

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) CUP2011-0011  
Application for )  
)  
*Birch Bay Village Community Club* ) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW,  
) AND DECISION

**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting a Zoning Conditional Use Permit to authorize construction of a 26 ft X 30 ft (780 sq. ft) "New Covered Veranda" as an addition to the existing Golf Course Club House.

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: Birch Bay Village Community Club

Site Location/Address: 8181 Cowichan Road, Blaine, WA

Legal Description: A tract of land lying within the NE ¼ of the SE ¼ of Sec23, T40N, R1W, W.M., Whatcom County, WA; further described as BIRCH BAY VILLAGE DIV 11C TRACT A-AF 1408729-27870 12/30/1981 VOL 635 PG 378.

Assessor's Parcel Number(s): 405123 469171 0000

Zoning: Urban Residential District (UR4)

Comprehensive Plan: Birch Bay Urban Growth Area

Subarea: Birch Bay Blaine

Total Acreage: 35.00 acre site (+/-)

Roads: Private

Water Supply: Birch Bay Water & Sewer District

Sewage Disposal: Birch Bay Water & Sewer District

Fire Protection: Whatcom County Fire District No. 21

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Blaine School District # 503

Topography: Location of proposed development is level.

Vegetation: Vegetated portions of site include mown lawn, shrubs, with scattered coniferous trees.

Adjacent Land Uses: North: UR4 - single-family residences  
East: UR4 - Golf Course  
South: UR4 - single-family residences  
West: UR4 - single-family residences

Easements: None

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 - September 7 and October 6, 2011  
Published - October 3 and October 13, 2011

Hearing Date:        October 26, 2011

Parties of Record:

Birch Bay Village Community Club  
Ken Hoffer, General Manager  
8055 Cowichan Road  
Blaine, WA 98230

Erin Osborn  
Planning and Development Services

Exhibits:

- 1     Land Use Application
  - 1-1    Fee Responsibility
  - 1-2    Agent Authorization – blank form
  - 1-3    PDS Address Instructions
  - 1-4    Property Owner Mailing Labels
  - 1-5    Chicago Title – Property Owner List
  - 1-6    Land Disturbance Permit, issued May 19, 2011
  - 1-7    Endangered Species Act Checklist
  - 1-8    PDS Case Activities for LDP
  - 1-9    Preliminary Stormwater Proposal
  - 1-10   Preliminary Traffic & Concurrency Info
  - 1-11   Revocable Encroachment Permit Application
  - 1-12   Determination of Completeness, August 4, 2011
  - 1-13   Customer Receipt
  - 1-14   PDS Hearing Examiner Checklist, October 13, 2011
  
- 2     Staff Report, October 12, 2011
  
- 3     Agency Comments
  
- 4     Public Comments
  
- 5     Vicinity Map
  
- 6     Zoning Map
  
- 7     Aerial Photos
  
- 8     Site Plan
  
- 9     SEPA, DNS, October 3, 2011, with Checklist, Distribution, Legal Notices

- 10 PDS Certificate of Mailing, Notice of Application, September 7, 2011, with SEPA Distribution List attached
- 11 Certificate of Mailing Notice of Public Hearing, October 6, 2011
- 12 Legal Notice of Public Hearing, October 13, 2011
- 13 Chicago Title packet of property addresses

## **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 #2, dated October 12, 2011, 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 no objection to any of the Conditions of Approval requested by Staff. There was no adverse public comment on this proposal.

## **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 construction of a new covered veranda addition to the existing patio 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 Birch Bay Village Community Club for the*

*proposed construction of a 780-square foot covered veranda on the patio of the existing golf course club house, located on Assessor's Parcel No.405123 469171, 8181 Cowichan Road, Blaine, Washington, subject to the following conditions:*

