

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) CUP2012-0006  
Application for )  
)  
*City of Bellingham* ) FINDINGS OF FACT,  
*Public Works* ) 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 authorize improvements to the City's municipal water storage and delivery system, improving water quality by installing new below ground water and utility lines to improve water circulation at an existing water tank.

**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:** City of Bellingham, Public Works Department

**Site Location/Address:** 1404 Marietta Avenue  
Bellingham, Washington

**Legal Description:** within the NW ¼ of the SE ¼ of the SE ¼ of Sec 4, T38N, R2E, W.M. Whatcom County, WA; more fully described in deed of conveyance on file.

**Assessor's Parcel Number:** 380204 418116 0000

**Zoning:** Rural District (R5A)

**Comprehensive Plan:** Rural

Subarea: Urban Fringe

Total Parcel Acreage: 1.23 acre

Roads: Public

Water Supply: City of Bellingham

Sewage Disposal: None Proposed

Fire Protection: Whatcom County Fire District No. 8

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: City of Bellingham School District No. 501

Topography: Parcel slopes in a southerly direction from the tank site toward Marietta Avenue.

Vegetation: The vegetated portions of the site include mowed, grassy areas, shrubs, and deciduous and a few coniferous trees.

Adjacent Land Uses:

North:	R5A	Single-family residences
East:	LII	Vacant, & Manufacturing
South:	R5A	Single-family residences
West:	R5A	Single-family residences

Easements: A dedicated easement of approximately 3,000 square feet (50' X 60') in favor of Verizon Wireless (formerly US West NewVector Group Inc.) upon which is located a 100 foot high cellular communications tower and fenced equipment compound.

Authorizing Codes, Policies, Plans, and Programs

Revised Code of Washington (RCW) Chapter 36.70

Revised Code of Washington (RCW) Chapter 58.17

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 17 – Flood Damage Prevention Code

Whatcom County Code, Title 23 – Shoreline Management Program

Whatcom County Code Title 24, Health Regulations

Legal Notices: Mailed – Notice of Application and Optional SEPA DNS, April 25, 2012  
-- Notice of Public Hearing, May 21, 2012  
Published – Notice of Application and Optional SEPA, April 25, 2012  
-- Notice Public Hearing, May 24, 2012

Hearing Date: June 6, 2012

Parties of Record

City of Bellingham, Public Works Department  
Freeman Anthony  
210 Lottie Street  
Bellingham, WA 98225

Mary White  
Division of Engineering

Erin Osborn  
Planning and Development Services

Exhibits:

- 1 Land Use Application
  - 1-1 Fee Responsibility
  - 1-2 Agent Authorization
  - 1-3 PDS Address Instructions
  - 1-4 Vicinity Map
  - 1-5 Address Labels
  - 1-6 Preliminary Traffic and Concurrency Information
  - 1-7 Preliminary Stormwater Proposal
  - 1-8 Revocable Encroachment Permit Application
  - 1-9 1% Real Estate Excise Tax, Whatcom County
  - 1-10 Policy of Title Insurance
  - 1-11 Bellingham Herald Tear-Sheet, April 25, 2012, Notice of SEPA/CUP Application
  - 1-12 Hearing Examiner Checklist #1, May 9, 2012
  - 1-13 Email request for Hearing Date
  - 1-14 PDS Form Memo to Tech Committee, April 25, 2012
  - 1-15 Letter of Complete Application, April 11, 2012
  - 1-16 Cover Letter with Application, March 27, 2012 from Reichhardt & Ebe Engineers
  - 1-17 2011 Whatcom County Fees – CUP
  
- 2 Agency Comments
  - Plans Examiner, May 7, 2012
  - Fire Marshal, May 3, 2012

Natural Resources, April 26, 2012

Stormwater – DOE and Public Works Engineering, May 7 and May 2, 2012

- 3 SEPA Checklist, DNS/Notice of Application: Notices and Legal, dated April 25, 2012
- 4 Plat Map
- 5 Zoning Map
- 6 USGS, US Topo Site Map, 2011
- 7 Aerial and Site Photos
- 8 Site Plans
- 9 Memorandum of Sublease
- 10 City of Bellingham Easement Agreement, CUP97-0017, Transmitter Site [unsigned], with Memorandum to Whatcom County Planning from John Hunt re: US West/Airtouch Cellular Application Foster Water Tank Site, dated March 26, 1997, signed John Hunt and Ken Thomas,
- 11 Certificate of Mailing, Notice of Application and Optional SEPA DNS, April 25, 2012
- 12 Certificate of Mailing, Notice of Public Hearing, May 21, 2012
- 13 Legal Notice, Notice of Public Hearing, May 24, 2012
- 14 Set of Large Revised Site Drawings, May 18, 2012
- 15 Staff Report, dated June 4, 2012 [revised per Staff Memo, Exhibit 16]
- 16 Staff Memorandum, dated June 6, 2012, re: Second Revision to Staff Report
- 17 Agency Comments submitted by Staff at the hearing
- 18 Reichhardt & Ebe transmittal sheet re: addendum to CUP Application and the revised plan set, dated May 18, 2012
- 19 DNS, dated May 25, 2012

