

**WHATCOM COUNTY HEARING EXAMINER**

RE: SHORELINE SUBSTANTIAL DEVELOPMENT )	SHR2008-00023
SHORELINE CONDITIONAL USE )	SHC2008-00015
ZONING CONDITIONAL USE )	CUP2008-00019
Application for )	
)	
<i>Steve O’Neill</i> )	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND DECISION

**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting approval of a Zoning Conditional Use Permit, Shoreline Substantial Development Permit and Shoreline Conditional Use Permit to expand an existing non-conforming former cannery building into a 32-room destination resort.

Decision: The requested permits are 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: Mr. Steve O’Neill

Property Owner: Turnstone Properties, Inc.

Property Location/Address: 755 Marine Drive  
Point Roberts, Washington

Legal Description: Section 09, Township 40 North, Range 03 West, W.M.  
Assessor’s Parcel Number: 405309 497335

Adjacent Water Body: Georgia Strait

Shoreline Designation: Urban

Shoreline of State-Wide Significance: No

Zoning: Resort Commercial

Comprehensive Plan: Resort / Recreational Subdivisions

Subarea: Point Roberts

<u>Authorizing Ordinances:</u>	SMP 23.50	Applicability
	SMP 23.70	Administration
	WCC 20.04	General Provisions
	WCC 20.92	Hearing Examiner

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.03	Urban Shoreline Area Designation
SMP 23.60.01	Shoreline Substantial Development Permit Criteria
SMP 23.60.04	Shoreline Conditional Use Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.05	Commercial Policies and Regulations
SMP 23.110	Definitions

Applicable Whatcom County Zoning Code Provisions:

WCC 20.64	Resort Commercial (RC) District
WCC 20.72	Point Roberts Special District
WCC 20.80	Supplementary Requirements
WCC 20.83	Nonconforming Uses and Parcels
WCC 20.84.200	Conditional Uses
WCC 20.97	Definitions

SEPA Review: Determination of Non-Significance (DNS) issued by Whatcom County Planning and Development Services (WCPDS) on November 17, 2009.

Legal Notices: Published – November 26, 2009  
Posted – November 24, 2009  
Mailed – January 28 and November 19, 2009

Hearing Date: December 9, 2009

Parties of Record:

Mr. Steve O'Neill  
755 Marine Drive  
Point Roberts, Washington 98281

Turnstone Properties, Inc.  
PO Box 321  
Point Roberts, Washington 98281

Joe Davis  
766 Marine Drive  
Point Roberts, Washington 98281

Chad Yunge and Tyler Schroeder  
Planning and Development Services

Sanja Barisic  
Division of Engineering

Exhibits:

- 1 Land Use Application
  - 1-1 Supplemental Application
  - 1-2 Blackfish Resort Project Narrative
  - 1-3 Representative Authorization
  - 1-4 Land Disturbance Application
  - 1-5 Pt. Roberts Water District No. 4 Water Availability
  - 1-6 Preliminary Traffic Info
  - 1-7 Preliminary Stormwater Proposal
  - 1-8 Complete Application Letter, dated October 16, 2008
  - 1-9 Certificate of Mailing of Notice of Application, dated Jan 28, 2009
  - 1-10 Tech Committee Form Letter
  - 1-11 Property Owners Labels
  - 1-12 Property Owner Form Letter
- 2 Staff Report, dated December 2, 2009
- 3 Agency Comments
- 4 Public Comments
- 5 Plat Map
- 6 Zoning Map

- 7 Aerial Photo
- 8 Aerial Map showing Site Legal Description
- 9 DNS, dated December 1, 2009
- 10 Paving/Parking Reduction Proposal, January 16, 2008
- 11 Ordinary High Water Mark Determination, dated November 23, 2009
- 12 Revised Site Plan, with Parking Revision, dated October 14, 2009
- 13 Proposed Site Plan, stamped VOID
- 14 On-Site Sewage System Application
- 15 Legal Notice of Application, without Affidavit of Publication
- 16 Certification of Mailing, dated November 19, 2009
- 17 Certificate of Posting, dated November 24, 2009
- 18 Legal Notice of Hearing, with Affidavit of Publication, dated November 26, 2009
- 19 Letter of concern dated December 3, 2009, from Joe Davis
- 20 Revised Staff Report, dated December 9, 2009
- 21 Comment Letters

## **II.**

The Applicant is requesting a Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit, and a Zoning Conditional Use Permit in order to expand an existing nonconforming, former cannery building into a 32-room destination resort.