**A. Planning Division**

1. Permit Changes or Modifications: 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 Whatcom County Hearing Examiner.
2. Parking: Pursuant to WCC 20.80.500, the Applicant shall establish adequate parking. An approved parking plan shall be submitted prior to issuance of the required commercial building permit. Parking shall be installed in accordance with Federal and State regulations for ADA accessibility. In the event there is a conflict between the State and Federal regulation(s), the State regulation(s) shall apply.
3. Lighting: Pursuant to WCC 20.80.523; the Applicant shall direct all lighting away from the adjoining property and the public road.
4. Glare: The Applicant shall ensure that parked vehicles are situated on the lot to prevent sun from reflecting glare visible to neighboring properties.
5. Refuse: At time of commercial building permit required to approve the construction of the Covered Veranda, the Applicant shall identify the location of refuse containers on an approved site plan.
6. Signage: Whatcom County will allow one non-illuminated freestanding sign, visible from the road and not exceeding six feet in height. One additional non-illuminated sign may be attached to the building for a maximum total signage of 16 square feet. No portion of any sign shall extend above the lowest portion of the roof pursuant to WCC 20.36.161(3). A building permit is required prior to installation of a sign.
7. Landscaping Requirements: An approved landscape plan shall be submitted prior to issuance of the commercial building permit required for the proposed development.
8. CUP Nontransferable: Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.
9. Right to Practice Forestry: 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.

10. Inadvertent Discovery: 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 (384-2280) 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 Lummi Sche'lan"en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.

**B. Building Services Division**

1. A commercial building permit is required for this proposal.
2. Due to the scope of the proposed project, the Applicant must apply to the Building Official for a pre-application screening prior to building permit application submittal. At the Building Official's discretion a pre-application meeting may be required.

**C. Public Works Division of River & Flood**

1. 17.16.020 Anchoring.
  - A. Structure shall be anchored to prevent flotation, collapse or lateral movement.
2. 17.16.030 Construction materials and methods.
  - A. All construction materials located below the BFE must be water resistant.
3. 17.16.090 Nonresidential construction.
  - A. Structure is designed using wet-floodproofing techniques and to be open or without walls, any changes to the design will require another flood review to ensure compliance with Title-17.
4. It is required to incorporate Best Management Practices (BMP's) in order to address any construction impacts that may negatively affect water quality/quantity during construction of the project.

**D. Whatcom County Health Department**

**Water:** If employees or the public have access to water, then public water is required.

**Sewage:** If plumbing is run to any portion of the new construction, a sewage disposal method will be required to be reviewed by WCHD to ensure adequate provisions for sewage disposal have been made.

**Food Service:** If food is to be prepared for the public, a food handling permit is required. Any caterer serving food must have a valid permit from WCHD.

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 2<sup>nd</sup> day of November 2011.

  
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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



**RECEIVED**  
J.E. "Sam" Ryan  
Director  
OCT 13 2011  
WHATCOM COUNTY  
HEARING EXAMINER

**WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT**

Date: October 12, 2011  
Hearing Date: October 26, 2011

**EXHIBIT**  
#2

The application of <b>Birch Bay Village Community Club</b> for a Zoning Conditional Use Permit	CUP2011-00011 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: Birch Bay Village Community Club is requesting a zoning conditional use permit to authorize construction of a 26' X 30' (780 sq. ft) "New Covered Veranda" as an addition to its existing Golf Course Club House.

Recommendation: The Technical Review Committee recommends that the Whatcom County Hearing Examiner approve the Applicant's request, subject to the requested conditions located in Section IX of this report.

**II. PRELIMINARY INFORMATION**

**A. BACKGROUND INFORMATION**

Applicant: Birch Bay Village Community Club  
8055 Cowichan Road  
Blaine, WA 98230

Site Location/Address: 8181 Cowichan Road

Legal Description: A tract of land lying within the northeast quarter of the southeast quarter of Section 23, Township 40 North, Range 1 West, W.M., Whatcom County, WA; Further described as BIRCH BAY VILLAGE DIV 11C TRACT A-AF 1408729-27870 12/30/1981 VOL 635 PG 378.

Assessor's Parcel Number(s): 405123 469171 0000



Zoning: Urban Residential District (UR4)

Comprehensive Plan: Birch Bay Urban Growth Area

Subarea: Birch Bay Blaine

Total Acreage: 35.00 acre site (+/-)

Roads: Private

Water Supply: Birch Bay Water & Sewer District

Sewage Disposal: Birch Bay Water & Sewer District

Fire Protection: Whatcom County Fire District No. 21

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Blaine School District # 503

Topography: Location of proposed development is level.

Vegetation: Vegetated portions of the site include mown lawn, shrubs, with a few scattered coniferous trees.

Adjacent Land Uses:

North:	UR4 - Single-family residences
East:	UR4 - Golf Course
South:	UR4 - Single-family residences
West:	UR4 - Single-family residences

Easements: None.

