

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) CUP2009-0010  
Application for )  
) FINDINGS OF FACT,  
*Larry Montgomery* ) CONCLUSIONS OF LAW,  
) AND DECISION

**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting a Zoning Conditional Use Permit to comply with Whatcom County Land Use Regulations. Montgomery Scrap Processing is an existing Type II Solid Waste Handling Facility consisting of metal recycling and the processing, crushing, and temporary storage of vehicles. The Applicant is proposing an engineered stormwater pond, an on-site sewage system, and a covered enclosure over the vehicle processing and car crushing area. The Applicant is also requesting approval of an existing 320 square foot modular office with the option to replace the structure with a new office of the same square footage at a later date.

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: Larry Montgomery

Site Location/Address: 4447 Curtis Road  
Bellingham, WA 98226

Legal Description: within the NE ¼ of the NW ¼ of Sec9, T38, R2E, W.M.  
Whatcom County, Washington

Assessor’s Parcel Number(s): 380209 222446

Zoning: Light Impact Industrial (LII)

Comprehensive Plan: Urban Growth Area

Subarea: Urban Fringe

Total Acreage: Approximately 5.74 acres

Roads: Curtis Road – Public

Water Supply: City of Bellingham - Public

Sewage Disposal: Proposed On-Site Sewage System (OSS)

Fire Protection: Whatcom County Fire District No. 8

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham School District No. 501

Topography: The site is described as mostly flat with the steepest slope being approximately 10%.

Vegetation: The eastern portion of the property is used for the existing recycling business. The back two-thirds of the property, approximately 585 feet further west, is rich with reed canary grass, sweet vernal grass, snowberry, Sitka willow, Pacific willow, cottonwood and alder. A Category 2 wetland makes up the western two thirds of the site.

Adjacent Land Uses: North: Residential and Agriculture  
East: Heavily Treed – Not Developed  
South: Canfor, USA – Lumber Mill & Distribution Center  
West: Heavily Treed – Not Developed

Easements: None

SEPA Review: SEPA (WAC 197-11) Mitigated Determination of Non-significance (MDNS) issued on May 6, 2010.

**AUTHORIZING CODES, POLICIES, PLANS, AND PROGRAMS:**

Whatcom County Comprehensive Plan

Whatcom County Code Chapter 15, Building Code

State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11,

Whatcom County Environmental Policy Administration Chapter 16.08

Whatcom County Code Chapter 16.16, Critical Areas

Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance  
Whatcom County Code Title 24, Health Regulations

Legal Notices:           Posted – October 21, 2010  
                                  Mailed – October 13, 2010  
                                  Published – October 21, 2010

Hearing Date:           November 3, 2010

Parties of Record:  
Larry Montgomery  
4447 Curtis Road  
Bellingham, WA 98226

Jack Swanson  
900 Dupont Street  
Bellingham, WA 98225

Doug Campbell  
Associated Project Consultants, Inc.  
1401 Astor Street  
Bellingham, WA 98225

Noah Booker  
Shelterbelt, Inc.  
2406 Broadway  
Bellingham, WA 98225

Charles Keller and Alison Starling  
17416 West Riverside Drive  
Bothell, WA 98011

George Daneri and Donald Wilcox  
PO Box 1753  
Bellingham, WA 98227

Sarah Hall/Brian Hansen  
Resick, Hansen & Follis  
PO Box 5846  
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Suzanne Bosman  
Planning and Development Services

Sanja Barisic  
Division of Engineering

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- 19 Email from Charles Sullivan, dated September 7, 2010 re: Health Department interpretation of Type II solid waste facility rules

## **II.**

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #2, dated October 20, 2010, a copy of which is attached hereto and incorporated herein by this reference. The Findings of Fact set forth in the Staff Report are supported by the record as a whole and are hereby adopted by the Hearing Examiner as Findings of Fact herein.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant and County requested a modification to Condition of Approval, F5, found on page 18 of the Staff Report.

## **III.**

There were written comments from the public submitted prior to the hearing and testimony at the public hearing. The main areas of concern dealt with stormwater impacts, including possibility of affecting the water quality of the aquifer. Concerns about stormwater run-off and stormwater quality have been addressed by Whatcom County Public Works and the Conditions of Approval attached to this Decision are adequate to assure appropriate handling of both stormwater quantities and quality.

Charles Keller raised an issue regarding Staff's conclusion that this facility was not a Type II Solid Waste Disposal Facility. His testimony indicated that he believed the facility was properly classified as a Type III Facility, pursuant to WCC 20.97.492. Both Whatcom County Public Health and the Washington State Health Department concluded that this facility is properly regulated as a Type II facility.

#### IV.

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

#### CONCLUSIONS OF LAW

##### I.

The proposed operation is classified as a Type II Solid Waste Handling Facility, consisting of metal recycling and the processing, crushing, and temporary storage of vehicles. This facility 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 set forth below, the Hearing Examiner finds that the proposal is consistent with all of the Conditional Use Criteria, as determined by Staff, and that 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 Larry Montgomery for the proposed operation of an existing Type II Solid Waste Handling Facility, consisting of metal recycling and the processing, crushing, and temporary storage of vehicles, to be located on Assessor's Parcel No.380209 222446, 4447 Curtis Road, Bellingham, Washington, subject to the following conditions:*

1. Permit Changes or Modifications: The use and location on the site shall not be modified or changed without further approval of the Whatcom County Hearing Examiner.
2. Regulation Requirements: The applicant shall comply with WCC 20.97.429(2) for Type II solid waste handling facilities. All materials shall be stored in containers and any dismantling of vehicles and/or their parts shall be done on a slab beneath an approved cover.
3. Building Setbacks: Pursuant to WCC 20.80.200, setback requirements for the Front Yard shall be 30-Feet. Side & Rear Yard setbacks shall be 10-Feet. The zoning administrator may reduce or eliminate side and rear yard setbacks in the LII zone district pursuant to WCC 20.80.210.
4. Lot Coverage: The maximum building coverage shall not exceed 60 percent of the lot size pursuant to WCC 20.66.450.

