

WHATCOM COUNTY HEARING EXAMINER

RE: Administrative Appeal) APL2010-0020
Reasonable Use Application for)
) FINDINGS OF FACT,
Barr Rental, L.L.C.) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Reasonable Use Permit under the Whatcom County Critical Areas Ordinance as the project includes filling a Category III Wetland and encroaching into a Category II Wetland buffer for the development of commercial storage at 3909 Bennett Drive, Bellingham, Washington.

Decision: The requested Reasonable 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: Barr Rental, L.L.C.

Property Location/Address: 3909 Bennett Drive
Bellingham, WA 98226

Legal Description: Assessor’s Parcel Numbers 380214-189471 & 380214-196455
BAKERVUE ADD TO BELLINGHAM LOT 2 & LOT 3 BLK 7

Zoning: Gateway Industrial (GI) and Light Impact Industrial (LII)

Comprehensive Plan: Urban Growth Area

Subarea: Urban Fringe

Authorizing Ordinances:

| | |
|---------------|--------------------------|
| WCC 20.92 | Hearing Examiner |
| WCC 20.84.230 | Appeals |
| WCC 2.33 | Permit Review Procedures |

Applicable Whatcom County Critical Areas Ordinance:

WCC 16.16.270 Reasonable Use and Variances

SEPA Review: Determination of Non-Significance (DNS), issued on November 12, 2010

Legal Notices: Mailed – August 16, 2010 and February 4, 2011
Published – September 7, 2010 and February 10, 2011

Hearing Date: March 16, 2011

Parties of Record:

Jack Swanson
900 Dupont Street
Bellingham, WA 98225

Doug Scoggins
Barr Rental, LLC
PO Box 2965
Ferndale, WA 98248

Ed Miller
Ronald Jepson and Associates
222 Grand Avenue, Suite C
Bellingham, WA 98225

Wendy Steffensen
RE Sources for Sustainable Communities
2309 Meridian Street
Bellingham, WA 98225

Mary White
Division of Engineering

Cassandra Schoenmakers
Planning and Development Services

Royce Buckingham

Civil Deputy Prosecutor

Exhibits:

- 1 Land Use Application
 - 1-1 Fee Responsibility
 - 1-2 Agent Authorization
 - 1-3 PDS Instructions-Property Owner Notices
 - 1-4 Customer Receipt, CA Variance
 - 1-5 Letter dated June 2, 2010, from Ed Miller, Ronald Jepson & Associates, re: Reasonable Use Application for the Bennett Property Project
 - 1-6 Reasonable Use Supplemental Application
 - 1-7 Letter of Complete Application, July 29, 2010
 - 1-8 Property Owner Notice of Application
 - 1-9 Scheduling email from Schoenmakers to Magner, August 17, 2010
 - 1-10 PDS Application Processing Track Form, August 16, 2010
 - 1-11 Chicago Title, Tax Information
 - 1-12 Statutory Warranty Deed
 - 1-13 1-13 Survey Map [part of Chicago Title info]
 - 1-14 Customer Receipt, LDP2010-0012
 - 1-15 Customer Receipt, LDP2010-0012, SEP2010-0014, SFR2010-0033
 - 1-16 PDS Application Questionnaire form
 - 1-17 Letter, March 11, 2010, from PDS re: LDP Application
 - 1-18 Email, December 8, 2010 from Cassandra Schoenmakers re: Reasonable Use Requirements and hearing schedule

- 2 Agency Comments
 - Sandy Petersen, PWD Engineering, August 24, 2010
 - Nick Smith, PDS Zoning, September 20, 2010
 - Bill Hewett, Fire Marshal, August 16, 2010
 - DOE, Bellingham Field Office, SEPA Comments, August 30, 2010
 - Email, September 20, 2010 from Susan Meyer, DOE
 - Email, November 4, 2010, from Schoenmakers to Susan Meyer
 - Letter, October 12, 2010, from Susan Meyer, DOE to Doug Scroggins [sic] re: US Army Corps of Engineers Reference #NWS-2010-908
 - Memo, October 27, 2010, from Michael DiSpigno, Cascade Engineering Group re: Response to Engineering Review Comments re: Stormwater
 - Letter, October 28, 2010, Ed Miller re: Addendum to Bennett Property Project Critical Areas Assessment Report and Mitigation Plan
 - PDS Letter, September 29, 2010 re: Notice of Additional Requirements

