

**WHATCOM COUNTY HEARING EXAMINER**

RE: SHORELINE VARIANCE ) SHV2010-0001  
Application for )  
)  
*Robert and Kimberly Jackson* ) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW,  
) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant requests approval of a Shoreline Variance to reduce the shore setback from the Strait of Georgia in order to construct a single-family residence and appurtenant developments and to enhance the view from the future subject development.

Decision: The requested permit is 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: Robert and Kimberly Jackson

Applicant Representative: Heidi Joostens – JWR Design, Inc.

Property Location: 4689 Sucia Drive  
Ferndale, Washington 98248

Legal Description: Section 05, Township 38 North, Range 01 East, W.M.  
Parcel No. 380105 526257

Adjacent Water Body: Strait of Georgia

Shoreline Designation: Shoreline Residential

Statewide Significance: No

Authorizing Ordinances: SMP 23.50 Applicability  
SMP 23.70 Administration

Applicable Shoreline Program Provisions:

SMP 23.10	Purpose and Intent
SMP 23.20	Goals and Objectives
SMP 23.30	Shoreline Jurisdiction and Area Designations
SMP 23.50	Applicability
SMP 23.60	Shoreline Permits and Exemptions
SMP 23.70	Administration
SMP 23.80	Legal Provisions
SMP 23.90	General Policies and Regulations
SMP 23.100.100	Residential Policies and Regulations
SMP 23.110	Definitions

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

Legal Notices: Published – December 30, 2010  
Mailed – January 27 and December 17, 2010  
Posted – December 30, 2010

Hearing Date: January 12, 2011

Parties of Record:

Robert and Kimberly Jackson  
4065 Salt Spring Drive  
Ferndale, Washington 98248

Heidi Joostens – JWR Design, Inc.  
104 Front Street  
Lynden, Washington 98248

Chad Yunge  
Planning and Development Services

Exhibits:

1 Land Use Application  
1-1 Fee Responsibility

- 1-2 Supplemental Application
- 1-3 Surrounding Properties List
- 1-4 Determination of Completeness, January 25, 2010
- 1-5 Comment Form, January 25, 2010
- 1-6 Certificate of Mailing, dated January 27, 2010
  
- 2 Staff Report, dated December 15, 2010
  
- 3 Email from Katrina Jackson to Chad Yunge, dated September 27, 2010 re: critical areas mitigation
  
- 4 Letter dated February 23, 2010 from Lummi Indian Business Council to Chad Yunge re: proposed development
  
- 5 Revised Site Plan with Shoreline Approved Stamp, dated December 15, 2010
  
- 6 Aerial Site Photos
  
- 7 Large Site Plan [scaled]
  
- 8 Certificate of Mailing: Notice of Public Hearing, dated December 17, 2010
  
- 9 Certificate of Posting: Notice of Public Hearing, dated December 30, 2010
  
- 10 Legal Notice of Public Hearing, dated December 30, 2010

## **II.**

The Applicant requests relief from the full shoreline setback as measured from the Ordinary High Water Mark to construct a new single-family residence and appurtenant developments utilizing an equivalent view as enjoyed by the neighboring residential developments, which would result in future residential development approximately 38-feet to 65-feet landward of the OHWM of the Strait of Georgia.

## **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 Staff Report, Exhibit #2, dated December 15, 2010, 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 Variance Permit for the proposed reduction in the shore setback in order to allow for the construction of a single-family residential development using a common line drawn between the two adjacent residential structures allowing the new residence to enjoy the same view amenities as the existing neighboring properties.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit No. 2, dated December 15, 2010. 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 Variance Permit is hereby granted to Robert and Kimberly Jackson granting relief from the shore setback in order to construct a single-family residence and appurtenant developments utilizing a common line drawn between the two adjacent residential structures, allowing the new residence approximately 38-feet to 65-feet landward of the Ordinary High Water Mark on property located on Assessor's Parcel No. 380105 526257, 4689 Sucia Drive, Ferndale, Washington. The permit is granted subject to the following conditions:

1. *The Applicant/Proponent shall obtain a building permit from the Whatcom County Planning and Development Services (WCPDS) – Building Services Division prior to construction of a single-family residence. The building permit shall require additional shoreline development review and approval pursuant to 23.60.01.A.*
2. *Future single-family residence and appurtenant development proposals shall be located within the approved building area as established by this Shoreline Variance Approval and as*

*depicted on the approved site plan. Future structures shall comply with all other applicable regulatory provisions of the Whatcom County Shoreline Management Program (SMP) including compliance with all other bulk and dimensional criteria. Building setbacks shall apply pursuant to 16.16.265.D.*

- 3. Future development proposals shall not result in an increase in impervious surface coverage on the area of the subject property west of Sucia Drive than the existing asphalt surfacing on the site. Future driveway, parking areas, walkways etc. shall employ pervious technologies consistent with the May 2005 Low Impact Development Technical Guidance Manual for Puget Sound pursuant to 23.90.09.B.4.*
- 4. Future residential development proposals shall include a stormwater management plan that utilizes an infiltration system to mimic the natural infiltration and ground water interflow processes where appropriate pursuant to 23.90.09.B.7.*
- 5. The maximum height of the future single-family residence shall not exceed 30-feet in height as measured from average existing grade to the peak of the structure.*
- 6. A Geotechnical Analysis of the site and shoreline characteristics shall be completed by a qualified professional per 23.110 of the SMP to demonstrate that future residential development will not require shoreline stabilization measures during the life of the structure (100 years), and impacts to adjacent, down current properties are not likely to occur. The above analysis shall be required prior to issuance of development permits on the property.*
- 7. Prior to issuance of the required development permits, the applicant/proponent shall submit a mitigation plan consistent with all applicable provisions outlined in 16.16.260.B and 16.16.760. Such a plan shall be completed by a qualified professional as defined by 23.110 and include a functional analysis demonstrating the proposed plan will result in no net loss to shoreline ecological functions and processes. The plan shall include provisions for mitigation monitoring and maintenance per 16.16.260.C and mitigation assurance measures per 16.16.260.D.*
- 8. Authorization to conduct development activities shall terminate five (5) years after the effective date of this shoreline variance, which shall be the date in which the request is authorized by the Washington State Department of Ecology. The Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause, if a request for extension has been filed with the Hearing Examiner or Administrator, as appropriate, before the expiration date of the shoreline variance and notice of the proposed extension is given to parties of record and the Department of Ecology.*

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 calendar days of the date of the written 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.

Any party of record may request a closed record review of the Hearing Examiner's Decision, issued under SMP 23.60.15.H.4, by the County Council. Such an appeal shall be filed with the County Council on forms supplied by the County within ten (10) calendar days of the written decision. If appeal is made to the County Council, notice of appeal shall be provided to all parties of record at least fifteen (15) days prior to consideration by the County Council. The Council shall meet to review the Hearing Examiner's decision within twenty-one (21) days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830 and Section 23.60.15.H. 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 18<sup>th</sup> of January 2011.

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Michael Bobbink, Hearing Examiner



December 15, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of <b>Robert and Kimberly Jackson</b> for a Shoreline Variance Request		SHV2010-00001 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant requests approval of shoreline variance to reduce the shore setback from the Strait of Georgia in order to construct a new single-family residence and appurtenant developments within the jurisdiction of the Shoreline Management Act (SMA) and to enhance the view from the future subject development.

