

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) CUP2010-0004  
Application for )  
)  
*Curt Lagerwey* ) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW,  
) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting a Zoning Conditional Use Permit to authorize a family owned and operated commercial hay and grain sales business including retail sales of accessory items incidental to agricultural uses, on a 12.63 acre site located at 5643 Aldrich Road, Bellingham, Washington.

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: Curt Lagerwey

Site Location/Address: 5643 Aldrich Road  
Bellingham, Washington 98226  
The site is generally located north of West Smith Road and south of West Axton Road, between Northwest Road and Guide Meridian.

Legal Description: Located within a Portion of the Northeast ¼ of the Northwest ¼ of Section 26, Township 39N, Range 2E, W.M.

Assessor's Parcel Number(s): 390226 236496

Zoning: Rural District

Comprehensive Plan: Rural

Subarea: Cherry Point Ferndale Subarea

Total Acreage: Approximately 12.63 acres

Roads: Public

Water Supply: Private well

Sewage Disposal: On site sewage system

Fire Protection: Whatcom County Fire District No. 7

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Meridian School District # 505

Topography: The site is described as mostly level.

Vegetation: The northern portion of the site consists of dairy pasture; the remainder of the site is developed, and includes several rows of deciduous and evergreen trees. The residential home site is landscaped with lawn and shrubs.

Adjacent Land Uses: North: Residential and Agriculture  
East: Residential and Agriculture  
South: Residential and Agriculture  
West: Residential and Agriculture

Easements: None

SEPA Review: SEPA (WAC 197-11) Determination of Non-significance issued on June 14, 2010.

AUTHORIZING CODES, POLICIES, PLANS, AND PROGRAMS:

1. Revised Code of Washington Chapter 36.70
2. Whatcom County Comprehensive Plan
3. Whatcom County Code, Title 14, Use of Natural Resources
4. Whatcom County Code, Chapter 15, Building Code
5. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
6. Whatcom County Code, Chapter 16.16, Critical Areas
7. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
8. Whatcom County Code, Title 24, Health Regulations

Legal Notices: Posted – August 4, 2010  
Mailed – March 25 and July 28, 2010  
Published – March 25 and August 5, 2010

Hearing Date: August 18, 2010

Parties of Record:

Curt and Michael Lagerwey  
5643 Aldrich Road  
Bellingham, WA 98226

Erin Osborn  
Planning and Development Services

Exhibits:

- 1 Land Use Application
  - 1-1 Supplemental Application
  - 1-2 Customer Receipt
  - 1-3 Fee Responsibility
  - 1-4 Chicago Title, Tax Information, 2009
  - 1-5 Special Warranty Deed, November 10, 1998
  - 1-6 Determination of Completeness, March 8, 2010
  - 1-7 Form Memo to Tech Committee, March 25, 2010
  - 1-8 Comment Letter Form, March 25, 2010
  - 1-9 PDS Property Owners Address Instruction Form
  - 1-10 Hand drawn site plan
  - 1-11 1000-ft Radius Property Owners
  - 1-12 Dept of Licensing Query Info Sheet
  - 1-13 Preliminary Traffic & Concurrency Information
  - 1-14 Preliminary Stormwater Proposal
  - 1-15 Hearing Examiner Checklist, March 25, 2010
- 2 Staff Report, dated August 5, 2010
- 3 Agency Comments
- 4 Aerial Photo
- 5 Vicinity Map
- 6 Zoning Map
- 7 Hand drawn site plan
- 8 Email dated March 31, 2010 re: Public Comment from “near by” neighbor
- 9 DNS, dated June 14, 2010

- 10 Whatcom County Health Dept, On-Site Sewage Disposal System Construction Permit
- 11 Certificate of Notice of Application, dated March 25, 2010
- 12 Certificate of Notice of Application, SEPA, dated June 14, 2010
- 13 Legal Notice of Application, dated March 25, 2010
- 14 Legal Notice of Application, SEPA, dated June 14, 2010
- 15 Certificate of Mailing of Notice of Public Hearing, dated July 28, 2010
- 16 Certificate of Posting of Notice of Public Hearing, dated August 4, 2010
- 17 Legal Notice of Public Hearing, dated August 5, 2010

**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 August 5, 2010, 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 public comment on this matter at the public hearing.

