

WHATCOM COUNTY HEARING EXAMINER

re: The application of Faber Construction
for a Zoning Conditional Use Permit

CUP2017-00002

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION

SUMMARY OF APPLICATION AND DECISION

Application: This request is to reauthorize a development request that was originally approved under permit applications SHR2007-0008 and CUP2008-00006. The applicant is proposing to replace a 940 square foot detached shop and carport with a 2 bedroom residential cabin substantially within the existing footprint. To remain compliant with the number of approved recreation lots approved through permit applications SHR2007-00008 and CUP2008-00006 the applicant is proposing to eliminate one of the recreation lots by combining lots #7 and #8 and eliminating #8, and constructing this development on a new carved out condominiumized lot (#84).

Decision: The requested Conditional Use Permit is granted, subject to conditions of approval.

INTRODUCTION

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

FINDINGS OF FACT

I.

Applicant: Faber Construction
6951 Hannegan Road
Lynden, WA 9826

Owner: Lake Whatcom Resort Partnership
6951 Hannegan Road
Lynden, WA 98264

Site Address: 990 Lake Whatcom Blvd.

Assessor's Parcel Number (s): 370420475090 – Original Master Parcel associated with Lot #84 which has not yet been assigned a APN.
370420479131 – Lot 7
370420478128 – Old Lot 8

Zoning: Rural (R5A)

Comprehensive Plan: Rural

Fire Protection: Fire District #18

Law Enforcement: Whatcom County Sheriff's Office

Adjacent Land Uses: North: Rural-Single Family Residences
East: Lake Whatcom
South: Rural-Single Family Residences
West: Vacant

Authorizing Codes, Policies, Plans, And Programs:

- Whatcom County Comprehensive Plan
- Whatcom County Code (WCC) 2.11, Hearing Examiner
- WCC 12.08, Construction Standards
- WCC 14, Use of Natural Resources
- WCC 15, Building Code/Fire Code
- State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
- WCC 16.08, Whatcom County Environmental Policy Administration
- WCC 16.16, Critical Areas
- WCC 20, Whatcom County Zoning Ordinance
- WCC 22, Whatcom County Project Permit Procedures
- WCC 23, Shoreline Management Program
- WCC 24, Health Regulations
- Business Rules of the Whatcom County Hearing Examiner (BRWCHE)

Legal Notices: Mailed – Notice of Public Hearing, August 12, 2021
Published – Notice of Public Hearing, August 18, 2021
Online Publication of Agenda and Zoom links – August 18, 2021

Hearing Date: September 1, 2021 – 1:30 p.m.

Parties of Record:

Sam McDaniel – Planner II – PDS
5280 Northwest Drive
Bellingham, WA 98226

Amy Keenan – Senior Planner – PDS
5280 Northwest Drive
Bellingham, WA 98226

Rick Faber – Applicant
Owner - Faber Construction
6951 Hannegan Road
Lynden, WA 98264

Hearing Examiner Exhibit List:

01. Application with Supplemental, 2.7.2017
02. Fee Responsibility, 3.27.2017
03. Preliminary Stormwater, 2.7.2017
04. Preliminary Traffic Concurrency, 2.7.2017
05. Land Disturbance Permit Application, 2.7.2017
06. Revocable Encroachment Permit Application, 2.7.2017
07. Notice of Application, 5.11.2017
08. Legal Notice, 5.11.2017
09. Certificate of Mailing, 5.10.2017
10. Labels, 2.7.2017
11. Overall Site Plan, 2.7.2017
12. Tear Sheet, 5.12.2017
13. CAO Memo, 6.14.2021
14. Geologic Approval Memo, 5.14.2021
15. PDS Stormwater Comments, 5.14.2019
16. Certificate of Mailing, 8.13.2021
17. Payment Legal Notice, 8.13.2021
18. Public Comments Compilation, June-July 2017
19. Close up Site Plan, 12.21.2021
20. SEPA Checklist-withdrawn, 3.27.2017
21. Staff Report, 8.23.2021
22. Signed 2009 MDNS, 8.5.2009

