

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT) SHR2012-0010
SHORELINE CONDITIONAL USE) SHC2012-0008
ZONING CONDITIONAL USE) CUP2012-0009
Application for)
)
Steve Cowden) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting approval of a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Zoning Conditional Use Permit to construct a private airstrip and a 6,000 square foot hangar outside of shoreline jurisdiction. The airstrip is proposed to be approximately 1,300 feet in length and 75 feet wide, and located in an existing raspberry field within shoreline jurisdiction.

Decision: The requested permits are granted, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

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

I.

PRELIMINARY INFORMATION

Applicant: Steve Cowden

Property Location: 3572 Mt Baker Highway
Bellingham, Washington

Legal Description: Assessor Parcel Numbers –
390428 336322
390428 257427
390428 319475
390428 345339

Adjacent Water Body: Nooksack River

Shoreline Designation: Conservancy

Statewide Significance: Yes

Zoning: Agriculture & Rural

Comp Plan Designation: Agriculture

Authorizing Ordinances: SMP 23.50 Applicability
 SMP 23.70.010 Administration
 SMP 23.70.030 Hearing Examiner

Authorizing Codes, Policies, Plans, and Programs

Whatcom County Comprehensive Plan

Whatcom County Code Chapter 12,

Whatcom County Code Chapter 15, Building 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 20, Official Whatcom County Zoning Ordinance

Whatcom County Code Title 24, Health Regulations

Applicable Shoreline Program Provisions

SMP 23.20 Goals and Objectives

SMP 23.30.020 Official Shoreline Map

SMP 23.30.090 Conservancy Designation

SMP 23.60.010 Substantial Development Permit Criteria

SMP 23.60.04 Conditional Use Permit Criteria

SMP 23.90 General Policies & Regulations

SMP 23.100.15 Transportation Facilities

SMP Chapter 11 Definitions

SEPA Review: Determination of Non-Significance (DNS) issued by Whatcom County Planning and Development Services on October 12, 2012.

Legal Notices: Published – December 27, 2012
 Posted – December 29, 2012
 Mailed – December 21, 2012

Hearing Date: January 9, 2013

Parties of Record

Steve Cowden
3463 Cedarville Road
Bellingham, WA 98226

Ali Taysi
AVT Consulting, LLC
1708 F Street
Bellingham, WA 98225

Sam McDaniel and Suzanne Bosman
Planning and Development Services

Exhibits

Large Black Binder holds all Exhibits

- 1 Zoning CUP Application with Project Narrative
- 2 Shoreline Substantial Development Permit/SHC Application and Narrative
- 3 Fee Responsibility and Agent Authorization
- 4 Deeds
- 5 Easements: 1) Airstrip Easement; 2) 500-ft radius easements
- 6 Water and Septic Information
- 7 1000-ft radius: Mailing List and Labels
- 8 Preliminary Storm and Traffic
- 9 Land Disturbance Permit
- 10 SEPA
- 11 Encroachment Permit
- 12 ESA Checklist
- 13 FAA Approval
- 14 FEMA Floodway: No Rise Analysis

- 15 Critical Areas Assessment
- 16 DOT Traffic Data: Mt. Baker Highway
- 17 Full Sized Plans
- 18 PDS Determination of Complete Application, May 15, 2012
- 19 PDS Comment Letter: Notice of Application/Optional SEPA DNS Process
- 20 Aerial Site Photos
- 21 Legal Notice of Application, July 3, 2012
- 22 Certificate of Mailing, Notice Public Hearing, December 21, 2012
- 23 Legal Notice of Public Hearing, December 27, 2012
- 24 Certificate of Posting, Notice of Public Hearing, December 29, 2012
- 25 Staff email re: scheduling hearing
- 26 Agency Routing Checklist
- 27 Hearing Examiner Checklist, sent July 3, 2012
- 28 Staff Report, January 9, 2013
- 29 Agency Comments, including
Doug Goldthorp, July 9, 2012
Environmental Health, July 19, 2012
Fire Marshal's Office, July 3, 2012
Development Engineer, July 9, 2012
Plans Examiner, July 27, 2012
Critical Areas, July 23, 2012
Flood Review, August 14, 2012
- 30 SEPA DNS Determination, issued October 12, 2012
- 31 WA State DOE SEPA Comment Letter, July 23, 2012
- 32 Public Comments
- 33 PDS Hearing Examiner Checklist, January 7, 2013

II.

The Applicant, Steve Cowden, is requesting a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and a Zoning Conditional Use Permit for the construction of a private airstrip and a 6,000 square foot hangar to be constructed outside of shoreline jurisdiction. The airstrip is proposed to be approximately 1,300 feet in length and 75 feet wide, and to be located in an existing raspberry field that is within shoreline jurisdiction.

III.

Except for a correction on page 14, noting the Applicant is proposing construction of a 6,000-square foot hangar, the Applicant has indicated that the Staff Report is factually correct. The Applicant also requested modification of Condition No. 8 to allow an average of 120 flights per year. Staff agreed to the requested modified wording and the Hearing Examiner concurs with this change to Condition No. 8 in Staff's recommended Conditions of Approval.

