

**WHATCOM COUNTY HEARING EXAMINER**

RE: SHORELINE SUBSTANTIAL DEVELOPMENT )	SHR2008-0027
SHORELINE VARIANCE )	SHV2008-0007
Application for )	
)	
<i>Mark and Connie Webster</i> )	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicants are requesting approval of a Shoreline Variance to reduce shore setbacks and buffers from the marine shoreline of Drayton Harbor and from shoreline associated wetlands in order to construct a single-family residence and necessary appurtenances. The requested Shoreline Variance is also to fill a portion of two shoreline associated wetlands in order to construct a residential driveway and required turnaround to accommodate emergency vehicles. Lastly, the requested Shoreline Variance proposes to reduce the requisite shoreline side yard setback to accommodate the location of the above-referenced emergency turnaround.

The Applicants are also requesting approval of a Shoreline Substantial Development Permit to construct the above referenced single-family residence and associated appurtenant developments.

Decision: The requested permits are granted, subject to conditions.

**FINDINGS OF FACT**

**INTRODUCTION**

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing.

**I.**

**PRELIMINARY INFORMATION**

Applicant: Mark and Connie Webster



Parties of Record:

Mark and Connie Webster  
5226 - 172<sup>nd</sup> Place SW  
Lynnwood, Washington 98037

Eric Weden  
Weden Engineering, LLC  
PO Box 3246  
Ferndale, WA 98248

Chad Yunge  
Planning and Development Services

Exhibits:

- 1 Land Use Application
  - 1-1 Customer Receipt
  - 1-2 Supplemental Application
  - 1-3 Chicago Title: Whatcom County Parcel Information
  - 1-4 Stipulation and Agreed Judgment Quieting Title
  - 1-5 Project Narrative, dated December 29, 2008, from Weden Engineering
  - 1-6 Neighboring Parcel Addresses
  - 1-7 Form Letter, dated January 12, 2009
  - 1-8 Email memo from Yunge to Magner, dated June 18, 2009
- 2 Revised Staff Report, dated July 13, 2009
- 3 Revised Site Plan, dated June 15, 2009
- 4 Certificate of Mailing, dated June 4, 2009
- 5 Certificate of Posting, dated June 9, 2009
- 6 Legal Notice, dated June 11, 2009
- 7 Mitigation Plan, by Northwest Ecological Services, dated December 2008 and Revision 2.0 July 2009
- 8 Aerial Photo
- 9 Agency Comments

- 10 Letter of support, dated January 30, 2009 from Harbor Shores, LLC, neighboring property owner
- 11 Application Processing Track
- 12 Certification of Mailing, Application Notice, dated January 13, 2009

**II.**

The Applicants are requesting a Shoreline Substantial Development Permit and a Shoreline Variance Permit for the proposed construction of a single-family residence and associated appurtenances.

**III.**

The Applicant has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the hearing. The Findings of Fact and Conclusions of Law of the Shoreline Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Revised Staff Report, Exhibit #2, dated July 13, 2009, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

**IV.**

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

**CONCLUSIONS OF LAW**

**I.**

The Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Permits for the proposed construction of a single-family residence and associated appurtenances.

Findings of Fact and Conclusions of Law are set forth in the Revised Staff Report, Exhibit #2, dated July 13, 2009. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, and with the Goals and Policies of the Whatcom County Shoreline Management Program. The Conclusions of Law adopted by Staff in the Staff Report are incorporated herein as Conclusions of Law.

## **II.**

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

### **DECISION**

A Shoreline Substantial Development Permit and Shoreline Variance Permit are hereby granted to Mark and Connie Webster for the proposed construction of a single-family residence to be located on Assessor's Parcel No. 400107 377110, Dearborn Avenue, Blaine, Washington. The permits are granted subject to the following conditions:

1. The proposed developments shall be consistent with the scope and site plans (dated June 3, 2009) as well as the revised mitigation plan (dated July 2009) approved by this shoreline substantial development and variance permit. Any changes to the proposed development shall require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner as well as the Washington State Department of Ecology.
2. A residential building permit is required prior to any development activity on the subject property. The applicant shall contact the WCPDS Building Services Division regarding requirements for application and to set up an application appointment. The building permit shall not be issued until all conditions of this shoreline permit have been met.
3. The project shall comply with all applicable federal, state and local laws and regulations. When other applicable regulations conflict with this permit approval, the more restrictive shall apply. Copies of any necessary federal permit approvals associated with the wetland fill shall be provided to the WCPDS prior to issuance of the residential building permit.
4. The required mitigation shall be subject to the following conditions:
  - An assignment of savings for the cost of the mitigation and 10-years of monitoring must be submitted prior to final approval of the residential building permit.
  - The mitigation shall be installed and an as-built plan submitted prior to temporary occupancy approval associated with the residential building permit.
  - A conservation easement protecting all remaining wetlands, buffers, and the mitigation area shall be recorded prior to final approval of the residential building permit.
  - Northwest Ecological Services will be the environmental consultant throughout the 10-year monitoring period and will be responsible for supervision of mitigation installation including preparation, planting, wetland creation, wetland and buffer enhancement, as-built report, annual monitoring reports and maintenance of the mitigation area.
5. A Trail Permit from Whatcom County Public Works (WCPW) – Engineering Services for the use of Dearborn Avenue. Contact Mary White at 360-676-6730 to start this process.

6. The proposed driveway to the single-family residence shall be a minimum of 12-feet in width and topped with a minimum of 2-inches of compacted crushed rock consistent with the WCPW Road Standards. Low impact development techniques are also acceptable
7. The proposed development is subject to the Drayton Harbor watershed special management area regulations enumerated in WCC Title 20. A temporary erosion and sedimentation control plan shall be submitted with the required residential building permit application for review and approval by WCPDS prior to issuance of the building permit.
8. If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during any ground disturbing activity, work in the area of discovery shall cease and the Whatcom County Shoreline Administrator (676-6907) LNTHPO (384-2298) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
9. Construction debris shall be wholly removed from the subject property upon completion of the proposed development. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority.
10. All materials that may come into contact with water shall be constructed of materials that will not adversely affect water quality or aquatic plants or animals.
11. Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development. No clearing of existing buffer areas with exception of areas to construct the driveway and house location shall be cleared.
12. Utilities shall be located within the proposed driveway corridor.
13. The proposed residence shall not exceed 30-feet in height as measured from existing average grade to the peak of the structure.
14. The applicant shall submit an engineered design for the proposed driveway demonstrating that the structure will not restrict surface water flow from the existing wetland across the site to Drayton Harbor. The design shall be submitted for review along with the required building permit.
15. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.19.A.3.

### **NOTICE**

In addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000. Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.

NOTICE OF ADMINISTRATIVE APPEAL PROCEDURES  
FROM FINAL DECISIONS OF  
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any opponent of record, or any County department. Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 15<sup>th</sup> day of July 2009.

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Michael Bobbink, Hearing Examiner



July 13, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

THE APPLICATION OF  
**MARK & CONNIE WEBSTER**  
FOR A SHORELINE SUBSTANTIAL DEVELOPMENT  
AND SHORELINE VARIANCE

SHR2008-00027  
SHV2008-00007  
FINDINGS, CONCLUSIONS,  
AND RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application:

The applicant is requesting approval of a shoreline variance to reduce shore setbacks and buffers from the marine shoreline of Drayton Harbor and from shoreline associated wetlands in order to construct a single-family residence and necessary appurtenances. The request for variance is also requested to fill a portion of two shoreline associated wetlands in order to construct a residential driveway and required turnaround to accommodate emergency vehicles. Lastly, the request for variance is requested to reduce the requisite shoreline sideyard setback to accommodate the location of the above-referenced emergency turnaround.

The applicant is also requesting approval of a shoreline substantial development permit to construct the above referenced single-family residence and associated appurtenant developments.