## **III.**

The Applicant has indicated that the Staff Report is factually correct. With the exception of the Condition of Approval requiring the Applicant to install designated parking spaces for 38 bicycles, based on WCC 20.64.653, the Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the hearing.

The Findings of Fact and Conclusions of Law of the Shoreline and Zoning Planners of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Revised Staff Report, Exhibit #20, dated December 9, 2009, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

#### **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 and Zoning Planners have recommended approval of the requested permits for the proposed expansion of an existing nonconforming, former cannery building into a destination resort business.

Findings of Fact and Conclusions of Law are set forth in the Revised Staff Report, Exhibit #20, dated December 9, 2009. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, with the Goals and Policies of the Whatcom County Shoreline Management Program, and with the Zoning Conditional Use Criteria of WCC 20.84.200 (1 through 8). The Conclusions of Law adopted by Staff in the Staff Report are incorporated herein as Conclusions of Law.

#### **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 Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Zoning Conditional Use Permit are hereby granted to Steve O'Neill for the expansion of an existing nonconforming former cannery building into a 32-room destination resort business. The property in question is located at 755 Marine Drive, Point Roberts, Washington. The permits are granted subject to the following conditions:

1. The proposed uses and developments shall be consistent with the scope and site plan (Revised October 14, 2009) approved by this zoning conditional use permit, shoreline substantial development permit and shoreline conditional use permit. Any changes to the proposed use or development in the future may require additional review and approval by the

Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner and/or the Washington State Department of Ecology (DOE).

2. Prior to any development activity on the subject property including land disturbance, a commercial building permit(s) shall be obtained from the Building Services Division of Whatcom County Planning and Development Services (WCPDS) for all structures subject to the applicable building code as determined by Building Services. A pre-application screening is required prior to building permit submittal. Contract Building Services (360-676-6907) to schedule and for submittal requirements. A Washington State registered architect will be required to prepare the construction documents. A Washington State Professional Engineer shall engineer the proposed building. Prior to issuance of the building permit(s), all applicable conditions outlined within CUP2008-00019, SHR2008-00023 and SHC2008-00015 shall be met as determined by WCPDS Natural Resource Permitting and Current Planning staff.
3. Construction and/or demolition debris shall be wholly removed from water/shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority.
4. The proposed addition of the existing former cannery structure and addition to the existing storage barn shall not exceed 25-feet in height as determined by the definition of Building Height pursuant to 20.97.040 of the Whatcom County Zoning Code. Construction plans submitted in association with the above required building permit(s) shall clearly demonstrate compliance with such height restrictions.
5. Prior to issuance of a building permit, all applicable design elements outlined within the Point Roberts Character Plan (Section 8.0 of the 2001 Point Roberts Subarea Plan) shall be reviewed and approved by the Point Roberts Character Plan Advisory Committee pursuant to the process outlined in Section 3-001 of the Point Roberts Subarea Plan.
6. If during the course of ground disturbing activity on the subject property, archaeological materials (bone, shell midden, cobble tools, fire-cracked rock, dark-stained soils etc.) are observed, work in the area of discovery shall cease and the Whatcom County State Environmental Policy Act (SEPA) Administrator (360-676-6907), Lummi Nation Tribal Historic Preservation Office (LNTHPO) representative (360-384-2280) and the Washington State Office of Archaeology and Historic Preservation (DAHP) representative (360-586-3065) shall be contacted immediately to determine the significance of the inadvertent discovery. If evidence of human remains are observed, the Whatcom County Sheriff's Department (911), Lummi Nation Schel'lan'en Department (360-384-2312), the Whatcom County Medical Examiner (360-738-4557), the State Physical Anthropologist (360-586-3534) and the Nooksack Tribe (360-592-5176) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required. Applicable laws pertaining to this site include RCW 27.44, WAC25.48, and Lummi Nation Title 40.

