installed prior to final inspection of the addition.
6. The applicant shall submit an as-built site plan of the mitigation plantings as well as photographs of the installed plants. These items shall be submitted within 30 days of plant installation.
7. A Protected Critical Area (PCA) site plan shall be recorded with the County Auditor's office prior to submittal of the building permit application.
8. 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 applicants.
9. Failure to comply with any permit condition may result in permit revocation.

## ORDER

The requested Critical Areas Variance (PL 19-0605) is approved, subject to the conditions set forth above.

**SO ORDERED**, this 21, day of July 2020.



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Wick Dufford, Hearing Examiner

Transmitted to Applicants, County staff and interested parties July 21, 2020.

See Notice of Decision, page 1 for appeal information.