Recommendation:

Staff recommends approval of the proposed project subject to the conditions outlined within this staff report.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Mark and Connie Webster  
5226 172<sup>nd</sup> Place Southwest  
Lynnwood, Washington 98037

Applicant Representative: Ryan Smith – Weden Engineering, LLC

Property Location/Address: Vacant Parcel – Dearborn Avenue  
Blaine, Washington

Legal Description: Section 07, Township 40North, Range 01East, W.M,  
Assessor's Parcel No.: 400107377110

Adjacent Water Body: Drayton Harbor and associated wetlands

Shoreline Designation: Urban Conservancy / Aquatic

Shoreline of State-Wide Significance: No

Zoning: Urban 4 Units/Acre (UR4)

Comprehensive Plan: Urban Growth Area

Subarea: Blaine / Birch Bay

## B. PROCEDURAL INFORMATION

Authorizing Ordinances: SMP 23.50 Applicability  
SMP 23.70 Administration

### Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.05	Urban Conservancy Designation
SMP 23.30.11	Aquatic Designation
SMP 23.60.01	Shoreline Substantial Development Permit Criteria
SMP 23.60.03	Shoreline Variance Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.11	Residential Policies and Regulations

SEPA Review: Categorically Exempt per WAC 197-11-800(1)(b)(i).

## III. FINDINGS

The applicant is requesting approval of a shoreline variance to reduce shore setbacks and protective buffers from the marine shoreline of Drayton Harbor and from shoreline associated wetlands in order to construct a single-family residence and necessary appurtenances. The request for variance is also requested to fill portions of two shoreline associated wetlands in order to construct a residential driveway and required turnaround to accommodate emergency vehicles. Lastly, the request for variance is requested to reduce the requisite shoreline sideyard setback to accommodate the location of the above-referenced emergency turnaround. The applicant is also requesting approval of a shoreline substantial development permit to construct the above referenced single-family residence and associated appurtenant developments. All requested setback and buffer reductions, and proposed developments are depicted on site plans dated June 3, 2009, received by Whatcom County Planning and Development Services (WCPDS) on June 15, 2009.

The subject property consists of an undeveloped lot measuring approximately 1.31-acres in size located at the northern terminus of Dearborn Avenue. Drayton Harbor borders the subject property to the west and a tidally-influenced creek runs through the northern portion of the subject property. For purposes of this permit review, this creek is considered part of Drayton Harbor due to daily tidal inundation. Three shoreline associated wetlands have been identified and delineated on the subject property by Cantrell and Associates (2007) and Northwest Ecological Services (NES 2008, Revised July 2009). Two of the wetlands (Wetland B and Wetland C) are located between the end of Dearborn Avenue and the location of the proposed single-family residence. Wetland A is located immediately adjacent to Drayton Harbor to the north of the proposed residence. The OHWM of Drayton Harbor and the delineated upland edge of Wetland A are synonymous. The property consists of a mixture of forested areas and fallow pasture areas. Some areas have been recently cleared within the last few years according to available aerial photography.

A 30-foot wide easement borders the eastern property boundary for the purpose of future utility development in the area. This easement formally belonged to Whatcom County as right-of-way (ROW) to extend Dearborn Avenue; however this ROW has since been abandoned by the County.

Shoreline bulk provisions including setbacks, buffers etc are found in 23.90.13 of the SMP. Table 23.90.13.C states that shore setbacks and protective buffers are determined based on the provisions of Title 16.16, otherwise known as the Whatcom County Critical Areas Ordinance (CAO). The CAO is incorporated into the SMP pursuant to 23.10.06. The marine shoreline of Drayton Harbor is designated as a habitat conservation area (HCA) and the prescriptive buffer according to 16.16.740 measures 150-feet landward as measured from the OHWM. The prescriptive buffers for the wetlands located on or near the subject property are found in 16.16.630 and are based on site specific delineation, functional analysis and the intensity of the proposed land use. NES has determined that the following prescriptive buffers apply to the wetlands located within the project area:

Wetland A	60-feet
Wetland B	40-feet
Wetland C	60-feet

According to the applicant, the subject property contains evidence of historic and/or cultural resources. These areas have been delineated on the site and the proposed developments have been designed to avoid disturbance of these areas.

Shoreline sideyard setbacks are 10-feet as measured from each property line intersecting the shoreline. The shoreline sideyard setback within an urban conservancy-designated shoreline is 10-feet.

