

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) CUP2020-0013  
Application for )  
Susan Costello ) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW,  
) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting a Zoning Conditional Use Permit to remove more than 20 percent of the total lot area from production of forest products. The clearing will be less than 35 percent and will accommodate construction of a single-family residence, access, accessory structures and Academy Highlands Drive. The project is located at 3722 Academy Highlands Drive, Bellingham, WA.

Decision: The requested Zoning Conditional Use Permit is approved, subject to conditions.

**FINDINGS OF FACT**

**INTRODUCTION**

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

**I.**

Applicant: Susan Costello

Property Address: 3722 Academy Highlands Drive  
Bellingham, WA.

Assessor’s Parcel Number: 380313 229052

Zoning: Rural Forestry

Comprehensive Plan: Forestry [Resource]

Subarea: Foothills

Total Acreage: Approximately 20 acres

Roads: Private

Water Supply: Rainwater catchment

Sewage Disposal: Septic system

Fire Protection: Whatcom County Fire District #4

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham Public Schools School District

Vegetation: The subject site has very little vegetation.

Adjacent Land Uses:

North:	Forestry
East:	Forestry
South:	Forestry
West:	Forestry

Easements: Associated utility easements

Authorizing Codes, Policies, Plans, and Programs

Revised Code of Washington [RCW] Chapters 36.70A

Whatcom County Comprehensive Plan

Whatcom County Code [WCC] Title 22, Chapter 22.05-Permit Review Procedures

Whatcom County Code Chapter 12.08, Development Standards

Whatcom County Code, Title 14, Use of Natural Resources

Whatcom County Code Chapter 15, Building Code/Fire Code

State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11,

Whatcom County Environmental Policy Administration Chapter 16.08

Whatcom County Code Chapter 16.16, Environment - Critical Areas

Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance

Whatcom County Code Title 24, Health Regulations

Legal Notices:

Posted –	Notice of Public Hearing, February 4, 2021
Mailed –	Notice of Public Hearing, January 26, 2021
Published –	Notice of Public Hearing, February 4, 2021

Hearing Date: February 17, 2021

Parties of Record

Susan Costello  
4152 Meridian Street, 105, Unit 369  
Bellingham, WA 98226

Jeff Campbell, Agent  
2508 Island View Lane  
Lummi Island, WA 98262

Amy Keenan, Planner II  
Whatcom County Planning & Development Services

Exhibits for Academy Highlands, CUP2020-0013

- 1 CUP Application
- 2 CUP Application Signature
- 3 CUP Agent Authorization
- 4 CUP Receipt
- 5 CUP Fee Responsibility
- 6 Neighboring Addresses
- 7 SEPA
- 8 SEPA DNS
- 9 OSS Application
- 10 Title Report
- 11 Recorded Deed
- 12 Preliminary Stormwater
- 13 Preliminary Stormwater Signature
- 14 Preliminary Traffic
- 15 Preliminary Traffic Signature
- 16 Land Disturbance Permit
- 17 BPS Concurrency
- 18 Assessor's Map
- 19 Stormwater Letter
- 20 Site Plan
- 21 Notice Labels
- 22 Determination of Completeness
- 23 Distribution List
- 24 Legal Notice
- 25 Notice of Application
- 26 Notice of Application - Posting
- 27 Certificate of Mailing
- 28 Codes Covenants and Restrictions for Academy Highlands

- 29 Public Works - Engineering Services Memo
- 30 Fire Marshal's Office Memo
- 31 CAO - Geohazards Memo
- 32 CAO - Wetlands and Habitat Conservation Area Memo
- 33 CAO - Watersheds
- 34 Staff Report

## II.

The Applicant is requesting a Zoning Conditional Use Permit to remove more than 20 percent of the total lot area from production of forest products. As required by WCC 20.42.450, the clearing will be less than 35 percent and will accommodate development of a single-family residence and access road. Accessory development will include a two-car garage, rainwater catchment system for domestic water uses, stormwater infrastructure, and a septic system.