The applicant shall contact DAHP and/or LNTHPO to determine the specific applicability of these laws and regulations and to determine if any additional permits are required by such agencies prior to initiating ground disturbing activity on the subject property.

7. Prior to issuance of building permit(s), the applicant shall demonstrate the proper provisions are in place for trash disposal.
8. Prior to issuance of building permit(s), the applicant shall demonstrate that handicapped-accessible public restrooms are provided on the subject property.
9. Prior to issuance of building permit(s), the applicant shall demonstrate that all commercial and institutional structures shall screen roof-mounted mechanical equipment so as not to be visible by surrounding uses or roads.
10. A final landscape plan is required prior to issuance of building permit(s) on the subject property. The plan shall incorporate the following elements for review by WCPDS Natural Resource and Current Planning staff, unless modified by or appealed to the appropriate agency:
  - Street trees along Maine Drive consistent with 20.72.657;
  - Consistent with the provisions of 20.80.300, the plan shall specify species name, size and location of all proposed plant materials and all existing trees over eight inches in caliper including those to be removed which shall be indicated. Existing trees which are part of a cluster of trees need not be individually identified. An irrigation plan or specified method of watering and the type and location of all proposed lighting shall also be included. Existing plants or native species which may need no watering should be so noted. The plan shall specify the treatment of the soil to protect its structure including method of protecting existing trees to remain and their root zones. The preferred scale of a plan shall be one inch equals 20 feet; but other scales may be used if approved by the zoning administrator, adequate detail can be conveyed and the scales correlate to other required site plans.
  - The final landscape/buffer enhancement plan be reviewed and approved by WCPDS Natural Resource Permitting staff prior to issuance of the required building permit for the project. The plan shall include measures for annual monitoring and maintenance of the buffer area for a period of five-years. The monitoring plan shall include analysis of the proposed temporary day-use area to determine whether or not the occasional use of this buffer area has a significant impact on buffer vegetation. If the practice of using this area results in poor vegetative conditions, such use shall be ceased or altered in a way that protects buffering functions as determined by WCPDS. The buffer enhancement portions of the plan shall be consistent with 16.16.260 and 16.16.760.
11. A no-protest agreement to participate in a future local improvement district, road improvement district, or transportation benefit district is required by the applicant prior to final occupancy issuance of the subject property, unless modified by or appealed to the appropriate agency.

12. A final Engineered Stormwater Design Report with a Temporary Erosion and Sediment Control (TESC) Plan shall be submitted for review and approval by the Engineering Division of Whatcom County Public Works (WCPW). The plan shall be consistent with the DOE Stormwater Manual for Western Washington and applicable Whatcom County Development Standards. Such review and approval is required prior to issuance of a building permit(s).
13. As-built drawings of any new drainage facilities on the subject property shall be provided and approved by WCPW Engineering Division prior to issuance of a Certificate of Occupancy in association with the building permit(s).
14. Pursuant to Chapter 2, Section 218(B), the applicant shall post a maintenance security with WCPW Engineering Division for all drainage facilities. The security shall be for an amount of 10% of the engineer's construction cost estimate or \$5,000.00, whichever is greater. The security shall be in effect for two years from the date of provisional acceptance of new drainage facilities.
15. Prior to issuance of a building permit(s), a revised sign plan shall be submitted for review and approval by WCPDS Current Planning Staff for consistency with 20.64.600.
16. A bicycle parking area shall be provided pursuant to WCC 20.64.653 (2) and (3), as required by the Zoning Administrator, unless appealed to the appropriate agency.
17. There shall be no storage or handling of hazardous, explosive, highly flammable materials which would cause fire, explosion or safety hazards. There shall be no production of noise at any property line of any use in this district in excess of the average intensity of street and traffic noise found in the district. There shall be no emission of dust, dirt, odors, smoke or toxic gases and fumes with exception of those generated through typical restaurant operation in compliance with all applicable regulations for such operations and emissions. There shall be no production of heat, glare or vibration perceptible from any property line of the premises upon which such heat, glare or vibration is being generated. There shall be no storage outdoors except within areas proposed and approved by this permit. There shall be no off-site release to soil or surface drainage-ways of water borne or liquid pollutants. Applicable health department permits must be secured before any development permit is issued.
18. The proposed hot whirlpool, hot and cold tubs etc. be re-located 20-feet to the east in order to avoid the 150-foot marine shoreline buffer along the southern portion of the subject property. The "high water line" as depicted on the site plans is inconsistent with the OHWM determination made by staff in the field and thus the purpose of the required relocation of the above structures. The applicant may have a future OHWM determination conducted by a qualified professional as determined by 23.110 to refute the County determination made to date. If such as determination is submitted and deemed consistent with DOE guidelines for conducting such determinations, the location of the above structures may be re-considered by