Recommendation: Staff recommends approval of the requested Shoreline Variance subject to the modifications and conditions outlined within this staff report.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

**Applicant:** Robert and Kimberly Jackson  
4065 Salt Spring Drive  
Ferndale, Washington 98248

**Applicant Representative:** Heidi Joostens – JWR Design, Inc.  
104 Front Street  
Lynden, Washington 98248

**Property Location:** 4689 Sucia Drive  
Ferndale, Washington 98248

**Legal Description:** Section 05 Township 38 North, Range 01 East, W.M.  
Parcel #: 380105526257

**Adjacent Water Body:** Strait of Georgia

Shoreline Designation: Shoreline Residential

Statewide Significance: No

## B. PROCEDURAL INFORMATION

Authorizing Ordinances: SMP 23.50 Applicability  
SMP 23.70 Administration

### Applicable Shoreline Program Provisions:

SMP 23.10	Purpose and Intent
SMP 23.20	Goals and Objectives
SMP 23.30	Shoreline Jurisdiction and Area Designations
SMP 23.50	Applicability
SMP 23.60	Shoreline Permits and Exemptions
SMP 23.70	Administration
SMP 23.80	Legal Provisions
SMP 23.90	General Policies and Regulations
SMP 23.100.100	Residential Policies and Regulations
SMP 23.110	Definitions

SEPA REVIEW: Categorically exempt pursuant to WAC 197-11-800(1)(b)(i).

## III. FINDINGS AND CONCLUSIONS

The applicant is requesting relief of the full shoreline setback measured from the ordinary high water mark (OHWM) in order to construct a new single-family residence and appurtenant developments with an equivalent view as enjoyed by the neighboring residential developments. Specifically, the applicant seeks reduction of the 150-foot prescriptive setback down to a common line drawn between the two adjacent residential structures which would result in a future residential development approximately 38 to 65-feet landward of the OHWM. This approval recommendation is based on review of a revised site plan received by Whatcom County Planning and Development Services (WCPDS) on October 7, 2010. It is important to note that even though the site plan illustrates a future residential development configuration, this variance review is limited to the proposed setback reduction as described above. Future development on the subject property will require additional review pursuant to Section 23.60.01.A. Modifications have been made to the staff approved site plan to ensure consistency with the variance criteria as explained within this report.

The subject property is located at 4689 Sucia Drive on the northern portion of Sandy Point, and accretion shoreform extending south into the Strait of Georgia. The property measures 9.15-acres in size and is unique as it is split by Sucia Drive and the two areas are off-set from one another. The property is also relatively narrow for a being over 9-acres in size. The western portion of the subject property, which is the subject of this variance review, measures 14,561-square feet in size and is located between the shoreline of Georgia Strait and Sucia Drive. This area is currently vacant with exception of a section of vacated asphalt roadway occupying approximately 4,100-square feet of the site. The roadway is located across the western and northern portions of the site. Areas between the roadway and the OHWM of Georgia Strait consist of low-growing native grasses and shrubs intermixed with beach logs. The remainder of the site is currently maintained

as lawn. The other portion of the subject property is located to the east of Sucia Drive and to the north of the previously discussed portion of the property. This area is currently developed with a 3,840-square foot storage barn along with a gravel access driveway and parking area. The remainder of the site consists of maintained lawn intermixed with large conifers. The easternmost part of the property is heavily wooded.

Shoreline bulk provisions such as required setbacks and ecological buffers are found in Section 23.90.13 of the SMP. Such setbacks are based on the provisions of the Whatcom County Critical Areas Ordinance (CAO) which is incorporated by reference as part of the SMP pursuant to 23.10.06. The Strait of Georgia is classified as a Habitat Conservation Area (HCA) pursuant to Article 7 of the CAO. Section 16.16.740.C states that the marine nearshore area, defined as the area between the shoreline and depths of 66-feet, are Locally Important Habitat Areas that should be protected with a prescriptive buffer of 150-feet as measured from the OHWM. In addition, certain structures must also be setback an additional 10-feet pursuant to 16.16.265.D. Application of these buffers and setbacks completely encumber the western portion of the subject property and construction of a new single-family residence elsewhere on the property would be outside of the jurisdiction of the Whatcom County Shoreline Management Program (SMP) and the Washington State Shoreline Management Act (SMA).