**III.**

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

**CONCLUSIONS OF LAW**

**I.**

The proposed operation of a family owned commercial hay and grain sales business can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (1 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 Curt Lagerwey for the proposed operation of a commercial hay and grain sales business to be located on Assessor's Parcel No.390226 236496, addressed*

as 5643 Aldrich Road, Bellingham, Washington, subject to the following conditions:

**A. Planning Division – Current Planning**

1. Use and location: The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner. The scope of this approval applies to a commercial hay and grain sales business including retail sales of accessory items incidental to agricultural uses, conducted in 512 square feet of floor area in an existing 4,608 square foot agricultural barn which is also used for storage of hay and grain associated with the business, and also includes outdoor storage for vehicles and equipment associated with the retail business.
2. Employees: A maximum total of four (4) full time employees may be employed in the operations of the retail sales of hay and grain and accessory items incidental to agricultural uses.
3. Landscaping: Landscaping shall be maintained pursuant to WCC 20.80.300. A scaled landscape site plan detailing the existing and proposed vegetative buffers screening the use from adjacent uses shall be submitted and approved by planning and development services department prior to issuance of the Change of Use commercial building permit as required in Section IX (D) of these conditions.
4. Drainage: Pursuant to WCC 20.36.656, approval of this application shall be subject to the stormwater management provisions of the Whatcom County Development Standards, unless specifically exempted.
5. Parking: Pursuant to WCC 20.80.500, adequate parking shall be established on an approved customer, employee, and outdoor storage of equipment and vehicle parking plan that shall be submitted prior to issuance of the required Change of Use commercial building permit [see Section IX (D)].
6. Business Hours: Hours of Operation for the retail store are 8 am – 6 pm seven days per week. When associated with operations of the retail store, loading and unloading activities that use machinery propelled by any type of fuel burning engine, or electric motor shall be prohibited between the hours of 10 pm and 7 am.
7. Lighting: Pursuant to WCC 20.80.523, 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.
8. Trash and storage areas: Pursuant to WCC 20.80.355, all trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
9. Signage: Directional signage shall comply with WCC 20.80.400.

10. Archaeological Discovery: Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

11. Whatcom County Code, Title 14, Right to Farm – Disclosure:

- 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.
- The disclosure shall contain the following language:

The subject property is within or near designated agriculture lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. You may be subject to inconveniences or discomforts arising from such operations, including but not limited to noise, odors, flies, fumes, dust, smoke, the operation of machinery of any kind during any 24-hour period (including aircraft), the storage and application of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Whatcom County has determined that the use of real property for agricultural operations is a high priority and favored use and will not consider to be a nuisance those inconveniences or discomforts arising from farm operations, if such operations are consistent with commonly accepted good management practices and otherwise comply with local, state, and federal laws.

**B. Health Department**

1. The Applicant shall comply with the conditions of the Whatcom County Health and Human Services Department in the memo dated April 8, 2010, unless modified by that Department or appealed to the appropriate agency.
2. Water: If any employees or the public have access to water then public water is required.
3. Sewage: If water is to be run to any new building, then an approved on-site sewage permit will be required. The expansion of any existing building will trigger Health Department review of the on-site septic system.

**C. Building Services Division**

1. The Applicant shall comply with the conditions of the Whatcom County Chief Plans Examiner in

the memo dated April 9, 2010, 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 March 3, 2010 *Master Land Use Application, Supplemental Conditional Use Application* and the following drawings: Site Plan and construction drawings from the original building permit – DET2000-00053.

Project Description – Change of Use:

- Convert existing one-story, 4,608sf, post-frame structure originally permitted as a detached accessory building into commercial feed store.
  - Public area will be limited to a 512sf area of the building converted to office use.
2. A commercial building permit is required for this proposal. It will be reviewed under the 2006 International Building Code (IBC) and comply with all other applicable codes and ordinances adopted by Whatcom County. The permit application will be for a tenant improvement to change the building's use and occupancy classification from Utility Group 'U' to a Storage Group 'S' and Business Group 'B.'
  3. A pre-application *screening* is required prior to building permit submittal. Contact the Building Services Division to schedule and for submittal requirements.
  4. The following requirements/findings are from the 2006 IBC:
    - a. Preliminary occupancy classifications:
      - Hay and grain storage >Group S-2 - Moderate-hazard storage
      - Office >Group B – Business
    - b. Where required, occupancy separation shall be constructed per IBC Table 508.3.3.
    - c. Exits shall meet the requirements of Chapter 10.
    - d. Minimum plumbing facilities (restrooms) are required in accordance with WA State Amendments (WAC) to IBC Chapter 29.
  5. Due to the scope of the project (Change of Use exceeding 4,000sf) a registered design professional, a WA State registered architect and/or engineer, may be required for the project. Subject to review of additional information, a determination will be made during the pre-application screening process.
  6. Existing buildings - No change of use shall be made to any building unless the building is made to comply with the requirements of with all current applicable codes. The existing structure was designed under the 1997 Uniform Building Code (UBC).
  7. Subject to additional review, one or more of the following actions may be required for this project:

- a. Prior to application for a building permit, a special inspection of the existing facilities may be conducted by the Building Inspector and/or Deputy Fire Marshal (at the applicant's expense) to determine occupancy classification and code compliance.
  - b. A Washington State registered engineer may be required to inspect the existing structure(s), identify any deficiencies and prepare a report documenting the findings.
  - c. If the existing structure does not meet IBC requirements for conventional light-frame wood construction, a WA State Professional Engineer will be required.
8. 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 51-50. Accessible parking and restrooms are required.
  9. Heating, cooling, ventilation and lighting shall comply with the WA State Nonresidential Energy Code (NREC) and Ventilation and Indoor Air Quality Code (VIAQ).
  10. Storage of flammable or combustible materials and/or high-pile storage items shall comply with the International Fire Code (IFC).
  11. All signage (free-standing and building-mounted) requires a separate permit.