**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**

Birch Bay Village Community Club has applied for a zoning conditional use permit (CUP) to authorize construction of a 26' X 30' (780 sq. ft) "New Covered Veranda" as an addition to its existing golf course Club House. The veranda is proposed to cover an existing patio so that Community Club members may meet and recreate under cover and out of the weather. Land disturbing activity associated with the construction of the existing concrete patio was previously approved and permitted under LDP2011-00028.

### **IV. SITE DESCRIPTION**

The subject property is located in the Birch Bay Blaine Subarea and is designated as an Urban Growth Area in the County's Comprehensive Plan. The Birch Bay Urban Growth Area is reserved for urban growth not associated with an incorporated area. The zoning is Urban Residential 4 Dwelling Units per 1 acre (UR4).

Birch Bay Village Community Club is a private gated residential community located on the northern shore of Birch Bay, just west of Cottonwood Beach. The proposed club house expansion is situated on an approximately 35 acre site developed with a nine hole (par 30) golf course and associated development including the subject club house, a swimming pool, volley ball/tennis/badminton courts, recreational beach access to the salt water and on-site Kwan Lake. The site features a golf pro shop, offices, a maintenance building, and associated parking for reserved for Birch Bay Village Community Club members.

Square footage associated with existing and proposed development includes: a 8,112-square foot clubhouse, a 6,000-square foot golf pro shop, 11,524-square feet of pools & pool house, 24,750 square feet of volleyball,/tennis/badminton courts, a 3,990-square foot maintenance shop, and 61,194 square feet of gravel parking and driveway and catch basins. The total square footage on the parcel for structures is approximately 29,626 square feet. With the addition of the proposed Covered Veranda of 780 square feet, the total square footage on the parcel for structures is approximately 30,406 square feet.

The golf course and grounds is generally level with a gradual slope in a southerly direction toward the salt water bodies known as Birch Bay and Georgia Strait. The site is fully developed with roads, walking paths, residential homes, golf course, Birch Bay Village Community Club accessory structures and associated parking. The golf course lawns are the primary vegetation on site with some scattered deciduous and evergreen trees installed as part of the landscape.

The majority of the land surrounding the subject site is zoned Urban Residential (UR4), and developed with residential home sites. In the general vicinity, there are some parcels to the West that are zoned Rural (R5A), consisting of generally vacant land.

## **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 September 7, 2011. The fifteen (15) day comment period ended on September 22, 2011.

On September 7, 2011, Notices of Application were mailed to property owners whose boundaries lie within 300 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 for the Notice of Application, Whatcom County Planning & Development Services Department received three written comments. A summary of these comments and a brief response to those comments is listed below:

Comments: Two of the public comments indicated that the public notice requirements were wasteful and inefficient use of County funds, and that such a small project could have otherwise been approved much more efficiently if different permit processing methods were employed. Another of the three public comments expressed a lack of confidence in the integrity and character of County staff charged with administrating the provisions of the code.

Response: Staff addressed permitting requirements, and reviewed the nonconforming status of the golf course and associated development, and found that the appropriate means to permit the request for the covered veranda was through a conditional use permit to authorize an expansion of a nonconforming use, as discussed on Page 11 & 12 of this report.

*The Technical Review Committee finds that public comment submitted during the 15 day public period has been adequately addressed in the above discussion, and in requested conditions of approval located in Section IX of this report.*

## **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 reviewed the completed SEPA checklist submitted by the applicant, and 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.

A Determination of Non-significance (DNS) was issued on October 3, 2011 after utilizing the Optional DNS process (WAC 197-11-355). The appeal period for this Optional DNS ended on October 13, 2011. No appeals to this determination were filed.

## **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 Department Division of Engineering reviewed the proposal and submitted a memo dated September 26, 2011 with comments listed below.

1. The applicant is requesting to install a veranda over an existing slab patio area. The subject site is zoned Urban Residential (UR4).
2. Engineering Services has no requirements for this proposal.
3. All appropriate permits must be obtained before construction. Obtaining a county permit does not replace or over-ride other state and federal statutes and regulations that may apply to this project.

