

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

**Applicant:** Sandra Boeskov  
121 W. Comstock Street  
Seattle, WA 98119

**Request:** Critical Areas Variance Modification, PL17-0017  
(Modifying PL14-0154)

**Location:** 4429 Agate Road, Guemes Island, within NE1/4 Sec. 26, T36N.  
R1E, W.M. Parcel No P46551.

**Land Use Designation:** Rural Intermediate

**Summary of Proposal:** To reconstruct a single family residence located approximately 18 feet from the shore of Padilla Bay. The house will be within the footprint of the former building, except five feet farther north to meet side yard setback requirements. The replacement structure will be consistent with previously-issued variance PL14-0154.

**SEPA Compliance:** Exempt

**Public Hearing:** June 14, 2017. Testimony by Staff and Applicant.

**Decision/Date:** The application is approved, subject to conditions. July 5, 2017.

**Reconsideration/Appeal:** Reconsideration may be requested by filing with Planning and Development Services (PDS) within 10 days of this decision. Appeal is to the Board of County Commissioners by filing with PDS within 14 days of this decision or decision on reconsideration if applicable.

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

## **FINDINGS OF FACT**

1. Sandra Boeskov seeks modification of a Critical Areas Variance which allowed residential remodeling approximately 18 feet from the shore of Padilla Bay (PL14-0154). The original building was found unsuitable for renovation and demolished. The applicant wants now to reconstruct the house within the footprint of the former building, except five feet farther north to meet side yard setback requirements.

2. The modified project will not encroach further into the shore setback. The proposed residence will be located outside of the Protected Critical Area (PCA) already established.

3. The majority of the northeast facing parcel consists of a steep, high-bank coastal bluff which tops at approximately 200 feet above mean sea level. At the base of the slope is a flat area created by fill placed behind a four-foot high concrete bulkhead. This area was created long before the passage of the Critical Areas Ordinance. The level area is about 125 feet wide and 95 feet deep.

4. Access to the base of the slope is provided by an easement off of Agate Road. This easement cuts across the slope above the level area, bisecting the parcel. Parking is provided onsite west of the proposed residence.

5. With the initial Critical Areas Variance, the applicant received a Shorelines Variance to allow the remodeling project. After the demolition of the original house, the Hearing Examiner granted a modification of the Shorelines Variance to allow for the replacement structure. (PL16-0467, November 22, 2016). The instant request conforms critical areas approval to the existing shoreline approval.

6. Surrounding land uses are single family residential and recreational homes located below the bluff. Notice of this application was provided as required by law. There is support for this project among neighbors and no opposition.

7. In response to a request by the Samish Indian Nation, an archaeological review of the site was conducted by ASM Affiliates. Following the report, the applicant must obtain a Washington State Department of Archaeology and Historic Preservation Archaeological Excavation Permit (WSDAHPAEP) prior to commencement of any construction activity.

8. No government agencies had comments. The County Fire Marshal will review the access again at the time of building permit application.

9. The proposed modification of the variance does not change the location of the residence except to move the building five feet north. The topographic constraints of the parcel limit the available area for development to the narrow fill along the shore, precluding strict application of the standard buffer requirements. A zoning variance will not provide relief.

10. Site assessments by professionals were prepared for the original variance applications. This replacement structure proposal does not change those assessments. The

proposed building will be located as far as possible from the shore. Compensation for impacts is provided in the existing mitigation plan. The buffer reduction is necessary to allow reasonable development of the site.

11. The Staff Report analyses the application against the variance criteria and mitigation sequencing of the Critical Areas Ordinance and finds that, as conditioned, the proposed Critical Areas Variance Modification will be consistent with the criteria. The Hearing Examiner concurs with this evaluation and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

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

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over these proceedings.
2. The project is exempt from the procedural requirements of the State Environmental Policy Act.
3. The proposed modification, as conditioned, is consistent with the requirements for a Critical Areas Variance. SCC 14.24.140(3), SCC 14.24.540(3).
4. Any finding herein which may be deemed a conclusion is hereby adopted as such.


### **CONDITIONS**

1. The project shall be completed as described in the application materials.
2. All required permits shall be obtained and adhered to.
3. If any modification of the project is proposed, the applicant shall notify Planning and Development Services prior to the start of construction.
4. Prior to commencement of any construction activity, the applicant shall obtain a WSDAHP AEP and shall abide by the conditions of same.

**ORDER**

The requested Critical Areas Variance Modification (PL17-0017) is approved, subject to the conditions set forth above.

**SO ORDERED**, this 5<sup>th</sup> day of July, 2017.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant and Staff, July 5, 2017

See Notice of Decision, page 2, for appeal information.