

**NOTICE OF DECISION OF
THE SKAGIT COUNTY HEARING EXAMINER**

Applicant: Frederick Paul and Mary Katherine Bianchini

Request /File No: Nos. PL21-0657 and PL21-0658

Location: Located at 33053 South Skagit Highway, on property situated within Skagit County, Washington, identified as tax assessor parcel number P41832; and minimally described as:

PTN GOVERNMENT LOT 6 & SW1/4 SW1/4, SECTION 22, TOWNSHIP 35 NORTH, RANGE 6 EAST, W.M. ALSO KNOWN AS TRACT 3 SHORT PLAT 61-78 AF#887024.

Land Use Designation: Rural Reserve

SEPA Determination: County staff determined that the proposal is categorically exempt from environmental review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), in accord with Washington Administrative Code (WAC) 197-11-800(6)(e). WAC 197-11-800(6)(e) provides that variance applications based on special circumstances applicable to the property, such as size, shape, topography, location, or surroundings, that would not result in any change in land use or density are exempt from SEPA environmental review.

Public Hearing: The Skagit County Hearing Examiner held an open record hearing on the application on April 13, 2022, as required by SCC 14.06.160(1)(b).

Summary of Decision: The request for a critical areas variance to reduce the standard 200-foot buffer associated with the Skagit River to a minimum of 50 feet, and for a shoreline variance to reduce the average shoreline setback of 89.5 feet to a minimum of 50 feet, to allow for the construction of a 192 square foot addition and a 144 square foot replacement porch to an existing residence, located at 33053 South Skagit Highway, is **APPROVED**, with conditions.

Decision Date: **July 26, 2022**

Appeal:

As provided in Section 13.01 of the County's Shoreline Master Program, any person aggrieved by the granting of a shoreline permit by the Skagit County Hearing Examiner may request a reconsideration before the Examiner or submit an appeal to the Board of Commissioners in accordance with Title 14 of the Skagit County Code. All requests for reconsideration or appeals must be submitted in writing within five (5) days of the date of the Examiner's written decision or decision after reconsideration.

Any person aggrieved by the granting of a shoreline permit may seek review from the State Shoreline Hearings Board by filing a written request for review with the Hearings Board within thirty (30) days of receipt by the Department of Ecology of the final order of the Hearing Examiner or Board of County Commissioners. The requester shall also file a copy of such request with the Department of Ecology, the Attorney General and the Board of County Commissioners. All procedures for appeal shall comply with RCW 90.58.180.

The entire decision can be obtained at Skagit County Planning and Development Services, 1800 Continental Place, Mount Vernon, WA.

**BEFORE THE HEARING EXAMINER
FOR SKAGIT COUNTY**

In the Matter of the Application of)	Nos. PL21-0657; PL21-0658
)	
Fredrick Paul Bianchini and)	Bianchini Shoreline Variance and
Mary Katherine Bianchini)	Critical Areas Variance
)	
)	
For Approval of a Shoreline Variance)	FINDINGS, CONCLUSIONS,
<u>and a Critical Areas Variance</u>)	AND DECISION

SUMMARY OF DECISION

The request for a critical areas variance to reduce the standard 200-foot buffer associated with the Skagit River to a minimum of 50 feet, and for a shoreline variance to reduce the average shoreline setback of 89.5 feet to a minimum of 50 feet, to allow for the construction of a 192 square foot addition and a 144 square foot replacement porch to an existing residence, located at 33053 South Skagit Highway, is **APPROVED**. Conditions are necessary to address specific impacts of the proposed project.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on June 22, 2022, utilizing a hybrid approach allowing for live participation or participation through remote access technology.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Leah Forbes, County Senior Planner
Mary Bianchini, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated June 15, 2022
2. Shoreline Variance Application, submitted January 3, 2022
3. Critical Areas Variance, submitted January 3, 2022
4. Short Plat Map (AF#887024), recorded September 8, 1978
5. Aerial Photographs
6. Site Photographs
7. Critical Area Site Plan, dated January 2021; Vicinity Maps

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8. Fish and Wildlife and Geohazard Assessments Report, Edison Engineering, dated January 20, 2021
9. Notice of Application
10. Notice of Public Hearing
11. Completed Mitigation Planting Photographs, dated June 15, 2022