*The Technical Review Committee has determined that as discussed above 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 September 26, 2011 with comments, listed below. Chief Plans Examiner conditions of approval for this proposal are listed in Section IX of this

document. The applicant shall comply with all conditions of the Chief Plans Examiner's unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

The following initial conditions are required for this permit. They are subject to change and additional conditions will be included when more detailed plans are submitted. These findings are based on review of the applicant's July 27, 2011 Conditional Use Application – and the following drawings: Site Plan and Floor Plan, Exterior Elevations and Structural.

Project description: Add a new 780sf covered roof structure over an existing concrete patio adjacent to the existing 2,340sf Clubhouse building.

1. A commercial building permit is required for this proposal. It will be reviewed under the 2009 International Building Code (IBC) and must comply with all other applicable codes and ordinances adopted by Whatcom County.
2. A pre-application screening is required prior to building permit submittal. Contact the Building Services Division to schedule and for submittal requirements.
3. A WA State Professional Engineer shall engineer the proposed structure because it does not meet IBC requirements for conventional light-frame wood construction.
4. The following requirements/findings are from the 2009 IBC:
  - a. Preliminary occupancy classifications:
    - Existing Clubhouse – Assembly Group A-3
    - Proposed Veranda – Assembly Group A-3
  - b. Exits shall meet the requirements of Chapter 10. If the covered patio is enclosed with a low wall to control access, an exit gate will be required.
5. The project shall meet the barrier-free, handicap accessible requirements of IBC, Chapters 10, 11 and Appendix E; ICC/ANSI A117.1-03; and WAC 51-10.

**Fire Code:** The Whatcom County Fire Marshal submitted a memo dated September 3, 2011 with comments that apply to this proposal, listed below.

1. No Comment or Condition apply to the proposal as long as it complies with all applicable codes and ordinances adopted by Whatcom County. Any overlooked hazardous condition and/or violation of applicable code does not imply approval of such condition or violation.

*The Technical Review Committee has determined that as discussed above, the conditional use permit application meets 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 determined that any land disturbance associated with the proposed development was previously approved under LDP2011-00028 a permit issued to authorize the installation of a concrete patio, the location of the Covered Veranda.

*The Technical Review Committee has determined that as discussed above, the proposed use meets 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.

Whatcom County Public Works – River and Flood staff submitted an email dated September 22, 2011. River & Flood comments are listed in this section, and conditions of approval are located in Section IX of this document.

1. The subject permit to construct a roof or new covered veranda over an existing concrete patio has been reviewed by the River and Flood Division for compliance with the Flood Damage Prevention Ordinance (Title-17) and the associated requirements of the Endangered Species Act (ESA). The project is within a Special Flood Hazard Area (SFHA) or Flood Zone AE with a Base Flood Elevation (BFE) of 8.0 feet (NGVD29).
2. The Birch Bay floodplain area is designated as an area of critical habitat for protection of listed species under the ESA. According to the submitted ESA checklist the project will not create any new impervious surface or require removal of any vegetation. Therefore a full-blown habitat assessment is not required.

*The Technical Review Committee has determined that as discussed above, and subject to the requested conditions, the proposed use meets the requirements of Title 17.*

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

**Chapter 20.20 – Urban Residential District**

**WCC 20.20.350 – Building Setback Criteria:**

Building setbacks shall be administered pursuant to WCC 20.80.200.

*Discussion: Birch Bay Village Community Club is served by Private Roads. Buildings shall be setback 25 feet from the road right of way for Cowichan Road. The application site plan shows that proposed location of the Covered Veranda is setback 146 feet from Cowichan Road right of way, and therefore conforms to the standards for the district.*

**WCC 20.20.400 – Height Limitations:**

Maximum height shall be limited to 35 feet of the highest gable from average finished grade. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

*Discussion: Maximum height of structures in this district is 35' to the midpoint of the highest gable, measured from average finished grade. Height of the proposed Covered Veranda measured from average finished grade is approximately 14.5 feet, and therefore conforming to the standard in the district.*

**WCC 20.20.450 – 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.

*Discussion: Proposed lot coverage including the proposed 780 square foot Covered Veranda is 30,406 square feet which is less than 35 percent of the approximately 35 acre site, therefore conforming to the standards for the district.*

**WCC 20.20.652 – Use of Natural Resources:**

All discretionary project permits for land on or within one-half mile of an 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.

*Discussion: The Technical Review Committee is recommending that the Hearing Examiner require the applicant to comply with natural resources disclosure policies contained in WCC Title 14. As discussed above, and subject to the requested condition, the proposed use meets the requirements of WCC 20.20.652.*

**WCC 20.20.653 – Landscaping:**

Landscaping shall conform to the requirements of WCC 20.80.300.

