

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT) SHR2009-0005
Application for)
)
Joe Baldwin) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Shoreline Substantial Development Permit to construct a single-family residence. The proposed residence will require greater than 250 cubic yards of landfill and excavation within the jurisdiction of the Whatcom County Shoreline Management Program (SMP).

Decision: The requested permit is granted, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

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

I.

PRELIMINARY INFORMATION

Applicant: Joe Baldwin

Property Location: 3042 Northshore Road
Bellingham, Washington

Legal Description: Within Section 32, Township 38N, Range 04E, W.M.
Assessor’s Parcel Number 380432-205362

Adjacent Water Body: Lake Whatcom

Shoreline Designation: Rural

Statewide Significance: Yes

Zoning: Rural (Two Dwellings per Acre)
Subarea: Lake Whatcom
SEPA Review: Categorically Exempt pursuant to WAC 197-11-800

Authorizing Ordinances:

SMP 23.50 Applicability
SMP 23.70.01 Administrator
SMP 23.70.03 Hearing Examiner

Applicable Shoreline and Zoning Provisions:

SMP 23.10 Governing Principles
SMP 23.20 Goals and Objectives
SMP 23.30.07 Rural Shoreline Area
SMP 23.40 Shorelines of Statewide Significance
SMP 23.60.01 Substantial Development Permit Criteria
SMP 23.90 General Policies and Regulations
SMP 23.90.13 Setbacks
SMP23.100.11 Residential
SMP 23.110 Definitions

Legal Notices: Published – June 11, 2009 and March 25, 2010
Mailed – March 17, 2010

Hearing Date: April 7, 2010

Parties of Record:

Joe Baldwin
2651 Huntington Street
Bellingham, WA 98226

Lonnie and Judith Barrett
3038 Northshore Road
Bellingham, WA 98226

Michael Tario
119 N. Commercial, Suite 1000
Bellingham, WA 98225

Sam McDaniel
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Supplemental Application
 - 1-2 Project Narrative
 - 1-3 Letter of Complete Application, dated June 8, 2009
 - 1-4 Property Owner Mailing Labels
 - 1-5 Notice of Application Distribution Memo, dated May 4, 2009
 - 1-6 Form Letter to Property Owners
 - 1-7 Legal Description for Recreational Easement
 - 1-8 Recreational / Landscaping Easement
 - 1-9 Address labels
- 2 Revised Site Plan
- 3 Aerial Photo
- 4 Vicinity Map
- 5 Zoning Map
- 6 Legal Notice of Application, dated June 11, 2009
- 7 Certificate of Mailing of Notice of Public Hearing, dated March 17, 2010
- 8 Legal Notice of Public Hearing, Affidavit, dated March 25, 2010
- 9 Request for Hearing Notification
- 10 Staff Report, dated March 31, 2010
- 11 Agency Comments
- 12 Public Comments
- 13 Letter dated April 6, 2010, from Michael Tario
- 14 Letter dated April 6, 2010, from Lonnie and Judith Barrett
- 15 Site Wetland Reconnaissance, Letter dated March 31, 2010, from CAi Cantrell & Associates, Inc.

II.

The Applicant is requesting a Shoreline Substantial Development Permit for the proposed

construction of a single-family residence requiring greater than 250 cubic yards of landfill and excavation within the jurisdiction of the Whatcom County Shoreline Management Program (SMP).

III.

The Applicant has applied for a Shoreline Substantial Development Permit associated with approximately 645-cubic yards of landfill and excavation, and construction of a single-family residence within the 200-foot shoreline jurisdiction associated with Lake Whatcom, a lake of more than 20-acres.

The parcel in question contains 24,038-square feet in size and approximately one-half of the parcel is within 200-feet of the shoreline jurisdiction of Lake Whatcom. The parcel is located on the landward side of Northshore Drive, with the waterward property line being approximately 90-feet from the Ordinary High Water Mark of the lake.

A small amount of the development, consisting of clearing and grading for the southern 10-feet of the parcel adjoining the right-of-way of Northshore Drive, will be within the 100-foot habitat conservation buffer required for Lake Whatcom. All of the remaining construction, including all of the house construction, will lie outside of the 100-foot habitation conservation buffer for the lake.

The Applicant's property is functionally and effectively disconnected from the habitat area (Lake Whatcom) by Northshore Drive, and the Whatcom County Shoreline Planner has concluded that the minor amount of work to be done on the landward side of Northshore Drive is excluded from the habitat conservation area buffer by the standards set forth in WCC 16.16.740.

IV.

The Whatcom County Shoreline Planner has reviewed the proposal for consistency with the requirements of the Whatcom County Shoreline Management Program, the Shoreline Management Act, and the applicable sections of the Whatcom County Critical Areas Ordinance. The Planner has concluded that the proposed development is consistent with the requirements of the Shoreline Management Program applicable to it and has recommended approval of the Substantial Development Permit, subject to conditions.

V.

There was no public comment or testimony on this matter at the hearing. The Hearing Examiner's Office did receive, review, and consider public comments in opposition to the permit from nearby property owners. Concerns raised in the public comments included the possible location of a regulated wetland on this site; objection to the permit based on a neighboring property owner's interaction in the past with Planning and Development Services, who, according to the owner, told him that the lot was a "recreational lot" and for all practical purposes would remain unbuildable under County regulations; concerns raised by the approval

of the Health Department and the Washington State Department of Ecology for the location of a well near the northern extremity of the property, approximately 240-feet from the shoreline of Lake Whatcom, and outside the jurisdiction of the Shoreline Management Plan; the potential for the removal of a mature Cedar tree located on or near the property boundary with the neighboring property owner to the west; issues related to the potential problems from erosion associated with the fill and grade onsite and the construction of the home; and issues raised by the slope of the lot between Northshore Drive and the northeastern property line.