5. Height Limitations: No maximum height is established; however, when building height exceeds 35 feet, the setback requirements of WCC 20.80.200 shall be increased by one foot for each foot of building height in excess of 35 feet, as applicable to all setbacks. Height of structures shall also conform to, where applicable, the general requirements of WCC 20.80.675.
6. Landscaping: Shall be implemented pursuant to WCC 20.80.300. Landscaped parking strips shall be provided pursuant to WCC 20.80.350. Additional requirements for landscaping are required in the LII zone district. Pursuant to WCC 20.80.360(4), the first 15 feet within the front yard setback adjacent to the road shall be landscaped with vegetative material. The remaining setback area may be used for parking.
7. Parking: Parking space dimensions shall comply with WCC 20.80.510. The parking area shall be designed in such a manner that any vehicle leaving or entering the parking area from or into a public or private street shall be traveling in a forward motion. Access of driveways and parking areas shall comply with WCC 20.80.565. Parking shall also be installed in accordance with federal and state regulations for ADA accessibility as specified in WCC 20.80.585.
8. Staging Area: No tow trucks, semi-trucks or any other vehicles shall be parked at any time in the County right-of-way. All vehicles coming and going to the site must use the appropriate entrance/exit and shall not block or impede traffic. The applicant shall inform frequent customers, freight companies and haulers of said condition and remind them that no vehicles shall be left in the County right-of-way overnight if the business is closed.
9. Trash & Storage: 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.
10. Stormwater and Drainage: Pursuant to WCC 20.80.630, all development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.
11. Signage: No signs were requested for this proposal. Requests for future signage shall comply with WCC 20.80.450 and the International Building Code.
12. Lighting: 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.
13. Compliance with BMPs: The applicant shall comply with all BMPs. In addition, the oil/water separator must be inspected and pumped once every 90-days to ensure proper functioning. Accurate records must be maintained and available to Whatcom County staff when requested.

14. Code Enforcement: Since this site has been operating for several years without the required land use and building permits, Whatcom County will be requiring all existing and expired building permits be brought into compliance within one-year from the date of CUP approval.
15. Project Phasing: Phase I consisting of the stormwater facility shall be fully installed and approved within one-year from the date of CUP approval. Phase III as proposed, consisting of the MDNS requirement for a cover over the car crushing and processing area shall be implemented as Phase II and shall be completed within two-years of CUP approval. The office, originally proposed as Phase II has already been issued a building permit (COM2009-00081). A Certificate of Occupancy for this structure shall be obtained within one-year of CUP approval as required in Condition #13 above. If a new office is proposed to replace the existing modular, it may be implemented as Phase III and shall be completed within three-years of CUP approval.
16. SEPA MDNS Requirements: The applicant shall comply with the SEPA Mitigated Determination of Non-significance as issued on May 6, 2010 under permit: SEPA2009-00046.
17. Building Cover: The applicant has agreed to provide a permanent cover over the car crushing facility as a condition of the MDNS. A Certificate of Occupancy for the cover shall be obtained within two-years of CUP approval.
18. Archaeological Findings: 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.
19. The Applicant shall comply with all requirements of the Whatcom County Health Department, as identified in the attached Staff Report and enumerated in a memorandum, dated September 13, 2010, unless modified by the Health Department or appealed to the appropriate agency.
20. The Applicant shall comply with the requirements of the Whatcom County Plans Examiner as outlined in the attached Staff Report, unless modified by the Plans Examiner or appealed to the appropriate agency.
21. The Applicant shall comply with the requirements of the Whatcom County Natural Resources Staff as outlined in the attached Staff Report, unless modified by the Natural Resources Staff, or appealed to the appropriate agency.
22. The Applicant shall comply with the requirements of the Whatcom County Deputy Fire Marshal as outlined in the attached Staff Report, unless modified by the Fire Marshal, or

appealed to the appropriate agency.

23. The Applicant shall comply with the requirements of Whatcom County Public Works, Division of Engineering as follows, unless modified by the Division of Engineering or appealed to the appropriate agency.

23-1 An **Engineered Stormwater Design Report** with TESC Plan shall be submitted to and approved by the PW Engineering Services prior to any land disturbance or the issuance of any building permits.

23-2 **Certified Record Drawings** (as-built) for the new drainage facility shall be provided and approved by the PW Engineering Services prior to any Certificate of Occupancy.

23-3 As per Chapter 2, Sec. 218, (B), the applicant shall post a **maintenance security** with the PW Engineering Services for drainage facilities. The security shall be for an amount of 10% of the engineer's construction cost estimate or \$5,000 (whichever is greater). The security shall be in effect for 2 years from the date of provisional acceptance of new drainage facilities.

23-4 The Applicant shall obtain a **Revocable Encroachment Permit** from the Engineering Services prior to any construction work in the County right-of-way.

23-5 The Applicant shall re-establish existing ditch along west side of Curtis Rd between south and north driveway access to the site. This ditch was located in the public rights-of-way and historically was a part of drainage system along Curtis Road. Typical cross-section shall be provided and approved by the Engineering Services prior to any construction.

24. 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 18<sup>th</sup> day of November 2010

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Michael Bobbink, Hearing Examiner

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) CUP2009-0010  
Application for )  
) FINDINGS OF FACT,  
*Larry Montgomery* ) CONCLUSIONS OF LAW,  
) AND DECISION ON RECONSIDERATION

**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting a Zoning Conditional Use Permit to comply with Whatcom County Land Use Regulations. Montgomery Scrap Processing is an existing Type II Solid Waste Handling Facility consisting of metal recycling and the processing, crushing, and temporary storage of vehicles. The Applicant is proposing an engineered stormwater pond, an on-site sewage system, and a covered enclosure over the vehicle processing and car crushing area. The Applicant is also requesting approval of an existing 320 square foot modular office with the option to replace the structure with a new office of the same square footage at a later date.

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**FINDINGS OF FACT**

**INTRODUCTION**

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Vegetation: The eastern portion of the property is used for the existing recycling business. The back two-thirds of the property, approximately 585 feet further west, is rich with reed canary grass, sweet vernal grass, snowberry, Sitka willow, Pacific willow, cottonwood and alder. A Category 2 wetland makes up the western two thirds of the site.