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Frederick Paul and Mary Katherine Bianchini (Applicant) request a critical areas variance, to reduce the standard 200-foot buffer associated with the Skagit River to a minimum of 50 feet, and a shoreline variance, to reduce the average shoreline setback of 89.5 feet to a minimum of 50 feet, to allow construction of a 192 square foot addition and a 144 square foot replacement porch to an existing residence that was constructed on their property in 1977. The 4.08-acre subject property currently contains an existing 1,824 square foot residence, a 792 square foot garage, and a 250 square foot woodshed. The residence is served by a drilled well and an on-site sewage system. The Applicant proposes to construct a 6-foot by 32-foot addition to the western side of the existing home, which would entail straightening an angled wall to create a larger footprint for the kitchen, laundry room, and bathroom. The Applicant also proposes to remove an existing 130 square foot porch on the southern, landward side of the home and to replace the porch with a new 144 square foot porch. The property is located between the Skagit River and South Skagit Highway, west of Loretta Creek, at 33053 South Skagit Highway.¹ *Exhibit 1, Staff Report, pages 1 through 3; Exhibits 2 through 7.*
2. The Skagit County Planning & Development Services Department (County) determined that the applications were complete on January 3, 2022. On or around January 27, 2022, the County mailed or emailed notice of the applications to property owners within 300 feet of the site and to reviewing departments and agencies, with a comment deadline of March 4, 2022. The County published notice of the applications in the *Skagit Valley Herald* on January 27 and February 3, 2022. On June 2, 2022, the County provided notice of the open record hearing associated with the applications in same manner. The County did not receive any comments on the proposal in response to its notice materials. *Exhibit 1, Staff Report, page 2; Exhibit 9; Exhibit 10.*

State Environmental Policy Act

3. County staff determined that the proposal is categorically exempt from environmental review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), in accord with Washington Administrative Code (WAC) 197-11-

¹ The subject property is identified by Tax Assessor's Parcel No. P41832. *Exhibit 1, Staff Report, page 1.*

800(6)(e). WAC 197-11-800(6)(e) provides that variance applications based on special circumstances applicable to the property, such as size, shape, topography, location, or surroundings, that would not result in any change in land use or density are exempt from SEPA environmental review. *Exhibit 1, Staff Report, page 3.*

Comprehensive Plan, Zoning, and Surrounding Uses

4. The subject property and all surrounding adjacent properties are designated “Rural Reserve” by the County Comprehensive Plan. The Comprehensive Plan describes the County’s rural residential designations as follows:

Rural Reserve, Rural Intermediate, and Rural Village Residential are the main residential land use designations in the Rural area. . . . All lands designated Rural Intermediate and Rural Village Residential are considered to be part of a Limited Area of More Intensive Rural Development (LAMIRD) as described in policy 3B-1.2 and as authorized by RCW 36.70A.070(5)(d)(i). These designations reflect areas that were generally already developed or platted at land use densities of 1 residence (or “dwelling unit”) per 2.5 acres, or greater, when the Growth Management Act was implemented in 1990. The Rural Reserve designation identifies portions of the Rural area that were not already developed at these higher densities.

Comprehensive Plan, page 81.

The Rural Reserve land use designation:

applies to all rural areas outside of the following designations: Natural Resource Lands, Rural Intermediate, Rural Village, any of the various Rural commercial/industrial designations, Open Space of Statewide/Regional Significance, or Urban Growth Area. The maximum allowed residential gross density is 1 residence per 5 acres in conservation and reserve development (CaRD) land divisions, and 1 residence per 10 acres in standard land divisions.

Exhibit 1, Staff Report, page 1.

5. The subject property and all surrounding adjacent properties are located in the “Rural Reserve” (RRv) zoning district. The RRv zoning district is intended to “allow low-density development and to preserve the open space character of those areas not designated as resource lands or as urban growth areas.” *Skagit County Code (SCC) 14.16.320(1)*. Lands in RRv zoning district are “transitional areas between resource lands and non-resource lands for those uses that require moderate acreage and provide residential and limited employment and service opportunities for rural residents. They establish long-term open spaces and critical area protection using CaRDs as the preferred residential development pattern.” *SCC 14.16.320(1)*. Detached single-family dwelling

units are an allowed use in the RRv zone. *SCC 14.16.320(2)(f). Exhibit 1, Staff Report, page 1*

Existing Site and Critical Areas

6. The 4.08-acre parcel is level and well vegetated with native trees and shrubs, with an area of lawn around the existing home and detached garage. Access to the property is provided by a private driveway connecting to South Skagit Highway, which borders the property to the south. The property is bordered to the east and west by similarly sized lots that are developed with single-family residences. The Skagit River borders the property to the north, and the existing residence is located approximately 50 feet from the ordinary high water mark (OHWM) of the Skagit River. The State Shoreline Management Act (SMA) and the County Shoreline Master Program (County SMP), govern work within 200 feet of the Skagit River OHWM. *RCW 90.58.030(2)(f)(v)(A); County SMP Sections 2.01 and 5.02.* The County SMP designates the property as within the “Rural” shoreline environment. Single-family dwelling units and accessory uses within the Rural shoreline environment are required to be set back a minimum of 50 feet from the Skagit River OHWM or the average of setbacks for existing dwelling units within 300 feet of the side property lines, whichever is greater. The two neighboring homes within 300 feet of the subject property create an average setback requirement of 89.5 feet. Accordingly, a shoreline variance is required for the proposed home addition and porch replacement project.