## II.

The Land Use Services Division of Whatcom County Planning and Development Services

recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #15, dated June 4, 2012, a copy of which is attached hereto and incorporated herein by this reference.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated there were no objections to any of the Conditions of Approval requested by Staff. There was no public comment on this matter, either in writing or at the public hearing.

### III.

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 installation of new below ground water and utility lines to improve the City's municipal water storage and delivery system for the existing water tank located in the City of Bellingham Urban Growth Area can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (2 through 8). Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Zoning Conditional Use Permit should be granted, subject to conditions.

#### 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 the City of Bellingham, Public Works Department, to install new below ground water and utility lines for the existing water tank located on Assessor's Parcel No. 380204 418116, 1404 Marietta Avenue, Bellingham, Washington, subject to the following conditions:*

#### **PDS – 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. Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.
3. To ensure conformance with Whatcom County Comprehensive Plan, Policy 5E-3, the City of Bellingham shall provide notification of the proposed development, approved under CUP2012-00006, to all abutting land owners.

4. Right to Farm: 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.

**Public Works – Division of Engineering**

1. The Applicant shall obtain a revocable encroachment permit if any work in County rights-of-way will occur, before issuance of a Land Disturbance Permit. Please contact Whatcom County Public Works, Engineering, if you have any questions.
2. All development shall comply with Whatcom County Development Standards.

**Whatcom County PDS- Natural Resources – Environmental Permitting**

1. A land disturbance permit from Whatcom County Planning & Development is required if fill and grade activities in excess of 50 cu yd are proposed prior to issuance of the building permit.

The Applicant shall complete construction or, if no construction is contemplated as a part of this permit, shall demonstrate compliance with all of the conditions of this permit within 24 (twenty-four) months of the date of the issuance of this Decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this Permit. Substantial progress toward completion may satisfy the terms of this condition if approved by Whatcom County Planning & Development Services and the Hearing Examiner. The Applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion or compliance. An extension shall be granted if the Hearing Examiner finds that the Applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning & Development Services before granting any extension.

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 following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the 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.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. 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 8<sup>th</sup> day of June 2012.



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Michael Bobbink, Hearing Examiner

**WHATCOM COUNTY**  
Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-676-6907, TTY 800-833-6384  
360-738-2525 Fax



**J.E. "Sam" Ryan**  
Director

**WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT (SECOND REVISION)**

Date: June 4, 2012  
Hearing Date: June 6, 2012

The application of <b>City of Bellingham, Public Works Department</b> for a Zoning Conditional Use Permit	CUP2012-00006 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: City of Bellingham Public Works Department is requesting Zoning Conditional Use Permit approval to authorize improvements to the City's municipal water storage and delivery system. Proposed project is to install new below ground water and utility lines to improve water circulation at an existing water tank, in order to improve water quality.

Recommendation: The Technical Review Committee recommends that the Whatcom County Hearing Examiner approve the City's application for a conditional use permit subject to the requested conditions located in Section IX of this report.

**II. PRELIMINARY INFORMATION**

**A. BACKGROUND INFORMATION**

Applicant: City of Bellingham, Public Works Department  
210 Lottie Street  
Bellingham, WA 98228

Site Location/Address: 1404 Marietta Avenue

Legal Description: A tract of land located within the Northwest Quarter of the Southeast Quarter of the Southeast Quarter of Section 4, Township 38 North, Range 2 East, W.M., Whatcom County, WA; more fully described in deed of conveyance, on file.

Assessor's Parcel Number: 380204 418116 0000



Zoning: Rural District (R5A)

Comprehensive Plan: Rural

Subarea: Urban Fringe

Total Parcel Acreage: 1.23 acre

Roads: Public

Water Supply: City of Bellingham

Sewage Disposal: None Proposed

Fire Protection: Whatcom County Fire District No. 8

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: City of Bellingham School District # 501

Topography: Parcel slopes in a southerly direction from the tank site toward Marietta Avenue.

Vegetation: The vegetated portions of the site include mowed, grassy areas, shrubs, and deciduous and a few coniferous trees.