23. Original Hearing Examiner Decision, 8.20.2009
24. shr2017-00006-2nd NOAR for expired-shoreline permits, 2.5.2018
25. shr2017-00006 NOAR for expired-shoreline permits, 8.30.2017
26. CUP2017-00002 NOAR, 2.18.2021
27. cup2017-00002 PWES, Wildwood Resort Comments 5.22.2019
28. shr2017-00006-shv2017-00001-shc2017-00002 Permit Expiration, 8.31.2018
29. Certificate of Posting, 8.18.2021
30. Mary Pat Chellson – Comment, 8.26.2021
31. Donna Mason – Comment, 8.27.2021
32. Chellson – Comment, 8.26.2021
33. Tracy Jovolos – Comment, 8.13.2021
34. Tani Sutley – Comment, 8.24.2021
35. Tani Sutley – email, 8.20.2021
Appendix A – Tani Sutley Wildwood Comment, 8.20.2021
36. Sam McDaniel - email re parcel numbers, 8.27.2021

II.

The applicant is proposing to replace a 940 square foot detached shop and carport with a 2 bedroom residential cabin substantially within the existing footprint. To remain compliant with the number of approved recreation lots approved through permit applications SHR2007-00008 and CUP2008-00006 the applicant is proposing to eliminate one of the recreation lots by combining lots #7 and #8 (eliminating #8) and constructing this development on a new condominiumized lot (#84).

III.

The Whatcom County Technical Review Committee has recommended approval of the requested Conditional Use Permit. The Applicant has indicated there are no factual inaccuracies in Staffs findings and no objection to the Conditions of Approval requested by Staff.

IV.

WCC 2.11.220 allows the Hearing Examiner to issue subpoenas and compel attendance of witnesses— but in this case no party requested the Hearing Examiner to compel a witness to appear in person and be cross examined.

V.

There were seven public comments submitted for this Hearing, including objections and clarification questions on the parcel numbers provided; complaints about the usage of the property in general; an implied request to treat this application as a variance that should be rejected; concerns about the closeness of a seasonal creek; and other issues. The public comments were reviewed and addressed by the parties at the hearing and in the staff report.

A specific fact the hearing examiner will note raised in the review of the comments is that this proposal has no new shoreline development associated with it that was not pre-existing, and a properly noticed SEPA Determination of Nonsignificance was previously issued.

The Whatcom County SEPA Official issued a SEPA Determination of Non-significance on February 11, 2009. Agency comments were received from Washington State Department of Ecology and the City of Bellingham. On March 5, 2009, Whatcom County SEPA Official withdrew the SEPA DNS and requested that the Hearing Examiner keep the hearing record open until such time as the SEPA Determination associated with the project was finalized. On August 5, 2009, the County's SEPA Official informed the Hearing Examiner that Planning and Development Services had re-issued a Mitigated Determination of Non-significance on July 2, 2009, that the comment period and appeal period had passed and that no affected party or jurisdiction had appealed the SEPA MDNS.

A geologic hazard assessment prepared by Geotest Services (GTS), dated October 28, 2019, that evaluated the location of the proposed cabin in the footprint of an existing storage shed and potential alluvial fan hazards. In response to concerns about geological stability in the alluvial area, a Notice of Additional Requirements to the applicant was issued on February 18, 2021. The staff report proposes to the hearing examiner a condition that new construction will include structural measures capable of mitigating interpreted hazards associated with the seasonal creek.

VI.

BRWCHE §2.4 grants parties the right to object to evidence and to cross-examine. In the case at hand, with full knowledge of the evidence being admitted, no objection was made to any of the 36 exhibits that were admitted into the record.

VII.

The Findings of Fact of Whatcom County Planning and Development Services, as set

forth in the Staff Report (exhibit 21), dated August 23, a copy of which is attached hereto, are supported by the record as a whole and are hereby adopted and incorporated herein by this reference.

VIII.

Any Conclusion of Law below 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 Application for the Conditional Use Permit can be approved if consistent with the Conditional Use Criteria of WCC 22.05.026(3) (a through i). Subject to the Conditions of Approval attached to the granting of this Permit Decision, the proposal is consistent with the Conditional Use Criteria, as found by the Technical Review Committee in the attached Staff Report. A Zoning Conditional Use Permit should be granted, subject to the Conditions of Approval listed below.

II.