The Skagit River is classified as a Type S water type requiring a standard 200-foot riparian buffer under the County’s critical areas ordinance. *SCC 14.24.530(1)(c).* Accordingly, a critical areas variance to reduce the 200-foot standard buffer is also required for the proposed home and porch replacement project. *Exhibit 1, Staff Report, pages 1 through 10; Exhibit 2; Exhibit 3; Exhibit 7; Exhibit 8.*

7. Edison Engineering prepared a fish and wildlife and geohazard assessments report for the proposal, dated January 20, 2021. The report determined that the proposed addition and porch replacement project would result in a total of 206 square feet of new building and porch space within the Skagit River shoreline buffer and recommend that the Applicant mitigate for impacts to the buffer by planting two native trees or eight native shrubs within 200 feet of the OHWM. The Applicant documented completion of the mitigation plantings, above the number of shrub plantings recommended in the report, in photographs taken on June 15, 2022. The report also identified a steep slope erosion hazard on the property but determined that it would be located outside of the project site and would not be impacted by the proposal. *Exhibit 8.*

Shoreline Variance

8. As noted above, the Applicant has applied for a shoreline variance to reduce the required average shoreline setback of 89.5 feet to a minimum of 50 feet to allow for the proposed

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home expansion and porch replacement project. The County SMP contains several policies and regulations governing residential development within the shoreline jurisdiction. *County SMP, Section 7.13.*

County staff identified the following residential development regulations as relevant to the proposal:

- Residential development is permitted [in the Rural shoreline environment] subject to the general and tabular regulations. *County SMP, Section 7.13.2.A(3)(a).*
- Alterations of the natural topography, the shore water interface, and vegetation of the site shall be minimize[d] to that extent necessary to the placement of the residence. *County SMP, Section 7.13.2.A(3)(b).*
- Proposals for residential development shall comply with applicable Skagit County plans, and ordinances and any revisions or amendments thereto. In the case of conflicting standards or requirements, the stricter shall apply. *County SMP, Section 7.13.2.B(1).*
- Residential development shall be located and designed to avoid the need for structural shore defense and flood protection works. *County SMP, Section 7.13.2.B(5).*
- The filling of water bodies and shorelands waterward of the extreme high tide line of OHWM and of floodways, natural wetland, marshes, and estuaries for expansion or creation of upland areas is prohibited. *County SMP, Section 7.13.2.B(6).*
- Legal public access to publicly owned shorelines and water bodies shall not be infringed upon by residential development. *County SMP, Section 7.13.2.B(7).*
- Residential structures shall be setback common to the average of setbacks for existing dwelling units within 300 feet of side property lines or a minimum setback distance as required in Table RD, whichever is greater. *County SMP, Section 7.13.2.B(9).*
- All plumbing, wiring, and other utility lines shall be installed underground or otherwise rendered inconspicuous by means meeting with Planning Department approval. *County SMP, Section 7.13.2.B(10).*
- Roads and parking areas shall be located as far landward of the OHWM in compliance with Table RD and the standards of "Transportation Facilities," Section 7.17. *County SMP, Section 7.13.2.B(11)(a).*
- Roads and parking areas shall meet the design and construction standards of applicable short plat or subdivision ordinances. *County SMP, Section 7.13.2.B(11)(b).*
- Residential developments shall utilize effective measures to control, treat, and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Such measures shall

meet the standards and criteria of the Skagit County Code. *County SMP, Section 7.13.2.B(12)*.

- Residential development shall meet all state and local guidelines and standards for solid waste and sewage disposal. *County SMP, Section 7.13.2.B(13)*.
- Setbacks for shoreline residences shall serve as screening and/or buffer areas between properties and between dwelling units and water bodies. *County SMP, Section 7.13.2.B(14)*.

Exhibit 1, Staff Report, pages 3 through 5.