the Whatcom County Shoreline Administrator.

19. A public access easement is required to establish the proposed pedestrian pathway to the marine shoreline on the subject property. The easement shall run with the land and be recorded with the County Auditor's Office prior to the time of building permit approval. A copy of the recorded easement shall be provided to the Shoreline Administrator. The minimum width of the public access easement shall be 10-feet. The proposed public access shall be fully developed and available for public use at the time of occupancy of the proposed project. The public access facility shall be maintained over the life of the use and development on the property. Maintenance of the public access facility shall be the responsibility of the property owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the County Auditor's Office. The standard State-approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the property owner. Such signs shall be posted in conspicuous locations at public access sites.
20. Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas, and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening.
21. The proposed water enjoyment commercial use shall remain open to the general public for the lifetime of the use and development.
22. Prior to issuance of a building permit(s), an on-site septic system (OSS) permit shall be obtained from the Whatcom County Health Department (WCHD).
23. A food service establishment plan review must be completed by the WCHD prior to health approval of the building permit(s). Contact Luis Flores at 360-676-6724 for more information.
24. A pool permit is required by the WCHD for any pools and/or hot tubs utilized by more than one guest or are not drained after each use. Contract Luis Flores at 360-676-6724 for more information.
25. A sprinkler system is required by the Whatcom County Fire Marshal's Office (WCFM). Such a system shall be designed in accordance with NFPA 13.

26. Fire extinguisher size shall be 2A:10BC in the building at locations approved by the WCFM prior to issuance of the building permit(s).
27. Fire department access shall meet the requirements of the Whatcom County Development Standards for roadway development.
28. A fire alarm system is required and shall meet the requirements of Chapter 9 of the IFC and NFPA 72.
29. Fire hydrants shall be located within 600-feet of all buildings on the subject property.
30. Authorization to conduct development activities shall terminate five (5) years after the effective date of these permits as defined by 23.60.19A.3. The Hearing Examiner or Shoreline Administrator, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good cause if a request for extension has been filed with the Hearing Examiner or Administrator as appropriate before the expiration date of the permits and notice of the proposed extension is given to parties of record and DOE.

### **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 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 December 2009.

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Michael Bobbink, Hearing Examiner

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



**David Stalheim**  
**Director**

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

REVISED  
December 9, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

The application of <b>Steve O'Neill</b>	FINDINGS, CONCLUSIONS AND RECOMMENDATIONS
For a Zoning Conditional Use Permit	CUP2008-00019
Shoreline Substantial Development Permit	SHR2008-00023
Shoreline Conditional Use Permit	SHC2008-00015

I. SUMMARY OF APPLICATIONS AND RECOMMENDATION

Application: The applicant is requesting approval of a zoning conditional use permit, shoreline substantial development permit and shoreline conditional use permit to expand an existing non-conforming former cannery building into a 32-room destination resort.