Due to the presence of numerous wetlands and other critical areas on and abutting the subject property, and application of the necessary buffers and setbacks described above, it has been determined by staff that the strict implementation of the SMP would impose an unnecessary hardship of the applicant. Therefore, a shoreline variance permit was required pursuant to 23.60.03. Additionally, wetland fill within the jurisdiction of the SMP requires approval of a shoreline variance permit pursuant to 23.60.03.C.

Pursuant to 23.60.01.A, a Shoreline Substantial Development Permit is required as the above proposal is not specifically exempt per 23.60.02.2. The proposed residential development exceeds the thresholds for review by exemption and a substantial development permit was therefore required.

#### IV. CONCLUSIONS

In the review of a shoreline variance permit, the Shoreline Administrator or Hearing Examiner, as appropriate, must find that the proposal is consistent with the variance criteria enumerated in 23.60.03.D as follows:

- 1. That the strict application of the bulk or dimensional criteria set forth in the SMP precludes or significantly interferes with a reasonable permitted use of the property;**

Staff Comment: The subject property abuts the marine shoreline of Drayton Harbor as well as a tidally-influenced stream. In addition, shoreline associated wetlands run through the subject property at numerous locations. A 30-foot utility easement encumbers the eastern portion of the subject property and evidence of historic and/or cultural resources have been delineated along the southwestern portion of the site. As this is the last lot located on Dearborn Avenue, an emergency turnaround has been required by the Whatcom County Fire Marshal's Office to accommodate emergency vehicles. As such, there is no suitable building area for a single-family residence and associated appurtenant development without the proposed wetland fill and reduction in protective buffers/setbacks from the marine shoreline areas and associated wetlands. The property is zoned for residential development and strict application of the dimensional setbacks in the case would preclude reasonable permitted use of the property according to this Administrator

- 2. That the hardship described in SMP 23.60.03.A is specifically related to the property, and is the result of conditions such as irregular lot shape, size, or natural features and the application of the SMP, and not, for example, from deed restrictions or the applicant's own actions;**

Staff Comment: It has been determined that the hardships stated previously within this staff report are based on natural features that exist on the property such as the presence of wetlands and proximity to the marine shoreline, and the presence of historic and/or cultural resources. In addition, the requirement to provide an emergency turnaround to serve all of Dearborn Avenue and the presence of a utility easement running through the property are outside of the control of the applicant.

**3. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects on adjacent properties or the shoreline environment.**

Staff Comment: Staff has determined that the design of the project is consistent with other single-family residential developments in the area. Dearborn Avenue is currently developed with single-family residences similar in size and scale to that of the proposed residence. The proposed home site is well screened from adjacent properties and no adverse effects on adjacent properties were identified during review of the permit, nor were adverse comments received from neighboring property owners during the requisite comment period. No adverse impacts on the shoreline environment are anticipated based on a mitigation plan reviewed and approved by staff as part of this assessment. Please see variance criteria 7 for further information regarding the required mitigation.

**4. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;**

Staff Comment: This administrator has recommended approval of at least two shoreline variance requests along Drayton Harbor due to the presence of shoreline associated wetlands and proximity to the marine shoreline within the last 4 years. The presence of wetlands in this area is common and most existing lots were platted well before the creation of the Shoreline Management Act (SMA). Consequently, there is little land available on such lots without the need for a variance approval. With exemption of the driveway, the development footprint of the proposed residence and necessary appurtenances occupy a footprint of less than 2,500 square feet. This is the same threshold utilized to approve new development on lots that meet the definition of non-conforming pursuant to 23.110 without a variance per 23.50.07.K. The wetland fill is necessary in order to access the least damaging portion of the subject property to critical areas, buffers and the historic and/or cultural resources identified on the property.

**5. That the public interest will suffer no substantial detrimental effect;**

Staff Comment: As conditioned, it is the determination of staff that the proposed development does not represent a substantial detrimental effect to the public interest. A mitigation plan has been developed to replace filled wetland areas and buffer encroachments. In addition, best management practices will be employed throughout the construction process to minimize any short term impacts to the shoreline environment.

**6. That the public rights of navigation and use of the shorelines will not be materially interfered with by the granting of the variance; and**

Staff Comment: No navigation impacts were identified in association with the proposed residential development. The residence will be screened from the water by the existing forested buffer between the shoreline and the structure.