- 3 Letter dated June 28, 2010 from Ed Miller, re: Reasonable Use Application

- 4 Email correspondence [Ed Miller/Susan Meyer/Randel Perry] Sept 29, 2010 [2-pages front & back] re: Response to Comments

- 5 PDS Letter, October 13, 2010 re: Revised Notice of Additional Requirements
- 6 PDS Letter, November 3, 2010 re: Compensatory Mitigation Plan
- 7 Critical Area Existing Conditions Map, handwritten notes, March 3, 2010
- 8 Large Maps (3) Wetland Exhibit, dated May 13, 2010
- 9 Large Maps (6) Site Plans, dated January 2010
- 10 Small Maps (4) Overall Site Layout, April 12, 2010
- 11 Aerial Map
- 12 Zoning Map
- 13 Very Large Project Site Plans (6 sheets), dated January 27, 2010
- 14 DNS, November 12, 2010, with attached SEPA Checklist and Distribution List
- 15 Bellingham Herald Tear Sheet, September 7, 2010, Notice of Application
- 16 Mailing Certification of Application Notice, August 16, 2010, with property owner labels and Agency Distribution list attached
- 17 PDS Notice of Application, August 16, 2010
- 18 PDS Notice of SEPA Determination, November 12, 2010
- 19 Certificate of Mailing, Notice of Public Hearing, February 4, 2011
- 20 Certificate of Mailing, Notice of Public Hearing with Property Owner Labels attached
- 21 Legal Notice of Public Hearing, February 10, 2011
- 22 Rescheduled Public Hearing Agenda, with Property Owner Labels attached
- 23 Stormwater Site Plan, February 2010, prepared by David Evans and Associates
- 24 Revised Critical Areas Assessment Report and Conceptual Mitigation Plan, May 2010, prepared by Ronald T. Jepson & Associates

- 25 Critical Areas Assessment Report and Conceptual Mitigation Plan, January 2010, prepared by David Evans and Associates
- 26 Staff Report, dated March 10, 2011
- 27 Cover Letter, dated March 3, 2011 from Jack Swanson re: BAR-Rental, LLC RV and Boat Storage Proposal, with Reasonable Use Supplemental Application attached
- 28 Reasonable Use Analysis as of February 24, 2011, prepared by Wm. T. Follis, LLC, Realtors
- 29 Cover Letter, dated January 27, 2011, from Jack Swanson with report attached: Reasonable Use Analysis as of January 5, 2011, prepared by Wm. T. Follis, LLC, Realtors
- 30 Letter dated November 24, 2010, from RESources for Sustainable Communities re: Comments on SEP2010-0014-County Issued DNS for Barr Rental, L.L.C., cover letter (email) attached
- 31 Email memo from Mary White, December 8, 2010 with DIMIS spreadsheet attached
- 32 Letter dated September 22, 2010 from Lummi Indian Business Council re: APL2010-0020 Inadvertent Discovery Language
- 33 Plans Examiner Comment Memorandum, dated August 19, 2010
- 34 Letter dated September 27, 2010 from Dept of the Army, Seattle District, Corps of Engineers to Doug Scoggins re: NWS-210-908, Barr Rental, LLC
- 35 Revised Site Plan, February 17, 2011 [24 X 36]
- 36 Series of Site Photos documenting site conditions [12-color]

II.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Reasonable Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #26, dated March 10, 2011, a copy of which is attached hereto and incorporated herein by this reference.

With the correction in the purchase price for the property, the Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to any of the Conditions of Approval requested by Staff. There was no public comment on this matter at the public hearing.

III.

Written comments received by Staff during Planning's review of the application were reviewed and concerns were addressed by Staff in the Staff Report. The Hearing Examiner concurs with Staff's review of the concerns as presented in the Staff Report.