In regard to these concerns, the Applicant submitted a Critical Areas Assessment which indicated that there were no regulated wetlands or regulated wetland buffers on the property. This report was reviewed by the Critical Areas Specialist for Whatcom County. The Critical Areas Technical Administrator approved the report and concurred in the conclusion that there were no regulated critical areas onsite.

Further, in regard to critical areas and the slope of the site, the Whatcom County Geologist concluded that there were no areas regulated on the site because of steep slopes and that the County Geologist had no concern about the proposed development in relationship to the geological status of the site.

VI.

A Condition of Approval includes strict conditions regarding erosion control; a requirement for permanent, onsite stormwater quality and quantity facilities meeting Whatcom County Code Requirements, approval and inspection of erosion control measures prior to initiating any new construction activities; meeting the requirements limiting impervious surface onsite, per the Water Resource Protection Overlay District Requirements of WCC 20.71.300; identifying the locations and dimensions of all existing tree canopy areas onsite with the tree canopy removal limited to the percentage allowed, pursuant to WCC 20.80375; and compliance with the restrictions of clearing and grading, and construction to certain time periods of the year.

Additionally prior to the issuance of a building permit, the Applicant will be required to establish a water source and sewage treatment system acceptable to the Whatcom County Department of Health.

VII.

The proposed development has been reviewed by the Shoreline Technical Administrator, the Critical Areas Technical Administrator, the Whatcom County Geologist, the Watershed Technical Administrator, Whatcom County Engineering Services Division, the Whatcom County Health Department, and the Whatcom County Building Services Division. All County agencies have concluded that the proposed development should be approved, subject to the Conditions requested by each County agency.

VIII.

The opponents have presented no specific evidence in the form of a professional evaluation of the objections or the issues they have raised. The record as a whole supports the

factual conclusion set forth in the Staff Report, Exhibit No. 10 in the Hearing Examiner file. The Factual Findings set forth in the Staff Report are hereby adopted by the Hearing Examiner as Findings of Fact herein.

IV.

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

CONCLUSIONS OF LAW

I.

The Whatcom County Shoreline Planner, who handled this application, has carefully reviewed all of the Goals and Policies of Whatcom County Shoreline Management Program, as well as the applicable Development Standards, and has concluded that, subject to the Conditions required in the Staff Report, Exhibit No. 10, the proposed development is consistent with the Whatcom County Shoreline Management Program, including the critical areas protection of the required habitat conservation area, landward of the Ordinary High Water Mark of Lake Whatcom. No specific information has been submitted by any of the concerned members of the public regarding this application which would identify and support with a preponderance of the evidence an argument that the Applicant has failed to comply with the Conditions for a Shoreline Substantial Development Permit in this case.

The Hearing Examiner concurs with the legal conclusions reached in the Staff Report and should grant the requested Shoreline Substantial Development Permit.

II.

Specifically, the Hearing Examiner concludes that the proposal is consistent with the requirements for a habitat conservation area abutting the shoreline of Lake Whatcom. Generally this habitat conservation area is required to be 100-feet from the Ordinary High Water Mark. As pointed out in the Findings, there will be some clearing, grading, and impervious surfaces (driveway) located from approximately 90 to 100-feet from the shore of the lake. However, all of this development is located landward of Northshore Drive.

Pursuant to WCC 16.16.740, Habitat Conservation Area Buffers, “shall not include areas which are functionally and effectively disconnected from the habitat area by a road or other substantial developed surface.” The habitat conservation area in this case starts at the Ordinary High Water Mark of Lake Whatcom and does not include any areas landward of Northshore Drive. Additionally, WCC 16.16.720.C allows road construction [would apply to driveway construction] when certain criteria are met. The proposed driveway in this case is consistent with the criteria of Paragraph C and can be allowed in a habitat conservation area. In this case, the habitat conservation area ends at the waterward edge of the developed surface of Northshore

Drive. If it did not end, the Applicant would still be allowed a minimal driveway to access the buildable portion of his lot.

III.

Many of the objections raised to the granting of this shoreline permit raise issues outside the purview of the requirements of a shoreline permit. The other issues have been properly dealt with in this review by including compliance with other applicable Whatcom County regulations as a Condition of Approval for the permit.

IV.

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

The Whatcom County Hearing Examiner hereby grants approval to the Shoreline Substantial Development Permit Application of Joe Baldwin, Permit No. SHR2009-0005, subject to the following conditions:

1. The proposed project shall conform to the design, configuration, size and location as approved on the revised site plan, dated April 1, 2010, except as modified by this approval. Any alteration of the approved design shall require additional review by the Whatcom County Shorelines Administrator.
2. If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907), LNTHPO (384-2298), Nooksack Tribe (592-2632) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
3. Issuance of this shoreline permit does not release the Applicant from any other State, Regional, or Federal statutes or regulations applicable to the proposed development.
4. Land clearing, grading, filling, and alteration of natural drainage or other features should be limited to the minimum amount necessary to accommodate the approved development. Surfaces cleared of vegetation should be immediately re vegetated with native or compatible plants.
5. The proposal must comply with all bulk and dimensional setback requirements as required by the Whatcom County Shoreline Management Program.