Adjacent Land Uses:

North:	R5A	Single-family residences
East:	LII	Vacant, & Manufacturing
South:	R5A	Single-family residences
West:	R5A	Single-family residences

Easements: A dedicated easement of approximately 3,000 square feet (50' X 60') in favor of Verizon Wireless (formerly US West NewVector Group Inc.) upon which is located a 100 foot high cellular communications tower and fenced equipment compound.

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

1. Revised Code of Washington (RCW) Chapter 36.70
2. Revised Code of Washington (RCW) Chapter 58.17
3. Whatcom County Comprehensive Plan
4. Whatcom County Code, Title 2, Chapter 2.33 – Permit Review Procedures
5. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
6. Whatcom County Code, Title 14, Use of Natural Resources
7. Whatcom County Code Chapter 12.08, Development Standards

8. Whatcom County Code Chapter 15, Building Code/Fire Code
9. State Environmental Policy Act (SEPA); Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
10. Whatcom County Code Chapter 16.16, Critical Areas
11. Whatcom County Code, Title 17 – Flood Damage Prevention Code
12. Whatcom County Code, Title 23 – Shoreline Management Program
13. Whatcom County Code Title 24, Health Regulations

### **III. APPLICATION PROPOSAL**

On March 28, 2011, City of Bellingham Public Works Department submitted an application for a Zoning Conditional Use Permit to authorize improvements to the City of Bellingham's municipal water storage and delivery system. The existing Marietta water tank is 50' high and 100' feet wide, and because of the large volume, the water in the tank tends to become stagnate due to lack of circulation. Proposed improvements are to remedy this lack of circulation and to improve overall water quality.

Project details include:

1. Installation of 415 lineal feet of new 16" below ground water line to be located within the foot print of the existing driveway;
2. Reconfiguration of an existing single 16" inlet/outlet that mounts on the water tank. A dedicated 12" inlet and a 16" outlet will replace the single 16" inlet to allow for water to recirculate within the tank;
3. Replacement of existing below ground telephone and electric lines down the existing driveway;
4. One new 7' X 12' pre-cast concrete underground vault to house new waterline valves to be located just southeast of the water tank, and south of the existing water tank utility building.

Proposed earth to be excavated is 487 cubic yards. Estimated fill is 187 cubic yards.

Based on requests from the Technical Review Committee, the Applicant submitted additional information to specify how any water discharged from tank cleaning operations generated by the proposed development would conform to County standards. This additional information is discussed within the body of this report in sections devoted to stormwater review, and is further discussed in sections that summarize review of the proposal for conformance with conditional use approval criteria, WCC 20.84.220 (1-9).

### **IV. SITE DESCRIPTION**

The site of the proposed development is located at 1404 Marietta Avenue, within Section 4, Township 38N, Range 2E, W.M., in Whatcom County, Washington: Assessor's Parcel Number 380204 418116 0000.

The subject property is located within the Bellingham Urban Fringe Subarea, and is designated Rural in the County's Comprehensive Plan. The subject parcel is zoned Rural District (R5A). Allowable density is based on the availability of public water, public sewer, and stormwater facilities, ranging from one dwelling unit per 5 acres to one dwelling unit per 10 acres.

The project site is accessed off of Marietta Avenue where it reaches its highest point in elevation. A high elevation was chosen for the water tank site to allow water to be pumped to the tank and then to be distributed by gravity.

Existing development is located on the highest point of the parcel, with the underground vault and proposed water lines, and power and utility service lines to be located in the downwardly (southerly) sloping driveway. The vegetated portions of the site include mowed lawn, grassy areas, and a few sparse coniferous trees and a variety of deciduous trees.

Existing development on the site also includes a wireless communications facility including a 100 foot high lattice tower, and fenced equipment compound all within a 50' X 60' dedicated easement. This easement is granted to Verizon Wireless (formerly US West Newvector Group Inc.), and as of the date of this report, there are several wireless carriers with antennas mounted on the tower.

Properties surrounding the subject site to the north, south and west are zoned Rural District (R5A), and to the east the zoning is Light Impact Industrial. A majority of the surrounding parcels are developed with residential home sites. Land located directly east is partly vacant and treed with a mix of deciduous and coniferous tree species, and one parcel is also developed with a manufacturing use.

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

Requirements for public notice are contained in Chapter 2.33 WCC.

Notice of Application: The Notice of Application for this proposal was published on April 15, 2012. The fifteen (15) day comment period ended on May 10, 2012. On April 15, 2012, 30 Notices of Application were mailed to property owners whose boundaries lie within 1000 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: During the public comment period set for the Notice of Application, Whatcom County Planning & Development Services Department received no written comments. There was one telephone call from a neighboring property owner who inquired about the possibility of obtaining excavated material

from construction, but no substantive comments were made in regards to the proposed development. This property owner was directed to contact the City in regards to its plans for excavated material, and to Whatcom County to get information as to whether a fill and grade permit would be required.