IV.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The proposed development and Reasonable Use can be approved if it is consistent with the Review Criteria of WCC 16.16.270. Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Reasonable Use Review Criteria. A Reasonable Use Approval 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 Reasonable Use Permit is hereby granted to Barr Rental, L.L.C. to fill a Category III Wetland and encroach into a Category II Wetland buffer for the development of a commercial storage project to be located on Assessor's Parcel Nos. 380214 189471 and 380214 196455, at 3909 Bennett Drive, Bellingham, Washington, subject to the following conditions:

1. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Hearing Examiner.
2. A Land Disturbance Permit (LDP2010-00012) shall be issued prior to any construction. The Land Disturbance Permit shall be conditioned to implement BMPs for erosion and sediment control measures.
3. The Stormwater Pollution Prevention Plan (SWPPP) shall be implemented in accordance with the submitted specifications. Contact Department of Ecology for assistance with the SWPPP.
4. Landscaping requirements must be completed pursuant to WCC 20.80.300 and performance standards listed in WCC 20.65.700 (GI) and 20.66.700 (LII).
5. Prior to issuance of the Land Disturbance Permit and, as stated in the letter dated, November 3, 2010:

- a. Fees associated with the mitigation and monitoring review shall be paid. The mitigation review fees are \$1,200.00 total (\$600.00 for mitigation plan review and installation and \$600.00 for the monitoring period).
 - b. A Conservation Easement must be filed at the Auditor's Office that includes a map identifying the remaining wetlands and buffer area to be protected.
 - c. As identified in the plan, a Bond or an Assignment of Savings must be provided for mitigation surety. The amount will be 125% of the cost of the mitigation (planting, installation, monitoring, etc).
6. Mitigation must be installed in accordance with the final approved mitigation plan submitted by Jepson and Associates. The installation shall be documented in the form of an as-built developed by a qualified specialist; the Applicant shall receive a portion of the assignment of savings for the cost of installation. The five-year monitoring period begins once the as-built report has been approved and continues until successful completion of all performance standards outlined in the approved mitigation plan. Monitoring reports shall be developed by a qualified specialist and submitted annually for the first three years as well as the fifth year after the as-built report.
7. A Revocable Encroachment Permit (ENC2010-00221) for Whatcom County Engineering shall be issued prior to commencing construction.
8. To develop both lots of record, the Applicant must file a covenant to bind.
9. 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 (676-6907) LNTHPO (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 LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
10. Any future development proposals associated with this property must be reviewed and approved by Whatcom County.
11. Issuance of Land Disturbance Permit does not constitute approval by other local, State or Federal agencies.
12. 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 29th day of March 2011.

Michael Bobbink, Hearing Examiner



March 10, 2011

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

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|--|---|
| The application of Bar-Rental LLC For Critical Area Reasonable Use Permit | APL2010-00020 FINDINGS, CONCLUSIONS, AND DETERMINATIONS |
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I. SUMMARY OF APPEAL AND RECOMMENDATIONS

Application: The applicants are requesting a Reasonable Use Permit under the Whatcom County Critical Areas Ordinance as the project includes filling a Category III wetland and encroaching into a Category II wetland buffer for the development of commercial storage at 3909 Bennett Drive.

Recommendation: Staff recommends approval of the reasonable use permit.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: David Evans and Associates

Owner: Bar-Rental LLC

Property Location/Address: 3909 Bennett Drive
Bellingham, WA 98226

Legal Description: APN: 380214-189471 & 380214-196455
BAKERVUE ADD TO BELLINGHAM LOT 2 & LOT 3
BLK 7

Zoning: Gateway Industrial (GI) and Light Impact Industrial (LII)

Comprehensive Plan: UGA

Subarea: Urban Fringe

B. PROCEDURAL INFORMATION

Authorizing Ordinances:

| | |
|---------------|--------------------------|
| WCC 20.92 | Hearing Examiner |
| WCC 20.84.230 | Appeals |
| WCC 2.33 | Permit Review Procedures |

Applicable Whatcom County Critical Areas Ordinance:

| | |
|---------------|------------------------------|
| WCC 16.16.270 | Reasonable Use and Variances |
|---------------|------------------------------|

SEPA Review:

Determination of Non-Significance (DNS) Issued on
November 12, 2010

III. FINDINGS AND CONCLUSIONS

On February 3, 2010, David Evans and Associates submitted an application for Bar-Rental LLC to construct a driveway access, gravel pad and storm drainage improvements through a Land Disturbance Permit at 3909 Bennett Drive (LDP2010-00012). The proposed use is for commercial vehicle storage. The proposed development is approximately 3.3 acres including stormwater improvements.