9. County staff reviewed the proposal and determined that it would comply with the residential development regulations described above, noting:
- The proposed residential additions do not include alteration of natural topography or the shore water interface.
 - Disturbance of vegetation on-site would be limited to the area immediately surrounding the existing home.
 - Residential uses are permitted outright in the RRv zoning designation. A variance request from the dimensional standards of the Critical Areas Ordinance has also been submitted. If this variance is approved, the project would comply with all applicable Skagit County Plans and Ordinances.
 - According to the Edison Engineering site assessment, a previous owner constructed a bulkhead near the shoreline in the late 1970s. It is still in place, but no additional structural shore defense or flood protection works are proposed.
 - There would be no fill material placed waterward of the OHWM as part of this proposal.
 - The subject site is private property, and public access is not currently allowed landward of the OHWM. This would not change as a result of the proposal.
 - The average setback of residences within 300 feet of the side property lines is 89.5 feet from the OHWM. The proposed home is located about 50 feet from the OHWM, and the proposed addition on the western side of the home would be approximately 65 feet from the OHWM of the river. The proposed replacement deck would be located landward of the home, approximately 89 feet from the OHWM.
 - All utilities proposed as part of this project would be located underground where feasible.
 - All parking for the home is located on-site, landward of the house.
 - The project would meet all applicable requirements of Chapter 14.32 SCC, Stormwater Management. Details of the drainage plan would be provided at the time of building permit application submittal.
 - The site is served by an existing septic system that is regularly inspected.

- Although the area immediately around the existing structures is cleared to lawn, the site is well vegetated with mature native trees and shrubs providing a visual barrier between neighboring homes as well as the river.

Exhibit 1, Staff Report, pages 3 through 5.

10. Variances from the application of specific bulk, dimensional, or performance standards set forth in the County SMP may be permitted where there are extraordinary or unique circumstances relating to the property. To obtain a shoreline variance, the Applicant must show that the strict implementation of the County SMP would impose unnecessary hardship and that compliance with these regulations would prohibit any reasonable use of the property. *County SMP, Section 10.01.*

The Applicant's materials specifically address the criteria for approval of a shoreline variance, under Section 10.03.1 of the County SMP, and contend:

- The required shoreline setback is 89.5 feet instead of 50 feet due to the location of two adjacent residences that were constructed after the subject residence was built, and the existing residence is legally nonconforming with this current shoreline setback requirement. Strict application of the current shoreline setback requirements would prevent construction of a modest addition to the existing legally nonconforming residence.
- The hardship is specifically related to the property due to the location of adjacent residences creating a required 89.5-foot setback for the existing residence. There are no deed restrictions, and the hardship was not a result of any action by the property owners.
- The subject parcel is very wide and conducive to the proposed mitigation. The neighbor to the east would be allowed to add building space because there is only one adjacent residence and, therefore, the neighboring residence is not subject to an expanded shoreline setback area. The proposed addition and replacement porch would be located on gravel that surrounds the existing house. The Applicant would mitigate for the addition and slightly expanded replacement deck by planting native trees and shrubs within the remaining shoreline setback. The proposed addition and porch replacement would not impact enjoyment of the shoreline.
- The requested variance for the legally nonconforming house would not constitute a grant of special privilege not enjoyed by other properties in the area.
- The public would suffer no detrimental effects because the proposed home addition would be small and would be located 60 feet from the shoreline and because the Applicant would mitigate for the additional building area through the planting of native trees or shrubs.

Exhibit 2.

11. County staff also reviewed the proposal for consistency with the requirements for a shoreline variance under Section 10.03.1 of the County SMP and determined:
- Residential development is a permitted use in the Rural shoreline area and the RRv zoning designation. The required average shoreline setback of 89.5 feet would interfere with the Applicant's ability to reasonably use the site. The home was constructed in 1977, and the neighboring homes were constructed later.
 - The hardship is not a result of the Applicant's actions. The home was legally permitted by a previous owner in April of 1976, prior to the adoption of the County SMP. The average setback is based on homes that were constructed more recently.
 - This approximately four-acre parcel is surrounded by large, well-vegetated sites containing residential structures of similar size. The project would not cause adverse effects to adjacent properties or the shoreline environment. The proposed expansion of the home would not be noticeable from the adjacent properties or the river. The size of the home with the proposed additions would not be out of scale for the area.
 - The requested expansion of this nonconforming home is minor and would not be out of scale for the area. Approving this request would not constitute a grant of special privilege not enjoyed by others along this stretch of the Skagit River shoreline and would be the minimum necessary to afford relief. The project would meet all other applicable dimensional standards.
 - The public interest would suffer no substantial detrimental effect due to this proposal. The existing home is well buffered by native vegetation, and the modest increase in size would not be visible to anyone outside of the property or on the river. The project would be constructed in compliance with current stormwater regulations to protect water quality.
 - Similar requests for modest expansions of existing homes on the large rural lots in this area would be consistent with the County SMP and RCW 90.58.020 and would not produce a substantial adverse effect to the shoreline environment.