According to 23.60.03 of the SMP, the purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in the SMP and any associated standards appended to the SMP such as critical areas buffer requirements where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the SMP would impose unnecessary hardships on the applicant/proponent or thwart the policy set forth in RCW 90.58.020. In addition, Section 23.60.03.F states that variance requests based on the applicant's/proponent's desire to enhance the view from the subject development may be granted where there are no likely detrimental effects to existing or future users, other features or shoreline ecological functions and/or processes, and where reasonable alternatives of equal or greater consistency with the SMP are not available. It is these provisions in which the applicant request the variance relief.

In order for a variance to be approved, the proposal must satisfy the criteria of section 23.60.03 of the SMP. These criteria are set forth and addressed below.

**23.60.03.D.1 That the strict application of the bulk or dimensional criteria in this Program precludes or significantly interferes with all reasonable permitted use of the property.**

The requested variance is consistent with this variance criterion. Application of the prescriptive 150-foot buffer/setback as well as the additional 10-foot building setback would preclude development of a single-family residence within shoreline jurisdiction. The portion of the subject property subject to the SMP is located within a Shoreline Residential Shoreline Designation according to the Official Shoreline Map described in 23.30.02 of the SMP. According to Section 23.30.06.1, the purpose of this designation is to accommodate residential development and such development is a permitted per 23.30.06.4.A. In addition, Revised Code of Washington (RCW) 90.58.020 outlines the overall guiding policy of the SMA, which recognizes single-family residential development as a preferred use of shorelines of the state. The policy also states that such development shall be designed and conducted in a manner to minimize, insofar as practical, the any resultant damage to the ecology and environment of the shoreline area. It is clear that the overall intent of the SMA is to foster residential development as long as impacts can be mitigated within shoreline jurisdiction. Disallowing all residential development would thwart the policy of 90.58.020. Section 23.60.03.B states that variances will be granted in any circumstance where denial would result in a thwarting of the policy enumerated in RCW 90.58.020. This permit recommendation has been modified and conditioned that any future development proposals

will not result in a net loss of shoreline ecological functions and processes. This is discussed in greater depth later within this staff report.

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

The hardship in this case is that the application of the prescriptive shoreline setbacks and buffers would preclude development of a single-family residence within shoreline jurisdiction. The lot shape and configuration, as well as applicable regulatory setbacks/buffers cause the hardship in this case as well as the location of the non-conforming residential structures to the north and south of the site. The 150-foot shoreline buffer/setback disallows development on any portion of the lot located west of Sucia Drive. To the east of the road, the roadside setback dictated by the Whatcom County Zoning Code precludes development within shoreline jurisdiction. Based on review of available property records, the subject property has been in its current configuration since prior to the applicant's ownership. The requested variance is consistent with this criterion.

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

The requested setback from the OHWM of Georgia Strait is compatible with the setback of a majority of existing residences located on the Sandy Point peninsula and Neptune beach area. The adjacent residence to the north of the subject property likely pre-dates the first official SMP in Whatcom County as it appears on 1977 aerial photograph of the area. The residence located immediately adjacent to the subject site to the south was originally permitted in 1996 and was substantially expanded to its current configuration in 2006. Although not in the area of the subject property, WCPDS and the Washington State Department of Ecology (DOE) approved a request for variance on a two-acre site on Lake Whatcom, a Shoreline of Statewide Significance in 2009 (SHV2009-00003). The circumstances are similar to this case and a variance was granted to allow a new residential development to be permitted within shoreline jurisdiction where ample area existing outside of such jurisdiction to construct a home without a variance. Mitigation was provided in that case to result in no net loss to the shoreline environment.

No adverse effects to adjacent properties were identified during staff review of the proposed variance. Future development proposals on the subject property will be reviewed via a shoreline substantial development or statement of exemption. At the time of development review, all other applicable provisions of the SMP will be applied to the subject property with exception of the setback varied by this approval.