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9. Trash & Storage: 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.
10. Stormwater and Drainage: Pursuant to WCC 20.80.630, all development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.
11. Signage: No signs were requested for this proposal. Requests for future signage shall comply with WCC 20.80.450 and the International Building Code.
12. Lighting: 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.
13. Compliance with BMPs: The applicant shall comply with all BMPs. In addition, the oil/water separator must be inspected and pumped once every 90-days to ensure proper functioning. Accurate records must be maintained and available to Whatcom County staff when requested.

14. Code Enforcement: Since this site has been operating for several years without the required land use and building permits, Whatcom County will be requiring all existing and expired building permits be brought into compliance within one-year from the date of CUP approval.

15. Project Phasing:

**Phase 1** consisting of the MDNS requirement for a cover over the car crushing and processing area shall be completed within one year of CUP approval. The Applicant is directed to provide Engineering Services, Whatcom County Public Works Department, with a Certified Stormwater Record Drawing for the existing drainage facility, including the oil/water separator, prior to January 30, 2011.

**Phase 2** consisting of the implementation of the upgraded stormwater facility shall be fully installed and approved within two years of the date of the CUP approval. Pending the installation of the approved stormwater facility, the applicant shall pump out and continuously maintain the existing oil water separator presently on site. Maintenance Report log shall be kept on the site and a copy shall be mailed quarterly to the Public Works Engineering Services, Attn. Sanja Barisic. As part of the implementation of Phase 2, applicant shall remove the contaminated metals and any contaminated soils from the areas to the south and west of the concrete slab processing area.

**Phase 3**, which was originally proposed as Phase 2, involves the construction of an office. A building permit (COM2009-00081) has already been issued and completion of that permit is pending. A certificate of occupancy for this structure shall be obtained within one year of CUP approval as required in Condition 13 above. Prior to issuance of any certificate of occupancy for COM2009-00081, the owner shall submit a certified record drawing (as-built) for the existing drainage facility currently on site and in operation. The new office proposed to replace the existing modular, may be implemented as Phase 3 and shall be completed within three years of CUP approval if applicant elects to go forward with that improvement.

16. SEPA MDNS Requirements: The applicant shall comply with the SEPA Mitigated Determination of Non-significance as issued on May 6, 2010 under permit: SEPA2009-00046.

17. Building Cover: The applicant has agreed to provide a permanent cover over the car crushing facility as a condition of the MDNS. A Certificate of Occupancy for the cover shall be obtained within two-years of CUP approval.

18. Archaeological Findings: 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.

19. The Applicant shall comply with all requirements of the Whatcom County Health Department, as identified in the attached Staff Report and enumerated in a memorandum, dated September 13, 2010, unless modified by the Health Department or appealed to the appropriate agency.
20. The Applicant shall comply with the requirements of the Whatcom County Plans Examiner as outlined in the attached Staff Report, unless modified by the Plans Examiner or appealed to the appropriate agency.
21. The Applicant shall comply with the requirements of the Whatcom County Natural Resources Staff as outlined in the attached Staff Report, unless modified by the Natural Resources Staff, or appealed to the appropriate agency.
22. The Applicant shall comply with the requirements of the Whatcom County Deputy Fire Marshal as outlined in the attached Staff Report, unless modified by the Fire Marshal, or appealed to the appropriate agency.
23. The Applicant shall comply with the requirements of Whatcom County Public Works, Division of Engineering as follows, unless modified by the Division of Engineering or appealed to the appropriate agency.

23-1 An ***Engineered Stormwater Design Report*** with TESC Plan shall be submitted to and approved by the PW Engineering Services prior to any land disturbance or the issuance of any building permits.

23-2 ***Certified Record Drawings*** (as-built) for the new drainage facility shall be provided and approved by the PW Engineering Services prior to any Certificate of Occupancy.

23-3 As per Chapter 2, Sec. 218, (B), the applicant shall post a ***maintenance security*** with the PW Engineering Services for drainage facilities. The security shall be for an amount of 10% of the engineer's construction cost estimate or \$5,000 (whichever is greater). The security shall be in effect for 2 years from the date of provisional acceptance of new drainage facilities.

23-4 The Applicant shall obtain a ***Revocable Encroachment Permit*** from the Engineering Services prior to any construction work in the County right-of-way.

23-5 The Applicant shall re-establish existing ditch along west side of Curtis Rd between south and north driveway access to the site. This ditch was located in the public rights-of-way and historically was a part of drainage system along Curtis Road. Typical cross-section shall be provided and approved by the Engineering Services prior to any construction.

24. 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 18<sup>th</sup> day of November 2010

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Michael Bobbink, Hearing Examiner



WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

October 20, 2010

Hearing Date: November 3, 2010

The application of <b>Larry Montgomery</b> for a Zoning Conditional Use Permit	CUP2009-00010 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: The applicant is requesting a zoning conditional use permit to comply with Whatcom County land use regulations. Montgomery Scrap Processing is an existing Type II Solid Waste Handling Facility consisting of metal recycling and the processing, crushing, and temporary storage of vehicles. The applicant is proposing an engineered stormwater pond, an on-site sewage system, and a covered enclosure over the vehicle processing and car crushing area. The applicant is also requesting approval of an existing 320 square foot modular office with the option to replace the structure with a new office of the same square footage at a later date.

Recommendation: The Technical Review Committee recommends approval of the proposed conditional use permit subject to the conditions in this document.

**II. PRELIMINARY INFORMATION**

A. BACKGROUND INFORMATION

Applicant: Larry Montgomery  
4447 Curtis Road  
Bellingham, WA 98226

Site Location/Address: 4447 Curtis Road.

Legal Description: The property lies within the Northeast 1/4 of the Northwest 1/4 of Section 9, Township 38, Range 2 East, W.M., Whatcom County, WA.