6. The Applicant shall comply with all of the requirements of the Whatcom County Health Department prior to any development approvals as outlined in the August 20, 2009, memorandum, unless modified by the Health Department or appealed to the appropriate agency.
7. The Applicant shall comply with all of the requirements of the Division of Engineering prior to any development approvals as outlined in the January 25, 2010, memorandum, unless modified by the Division of Engineering, or appealed to the appropriate agency.
8. The Applicant shall comply with all of the requirements of the Watershed Technical Administrator, as outlined in the March 9, 2010, memorandum, prior to any development approvals, unless modified by the Watershed Technical Administrator or appealed to the appropriate agency.
9. The Applicant shall comply with all of the requirements of the Whatcom County Building Services Division prior to any development approvals, as outlined in the March 11, 2010, memorandum, unless modified by the Building Services Division or appealed to the appropriate agency.
10. The existing buffer vegetation located between the waterward side of Northshore Road and Lake Whatcom is within a Habitat Conservation Area and is to be retained or enhanced with native plantings. Pursuant to WCC 16.16.265, and prior to issuance of a building permit, the Applicant shall ensure that a "Notice of Critical Area and Restriction on Use or Alteration" Document is filed with the Whatcom County Auditor's Office.
11. Clearing activity as defined in WCC 20.97.054 that will result in exposed soils exceeding 500 square feet shall not be permitted from October 1st through May 31st.
12. State water quality and all other applicable standards shall be adhered to. Water quality of ground and surface waters shall not be significantly degraded.
13. Development pursuant to this Approval shall not begin until and shall not be authorized until twenty-one (21) days after the "date of filing" or until all review proceedings before the Shoreline Hearings Board have terminated.
14. Construction shall commence within two years of the effective date of the Shoreline Substantial Development as defined by WAC 173-27-090 (3).

NOTICE

In addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or

by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000. Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.

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

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

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

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

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

DATED this 15th day of April 2010.

Michael Bobbink, Hearing Examiner

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Planning & Development Services
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David Stalheim
Director

J.E. "Sam" Ryan
Assistant Director

March 31, 2010

WHATCOM COUNTY SHORELINES SUBSTANTIAL DEVELOPMENT PERMIT

Shoreline Substantial Development Permit for)	SHR2009-00005
)	
Joe Baldwin)	Lead Agency: Whatcom County
)	
)	Date Received: June 8, 2009
)	Date Approved: March 31, 2010

I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant requests approval of a Shoreline Substantial Development permit to construct a single-family residence. The proposed residence will require greater than 250 cubic yards of landfill and excavation within the jurisdiction of the Whatcom County Shoreline Management Program (SMP).

Recommendation: Staff recommends approval of the requested Shoreline Substantial Development permit subject to the conditions of approval outlined within this approval.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant/Owner:	Joe Baldwin 2651 Huntington Street Bellingham, WA 98226
Property Location:	3042 Northshore Road Bellingham, Washington
Legal Description:	Within Section 32, Township 38N, Range 04E, W.M. Assessor's Parcel Number: 380432-205362
Adjacent Water Body:	Lake Whatcom
Shoreline Designation:	Rural
Statewide Significance:	Yes
Zoning:	Rural (2 Dwellings Per Acre)
Subarea:	Lake Whatcom
SEPA Review:	Categorically Exempt pursuant to WAC 197-11-800

B. PROCEDURAL INFORMATION

Authorizing Ordinances:

SMP 23.50	Applicability
SMP 23.70.01	Administrator
SMP 23.70.03	Hearing Examiner

Applicable Shoreline and Zoning Provisions:

SMP 23.10	Governing Principles
SMP 23.20	Goals and Objectives
SMP 23.30.07	Rural Shoreline Area
SMP 23.40	Shorelines of Statewide Significance
SMP 23.60.01	Substantial Development Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.90.13	Setbacks
SMP23.100.11	Residential
SMP 23.110	Definitions

III. FINDINGS

The applicant is requesting a Shoreline Substantial Development Permit to construct a single family residence. The applicant has indicated that the proposed residence will have a footprint of 1,782 square feet and a total impervious area of 2,488 square feet. The applicant has indicated that the proposal will result in approximately 645 cubic yards of landfill and excavation within the jurisdiction of the SMP.

The subject property is located at 3042 Northshore Road along the eastern side of Lake Whatcom. The property is 24, 038 square feet in size and of regular shape. The subject property is currently developed with a permitted access road that was utilized to gain access to install a well. The property slope is approximately 30% and slopes towards Northshore Road with the OHWM of Lake Whatcom located on the waterward side of Northshore Road. The property is vegetated with well established second growth Douglas Fir, Western Red Cedar, and Big Leaf Maples, with an understory of predominately low bush vegetation.

According to the Whatcom County Zoning Map, the subject site is zoned Rural 2 Units per acre (R2A). Chapter 20.36.051 states that one single-family dwelling unit per lot is permitted in the Rural zoning designation. Pursuant to the Whatcom County Shoreline Management Program, the subject property is designated as a Rural Shoreline. Policies for Rural Shoreline designation indicate that new development should protect or enhance the area character and sustain the shoreline ecological functions and processes by limiting building density and height, and providing effective setbacks, buffers and open space. Residential development is indicated as a permitted use in the Rural Shoreline Designation area. The proposed residential development activities on the property appear to comply with the policies and regulations specified under the applicable zoning and shoreline designations, subject to conditions.

Pursuant to 23.40.01, development on Shoreline of Statewide Significance the statewide interest should be recognized and protected over local interest, agencies and local interest groups should be consulted and responses solicited. The natural character of the shorelines should be preserved, intensive development should be concentrated in areas already developed and limited in areas of low-density development. The use of Shorelines of Statewide Significance should result in long term benefit to the people of the state, resources and ecological systems should be

protected and scarce or rare sites should be left in their natural state. Public access to publicly owned areas on Shorelines of Statewide Significance should be increased.

The proposal does not meet the requirements for a Shoreline Exemption under the Whatcom County Shoreline Management Program due to landfill and excavation in excess of 250 cubic yards per the definition of "Appurtenance". Section 23.60(D) states that if any part of a proposed development is not eligible for a Shoreline Statement of Exemption, then a Shoreline Substantial Development Permit is required for the entire proposed development project.