## III.

The Whatcom County Technical Review Committee has recommended approval of the requested Zoning Conditional Use Permit to allow removal of more than 20 percent of the total lot area from production of forest products. As allowed by WCC 20.42.450, the clearing will be less than 35 percent and will accommodate construction of a single-family residence, access, accessory structures and Academy Highlands Drive. The Technical Review Committee's Staff Report, dated February 8, 2021, recommends the Hearing Examiner to approve the Applicant's request, subject to conditions. The Findings of Fact and Conclusions of Law set forth in the Staff Report, dated February 8, 2021, a copy of which is attached hereto, are incorporated herein by this reference. The Applicant has indicated that there are no factual inaccuracies in Staff's factual findings and no objection to the Conditions of Approval requested by Staff. There was no public comment on the application during the public comment period or at the public hearing.

The Findings of Fact in the Staff Report are supported by the record as a whole and are hereby adopted by the Hearing Examiner as the Findings of Fact herein.

#### **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 requested Conditional Use Permit can be approved only if the request is consistent with the Zoning Conditional Use Permit Criteria of WCC 20.42.901. The conditional uses listed in WCC20.42.150 are subject to forestry conditional use criteria. The criteria listed in WCC20.42.902 shall supersede the criteria listed in WCC22.05.026. The Technical Review Committee and Hearing Examiner concluded that the specific standards of the use district defining the requested Zoning Conditional Use Permit meets the requirements and the project does satisfy the criteria of WCC 20.42.902 (1) through (12). The Hearing Examiner concurs with the Technical Review Committee that the proposed development is consistent with the applicable CUP criteria.

Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner should approve the granting of the Applicant's Zoning Conditional Use Permit.

##### **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 Zoning Conditional Use Permit is hereby granted to Susan Costello to remove more than 20 percent of the total area from production of forest products but less than 35 percent, to accommodate construction of a single-family residence, located at 3722 Academy

Highlands Drive, Bellingham, WA, Assessor's Parcel No. 380313 229052,  
subject to the following conditions:

### **Planning Division**

1. The use and location on shall be substantially as approved by this permit, as shown on the site plan floor plan dated August 2020. The use and location shall not be amended or revised in any way without further approval of the Hearing Examiner.
2. This CUP is to allow the additional removal of land from forestry production and do not authorize land clearing or construction. An LDP and building permit will be required.
3. No more than 35 percent of the site (seven acres) shall be permanently removed from forestry production. The area cleared shall be the minimum necessary to accommodate the Academy Highlands Drive, the two-party access and turnouts, the single-family residence and associated accessory uses and structures. This will be reviewed at the time of LDP and building permit approval.
4. A building permit is required for each proposed structure.
5. Pursuant to WCC 20.84.210 Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.
6. Pursuant to WCC 22.05.140(1) Expiration of project permits, the project permit approval status shall expire two years from the date of approval. The decision maker may extend this period up to one year from the date of original expiration upon written request by the applicant if requested prior to expiration.

### **Fire Marshal's Office**

7. The Fire Department Turnaround feature will need to be improved. All three legs of the proposed T Shape Turnaround must be 20' in width for a run of 45' from the center of the Turnaround.
8. Portions of the driveway will need to be paved due to the slope of the driveway. Driveways over 12% in grade need to be paved and driveways 15-18% in grade need to be grooved pavement.

### **Critical Areas – Wetlands and Habitat Conservation Areas**

9. A final site plan shall be reviewed at the time of LDP and building permit submittal by Critical Areas staff for approval.

**Critical Areas – Geohazards**

- 10. Supplemental review by the Technical Administrator of Article 3 shall be required prior to any land disturbing or development activities not approved under LDP2020-00061.

**Critical Areas – Stormwater/Watersheds**

- 11. Tree canopy removal shall not exceed 35% of the parcel.
- 12. Stormwater details and designs are not approved as part of this Conditional Use Permit.

NOTICE

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

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

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 22th day of February 2021,



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Michael Bobbink, Hearing Examiner



**WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT**

Date: February 8, 2021  
Hearing Date: February 17, 2021

The application of <b>Susan Costello</b> for a Zoning Conditional Use Permit in the Rural Forestry Zone.	CUP2020-00013 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: The applicant is requesting a conditional use permit to remove more than 20 percent of the total lot area from production of forest products. As allowed by WCC 20.42.450, the clearing will be less than 35 percent and will accommodate construction of a single family residence, access, accessory structures and Academy Highlands Drive.

Recommendation: The Technical Review Committee recommends that the Whatcom County Hearing Examiner approve the Applicant's request, subject to the requested conditions located in Section IX of this report.