*The Technical Review Committee finds that requirements pertaining to Public Comment have been fulfilled as discussed above.*

## **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 Whatcom County SEPA Official has reviewed the completed SEPA checklist (SEP2012-00022) submitted by the applicant, and has made a determination that with proper mitigation and by compliance with applicable codes and requested conditions, no significant adverse impacts to the environment would be likely to occur as a result of approving the proposed zoning conditional use. This decision was made following review of a completed SEPA environmental checklist and other information submitted as part of the record and on file with the lead agency.

A Determination of Non-significance (DNS) was issued on May 25, 2012 after utilizing the Optional DNS process (WAC 197-11-355) which established a 15 day comment period ending on May 10, 2012. The 10 day appeal period for this DNS ended June 4, 2012. No appeals to this determination were filed.

Written comments were received from the Department of Ecology, Bellingham Field Office, Kurt Baumgarten in regards to review of the application for conformance with requirements for National Pollutant Discharge and Elimination System (NPDES) General Permits that could apply to water tank discharge operations. Email correspondence on record between the Applicant, and Whatcom County Public Works Engineering staff, Mary White, addressed these comments to the satisfaction of Mr. Baumgarten who indicated that since water tank discharge was to the *ground* and not to a surface water of the State, that a NPDES would not be required.

*Finding: The Technical Review Committee finds that environmental review as to whether probable significant adverse impacts would be likely to occur as a result of approving the proposed development has been completed in conformance with the State Environmental Policy Act Rules pursuant to WAC 197-11.*

## **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.

The Whatcom County Public Works Division of Engineering reviewed the proposal and submitted a memo dated May 8, 2012 with comments and requirements as discussed below. After working with the applicant to address the requirements of the May 8, 2012 memo, Public Works Engineering staff submitted another memo on May 22, 2012 indicating that the requirements of the May 8, memo had been changed.

Engineering Comments and Requirements from the May 8, 2012 memo are listed below:

1. Applicant shall provide a water discharge plan that ensures no flooding of adjacent properties.
2. Applicant will show no contamination of both ground water and surface water by discharges of flush water (show proper de-chlorination).

Listed below is Public Works Engineering comment from the May 22, 2012 memo.

1. On the basis of comments received from Ian Hinton, P.E., Reichhardt & Ebe Engineering, Inc., on May 18, 2012. My understanding is that there have been no written comments from the public, adverse or otherwise

Public Works Conditions of Approval are listed in Section IX of this report.

*Finding: The Technical Review Committee has determined that as discussed above and subject to the recommended conditions, the proposed use 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 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 Chief Plans Examiner submitted a memo dated May 7, 2012 with comments that are listed below.

These findings are based on review of the applicant's 3.28.12 Conditional Use Application - Master and construction documents prepared by the civil engineer.

Project Description:

Renovations to an existing water reservoir facility consisting of the following work:

- o 415 lineal feet of 16" underground water main from the adjacent street to the existing storage tank.
- o 7' x 12' precast concrete, underground vault for new valving.
- o Miscellaneous: new tank drain, telephone and power conduits.

A building permit is not required for this proposal per Section 105.2.3 Public Service Agencies of the 2009 International Building Code (IBC):

"A permit shall not be required for the installation, alteration or repair of generation, transmission, distribution or metering or other related equipment that is under the ownership and control of public service agencies by established right."

**Fire Code:** The Whatcom County Fire Marshal's Office submitted a memo dated May 3, 2012 indicating there were no comments or conditions applicable to the proposed development.

*Finding: The Technical Review Committee has determined that as discussed above, the proposed development will meet the requirements of WCC Title 15.*

**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.

Whatcom County Planning & Development Services Department Natural Resources Division Critical Areas wetlands staff reviewed the proposal and submitted a Memo on April 26, 2012 with the following comments:

1. Critical areas staff have reviewed the proposed renovation of an existing reservoir for compliance with WCC16.16 (Critical Areas Ordinance). Whatcom County Critical Area maps do not indicate the potential of wetlands or Habitat Conservation Areas on the site.

*Finding: The Technical Review Committee has determined that as discussed above, the proposal is in conformance with the requirements of WCC Chapter 16.16.*

#### **D. WCC Title 17 – Flood Damage Prevention**

WCC Title 17 contains standards that regulate development within a flood hazard area as established in WCC 17.04.050. The subject property is not within a flood hazard zone.

*Finding: The site is not located within a flood hazard area; therefore the requirements of Title 17 do not apply to the proposed use.*

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

##### **Chapter 20.36 – Rural District**

##### **WCC 20.36.010 Purpose:**

The purpose of this district is to implement the rural designation of the Comprehensive Plan and appropriate subarea plan, which calls for the maintenance of rural character and environmentally fragile areas by allowing a variety of low intensity uses that are compatible and complementary with the conservation of agricultural, forestry and related uses.

