

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

**Applicant:** Ted Brown  
310 Lilac Lane  
Mount Vernon, WA 98273

**Contact:** Tina Mirabile  
1500A East College Way, Ste 506  
Mount Vernon, WA 98273

**Request:** Shoreline Substantial Development and Shoreline Variance Permit,  
PL15-0027  
Critical Areas Variance, PL15-0108

**Location:** 19163 West Big Lake Blvd within the Northwest quarter of Section 7,  
Township 33 North, Range 5 East, W.M., Skagit County, Washington  
Parcel: P62137

**Land Use Designations:** Zoning: Rural Village Residential  
Shorelines: Rural Residential

**Summary of Proposal:** Applicant proposes to remodel an unpermitted pole building into a single family residence, and remove an unpermitted previously constructed dock and construct a new dock.

**SEPA Compliance:** Mitigated Determination of Non-Significance issued on May 21, 2015.  
No appeals.

**Public Hearing:** November 18, 2015. Testimony by Staff and Applicant. PDS recommended approval.

**Decision/Date:** The application is approved subject to conditions. December 1, 2015.

**Reconsideration/Appeal:** Critical Areas: 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.  
Shoreline: Reconsideration may be requested by filing with PDS within 5 days of this decision. Appeal is to Board of County Commissioners by filing with PDS within 5 days of this 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. This case arose from the initial unpermitted construction by Mr. Ted Brown to his property located at 19163 West Big Lake Blvd. within the NW ¼ of Section 7, Township 33 North, Range 5 East, W.M., Skagit County, Washington. Parcel #P62137. The property consists of .49 acre.

2. Originally the property was used as recreational. Mr. Brown received an access and grading permit in 2011 to install a gravel driveway and underground utilities. A building permit was issued in 2014 to construct a post and frame picnic shelter to park a recreational vehicle underneath.

3. On January 5, 2015 Skagit County issued an Administrative Order to Abate and indicated that building construction and fill and grading within critical areas occurred without a permit. A further inspection took place on May 21, 2015 as noted in Department of Ecology letter July 2, 2015 (ex 12) listing the more egregious of the unpermitted activity.

4. On January 29, 2015 Mr. Brown applied for a Shoreline Substantial Development Permit (SSDP) and a Shoreline Variance Permit. Mr. Brown also applied for a Critical Areas Variance on March 17, 2015.

5. The existing unpermitted dock is approximately 130 feet long (117 feet waterward of the OHWM ) and five feet wide. The application has been revised to remove the existing floating dock and construct a 111 foot long dock in its place. The average dock length within 300 feet of the parcel is 111.66 feet.

6. The applicant also proposes to remodel the unpermitted pole barn into a single family residence (SFR). The average setback for residences in the area is 105.5 feet. The proposed residence is located 65.5 feet from Big Lake.

7. The property is designated Rural Village Residential in both the Comprehensive Plan and the Zoning Maps. The site is designated Rural Residential in the Skagit County Shoreline Management Master Program (SMMP).

8. The standard Critical Areas buffer from Big Lake is 100 feet. The Shoreline setback is 105.5 feet. Wetlands have been identified on and adjacent to the property. The wetlands are rated as a Category II with a habitat score of 16, requiring a 75 foot buffer for a moderate residential impact. (See ex 11.) A reduction of the wetland buffer to 65.5 feet is included as part of the Critical Areas Variance (CAV).

9. The property is accessed from West Big Lake Blvd. upon a recently installed 300 foot gravel driveway east of the boulevard.

10. Surrounding land uses include single family residential and recreational homes as well as forestry uses of long-term commercial significance.

11. Several trees along the shoreline have been preserved and provide some screening from the road and from the lake.

12. A letter of completeness for the proposal was issued March 18, 2015. Notice of application was published March 26 and April 22, 2015. Mailing to all property owners within 300 feet of the subject property also took place. There was a 30 days comment period associated with the Notice of Development which ended May 4, 2015. Two comment letters (ex 12 and 13) were received during the period.

13. A Mitigated Determination of Non-significance (MDNS) was issued May 23, 2015. (ex 4). No comments were received during the period ending June 12, 2015. A number of conditions were included within the MDNS.

14. The development is not within a designated flood hazard area except for the immediate shoreline area.

15. The residential development, including a dock, is designed to minimize impact to the shoreline area. The 65.5 foot buffer provides an area to enhance the natural vegetation and improve the shoreline environment beyond what currently exists. (ex 11, p 8,10)

16. The proposal does not allow any armoring on the shoreline and does require removal of some vegetation to restore the shoreline buffer. (ex 11, p 10.) No fertilizer nor herbicide will be allowed to be used in the buffer area. There will be no vegetation clearing and the existing cedar and alder trees will be retained. (ex 3)

17. The 0.49 acre property is irregularly pie shaped and requires buffers associated with the Big Lake shoreline and a Category II Lacustrine fringe wetland.

18. The reduced 65 foot critical area buffer consists of 7,800 square feet in total area (ex 4).

19. The property is served by public sewer and water. Under SCC, buffers may be reduced when impacts are mitigated and the result provides equal or greater protection of the Habitat Conservation Areas (HCA) functions and values.

20. Under SCC, the required setback for the SFR is 35 feet. When the lot is “panhandled” the front setback where the lot width reaches the minimum lot width for the zone, in this case where the lot width reaches 75 feet (supplied with public water). An approved administrative setback reduction will need to be obtained as a requirement before building the SFR development.