Recommendation: Staff recommends approval of the proposed project subject to the conditions outlined within this staff report.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Mr. Steve O'Neill  
755 Marine Drive  
Point Roberts, Washington 98281

Property Owner: Turnstone Properties, Inc.  
PO Box 321  
Point Roberts, Washington 98281

Property Location/Address: 755 Marine Drive  
Point Roberts, Washington

Legal Description: Section 09, Township 40 North, Range 03 West, W.M,  
Tax Parcel Number: 405309497335

Adjacent Water Body: Georgia Strait

Shoreline Designation: Urban

Shoreline of State-Wide Significance: No

Zoning: Resort Commercial

Comprehensive Plan: Resort / Recreational Subdivisions

Subarea: Point Roberts

**B. PROCEDURAL INFORMATION**

<u>Authorizing Ordinances:</u>	SMP 23.50	Applicability
	SMP 23.70	Administration
	WCC 20.04	General Provisions
	WCC 20.92	Hearing Examiner

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
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SMP 23.60.04	Shoreline Conditional Use Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.05	Commercial Policies and Regulations
SMP 23.110	Definitions

Applicable Whatcom County Zoning Code Provisions:

WCC 20.64	Resort Commercial (RC) District
WCC 20.72	Point Roberts Special District
WCC 20.80	Supplementary Requirements
WCC 20.83	Nonconforming Uses and Parcels
WCC 20.84.200	Conditional Uses
WCC 20.97	Definitions

SEPA Review: Determination of Non-Significance (DNS) issued by Whatcom County Planning and Development Services (WCPDS) on November 17, 2009.

**III. FINDINGS**

The applicant is requesting approval of a zoning conditional use permit, shoreline substantial development permit and a shoreline conditional use permit to expand an existing, former cannery building into a 32-room destination resort including a restaurant, bakery and spa.

The subject property consists of approximately four-acres located near the southwestern tip of Point Roberts along the shoreline of Georgia Strait. The site is currently developed with a commercial structure historically constructed and operated as a cannery in the 1900s. The existing structure measures approximately 17,000-square feet in size and was substantially renovated in 1996. This structure is located along the northwestern corner of the property approximately 25 to 35-feet landward of the ordinary high water mark (OHWM) of Georgia Strait. An asphalt parking area and access drive extends south and east of the existing former cannery structure. A storage building with a separate concrete access drive is located along the northeastern corner of the subject property. This structure measures approximately 1,200-square feet in size. Remaining portions of the property remain vegetated with a mixture of grasses and shrubs. Marine Drive bounds the subject property to the east, beyond which lie single-family residences. Numerous single-family developments are located north of the subject property along Marine Drive. A vacant parcel bounds the property to the south beyond which lies Lighthouse Park operated by the Whatcom County Parks and Recreation Department.

The applicant proposes an addition of approximately 25,000 square feet to the existing structure by expanding the existing second-story of the former cannery building and by expansion of a two-story addition

to the south in an area of the existing asphalt parking lot. With exception of foot trails, day-use areas and native landscaping, no development is proposed waterward of the existing and proposed resort structures. The parking lot will be expanded utilizing pervious pavement. The existing storage structure will also be expanded to accommodate a seasonal kitchen, brewery, winery, laundry, restrooms as well as a greenhouse. An on-site septic system has been designed to accommodate the proposed use and will be located along the northeast corner of the subject property. Remaining areas will be professionally landscaped with a series of footpaths, water features, lawn areas etc. According to the applicant, approximately 3,060-cubic yards of excavation and fill will be required to complete the site redevelopment.

The subject property falls within the Resort Commercial District of the Whatcom County Zoning Code (WCC Title 20.64). According to 20.64.050, restaurants and hotels accommodating up to 16 or less sleeping units are outright permitted within the Resort Commercial District. As stated previously, the applicant has proposed a 32-unit facility and thus the requirement to obtain a zoning conditional use permit as required by 20.64.153. A conditional use permit shall meet any specific standards of the use district (Resort Commercial) and adequate evidence shall be shown that the proposed use at the proposed location will be consistent with 20.84.220 1-7.

Georgia Strait is a shoreline of the state and thus subject to the provisions of the Whatcom County Shoreline Management Program (SMP). Jurisdiction of the SMP extends landward 200-feet from the OHWM of Georgia Strait which includes the area of the existing and proposed resort structure and a portion of area to the east. A shoreline substantial development permit is required for the proposed developments within SMP jurisdiction as the project does not fall within any of the listed exemptions from such permit review pursuant to 23.60.02.2.