Any Conclusion of Law deemed to be a Conclusion of Fact is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

A Conditional Use Permit is hereby granted to Faber Construction to replace a detached shop and carport with a cabin, located on Assessor's Parcel Nos. 370420475090, addressed as 990 Lake Whatcom Blvd, Sedro Wooley, Washington, subject to the following conditions:

A. Prior Decisions – SHR2007-0008 and CUP2008-00006

1. As are applicable, all conditions imposed by the Hearing Examiner in granting approval of a Shoreline Substantial Development Permit and a Zoning Conditional Use Permit under SHR2007-0008 and CUP2008-00006 on August 20, 2009, or thereafter amended, remain in full force and effect, and are re-confirmed as conditions for the Conditional Use Permit, except to the extent that they are amended or superseded by the conditions below issued this date, or by the law.

B. Planning Division – Current Planning

1. The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586- 3065) and the Lummi Nation Tribal Historic Preservation Office (360-384- 2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
3. Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.
4. The applicant shall obtain a building permit from the Whatcom County Planning and Development (WCPDS) – Building Services Division prior to any work on the subject property. The above required building permit shall be reviewed by to ensure consistency with the conditions of this approval prior to issuance of said permit.
5. Project permit approval status shall expire two years from the date of approval except where a different duration of approval is authorized by Whatcom County Code or is established by a court decision or state law or executed by a development agreement. The decision maker may extend this period up to one year from the date of original expiration upon written request by the applicant.

C. Building Services Department

1. A building permit shall be submitted by the applicant for this proposal. 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.
2. 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.

D. Public Works – Engineering

1. All development shall comply with the WC Development Standards.
2. Proposed project is subject to Lake Whatcom Special District Watershed requirements as per WCC, Chapter 20.51.420. (2). Proposed projects shall incorporate presumptive BMPs addressing applicable Min. Requirements and demonstrate that replaced hard surfaces will not increase or exceed the corresponding natural stormwater runoff phosphorus loading profile. Further review and comments in more detailed manner on stormwater design, details and civil drawings will be addressed at the time of subsequent building permit or land disturbance permit submittal. The applicant shall obtain a revocable encroachment permit prior to any work to be performed in the county rights-of-way.
3. Existing access approach on Lake Whatcom Boulevard shall continue to meet safe site

distance as approved in the previous CUP2008-000006 conditions. Applicant must maintain all the time access safe clear vision line in both directions. Maintenance to include trimming and/or removing vegetation along the Lake Whatcom Blvd site line.

4. All appropriate permits must be obtained before construction. Obtaining a County permit does not replace or over-ride other state and federal statutes and regulations that may apply to this project.

E. Health Department

1. The applicant must demonstrate adequate sewage disposal capacity for this project. The applicant is proposing to combine unit 7 & 8 and use the utilities from one of the units to support the proposed cabin. The cabin would tie into drainfield "G" (APN: 370420440088). The cabin would be limited to 2 bedrooms and require an approved on-site sewage system design at the time on building permit application.
2. The applicant must have an approved public water supply for this proposal. The property is currently served by the Wildwood Resort Condo Association Group A Water System. Public water availability approval for an existing connection that moved to the cabin will be required at the time of building permit application.

F. Critical Area's Office – Geohazardous Areas

1. All recommendations presented in the Wildwood Alluvial Fan – Revision 1 prepared by Geotest Services, Inc., dated May 4, 2021, shall be incorporated in the project designed, and will be reviewed for conformity at the time of building permit submittal.

G. Stormwater

1. Activities which expose more than 500 sq. ft. of soil are prohibited from October 1 through May 31.
2. If more than 1,500 sq. ft. of hard surface is replaced or 500 sq. ft. of hard surface is created as part of future permitting or construction activities associated with existing shop/Building A, a stormwater design consistent with WCC 20.51.420(2)(c) or (d) shall be required prior to temporary occupancy of the structure. Prior to final occupancy, the approved stormwater infrastructure shall be constructed, inspected, and shall be found consistent with the approved plan. At the time of building permit submittal, a stormwater design that is consistent with WCC 20.51.420(2)(d) must be included in the submitted application materials.

NOTICE OF POTENTIAL REVOCATION & PENALTIES

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 6th day of September 2021.



Rajeev D. Majumdar, Hearing Examiner *Pro-Tem*



WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

Hearing Date: September 1, 2021

The application of Faber Construction		CUP2017-00002
for a Zoning Conditional Use Permit		FINDINGS, CONCLUSIONS, AND
		RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary: This request is to reauthorize a development request that was originally approved under permit applications SHR2007-0008 and CUP2008-00006. The applicant is proposing to replace a 940 square foot detached shop and carport with a 2 bedroom residential cabin substantially within the existing footprint. To remain compliant with the number of approved recreation lots approved through permit applications SHR2007-00008 and CUP2008-00006 the applicant is proposing to eliminate one of the recreation lots by combining lots seven and eight and constructing this development on a new condominiumized lot (#84).