No adverse written comments were received by neighboring property owners or members of the general public during review of the variance.

As modified and conditioned, the variance request will not cause adverse effects to the shoreline environment. Please refer to staff analysis associated with variance criterion 23.60.04.D.7 for further discussion.

**23.60.03.D.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.**

The proposed variance request is consistent with the above-referenced criterion. The Sandy Point peninsula to the south as well as the Neptune Beach area to the north of the subject site are densely developed with single-family residences, appurtenant developments and a myriad of accessory structures. In many cases, the primary residential structures are located closer to the shoreline than that proposed by this variance request. Numerous variance requests have been granted by WCPDS and the Washington State Department of Ecology (DOE) in the area of the subject property to reduce requisite shore setbacks solely for the purposes of view enhancement.

Section 23.60.03.F states that variance requests based on the applicant's desire to enhance the view from the subject development may be granted where there are no likely detrimental effects to existing or future users, other features or shoreline ecological functions and processes. In platted residential areas, variances shall not be granted that allow a lesser shore setback than what is typical for the immediate area.

The applicant has requested that the waterward side of a future residential development on the subject site be located at a common line drawn between the closest waterward corners of the adjacent residences to the north and south in order to obtain an equivalent view. Section 23.60.03 allows additional flexibility in platted areas such as the area of the subject property as long as the resultant structure is not located closer to the shoreline than adjacent homes. In addition, the area requested under this provision must be safe for existing and future users and not cause adverse effects to the shoreline environment.

The proposed variance request as modified and conditioned, along with application of the applicable development provisions of the SMP once a development application is submitted, meets the above provisions of Section 23.60.03.F. In this case, a structure at the common line setback is the minimum necessary reduction to afford relief, consistent with the above criterion.

#### **23.60.03.D.5 That the public interest will suffer no substantial detrimental effect.**

No substantial detrimental effects to the public interest were identified by staff during review of the project nor were written comments from the public received in objection to the proposed project.

On March 1, 2010, a letter was received from Mr. Leroy Deardorff, Director of the Lummi Nation Environmental Protection Program. The letter summarizes four reasons as to why the proposed variance request should be denied. These are briefly summarized and addressed below:

1. That construction of a future residence at the distance proposed by this variance request will ultimately lead to a bulkhead being constructed to protect the residence from future erosion. Bulkheads are known to adversely affect the nearshore environment which would thus negatively affect tribally-owned tidelands that border the subject property to the west.
2. That the project would not be consistent with the Lummi Reservation Coastal Protection Guidelines. This study identifies the area of the subject site as having a high erosion rate requiring future hardened shoreline stabilization.

As stated previously, no actual development is being reviewed pursuant to this shoreline variance. Development within shoreline jurisdiction requires review via a shoreline substantial development permit or shoreline statement of exemption from a shoreline substantial development permit. In either case, in order for future development to be approved in shoreline jurisdiction, such development shall be consistent with all applicable policies and regulations of the SMP. One such

regulation specific to residential development is Section 23.100.11.B.1(b) which states the following:

New residential development shall assure that the development will not require shoreline stabilization. Prior to approval, geotechnical analysis of the site and shoreline characteristics shall demonstrate that shoreline stabilization is unlikely to be necessary; setbacks from marine shoreline erosion areas shall be sufficient to protect structures during the life of the structure (100 years); and impacts to adjacent, down current properties are not likely to occur. The greater setback resulting from this regulation or 23.90.13 shall apply.

This regulation has been captured as a condition of this variance recommendation so that the applicant is aware that additional review to ensure that future shoreline stabilization on the property is avoided. Note that preliminary review by the WCPDS Staff Geologist did not indicate active coastal erosion issues in the area of the subject site.

3. That the area of the subject property in question is located within a hazardous area that development in such areas should be avoided. The statement is based on the Lummi Nation Multi-Hazard Mitigation Plan and Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) for the area.