Assessor's Parcel Number(s): 380209 222446

Zoning: Light Impact Industrial (LII)

Comprehensive Plan: Urban Growth Area

Subarea: Urban Fringe

Total Acreage: Approximately 5.74 acres

Roads: Curtis Road – Public

Water Supply: City of Bellingham - Public

Sewage Disposal: Proposed On-Site Sewage System (OSS)

Fire Protection: Whatcom County Fire District No. 8

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham School District # 501

Topography: The site is described as mostly flat with the steepest slope being approximately ten percent.

Vegetation: The eastern portion of the property is used for the existing recycling business. The back two-thirds of the property, approximately 585 feet further west, is rich with reed canary grass, sweet vernal grass, snowberry, Sitka willow, Pacific willow, cottonwood and alder. A Category 2 wetland makes up the western two thirds of the site.

Adjacent Land Uses: North: Residential and Agriculture  
East: Heavily Treed – Not Developed  
South: Canfor, USA – Lumber Mill & Distribution Ctr.  
West: Heavily Treed – Not Developed

Easements: None

SEPA Review: SEPA (WAC 197-11) Mitigated Determination of Non-significance (MDNS) issued on May 6, 2010.

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

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

**III. APPLICATION PROPOSAL**

The applicant, Larry Montgomery, has applied for a conditional use permit to bring his existing recycling business, Montgomery Scrap Processing, into compliance with Whatcom County codes and regulations. His business has been located at the present location for at least seven years. At this time he has approximately four full time employees.

The applicant wishes to utilize the eastern portion of his property for general scrap metal processing which includes the processing, crushing, and temporary storage of vehicles. The applicant is requesting a three-year phased plan to complete the requirements. Phase 1 is proposed to be the installation of a stormwater plan. Phase 2, a 320 square foot office building; and Phase 3 a covered enclosure where the vehicle processing and car crushing will occur.

**In an effort to mitigate impacts and to comply with the SEPA Mitigated Determination of Non-Significance (MDNS), staff recommends modification of the proposed phased plans. These changes will be reflected in the conditions set forth by staff in the section of this report titled, "*Conditions of Approval*", Pages 13-19.**

The overall project proposes to implement the following:

1. Construction of a new stormwater detention and water quality pond facility.
2. Reconfiguration of the site drainage collection to route runoff through an oil/water separator and into a stormwater pond.
3. Construction of a raised berm around the vehicle crusher area, and a roof structure over the crusher.

4. Construction of a new concrete pad with a raised berm and roof cover to house the vehicle processing racks.
5. Utilize existing storage and containment structures for the purpose of storing hazardous materials.
6. Implement a Stormwater Pollution Prevention Plan, in accordance with the Industrial Stormwater General NPDES Permit requirements.
7. An on-site sewage system (OSS) is proposed as approved by the Whatcom County Health Department.

#### **IV. SITE DESCRIPTION**

The subject property is located approximately ½ mile west of the Bellingham International Airport, between Wynn Road and Rural Avenue, respectively. The site address is 4447 Curtis Road, which lies within the Northeast ¼ of the Northwest ¼ of Section 9, Township 38, Range 2 East, W.M., Whatcom County, WA.

The ~ 5.74 acre site is located on the west side of Curtis Road and consists of mostly level terrain. The business operation utilizes the front one-third of the parcel with the remaining two-thirds being undeveloped Category 2 wetlands as noted in a Wetland Delineation Report dated September 16, 2008 by The Jay Group.

The eastern portion of the property consists of the recycling scrap yard. Two large storage containers are located on a concrete slab within the 30-foot front yard setback area. Staff is proposing that these be moved out of the setback area and placed on the existing concrete slab located along the southerly property line in order to comply with Whatcom County setback criteria.

All properties surrounding the site are zoned Light Impact Industrial (LII) with the exception of the properties to the west. Properties abutting the subject property to the West are zoned Rural (R5A) and are separated by railroad tracks owned by Burlington Northern Railroad. The parcel to the immediate West is approximately 50 acres in size. It is undeveloped and completely covered with trees.

The parcel to the North is approximately 7.5 acres with a residence and a barn located approximately 300 feet from the subject site.

The eastern property line abuts the County right-of-way for Curtis Road. All parcels to the east are undeveloped and heavily treed.

To the south is a lot approximately 9.31 acres. There is one structure approximately 450' south of the existing Montgomery Scrap Processing site. This structure is on the southerly property line and is the location of Nelson Industrial, Inc. a welding and fabrication business. This parcel abuts Canfor USA to the South, a large lumber mill and distributing center. The three

businesses: Montgomery Scrap Metal Processing, Nelson Industrial, Inc., and Canfor, USA are the only three industrial uses in an area mainly undeveloped.

## **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 May 7, 2009. The fifteen (15) day comment period ended on May 22, 2009.

Pursuant to WCC 20.84.235(2), Notices were mailed on May 7, 2009 to property owners whose boundaries lie within 300 feet of the subject property.

Notice of Public Hearing: The Notice of Public Hearing for this application was published on May 7, 2009 in a one-time newspaper publication in the Bellingham Herald.

### **Public Comments:**

During the public comment period the County received two written comments in opposition of the proposal. Another letter dated, August 31, 2009 was received from Mr. Montgomery's attorney, Jack O. Swanson, of Belcher & Swanson Law Firm. His letter was written in response to the public comments received during the public comment period.

The following is a brief summary of the concerns addressed in the letters of opposition regarding the proposed use:

1. A party of record states that the proposed facility will be located directly next to his home and that a recycling facility will be in contrast to the rural character of the area which happens to be rich in wetlands, wildlife, and native plants.

*The complainants parcel is not directly next to the subject site. In contrast, it is 4,000 feet South of the proposed facility in the SE ¼, of the SW ¼ of Section 9, Township 38, Range 2 East, W.M., Whatcom County, WA.*

*The proposed facility should have no direct impacts to this person's private property, including any impacts to wetlands or native habitats on his site. In addition, the SEPA Mitigated Determination of Non-significance (MDNS) will require that a fence be installed at the facility along the area of substantial developed surface to protect the on-site wetlands and buffers. Other Best Management Practices (BMPs) will be implemented which will be described in further detail within this report.*

2. Another party of record filed the following concerns regarding this proposal:

- a) There are six wells which are less than 15 feet in depth located in close proximity to the proposed facility. Any surface water contamination could have adverse negative impacts to surrounding properties.