*Note: Whatcom County will be adopting the 2009 edition of most applicable Codes on July 1 of this year (2010). All building permit applications submitted after June 30, 2010 will be reviewed under the new Codes.*

**D. Fire Marshal's Office**

1. Fire flow shall be provided at 2000 gallons per minute delivered to onsite fire hydrants at a minimum of 20 psi. Hydrants shall be located within 400 feet of all buildings.
2. Fire extinguisher size shall be 2A:10BC in the building at locations approved by the Fire Marshal.
3. Fire Department access shall meet the minimum requirements of the Whatcom County Development Standards for Roads.
4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.

**E. Public Works – Engineering Division**

1. The Applicant shall comply with the conditions of the Whatcom County Public Works Department, Engineering Division submitted in the memo dated April 19, 2010, unless modified by that Department or appealed to the appropriate agency.
  - The Applicant submitted an application for a Zoning Conditional Use Permit to convert an existing 48x96 sq ft barn into a hay and grain sales and storage business located at the above address. The zoning is Rural 10 Acres (R10A). Based on



submitted Preliminary Traffic Analyses the applicant is anticipating approximately 20 clients/customers per day. The site has two existing gravel access points:

- Aldrich Road is classified as a Rural Local Access. Speed limit in this area is 35MPH with 948 ADT (average daily trip).
- The following comments apply to the proposed project:
  1. All development shall comply with WC Development Standards.
  2. Both access points shall have a commercial paved aprons installed as per Road Standards, Chapter 5. The Applicant shall obtain a Revocable Encroachment Permit prior to installation of paved aprons in the county right-of-way.
  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 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 26<sup>th</sup> day of August 2010.

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Michael Bobbink, Hearing Examiner

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



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

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

August 5, 2010

The application of <b>Curt Lagerwey</b> for a Zoning Conditional Use Permit		CUP2010-00004
		FINDINGS, CONCLUSIONS, AND
		RECOMMENDATIONS

**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: The applicant is requesting a zoning conditional use permit to authorize a family owned and operated commercial hay and grain sales business including retail sales of accessory items incidental to agricultural uses, on a 12.63 acre site located at 5643 Aldrich Road.

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

**II. PRELIMINARY INFORMATION**

**A. BACKGROUND INFORMATION**

Applicant: Curt Lagerwey  
5643 Aldrich Road  
Bellingham, WA 98226

Site Location/Address: Property address is 5643 Aldrich Road. Site is generally located north of West Smith Road and south of West Axton Road, between Northwest Road and Guide Meridian.

Legal Description: Located within a Portion of the Northeast ¼ of the Northwest ¼ of Section 26, Township 39N, Range 2E, W.M.

Assessor's Parcel Number(s): 390226236496

Zoning: Rural District

<u>Comprehensive Plan:</u>	Rural
<u>Subarea:</u>	Cherry Point Ferndale Subarea
<u>Total Acreage:</u>	Approximately 12.63 acres
<u>Roads:</u>	Public
<u>Water Supply:</u>	Private well
<u>Sewage Disposal:</u>	On site sewage system
<u>Fire Protection:</u>	Whatcom County Fire District No. 7
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Public Schools:</u>	Meridian School District # 505
<u>Topography:</u>	The site is described as mostly level.
<u>Vegetation:</u>	The northern portion of the site consists of dairy pasture; the remainder of the site is developed, and includes several rows of deciduous and evergreen trees. The residential home site is landscaped with lawn and shrubs.
<u>Adjacent Land Uses:</u>	North: Residential and Agriculture East: Residential and Agriculture South: Residential and Agriculture West: Residential and Agriculture
<u>Easements:</u>	None
<u>SEPA Review:</u>	SEPA (WAC 197-11) Determination of Non-significance issued on June 14, 2010.

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

1. Revised Code of Washington Chapter 36.70
2. Whatcom County Comprehensive Plan.
3. Whatcom County Code, Title 14, Use of Natural Resources
4. Whatcom County Code Chapter 15, Building Code
5. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
6. Whatcom County Code Chapter 16.16, Critical Areas
7. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
8. Whatcom County Code, Title 24, Health Regulations

### **III. APPLICATION PROPOSAL**

The applicant and property owner Curt Lagerwey, has applied for a conditional use permit to authorize the conversion of 512 square feet of an existing 48' X 96' (4,608 square foot) barn to house a family owned and operated commercial hay and grain sales business including retail sales of accessory items incidental to agricultural uses.