The County CAO identifies, and regulates development within Geologically Hazardous Areas (GHAs). In addition the CAO also has specific regulations regarding Frequently Flooded Areas (FFAs) in conjunction with Whatcom County Flood Ordinance (Title 17) which interfaces with the FEMA flood insurance program. According to the County GHA maps, only seismic hazards exist on the subject property, which are unavoidable anywhere on the subject property. These types of hazards are typically overcome structurally during building permit review. As stated previously, the shoreline development regulations require identification and quantification of coastal erosion hazards as well as the establishment of proper erosion hazard buffers prior permitting new development to occur in such areas. This is a requirement to ensure that future shore defense structures are unlikely to be necessary and to make sure the structure is safe to occupy throughout its design life.

According to FEMA FIRM maps for the area of the subject property, a portion of the subject site is within an AE flood zone. Such zones are areas with a 1-percent chance of annual flooding. This is not a high velocity flood zone and County/Federal flood regulations are designed to keep flood waters from being displaced so as to not increase flooding on down current properties. Prior to issuance of any future development permits on the subject site, the applicant must demonstrate compliance with Title 17 as reviewed and approved by the Whatcom County Public Works – River and Flood Department. Preliminary review by River and Flood indicated that future development within the area proposed by the applicant would likely receive approval.

4. That the applicant should be notified that a Lummi Land Use permit is required for proposed land disturbing activities on the Lummi Indian Reservation.

This comment is noted. Section 23.50.03 states that obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, State, regional or Federal statutes or regulations applicable to such development or use. It is the burden of the applicant/proponent to comply with all applicable regulatory provisions on the property.

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

The proposed residential development has no impact on rights of navigation or other known public rights of use of the shoreline.

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

As previously mentioned, the site plan illustrates a theoretical future development layout; however this variance review is limited to the requested relief from the shoreline setback. As such, the site plan recommended by staff for approval has been modified to delineate an area where future development could occur while retaining enough mitigation opportunity to demonstrate that the future development will cause no adverse impacts to shoreline ecological functions and processes. As modified and conditioned, the proposal meets this variance criterion.

The applicant retained Katrina Jackson of Northwest Wetland Consultants (NWC) to conduct a preliminary assessment of the site and to comment on whether or not enough mitigation opportunity existed on the property to offset impacts from future residential development. This was done at the request of the Shoreline Administrator. Ms. Jackson made the following comments on this issue in an email dated September 29, 2010"

*I have reviewed the site and assess that the parcel is almost 100% disturbed with asphalt surface, mowed lawn, and small recreational equipment storage and other uses. The old road represents a substantial impervious surface and its removal represents an excellent mitigation opportunity. Removal warrants a higher ecological benefit than would simple restoration of lawn grass to a native plant community. Benefits to water quality improvement and temperature moderation can be achieved within the marine shoreline buffer. The new structure as proposed located farther back than existing development represents improvement in the near shore area and when mitigated can improve connectivity of native habitat.*

Although existing buffering functions on the subject site are degraded, it is clear that future construction of a single-family residence and appurtenant developments on the site will have impact to buffer functions. In the absence of a formal development proposal, this variance approval has been conditioned that a detailed functional impact analysis and mitigation plan be developed for review by the Administrator prior to issuance of any development permits on the site. The modified site plan illustrates a box in which a future development layout must be contained consistent with the applicable development provisions of the SMP. This includes observation of the required building setback provisions outlined in 16.16.235.D as well as utilization of low impact development standards as required in 23.90.09 which include minimization of Impervious surfaces and installation of stormwater systems that mimic natural infiltration and groundwater interflow processes. Some of these provisions have been included as conditions of the variance approval to help the applicant during the design phase of the future residential structure.