Recommendation: The Technical Review Committee recommends approval of the application for a zoning conditional use permit, subject to the requested conditions, as attached.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Faber Construction
131 E Grover
Lynden, WA 98264

Owner: Lake Whatcom Resort Partnership
131 E Grover
Lynden, WA 98264

Site Location/Address: 990 Lake Whatcom Blvd.

Assessor's Parcel Number(s): 370420475090

Zoning: Rural (R5A)

<u>Comprehensive Plan:</u>	Rural
<u>Fire Protection:</u>	District #18
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Adjacent Land Uses:</u>	North: Rural-Single Family Residences East: Lake Whatcom South: Rural-Single Family Residences West: Vacant

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

1. Whatcom County Comprehensive Plan.
2. Whatcom County Code, Title 14, Use of Natural Resources
3. Whatcom County Code Chapter 15, Building Code
4. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
5. Whatcom County Code Chapter 16.16, Critical Areas
6. Whatcom County Code, Title 20, Whatcom County Zoning Ordinance
7. Whatcom County Code, Title 22, Whatcom County Project Permit Procedures
8. Whatcom County Code, Title 23, Shoreline Management Program
9. Whatcom County Code, Title 24, Health Regulations

III. APPLICATION PROPOSAL

Permit Application History:

On February 7, 2017 the applicant made application for a Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit, a Shoreline Variance, and a Zoning Conditional Use Permit. The applications were for developments within the Wildwood RV Park. The developments proposed included marina expansion, marina dredging, replacement of detached existing shop with residential development, and extending the authorization of 19 patio covers. A notice of additional requirements for the shoreline components was issued on February 6, 2018 and no response was received from the applicant. The shoreline permits were expired on August 31, 2018.

This Zoning Conditional Use application has been reduced in scope to only involve the reauthorization of the replacement of a 940 square foot detached shed and carport with a cabin located substantially within the same footprint. All work is located outside of jurisdiction of the Shoreline Management Program.

Wildwood Historical Discussion:

A shoreline substantial permit and zoning conditional use permit were submitted in 2007 and 2008 (SHR2007-00008 and CUP20008-00006). The applicant requested approval to renovate the existing nonconforming resort and marina by reducing the

number of RV pads from 130 to 83, replacement and/or remodel of existing structures, installation of a new septic system and an upgrade of portable water storage tank.

As part of the associated State Environmental Policy Act (SEPA) review (SEP2008-00039) for the development proposals of 2007-2008, The stormwater from the entire project was required to meet levels equivalent to a pre-developed forested condition. The applicants provided an engineered stormwater design which was peer reviewed and approved by the Washington State Department of Ecology. The design minimized the impervious surface coverage to less than 10% of the site and utilized multiple Low Impact Development (LID) techniques to achieve the goal required through SEPA. The Hearing Examiner (and the Washington State Department of Ecology) approved the shoreline and conditional use permits in August 2009.

The applicant submitted a revision request to the Hearing Examiner in 2010. The applicant requested to allow for a temporary office in a small portion of the existing building 'C' while building 'F' is demolished and to rephrase condition #7 to allow for the completion of Phase 1 prior to installation of shoreline restoration and to allow for additional width on Marina Dock fingers from 24" to 36". After review by staff and a recommendation of approval to the Hearing Examiner the revision was approved in 2010.

Finally, in 2011 the applicant requested an additional revision to the shoreline substantial and conditional use permit requesting permits to allow changes to lots 1-8, existing 1,822 square foot gravel parking area conversion, parking area along east wall of building 'E' (wood shed), existing impervious asphalt road conversion to pervious asphalt, Phase 2 overall RV lot layout, grass grid parking areas, road curvature, future playground area, building/campsite plan, impervious/pervious calculations and drainfield corrections. This proposal involved changing recreational vehicle sites to allow park model units, establishment of pervious washed gravel pads for the RV/park model sites.

The 2011 revision was approved by the Hearing Examiner on October 20, 2011 subject to additional conditions of approval. The applicant has submitted several building permits to complete development of the proposed improvements.