21. Public use of the lake at this location will not change. The dock design includes light-penetration to minimize impacts. Prior to building the dock a hydraulics permit from Washington Department of Fish and Wildlife must be obtained (ex 13).

22. Currently there are limited wildlife habitat and wetlands present on site as well as relatively poor native fish habitat. This proposal will not likely result in a reduction of the overall wildlife habitat area or quality of the wetland or in any way diminish essential fish habitat along the shoreline.

23. Erosion control measures to prevent any adverse impacts to surface and ground water are required and will be followed as a condition of permit issuance.

24. This proposal puts the SFR closer to the shoreline than surrounding residences but is similar to existing development patterns. Setback, lot coverage and height of the proposed residence and proposed dock length is compatible with surrounding areas and preserves the natural features of the area.

25. The proposed mitigation plan will provide additional vegetation to enhance views both from the road and from Big Lake.

26. The proposal seeks to control and treat surface water runoff by installing silt fencing, reseeded disturbed areas, limiting construction activities to dry seasons and other erosion control measures required by SCC. A mitigation planting plan for the remaining shoreline buffer will improve habitat and screening.

27. The size and shape of P6127 are limiting such that strict application of the dimensional requirements of the SMMP would virtually prohibit residential development on the property.

28. The hardship of developing this parcel is not a result of the applicant's actions or any deed restrictions. The size of the proposed SFR and the requested variances are the minimum necessary to afford relief considering the size and location of the developable portions of the project.

29. The replacement of the RV cover with a residence will not have a substantial detrimental effect on the public interest. The granting of this variance will not have a substantial adverse effect on the shoreline environment.

30. Due to the shape, width and shallow depth of the parcel a zoning setback reduction would not be adequate to allow for development outside the critical area buffers.

31. The site assessment submitted with the application (ex 11) has been thoroughly and precisely prepared by a qualified professional. The assessment utilizes best available science to support the modification of the critical area buffers.

32. Exhibit 11 generally concludes that buffer reductions allow reasonable development of the property while minimizing impacts to critical areas. The reasons supplied in the assessment justify the granting of the requested CAV from dimensional standards.

33. As long as the mitigation plan is fully implemented, the proposal will not create a significant adverse impact to the associated critical areas.

34. The location of the proposed SFR is the minimum necessary for reasonable use of the parcel. Any portion of the buffer degraded during construction must be restored with native vegetation. After construction the remaining buffer area will need to be identified as a protected critical area.

35. The planting plan for enhancement of the buffer areas has been provided and includes planting 32 trees and 58 large shrubs within the 65.5 foot setback buffer.

36. The hearing was held November 18, 2015. Exhibits 1-11 were admitted.

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

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over the subject matter and parties of this proceeding.

2. The applicant will remove the existing 107 foot long unpermitted floating dock and construct a 111 foot dock in its place that meets the requirements of SCC, the SMMP and a required hydraulics permit.

3. A hydraulics permit shall be obtained prior to the construction of the new dock.

4. SCC and SMMP policies and requirements for a shoreline variance and for a critical area variance have been met. An approved administrative setback reduction from Planning and Development Services (PDS) shall be obtained prior to construction. All building permits shall likewise be obtained prior to construction.

5. Properly conditioned (ex 1, p 13) this proposal has received a recommendation of approval from PDS for the Shoreline Substantial Development Permit, the Shoreline Variance request and the Critical Areas Variance request.

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

### **CONDITIONS**

1. The recommendations of the Advanced Environmental Solutions site assessment dated April 2012, and amended June 24, 2015 shall be considered conditions of approval unless modified by the conditions below.

2. The mitigation plan for enhancement of the remaining shoreline buffer area shall be fully implemented.
3. 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 that survival rate, a qualified professional must assess the site and determine the best method to improve the rate of survival for additional native plants. A taller and stronger beaver exclusion fence shall be installed.
4. 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. Knowledge of the expiration date is the responsibility of the applicant. (SCC 14.24.140(6)).
5. The applicant and its contractors shall comply with the State Water Quality Criteria, Surface Water WAC 173-201A and Ground Water WAC 173-200, and WAC 173-60 Maximum Environmental Noise Levels for noise and light.
6. Temporary erosion/sedimentation control measures shall be utilized in accordance with SCC 14.32.060, the Drainage Ordinance.
7. The applicant shall comply with all relevant provisions SCC 14.16 the Zoning Ordinance.
8. The applicant shall submit a copy of the Hearing Examiner's written order (decision) with the building permit application.
9. The project shall be commenced within 2 years of the shoreline variance approval and completed within 5 years.
10. The applicant shall strictly adhere to the project information (site diagram) submitted for this proposal. If the applicant proposes any modification of the subject proposal, PDS shall be notified and approval received prior to the start of construction for any modifications.
11. The applicant shall remove all equipment, materials and sheds located within the critical areas buffer.
12. The shoreline setback and wetland buffer shall be placed into a protected critical area (PCA) as per the requirements of SCC 14.24.090. The PCA shall be recorded prior to building permit application.
13. The proposed residence structure shall not exceed an average height of 30 feet and improvements onsite shall not exceed 30% developed area.

## **ORDER**

The requested Shoreline Substantial Development and Shoreline Variance Permit (PL15-0027) and Critical Areas Variance (PL15-0108) are approved, subject to the conditions set forth above.

**DONE**, this 1<sup>st</sup> day of December, 2015

---

W. H. Nielsen, Hearing Examiner *pro tem*

Transmitted to Applicant, December 1, 2015

See Notice of Decision, page 1, for appeal information