The proposed project is located on two parcels in contiguous ownership, APN: 380214-189471 and 380214-196455. Together, the parcels are approximately 7.90 acres and split-zoned; the east portion of the property is Gateway Industrial and the west half of the property is Light Impact Industrial. The proposed development is concentrated primarily within the Gateway Industrial zone. Additionally, the parcels are located within the Urban Growth Area (UGA) of the City of Bellingham. The applicants stated there is no public water availability for the two parcels. Currently, a single-family residence exists on the northern parcel. The two parcels were purchased in May 2005 for a total of \$1,100,000.00. According to Whatcom County Assessor's records, the two parcels are appraised at \$1,209,989.00.

Included in the application materials is a wetland delineation, proposed compensatory mitigation plan and stormwater proposal. The proposed project includes filling a Category III wetland and impacting a Category II wetland buffer for proposed commercial storage development. Per WCC 16.16.620, the proposed impacts to the wetland and wetland buffer must meet the reasonable use or variance standards in WCC 16.16.270. The project proponents were notified that the proposed gravel storage must demonstrate avoidance of critical areas and buffers or demonstrate the project achieves the reasonable use or variance criteria set forth in WCC 16.16.270.

The applicants submitted a complete reasonable use application on July 23, 2010. The application included an economic analysis of two design concepts. The first concept included avoidance of all critical area and buffer impacts. The second design is the proposed development that impacts the Category III wetland and Category II wetland buffer. The Technical Administrator requested an alternatives analysis on September 29, 2010 to demonstrate alternative design concepts had been explored. Staff offered an example of a previous

alternatives analysis. The applicant submitted design alternative sketches but only provided an economic analysis for avoidance of all critical areas and the proposed development as shown in LDP2010-00012. The economic analysis for both design concepts was based on the presumed requirement through Public Works road frontage improvements (valued at approximately \$200,000.00), however, Public Works is not requiring road frontage improvements for the proposed commercial storage pad. Staff requested a revised analysis based on actual improvements required.

A second economic analysis was submitted on January 27, 2011 that addresses the expected revenue to be generated from the property based on the assessed value of both parcels. The analysis states through avoiding critical areas and buffers, a 28,600 square foot building pad would remain after required site improvements were constructed. This analysis did not examine the current proposed development or other design alternatives.

A third economic analysis was submitted on March 3, 2011 that assessed costs associated with construction of the proposed development and the land acquisition costs. Based on the third economic analysis, the revenue generated from the proposed commercial storage area would not be an economically viable use of the parcel as the annual revenue does not cover the costs of acquisition and construction.

Basis for Reasonable Use

WCC16.16.270 Review Criteria:

To qualify as a reasonable use, the technical administrator or hearing examiner, as appropriate, must find that the proposal is consistent with all of the following criteria:

a. There is no portion of the site where the provisions of this chapter allow reasonable economic use, including agricultural use or continuation of legal nonconforming uses;

The economic analysis provided by the applicants on January 27, 2011 states there will be approximately 28,600 square feet of revenue generating area after the required developmental standards including stormwater improvements, landscaping requirements and zoning setbacks are completed, that would not impact critical areas and associated buffers. The appraiser provided the figure, “\$3,500.00 per month would be generated, and after expenses, a value conclusion of \$755,000.00 would be supportable for 28,600 square feet as a commercial building pad.” The analysis did not provide a calculation for the current value of the property. Assuming the ratio of \$755,000.00 supports 28,600 square feet, staff concluded \$1,400,000.00 would be supported by a building pad of approximately 53,033 square feet that would potentially generate monthly revenue of approximately \$6,491.00. Staff requested that the applicant revise the application to reduce the impact area or provide further information.