**II. PRELIMINARY INFORMATION**

**A. BACKGROUND INFORMATION**

Applicant/Owner: Susan Costello  
4152 Meridian Street, 105, Unit 369  
Bellingham, WA 98226

Agent: Jeff Campbell  
2508 Island View Lane  
Lummi Island, WA 98262

Application Submittal: October 15, 2020

Determination of Completeness: October 23, 2020

Site Location/Address: 3722 Academy Highlands Drive

Assessor's Parcel Number(s): 380313 229052

Zoning: Rural Forestry

Comprehensive Plan: Forestry (Resource)

Total Acreage: Approximately 20 acres

Roads: Private

Water Supply: Rainwater catchment

Sewage Disposal: Septic system

Fire Protection: Whatcom County Fire District #4

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham Public Schools

Vegetation: Vegetated pasture areas and forest.

Adjacent Land Uses:

North:	Forestry
<u>East:</u>	Forestry
<u>South:</u>	Forestry
<u>West:</u>	Forestry

Easements: Associated utility easements

B. AUTHORIZING CODES, POLICIES, PLANS, AND PROGRAMS:

1. Revised Code of Washington (RCW) Chapter 36.70
2. Whatcom County Comprehensive Plan
3. Whatcom County Code, Title 22, Chapter 22.05 – Permit Review Procedures
4. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
5. Whatcom County Code, Title 14, Use of Natural Resources
6. Whatcom County Code Chapter 12.08, Development Standards
7. Whatcom County Code Chapter 15, Building Code/Fire Code
8. State Environmental Policy Act (SEPA); Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
9. Whatcom County Code Chapter 16.16, Critical Areas
10. Whatcom County Code Title 24, Health Regulations

### **III. APPLICATION PROPOSAL**

The applicant, Susan Costello, is requesting a conditional use permit (CUP) to remove more than 20 percent of the total lot area from production of forest products. As allowed by WCC 20.42.450, the clearing will be less than 35 percent and will accommodate development of a single family residence. Accessory development will include a two car garage, rainwater catchment system for domestic water uses, stormwater infrastructure, and a septic system.

Access to the site will be from Academy Highlands Drive and will be sized for use by two residential lots (lot 14 and lot 15) and include a Fire Marshal's Office required turnout.

This CUP will not authorize any work onsite. The applicant shall complete the August 19, 2020 Notice of Additional Requirements (NOAR) associated with LDP2020-00061 and receive approval prior to any site work. The applicant shall also apply for and receive approval of a building permit prior to any building construction.

#### **Reviewed Studies/Plans**

Site Plan, Freeland and Associates, August 24, 2020

### **IV. SITE DESCRIPTION**

The subject property is located at 3722 Academy Highlands Drive, Bellingham, WA. The property is approximately 20 acres and is located within the Rural Forestry (RF) zone. The site is forested with a ridge on the northern portion and steep slopes to the south. The site is currently undeveloped except Academy Highland Drive (a private road) and a forestry access easement to the south.

### **V. PUBLIC NOTICE AND COMMENT**

Requirements for public notice are contained in Chapter 22.05 WCC.

Notice of Application: The Notice of Application for this proposal was published on November 6, 2020. The fourteen (14) day comment period ended on November 20, 2020.

On November 6, 2020, Notices of Application were mailed to property owners whose boundaries lie within 1,000 feet of the subject property.

Notice of Public Hearing: The Notice of Public Hearing for this application was published in a one-time newspaper publication in the Bellingham Herald.

Public Comment: Whatcom County Planning & Development Services (PDS) received no comments on this proposal.

## **VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment unless the proposal is categorically exempt from SEPA threshold review. The applicant submitted a land disturbance permit application (LDP2020-00061) for site clearing on July 15, 2020. A SEPA checklist (SEP2020-00064) was also included with the land disturbance application.

A Determination of Non-Significance (DNS) was issued on August 5, 2020 for the land disturbance activities and proposed future residence. No appeals were filed.

## **VII. CONSISTENCY WITH REGULATIONS, FINDINGS OF FACT**

### **A. WCC Chapter 12.08 – Roads and Bridges**

WCC Chapter 12.08 adopts and gives authorization for development standards for development within Whatcom County. Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as “Whatcom County development standards” and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with county regulations.