The applicant reports that the site has been used in business operations associated with J & L Express for the last 12 years. J & L Express is a business in which Curt Lagerwey, named as a partner has been in operation since January 1998. The scope of operations includes storage and distribution of hay & grain to local dairy farms by semi-tractor and trailer. The Lagerwey family would like to expand their warehousing and hay and grain distribution business to include small scale on-site retail sales. The proposed 512 square feet in floor area would serve as the retail sales area, and provide the community with access to the onsite inventory of 200 tons of hay and 25 tons of grain, and also supply accessory items that are incidental to farming.

The proposal includes a staff of (4) full time employees all of which at the current time are family members each of whom anticipate taking an active role in managing the daily routine operations of the proposed business. The applicant proposes that customer traffic is expected to be up to 20 customers per day, with two semi-tractor trailer deliveries per day, and that customer parking will be located in the adequate area provided in the front (east side) of the building, and that customer pick up would be located in the back (west side) of the building.

In summary, as stated above, the applicant is requesting conditional use approval to authorize on-site retail sales of hay and grain and accessory items incidental to agricultural operations as provided in Whatcom County Code, Section 20.36.172 which provides for commercial operations that directly provide goods or services to agricultural operators with the intent of augmenting agricultural operations.

### **IV. SITE DESCRIPTION**

The subject property is an approximately 12.63 acre site, and is accessed from Aldrich Road. Property address is 5643 Aldrich Road, and is generally located north of West Smith Road, south of West Axton Road, and east of Northwest Road and west of Guide Meridian, in Whatcom County.

The site consists of generally level terrain. The northern nine acres of the 12.63 acre parcel is used as pasture. The existing developed area is situated on the southern portion of the site and includes a gravel circular driveway and parking areas, a single family residence with attached garage and landscaped areas, five (5) agricultural outbuildings, and proposed customer parking. The structures on site include a workshop, a dairy barn which is leased to a farmer who milks a small herd of Jersey cows, and three (3) other large agricultural buildings which are used in the raising of

Holstein replacement heifers used in the local dairy industry. On all sides, the site is well screened from adjacent uses either by the profile of existing buildings or small young stands of mixed deciduous and coniferous trees. The applicant has plans underway to install a row of mixed tree species along the property line abutting Aldrich Road extending to West Axton Road. This tree line as proposed will provide a buffer to screen the proposed commercial use from existing residential and agricultural uses, and from the public road way. Property surrounding the site to the north, south and west is zoned Rural (R10) and to the east, the zoning is Agriculture. Parcels surrounding the site are developed with residential homesites with a predominant land use of agriculture. Directly south of the site is a parcel devoted to Christmas trees under cultivation.

## **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 March 25, 2010. The fifteen (15) day comment period ended on April 9, 2010. Notice was also mailed to property owners within 1000 feet of the site on the March 22, 2010 with the same 15 day comment period ending on April 9, 2010.

Public Comment: During the public comment period for the Notice of Application, the County received no written comments. One anecdotal comment was received during the comment period by a property owner within 1000 feet of the proposed use. A summary of the single comment and a brief response to that comment is listed below:

- The substance of the anecdotal comment focused on the potential impacts of noise that could be generated by diesel engines or fork lift operations associated with loading or unloading operations that might occur during late night or early in the morning.

Planning Development Services Department Planning Division staff reviewed the scope of this potential impact and in response requested additional information from the applicant to clarify as to the hours of operation; staff has proposed conditions that would eliminate potential impacts from noise during late night or early morning hours.

Notice of Public Hearing: The Notice of Public Hearing for this application was published in a one-time newspaper publication in the Bellingham Herald.

## **VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment unless the proposal is categorically exempt from SEPA threshold review. The Whatcom County SEPA Official has reviewed the completed

SEPA checklist submitted by the applicant, and has made a determination that with proper mitigation and by compliance with applicable codes and requested conditions, no significant adverse impacts to the environment would be likely to occur as a result of approving the proposed use. A Determination of Non-significance (DNS) was issued June 14, 2010. The comment period for this DNS ended on June 28, 2010. No comments were received. The appeal period for this DNS ended on July 12, 2010. No appeals to this determination were filed.

## **VII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS**

### **A. Whatcom County Comprehensive Plan**

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

**Goal 2FF:** Provide employment opportunities in the rural parts of Whatcom County.

**Policy 2FF-1:** Support small businesses, cottage industries, home occupations, resource-based and other appropriate light industry in the rural areas of Whatcom County.

**Goal 8B:** Maintain and enhance Whatcom County's agricultural products industry as a long-term and sustainable industry.