**7. Mitigation is provided to offset unavoidable adverse impacts caused by the proposed development or use.**

Staff Comment: A mitigation plan conducted by NES, dated December 2008, and revised July 2009, was submitted by the applicant. The mitigation plan has been reviewed and approved by staff and when implemented, should result in no net loss to shoreline ecological functions and processes. Throughout review of the variance permit, staff has worked with the applicant/proponent on some necessary changes

to the proposed home location and configuration to minimize impacts as much as possible while still allowing reasonable development of the site for residential purposes consistent with 90.58.020.

**According to 23.60.03.G, in the granting of all variances, consideration shall be given to the cumulative environmental impact of additional request for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policy of 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.**

Staff Comment: 90.58.020 identifies residential development as a preferred use of Shorelines of the State as long as the development is conducted in a manner than minimizes negative impacts to the shoreline environment or other users. A mitigation plan has been reviewed and approved by staff to date and it has been determined that adequate opportunity exists on the subject property for wetland replacement and buffer enhancement. With proper monitoring and maintenance approved as part of the final mitigation plan, the proposal should result in no net loss shoreline ecological function over the long term. As such, additional approvals in the area subject to the same mitigation requirements are not believed to represent a cumulative adverse effect on the shoreline environment. No impacts to shoreline users were identified during the review of this project.

In the review of Shoreline Substantial Development Permits, the Administrator or Hearing Examiner, as appropriate, must find that the proposal is consistent with the following criteria:

- A. All regulations of the SMP appropriate to the shoreline designation and the type of use or development activity proposed shall be complied with, except those bulk and dimensional standards, which have been modified by approval of a Shoreline Variance Permit.**
- B. All policies of the SMP appropriate to the shoreline designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated. A reasonable proposal that cannot fully conform to these policies may be permitted, provided it is demonstrated that the proposal is clearly consistent with the overall goals, objectives and intent of the SMP.**

General policies and regulations applicable to all development within the jurisdiction of the SMP are outlined in 23.90. General policies and regulations applicable to the subject property are as follows:

#### **23.90.02 – Land Use**

Staff Comment: This section reiterates the policies enumerated in 90.58.020 and recognizes a use preference for residential developments on Shorelines of the State as long as the location, design and long-term management of the development does not substantially impact the shoreline environment or the lawful rights of publicly owned shorelines. It is staff's determination that the proposed project meets this regulation as conditioned.

#### **23.90.03 – Ecological Protection and Critical Areas**

Staff Comment: The proposed residential development has been designed to minimize, as so far as feasible, impacts to critical areas on or near the subject property including wetlands and the marine shoreline of Drayton Harbor. Design of this project is consistent with the mitigation sequence outlined within this regulation and with the required mitigation measures, should result in a no net loss of shoreline ecological functions.

#### **23.90.04 – Water Quality and Quantity**

Staff Comment: This section states that the location, construction, operation and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality over the long term.

According to NES, the material to be utilized as wetland fill for the driveway access to the building site will be designed to maintain existing surface water flow paths through the wetland areas. This will be accomplished by constructing course aggregate base rock below a permeable asphalt pavement section. The design will prevent concentrated flows, but based on final design criteria, may require an array of small, uniform culvert crossings space to imitate natural flow width and rates sufficient to hydrate the wetland mitigation area downstream. The applicant has indicated that an engineered plan will be designed after approval of this conceptual concept. This approval recommendation has been conditioned that the final plan be submitted and approved by WCPDS prior to issuance of the required building permit.

Based on the above information and attached conditions, the applicable water quality and quantity policies and regulations have been met.

#### **23.90.05 – Views and Aesthetics**

Staff Comment: According to this section, shoreline use and development activities should be designed and operated to minimize obstructions of the public's visual access to the water and shoreline. Such use and development should not significantly detract from shoreline scenic and aesthetic qualities that are derived from natural or cultural features, such as shoreforms, vegetative cover and historic sites/structures. Clearing, thinning, and/or limbing for limited view corridors should only be allowed where it does not adversely impact ecological and/or aesthetic values, and/or slope stability. Vegetation conservation should be preferred over the creation or maintenance of views from property on the shoreline to protect shoreline ecological function and aesthetics. No clearing for view enhancement has been allowed based on review of the proposed mitigation plan. The location of the residence is well screened from both the water and adjacent shoreline properties by existing forested areas. As such, the project proposal is consistent with the above provisions.