Public Works Engineering Services (PWES) reviewed the proposal and submitted a memo dated November 23, 2020 with recommended conditions of approval and the following comments:

The applicant is seeking to be able to clear a larger portion of their lot than would be allowed in the Rural Forestry (RF) zone which restricts non-forestry related clearing to less than 20 percent of the lot area (WCC 20.42.450). Access to this parcel is via a private road, Academy Highlands Drive, which connects to Academy Road, a publicly maintained road, classified as Rural Local Access.

PWES comments:

- The project is exempt from concurrency evaluation per WCC 20.78.030.
- The proposal appears to provide an entrance to a private road in accordance with applicable county standards and would not generate traffic in excess of capacity of the public road system at reasonable safety and service levels.
- An encroachment permit is not required as there is no work in the County right-of-way indicated in this proposal.
- It is anticipated that stormwater review for this site will be done by Planning and Development Services (PDS), Natural Resources staff, as a part of the review for the single family residence (SFR).

*The Technical Review Committee has determined that as discussed above and conditioned the proposed use meets the requirements of WCC Chapter 12.08.*

## **B. WCC Title 15 – Buildings & Construction**

**Fire Code:** The Whatcom County Fire Marshal's Office submitted a memo dated December 4, 2020 with the follow comment and recommended conditions of approval:

The driveway dimensions meet the minimum requirements. However, the Fire Department Turnaround feature will need to be improved. All three legs of the proposed T Shape Turnaround must be 20' in width for a run of 45' from the center of the Turnaround.

Portions of the driveway will need to be paved due to the slope of the driveway. Driveways over 12% in grade need to be paved and driveways 15-18% in grade need to be grooved pavement.

*The Technical Review Committee has determined that as conditioned, the conditional use permit application meets the requirements of WCC Title 15 – Fire Code.*

## **C. WCC Title 16 – Whatcom County Critical Areas Ordinance**

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

### **Critical Areas – Wetlands and Habitat Conservation Areas**

Whatcom County Planning & Development Services Natural Resources Division Critical Areas wetlands staff reviewed the proposal through the preapplication process and on January 22, 2021 submitted a memo with the following discussion:

Conditional Use Permit CUP2020-00013 has been forwarded to Whatcom County Critical Area staff for review under WCC 16.16, specifically WCC 16.16.100 – Purpose and Intent, WCC 16.16.200 – Administrative Provisions, WCC 16.16.600 – Wetlands, and WCC 16.16.700 – Habitat Conservation Areas (HCA).

The subject parcel is located at 3722 Academy Highlands Dr. The parcel number is 380313 229052. This project proposes to construct a 6992 Sq. Ft. home and clear approximately 3.5 acres of vegetation in addition to the previously cleared and permitted Academy Highlands Drive right of way.

Whatcom County maps, local GIS resources, and supplemental information in the pre-application packet indicate the site contains Fish and Wildlife Habitat Conservation Areas.

Specifically, the south east portions of the lot are identified the Washington State Department of Fish and Wildlife as a biodiversity area and corridor. It appears the applicants submitted site plan appears to mostly avoid this area. However, a final site plan

shall be reviewed at the time of LDP and building permit submittal by Critical Areas staff for approval.

### **Critical Areas – Geohazards**

Whatcom County Planning & Development Services Natural Resources Division Staff Geologist reviewed the proposal through the preapplication process and the associated LDP. Staff submitted a memo on January 11, 2021 with the following discussion:

Previous review of proposed clearing activities associated with the driveway and house site was conducted for potential impacts to regulated geologically hazardous areas pursuant to Article 3 of the Whatcom County Critical Areas Ordinance under LDP2020-00061. At that time, the site plan consisted of clearing for the home site that extended on to moderate slopes, and included a 100-foot flow-path for stormwater treatment and dispersion. The stormwater dispersion flow-path extended downgradient onto slopes with increasingly steep gradient. As required for stormwater treatment, the flow-path would be required to remain as undisturbed native vegetation. As a result no detrimental impacts to regulated geologically hazardous areas were interpreted, and no additional information in consideration regulated geologically hazardous areas was required.

The site plan submitted with the subject conditional use application depicts a clearing limit extending over the 100-foot stormwater dispersion flow-path area. For stormwater treatment the dispersion flow-path is required to be undisturbed native vegetation. Furthermore the clearing limit encroaches on steep slopes not reviewed under LDP2020-00061.