*Discussion: The subject application for a conditional use permit is proposed by a municipal water system (City of Bellingham), to authorize improvements to its water system to provide increased water circulation and improve water quality.*

*Provisions for water utility projects are made in the Official Whatcom County Zoning Ordinance, Chapter 20.82 – Public Utilities; this chapter applies to all zoning districts, (unless stated otherwise). This Chapter states that when a proposal includes the installation of water lines that exceed an inside of diameter of 8 inches and the project has been identified in an approved water plan, and the site is located within an urban growth area, then project may be approved as a permitted use.*

*In this case the site is not located within an urban growth area, and although the proposed improvements are identified in the City's approved Water System Plan, the proposal is being reviewed as a conditional use as provided in WCC 20.82.030 (3) which states that water lines that exceed an inside diameter of 8 inches may be approved subject to conformance with conditional use criteria located in WCC 20.84.220 (1-9).*

*In part, the conditional use criteria referenced above states that "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. . . "However, in this case the use district in which the development is proposed Rural District) does not contain provisions for the specific use, as may be found in some other districts, such as the Agriculture District which contains specific provisions that pertain to public utility development. The Official Whatcom County Zoning Ordinance, Public Utility Chapter is not a "use district" but an overlay chapter that applies to all zoning districts, and does not contain specific provisions that apply to building setbacks, heights, landscaping, or lot coverage.*

*Whatcom County Code, Title 20, Chapter 20.04 – General Provisions clarify the purpose and intent of this title. It is stated that the purpose and intent of Title 20 is to further the goals and policies of the Whatcom County Comprehensive Plan, and to regulate the physical development of the county through coordinating the execution of both public and private projects. It further states that the objective of this title is to assure the highest standards for living, and that in interpreting and applying the provisions of this title, they shall be held to be the minimum requirements for the promotion of public health, safety, convenience, order morals and general welfare.*

*Finding: Based on the above analysis, the Technical Review Committee has determined that in accordance with the General Provisions of Chapter 20.04 WCC, the proposed conditional use permit application will be reviewed for consistency with the use restrictions that apply to conditional uses found in Whatcom County Code, Chapter 20.36 - Rural District as listed and discussed below, and as further provided in Whatcom County Code, Chapter 20.80 – Supplementary Requirements.*

**WCC 20.36.350 Building setbacks:**

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

*Finding: The proposed development identified on the May 18, 2012 site plan has been reviewed and approved in conformance with 20.36.350.*

**WCC 20.36.400 Height regulations:**

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.



*Finding: All proposed development is below ground. The Technical Review Committee has determined that the proposed development is in conformance with the requirements of WCC 20.36.400.*

**20.36.450 Lot coverage:**

No structure or combination of structures, including accessory buildings, shall occupy or cover more than 2,500 square feet or 35 percent, whichever is greater of the total area.

*Finding: The proposed development does not add any additional structures to the existing development on the lot. The Technical Review Committee has determined that the proposed development is in conformance with the requirements of WCC 20.36.450.*

**20.36.652 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.

*Finding: As a condition of approval, the Technical Review Committee is recommending that the Hearing Examiner require the applicant to comply with Right to Farm disclosure policies contained in WCC Title 14.*

**WCC 20.36.653 Landscaping:**

Refer to WCC 20.80.300 for landscaping requirements. (Ord. 89-117, 1989).

*Discussion: Application materials submitted do not identify any above ground improvements, therefore the requirements of WCC 20.36.653 do not apply to the proposed development.*

**WCC 20.36.654 Parking requirements:**

Parking shall conform to the requirements of WCC 20.80.500.

*Discussion: The submitted application site plan dated May 18, 2012 identifies adequate space on the subject parcel to adequately accommodate any need for vehicle parking. No new structures are proposed, and no increase in traffic will occur as a result of the proposed development.*

*Finding: As discussed above, the Technical Review Committee finds that the proposed development conforms to the requirements of WCC 20.36.654.*

**WCC 20.36.656 Drainage:**

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.

*Finding: Public Works Division of Engineering has reviewed the proposal for consistency with Whatcom County Development Standards pertaining to stormwater management, and has determined that subject to the recommended conditions the proposed development will conform to the requirements of WCC 20.36.656.*

**WCC Chapter 20.71 Water Resource Protection Overlay District**

Water Resource Protection Overlay areas are defined in WCC Chapter 20.71 and include the entire geographic area of the Lake Whatcom, Lake Samish, and Lake Padden watersheds within Whatcom County's jurisdiction. These areas are also designated stormwater special districts pursuant to WCC 20.80.635 and water resource special management areas pursuant to WCC 20.80.735.