Pursuant to 23.60.01(B), In order for a substantial development to be approved, the decision maker must find that the proposal is consistent with the following criteria:

IV. CONCLUSIONS

In the review of Shoreline Substantial Development Permits, the Administrator or Hearing Examiner, as appropriate, must find that the proposal is consistent with the following criteria:

- 1. All regulations of the SMP appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance pursuant to 23.60.03.**
- 2. All policies of the SMP appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.**

General and use-specific policies and regulations associated with landfill and excavation and residential developments are found within Sections 23.90 and 23.100.11, respectively. Applicable policies and regulations associated with the proposed development are listed and discussed below:

Ecological Protection and Critical Areas

23.90.03.A Policies

- Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas designated in WCC 16.16, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, in so far as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; littoral drift; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.
- In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.
- Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the Administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

23.90.03.B

Regulations

- Mitigation Sequencing - To comply with the policies of SMP 23.90.03.A, a shoreline permit applicant or project proponent shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts. Mitigation shall occur in the following prioritized order:
 - Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
 - Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
 - Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment.
 - Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.
- Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.
- Because of its incorporation by reference herein under Section 23.10.06.A. above, the provisions of the Whatcom County Critical Areas Ordinance, WCC 16.16, shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with WCC 16.16 and the Program, provided that alteration for a water-oriented use may be allowed in accordance with WCC 16.16.225.B.3. Within shoreline jurisdiction, the regulations of WCC 16.16 shall be liberally construed together with the Program to give full effect to the objectives and purposes of the provisions of the Program and Act.
- Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this Program and WCC 16.16.
- The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.
- Whenever the administrator issues a determination or recommendation and/or conditions of approval on a proposal, which will result in the denial or substantial alteration of a proposed action, such determinations will be provided in writing stating the relationship(s) between the ecological factors, the proposed action and the condition(s).

Staff Comment:

The proposed project is consistent with the above policies and regulations. Pursuant to 23.90.13.C, Shore setbacks for residential development are established pursuant to WCC 16.16. Habitat conservation area buffers establish a 100 foot buffer for lakes greater than 20 acres. Additionally, pursuant to 16.16.740 the proposed area for the residence is functionally and effectively disconnected from the habitat area by Northshore Road. The proposed location for the residential developments is on the landward side of Northshore Road. The submitted application

materials indicate that the residence will exceed the required 100 foot setback as required by the SMP.

In 2007, in conjunction with a shoreline exemption application, a professional wetland consultant along with Critical Area staff inspected the site and found no wetland indicators present on site. The proposal has been unconditionally approved by the Whatcom County Critical Area Technical Administrator and the Whatcom County Geologist. This recommendation of approval has been conditioned to comply with the requirements of the Watershed Resource Protection Overlay District & the Stormwater Special District Requirements found in the Whatcom County Zoning Ordinance. The proposal is exempt from SEPA pursuant to WAC 197-11-800. There is no evidence that the project will have long term adverse impacts to shoreline ecological functions or processes.

Water Quality and Quantity

23.90.04.A Policies

- The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality of surface and ground water over the long term.
- Shoreline use and development should minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.
- Appropriate buffers along all wetlands, streams, lakes, and marine water bodies should be provided and maintained in a manner that avoids the need for chemical treatment.

23.90.04.B Regulations

- Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws.
- New development shall provide stormwater management facilities designed, constructed, and maintained in accordance with the current stormwater management standards. Deviations from these standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.
- Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control (TESC) plan, or administrative conditions.
- To avoid water quality degradation by malfunctioning or failing septic systems located within shoreline jurisdiction, on-site sewage systems shall be located and designed to meet all applicable water quality, utility, and health standards. The owner must be in compliance with WCC 24.05.160 – Operation and Maintenance.

Staff Comment:

The proposal is consistent with the above water quality and quantity policies and regulations. This recommendation of approval has been conditioned to comply with the Whatcom Stormwater Special District Standards which will require the installation of permanent on site Stormwater

quality and quantity facilities at the time of construction. Additionally, this recommendation of approval has been conditioned that a Temporary Erosion and Sedimentation Control Plan (TESC) plan be submitted to PDS prior to ground disturbing activities. The application indicates the proposed installation of pervious pavers which will be reviewed at time of development application for compliance with the 2005 Low Impact Development Technical Guidance Manual for Puget Sound.

Vegetation Conservation

23.90.06.A Policies

- Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. Important functions of shoreline vegetation include, but are not limited to:
 - Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.
 - Regulating microclimate in riparian and nearshore areas.
 - Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macro invertebrates.
 - Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.
 - Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.
 - Improving water quality through filtration and vegetative uptake of nutrients and pollutants.
 - Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.
 - Providing habitat for wildlife, including connectivity for travel and migration corridors.

23.90.06.B Regulations

- Shoreline developments shall comply with the vegetation conservation policies of this Program through compliance with the critical area standards of WCC 16.16.335, 16.16.360, 16.16.630 and 16.16.740 for protection and maintenance of critical area and buffer vegetation.
- Where compliance with SMP 23.90.06.B.1 is not feasible or required, new developments shall be required to develop and implement a vegetation management plan. When required, vegetation management plans shall be prepared by a qualified professional and shall be consistent with the requirements in WCC 16.16.260.B and .C, provided that the Administrator may establish prescriptive standards for vegetation conservation and management as an alternative to requiring a specific plan for a development. Vegetation management plans shall describe actions that will be implemented to ensure that buffer areas provide ecological functions equivalent to a dense native vegetation community to

the extent possible given the area that is feasibly available. Required vegetation shall be maintained over the life of the use and/or development by means of a conservation easement or similar legal instrument recorded with the Whatcom County Auditor.

- Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.
- Removal of noxious weeds and/or invasive species shall be incorporated in vegetation management plans, as necessary, to facilitate establishment of a stable community of native plants.

Staff Comment:

The proposed project is consistent with the above policies and regulations. The proposed residence will be located on the landward side of Northshore Road and the closest point of the residence will be located 125 from the OHWM of Lake Whatcom. The property slope averages approximately 30% and slopes towards Northshore Road with the OHWM of Lake Whatcom located on the waterward side of Northshore Road. The property is vegetated with second growth Douglas Fir, Western Red Cedar, and Big Leaf Maple with an understory of predominately low bush vegetation. The proposed residence exceeds the 100 foot Habitat Conservation Area buffer requirement set forth in WCC 16.16.740. This recommendation of approval has been conditioned that the development permit will be required to comply with the canopy retention and impervious limits set forth in WCC 20.80.735 and WCC 20.71. No additional impacts to shoreline ecological functions or processes were identified in association with the permit review. Pursuant 39.90.06.B, this recommendation of approval has been conditioned requiring a "Notice on Title" be recorded with the Whatcom County Auditor's Office prior to approval of any development permits. The application indicates that the vegetation to be cleared is the minimum necessary to accommodate the approved development.

Landfill and Excavation

23.90.10.A Policies

- Landfill and excavation should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat are encouraged.
- The predicted economic benefits of landfills and excavation should be weighed against long term cumulative impacts on ecological processes and functions.

23.90.10.B Regulations

- Landfill and excavation shall be minimized to the maximum extent practicable and allowed only along with approved shoreline use and development activities that are consistent with this Program.
- A temporary erosion and sediment control (TESC) plan shall be provided for all proposed landfill and excavation activities.

Staff Comment:

The proposed project is consistent with the above landfill and excavation policies and regulations. The proposed landfill and excavation aim to accommodate the proposed residential use of the property, which is supported by the SMP and the Shoreline Management Act. A TESC plan will be

required to mitigate any potential short term adverse impacts to water quality, fish and wildlife habitat during throughout construction. Nothing in the record indicates a net loss of shoreline ecological functions or processes. Pursuant to the Landfill and excavation policies and regulations the amount of excavations will be limited to the minimum amount necessary to accommodate the residence.

Residential

Residential Policies:

- Single family residences are designated in RCW 90.58 as a priority use in those limited instances when authorization is given for alterations of the natural condition of shorelines of the state.
- Allowable density of new residential development should comply with applicable comprehensive plan goals and policies, zoning restrictions, and shoreline area designation standards. The density per acre of development should be appropriate to local natural and cultural features.
- Structures or development for uses accessory to residential use should preserve shoreline open space, be visually and physically compatible with adjacent cultural and shoreline features, be reasonable in size and purpose, and result in no net loss of shoreline ecological functions and processes.
- New residential development should be planned and built in accordance with the policies and regulations in SMP 23.90.03 and to minimize the need for shoreline stabilization and flood hazard reduction measures.
- Measures to conserve native vegetation along shorelines should be required for all residential development. Vegetation conservation may include avoidance or minimization of clearing or grading, restoration of areas of native vegetation, and/or control of invasive or non-native vegetation.
- Whenever possible, non-regulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged for residential development. Such methods may include resource management planning, low impact development techniques, voluntary protection and enhancement projects, education, or incentive programs.

Residential Regulations:

- Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in SMP 23.90.13 - Setback, Height and Open Space Standards for Shoreline Development.

Staff Comment:

According the Whatcom County Zoning Map the subject parcel is zoned Rural (R2A). Chapter 20.36.051 states that one single-family dwelling unit per lot is permitted in the Rural zoning designation. The Rural zoning designation allows for residential development, provided that the development density does not exceed 1 dwelling units per 2 acres. The size of the subject site is approximately 24,038 square feet and the proposed use of the site does not exceed the allowable density requirements. Pursuant to 23.100.11.C, residential development is permitted with the Rural Shoreline designation subject to the policies and regulations of the SMP. This recommendation of approval has been conditioned to ensure compliance with the prescribed setbacks, height and open space standards. The applicant is not proposing the conversion of native shoreline vegetation and canopy clearing will be limited to 35% or 5,000 square feet whichever is greater, pursuant to 20.80.735. The future residence will comply with the impervious surface limits set forth in WCC 20.71 and be reviewed at time of development application. The

proposed residential development activities on the property appear to comply with the policies and regulations specified under the applicable zoning and shoreline designations and RCW 90.58.020.

3. In the granting of all shoreline substantial development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes and other users.

Staff Comment:

As stated previously within this staff report, as conditioned, staff anticipates no net loss of shoreline ecological functions or processes as a result of the proposed project. The proposal as conditioned appears to comply with the density standards, development standards, bulk and dimensional setbacks, impervious surface limits, vegetation conservation standards, and critical area requirements. As such, additional approvals for additional developments where similar circumstances exist, are not likely to represent a cumulative environmental impact to the shoreline.

4. In accordance with the criteria of RCW 90.58.030(2)(e), the legislature designated Lake Whatcom as a Shoreline of Statewide Significance. Pursuant to 23.40.01, development on Shoreline of Statewide Significance the statewide interest should be recognized and protected over local interest, agencies and local interest groups should be consulted and responses solicited. The natural character of the shorelines should be preserved, intensive development should be concentrated in areas already developed and limited in areas of low-density development. The use of Shorelines of Statewide Significance should result in long term benefit to the people of the state, resources and ecological systems should be protected and scarce or rare sites should be left in their natural state. Public access to publicly owned areas on Shorelines of Statewide Significance should be increased.

