

WHATCOM COUNTY HEARING EXAMINER

re: The application of **Whatcom Humane Society** for a Zoning Conditional Use Permit

CUP2021-00002

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Conditional Use Permit to change the use of the existing building from a bed and breakfast to a wild animal rescue center. The center will be used to rehabilitate wild animals for their eventual release into the wild, addressed 5602 Mission Road, Bellingham, WA.

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

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.

FINDINGS OF FACT

I.

Applicant: Whatcom Humane Society

Site Address: 5602 Mission Road
Bellingham, Washington 98226

Agent: Laura Clark
Whatcom Humane Society

Assessor's Parcel Number: 390430160497

Legal Description: NE NW-GOVT LOT 1-EXC PTN OF GOVT LOT 1 LY NWLY OF SE LI OF MILWAUKEE RR R/W-TOG WI ESMT REC AF 1139376-EXC S 621.56 FT OF E 1402 FT THEREOF AS MEAS ALG S-E LINES

Zoning: Rural (R5A)

Subarea: Foothills

Lot Sizes: 40 acres

Roads: Private

Water & Sewer Supply: Anderson Creek Water Association

Fire Protection: Whatcom County Fire District #1

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Mount Baker School District

Topography: Location of proposed development is generally level.

Vegetation: The site has very little vegetation.

Adjacent Land Uses:

North:	Residential
East:	Educational
South:	Residential
West:	Residential

Authorizing Codes, Policies, Plans, And Programs:

- Revised Code of Washington (RCW) Chapter 36.70
- Whatcom County Comprehensive Plan
- Whatcom County Code, Title 2, Chapter 2.33 – Permit Review Procedures
- Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
- Whatcom County Code, Title 14, Use of Natural Resources
- Whatcom County Code Chapter 12.08, Development Standards
- 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, Critical Areas
- Whatcom County Code Title 24, Health Regulations
- Whatcom County Code Title 22, Permit Processing procedures

Legal Notices: Mailed – Notice of Public Hearing, April 28, 2021
Posted – Notice of Public Hearing, May 3, 2021
Published – Notice of Public Hearing, May 5, 2021
Online Publication of Agenda and Zoom links – May 5, 2021

Hearing Date: May 19, 2021

Parties of Record

Whatcom Humane Society, Applicant
2172 Division Street
Bellingham, WA 98226

Laura Clark, Agent
2172 Division Street
Bellingham, WA 98226

Charles Sullivan – Planner II
5280 Northwest Dr
Bellingham, WA 98226

Erin Page – Planner III
5280 Northwest Dr
Bellingham, WA 98226

Laura Vandervort – Engineer III
5280 Northwest Dr
Bellingham, WA 98226

Vicki Savage
2172 Division Street
Bellingham, WA 98226

Hearing Examiner Exhibit List:

1. Hearing Memo with attachments
2. Fire Marshal Office - memo
3. comments – Nooksack Tribe
4. Revised Site Plan
5. Public Works memo
6. Health memo
7. Receipt

8. Application
9. Notice of Application
10. Vicinity Map
11. WLT nearby property owners
12. Traffic, Stormwater, Encroachment
13. Recorded Easement
14. Certificate of Mailing Notice of Application
15. Staff Report
16. Bellingham Herald Legal Notice Public Hearing, May 5, 2021
17. Certificate of Posting: Notice of Public Hearing, May 3, 2021
18. Notice of Hearing, Mailed April 27, 2021

II.

The Applicant is seeking a Zoning Conditional Use Permit to use the property located at 5602 Mission Road as an animal rehabilitation center. The proposed facility will be the only fully licensed wildlife rehabilitation center in Whatcom County fully licensed by the Washington State department of Fish and Wildlife. The center will provide medical treatment, care and services to wild animals such as deer, bald eagles, swans, owls, hawks, opossums, raccoons, skunk, robins, crows, ducks, squirrels, beavers, marine mammals, seagulls, and rabbits. Animals stay at the center for times ranging from 1 day to approximately 3 months.

III.

The Whatcom County Technical Review Committee has recommended approval of the requested Zoning Conditional Use Permit to allow for the proposed facility to be used as an animal rehabilitation center. The Applicant has indicated there are no factual inaccuracies in the Staff Report findings and no objection to the Conditions of Approval requested by Staff. There was no public comment on the application prior to 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 proposed use is allowed in the R5A zone as a conditional use pursuant to WCC 20.84.155. Subject to the recommended Conditions of Approval the proposal will meet all of the applicable zoning requirements and will be consistent with the goals and policies of the Whatcom County Comprehensive Plan.

II.

A Conditional Use Permit can be granted if it is consistent with the requirements of WCC 20.84.220 1-9. Staff has reviewed the proposal and concludes, that subject to the conditions of Approval recommended in the staff report, the proposal will be consistent with the conditional use requirements. The Hearing Examiner concurs.

III.

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 Whatcom Humane Society to use the property located on Assessor's Parcel No. 390430160497, addressed as 5602 Mission Road, Bellingham, Washington, as an animal rehabilitation center, subject to the following conditions:

A. Planning Division

1. The use and location on the site as approved by this permit, as shown on the site plan date received on April 20, 2021 shall not be amended or changed in any way without further approval of the Hearing Examiner, except as provided by WCC 20.84.225.