*Finding: The Technical Review Committee has determined that the proposed development is not in an area designated as a Water Resource Protection Overlay District, and therefore the requirements of WCC Chapter 20.71 do not apply.*

**WCC Chapter 20.78 Transportation Concurrency**

WCC Chapter 20.78 gives authority to ensure adequate transportation facilities are available or provided concurrent with development.

Discussion: Public Works Engineering Services reviewed the Preliminary Traffic and Concurrency information submitted at time of application and has submitted a recommended condition of approval to require that a Revocable Encroachment Permit be obtained for any work performed within a County Right of Way

*Finding: The Technical Review Committee has determined that as discussed above and subject to the recommended condition, the proposal will be comply with the requirements of WCC Chapter 20.78 – Transportation Concurrency.*

**WCC 20.80.21 - 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 & Sewer**

*Discussion: The proposed use does not create a demand for either water or sewer service. The proposal is to improve City of Bellingham's municipal water system and its water quality.*

### **Schools**

With regard to schools and fire protection, RCW 82.02.050(b) states: "...To promote orderly growth and development by establishing standards by which counties, cities and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve the growth and development..."

No such ordinance is in place in Whatcom County, and RCW 82.02.020 is clear that the county has no authority to require such fees. However RCW 82.02.020 "...does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of the proposed development, subdivision or plat."

*Discussion: The proposed use located within the service area designated as School District # 501. The School District was sent a combined notice of application along with notice of Environmental Review under the State Environmental Policy Act (SEPA) which stated that the Optional Determination of Non-Significance (DNS) process was being used. During the 15 day comment period, no comments were received from the School District indicating that the use would increase a requirement for services.*

### **Fire Protection**

*Discussion: The proposed use located within the service area designated as Fire District No. 8. The Fire District was sent a combined notice of application along with notice of Environmental Review under the State Environmental Policy Act (SEPA) which stated that the Optional Determination of Non-Significance (DNS) process was being used. During the 15 day comment period, no comments were received from the Fire District indicating that the use would increase a requirement for services.*

*The Whatcom County Fire Marshal reviewed application materials on file, and submitted a memo dated May 3, 2012 indicating that there were no concerns or conditions at that time.*

*Finding: The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.80.212.*

**WCC 20.80.523 – Lighting Criteria:**

Any parking area which is intended to be used primarily during non-daylight hours shall be properly illuminated to avoid accidents. Any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.

*Finding: The Technical Review Committee has determined that since no lighting is proposed as part of the proposed development that WCC 20.80.523 does not apply.*

**Whatcom County Code, Chapter 20.82 – Public Utilities**

**WCC 20.82.010 Intent.**

The provisions of this chapter regulate the installation, maintenance and operation of public utility lines, pipelines for oil and gas, railroads (but not included switching yards or round houses), or maintenance facilities. The citizen initiative, enacted through Ordinance 90-124, regarding power line placement, Comprehensive Plan land use designations, Comprehensive Plan policy directives and the specific provisions of this chapter, shall be the basis for decisions regarding utility development. This chapter applies to all zoning districts unless stated otherwise.

*Finding: Whatcom County Code, Chapter 20.82 – Public Utilities applies to all zoning districts, unless otherwise provided. The proposed pump house is located within the Rural District. The proposal has been reviewed for conformance with specific standards of the use district (WCC 20.36), and conditions have been proposed to ensure that any applicable standard of the use district is fulfilled.*

**WCC 20.82.030 Conditional Uses**

The following uses shall require a conditional use permit or major project permit and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance:

**WCC 20.82.030 (3)**

New sewer and/or water lines with an inside diameter greater than eight inches except for new sewer and/or water lines located and installed by a public utility or municipality within urban growth areas, and in conformance with a state approved sewer and/or water comprehensive plan and consistent

with the Whatcom County Comprehensive Plan, which shall be permitted outright.

*Discussion: Proposed City of Bellingham water system improvements have been determined to require a conditional use permit subject to conformance with conditional use approval criteria in [WCC 20.84.220 (1-9) (below)].*

**WCC 20.84.220 (1-9) - Conditional Use Permit Criteria**

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:

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

*Discussion: Whatcom County Code, Chapter 20.82 – Public Utilities applies to all use districts. Whatcom County Comprehensive Plan land use designations, Comprehensive Plan policy directives and the specific provisions contained within WCC 20.82 – Public Utilities, are the basis for review in making recommendations in regards to utility development in Whatcom County.*

*The proposed development is a component of a public water utility improvement plan and is considered an "Essential Public Facility". The proposal has been reviewed for consistency with Comprehensive Plan Goals and policies that address site locational criteria that apply to the establishment of Essential Facilities. These comprehensive plan goals and policies are discussed in Chapter Two, Land Use, Whatcom County Comprehensive Plan.*