Comment: *Whatcom County Critical Areas staff has reviewed the proposal, and found that no wetland and habitat management areas will be impacted by the proposed development. Single family development is identified a preferred use of the shorelines of the State within RCW 90.58.020. The proposal will not affect public access to the shoreline. Views and public access will remain unaffected by this development. Other reviews on record demonstrate the project, as conditioned, should satisfy the public safety, health and welfare requirements of applicable Whatcom County regulations.*

Based on staff's review, the proposed development appears, subject to the attached conditions of approval, to meet all the current development standards of the Shoreline Program, and concurrently protect the interest of the public on a regional basis.

V. PUBLIC COMMENTS

Comments were received from the neighbor to the south **Mr. Michael Tario** and the neighbor to the north **Mr. & Ms. Barrett**.

The concerns outlined in the comments include the; the validity of the existing well and septic system location, potential erosion problems, the suitability of the lot for construction, slope stability, setback concerns, removal of trees and vegetative cover, and potential runoff concerns.

Staff Comment:

Whatcom County staff respects the issues brought forth by the concerned citizens, however, staff feels that subject to the conditions of approval, the proposed development will be consistent with the policies and regulations of the Shoreline Management Program and Shoreline Management Act.

This recommendation of approval has been conditioned to require that any future development permits obtain Whatcom County Health Department approval for the existing onsite septic system and water verification prior to building permit approval.

The proposal exceeds the 100 foot buffer requirement set forth in WCC 16.16.740 and is located on the landward side of Northshore Road. The amount of existing native canopy to be cleared is regulated pursuant to 20.80.735 which will limit the clearing to 5,000 square feet or 35% of the existing tree canopy area, whichever is greater and will be reviewed at the time of development application. The future development permit will need to demonstrate compliance with the impervious surface limits set forth in WCC 20.71. Any future residential development proposals will be required to install permanent on site stormwater quantity and quality facilities pursuant to the Whatcom County Development Standards. This recommendation of approval requires the applicant submit a Temporary Erosion and Sedimentation Control Plan prior to initiating ground disturbing activities. The proposal was reviewed by the Whatcom County Geologist and received unconditional approval. The combination of canopy removal limitations, the utilization of a pervious materials, and the requirement for an onsite stormwater system should aid in the mitigation of potential runoff concerns.

The applicant has revised the site plan to eliminate proposed developments from the within the 10 foot side yard setback as required in the SMP. The applicant is proposing a 4 foot pervious path within the side yard setback as allowed pursuant to 23.90.13.B.7.e. Otherwise, the proposal complies with the bulk and dimensional requirements required by the SMP. Future development permits will be reviewed to ensure that any retaining walls are constructed to the International Residential Code requirements.

The proposal was reviewed by all appropriate departments and agencies for review and nothing was identified that would indicate that the subject lot is unbuildable. Staff has reviewed the proposal and has determined that the proposed residential development demonstrates substantial compliance with the policies and regulatory provisions of the SMP. The applicant is not seeking any variances from the regulations. No variance applications have been accepted for the proposal as the project does not need relief from the bulk and dimensional requirements outlined in the SMP.

Staff clearly understands the concerns regarding the overall health of Lake Whatcom as it is a public water source. However, staff must review development proposals for compliance with regulations that are in effect and this proposal as conditioned appears to comply with the environmental regulations and development standards. The proposal is categorically exempt from SEPA pursuant to WAC 197-11-800.

The following comment letter was received via email on March 30, 2010 from Resources which is a local non-profit environmental education organization.

Dear Mr. Bobbink:

This letter is in regard to a shoreline application associated with the construction of a single family residence at 3042 Northshore Road. This property is located on the east side of Lake Whatcom. It has a slope of approximately 15-35%. Our staff has reviewed the file associated with this project. Our comments are these:

1. The applicant is proposing to build a driveway within the 100 foot habitat conservation area buffer setback (bald eagle and salish sucker) requirement set forth within WCC

- 16.16.740. This action should be avoided per the mitigation sequencing in WCC 16.16.260, which explicitly states that developments may be located within critical areas, only after the mitigation sequencing steps of avoiding, minimizing, rectifying, reducing, and compensating for the adverse impact have been taken. This applicant has not gone through the required mitigation sequence.
2. WCC 23.60.01(C) requires that in the granting of all shoreline substantial development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other undeveloped parcels in areas where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users. No analysis of cumulative impacts was available in the file. Please require that this be done and provide it to us for review.
 3. In the file there is no mention of what mitigations will be required to insure that this project meets the goals of the Lake Whatcom Total Maximum Daily Loading Study (TMDL). Because of the slope of this parcel, additional analysis should be accomplished to insure that stormwater from this project will not further impact water quality in Lake Whatcom.
 4. There are letters from adjacent land owners in the file. These letters reference serious concerns about the wet season drainage and existence of surface water springs on this parcel. Based on this information, seasonally wet conditions will impose a constraint on construction. In addition, an assessment should be made on whether these springs along with the new development will cause increased erosion and sloughing at the site. If so, a permanent provision for infiltration of surface water and stormwater into a stable grassed area will be needed.
 5. The applicant is proposing to clear land and exceed the canopy retention and impervious limits set forth in WCC 20.80.735. We don't understand why this is being considered. Tree retention and preservation of existing trees limits exposed soils and reduces the potential for transport of dissolved pollutants and sediments off site. Preservation of existing trees reduces the quantity and maintains the quality of stormwater leaving the property during and after development by allowing infiltration and evapotranspiration of rainfall and surface water runoff.

Based on these issues, we urge that the permit application be denied. Thank you for the opportunity to comment on this issue. Please notify me regarding future decisions on this matter.