*Staff contacted the Washington State Department of Ecology (DOE) to discuss the six wells in question to determine how close in proximity they are to the proposed facility. A DOE staff member provided documents to Whatcom County and explained that these are not drinking wells. What appears to be wells on the DOE website are actually Resource Protection Well Reports for Geo-technical boring for soil samples. All six well reports were taken on the same parcel on Curtis Road.*

- b) The party states that this facility is a Type III solid waste handling facility not a Type II.

*Solid waste handling facilities means any facilities for the collection, transfer, treatment, recycling or ultimate disposal of solid waste. There are four types of solid waste handling facilities as defined in the Whatcom County Code, Title 20.*

*WCC 20.97.429(2) defines a Type II solid waste handling facility as an outdoor recycling yard where materials, other than organic materials, are stored in containers.*

*Examples of a Type III solid waste handling facilities are municipal solid waste landfills, incinerators, biomedical waste operations and other uses that deal with materials that could present a significant threat to public health.*

*Montgomery Scrap Processing is an existing facility that deals primarily with broken down cars where the oil, transmission fluid and anti-freeze are removed and contained prior to the vehicles being crushed and hauled away.*

*A Type II solid waste handling facility is permitted by approval of a conditional use permit pursuant to WCC 20.66.186. It is staffs opinion that the proposed use meets the definition of a Type II solid waste handling facility as defined in the Whatcom County Code. In addition, the Whatcom County Health Department views Montgomery Scrap Processing as an exempt recycler. As such he is exempt from solid waste permitting through WAC 173-350 "Solid Waste Rules". In order to maintain his exemption he must comply with the performance standards outlined in WAC 173-350.*

*As an exempt recycler, Mr. Montgomery's facility meets the definition of a Type II solid waste facility provided that he stores his materials in containers. The Whatcom County Health Department interprets this to mean that the recyclable material and waste must be contained.*

*As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the state. Given Mr. Montgomery's proposed roof cover, stormwater facility, operational and structural BMP's, Whatcom County believes the proposal meets the intent of a Type II solid waste handling facility.*

- c) The storage and crushing of vehicles could easily contaminate the wetlands adjacent to this site with petroleum and other automotive products. Chemical contamination would have serious negative impacts on these sensitive environmental areas.

*There is potential for waste materials or pollutants from the vehicle recycling and metal salvage operation to enter surface or ground waters, if the proper Operational and Structural Best Management Practices for Stormwater Pollution Prevention are not implemented or adhered.*

*Stormwater runoff from the developed portion of the site will be collected in trench drains and catch basins and routed through a flow control and water quality treatment train prior to discharge to the existing ditchline flowing west along the northern property line. The treatment train will consist of an oil/water separator, and a constructed stormwater treatment wetland located within the detention pond and will be designed in accordance with the Department of Ecology Stormwater Management Manual for Western Washington.*

*Whatcom County will also be requiring that all BMPs be maintained including but not limited to the oil/water separator. Whatcom County will be requiring it to be inspected and pumped once every 90-days to ensure proper functioning.*

*Furthermore, with the implementation of the SEPA Mitigated Determination of Non-significance (MDNS) requirements, and additional conditions required as approval of this permit, staff feels there is enough mitigation and controls in place to reduce and prevent waste materials and pollutants from entering ground or surface waters. The project proposes to implement a Stormwater Pollution Prevention Plan, in accordance with the Industrial Stormwater General NPDES Permit requirements, including a Spill Control Plan, employee training, and Operational and Structural BMPs.*

- d) The noise generated from this facility is incompatible with the neighboring rural and agricultural zoning.

*Noise generated by the facility will be typical of noise expected in a Light Impact Industrial (LII) zone district. There will be noise at this facility generated from: employee vehicles, large semi trucks hauling crushed cars to and from the site, loading and unloading other (non-vehicle) scrap metal &*

*recycled materials, and from the car crusher itself. There may also be increased noise levels during the construction phase.*

*Pursuant to WCC 20.80.620, no development shall exceed the maximum environmental noise level established by WAC 173-60.*

The comments listed above by staff were simplified for the purpose of addressing the main concerns that were identified during the public comment period.

The citizens concerns are addressed in detail by staff in the section of this report titled, "*Findings of Fact and Consistency with Regulations*", Section C, Page 9. In addition, more explicit requirements may be noted in the conditions set forth by staff in the section of this report titled, "*Conditions of Approval*", Pages 13-19.

## **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. On May 6, 2010, the Whatcom County SEPA Official made a Mitigated Determination of Non-significance (MDNS) regarding the proposal for Montgomery Scrap Processing, a Type II Solid Waste Handling Facility. The comment period for this MDNS ended on May 20, 2010, and no comments or appeals were received.

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

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

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

**Goal 7F:** Encourage development that creates local re-investment funds and provides jobs in the local community.

**Policy 7F-1:** Support existing local businesses as the major contributors of job creation and regeneration and afford them every opportunity to continue their success in the community.

**Goal 2A:** Ensure provision of sufficient land and densities to accommodate the growth needs of Whatcom County and protect the qualities that make the county a desirable place to live.

**Policy 2A-7:** Provide sufficient and appropriately located residential, commercial and industrial lands.

The Technical Review Committee finds that the application for a conditional use permit to authorize the establishment of a Type II solid waste handling facility for the purpose of recycling scrap metal and crushing cars on a site located within the Light Impact Industrial (LII) zone district is consistent with the goals and policies of the Whatcom County Comprehensive Plan.

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

Solid waste handling facilities are facilities meant for the collection, transfer, treatment, recycling or ultimate disposal of solid waste. There are four types of solid waste handling facilities as defined in the Whatcom County Code, Title 20. Type I, Type II and Type III solid waste handling facilities are permitted by approval of a conditional use permit in the LII zone district. A Type IV solid waste handling facility which consists of composting and mushroom composting is not permitted in this zone.

Whatcom County Code, (WCC) 20.97.429(2) defines a Type II solid waste handling facility as an outdoor recycling yard where materials, other than organic materials, are stored in containers.