**Goal 8C:** Preserve and enhance the cultural heritage that is related to agriculture.

**Policy 8C-1:** Find ways for retiring farmers to pass their farms on to their children and for young farmers to be able to afford to buy productive farmland.

#### **Whatcom County County-Wide Planning Policies:**

**Goal # 1** – "Whatcom County shall primarily become a government of rural areas in land use matters directed towards agriculture, forestry and other natural resources and natural resource based industries."

**Goal # 8** – Economic development should be encouraged that: a) does not adversely impact the environment; b) is consistent with community values; c) encourages development that provides jobs to county residents d) addresses industries for a more diversified economic base; e) promotes reinvestment in the local economy; and f) supports retention and expansion of existing businesses.

*The Technical Review Committee finds that the conversion of 512 square feet of an existing 48' X 96' barn to house a family owned and operated commercial hay*

*and grain sales business including retail sales of accessory items incidental to agricultural uses on a site located within the Rural zoning district is consistent with the relevant Whatcom County Comprehensive Plan goals and policies listed above.*

## **B. Official Whatcom County Zoning Ordinance (Title 20, WCC)**

### **Rural District (WCC Chapter 20.36)**

The subject application consists of a request for approval of a conditional use that is specifically provided for in the applicable zoning district subject to approval and conditions issued by the Whatcom County Hearing Examiner. A description of the specific use that is the subject of application, as provided in the Official Whatcom County Zoning Ordinance, is listed below:

#### **20.36.150 Conditional uses.**

**20.36.172** Commercial operations that directly provide goods or services to agricultural operators with the intent of augmenting agricultural operations, including but not limited to hay sales and storage, sawdust sales and storage, farm equipment service and repair, and farm chemical applicator establishments; provided, that the prospective commercial operation is limited to directly serving agricultural operators; does not include the manufacture of farm-related implements; does not include livestock auction facilities; and is located on a parcel that is surrounded by agricultural operations or is in an area that is predominantly used for agriculture or forestry or mining.

Listed below are specific code requirements pertaining to site development in the Rural zoning district:

#### **20.36.350 Building setbacks.**

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

#### **20.36.350 Height limitations.**

Maximum height shall be limited to 35 feet. Height of structures shall also conform to the general requirements of WCC 20.80.675 (Ord. 85-70, 1985; Ord. 84-38, 1984).

#### **20.36.450 Lot coverage.**

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

#### **20.36.650 Development Criteria.**

**20.36.652 Use of natural resources.** All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial



Forestry or Rural Forestry or within 300 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry and mineral land disclosure policies contained in WCC Title [14](#), Use of Natural Resources. (Ord. 98-083 Ex. A § 44, 1998; Ord. 96-056 Att. A § A2, 1996; Ord. 92-015, 1992).

**20.36.653 Landscaping.**

Landscaping and parking requirements shall be installed pursuant to WCC [20.80.300](#) (Ord. 89-117, 1989).

**20.36.654 Parking requirements.**

Parking shall conform to the requirements of WCC [20.80.500](#).

**20.36.656 Drainage.**

Approval of this application shall be subject to the stormwater management provisions of the Whatcom County Development Standards, unless specifically exempted.

*No new construction except for the installation of signage is proposed. Building setbacks will be reviewed at the time of building permit submittal. The Technical Review Committee has determined that as conditioned, the proposal to convert a 512 square feet portion of an existing 48' X 96' (4,608 square foot) barn to house a family owned and operated commercial hay and grain sales business including retail sales of accessory items incidental to agricultural uses meets the requirements of Chapter 20.36 of the Whatcom County Code.*

Whatcom County Code, Section 20.84.200 establishes the role of the Whatcom County Hearing Examiner in approving applications for conditional use permits as provided in the Official Whatcom County Zoning Ordinance. When it is determined by the hearing examiner that such uses meet specific criteria, the hearing examiner may approve such uses, subject to conditions as necessary to ensure that any specific standards of the use district defining the conditional use are fulfilled, and that the criteria applicable to conditional uses are met. The approval criteria that applies to conditional uses and a discussion as to how the proposed use is consistent with those criteria is listed below:

**20.84.200 Conditional uses.**

**20.84.220 (1) through (8) Criteria:**

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

Discussion: The Whatcom County Comprehensive Plan – Resource Lands section places great emphasis on the importance of providing for uses that preserve and promote the practice and the viability of agriculture, a resource based industry. A

family owned and operated commercial hay and grain sales business including retail sales of accessory items incidental to agricultural uses is in conformance with the Comprehensive Plan goals and policies to further promote access to goods and products upon which agricultural operators rely. Further, this proposal is on property, and surrounded by property that is actively farmed. The Lagerwey farm has been in family ownership for many years. It is the intention of the family to preserve this ownership, and it is a stated goal of the applicant that the proposed commercial use is intended to provide a means of income for the long term for his daughters and granddaughter, with the hope that they may continue to retain the farm in family ownership for many years to come. Comprehensive Plan goals and strategies encourage the retention of family farms and uses that will help preserve the cultural heritage of agriculture in the community.