#### **23.90.06 – Vegetation Conservation**

Staff Comment: This section states that where new developments and/or uses are proposed, native vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. As previously mentioned, a mitigation plan has been developed to mitigate impacts associated with the proposed development. This approved mitigation plan along with conditions outlined within this staff report, should result in a no net loss of shoreline ecological function on the subject property and thus consistent with this section of the SMP.

#### **23.90.07 – Archaeological, Historic and Cultural Resources**

Staff Comment: Evidence of historic and/or cultural resources has been documented on the subject property by Drayton Archaeological Research (DAR) in a report dated June 9, 2009. These areas have been delineated on the subject property and the proposed project has been designed to avoid impacts to these resources during construction of the project. This approval recommendation has been conditioned to address any inadvertent discovery of such resources during the construction phase of the development.

#### **23.90.10 – Landfill and Excavation**

Staff Comment: This section states that landfill and excavation shall be minimized to the maximum extent practicable and allowed only along with approved shoreline use and development activities that are consistent with the SMP. Landfill and excavation within wetlands shall only be permitted in limited instances with due consideration given to the specific site conditions and only along with approved shoreline use and development activities consistent with the SMP.

Wetland fill associated with the development of a single-family residence is not allowed without a variance. The wetland fill necessary to access the proposed development site is believed to represent the minimum necessary to accommodate the approved development based on all other applicable County regulations including emergency vehicle access. The variance criteria associated with proposed wetland fill have been met as discussed previously within this staff report.

### **23.90.13 – Shoreline Bulk Provisions**

This approval recommendation has been conditioned that the remaining bulk and dimensional provisions applicable to the proposed development that have not been altered based on the application of a shoreline variance, be met.

Applicable use specific policies and regulations for residential development are outlined in 23.100.11.A as follows:

#### **23.100.11.A – Residential Policies**

Single-family residences are designated in RCW 90.58 as a priority use in those limited instances when authorization is given for alterations of the natural conditions of shorelines of the state. Structures or development for uses accessory to residential use should preserve shoreline open space, be visually and physically compatible with adjacent cultural and shoreline features, be reasonable in size and purpose, and result in not net loss of shoreline ecological functions and processes. New residential development should be planned and built in accordance with the policies and regulations in 23.90.03 and to minimize the need for shoreline stabilization and flood hazard reduction measures. Measures to conserve native vegetation along shorelines should be required for all residential development. Vegetation conservation may include avoidance or minimization of clearing or grading, restoration of areas of native vegetation, and/or control of invasive or non-native vegetation.

Staff Comment: Through compliance with the general policies and regulations outlined in 23.90.03 as described previously within this staff report, as well as compliance with the applicable residential regulations described below, staff believes the proposal meets the above residential policies.

#### **23.100.11.B. – Residential Regulations**

New residential development may not be approved in cases when it can be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within a channel migration zone or floodway during the life of the development or use. New residential development shall assure that the development will not require shoreline stabilization. Residential structures, accessory uses and related facilities shall be designed and located so as to minimize view obstructions to and from shorelines and water bodies.

Staff Comment: Portions of the subject property lie within FEMA-mapped flood zone and therefore subject to the flood prevention regulations enumerated in WCC Title 17. This review shall occur through the review of the required residential building permit to determine the base elevation of the first floor of the proposed residence. The subject property is located on Drayton Harbor, which in general experiences very slow shoreline erosion rates. Staff observed no significant erosion during site inspections to the subject property and has determined that shoreline stabilization is not reasonably foreseeable in the future to protect the residence. As discussed previously within this staff report, the proposed development has been designed to minimize view obstructions from adjacent shoreline properties as well as from the water surface.

**C. In the granting of all Shoreline Substantial Development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.**

Staff Comment: The project has been designed to avoid impacts to critical areas and maintain setbacks to the extent practicable while still allowing for development of a single-family residence consistent with 90.58.020. A mitigation plan has been designed and approved by staff that should result in no net loss to the

shoreline environment. As such, approvals of additional requests for like actions within the area are not believed to represent a cumulative environmental impact.