Type II solid waste handling facilities, when located outside of the Cherry Point Major Port Industrial Urban Growth Area are permitted by a conditional use permit (CUP) in the Light Impact Industrial (LII) Zone District pursuant to WCC 20.66.186.

The proposed scrap metal processing facility meets the definition of a Type II solid waste handling facility since the proposed use is an outdoor recycling yard which does not recycle organic materials, and where such materials will be stored and/or contained as to prevent contamination to ground water. The use is allowed through the issuance of a discretionary land use permit subject to the code criteria set forth in WCC 20.84.220. Subject to review, conditions on application approval are set forth by the hearing examiner to ensure that criteria are satisfied and potential impacts are mitigated.

## **C. Compliance with WCC 20.84.200 & WCC 20.84.220 Criteria**

Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:

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

The purpose of the LII district is to implement the Comprehensive Plan by providing for the planned development of large land areas, in appropriate locations, primarily for industrial and subordinate uses which provide support services to the district.

The Whatcom County Comprehensive Plan encourages locally owned and operated businesses to re-invest profits and wages in the local community. Local businesses use local banks and other support services which help the local economy.

The proposed use is located in the Urban Growth Area, zoned Light Impact Industrial, and is specifically permitted pursuant to an approved Conditional Use Permit. The proposed use is relatively benign in terms of solid waste and is therefore harmonious and in accordance with the objectives of the Whatcom County's Comprehensive Plan and zoning regulations.

**(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.**

The Whatcom County zoning ordinance separates residential, commercial, and industrial districts to preserve the individual characteristics of each zone district to create attractive, healthful residential areas. In addition, zoning helps assure property owners and residents that the characteristics of nearby areas will remain consistent with the intent and objectives of the Comprehensive Plan.

Montgomery Scrap Processing has been operating from the existing location for over seven years. It is located in an Urban Growth Area designated for industrial uses.

Light industrial uses are primarily related to services, distribution, manufacturing and assembly of finished products that have a relatively light impact on adjacent uses and districts. It is also the purpose of this district to accommodate limited commercial uses that are incompatible with other commercial uses. The LII zone district does not permit single-family residences because the intent is to allow more intense uses such as rail, truck and freight terminals, manufacturing, contractor storage and equipment yards, and other uses such as type II solid waste handling facilities. These uses would not be characteristic or conducive of a residential or rural zone. Instead, they are conditionally permitted in the LII district.

As a condition of approval, Whatcom County will be requiring the applicant to keep all scrap metal in containers as required by code. The site will not be a scrap metal yard and therefore visual piles of scrap will not be visible to the public. However, there will be times when scrap is visible such as when employees are preparing certain automotive parts for recycling. One such example is when the radiators are stripped of any remaining steel. The copper and brass wiring is also removed from the radiators so that only the aluminum portion of the radiator is left for recycling. This is a process that takes place outside and then the parts are returned to the shipping cargo container pending pick-up from a local recycling company.

There will also be vehicles brought to the site which will be temporarily visible to the public. These vehicles are those awaiting removal of fluids prior to the crushing process. Once crushed, the vehicles are stacked on a trailer waiting to be hauled off site. A limited number of vehicles will likely remain on site until a full load can be hauled away. However, it is not of any economic value for the applicant to store crushed vehicles for an extended period of time. The proposed roof/cover over the vehicle crushing area will help minimize visual impacts. The overall facility should have very few impacts that are not harmonious or appropriate in appearance relative to other uses permitted in this zone district. The only reason this business may stand out is because most of the neighboring LII parcels are currently undeveloped.

The Technical Review Committee finds the proposal 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 area.

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

The proposed use, as conditioned, is not considered hazardous by the Health Department, Engineering Division, the Fire Marshal or Building Services Division.

Auto and scrap recycling businesses used to be junkyards whereby salvage dealers burned, buried, or dumped scrap and garbage. These bad practices often led to soil and groundwater contamination. Few auto and scrap dealers followed environmentally sound dismantling and storage practices. In addition to the conditions imposed as requirements of approval for this facility, several state agencies also regulate scrap metal processors.

It's important to note that this site has been functioning with very little regulatory control for the past seven years. By granting approval of this CUP, Whatcom County can now place conditions on this permit to ensure compliance and compatibility with all county and state regulations.

Potential impacts to surface and ground water will be mitigated through the construction of a raised berm around the vehicle crushing area and the construction of a cover over the recycling process area. These measures will help prevent any potential waste materials from entering into surface or ground water. The implementation of Operational and Structural Best Management Practices for Stormwater Pollution Prevention along with good employee training, will also help minimize accidental spills and contamination.

In addition, staff is requiring the applicant to provide a permanent cover over the car crushing facility as a condition of the State Environmental Policy Act (SEPA) Mitigated Determination of Non-significance (MDNS). The applicant's proposal was for an approximate 1,500 square foot partially enclosed cover. However, it is likely the cover will be much larger in order to comply with the MDNS requirements. The purpose of the cover is both visual and environmental. It will provide permanent coverage for the operation area where employees remove vehicle fluid, crush the vehicles, and where vehicles are stored prior to them being hauled away. The cover is necessary for containment and to prevent pollutants released during the car crushing process from mixing with rainwater and causing stormwater contamination.

Montgomery Scrap Processing does not pose a hazardous threat to the general public welfare. We can find hazardous chemicals in the floors of our homes, in the solid Polystyrenes used in disposable plastic cutlery and in our own fertilizers we use in our yard.

The proposed Type II solid waste handling facility does not consist of biomedical, arsenic, carcinogens, or other suspected highly toxic recycled agents. The fluids drained from the vehicles prior to crushing will be handled using approved BMPs and according to all local and state regulations. The Whatcom County Fire Marshal has conditioned approval of this CUP to require that the storage and handling of flammable and combustible liquids meet all requirements of Chapter 34 of the International Fire Code.

**(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.**

The site is serviced adequately by necessary public facilities. The level of service for access, fire, and police will remain the same. Emergency Services are provided by Whatcom County Fire District #8 and the Whatcom County Sheriff's Department.