**(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 structure that has been selected to house the proposed family owned and operated commercial hay and grain sales business including retail sales is existing and was permitted as a detached accessory building (accessory to the agricultural uses on the property). No new buildings or structures are planned (with the exception of directional signage). All on-site structures are constructed in a manner that is consistent with the appearance of other structures found within the general vicinity. The Lagerwey home is a typical farm house with a wrap around porch which features an attached garage. The farm buildings on the site are similar to those found in the agricultural community and the layout of the site is typical of an orderly and practical successful working farm. The residence with its landscaped areas blends well with the typical routine farm operations. The structure that is proposed to house the commercial business is situated so that vehicles may enter and exit without encumbering the ingress or egress of other existing uses on the site.

The applicants have requested that up to (4) full time employees be permitted in the operations of the proposed use. It is noted that at this time, although the business is operated by family members, at some time in the future there may be a need to hire staff other than other than family members. Authorizing the number of persons employed at the site, not to exceed a maximum total of four (4) full time employees engaged in the family owned commercial hay and grain sales business including retail sales of accessory items incidental to agricultural uses in existing buildings with outside storage of vehicles and equipment will be conditioned so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and will not change the essential character of the same area.

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

Discussion: The proposed use as conditioned is not considered hazardous by the technical review committee. Additional traffic of up to 20 customer visits per day, could potentially affect adjacent uses. There is one residence across the road from site which is currently occupied by a family member who participates in the existing business. The next nearest neighbor is to the south of the subject parcel, and there is a large stand of cultivated Christmas trees that will serve to buffer any impacts. The proposed use is to be located on a site that has more than adequate vegetative screening, however the applicant has proposed to augment the existing deciduous trees and conifers existing on the site by planting a row of mixed species trees on the property line abutting Aldrich Road, extending north to West Axton. Once developed into maturity, the tree line will serve to almost entirely screen the proposed operation from view of the public road to south bound traffic and minimize any possible disturbance from an increase in traffic to the site.

**(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. Engineering Division staff has reviewed the proposed use for traffic impacts and found that the road is engineered to accommodate the proposed increase in traffic to the site. Engineering staff also reviewed the preliminary stormwater application submitted by the applicant and found that it met threshold levels exempting the use from stormwater report submittal requirements. Fire protection is provided by Fire District #7. Refuse disposal is provided by the private sector. Potable water is provided by the existing well and the site is served by an existing on site sewage system. County Health Department comments indicate that the proposed use will require public water. It appears that the subject parcel is within the Deer Creek Water Association, Declared Water Service Area, a Group A, Public Water Utility. Typically, costs associated with water service extensions are borne by the developer/applicant.

**(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: As reported by the applicant, the existing J & L Express livestock feed distribution business delivers hay and grain to local dairy farmers at their sites. The additional component of on-site retail sales of hay and grain and other agricultural goods and products will be a benefit to farmers and citizens who may wish to purchase such products in closer proximity than might otherwise be available. The location of the proposed business is situated approximately midway between two other similar type although larger scale (than proposed) commercial businesses serving the agricultural community. Being positioned midway between other similar

uses may result in a reduction in travel time and distance of vehicular trips for customers wishing to obtain agricultural goods to augment farm operations.

**(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: The proposed use will not be detrimental to persons, property, or the general welfare, as conditions placed on the operation and use of the property for the business will serve to mitigate potential impacts. Public comment included a concern raised about the potential of negative impacts from noise generated by business operations. Staff reviewed these concerns, and has proposed that to ensure compatibility with existing and future land uses, and to prevent disturbance to existing or future property owners in the vicinity, that a condition of approval include a requirement that any loading and unloading operations associated with the retail store shall be prohibited on the site between the hours of 10 pm and 7 am. This will apply to all fork lift operations, diesel powered delivery trucks and trailers, gasoline engines or generators, or electric motors that are typically utilized in the business. Fumes that are generated from operation of diesel powered trucks and other fuel burning engines are dissipated in the outside air, and will not reach other uses. Glare impacts will be mitigated by conditions that require lighting to be directed away from adjacent uses.

**(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: The Engineering Services Division of the Whatcom County Public Works Department has determined that the public roadway is designed to meet the traffic requirements associated with the proposed use. Engineering Division staff has also determined that both points of access to Aldrich Road from the circular driveway will need to have commercial paved aprons installed as per Road Standards, Chapter 5 in order to handle semi-tractor trailer traffic. Also, the applicant will be required to obtain a Revocable Encroachment Permit prior to installation of paved aprons in the county right-of-way.