#### V. PUBLIC COMMENTS

No public comments in opposition to the proposal were received by staff during the review of this project.

#### VI. AGENCY COMMENTS

On January 22, 2009, Whatcom County Public Works – Division of Engineering provided conditions of approval which have been incorporated within this staff report.

On January 23, 2009, the Lummi Nation Tribal Historic Preservation Office (LNTHPO) commented on the potential for cultural resources on the subject property and the requirement to have an archaeological assessment completed prior to ground disturbing activities. As explained previously within this staff report, such as study has been completed and the project has been re-designed to avoid cultural resources on the property. In addition, the approval recommendation is conditioned to address inadvertent discovery of such resources during the construction phase of the project.

On July 7, 2009, WCPDS natural resource technical review staff approved the mitigation plan associated with the proposed project with conditions. Such conditions are enumerated within the recommendations section of this staff report.

#### VII. RECOMMENDATIONS

Based on the above findings and technical review, **Staff recommends approval** of the request for a Shoreline Substantial Development and Shoreline Variance permit subject to the following conditions of approval:

1. The proposed developments shall be consistent with the scope and site plans (dated June 3, 2009) as well as the revised mitigation plan (dated July 2009) approved by this shoreline substantial development and variance permit. Any changes to the proposed development shall require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner as well as the Washington State Department of Ecology.
2. A residential building permit is required prior to any development activity on the subject property. The applicant shall contact the WCPDS Building Services Division regarding requirements for application and to set up an application appointment. The building permit shall not be issued until all conditions of this shoreline permit have been met.
3. The project shall comply with all applicable federal, state and local laws and regulations. When other applicable regulations conflict with this permit approval, the more restrictive shall apply. Copies of any necessary federal permit approvals associated with the wetland fill shall be provided to the WCPDS prior to issuance of the residential building permit.
4. The required mitigation shall be subject to the following conditions:
  - An assignment of savings for the cost of the mitigation and 10-years of monitoring must be submitted prior to final approval of the residential building permit.
  - The mitigation shall be installed and an as-built plan submitted prior to temporary occupancy approval associated with the residential building permit.
  - A conservation easement protecting all remaining wetlands, buffers, and the mitigation area shall be recorded prior to final approval of the residential building permit.
  - Northwest Ecological Services will be the environmental consultant throughout the 10-year monitoring period and will be responsible for supervision of mitigation installation including preparation, planting, wetland creation, wetland and buffer enhancement, as-built report, annual monitoring reports and maintenance of the mitigation area.

5. A Trail Permit from Whatcom County Public Works (WCPW) – Engineering Services for the use of Dearborn Avenue. Contact Mary White at 360-676-6730 to start this process.
6. The proposed driveway to the single-family residence shall be a minimum of 12-feet in width and topped with a minimum of 2-inches of compacted crushed rock consistent with the WCPW Road Standards. Low impact development techniques are also acceptable
7. The proposed development is subject to the Drayton Harbor watershed special management area regulations enumerated in WCC Title 20. A temporary erosion and sedimentation control plan shall be submitted with the required residential building permit application for review and approval by WCPDS prior to issuance of the building permit.
8. If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during any ground disturbing activity, work in the area of discovery shall cease and the Whatcom County Shoreline Administrator (676-6907) LNTHPO (384-2298) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
9. Construction debris shall be wholly removed from the subject property upon completion of the proposed development. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority.
10. All materials that may come into contact with water shall be constructed of materials that will not adversely affect water quality or aquatic plants or animals.
11. Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development. No clearing of existing buffer areas with exception of areas to construct the driveway and house location shall be cleared.
12. Utilities shall be located within the proposed driveway corridor.
13. The proposed residence shall not exceed 30-feet in height as measured from existing average grade to the peak of the structure.
14. The applicant shall submit an engineered design for the proposed driveway demonstrating that the structure will not restrict surface water flow from the existing wetland across the site to Drayton Harbor. The design shall be submitted for review along with the required building permit.
15. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.19.A.3.

Report prepared by:

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Whatcom County Planning and Development Services