The modified site plan together with the application of the SMP, demonstrates that ample opportunity exists on the subject site to offset adverse impacts caused as a result of the future development proposal. As stated by NWC, the entire subject site contains opportunity to improve shoreline buffer functions. The area authorized by this variance request represents an area measuring approximately 7,280 – square feet, leaving an equitable amount of area between the future development and the shoreline of Georgia Strait as well as available side yard areas with contiguous connection to the shoreline. In addition, the applicant has proposed complete removal and restoration of the areas of the subject site currently covered by the remnant asphalt roadway

(approximately 4,100-square feet). Staff agrees with NWC that removal of this roadway warrants a higher mitigation ratio than a 1:1. That said, enhancement of the area available outside of the development area through the required mitigation plan, will likely result in an increase in overall shoreline ecological functions.

**23.60.03.G States that in the granting of all variances, consideration shall be given to the cumulative environmental impact of additional requests 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 policies of RCW 90.58.020 and should not produce significant adverse effects to the shoreline environment or other users.**

As modified and conditioned by this approval recommendation, no detrimental effects to the shoreline environment are apparent. An asphalt roadway will be removed from the subject site and the area will be enhanced with native trees, shrubs and groundcovers pursuant to a professionally designed mitigation analysis and plan. If similar circumstances exist in the area of the subject development, it is inferred that a positive cumulative effect would occur. The proposed variance request is consistent with this provision.

## VI. RECOMMENDATIONS

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

- 1. The applicant/proponent shall obtain a building permit from the Whatcom County Planning and Development Services (WCPDS) – Building Services Division prior to construction of a single-family residence. The building permit shall require additional shoreline development review and approval pursuant to 23.60.01.A.*
- 2. Future single-family residence and appurtenant development proposals shall be located within the approved building area as established by this shoreline variance approval and as depicted on the approved site plan. Future structures shall comply with all other applicable regulatory provisions of the Whatcom County Shoreline Management Program (SMP) including compliance with all other bulk and dimensional criteria. Building setbacks shall apply pursuant to 16.16.265.D.*
- 3. Future development proposals shall not result in an increase in impervious surface coverage on the area of the subject property west of Sucia Drive than the existing asphalt surfacing on the site. Future driveway, parking areas, walkways etc. shall employ pervious technologies consistent with the May 2005 Low Impact Development Technical Guidance Manual for Puget Sound pursuant to 23.90.09.B.4.*
- 4. Future residential development proposals shall include a stormwater management plan that utilizes an infiltration system to mimic the natural infiltration and ground water interflow processes where appropriate pursuant to 23.90.09.B.7.*
- 5. The maximum height of the future single-family residence shall not exceed 30-feet in height as measured from average existing grade to the peak of the structure.*
- 6. A Geotechnical Analysis of the site and shoreline characteristics shall be completed by a qualified professional per 23.110 of the SMP to demonstrate that future residential*

*development will not require shoreline stabilization measures during the life of the structure (100 years), and impacts to adjacent, down current properties are not likely to occur. The above analysis shall be required prior to issuance of development permits on the property.*

- 7. Prior to issuance of the required development permits, the applicant/proponent shall submit a mitigation plan consistent with all applicable provisions outlined in 16.16.260.B and 16.16.760. Such a plan shall be completed by a qualified professional as defined by 23.110 and include a functional analysis demonstrating the proposed plan will result in no net loss to shoreline ecological functions and processes. The plan shall include provisions for mitigation monitoring and maintenance per 16.16.260.C and mitigation assurance measures per 16.16.260.D.*
  
- 16. Authorization to conduct development activities shall terminate five (5) years after the effective date of this shoreline variance, which shall be the date in which the request is authorized by the Washington State Department of Ecology. The Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause, if a request for extension has been filed with the Hearing Examiner or Administrator, as appropriate, before the expiration date of the shoreline variance and notice of the proposed extension is given to parties of record and the Department of Ecology.*

Report prepared by:

Chad J. Yunge

Whatcom County Shorelines Administrator

Planning and Development Services – Land Use & Natural Resource