IV. SITE DESCRIPTION

The subject property is a 14.8 acre parcel located at 990 South Lake Whatcom Boulevard at the Southwestern end of Lake Whatcom. The site is home to the Wildwood Resort and Marina and contains recreational vehicles, cabins, swimming pool, marina with a fueling dock and other associated recreational developments.

V. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in Chapter WCC 22.05.070.

Notice of Application: Pursuant to WCC 22.05.070, Notices for CUP2017-00002 were mailed on May 11, 2017 to property owners whose boundaries lie within 1,000 feet of the subject property. Because the Zoning Permit was combined with several Shoreline permits the comment period was 30 days pursuant to WCC 23.60.100 and concluded on June 11, 2017.

Public Comment: A substantial number of comments were received in opposition during the noticing. The comments were in opposition to the proposed shoreline developments and the intensification of shoreline uses, as well as the inadequacy of intent to issue a threshold Determination of Nonsignificance. The three Shoreline applications expired in 2018 and the SEPA Checklist withdrawn on April 23, 2019.

Staff reviewed the comments and did not locate comments regarding the Zoning Conditional Use Permit portion. Staff feels it is important to again state that this proposal has no shoreline development associated and does not require a new or revised SEPA Threshold Determination. The Notice of Hearing has been sent to all parties of record.

Notice of Public Hearing: The Notice of Public Hearing for the Zoning Conditional Use Permit application was published one-time in the Bellingham Herald on May 11, 2017.

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 subject development was contemplated during the original SEPA Checklist review (SEP2008-00039). A Mitigated Determination of Non-Significance was issued on July 2, 2009.

VII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS

A. WCC Title 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.

The Whatcom County Public Works, Division of Engineering, reviewed the proposal and a memo with conditions of approval dated May 22, 2019. Engineering comments are listed in the Conditions Section of this staff report.

The Technical Review Committee has determined that as conditioned the project meets the requirements of WCC Chapter 12.08.

B. WCC Title 15 – Buildings & Construction

Building Code: WCC Title 15 adopts and amends the applicable building, mechanical, plumbing and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County planning and development services department.

The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 15.

Fire Code: WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County planning and development services department.

The Whatcom County Fire Marshal submitted a memo dated June 16, 2021 unconditionally approving the proposal.

The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 15.

C. WCC Title 16 – Critical Areas

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.

Habitat Conservation Areas:

The Whatcom County Critical Areas Planner submitted a revised memo dated June 14, 2021 unconditionally approving the proposal.

The above referenced case was reviewed for potential critical area concerns in regards to wetlands and Habitat Conservation Areas (HCA's) per WCC 16.16 Articles 6 & 7.

The project scope has been reduced to include only the reconstruction of an existing shop into a cabin. No other improvements have been reviewed or approved by Critical Areas staff at this time.

The proposed building project (rebuilding the existing shop into a cabin) will not require any further critical area review as the project is proposed. The proposal utilizes the same building footprint and/or involves constructing over existing developed area. If there are changes outside of the presented scope of work, further review and/or mitigation may be required.

Geohazardous Areas:

The proposed improvements, which consist of construction of a new cabin located in the footprint of an existing storage shed, are located in a regulated Alluvial Fan Hazard Area and are subject to the requirements of Article 3 of the Whatcom County Critical Areas Ordinance. The new cabin requires the transfer of a residential density from Lot 7 to the site of the existing storage shed. The storage shed is located in closer proximity to the stream that bifurcates the Wildwood Resort, and an assessment of risk transfer relative to the position of Lot 7 was requested. Hazards were assessed by Geotest Services, Inc. (GTS), and are presented in a professional reported titled Wildwood Alluvial Fan – Revision 1, May 4, 2021.

GTS concludes that no increased risk is posed by the transfer of residential density to the location of the existing storage shed. In general, the assessment states that similar risk is present at either location but that new construction will include structural measures capable of mitigating interpreted hazards. As a result, the proposed improvements may be approved in consideration of Article 3 of the Whatcom County Critical Areas Ordinance subject to the following conditions of approval:

The Technical Review Committee has determined the project meets the requirements of WCC Chapter 16.16.

D. WCC Title 24.05 – Health Department

The purpose of this title is to provide minimum standards to safeguard public health and welfare by regulating and controlling the activities considered in this title and any related work.