*The Whatcom County Comprehensive Plan includes discussion on essential public facilities that are difficult to site because of potential adverse affects related to size, bulk hazardous characteristics, noise, or public health and safety. Potential adverse affects of the City's proposed improvements are minimal. All proposed development is situated on a 1.23 acre site previously developed with a large water tank and existing below water lines.*

*It should be noted, that the Whatcom County Comprehensive Plan states that the siting of essential public facilities may not be prohibited. To facilitate the establishment of these essential but difficult to site public facilities, Land Use, Chapter Two, Goals and policies establish a process that is to be followed when siting these facilities, including: early County review on any proposal for a conditional use permit; public notice and open record hearing before the hearing examiner; and review of project proposal for consistency with zoning regulations and comprehensive plan policies.*

*The importance of effective public review and participation to ensure compatibility with neighboring land uses is emphasized over and over again in the county comprehensive plan goals and policies. As discussed in the previous section on Public Comment, there were no comments submitted by the public that directly addressed the scope of improvements. There have been no complaints or objections to this proposal, filed with the Technical Review Committee.*

*Finding: The Technical Review Committee finds that as discussed above, and subject to the requested conditions listed in Section IX of this report, the proposed development conforms to the requirements of WCC 20.84.220 (1).*

**(2) 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: Application materials describe the proposal as one that will create noisy construction activities for a period that is brief in duration. All proposed construction activity consists of excavation and placement of new pipes, utility vault, and electrical service lines, and phone lines below ground. The proposed development will serve to promote increased water quality at a site that has been used to store City of Bellingham water for some time.*

*The Technical Review Committee has considered the potential impact of the proposed development relative to a range of potential uses that could otherwise be outright permitted and could be expected to be established in the Rural District. These uses include single family dwellings; agricultural uses; public parks and recreational uses; trails, trailheads and restroom facilities, sod farming, small wood lot management, to name a few. Traffic to the site will generally be limited to routine maintenance, and limited in duration, and will not exceed the scale and intensity of other uses that are outright permitted in the district.*

*Finding: The Technical Review Committee finds that as discussed above, and subject to the requested conditions listed in Section IX of this report, the proposed development conforms to the requirements of WCC 20.84.220 (2).*

**(3) 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.**

*Finding: The proposed development is located in an area designated for Rural Growth in the County's Comprehensive Plan. The purpose of the proposed improvements is to increase water quality and efficiencies of water delivery to the City of Bellingham water customers.*

*Public water can be both an urban and a rural service, when provided at a level of service consistent with planned for rural densities of the area. The Technical Review Committee finds that the function of the proposed water system improvements is consistent with rural land use policies as discussed in the rural lands element of the Whatcom County Comprehensive Plan.*

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

*Discussion: During the construction phase of development there could be some inconvenience to neighboring uses. Once construction is completed, and operations commence, there shouldn't be any increase in traffic to the site. By the lack of any substantive public comment, the Technical Review Committee concludes that the use of the site for a water tank and the wireless communications cellular tower is not disturbing to existing uses. The City of Bellingham Public Works, staff, Freeman Anthony, contacted an adjacent neighbor to discuss whether there were any impacts from tank draining operations, and the neighbor indicated that there were none.*

*Property owners within 1,000 feet of the proposal were sent Notices of Application, and of these property owners, no one commented or chose to lodge objections to the proposed development.*

*Finding: The Technical Review Committee finds that as discussed above, and subject to the requested conditions, the use will not be hazardous or disturbing to existing or future neighboring uses beyond the level of what could be expected from the allowable uses permitted in the zone.*

**(5) 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 level of service for access, fire, and police is discussed below:*

*Roads:*

*Access to the site is from Marietta Avenue, a County Public Road. Public Works Division of Engineering reviewed the Preliminary Traffic Concurrency Evaluation submitted at time of application, and with the exception of the required revocable encroachment permit, did not require any specific conditions of approval that would apply to the proposed development.*

*Police and Fire Protection:*

*Fire Emergency Services are provided by Whatcom County Fire District No. 8 and Police Services are provided by Whatcom County Sheriff's Department. Notices of Application were sent to the Fire District and the Whatcom County Fire Marshal's Office. The Whatcom County Fire Marshal's Office reviewed*

*application materials and indicated that there were no fire safety concerns at the site. No comments were received from Whatcom County Fire District No. 8 to indicate that the proposed development could not be served.*

*Environmental Health*

*The application was submitted to the Whatcom County Health Department. Health Department staff reviewed the application, but did not submit comments or any conditions that would apply to the use as proposed.*