Exhibit 1, Staff Report, pages 5 through 7.

Critical Areas Variance

12. As noted above, the Applicant requests a critical areas variance to reduce the standard 200-foot buffer associated with the Skagit River by more than 50 percent, to a minimum of 50 feet, to accommodate the proposed home addition and porch replacement project. SCC 14.24.540(4). SCC 14.24.540(3) provides:

Buffers may be reduced when buffer reduction impacts are mitigated and result in equal or greater protection of the [fish and wildlife habitat conservation area] functions and values. Prior to considering buffer reductions, the applicant shall demonstrate application of mitigation sequencing as required in SCC 14.24.080. In all circumstances where a substantial portion of the remaining buffer is degraded, the buffer

reduction plan shall include replanting with native vegetation in the degraded portions of the remaining buffer area and shall include a 5-year monitoring and maintenance plan.

County staff analyzed the proposal and determined that this requirement would be satisfied, noting:

- Any addition to the existing home cannot avoid all impacts to the standard 200-foot buffer of the Skagit River.
- The potential impacts of the proposed additions would be minimized by keeping the footprint small and located to the side and landward of the home.
- The nature of buffer impacts associated with construction of the residential addition and deck would be permanent and cannot be completely repaired, rehabilitated, or restored.
- The buffer impacts associated with construction of the additions cannot be reduced or eliminated over time. The buffer, excluding the home, septic system, and detached garage, would be identified as a protected critical area and would be permanently protected from future development.
- To compensate for potential impacts, the disturbed portions of the remaining buffer area would be enhanced with native vegetation.
- Enhancement of the degraded portions of the buffer would take place concurrent with construction of the residential additions. An equivalent amount of impacted buffer area, 206 square feet, would be enhanced. This would be accomplished by planting a minimum of two native conifers or eight native shrubs within the buffer.

Exhibit 1, Staff Report, page 9.

13. The Applicant's materials specifically address the criteria for approval of a critical areas variance under SCC 14.24.140(3) and assert:
 - The existing house and deck are located within the critical areas buffer. There are no other zoning setbacks applicable to the project and, therefore, a variance from standard zoning setbacks would not provide any relief.
 - The submitted site assessment and mitigation plan addresses mitigation controls. There would be a small impact to critical areas. The property is wide (316 feet) and even wider along the river. The buffer associated with Skagit River extends over approximately 1.5 acres of the 4.08-acre property. The proposal is to construct a 196 square foot home addition and to replace an existing 130 square foot porch with a new 144 square foot porch. The site has been developed and occupied for over 44 years, and, as mitigation, the Applicant would plant shrubs and herbaceous vegetation where none has existed for many years.
 - The proposed deck replacement and expansion would be located in an existing graveled area and would not affect any unoccupied spaces.

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- The proposed deck replacement and expansion would be located approximately 60 feet from the Skagit River OHWM, on a high spot in the area.
- The location of the proposed variance would not be within a special flood hazard area.
- The residence on the property was built in 1977, prior to the requirement for a 200-foot buffer from Skagit River.
- The variance is necessary to accommodate additional living space within the existing residence, where the Applicant intends to live.

Exhibit 3.

14. County staff also reviewed the proposal for consistency with the requirements for a critical areas variance under SCC 14.24.140(3) and determined:
- The existing home is located within the standard 200-foot buffer on the Skagit River. Constructing the addition and replacing the deck on the home would provide for a modest increase in living space. A zoning variance would not provide sufficient relief to avoid the need for the requested critical areas variance.
 - The Fish and Wildlife and Geohazard Assessments prepared by Edison Engineering, dated January 20, 2021, were prepared using best available science.
 - The conclusions of the site assessments used best available science to support the minor reduction of the standard 200-foot shoreline buffer.
 - The site assessment with mitigation proposed would allow for reasonable use of the site while having the least possible impact on the Skagit River shoreline.
 - The Applicant has provided adequate justification for the buffer reduction. The request is the minimum variance necessary to make possible the reasonable use of the land.
 - The purpose of Chapter 14.24 SCC is to assist in conserving the value of property while providing protection for critical areas. The site assessment and mitigation plan ensure that the proposed additions can be constructed while avoiding significant adverse impact to the shoreline. The granting of this variance would not be detrimental to the public welfare.
 - This parcel was created by land division in 1978, after the home was constructed in 1977. The boundaries of the site have not been altered since that time.
 - This parcel was created by short plat prior to adoption of current land use regulations. The home was legally permitted and constructed in the 1970s.