*Discussion: Pursuant to WCC 20.80.300, a landscaping plan will be required at time of application for the required commercial building permit, and approved prior to issuance of the building permit, thereby meeting the standards of the district.*

**WCC 20.20.654 – Parking Requirements:**

Parking shall conform to the requirements of WCC 20.80.500. However, recreation vehicles, and boat parking and storage shall be limited to side and rear yard areas.

*Discussion: Adequate parking for the proposed use shall be shown on a site plan submitted at time of application for the required commercial building permit, and approved prior to issuance, thereby meeting the standards of the district.*

**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.

*Discussion: Lighting requirements will be reviewed for conformance with this Section at time of the application for the required commercial building permit, thereby ensuring conformance with the standards for lighting in the district.*

**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.

*Discussion: A Preliminary Stormwater Proposal has been reviewed by Public Works – Division of Engineering for conformance with Whatcom County Development Standards. Engineering staff indicated in a memo that the use would not be subject to any additional requirements.*

**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.

*Discussion: The proposed use is located within the Birch Bay watershed, and therefore not subject to the requirements of the Water Resource Protection Overlay District. However, since the project is in a watershed, the Technical Review Committee has determined that the proposed use will be reviewed for conformance with any applicable watershed regulations at time of review of the required commercial building permit application.*

### **WCC Chapter 20.78 Transportation Concurrency**

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

Public Works Engineering Services reviewed the Preliminary Traffic and Concurrency information submitted at time of application. Based on the information submitted, a determination was made indicating that there are no further requirements for this proposal.

*Discussion: The Technical Review Committee has determined that the proposal conforms to the requirements of WCC Chapter 20.78.*

### **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 application states that water & sewer services will be served by Birch Bay Water & Sewer District. The Technical Review Committee finds that no county facilities will be reduced below applicable levels of service as a result of the development.*

### **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 Technical Review Committee notes that public notice of the proposed use was published in a journal of record, and no comments were received from the School District indicating that the use would increase a requirement for services, or costs associated with improvements. The Technical Review Committee finds that no county facilities will be reduced below applicable levels of service as a result of the development.*

### **Fire Protection**

*Discussion: The proposed use is located within the service area designated as Fire District No. 21. The notice of application was published in the Bellingham Herald. No comments were received from Fire District No. 21 indicating that the use would increase a requirement for services. The Whatcom County Deputy Fire Marshal submitted a memo dated September 3, 2011 with comments indicating that the proposal had been reviewed, and that no specific conditions or approval applied to the proposal.*

*The Technical Review Committee has determined that, as discussed above, the project meets the requirements of WCC Chapter 20.80.212. The Technical Review Committee finds that no county facilities will be reduced below applicable levels of service as a result of the development.*

### **WCC 20.83 – Nonconforming Uses and Parcels**

#### **20.83.010 Continuation.**

Except as otherwise provided in this chapter, the lawful use of any building, land or premises, existing on the effective date of adoption or amendment of this chapter, may be continued although such use does not conform to the provisions hereof. If such nonconforming use is discontinued for a period of 12 months or more, any future use of said building, land or premises shall be consistent with the provisions of this chapter.

#### **WCC 20.97.270 Nonconforming use.**

"Nonconforming use" means a building or land occupied by a legally established use that does not conform with the use regulations of the zoning district in which it is located."

*Discussion:* As stated in the above referenced code, nonconforming uses are those uses, that if demonstrated were legally established may be *continued* although such uses do not conform to requirements that would apply to the establishment of such uses according to current applicable code.

In looking into whether the proposal, a small addition to an existing clubhouse, could be permitted as a revision or a commercial building permit accessory to the existing development, staff noted that the only other use permit on record was for an expansion of a nonconforming use. In 2005, a conditional use permit (CUP2005-00003) was issued to allow Birch Bay Village to expand its maintenance shop as an expansion of a nonconforming use. At that time, staff determined that Birch Bay Village Community Club golf course had been created through a legally recognized process, and that it had been in continual operation since the early 1970's, and that it satisfied the criteria defining a nonconforming use, making it eligible for expansion through the conditional use permit application process.