There was no public comment on this matter at the hearing. The Findings of Fact and Conclusions of Law of the Shoreline Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit No. 28, dated January 9, 2013, a copy of which is adopted and incorporated herein by this reference.

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.

Whatcom County Shoreline Planner has recommended approval of the requested shoreline permits for the proposed construction of a private airstrip and a 6,000 square foot hangar outside of shoreline jurisdiction. The airstrip is proposed to be approximately 1,300 feet in length and 75 feet wide and located in an existing raspberry field within shoreline jurisdiction.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #28, dated January 9, 2013. Subject to the Conditions of Approval recommended by Staff, and modified herein by the Hearing Examiner, the Hearing Examiner also

concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, with the Goals and Policies of the Whatcom County Shoreline Management Program and with the criteria for a Zoning Conditional Use Permit under WCC 20.84.200. The Conclusions of Law adopted by Staff in the Staff Report are incorporated herein as Conclusions of Law.

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 Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Zoning Conditional Use Permit are hereby granted to Steve Cowden to develop a private airstrip and construct a 6,000-sq ft hangar to be located on property addressed as 3572 Mt. Baker Highway, Bellingham, Washington. The permits are granted subject to the following conditions:

Shoreline Permit Conditions of Approval

1. *The proposed shoreline developments shall be consistent with the scope and site plan approved by this Shoreline Conditional Use Permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or the Whatcom County Hearing Examiner.*
2. *The Applicant shall comply with the requirements of the **Whatcom County Division of Engineering Services** as outlined in the June 9, 2012 memorandum unless modified by Engineering Services or appealed to the appropriate agency.*
3. *The Applicant shall comply with the requirements of the **Whatcom County Plans Examiner** as outlined in the July 27, 2012 memorandum unless modified by the Building Services Division or appealed to the appropriate agency.*
4. *The Applicant shall comply with the requirements of the **Whatcom County Fire Marshal's Office** as outlined in the July 3, 2012 memorandum unless modified by the Fire Marshal's Office or appealed to the appropriate agency.*
5. *The Applicant shall comply with the requirements of the **Whatcom County Critical Areas Technical Administrator** as outlined in the July 23, 2012 memorandum unless modified by the Technical Administrator or appealed to the appropriate agency.*

6. *The Applicant shall comply with the requirements of the **Whatcom County Engineering Division of River & Flood** as outlined in the August 14, 2012 memorandum unless modified by the Technical Administrator or appealed to the appropriate agency.*
7. *Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sedimentation control (TESC) plan reviewed and approved by the Shoreline Administrator.*
8. *The number of landings and take-offs shall not exceed 120 per year.*
9. *Operation of the landing strip shall be limited to daylight hours.*
10. *Prior to construction of the airstrip, the Applicant shall file a Notice on Title with the Whatcom County Auditor's Office along with a copy of the approved site plan. The Notice on Title shall be filed on forms provided by Whatcom County Planning and Development Services and shall include a copy of the site plan approved by this permit.*
11. *The Applicant shall remove construction and/or demolition debris from the shoreline area upon completion of the project.*
12. *The Applicant shall comply with all applicable Federal, State, and local laws and regulations in completing this project.*
13. *If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (360-676-6907), LNTHPO (360-384-2298), and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and LNTHPO Dept. (360-384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.*
14. *Construction shall commence within two years of the effective date of the substantial development permit as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.*

Zoning Conditional Use Permit Conditions of Approval

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. *Pursuant to WCC 20.80.500, the Applicant shall establish adequate parking, which shall be shown on the site plan for the building permit for the hangar.*
3. *Pursuant to WCC 20.80.523; the Applicant shall ensure any lights used to illuminate the parking lot for the hangar shall be arranged as to direct the light away from adjoining properties and the public road. The lighting shall not conflict with any FAA requirements or restrictions and shall not cause glare or interference for flight traffic landing on the airstrip.*
4. *Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.*
5. *Pursuant to WCC, Title 14, the Applicant/owner 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.*
6. *The private airstrip shall be for personal use only by Mr. Cowden, his family, or friends. The Applicant shall use the airstrip during daylight hours only.*
7. *The hangar shall be for personal use only for the storage of planes owned by the property owner. No commercial rental of the hangar shall be permitted.*
8. *The property owner shall contact the Washington State Department of Ecology (DOE) and reference their File #201203239 to determine if a NPDES Construction Stormwater General Permit is required.*

NOTICE

In addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000. Any person who willfully violates any court order, regulatory order

or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.

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

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any opponent of record, or any County department. Appeal to County Council. Within ten calendar days of the date of the written decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

Any party of record may request a closed record review of the Hearing Examiner's Decision, issued under SMP 23.60.15.H.4, by the County Council. Such an appeal shall be filed with the County Council on forms supplied by the County within ten (10) calendar days of the written decision. If appeal is made to the County Council, notice of appeal shall be provided to all parties of record at least fifteen (15) days prior to consideration by the County Council. The Council shall meet to review the Hearing Examiner's decision within twenty-one (21) days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830 and Section 23.60.15.H. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 22nd day of January 2013.



Michael Bobbink, Hearing Examiner