Sincerely,

North Sound Baykeeper Team

Lee First, Field Investigator
Wendy Steffensen, Lead Scientist
Matt Krogh, Program Manager

Staff Comment:

As stated previously within this staff report, as conditioned, staff anticipates no net loss of shoreline ecological functions or processes as a result of the proposed project. The proposal as conditioned will comply with the density standards, development standards, bulk and dimensional setbacks, impervious surface limits, vegetation conservation standards, and critical area requirements. As such, additional approvals for additional developments where similar circumstances exist, are not likely to represent a cumulative environmental impact to the shoreline.

The habitat conservation area buffer distance is set forth in 16.16.740 and in this case the required buffer is 100 feet as Lake Whatcom is larger than 20 acres in size. Pursuant to 16.16.740.A. buffers shall not include areas that are functionally and effectively disconnected from the habitat area by a road or other substantial developed surface. The habitat conservation buffer is the area located between the OHWM of Lake Whatcom and the waterward side of Northshore Road. The remaining parcel on the landward side of Northshore Road is functionally disconnected from the habitat conservation area and therefore is not subject to the sequencing steps outlined in 16.16.260.

The amount of existing native canopy to be cleared is regulated pursuant to 20.80.735 which will limit the clearing to 5,000 square feet or 35% of the existing tree canopy area, whichever is greater and will be reviewed and approved at the time of development application. The future development permit will need to demonstrate compliance with the impervious surface limits set forth in WCC 20.71. Additionally, the future residential development proposals will be required to install permanent on site stormwater quantity and quality facilities pursuant to the Whatcom County Development Standards to reduce the amount of stormwater leaving the subject lot.

This recommendation of approval has been conditioned to comply with the afore mentioned impervious surface limits and clearing limits outlined in 20.71 and 20.80.735 prior to issuance of any development permits. Additionally, to reduce any short term impacts this recommendation of approval requires the applicant submit a Temporary Erosion and Sedimentation Control Plan prior to initiating ground disturbing activities. Any future construction will comply with the seasonal restriction outlined in WCC 20.80.735 which will limit the amount of exposed soils to not more than 500 square feet from September 1st through May 31st.

With regards to the TMDL study, pursuant to 23.10.03.D, the SMP requires that the regulation of private property to implement Program goals such as ecological functions and processes must be consistent with all relevant constitutional and other legal limitations. These include but are not limited to civil rights guaranteed by the U.S. and State constitutions, recent federal and state case law, and state statutes. Staff is unaware of any legal precedent or nexus that would allow the subject permit to be placed on hold for additional analysis. Holding a proposal for additional TMDL analysis would exceed the authority of the SMP and the constitutional rights of the property owner.

VI. AGENCY COMMENTS

The Whatcom County **Health Department** submitted the following comments regarding the proposal on August 20, 2009:

The Whatcom County Health Department has the following comments regarding the application referenced above:

Water:

An approved water availability packet is required at the time of building permit issuance.

Sewage:

There is an existing permitted on-site sewage system on the property. If this is used the following requirements must be met prior to final occupancy.

1. WCHD must inspect the installation of the new combination septic/pump tank
2. A licensed OSS designer must submit a record drawing of the new tank location
3. The house not be given final occupancy until the sewage pump is hardwired and WCHD has inspected it.

The Whatcom County **Department of Engineering Services** submitted the following comments regarding the proposal on January 25, 2010:

The applicant has submitted an application for a Shoreline Substantial Development Permit to construct a new SFR and associated driveway at the above address. Northshore Rd (this segment) is classified as a Local Access.

The following requirements apply to the proposed project:

*****All development shall comply with WC Development Standards.**

1. Submitted engineered site plan dated 2/23/2010 addressing construction of the proposed steep driveway and access point has been approved by Engineering Services. (copy of the approved plans attached)
2. The applicant shall obtain a Revocable Encroachment Permit from Public Works, Engineering Services prior to any construction work in the county rights-of-way area. (Applicant already applied for ENC2009-00447).
3. The proposed development is subject to Lake Whatcom watershed review. Detailed drainage proposal and TESC Plan shall address all clearing activities associated with a fill and grade permit or building permit.
4. The applicant shall obtain an address from the Engineering Services for the proposed SFR.

*****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 Whatcom County **Watershed Technical Administrator** submitted the following revised comments regarding the proposal on March 9, 2010:

Whatcom County Watersheds staff has reviewed the proposal to construct a single family residence with daylight basement and has no objection to approval based on the following conditions:

- 1.) Per Whatcom County Code (WCC) 20.80.635 – Stormwater Special District requirements: Permanent on site stormwater quality and quantity facilities shall be required.
- 2.) ESC measures shall be installed and inspected per the approved site plan. Failure to have measures inspected and signed off will delay any subsequent building inspections. All exposed soils shall be covered with appropriate mulch within two days of disturbance.
- 3.) Per Water Resource Protection Overlay District (WCC 20.71.300), the applicant must include all locations and dimensions of all existing and proposed impervious surface. Impervious surface includes concrete, asphalt, structures, gravel areas, roof overhangs exceeding 3 feet, or any other areas that impede the natural infiltration of water. Slatted decks do not count as impervious surface. Applicant must indicate the type of decking. Proposal shall not exceed the amount of impervious surface area as allowed in WCC 20.71.300.