Additional review would be required to determine if detrimental impacts to regulated geologically hazardous areas are likely based on the submitted site plan for the subject conditional use permit. If the potential for detrimental impacts is interpreted then assessment and mitigating recommendations by a qualified professional in accordance with WCC 16.16.310, .320, .325, .375 and .900 would be required. However, it is interpreted that additional site plan revisions are likely as stormwater and other development requirements are addressed. Supplemental review by the Technical Administrator of Article 3 shall be required at that time.

As the subject conditional use permit requests pertains to lot coverage requirements, and avoidance of regulated geologically hazardous areas is interpreted as feasible, the use permit may be approved in consideration of Article 3 of the Whatcom County Critical Areas Ordinance subject to the recommended condition of approval.

### **Critical Areas – Stormwater/Watersheds**

Whatcom County Planning & Development Services Natural Resources Division - Stormwater staff reviewed the proposal through the preapplication process and the associated LDP. Staff submitted a memo on November 24, 2020 with the following discussion:

The project requests that, per WCC 20.42.163, more than 20% of the site be removed from Forestry uses. This project is also located within the Lake Whatcom watershed and is subject to the requirements of WCC 20.51. A Land Disturbance Permit (LDP2020-00061) has also been submitted for review.

Per WCC 20.51.440, no more than 35% of the tree canopy on site may be removed. The parcel is 20-acres in size. The applicants have indicated that they plan to remove a total of ~3.5 acres, in addition to the ~1.6 acres that have already been removed for construction of Academy Highlands Dr. The proposed totals are less than the 35% allowed for removal and therefore, staff has found that the Conditional Use Proposal is consistent with WCC 20.51.

The applicants should be aware that there are still aspects of the stormwater design that need to be clarified prior to approval of the stormwater plan. However, these clarifications will be reviewed as part of LDP2020-00061 and has no impact on the proposed CUP.

*The Technical Review Committee has determined that as discussed above, the conditional use permit application meets the requirements of WCC Title 16.*

## **D. WCC Title 20 – Official Whatcom County Zoning Ordinance**

### **Chapter 20.42 – Rural Forestry (RF)**

#### **WCC 20.42.010 Purpose.**

The primary purpose of this district is to implement the forestry designation of the Whatcom County Comprehensive Plan, established pursuant to RCW [36.70A.170](#), by providing the opportunity for nonindustrial landowners to manage their land for long-term productivity and sustained use of forest resources. In addition, the district encourages the management of land for wildlife, aesthetics, and other noncommodity values. It also provides for uses that are compatible with these activities, while maintaining water quality and soil productivity. Lummi Island Scenic Estates shall be administered under the RR-I zone district regulations. A secondary purpose of this district is to serve as a holding district within the urban growth area Comprehensive Plan designations to allow forestry uses in the near term while protecting the area from suburban sprawl and preserving the potential for future urban development.

#### **WCC 20.42.050 Permitted uses.**

Unless otherwise provided herein, permitted, accessory and conditional uses shall be administered pursuant to the applicable provisions of Chapter 20.80 WCC (Supplementary Requirements) and Chapter 22.05 WCC (Project Permit Procedures), the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Shoreline Management Program.

#### **WCC 20.42.056 One single-family dwelling per legal lot of record.**

*The applicant is proposing to build one single family residence with associated infrastructure including an access road and turnarounds, and accessory buildings.*

#### **WCC 20.42.350 Building setbacks.**

Building setbacks shall be administered pursuant to WCC [20.80.200](#) (Setback requirements).

Rural Forestry							
Road Type						Other	
Commercial, Industrial, I-5, State Hwys, Principal & Minor Arterials	Collector Arterials or Major Collectors	Minor Collectors	Local Access Streets	Neighborhood Collector	Minor Access Streets	Side Yard	Rear Yard
45'	35'	25'	25	20'	20'	20'	20'

*The setback requirements in WCC 20.42.350 will be reviewed at the time of building permit.*

**WCC 20.42.400 Height limitations.**

No residential structures or buildings accessory thereto with the exception of barns and silos shall exceed a height of 35 feet.

*Height will be reviewed at the time of building permit submittal.*

**WCC 20.42.450 Lot coverage.**

No more than 20 percent of the lot area shall be permanently altered or removed from production of forest products, excluding natural meadows, bogs, surface water and rock outcrops, unless authorized as a conditional use or the planned unit development provision of Chapter 20.85 WCC, in which case no structure or combination of structures, including accessory buildings, shall occupy or cover more than 35 percent of the lot.