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

Discussion: The proposed use will not result in the destruction, loss or damage of natural, scenic or historic feature of major importance.

*The Technical Review Committee has determined that the subject to the requested conditions proposed in Section IX of this report, that the applicant's request to approve the proposed use meets the criteria for approving conditional uses as provided in WCC 20.84.220 (1) through (8).*

### **C. Critical Areas (Title 16)**

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.

A critical areas technical administrator reviewed the application for a conditional use permit on March 30, 2010, and as a result of this review, critical areas staff determined that there will be no wetland or habitat area impacts as a result of this proposal.

*The Technical Review Committee has determined that the proposal meets the requirements of Chapter 16.16, Whatcom County Code.*

### **D. Fire Marshal's Office**

The Whatcom County Deputy Fire Marshal submitted a memo dated March 26, 2010 with conditions of approval for this proposal.

*The Technical Review Committee has determined that as conditioned, the proposal meets the requirements of Whatcom County Code Section 20.80.212 - Concurrency.*

### **E. Health Code (Title 24)**

The purpose of Title 24 is to provide minimum standards to safeguard public health and welfare by regulating and controlling the activities considered in this title and any related work.

The Whatcom County Health Department submitted a memo dated April 8, 2010 with comments.

*The Technical Review Committee has determined that as conditioned, the project meets the requirements of Title 24, Whatcom County Code.*

### **F. Building Code (Title 15)**

The Whatcom County Chief Plans Examiner submitted a memo dated April 9, 2010 with comments.

*The Technical Review Committee has determined that as conditioned, the proposal meets the requirements of Title 15, Whatcom County Code.*

### **G. Whatcom County Development Standards**

The Whatcom County Public Works, Engineering Division staff submitted a memo dated April 19, 2010 with comments.

*The Technical Review Committee has determined that as conditioned, the proposal meets the requirements of Whatcom County Development Standards.*

## **VIII. RECOMMENDATION**

Based on the findings of fact listed above, the Technical Review Committee has concluded that subject to the following proposed conditions, the proposed use would comply with all applicable Whatcom County regulations.

The Technical Review Committee recommends approval of the application for a conditional use permit to authorize a family owned and operated commercial hay and grain sales business including retail sales of accessory items incidental to agricultural uses, on a 12.63 acre site located at 5643 Aldrich Road, subject to the following conditions:

## **IX. CONDITIONS OF APPROVAL**

### **A. Planning Division – Current Planning**

1. Use and location: The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner. The scope of this approval applies to a commercial hay and grain sales business including retail sales of accessory items incidental to agricultural uses, conducted in 512 square feet of floor area in an existing 4,608 square foot agricultural barn which is also used for storage of hay and grain associated with the business, and also includes outdoor storage for vehicles and equipment associated with the retail business.
2. Employees: A maximum total of four (4) full time employees may be employed in the operations of the retail sales of hay and grain and accessory items incidental to agricultural uses.
3. Landscaping: Landscaping shall be maintained pursuant to WCC 20.80.300. A scaled landscape site plan detailing the existing and proposed vegetative buffers screening the use from adjacent uses shall be submitted and approved by planning and development services department prior to issuance of the Change of Use commercial building permit as required in Section IX (D) of these conditions.
4. Drainage: Pursuant to WCC 20.36.656, approval of this application shall be subject to the stormwater management provisions of the Whatcom County Development Standards, unless specifically exempted.
5. Parking: Pursuant to WCC 20.80.500, adequate parking shall be established on an approved customer, employee, and outdoor storage of equipment and vehicle parking plan that shall be submitted prior to issuance of the required Change of Use commercial building permit [see Section IX (D)].
6. Business Hours: Hours of Operation for the retail store are 8 am – 6 pm seven days per week. When associated with operations of the retail store, loading and unloading activities that use machinery propelled by any type of fuel burning engine, or electric motor shall be prohibited between the hours of 10 pm and 7 am.

7. Lighting: Pursuant to WCC 20.80.523; 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.
8. Trash and storage areas: Pursuant to WCC 20.80.355; all trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
9. Signage: Directional signage shall comply with WCC 20.80.400.
10. Archaeological Discovery: Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
11. Whatcom County Code, Title 14, Right to Farm – Disclosure:
  - 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.
  - The disclosure shall contain the following language:

The subject property is within or near designated agriculture lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. You may be subject to inconveniences or discomforts arising from such operations, including but not limited to noise, odors, flies, fumes, dust, smoke, the operation of machinery of any kind during any 24-hour period (including aircraft), the storage and application of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Whatcom County has determined that the use of real property for agricultural operations is a high priority and favored use and will not consider to be a nuisance those inconveniences or discomforts arising from farm operations, if such operations are consistent with commonly accepted good management practices and otherwise comply with local, state, and federal laws.