Whatcom County Public Works, Division of Engineering reviewed the proposal and has required that an Engineered Stormwater Design Report and a Temporary Erosion Sediment Control (TESC) Plan be submitted for approval

prior to any permits being issued. In addition, the applicant will be required to submit a Certified Record Drawings (as-built) for the new drainage facility.

There used to be an existing ditch that ran along the west side of Curtis Road between the north and south access driveways to Mr. Montgomery's site. The ditch was located in the public right-of-way and historically was part of a drainage system along Curtis Road. This ditch was filled in so trucks and vehicles could park in front of Mr. Montgomery's property. This was often used as a staging area. Whatcom County will be requiring the applicant to re-establish the existing ditch according to Whatcom County Public Works, Division of Engineering standards. All parking for this business shall be on-site only as conditioned by staff in the section of this report titled, "*Conditions of Approval*", Pages 13-19.

Public water is provided by the City of Bellingham. The Whatcom County Health Department will be requiring an on-site sewage (OSS) permit demonstrating adequate capacity for the facility. The permit will be required prior to any building permits being issued.

**(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.**

Approving the conditional use application for Montgomery Scrap Processing will not create excessive additional requirements at public cost. The business provides a much needed service to the community since this is one of the only scrap metal recycling businesses in town with the ability to crush hulk and junked vehicles. The business is utilized by a number of local hulk-haulers.

**(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.**

Activities generated on the site will not be detrimental to persons, property, or the general welfare because conditions placed on the operation and use of the property for the business will serve to mitigate potential impacts.

**(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.**

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. The speed limit for Curtis Road is 35 mph. It is classified as an Urban Collector Arterial with 708 Average Daily Trips (ADTs).

The proposed development will generate 9 or less new p.m peak hour trips in one direction. Therefore the project is exempt from Concurrency Evaluation.

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

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 finds the proposal as conditioned, will comply with WCC 20.80.200 and WCC 20.84.220.

**CONCLUSION**

There are inherent environmental benefits for scrap recycling. Metal recycling keeps non-renewable resources out of landfills, reduces energy consumption, decreases greenhouse gas emissions and helps us make better use of our natural resources.

The proposed Type II solid waste handling facility will implement structural facilities and best management practices to protect adjacent and downstream natural resources. The site as conditioned, will comply will all state and local requirements. In addition, the business is an asset and much needed service to the community.

**VIII. RECOMMENDATION**

The Technical Review Committee has determined that the proposed Type II solid waste facility complies with applicable Whatcom County regulations. Staff recommends the Hearing Examiner approve the proposed project subject to the following conditions:

**IX. CONDITIONS OF APPROVAL**

**A. Planning Division**

1. Permit Changes or Modifications: The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Regulation Requirements: The applicant shall comply with WCC 20.97.429(2) for Type II solid waste handling facilities. All materials shall be stored in containers and any dismantling of vehicles and/or their parts shall be done on a slab beneath an approved cover.
3. Building Setbacks: Pursuant to WCC 20.80.200, setback requirements for the Front Yard shall be 30-Feet. Side & Rear Yard setbacks shall

be 10-Feet. The zoning administrator may reduce or eliminate side and rear yard setbacks in the LII zone district pursuant to WCC 20.80.210.

4. Lot Coverage: The maximum building coverage shall not exceed 60 percent of the lot size pursuant to WCC 20.66.450.
5. Height Limitations: No maximum height is established; however, when building height exceeds 35 feet, the setback requirements of WCC 20.80.200 shall be increased by one foot for each foot of building height in excess of 35 feet, as applicable to all setbacks. Height of structures shall also conform to, where applicable, the general requirements of WCC 20.80.675.
6. Landscaping: Shall be implemented pursuant to WCC 20.80.300. Landscaped parking strips shall be provided pursuant to WCC 20.80.350. Additional requirements for landscaping are required in the LII zone district. Pursuant to WCC 20.80.360(4), the first 15 feet within the front yard setback adjacent to the road shall be landscaped with vegetative material. The remaining setback area may be used for parking.
7. Parking: Parking space dimensions shall comply with WCC 20.80.510. The parking area shall be designed in such a manner that any vehicle leaving or entering the parking area from or into a public or private street shall be traveling in a forward motion. Access of driveways and parking areas shall comply with WCC 20.80.565. Parking shall also be installed in accordance with federal and state regulations for ADA accessibility as specified in WCC 20.80.585.
8. Staging Area: No tow trucks, semi-trucks or any other vehicles shall be parked at any time in the County right-of-way. All vehicles coming and going to the site must use the appropriate entrance/exit and shall not block or impede traffic. The applicant shall inform frequent customers, freight companies and haulers of said condition and remind them that no vehicles shall be left in the County right-of-way overnight if the business is closed.
9. Trash & Storage: 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.
10. Stormwater and Drainage: Pursuant to WCC 20.80.630, all development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

11. Signage: No signs were requested for this proposal. Requests for future signage shall comply with WCC 20.80.450 and the International Building Code.
12. Lighting: 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.
13. Compliance with BMPs: The applicant shall comply with all BMPs. In addition, the oil/water separator must be inspected and pumped once every 90-days to ensure proper functioning. Accurate records must be maintained and available to Whatcom County staff when requested.
14. Code Enforcement: Since this site has been operating for several years without the required land use and building permits, Whatcom County will be requiring all existing and expired building permits be brought into compliance within one-year from the date of CUP approval.
15. Project Phasing: Phase I consisting of the stormwater facility shall be fully installed and approved within one-year from the date of CUP approval. Phase III as proposed, consisting of the MDNS requirement for a cover over the car crushing and processing area shall be implemented as Phase II and shall be completed within two-years of CUP approval. The office, originally proposed as Phase II has already been issued a building permit (COM2009-00081). A Certificate of Occupancy for this structure shall be obtained within one-year of CUP approval as required in Condition #13 above. If a new office is proposed to replace the existing modular, it may be implemented as Phase III and shall be completed within three-years of CUP approval.
16. SEPA MDNS Requirements: The applicant shall comply with the SEPA Mitigated Determination of Non-significance as issued on May 6, 2010 under permit: SEPA2009-00046.
17. Building Cover: The applicant has agreed to provide a permanent cover over the car crushing facility as a condition of the MDNS. A Certificate of Occupancy for the cover shall be obtained within two-years of CUP approval.
18. Archaeological Findings: 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.