Based on staff’s findings, the applicants submitted a third economic analysis on March 3, 2011. The March 3, 2011 economic analysis states the proposed development would not generate a revenue stream that would be considered a reasonable economic use because the revenue would not support \$2,040,000. The appraiser estimated the total cost for construction of the proposed development and land acquisition is approximately \$2,040,000. The projected annual revenue for 94 rental spaces, less the expenses, is approximately \$35,330. The annual revenue of \$35,330

would be economically viable for a property with costs at \$883,200. Therefore, the project revenue is less than the estimated costs for acquisition and construction of the proposed development.

There is an existing single-family residence on the northern parcel. Per WCC 20.65.060 one existing single-family residence is a permitted use, however, applicant states the single-family residence is in derelict condition. The existing single-family residence constitutes a continuation of a legal nonconforming use. Staff contacted the applicants to state the intention of the single family residence. There is an application for a demolition permit that suggests the applicants do not have any intention of continuing the single family use.

Based on the permitted uses in WCC 20.65.050, the lack of public water and sewer services, and the calculations completed through the economic analysis provided on March 3, 2011, it appears the proposed project constitutes a reasonable economic use of the parcel.

b. There is no feasible alternative to the proposed activities that will provide reasonable economic use with less adverse impact on critical areas and/or buffers. Feasible alternatives may include, but are not limited to, locating the activity on a contiguous parcel that has been under the ownership or control of the applicant since the effective date of the ordinance codified in this chapter, change in use, reduction in size, change in timing of activity, and/or revision of project design;

The applicants provided two design alternatives throughout the review process. The first design is the proposed project that includes developing approximately 3.3 acres and mitigating for critical area impacts on the remaining 4.6 acres. The second design alternative includes avoiding all critical areas and buffers by developing approximately 44,000 square feet of upland area. The use remained the same for both alternative designs.

The economic analysis provided on January 27, 2011 states that avoiding the critical areas and buffers would not be an economically viable option. The applicants did not provide an analysis for minimizing the impacts to critical areas and buffers through reducing the size of the impact, changing the use or changing the timing of the proposed development.

The economic analysis provided on March 3, 2011 analyzes the proposed development and the potential revenue generation with a reasonable capitalization rate of 4%. The analysis stated the revenue generation from the proposed development is less than the total cost of acquisition and construction costs. Therefore, the proposed development results in the least adverse impacts to critical areas and/or buffers while providing a reasonable economic use for the parcel.

The applicants stated the parcel does not have access to public water and sewer service. The lack of water prohibits a variety of uses for the parcel at this time. Additionally, staff discussed the water availability with the City of Bellingham and it is unclear when this area may be annexed into the City and gain access to public water. Therefore, we cannot estimate a different time frame for alternative uses and project designs.

c. Activities will be located as far as possible from critical areas and the project employs all reasonable methods to avoid adverse effects on critical area functions and values, including maintaining existing vegetation, topography, and hydrology. Where both critical areas and buffer areas are located on a parcel, buffer areas shall be disturbed in preference to the critical area;

As part of the original Land Disturbance Permit application, a wetland delineation and compensatory mitigation plan were submitted. The proposed project includes filling the Category III wetland that abuts Bennett Drive and concentrate the development on the eastern 3.3 acres of the parcel and the remaining 4.6 acres is protected for the compensatory mitigation project.

The proposed critical area compensatory mitigation project meets the minimum replacement ratios for wetland creation (2:1) and provides a combination of wetland buffer enhancement and buffer averaging to compensate for buffer impacts per WCC 16.16. The Department of Ecology reviewed the proposed project and provided comments with a recommendation to seek off-site mitigation to compensate for habitat loss. Through further correspondence with Department of Ecology, the primarily function of the wetlands and buffers onsite are for water quality and hydrologic function and exhibit low habitat function. Per Department of Ecology's publication, *Wetland Mitigation in Washington State, Version 1 (2006)*, determining the buffer for a compensation site should be determined on a case-by-case basis. As the site has low habitat function, a deviation from the standard buffer width is appropriate in this specific situation.