*The RF zone has distinct lot coverage requirements related to permanent alteration or removal of land from the production of forest products. A 20 acre lot would be allowed to remove up to four acres from permanent forest production.*

*The site plan provided by the applicant details the area permanently removed from forest production:*

Purpose	Acreage
Academy Highlands Drive	1.61
Shared driveway	0.50
Clearing limits for house, septic, accessory buildings and stormwater	3.01
Primitive road easement (access to additional lots)	0.50
<i>Total:</i>	5.61

*This property is somewhat unique in that the development was created through an exempt land division (WCC 21.01.040(2)(b)) and the road is an easement over all properties. Pursuant to WCC 21.03, the County did not review the proposed development except to ensure a valid land use for the RF zone existed and to provide*

*access (easements). The lots created by the exempt land division have assigned lot numbers from the developer, however, these are not considered platted lots, nor have the lots been reviewed for consistency with development standards.*

*The access road for all lots will remove 1.61 acres from permanent production. The shared driveway for this lot (lot 14), and to access an adjacent lot (lot 15) will remove another 0.50 acres from production. Finally, an unbuilt access easement for future lots will remove another 0.50 acres from forestry production.*

*WCC 20.42.450 allows more than 20 percent of the site to be removed from forestry production through a CUP.*

**WCC 20.42.652 Use of natural resources.**

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 300 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

*This property is located within the RF zone and it is recommended a right-to-forestry disclosure be required at the time of building permit.*

**WCC 20.42.654 Parking requirements.**

*Parking shall conform to the requirements of WCC 20.80.500. However, recreation vehicles and boat parking and storage shall be limited to side and rear yards.*

*A single family residence is required to have two off-street parking spaces. This will be reviewed at the time of building permit.*

**WCC 20.42.657 Drainage.**

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

*The proposal is being reviewed for stormwater management. Final stormwater conditions will be added to the building permit.*

**WCC 20.80.212 Concurrency.**

WCC Section 20.80.212 states that no conditional use permit shall be approved without a written finding that:

1. All providers of water, sewage disposal, schools, and fire protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
2. No county facilities will be reduced below applicable levels of service as a result of the development.

### **Water**

*Water is proposed to be provided by rainwater catchment. Rainwater catchment system approval will be required at the time of building permit submittal.*

### **Sewer**

*The applicant is proposing to use an onsite sewage system (OSS). The OSS will have to be installed and approved at the time of the building permit.*

### **Schools**

*The Technical Review Committee notes that public notice of the proposed use was published in a journal of record, and no comments were received from the School District indicating that the use would increase a requirement for services, or costs associated with improvements.*

### **Fire Protection**

*The proposed use is located within the service area designated as Whatcom County Fire District #4 (managed and staffed by North Whatcom Fire and Rescue (Fire District #21)). There is no additional requirements for the district regarding single family residences.*

*The Technical Review Committee has determined that, as discussed above, the project meets the requirements of WCC Chapter 20.80.212. The Technical Review Committee finds that no county facilities will be reduced below applicable levels of service as a result of the development.*

### **WCC 20.42.900 Conditional use permit criteria.**

**WCC 20.42.901** - The conditional uses listed in WCC 20.42.150 shall be subject to the following forestry conditional use criteria. Said criteria listed in WCC 20.42.902 shall supersede the criteria listed in WCC 22.05.026.

**WCC 20.42.902** - Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled and shall find adequate evidence showing that the proposed conditional use at the proposed location will:

**(1)** Be in accordance with all applicable local and state laws, standards and regulations;

*The proposed single family residence is in conformance with all applicable local and state laws, standards and regulations.*

**(2)** Be reasonably compatible with the surrounding environment and with the policies of the Whatcom County Comprehensive Plan;

*The proposal is located within the RF zone; however, the lot is part of a 31 lot exempt land division with each parcel being approximately 20 acres. The exempt land division contains an access road, easement for access to other lots and codes,*

*covenants, and restrictions (CC&R's) and it is reasonable to assume additional residences will be built around the subject property. Furthermore, a right-to-forestry covenant will be recorded on this property to ensure future property owners understand this area is subject to forestry operations.*