The Whatcom County Health Department reviewed the proposal and submitted a memo dated June 18, 2020 unconditionally recommending approval.

The Whatcom County Health Department (WCHD) has reviewed the proposed project referenced above in accordance with WCC 24.05 On-Site Sewage Regulations and WCC 24.11 Drinking Water.

Sewage Disposal

The applicant must demonstrate adequate sewage disposal capacity for this project. The applicant is proposing to combine unit 7 & 8 and use the utilities from one of the units to support the proposed cabin. The cabin would tie into drainfield "G" (APN: 370420440088). The cabin would be limited to 2 bedrooms and require an approved on-site sewage system design at the time on building permit application.

Drinking Water

The applicant must have an approved public water supply for this proposal. The property is currently served by the Wildwood Resort Condo Association Group A Water System. Public water availability approval for an existing connection that moved to the cabin will be required at the time of building permit application.

The Technical Review Committee has determined the project meets the requirements of WCC Chapter 24.

**E. WCC Title 20 Official Whatcom County Zoning Ordinance
WCC 20.36 Rural District**

20.36.010 Intent.

The purpose of the Rural District is to maintain the low density rural residential character of the areas designated as rural and rural neighborhood on the Comprehensive Plan map and implement the Comprehensive Plan policies that define the rural character in Whatcom County in accordance with RCW 36.70A.070(5). In addition, it is the intent of this district to allow a variety of low intensity uses that are compatible and complementary with the conservation of agricultural, forestry and related uses.

20.36.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback Requirements).

Rural (R)							
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'	45'	35'	25'	25'	20'	5'	5'
<i>Water Resource Protection Overlay</i>							
30'	30'	20'	20'	20'	20'	5'	5'
<p>1. Setbacks shall be increased to 100 feet for those parcels situated adjacent to the Commercial Forestry Zone District, except that such parcels whose owners have filed an agreement with the county auditor as specified in WCC <u>20.36.651</u> shall be subject to the standard setback in WCC <u>20.80.210</u>.</p> <p>2. Lots created after 2001 through the cluster provisions, or lots created through the APO provisions which will be used for human habitation, shall be set back a minimum of 100 feet from the property line of any parcel or portion thereof which is designated or used for agricultural purposes. No structures shall be constructed within 30 feet of exterior, side and rear property lines, and no structure shall be constructed within 30 feet of an agricultural use. Subject to any further requirements within Chapter <u>20.38</u> WCC, Agriculture Protection Overlay.</p> <p>3. A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.</p> <p>4. A marijuana production or processing facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 feet provide a notarized written agreement as provided by the department consenting to the facility.</p> <p>5. A marijuana production or processing facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single-family dwelling (structure) to any structure or fence used for the production or processing of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC <u>20.84.235</u>.</p>							

The location of the cabin appears to comply with the 30 foot setback off of Lake Whatcom Blvd.

20.36.400 Height limitations.

Maximum height shall be limited to 35 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675. The portion of the project within shoreline jurisdiction will be limited to 30 ft. in height per the SMP.

The new structure will be reviewed at the time of building permit submittal for consistency with WCC 20.36.400.

20.36.450 Lot coverage.

Except as follows, no structure or combination of structures shall occupy or cover more than 5,000 square feet or 20 percent, whichever is greater, of the total lot area, not to exceed 25,000 square feet. Public community facilities that serve a predominantly rural area shall occupy or cover no more than 35 percent of a lot, with no limitation on structure (or combination of structures) size. Buildings used for livestock or agricultural products shall be exempt from this lot coverage requirement.

The original proposal was slightly larger than the existing detached building footprint. The applicant has modified the proposal to ensure no increase in lot coverage.

WCC 20.36.656 Drainage. (Adopted by reference in WCCP Chapter 2.)

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

The proposal has been reviewed by Whatcom County Public works for stormwater impacts. As conditioned the proposal complies with WCC20.36.656.

WCC 20.51 Lake Whatcom Watershed Overlay

The Lake Whatcom Watershed Overlay District is intended to manage and treat stormwater runoff and establish more stringent standards on clearing activities and reduce the phosphorus loading into Lake Whatcom, in order to preserve and protect a unique and important water resource, Lake Whatcom. This district is designed to protect the long-term viability of Lake Whatcom as a drinking water source, and to comply with the requirements set forth by the Washington State Department of Ecology through the pending Lake Whatcom total maximum daily load (TMDL) by limiting the phosphorus loading into Lake Whatcom that results from land disturbing or conversion projects and work, and reduces phosphorus loading from existing sources.