The concept of reducing the impacts to only buffers was discussed between staff, Department of Ecology and the qualified specialist, Ed Miller. The development would disconnect the Category II wetland from the eastern most Category III wetland and leave smaller buffers to protect the western wetlands. For water quality and hydrologic function, disconnecting the two wetlands would likely decrease the function of both wetlands. However, concentrating the mitigation on the western portion of the property and preserving 4.6 acres would likely improve water quality and hydrologic function overall.

Additionally, the applicant obtained a Nationwide Permit (NWP) 39 from the U.S. Army Corps of Engineers, for the proposed fill of the Category III wetland. Department of Ecology responded to the NWP and determined the project meets the requirements for Washington State 401 Water Quality Certification and Coastal Zone Management Act Consistency and will not require an individual 401 certification through Department of Ecology.

d. The proposed activities will not result in adverse effects on endangered, or threatened species as listed by the federal government or the state of Washington, or be inconsistent with an adopted recovery plan;

The Department of Fish and Wildlife data does not indicate endangered or threatened species utilize these parcels. The critical areas assessment provided with the Land Disturbance Permit application did not identify any endangered or threatened species inhabiting the subject parcels. The Technical Administrator conducted a site inspection on February 11, 2010 and verified the

critical areas assessment that found no threatened or endangered species utilizing the subject properties. Therefore, the proposed project shall not adversely effect endangered or threatened species.

e. Measures shall be taken to ensure the proposed activities will not cause degradation of ground water or surface water quality, or adversely affect drinking water supply;

The proposed project has been distributed to the Whatcom County Health department, Whatcom County Public Works Engineering Department, the City of Bellingham and Department of Ecology. The Health Department did not provide comments regarding the proposed project. Additionally, the City of Bellingham did not provide comments.

The applicants submitted a Stormwater Management Report for review by the Engineering Department. The Stormwater Management Report was reviewed and approved by Engineering on November 8, 2010. The proposed stormwater plan includes a stormwater detention facility and catch basins.

The Department of Ecology reviewed the proposed project and provided comments regarding the potential impacts to water quality. Department of Ecology has regulatory authority through the Clean Water Act to ensure water quality standards are being met through prevention of water pollution. The proposed project may require an NPDES General Permit when land disturbance activities reach certain thresholds. Additionally, the Department of Ecology recommended the applicants obtain and implement a Stormwater Pollution Prevention Plan (SWPPP) to ensure the project remains in compliance with Department of Ecology, implements Best Management Practices (BMPs) for erosion control and prevention of impacts to receiving waters from peak rates and volumes of stormwater runoff. Included in the project site plans is a Stormwater Pollution Prevention Plan.

In satisfying the Whatcom County Engineering requirements and adhering to the Department of Ecology standards, the project shall not cause degradation to the ground water or surface water quality and will not affect the drinking water supply.

f. The proposed activities comply with all state, local and federal laws, including those related to erosion and sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;

The Department of Ecology has reviewed the proposed project and provided comments regarding the potential impacts to water quality. One of the comments provided by Department of Ecology recommended the applicants obtain and implement a Stormwater Pollution Prevention Plan (SWPPP) to ensure the project remains in compliance with Department of Ecology, implements Best Management Practices (BMPs) for erosion control and prevention of impacts to receiving waters from peak rates and volumes of stormwater runoff. Included in the project site plans is a SWPP. The Stormwater Management Plan was reviewed and approved by Whatcom County Engineering.

The proposed project is not located within a floodway or a floodplain, therefore, the project will not be subject to floodplain restrictions.