*Finding: The site will be served adequately by necessary public facilities, or the Applicant will provide adequately for any necessary public facilities.*

**(6) 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 City of Bellingham is an incorporated municipality that will bear financial responsibility for any or all improvements that are proposed within the scope of this application. The purpose of the proposed improvements is to increase water quality and water system efficiency.*

*Finding: The Technical Review Committee finds that although the proposed development may create additional public costs for public facilities and services, that it will not be detrimental to the economic welfare of the community.*

**(7) 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: Construction activities associated with the proposed development will cause a temporary inconvenience and additional noise created by equipment and machinery used in the construction, and depending on site conditions and weather, some dust or mud may be expected from grading and trenching.*

*Finding: The Technical Review Committee finds that as discussed above, and subject to conformance with Whatcom County Development Standards and adherence to Best Management Practices during construction, the proposed development will not involve uses, activities processes, materials, equipment and conditions of operation in any permanent duration 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.*



**(8) 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 Division of Engineering Services has reviewed vehicular access to the subject parcel. Engineering staff comments indicate that the Applicant will be required to obtain a Revocable Encroachment Permit for any work within the County Right of Way.*

*Finding: The Technical Review Committee has determined that as discussed above, the existing vehicular approaches will be reviewed for any changes in order to accommodate traffic generated by the proposed development.*

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

*Discussion: The proposed use was routed to the Whatcom County natural resources team for review of potential impacts to critical areas. On the basis of application review and a site inspection, a determination was made that there will be no wetland or habitat conservation area impacts as a result of approving this proposal.*

*Finding: It is the determination of the Technical Review Committee that the proposed development will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.*

**F. WCC Title 23 – Shoreline Management Program**

WCC Title 23 contains standards that regulate development within the shorelines of the state pursuant to the State of Washington Shoreline Management Act (SMA). The purpose and intent of the Whatcom County Shoreline Management (SMP), Title 23, is to promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of Whatcom County shorelines; and to manage shorelines in a positive, effective, and equitable manner.

*Finding: The site is not located within a jurisdiction of the SMP, therefore the requirements of Title 23 do not apply to the proposed use.*

**G. Health Code (Title 24)**

The purpose of Title 24 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 (WCHD) reviewed the proposed development and made no comments of record.

*The Technical Review Committee has determined that as discussed above the project meets the requirements of WCC Title 24.*

## H. Whatcom County Comprehensive Plan

Zoning regulations are meant to implement the goals and policies of the County's Comprehensive Plan. Conditional uses are those uses that may be approved if it is determined that the specific use requested is consistent with the general and specific objectives of the Whatcom County Comprehensive Plan. The proposed development that is the subject of this report has been reviewed for consistency with the following goals and policies of the Whatcom County Comprehensive Plan:

**Goal 5B:** Support development and use of new utility and information technologies

**Policy 5B-2:** Support development and use of new technologies.

**Goal 5E:** Reduce unnecessary obstacles to land use development applications.

**Policy 5E-3:** Utility companies shall provide notification of proposed projects to abutting land owners.

**Goal 5J:** Facilitate maintenance and rehabilitation of existing utility systems and facilities, and encourage the use of existing utility corridors.

**Policy 7C-1:** Continue to work with all involved parties to ensure an adequate water supply and distribution system to support economic growth.

*Finding: The Technical Review Committee finds that the proposed development is consistent with the above listed Goals and Policies of the Whatcom County Comprehensive Plan.*

## **VIII. RECOMMENDATION**

The Technical Review Committee recommends that the Whatcom County Hearing Examiner approve the application of the City of Bellingham for a zoning conditional use permit to authorize construction and operation of new underground utility lines, and below ground equipment vault subject to requested conditions that are listed below in Section IX of this report.

## **IX. CONDITIONS OF APPROVAL**

### **A. PDS – Current Planning**

1. Permit Changes or Modifications: 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. CUP Nontransferable: Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by

the hearing examiner.

3. To ensure conformance with Whatcom County Comprehensive Plan, Policy 5E-3, City of Bellingham shall provide notification of the proposed development approved under CUP2012-00006 to all abutting land owners.
4. Right to Farm: 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.

#### **B. Public Works – Division of Engineering**

1. The applicant shall obtain a revocable encroachment permit if any work in County rights-of-way will occur, before issuance of a Land Disturbance Permit. Please contact Whatcom County Public Works, Engineering, if you have any questions.
2. All development shall comply with Whatcom County Development Standards.

#### **C. Whatcom County PDS- Natural Resources – Environmental Permitting**

1. A land disturbance permit from Whatcom County Planning & Development is required if fill and grade activities in excess of 50 cu yd are proposed prior to issuance of the building permit.

Report prepared for the Technical Review Committee by:

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