## **B. Health Department**

The Whatcom County Health Department submitted a memo dated September 13, 2010 with the following comments:

### **SEWAGE:**

An On-Site Sewage (OSS) permit demonstrating adequate capacity will be required prior to building permit issuance.

### **DRINKING WATER:**

Public water will be required for this project.

### **SOLID WASTE:**

The applicant is proposing to operate a recycling operation that is exempt from permitting per WAC 173-350. If the applicant fails to meet the performance standards of WAC 173-350-060 then a solid waste handling permit will be required.

## **C. Building Services Division**

The Whatcom County Plans Examiner submitted a memo dated May 13, 2009 requiring the following condition(s) of approval:

1. The plans examiners do not have any comments for the Zoning CUP at this time. Once the CUP has been approved and structures or projects are proposed and applied for permits the following comments will apply.
2. Due to the scope of this project, these comments do not address any specific requirements. Specific requirements will be discussed at time of application of each individual building pre-application meeting and or submittal when more detailed plans are available. The following are general comments are not intended to be the final comments or requirements for any one project.
3. A building permit would be required for foundations and structures.
4. Due to the scope of the proposed project, the applicant must apply to the Building Official for a pre-application screening prior to building permit application submittal. At the Building Official's discretion a pre-application meeting may be required.
5. Applicable code references for this project proposal are the 2006 International Building Code (IBC); the 2006 International Fire Code (IFC); the 2006 International Mechanical Code (IMC); the 2006 International Fuel Gas Code (IFGC); the 2006 Uniform Plumbing Code (UPC); all applicable code referenced manuals and standards; all applicable Washington State Amendments to the above referenced

- codes; the 2006 Washington State Non-residential Energy Code (NREC) and Ventilation & Indoor Air Quality Code (VIAQ).
6. A Washington State Professional Engineer may be required to engineer the proposed project. The engineer shall perform a complete structural analysis for the proposed building(s).
  7. **(REQUIRED) Provide a code data summary sheet on the plan drawing submittals.** List all applicable code data specific to the proposed project, including but not limited to types of occupancy, type(s) of construction, allowable height and area justification, occupant loads, egress path and travel distance, required exits and widths, non-separated or separated use, mixed occupancy, incidental and or accessory uses, fire protection systems, building design criteria, plumbing fixture counts, etc.
  8. A design professional of record (licensed architect or engineer of record) shall be designated on the permit submittal documents and drawings where appropriate. The design professional of record shall be responsible for reviewing and coordinating all submittal documents prepared by others, including deferred submittal items, for compatibility with the design of the building. (IBC Section 106.3.4)
  9. The proposal shall meet the barrier-free, handicap accessible requirements of the International Building Code, Chapters 10 & 11; IBC Appendix E; ICC/ANSI A117.1-03; applicable sections of the Washington State Amendments, per WAC 51-50. Accessibility design details shall be indicated on the plan drawings and submitted with the building permit. (for structures)
  10. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.
  11. Required plans for this project shall include but not be limited to.  
(Suggested scales)
    - a. Site plan (1/10<sup>th</sup> scale)
    - b. Foundation plan (1/4" = 1' scale)
    - c. Floor plan (plan views) (1/4" = 1' scale)
    - d. Elevation plans (1/4" = 1' scale)
    - e. Structural plans (1/4" = 1' scale)
    - f. Section views (1/2" = 1' scale)
    - g. Details (special construction and or connections) (1/2" = 1' scale)

#### **D. Critical Areas**

The Whatcom County natural resources staff submitted a revised Critical Areas Memo dated August 10, 2009 requiring the following condition(s) of approval:

Critical areas staff have received an updated site plan from Cantrell & Associates indicating the limits of existing substantial developed surface. The new stormwater facility will be located within the area of existing developed surface and will have no new wetland or habitat conservation area impacts.

The following are critical area requirements for approval of the Conditional Use permit:

- A fence must be installed along the area of substantial developed surface protecting the remaining wetlands and buffers from further impact.
- The wetlands and buffers must be placed in a Conservation Easement.

## E. Fire Marshal

The Whatcom County Deputy Fire Marshal submitted a memo dated May 8, 2009 requiring the following conditions of approval:

1. Storage and handling of flammable and combustible liquids shall meet the requirements of Chapter 34 of the International Fire Code.
2. A Fire Extinguisher of a minimum 40:B rating shall be located within 10 feet of the vehicle prep racks. A fire extinguisher of a 2A:10BC shall be located in the building at a location approved by the Fire Marshal.
3. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.

## F. Public Works – Engineering Division

The Whatcom County Public Works, Division of Engineering submitted a memo dated August 10, 2009 requiring the following conditions of approval:

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

1. An **Engineered Stormwater Design Report** with TESC Plan shall be submitted to and approved by the PW Engineering Services prior to any land disturbance or the issuance of any building permits.
2. **Certified Record Drawings** (as-built) for the new drainage facility shall be provided and approved by the PW Engineering Services prior to any Certificate of Occupancy.
3. As per Chapter 2, Sec. 218, (B), the applicant shall post a **maintenance security** with the PW Engineering Services for drainage facilities. The security shall be for an amount of 10% of the engineer's construction cost estimate or \$5,000 (whichever is greater). The security shall be in effect for 2 years from the date of provisional acceptance of new drainage facilities.
4. The applicant shall obtain a **Revocable Encroachment Permit** from the Engineering Services prior to any construction work in the County right-of-way.

5. The applicant shall re-establish existing ditch along west side of Curtis Rd between south and north driveway access to the site. This ditch was located in the public rights-of-way and historically was a part of drainage system along Curtis Road. Typical cross-section shall be provided and approved by the Engineering Services prior to any construction.

Report prepared for the Technical Review Committee by:

Suzanne Bosman,  
Senior Planner