A Lake Whatcom Overlay Technical Administrator reviewed the proposal and submitted a memo dated May 14, 2019 recommending approval subject to conditions. Conditions are located within the conditions section of this Staff Report.

WCC 20.83.020 Expansion of nonconforming use

(2) The expansion of a nonconforming use by addition or enlargement shall require a conditional use permit, except for nonconforming adult businesses, which shall not be expanded. The expansion must be on the parcel as it existed at the time the use became nonconforming and the use shall not expand on adjacent parcel(s). The expansion shall be approved if it is consistent with the applicable zoning regulations except the use restrictions and complies with WCC 22.05.026(3)(b) to (i).

As discussed previously, this request is to reauthorize a development request that was originally approved under permit applications SHR2007-0008 and CUP2008-00006. The applicant is proposing to replace a 940 square foot detached shop and carport with a 2 bedroom residential cabin substantially within the existing footprint. To remain compliant with the number of approved recreation lots approved through permit applications SHR2007-00008 and CUP2008-00006 the applicant is proposing to eliminate one of the recreation lots by combining lots seven and eight.

On Page 3 of the Staff Report for SHR2007-00008 and CUP2008-00006 it states: "The following is a narrative of the staff recommended approvable scope of the proposed renovations of the Lake Whatcom Resort;

- 1) "A" Shop Building will be rebuilt or remodeled with no change in size or location."

While the applicant has proposed an 86 square foot covered entry way located outside of the existing footprint he has modified the proposal to eliminate the equal amount of roof area for the cabin, resulting in no increase in lot coverage. Staff is recommending approval of the slight modification to the footprint.

WCC 22.05.026 - Conditional Use Permits

Before approving an application, the director or hearing examiner shall ensure that any specific standards of the zoning district defining the use are fulfilled, and shall find adequate evidence showing that the proposed use at the proposed location:

(a) Will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations.

Proximity to Canada – Goal 7E Enhance the economic trade, tourism, and industrial siting advantages of the county's location adjacent to the Canadian border.

Shoreline Access Areas – Goal 9E Recognize the shoreline as one of Whatcom County's unique assets and provide adequate physical and visual access for present and future generations.

Recreation – Goal 9D Provide specialized recreation areas taking advantage of unique opportunities to serve both county residents and visitors.

Response: The resort has been located and operated at the current location since the 1940's and is considered to be part of the existing character of the neighborhood near South Bay Lake Whatcom. The resort went through a significant upgrade and reconfiguration over the last 5-7 years. This proposal does not appear to significantly alter the overall development approved prior through the CUP and Shoreline permitting process and will continue to demonstrate compliance with Whatcom County's Comprehensive Plan.

(b) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.

Discussion: The resort has been located and operated at the current location since the 1940's and is considered to be part of the existing character of the neighborhood near South Bay Lake Whatcom. The conversion of a detached garage and detached carport to a cabin within the existing resort will not change the character of the area that was established by prior permit authorizations.

(c) If located in a rural area (as designated in the Comprehensive Plan), will be consistent with rural land use policies as designated in the rural lands element of the Comprehensive Plan.

The subject property is located in a rural area as identified in the Whatcom County Comprehensive Plan. Residential development that meets the density of the zoning district is consistent with the rural land use policies that are designated in the rural lands element of the Comprehensive Plan.

Policy 2DD-2: Protect the character of the rural area through the County's development regulations. In addition to the policies of this plan that provide measures governing rural development, the following County's key development regulations are incorporated into this plan by reference.

Finding: The proposal has been reviewed by Whatcom County's Technical Review Committee; the proposal has been conditioned for consistency with all applicable Whatcom County development regulations.

(d) Will not be hazardous or disturbing to existing or future neighboring uses.

Discussion: It does not appear that the conversion of a detached garage and detached carport to a cabin within the existing resort where other cabins exist will not be hazardous to existing or future neighboring uses.

(e) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies

responsible for the establishment of the proposed use shall be able to provide adequately any such services.

Discussion: The proposal will be adequately serviced by necessary public facilities; including power, water & sewer, police and fire protection. No other services are necessary or will need to be improved.