## B. Health Department

1. The applicant shall comply with the conditions of the Whatcom County Health and Human Services Department in the memo dated April 8, 2010, unless modified by that Department or appealed to the appropriate agency.
2. Water: If any employees or the public have access to water then public water is required.
3. Sewage: If water is to be run to any new building, then an approved on-site sewage permit will be required. The expansion of any existing building will trigger Health Department review of the on-site septic system.

## C. Building Services Division

1. The applicant shall comply with the conditions of the Whatcom County Chief Plans Examiner in the memo dated April 9, 2010 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 March 3, 2010 *Master Land Use Application, Supplemental Conditional Use Application* and the following drawings: Site Plan and construction drawings from the original building permit – DET2000-00053.

### Project description – Change of Use:

- Convert existing one-story, 4,608sf, post-frame structure originally permitted as a detached accessory building into commercial feed store.
  - Public area will be limited to a 512sf area of the building converted to office use.
1. A commercial building permit is required for this proposal. It will be reviewed under the 2006 International Building Code (IBC) and comply with all other applicable codes and ordinances adopted by Whatcom County. The permit application will be for a tenant improvement to change the building's use and occupancy classification from Utility Group 'U' to a Storage Group 'S' and Business Group 'B'.
  2. A pre-application *screening* is required prior to building permit submittal. Contact the Building Services division to schedule and for submittal requirements.
  3. The following requirements/findings are from the 2006 IBC:
    - a. Preliminary occupancy classifications:
      - Hay and grain storage >Group S-2 - Moderate-hazard storage
      - Office >Group B – Business
    - b. Where required, occupancy separation shall be constructed per IBC Table 508.3.3.
    - c. Exits shall meet the requirements of Chapter 10.



- d. Minimum plumbing facilities (restrooms) are required in accordance with WA State Amendments (WAC) to IBC Chapter 29.
4. Due to the scope of the project (Change of Use exceeding 4,000sf) a registered design professional, a WA State registered architect and/or engineer, may be required for the project. Subject to review of additional information, a determination will be made during the pre-application screening process.
5. Existing buildings - No change of use shall be made to any building unless the building is made to comply with the requirements of with all current applicable codes. The existing structure was designed under the 1997 Uniform Building Code (UBC).
6. Subject to additional review, one or more of the following actions may be required for this project:
  - a. Prior to application for a building permit, a special inspection of the existing facilities may be conducted by the Building Inspector and/or Deputy Fire Marshal (at the applicant's expense) to determine occupancy classification and code compliance.
  - b. A Washington State registered engineer may be required to inspect the existing structure(s), identify any deficiencies and prepare a report documenting the findings.
  - c. If the existing structure does not meet IBC requirements for conventional light-frame wood construction, a WA State Professional Engineer will be required.
7. 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 51-50. Accessible parking and restrooms are required.
8. Heating, cooling, ventilation and lighting shall comply with the WA State Nonresidential Energy Code (NREC) and Ventilation and Indoor Air Quality Code (VIAQ).
9. Storage of flammable or combustible materials and/or high-pile storage items shall comply with the International Fire Code (IFC).
10. All signage (free-standing and building-mounted) requires a separate permit.

*Note: Whatcom County will be adopting the 2009 edition of most applicable Codes on July 1 of this year (2010). All building permit applications submitted after June 30, 2010 will be reviewed under the new Codes.*

#### **D. Fire Marshal's Office**

1. Fire flow shall be provided at 2000 gallons per minute delivered to onsite fire hydrants at a minimum of 20 psi. Hydrants shall be located within 400 feet of all buildings.

2. Fire extinguisher size shall be 2A:10BC in the building at locations approved by the Fire Marshal.
3. Fire department access shall meet the minimum requirements of the Whatcom County Development standards for roads.
4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.

#### **E. Public Works – Engineering Division**

The applicant shall comply with the conditions of the Whatcom County Public Works Department, Engineering Division submitted in the memo dated April 19, 2010, unless modified by that Department or appealed to the appropriate agency.

- The applicant submitted an application for a Zoning Conditional Use Permit to convert an existing 48x96 sq ft barn into a hay and grain sales and storage business located at the above address. The zoning is Rural 10 Acres (R10A). Based on submitted Preliminary Traffic Analyses the applicant is anticipating approximately 20 clients/customers per day. The site has two existing gravel access points:
- Aldrich Rd is classified as a Rural Local Access. Speed limit in this area is 35MPH with 948 ADT (average daily trip).
- The following comments apply to the proposed project:
  1. All development shall comply with WC Development Standards.
  2. Both access points shall have a commercial paved aprons installed as per Road Standards, Chapter 5. The applicant shall obtain a Revocable Encroachment Permit prior to installation of paved aprons in the county right-of-way.
  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.

Report prepared for the Technical Review Committee by:

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Planner