In reviewing this application, and in response to public comment about the efficiency of the Department, and comments from the applicant regarding the onerous permitting requirements, staff conducted research and noted that "Golf courses and commercial recreation facilities related to golf courses." are specifically provided as a conditional use in the Urban Residential District, under Section 20.20.156 of the Whatcom County Zoning Code. Since the addition of a covered veranda to an existing club house could also be described as a "commercial recreation facility related to a golf course", staff questioned whether the covered veranda could be permitted as such, so that any future change to the Club House might be processed as a revision in the future. On the surface, the proposal appeared to be in conformance with the use regulations of the Urban Residential District i.e. 20.20.156 WCC. Staff offers the following discussion to clarify the record as to the nonconforming status of Birch Bay Village Community Club Golf Course and Clubhouse.

As discussed above, on the face of the application, the proposed use appears to conform to the "*use regulations of the zoning district in which it is located*" which would make the use of the property for a golf course and commercial recreation facilities (i.e. covered veranda attached to a golf course club house), *conforming* as opposed to nonconforming. However, since "Golf courses and commercial recreation facilities related to golf courses", have been established as a *use* pursuant to an overarching mandate delivered by GMA, they must as *uses* also answer to development regulations adopted pursuant to the Whatcom County Comprehensive Plan in accordance with Washington State Growth Management Act (GMA) Chapter 36.70A RCW. But since the Birch Bay Village Golf Course was established prior to GMA, the

Comprehensive Plan, and its implementing regulations, it follows that *golf courses et al.* although specifically provided for as a conditional use in this district, in this case do not apply to Birch Bay Village Community Clubs' proposal to construct a covered veranda as an addition to an existing club house; and because, it is unlikely that this golf course would conform to today's standards adopted in accordance with comprehensive plan goals and policies, staff therefore finds that Birch Bay Village Community Club golf course and associated development is *nonconforming* and any proposed expansion of the Birch Bay Village Community Club or its associated development should be processed accordingly as an expansion of a nonconforming use.

Of Note: In the interest of efficiency and in response to public comment about use of resources, staff encouraged Birch Bay Village Community Club to consider its long term plans and make use of the current permit application process to cover any future development plans; however, the Club responded that it wasn't in a position to pursue any other future development plans at this time.

#### **20.83.020 Expansion of nonconforming use.**

(2) The expansion of a nonconforming use by addition or enlargement shall require a conditional use permit, except for nonconforming adult businesses, which shall not be expanded. The expansion must be on the parcel as it existed at the time the use became nonconforming and the use shall not expand on adjacent parcel(s). The expansion shall be approved if it is consistent with the applicable zoning regulations except the use restrictions and complies with WCC 20.84.220 (2) through (8).

*Discussion:* The proposed expansion is on a Community Tract A of an approximately 35 acre site occupied by the Birch Bay Village Community Club, as it existed at the time the use became nonconforming. The use is not proposed to expand onto an adjacent parcel. The proposal will be reviewed for consistency with applicable zoning regulations except the use restrictions. Staff has determined that the proposal to add a Covered Veranda onto Birch Bay Village Community Club's existing golf course Clubhouse to cover an existing patio is an expansion of a nonconforming use, and accordingly, the application will be reviewed for conformance with conditional use approval criteria WCC 20.84.220 (2-8), in the following paragraphs, listed below this section.

#### **WCC 20.84.220 - Conditional Use Permit Criteria**

##### **20.84.200 Conditional uses.**

##### **20.84.220 (2) through (8) Criteria.**

Conditional use permits issued to authorize expansions of nonconforming uses are reviewed for conformance with the same criteria as other conditional uses with the *exception* of consistency with WCC 20.84220 (1) which states that the use "Will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations."

Before approving an application for a conditional use permit for an expansion of a nonconforming use, the hearing examiner shall find adequate evidence showing that the proposed conditional use at the proposed location:

**(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: The proposed Covered Veranda is proposed be added to Birch Bay Village Community Club's existing Golf Course Clubhouse which has been located on the site since the early 1970's. The covered area will provide shelter for golf course members to recreate out of the weather. The proposal states that the roof will be constructed in such a way so as to match the existing Clubhouse roofing material. As proposed, the addition will be harmonious and appropriate in appearance with the existing or intended character of the general vicinity. The volume of traffic to the site is not proposed to be changed. The proposed use as conditioned will not change the essential character of the area.