2. Pursuant to WCC, Title 14, the owners of the property upon which this conditional use permit approval is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on forms provided by Whatcom County, which shall then be recorded in the Whatcom County Auditor's office.
3. Inadvertent Discovery of Archaeological Resources: Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
4. Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055): "If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains."

B. Building Services Division

5. A commercial building permit is required for this project. It will be reviewed under the current adopted edition of the International Building Code (IBC) and must comply with all other applicable codes and ordinances adopted by Whatcom County.
6. A pre-application screen meeting will be required prior to submittal for permit to determine if a Building Services pre-application meeting will be required or waived. If a Conditional Use Permit is required, it must be approved prior to the screening meeting

date. Call 360-778-5900 to set up a screening meeting with the Building Department supervisor or a plans examiner.

7. When you have completed your screening and have completed any requirements indicated on your screening form or you have completed your pre-application meeting and have completed any requirements from that meeting you may set up your appointment for permit submittal. Appointments are available on Mondays through Friday. To schedule an appointment, contact Planning and Development Services (369-778-5900). Please have your pre-application number and/or your contact information and geographic (tax parcel) number available when you call to schedule. The commercial building permit application form is available on-line at: www.whatcomcounty.us/pds under Quick Links > Applications/Forms.

C. Whatcom County Public Works – Engineering

8. All development shall comply with the Whatcom County Development Standards (WCDS).
9. Access from Mission Rd shall have adequate sight distance.

D. Whatcom County Fire Marshalls office- – Engineering

10. The access road drivable surface, as shown on the site plan dated April 20, 2021 shall be maintained and shall be 20 feet wide, per Whatcom County Public Works Road Standards. WCC Detail 505.E-1, with a minimum vertical clearance of 13 feet 6 inches.
11. The fire apparatus turnaround as shown on the site plan dated April 20, 2021 shall be maintained Per WCC Detail 505.L-2 and remain clear at all times.
12. Visible fire numbers on an address post on county maintained road shall be provided.
13. No other structures shall be constructed within 60 feet of the existing main building, without further consideration for Fire Flow requirements.
14. A Building permit shall be obtained for the change of use of the main structure (the lodge) from a Residential use (Lodge) “R” occupancy to an agricultural use “U” occupancy.
15. A Building permit shall be obtained for any new structures, cages, and fenced areas constructed on the site.

E. Critical Areas– Wetlands

16. Prior to issuance of a building permit for the wildlife cages, and issuance of the Land Disturbance Permit (LDP2021-00031) the following must be submitted, reviewed and approved by Natural Resources Staff:
 - a. State Environmental Policy Act (SEPA) Checklist for work within Lands Covered by Water as defined in WAC 197-11-756
 - b. Wetland Delineation authored by a qualified wetland biologist for all areas within 200 feet of the violation
 - c. Mitigation plan, authored by a qualified wetland biologist, that clearly demonstrates a rectification method that meets mitigation standards within the CAO, and describes a work plan to safely remove fill from Lands Covered by Water
 - d. A bond or assignment of savings (AOS) must be established in accordance with WCC 16.16.260(D)(1)(a-g). The amount shall be listed in the approved mitigation plan, and constitutes 125% of the total cost of mitigation based on a pre-approved bid from a contractor, or County Assignment of Savings worksheet.
 - e. A Conservation Easement is required for mitigation areas on the property. In conformance with WCC 16.16.265.C, a Conservation Easement map and form is to be prepared by the applicant, signed by County staff, filed with the auditor, then a copy of the recorded document returned to Planning and Development Services. Please refer to the County website for this form
 - f. A signed agreement to maintain the mitigation site. Please refer to the County website for this form.

17. Critical Area staff shall review the final site plans submitted for the future building structural permit.

18. Prior to temporary occupancy under the future building permit, the critical areas mitigation must be installed. An as-built plan shall be submitted to the County for approval within 30 days of installation. Because the project is associated with direct wetland impacts, the as-built shall be authored by a qualified wetland biologist. The as built shall be approved in conjunction with an on-site as-built inspection per WCC 16.16.260(C)(1-3).

19. Following the mitigation as-built report approval, a mitigation report will be required for a period of five years on the 1st, 2nd, 3rd and 5th year after installation showing that mitigation is meeting its approved criteria. Funds will be released from the assignment of savings with the approval of each monitoring report.

20. Recommendation of approval for the conditional use permit does not remove the right for critical areas staff to add additional conditions as necessary to appurtenant future development permits.

21. Obtaining a County Permit does not supersede other local, State or Federal statutes and regulations that may apply to this permit. Any wetland impacts require notifying the US Army Corps of Engineers (Randel Perry 206-764-6985) and Washington Department of Ecology (Chris Luerkens 360-410-4807)

F. Health Department

22. The applicant will be required to provide a current Report of System Status (ROSS) septic evaluation completed by an Operation and Maintenance Specialist at the time of tenant improvement or building permit application.

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 24th day of May 2021.



Michael Bobbink, Hearing Examiner