Exhibit 1, Staff Report, pages 12 through 16.

Testimony

15. County Senior Planner Leah Forbes testified generally about the proposal, the review process that occurred, and how, with conditions, the proposal would be consistent with the County's Comprehensive Plan, zoning ordinances, critical areas ordinances, and shoreline master program, and would meet the requirements for approval of a shoreline variance and a critical areas variance. She noted that the existing home on the property

was constructed in 1977 and is located approximately 50 feet from the Skagit River OHWM. Ms. Forbes explained that the County SMP requires homes to be located a minimum of 50 feet from the OHWM or the average of setbacks from the OHWM for homes within 300 feet of the side property lines, whichever is greater. She explained that the two homes within 300 feet of the site's side property lines, which were constructed after the home on the subject property, create an average setback of 89.5 feet and, therefore, the proposed home additions would require a shoreline variance. Ms. Forbes stressed that the proposed additions would be located greater than 50 feet from the OHWM. She detailed how the proposal would comply with all applicable County SMP policies and regulations for residential development within the shoreline jurisdiction. Ms. Forbes explained that a critical areas variance would also be required for the proposal because the existing home is, and proposed additions would be, located within the standard 200-foot buffer associated with the Skagit River. She detailed how the proposal would meet the requirements for a critical areas variance to reduce the 200-foot buffer to a minimum of 50 feet, stressing that the proposed mitigation would be sufficient to ensure no detrimental impacts would result from the proposed additions. *Testimony of Ms. Forbes.*

16. Applicant Mary Bianchini testified that the proposed home additions would not extend further toward the OHWM than the existing home. She noted that mitigation plantings have already been planted on the site, including salal, currant, and elderberry bushes. Ms. Bianchini stated that she has lived at the property for nearly 30 years and has been a good steward of the land. *Testimony of Ms. Bianchini.*

Staff Recommendation

17. Ms. Forbes testified that County staff recommends approval of the shoreline variance and critical areas variance with conditions. Ms. Bianchini testified that she understands and would comply with County staff's recommended conditions of approval. *Testimony of Ms. Forbes; Testimony of Ms. Bianchini.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide requests for a shoreline variance and for a critical areas variance. *Chapter 14.06 SCC; SCC 14.10.020(3); SCC 14.24.140; County SMP, Sections 9.06, 9.07, and 10.02.3.*

Criteria for Review- Shoreline Variance

Shoreline Management Act

The Shoreline Management Act is codified at Chapter 90.58 RCW. Applicable policies of RCW 90.58.020 include those to foster "all reasonable and appropriate uses"; protect against adverse effects to the public health, the land, and vegetation and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alternations to the natural condition

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of the shoreline. Nonetheless, “private property rights are ‘secondary to the SMA’s primary purpose, which is to protect the state shorelines as fully as possible.’” *Samson v. City of Bainbridge Island*, 149 Wn. App. 33, 49, 202 P.3d 334 (2009) (internal quotation marks omitted) (quoting *Lund v. Dep’t of Ecology*, 93 Wn. App. 329, 336-37, 969 P.2d 1072 (1998)). Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” *RCW 90.58.020*. See also *Buechel v. Dep’t of Ecology*, 125 Wn.2d 196, 203, 884 P.2d 910 (1994).

In promulgating the Shoreline Management Act of 1971, the legislature recognized that “ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development” of the state’s shorelines. *RCW 90.58.020*. The legislature also determined that “unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest.” *RCW 90.58.020*. Accordingly, the Shoreline Management Act requires local governments to develop a master program to regulate shoreline uses consistent with its guidelines. *RCW 90.58.080(1)*.

Shoreline Management Act Regulations

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant’s permit request. WAC 173-27-170 sets forth permitting procedures and permit criteria for shoreline variances. The Hearing Examiner reviews the application under the following criteria:

- (1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in *RCW 90.58.020*. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- (2) Variance permits for development and/or uses that would be located landward of the ordinary high water mark (OHWM), as defined in *RCW 90.58.030 (2)(c)*, and/or landward of any wetland as defined in *RCW 90.58.030 (2)(h)*, may be authorized provided the applicant can demonstrate all of the following:
 - (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
 - (b) That the hardship described in (a) of this subsection 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 the master program, and not, for example, from deed restrictions or the applicant's own actions;

- (c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and would not cause adverse impacts to the shoreline environment;
- (d) That the variance would not constitute a grant of special privilege not enjoyed by the other properties in the area;
- (e) That the variance requested is the minimum necessary to afford relief; and
- (f) That the public interest would suffer no substantial detrimental effect.

