

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

**Applicant:** Nick Rempel  
3340 36th Ave. South  
Seattle, WA 98144

**Request/File No:** Shoreline Variance, PL 13-0342  
Critical Areas Variance, PL 13-0380

**Location:** North end of Mercer Road on shoreline of Samish Island. The property is within the SE1/4 Sec. 26, T36N, R2E, W.M. Parcel No. 47134.

**Shoreline Designation:** Rural Residential

**Summary of Proposal:** Applicant proposes to build a two-story residence, with a footprint of 900 to 1,000 square feet, at the base of a high coastal bank. There is there an approximately 150-foot wide by 45-foot deep flat building area that was created years ago by placing fill behind a four-foot high concrete bulkhead at the Ordinary High Water Mark (OHWM). Access to the base of the slope is provided by an existing easement extending Mercer Road by cutting across the slope to the shore. Except for a small shed, the parcel is undeveloped. The requested variances are for a 25-foot setback from the OHWM.

**SEPA Compliance:** Exempt

**Public Hearing:** March 26, 2014. Testimony by Staff and applicant. No public testimony. Planning and Development Services (PDS) recommended approval.

**Decision/Date:** The application is approved, subject to conditions. April 11, 2014.

**Reconsideration/Appeal:** A Request for Reconsideration may be filed with PDS within 5 days of this decision. The decision may be appealed to the Board of County Commissioners by filing an appeal with PDS within 5 days of the date of decision or decision on reconsideration, if applicable.

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

## **FINDINGS OF FACT**

1. Nick Rempel (applicant) seeks a Shoreline Variance and Critical Areas Variance to build a house next to Samish Bay.
2. The property is located on the north end of Samish Island at the end of Mercer Road, within a portion of Sec. 26, T36N, R2E. W.M. The parcel number is P47134.
3. The property includes a steep bluff extending about 85 feet above the shore area. An access easement from Mercer Road traverses the slope. There is a flat area at the bottom of the slope which extends about 45 feet landward from a bulkhead at the OHWM. This is the area for which the home is proposed.
4. The building site was created by actions taken prior to the adoption of the Shoreline Management Act.
5. The plan is to build a two-story house next to the base of the slope. A six-foot high retaining wall will be installed between the slope and the residence along the southern perimeter of the building. A septic drainfield will be placed behind the retaining wall. Health Department review noted that a septic permit has been issued for the project.
6. The new house will have a footprint of 900 to 1,000 square feet. The structure will have no effect on existing residential views. The plan calls for a setback of approximately 25 feet from the OHWM. This is consistent with the setbacks for existing residential development along this shoreline.
7. A permit for a similar house project on this lot was issued, after hearing, in May of 2006. The permit expired before the project commenced. The instant request seeks a new permit to start the development clock running again.
8. In 2005 a Geologic Hazard and Fish and Wildlife Assessment was prepared for the residential project by Edison Engineering. With the construction of the proposed retaining wall, the report concluded that a residence could be safely built. The Fish and Wildlife Assessment as amended recommended a detailed buffer enhancement plan (mitigation) to compensate for vegetation removed in connection with construction.
9. Edison Engineering reviewed its prior work and presented an Addendum dated December 12, 2013. The addendum incorporates newly required analysis of potential impacts to threatened or endangered species. The opinion of the report is that building the house will not adversely affect threatened or endangered species in the area.
10. The proposal was reviewed by various County Departments. Public works noted that a floodplain development permit is required for the proposal.

11. The public hearing was given proper notice. There was no public testimony. A comment letter from RE Sources for Sustainable Communities and the North Sound Baykeeper program asked for a fish and wildlife assessment. The assessments made were provided to the commenter and further comments were not received.

12. The relevant shoreline setback is 50 feet and the relevant critical areas setback is 100 feet. The proposed project cannot meet these limits because of topographic constraints.

13. The criteria for Shoreline Variances are set forth in the Skagit County Shoreline Master Program (SMP) at SMP 10.03(1). The criteria for Critical Areas Variances are set forth at SCC 14.24.140(3). The Staff Report analyzes the application in light of all of these criteria and concludes that, as conditioned, the project will be consistent with them. 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.

14. The record demonstrates that no substantial changes in the conditions and circumstances have occurred since the initial permit was issued in 2006. The application is from children of the initial applicant. No reasons have been presented why a new time frame for construction should not be allowed.

15. 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.
2. The proposal is exempt from the procedural requirement of the State Environmental Policy Act. WAC 197-11-800(6)(b).
3. The findings support a conclusion that the project, as conditioned, will meet the variance criteria of the SMP. SMP 10.03(1).
4. The findings support a conclusion that the project, as conditioned, will meet the Critical Areas variance criteria. SCC 14.24.140(3).
5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

### **CONDITIONS**

1. The construction of the project shall conform to the application materials, except as the same may be modified by these conditions.
2. The recommendations of the Edison Engineering site assessment and addenda shall be followed, except as they may be modified by these conditions.

3. The mitigation plan for enhancement of the remaining shoreline buffer area shall be fully implemented.

4. All mitigation plants shall maintain a survival rate of 100% following the first year and 80% following years three and five. If the plants do not meet these survival rates, a qualified professional shall assess the site and determine the best method to improve the survival rate for additional native plants.

5. The Critical Areas variance shall expire if the use or activity for which it is granted is not commenced within three years of final approval.

6. The project shall be commenced within two years of final Shoreline variance approval and completed within five years thereof.

7. Temporary erosion/sedimentation control measures shall be used in accordance with the Skagit County Drainage Ordinance, Chapter 14.32 SCC.

8. The applicant shall comply with all other relevant County and State regulations, including, but not limited to State Water Quality Criteria for Surface and Ground Water, Chapters 173-201A and 173-200 WAC, Maximum Environmental Noise Levels, Chapter 173-60 WAC and the Skagit County Zoning Ordinance, Chapter 14.16 SCC.

9. The remaining critical area buffer shall be placed into a Protected Critical Area (PCA) as required by SCC 14.24.090. The PCA shall be recorded at the time of Building Permit application.

10. The applicant shall obtain all other required permits. A copy of this decision shall be submitted with the Building Permit application.

11. If the applicant proposes any modification to this proposal, it shall request and receive permission from PDS to do so.

12. Failure to comply with any permit condition may result in permit revocation.

**DECISION**

The requested Shoreline Variance (PL13-0342) and Critical Areas Variance (PL13-380) are approved, subject to the conditions set forth above.

**DONE**, this 11<sup>th</sup> day of April, 2014.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant, April 11, 2014

See Notice of Decision, Page 1, for appeal information.