**(3)** Not generate traffic in excess of capacity of the public road system at reasonable safety and service levels;

*The proposal will not generate traffic in excess of capacity for the public road system.*

**(4)** Not create unreasonable demands for public expenditures to provide services, facilities, or utilities beyond those which are normally required for permitted uses in the Forestry District;

*Single family residences are an allowed use in the RF zone; the proposed use will not create unreasonable demands for public expenditures.*

**(5)** Provide entrances to public roads or private roads open to public use in accordance with applicable county or state standards;

*The intersection with Academy Highlands Road meets applicable county standards.*

**(6)** Provide reasonable sound and sight buffering so as not to detract from normal use of surrounding property, public and private roads, and trails open to public use;

*A single family residence will not detract from normal use of the property, public and private roads or trails open to public use.*

**(7)** Be located a reasonable distance from areas of actual or potential natural hazard;

*The proposed home site will be located outside of any critical area.*

**(8)** Not unreasonably contribute to actual or potential water quality or quantity problems;

*The proposed residence will be required to meet all standards regarding critical areas protection and stormwater.*

**(9)** Be designed to provide reasonable safety from fire hazard;

*The proposed residence will meet all Fire Marshal's Office requirements.*

**(10)** Not unreasonably interfere with any territorial or otherwise significant view from surrounding property and public roads;

*The proposed residence will not interfere with any territorial or significant views from surrounding properties or public roads.*

**(11)** Not remove areas of native vegetation which protect shorelines and streambanks from erosion, except as necessary for such uses as culverts, bridges, boat ramps, recreation areas and stream bank stabilization projects; and

*The proposed residence will not remove vegetation outside of the development area.*

**(12)** Include reasonable soil erosion plans necessary to prevent soil, organic debris and other pollutants from entering streams, ponds, or lakes.

*The proposed residence will be required to meet all standards regarding critical areas protection and stormwater.*

*Finding: The Technical Review Committee finds that the proposed development is consistent with the above CUP criteria.*

### **VIII. RECOMMENDATION**

The Technical Review Committee recommends that the Whatcom County Hearing Examiner approve the CUP to allow removal of more than 20 percent of the total lot area from production of forest products. As allowed by WCC 20.42.450, the clearing will be less than 35 percent and will accommodate construction of a single family residence, access, accessory structures and Academy Highlands Drive.

### **IX. CONDITIONS OF APPROVAL**

#### **Current Planning**

1. The use and location on shall be substantially as approved by this permit, as shown on the site plan floor plan dated August 2020. The use and location shall not be amended or revised in any way without further approval of the Hearing Examiner.
2. This CUP is to allow the additional removal of land from forestry production and do not authorize land clearing or construction. An LDP and building permit will be required.
3. No more than 35 percent of the site (seven acres) shall be permanently removed from forestry production. The area cleared shall be the minimum necessary to accommodate the Academy Highlands Drive, the two-party access and turnouts, the single family residence and associated accessory uses and structures. This will be reviewed at the time of LDP and building permit approval.
4. A building permit is required for each proposed structure.
5. Pursuant to WCC 20.84.210 Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.

6. Pursuant to WCC 22.05.140(1) Expiration of project permits, the project permit approval status shall expire two years from the date of approval. The decision maker may extend this period up to one year from the date of original expiration upon written request by the applicant if requested prior to expiration.

#### **Fire Marshal's Office**

7. The Fire Department Turnaround feature will need to be improved. All three legs of the proposed T Shape Turnaround must be 20' in width for a run of 45' from the center of the Turnaround.
8. Portions of the driveway will need to be paved due to the slope of the driveway. Driveways over 12% in grade need to be paved and driveways 15-18% in grade need to be grooved pavement.

#### **Critical Areas – Wetlands and Habitat Conservation Areas**

9. A final site plan shall be reviewed at the time of LDP and building permit submittal by Critical Areas staff for approval.

#### **Critical Areas – Geohazards**

10. Supplemental review by the Technical Administrator of Article 3 shall be required prior to any land disturbing or development activities not approved under LDP2020-00061.

#### **Critical Areas – Stormwater/Watersheds**

11. Tree canopy removal shall not exceed 35% of the parcel.
12. Stormwater details and designs are not approved as part of this Conditional Use Permit.

Report prepared for the Technical Review Committee by:  
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