WAC 173-27-170.

Consistent with the requirements under WAC 173-27-170, the County SMP provides that shoreline variance permit may be granted if the Applicant can meet all the following criteria:

- a. That the strict application of the bulk, dimensional or performance standards set forth in this Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program.
- b. That the hardship described above 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 Master Program and not, for example, from deed restrictions or the applicant's own actions.
- c. 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 designation.
- d. That the variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the same area and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect.

County SMP, Section 10.03.1.

In addition to the above criteria:

In the granting of all variance permits, consideration shall be given to the cumulative 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 this Master Program and should not produce substantial adverse effects to the shoreline environment.

County SMP Section 10.03.3.

*Findings, Conclusions, and Decision
Skagit County Hearing Examiner
Bianchini Shoreline Variance and Critical Areas Variance
Nos. PL21-0657; PL21-0658*

Criteria for Review- Critical Areas Variance

The Hearing Examiner may approve a request for a variance from the setback and buffer requirements of the County's Critical Areas Ordinance, Chapter 14.24 SCC, if the Hearing Examiner determines that each of the following requirements would be met:

- (a) The issuance of a zoning variance by itself will not provide sufficient relief to avoid the need for a variance to the dimensional setback and other requirements for the critical areas regulated by this Chapter; and
- (b) Preparation of a site assessment and mitigation plan by a qualified professional pursuant to the requirements of SCC 14.24.080 and all other applicable sections of this Chapter. The site assessment and mitigation plan shall be prepared utilizing best available science; and
- (c) The conclusions of the site assessment must utilize best available science to support a modification of the dimensional requirements of this Chapter; and
- (d) The site assessment and mitigation plan demonstrate that the proposed project allows for development of the subject parcel with the least impact on critical areas while providing a reasonable use of the property; and
- (e) The reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and
- (f) The granting of the variance will be consistent with the general purpose and intent of this Chapter, and will not create significant adverse impacts to the associated critical areas or otherwise be detrimental to the public welfare; provided, that if the proposal is within the special flood hazard area (SFHA), the applicant must demonstrate that the proposal is not likely to adversely affect species protected under the Endangered Species Act, or their habitat; and
- (g) The inability of the applicant to meet the dimensional standards is not the result of actions by the current or previous owner in subdividing the property or adjusting a boundary line after the effective date of the ordinance codified in this Chapter; and
- (h) The granting of the variance is justified to cure a special circumstance and not simply for the economic convenience of the applicant.

SCC 14.24.140(3).

The criteria for review adopted by the Skagit County Board of County Commissioners are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering

the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

Conclusions Based on Findings

- 1. With conditions, the proposal would meet the specific requirements for a shoreline variance under the SMA and the County SMP.** The County provided reasonable notice and opportunity to comment on the proposal. The County did not receive any comments on the proposal from members of the public or from reviewing government agencies in response to its notice materials. The proposal is categorically exempt from environmental review under SEPA, in accord with WAC 197-11-800(6)(e).

Applicable policies of the Shoreline Management Act (SMA) include those to foster “all reasonable and appropriate uses;” protect against adverse effects to the public health, the land, and vegetation and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alterations to the natural condition of the shoreline. Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” *RCW 90.58.020*. The proposal is to construct a 192 square foot addition and a 144 square foot replacement porch to an existing residence, which is a reasonable and appropriate use within the Rural shoreline environment.

The existing home on the property was constructed 1977 and is located 50 feet from the Skagit River OHWM. The County SMP requires residences to be set back a minimum of 50 feet from the Skagit River OHWM or the average of setbacks from the OHWM of neighboring homes within 300 feet of the side property lines, whichever is larger. Due to the later construction of homes within 300 feet of the property’s side property lines, the required average shoreline setback for the subject home is 89.5 feet. Strict application of this average setback requirement would preclude construction of the proposed modest additions to the existing home, a reasonable use not otherwise prohibited by the County SMP. This hardship is not the result of any actions by the property owner but, rather, is the result of subsequent residential development on neighboring properties that increased the required shoreline setback for the existing residence from 50 feet to 89.5 feet.