(f) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.

Discussion: The proposal will not create additional public costs for public services.

(g) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.

Discussion: Temporary noise, equipment and dust may be present during construction. Once constructed the not involve activities, process, materials, equipment or conditions of operation are anticipated which will be detrimental to any persons, property or general welfare of the area by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.

(h) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.

Discussion: Whatcom County Public Works Engineering Services reviewed the proposal and determined that the project is exempt from traffic concurrency.

(i) Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.

Discussion: The proposal was routed to the Whatcom County natural resources division for review of potential impacts to critical areas. No natural, scenic, or historic features of major importance have been identified on or in close proximity to the site. It was determined that that no critical areas impacts are likely to occur as a result of the proposed conditional use.

VIII. RECOMMENDATION

Based on the findings of fact listed above, the Technical Review Committee has concluded that subject to the following proposed conditions, the proposed replacement of an existing detached building with a cabin will comply with all applicable Whatcom County regulations.

IX. CONDITIONS OF APPROVAL

A. Planning Division – Current Planning

1. The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
3. Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.
4. The applicant shall obtain a building permit from the Whatcom County Planning and Development (WCPDS) – Building Services Division prior to any work on the subject property. The above required building permit shall be reviewed by to ensure consistency with the conditions of this approval prior to issuance of said permit.
5. Project permit approval status shall expire two years from the date of approval except where a different duration of approval is authorized by Whatcom County Code, or is established by a court decision or state law, or executed by a development agreement. The decision maker may extend this period up to one year from the date of original expiration upon written request by the applicant.

B. Building Services Department

1. A building permit shall be submitted by the applicant for this proposal. 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.
2. 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.

C. Public Works – Engineering

1. All development shall comply with the WC Development Standards.

2. Proposed project is subject to Lake Whatcom Special District Watershed requirements as per WCC, Chapter 20.51.420. (2). Proposed projects shall incorporate presumptive BMPs addressing applicable Min. Requirements and demonstrate that replaced hard surfaces will not increase or exceed the corresponding natural stormwater runoff phosphorus loading profile. Further review and comments in more detailed manner on stormwater design, details and civil drawings will be addressed at the time of subsequent building permit or land disturbance permit submittal. The applicant shall obtain a revocable encroachment permit prior to any work to be performed in the county rights-of-way.
3. Existing access approach on Lake Whatcom Boulevard shall continue to meet safe site distance as approved in the previous CUP2008-000006 conditions. Applicant must maintain all the time access safe clear vision line in both directions. Maintenance to include trimming and/or removing vegetation along the Lake Whatcom Blvd site line.
4. All appropriate permits must be obtained before construction. Obtaining a County permit does not replace or over-ride other state and federal statutes and regulations that may apply to this project.

D. Health Department

1. The applicant must demonstrate adequate sewage disposal capacity for this project. The applicant is proposing to combine unit 7 & 8 and use the utilities from one of the units to support the proposed cabin. The cabin would tie into drainfield "G" (APN: 370420440088). The cabin would be limited to 2 bedrooms and require an approved on-site sewage system design at the time on building permit application.
2. The applicant must have an approved public water supply for this proposal. The property is currently served by the Wildwood Resort Condo Association Group A Water System. Public water availability approval for an existing connection that moved to the cabin will be required at the time of building permit application.

E. Critical Area's Office – Geohazardous Areas

1. All recommendations presented in the Wildwood Alluvial Fan – Revision 1 prepared by Geotest Services, Inc., dated May 4, 2021, shall be incorporated in the project designed, and will be reviewed for conformity at the time of building permit submittal.

F. Stormwater

1. Activities which expose more than 500 sq. ft. of soil are prohibited from October 1 through May 31.

2. If more than 1,500 sq. ft. of hard surface is replaced or 500 sq. ft. of hard surface is created as part of future permitting or construction activities associated with existing shop/Building A, a stormwater design consistent with WCC 20.51.420(2)(c) or (d) shall be required prior to temporary occupancy of the structure. Prior to final occupancy, the approved stormwater infrastructure shall be constructed, inspected, and shall be found consistent with the approved plan. At the time of building permit submittal, a stormwater design that is consistent with WCC 20.51.420(2)(d) must be included in the submitted application materials.

Report prepared for the Technical Review Committee by:

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Planner II