- 4.) Revisions include impervious surface coverage for lot. Allowance is 2,500 square feet; proposed project would achieve maximum impervious surface allowance.
- 5.) Revisions were submitted February 26, 2010 which reflect the proposed impervious surface breakdowns and calculations; it also includes proposed installation of pavers on the parking area of the plan. Please be advised that pavers must adhere to slope requirements. The applicant must supply a manufacturer's specifications sheet which includes all of the technical details of the proposed pervious pavers. The sub-base of the pervious pavers as shown on the site plan shall occur prior to installation of top course. Inspection of top course shall occur prior to final inspection. Installation shall be in accordance with manufacturer's specs. Any deviation from the approved plans will require further review and approval.
- 6.) Per Water resources Special Management Area (WCC 20.80.735), the applicant must include the locations and dimensions of all existing tree canopy areas on site. The locations and dimensions of tree canopy to be removed for development must also be included with the building permit submittal. Tree canopy areas in the amount as stated in WCC 20.80.735 must be retained.
- 7.) Must indicate on site plan submitted with SFR where the fill is to be located on site.
- 8.) Please note that clearing activity as defined in WCC 20.97.054 that will result in exposed soils exceeding 500 square feet shall not be permitted from September 1st through May 31st.

The Whatcom County **Critical Area Technical Administrator** submitted the following comments regarding the proposal on June 12, 2009:

An application for the above Shoreline Substantial Development permit has been routed to Critical Areas staff in conformance with WCC16.16, Critical Areas Ordinance. After reviewing the submitted materials, Critical Areas staff has determined that there will be no wetland or habitat conservation areas as a result of this proposal.

The Whatcom County Planning & Development Services – **Building Services Division** administers the International Residential Code (IRC) associated with residential structures. The office of the Plans Examiner submitted a March 11, 2010 memorandum with the following comments:

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 9.25.08 construction documents.

Project description:

- 3,145sf two-story (daylight basement) residence.

1. A building permit is required for this proposal. It will be reviewed under the current edition of the International Residential Code (IRC) and comply with all other applicable codes and ordinances adopted by Whatcom County.
2. If the proposed building does not meet IRC requirements for *conventional light-frame wood construction*, a structural analysis by a Washington State Professional Engineer will be required.
3. Mechanical equipment and plumbing system installations shall comply with the current adopted edition of the International Mechanical Code (IMC), International Fuel Gas Code (IFGC), and the Uniform Plumbing Code (UPC).

4. The building shall comply with the 2006 Washington State Energy Code (WSEC) and the 2006 Washington State Ventilation and Indoor Quality Code (VIAQ).
5. Provide approved verification from the Whatcom County Environmental Health Dept. of water and sewer availability. If property is on a septic system, provide an approved permit and design which demonstrates the inclusion and/or capacity for the proposed ADU.
6. Submittal of a building permit application requires a prescheduled application appointment. Refer to the *Residential and Detached Accessory Structures - Permit Application Packet** for additional information and a description of the submittal documents required to apply for a building permit.
7. Free-standing retaining walls (not connected to residence) greater than 4' in height require a separate building permit.
8. A Demolition Permit is required for the removal of any existing buildings, structures or other such site improvements.

* Available on-line at: www.whatcomcounty.us/pds under *Quick Links > Applications/Forms*.

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

VII. RECOMMENDATIONS

Based on the above findings and technical review, **Staff recommends approval** of the request for a shoreline substantial development permit subject to the following conditions of approval:

1. *The proposed project shall conform to the design, configuration, size and location as approved on the site plan dated April 1, 2010, except as modified by this approval. Any alteration of the approved design shall require additional review by the Whatcom County Shorelines Administrator.*
2. *If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907), LNTHPO (384-2298), Nooksack Tribe (592-2632) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.*
3. *Issuance of this shoreline permit does not release the applicant from any other State, regional or Federal statutes or regulations applicable to the proposed development.*
4. *Land clearing, grading, filling, and alteration of natural drainage or other features should be limited to the minimum amount necessary to accommodate the approved development. Surfaces cleared of vegetation should be immediately re vegetated with native or compatible plants.*
5. *The proposal must comply with all bulk and dimensional setback requirements as required by the Whatcom County Shoreline Management Program.*

6. *The applicant shall comply with all of the requirements of the Whatcom County Health Department prior to any development approvals as outlined in the August 20, 2009 memorandum unless modified by the Health Department or appealed to the appropriate agency.*
7. *The applicant shall comply with all of the requirements of the Engineering Services Department prior to any development approvals as outlined in the January 25, 2010 memorandum unless modified by the Engineering Services Department or appealed to the appropriate agency.*
8. *The applicant shall comply with all of the requirements of the Watershed Technical Administrator prior to any development approvals as outlined in the March 9, 2010 memorandum unless modified by the Watershed Technical Administrator or appealed to the appropriate agency.*
9. *The applicant shall comply with all of the requirements of the Whatcom County Building Services Division prior to any development approvals as outlined in the March 11, 2010 memorandum unless modified by the Building Services Division or appealed to the appropriate agency.*
10. *The existing buffer vegetation located between the waterward side of Northshore Road and Lake Whatcom is within a Habitat Conservation Area and is to be retained or enhanced with native plantings. Pursuant to WCC 16.16.265 prior to issuance of a building permit the applicant shall ensure that a "Notice of Critical Area and Restriction on use or Alteration" document is filed with the Whatcom County Auditor's Office.*
11. *Clearing activity as defined in WCC 20.97.054 that will result in exposed soils exceeding 500 square feet shall not be permitted from September 1st through May 31st.*
12. *State water quality and all other applicable standards shall be adhered to. Water quality of ground and surface waters shall not be significantly degraded.*
13. *Development pursuant to this approval shall not begin until and shall not be authorized until twenty-one (21) days after the "date of filing" or until all review proceedings before the Shoreline Hearings Board have terminated.*
14. *Construction shall commence within two years of the effective date of the Shoreline Substantial Development as defined by WAC 173-27-090 (3).*

Report prepared by:

Sam McDaniel
Whatcom County Shoreline Administrator
Whatcom County Planning and Development Services