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

Discussion: The covered patio area adjacent the Club house will be used by Birch Bay Village Community Club members and their guests for recreational purposes. As conditioned, the use will not be hazardous or disturbing to existing or future neighboring uses.

**(4) 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 site is serviced adequately by necessary public facilities: Water and Sewer are provided by Birch Bay Water and Sewer District; Fire Protection is provided by Fire District No. 21; streets are private and privately maintained; drainage structures have been installed and are maintained pursuant to the conditions of approval for their construction; refuse disposal is provided by contractual agreement; and the site is in the Blaine School District No. 503.

Roads:

Access to the site of the proposed development is via Cowichan Road a private road, accessed from County Road Birch Bay Drive that has a posted speed limit of 25 mph. Public Works Engineering Services has reviewed the proposal for consistency with applicable code and has indicated that the use is exempt from any specific conditions for approval of the proposed use.

Police and Fire Protection:

Emergency Services are provided by Whatcom County Fire District No. 21 and the Whatcom County Sheriff's Department. The Whatcom County Fire Marshal reviewed that application and indicated that no specific Comments or Conditions of approval apply to the proposed use

Environmental Health

The site is served by water and sewer service provided by Birch Bay Water & Sewer District. The application was submitted to the Whatcom County Health Department. Health Department staff reviewed the application and submitted conditions of approval that address requirements regarding food handling, and public water and sewer.

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

Discussion: The proposal is sponsored by Birch Bay Village Community Club, a private commercial enterprise that will realize all costs associated with the proposed development and maintenance upon approval.

The Technical Review Committee finds that as conditioned, the proposed use will not create additional public costs for public facilities and services, and will not be detrimental to the economic welfare of the community.

**(6) 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: Subject to the proposed conditions, the proposed Covered Veranda or use of the new facility will not be detrimental to any person's property, or the general welfare by reasons of excessive traffic, noise, smoke, fumes, glare, or odors. There may be some inconvenience to Club Members during the construction phase, however, this will be of a relatively short duration, and

will be monitored and managed by the Applicant for impacts to the community.

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

Discussion: Whatcom County Public Works Engineering Services reviewed the site plan, and the preliminary traffic proposal submitted with the application, and determined, and found that there would be no new requirements applicable to the proposal for its approval.

**(8) 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 at the time of application for the land disturbance permit associated with construction of the concrete patio. The land disturbance application was also reviewed by cultural resources staff for the presence of any potential archaeological site, in the vicinity. Staff found, that according to current ArcGIS records, the parcel is not located within the boundaries of a known archaeological site. Staff is recommending a condition of approval that addresses inadvertent discovery of any archaeological remains, located in Section IX of this report. No scenic or historic features of major importance have been identified on or in close proximity to the site.

*Finding: The Technical Review Committee finds that the proposal as conditioned will be consistent with applicable zoning regulations except the use restrictions and will conform to criteria in WCC 20.84.220 (2) to (8).*

#### **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.

*The proposed development is not located within the jurisdiction of the Whatcom County Shoreline Management Program; therefore the proposed use is exempt from the requirements of Title 23.*

**B. Building Services Division**

1. A commercial building permit is required for this proposal.
2. Due to the scope of the proposed project, the applicant must apply to the Building Official for a pre-application screening prior to building permit application submittal. At the Building Official's discretion a pre-application meeting may be required.

**C. Public Works Division of River & Flood**

1. 17.16.020 Anchoring.
  - A. Structure shall be anchored to prevent flotation, collapse or lateral movement.
2. 17.16.030 Construction materials and methods.
  - A. All construction materials located below the BFE must be water resistant.
3. 17.16.090 Nonresidential construction.
  - A. Structure is designed using wet-floodproofing techniques and to be open or without walls, any changes to the design will require another flood review to ensure compliance with Title-17.
4. It is required to incorporate Best Management Practices (BMP's) in order to address any construction impacts that may negatively affect water quality/quantity during construction of the project.

**D. Whatcom County Health Department**

**Water:**

If employees or the public have access to water then public water is required.

**Sewage:**

If plumbing is run to any portion of the new construction, a sewage disposal method will be required to be reviewed by WCHD to ensure adequate provisions for sewage disposal have been made.

**Food Service:**

If food is to be prepared for the public, a food handling permit is required. Any caterer serving food must have a valid permit from WCHD.

Report prepared for the Technical Review Committee by:

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