The proposed project includes site development of commercial storage. The Whatcom County Health Department was notified of the proposed project and did not submit comments regarding on-site wastewater disposal requirements.

g. There will be no damage to nearby public or private property and no threat to the health or safety of people on or off the site;

The property owners within a 300-ft. radius were notified of the proposed project and given a timeframe to submit comments regarding the project. Staff received no public comments from the surrounding property owners. In addition, the reasonable use application was distributed to pertinent departments and agencies to review for compliance with the respective regulations. Through the departmental and agency review, the proposed project shall not present a threat to health or safety of surrounding properties.

h. The inability to derive reasonable economic use of the property is not the result of segregating or dividing the property and/or creating the condition of lack of use after the effective date of the ordinance codified in this chapter; and

According to Whatcom County records, the property has not been further divided or segregated since the lot was created in 1938 as part of the Bakerview Addition to Bellingham plat. The two lots were created prior to the adoption of the Whatcom County Critical Areas Ordinance in September 2005.

i. The project includes mitigation for unavoidable critical area and buffer impacts in accordance with the mitigation requirements of this chapter.

The applicants submitted a critical areas assessment report and compensatory mitigation plan with LDP2010-00012. The wetland delineation identified four wetlands on the subject parcel. Staff verified and approved the critical areas assessment with minor amendments on March 3, 2010. The proposed project includes filling the eastern most Category III wetland and associated buffer. The project also includes impacting the adjacent Category II wetland buffer.

The compensatory mitigation plan submitted includes minimum replacement ratios for wetland creation (2:1) and provides a combination of wetland buffer enhancement and buffer averaging to compensate for buffer impacts. The proposed mitigation plan includes creating wetland area within the existing buffer of the Category II wetland to increase the size of the Category II wetland. The buffer for protecting the creation area and existing Category II wetland consists of a 20-foot buffer abutting the stormwater detention pond at the closest point.

If the reasonable use permit is approved, the compensatory mitigation plan is sufficient for the proposed development. However, if an alternative design shall be approved, the compensatory

mitigation plan must be amended to reflect the changes in impact and mitigation requirements. Additionally, the proposed project has received the Nationwide Permit (NWP) 39 from the Army Corps of Engineers and authorization from Department of Ecology and both agencies should be notified of any changes in impacts to critical areas from changing the proposed development.

Per WCC 16.16.260 and 16.16.690, the mitigation project shall be installed in accordance with the approved plan, maintained and monitoring for a minimum period of five years by a qualified wetland specialist. The applicants are required to obtain a bond or assignment of savings of 125 percent of the cost of the entire mitigation project. Additionally, the mitigation area shall be protected in perpetuity through a conservation easement.

Public Comments

Staff received comments from the non-profit organization, Re-Sources, on November 24, 2010 that states the following concerns:

1. The applicant has not demonstrated that all reasonable measures have been taken to avoid adverse impacts to critical areas and associated buffers (WCC 16.16.260 and 620). The development footprint should be further reduced.
2. In the proposed development scheme, Wetland C, a type II wetland, is not sufficiently protected and the effects on it have not been sufficiently mitigated.

Staff has reviewed the comments and addressed the above listed concerns in WCC16.16.270 c. and i. Addressing the temporary impacts that may occur during construction shall be addressed at permit issuance. Re-Sources also included concerns with the monitoring of the proposed mitigation that can be addressed through the recommended condition number three.

Agency Comments

Staff received comments from the following agencies:

- Department of Ecology provided comments on August 30, 2010 that address potential water quality concerns. Susan Meyer stated the impacted wetlands would require compensatory mitigation and the mitigation areas must have adequate buffers for habitat. Through further discussions, Susan Meyer acknowledged that larger buffers were not required due to the lack of connectivity to adjacent habitat areas as well as the wetland functions. Mak Kaufman and Kurt Baumgarten stated construction activities might have significant impacts on water quality. Additionally, Mr. Kaufman and Mr. Baumgarten addressed the NPDES permit requirements for the proposed project and suggested the project include a Stormwater Pollution Prevention Plan (SWPPP).
- Lummi Indian Business Council stated the site was not located within a known archeological site but to include inadvertent archeological discovery information as a condition of approval.
- Whatcom County Public Works Engineering provided the following comments:
 - As requested in the undated Distribution List for the Notice of Application for subject proposed project, we offer the following comments:

- On the Notice itself in the “Required Studies” section:
 - A revised *Stormwater Management Report* that:
 - Addresses the wetlands fluctuations and how the site development and stormwater system affects the wetland.
 - Modifies the pre-development basin (i.e., the pre- and post-development basins should not be the same).
 - Identifies where the stormwater flows downstream of the pond, beyond the catch basin southeast of the site.
 - A *Preliminary Traffic & Concurrency Information* form.
- Further to paragraph no. 1.1.2 above, WSDOT might, depending on the type of business on the site, require the Applicant to submit a *Traffic Impact Analysis*. If WSDOT does receive a *Traffic Impact Analysis*, we request a courtesy copy.
- The Applicant must submit a *Revocable Encroachment Permit* application package to the County Public Works Department for property ingress and egress access, and for possible improvements within the right-of-way.

Engineering staff received the requested information and approved the Stormwater Management Report.

- Whatcom County Plans Examiner provided the following:
 - At the time when structures will be built, comments will be given at that time for each individual project.
 - Specific requirements will be discussed at time of application of each individual building pre-application meeting and or submittal when more detailed plans are available. The following are general comments are not intended to be the final comments or requirements for any one project.
 - Due to the fact that imported fill is being brought to the site, a geotechnical report will most-likely be required for each project on the site unless the applicant provide one for the entire site or show that the structures are being constructed on undisturbed native soil.
 - Required plans for projects shall include but not be limited to. (Suggested scales)
 - Site plan (1/10th scale)
 - Foundation plan (1/4” =1’ scale)
 - Floor plan (plan views) (1/4” =1’ scale)
 - Elevation plans (1/4” =1’ scale)
 - Structural plans (1/4” =1’ scale)
 - Section views (1/2” =1’ scale)
 - Details (special construction and or connections) (1/2” =1’ scale)
- Whatcom County Zoning Administrator provided comments regarding the building setbacks and design standards. Please see the attached memo for details.
- The Whatcom County Fire Marshall did not have any comments or conditions.

IV. DETERMINATION

Staff recommends approval of the proposed development and reasonable use permit with the following conditions:

1. A Land Disturbance Permit (LDP2010-00012) shall be issued prior to any construction. The Land Disturbance Permit shall be conditioned to implement BMPs for erosion and sediment control measures.
2. The Stormwater Pollution Prevention Plan (SWPPP) shall be implemented in accordance with the submitted specifications. Contact Department of Ecology for assistance with the SWPPP.
3. Landscaping requirements must be completed pursuant to WCC 20.80.300 and performance standards listed in WCC 20.65.700 (GI) and 20.66.700 (LII)
4. Prior to issuance of the Land Disturbance Permit and as stated in the letter dated, November 3, 2010:
 - a. Fees associated with the mitigation and monitoring review shall be paid. The mitigation review fees are \$1,200.00 total (\$600.00 for mitigation plan review and installation and \$600.00 for the monitoring period).
 - b. A Conservation Easement must be filed at the Auditors office that includes a map identifying the remaining wetlands and buffers area to be protected.
 - c. As identified in your plan, a Bond or an Assignment of Savings must be provided for mitigation surety. The amount will be 125% of the cost of the mitigation (planting, installation, monitoring, etc).
5. Mitigation must be installed in accordance with the final approved mitigation plan submitted by Jepson and Associates. The installation shall be documented in the form of an as-built developed by a qualified specialist, the applicant shall receive a portion of the assignment of savings for the cost of installation. The five-year monitoring period begins once the as-built report has been approved and continues until successful completion of all performance standards outlined in the approved mitigation plan. Monitoring reports shall be developed by a qualified specialist and submitted annually for the first three years as well as the fifth year after the as-built report.
6. A Revocable Encroachment Permit (ENC2010-00221) for Whatcom County Engineering shall be issued prior to commencing construction.
7. To develop both lots of record, the applicant must file a covenant to bind.
8. 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 (676-6907) LNTHPO (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 LHTHPO Department (384-2298) shall be

- contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
9. Any future development proposals associated with this property must be reviewed and approved by Whatcom County.
 10. Issuance of Land Disturbance Permit does not constitute approval for other local, state or federal agencies.

Report prepared by:

Cassandra Schoenmakers
Planner – Critical Areas