The 4.08-acre parcel is surrounded by similarly sized and well-vegetated properties developed with single-family residences. As proposed and conditioned herein, the modest additions to the existing residence on the property would not be noticeable from the surrounding properties and would not cause adverse effects to the surrounding properties or the shoreline environment. The Applicant would be required construct the proposed additions in compliance with current stormwater regulations and would provide the County with a detailed drainage plan ensuring compliance with such regulations with the building permit application. Approving the requested shoreline variance would not

constitute a grant of special privilege and is the minimum necessary to allow for the modest home additions, a right enjoyed by other property owners in the vicinity and Rural shoreline environment that do not have similar setback constraints created by subsequent neighboring residential development. County staff reviewed the proposal and determined that, with conditions, it would comply with all applicable policies and regulations governing residential development in the shoreline jurisdiction and within the Rural shoreline environment. County staff also considered the potential cumulative impacts of additional requests for similar proposals in the area and determined that they would not produce a substantial adverse impact on the shoreline environment, noting that similar requests for modest expansions of existing home on large rural lots in the area would be consistent with the SMA and the County SMP. The Hearing Examiner concludes that the public interest would not suffer a detrimental effect from the requested shoreline variance.

Conditions, as detailed below, are necessary to ensure that the proposal meets the criteria for a shoreline variance and complies with all other local, state, and federal requirements. *Findings 1 – 17.*

2. **With conditions, the proposal would meet the requirements for a critical areas variance.** The Applicant requests a critical areas variance to reduce the 200-foot buffer associated with the Skagit River to a minimum of 50 feet to allow for the proposed additions to the existing residence on the site, which is located entirely within the 200-foot buffer area. The subject property and all surrounding properties are designated Rural Reserve by the County Comprehensive Plan and are within the Rural Reserve (RRv) zoning district, which allows for detached single-family dwelling units. The existing home on the property was constructed in 1977 and is legally nonconforming with the current 200-foot buffer requirement. The need for a critical areas variance to allow for modest additions to the existing home is not the result of any actions of the property owner and is the minimum necessary to allow for the modest additions to the existing single-family home on the property.

Edison Engineering prepared a fish and wildlife and geohazard assessments report for the proposal, which determined that the proposed addition and porch replacement project would result in a total of 206 square feet of new building and porch space within the Skagit River shoreline buffer and recommended that the Applicant mitigate for impacts to the buffer by planting two native trees or eight native shrubs within 200 feet of the OHWM. County staff reviewed the report and determined that the proposal used appropriate mitigation sequencing. The Applicant has installed the required mitigation plantings on-site and would be required to comply with the report's recommendations for monitoring and maintaining the plantings to ensure that the proposal's impacts to the buffer are appropriately mitigated.

Conditions, as detailed below, are necessary to ensure that the proposal meets the criteria for a critical areas variance and complies with all other local, state, and federal requirements. *Findings 1 – 17.*

DECISION

Based on the preceding findings and conclusions, the request for a critical areas variance to reduce the standard 200-foot buffer associated with the Skagit River to a minimum of 50 feet, and for a shoreline variance to reduce the average shoreline setback of 89.5 feet to a minimum of 50 feet, to allow for the construction of a 192 square foot addition and a 144 square foot replacement porch to an existing residence, located at 33053 South Skagit Highway, is **APPROVED**, with the following conditions:²

1. The recommendations of the Edison Engineering Fish and Wildlife & Geohazard Assessments, dated January 20, 2021, shall be considered conditions of approval unless modified by the conditions below.
2. Prior to final inspection, a minimum of two native conifers or eight native shrubs must be planted within the remaining Skagit River buffer.
3. The Applicant shall submit an as-built site plan of the mitigation plantings as well as provide photographs of the installed plants. This must be submitted within 30 days of plant installation.
4. All mitigation plants shall maintain a survival rate of 100 percent following the first year and 80 percent 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.
5. A Protected Critical Area (PCA) site plan shall be recorded with the County Auditor's office prior to submittal of the building permit application.
6. 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)).
7. 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.

² This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by County Code.

8. Temporary erosion/sedimentation control measures shall be utilized in accordance with the Skagit County Code 14.32 Stormwater Management.
9. The Applicant shall comply with all relevant provisions of Skagit County Code 14.16 the Zoning Ordinance.
10. The Applicant shall submit a copy of the Hearing Examiner's written order (decision) with the building permit application.
11. The project shall be commenced within 2 years of the shoreline variance approval and completed within 5 years.
12. 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, he/she shall notify Planning & Development Services prior to the start of construction.
13. Construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140(5)(a) and (b). *WAC 173-27-190.*

DECIDED this 26th day of July 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center