The proposed commercial use of the subject property is consistent with the definition of water-oriented pursuant to 23.110 and thus a permitted use within the urban shoreline designation as enumerated in 23.100.05.C.1. The existing former cannery building meets the definition of a non-conforming structure pursuant to 23.110 due to its close proximity to the shoreline of Georgia Strait. Section 23.50.07.E states that non-conforming structures with conforming uses within commercial or mixed-use developments may be expanded or enlarged within the existing building footprint as a conditional use. The proposed expansion is consistent with the above-referenced provisions and the subject of the requested shoreline conditional use permit.

#### IV. CONCLUSIONS

##### Zoning Conditional Use Permit

As stated previously, a zoning conditional use permit is required in this case to establish a greater number of sleeping units (32) than are outright permitted (16) within the Resort Commercial District. In order to be approved, specific standards enumerated within the use district defining the conditional use must be fulfilled. In addition, compliance with the following provisions shall be demonstrated:

**20.84.220.1 The proposal will be harmonious and in accordance with the general and specific objectives of the Whatcom County Comprehensive Plan and applicable zoning regulations.**

##### Staff Comment:

The proposed project is consistent with the applicable zoning regulations as discussed later within this staff report. The subject property is located within a resort/recreational subdivision comprehensive plan designation and the proposed resort use is consistent with the resort community goals and policies enumerated within the Whatcom County Comprehensive Plan. The project is compliant with the Whatcom County Shoreline Management Program and the County Critical Areas Ordinance, consistent with the fish and wildlife goals and policies of the comprehensive plan. The Resort Commercial District purpose is to provide land areas which through their natural and manmade attributes attract resort

activities and the district should provide for uses normally found in resort areas and encourage the type of development which occurs in a cohesive fashion and which promotes open space and other amenities considered significant for viable resort areas. The purpose of the proposed project is to encourage tourism and recreation to Point Roberts which also creates employment opportunities to residents of the County consistent with Economic and Recreation goals and policies of the comprehensive plan and applicable zoning regulations.

**20.84.220.2 The project 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.**

Staff Comment:

The proposed commercial resort development is subject to the Point Roberts Character Plan. This approval recommendation has been conditioned that the design of the project be reviewed and approved by the Point Roberts Character Plan Review Committee which will address the above criteria. The proposed project meets all applicable setbacks and height limitations as conditioned.

**20.84.220.3 The project will not be hazardous or disturbing to existing or future neighboring uses.**

Staff Comment:

No hazardous or disturbing elements to existing or future neighboring uses has identified by staff through review of the project proposal. As conditioned, the project is consistent with the above criteria.

**20.84.220.4 The project 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.**

Staff Comment:

No deficiencies to the above-referenced public facilities and services were identified through staff review of the project. This approval recommendation has been conditioned that all applicable regulations for utility, stormwater, health regulations etc. be met prior to issuance of a building permit.

**20.84.220.5 The project 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.**

Staff Comment:

No substantial infrastructure improvements were identified through review of the proposed project that would represent increased cost to the public. No adverse comments were received during the interagency comment period from utility providers or County Public Works and Health Departments. The purpose of the proposed project is to draw recreational interest to Point Roberts which will likely have a positive impact to the economic welfare of the community consistent with the applicable comprehensive plan designation, zoning district and shoreline reach designation.

**20.84.220.6 The project 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.**

Staff Comment:

No such uses or activities are proposed nor were identified during staff's review of the project proposal. This approval recommendation has been conditioned that no activities or uses such as those listed above are allowed on the subject property without additional review and approval by WCPDS.

**20.84.220.7 The project will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.**

Staff Comment:

The existing and proposed entry to the subject property has been reviewed by the Engineering Division of Whatcom County Public Works. No adverse comments were received by staff regarding the proposed design of the vehicular approach to the proposed development.

**20.84.220.8 The project will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.**

Staff Comment:

The proposed project involves the re-development of a former cannery structure on the subject property. The design of the new expanded structure is subject to the Point Roberts Character Plan of which such a review by the Point Roberts Character Plan Committee should ensure that the proposed design is consistent with specific elements of the plan. The plan recognizes and encourages the design of new commercial structures to be consistent with "cannery-style" architecture consistent with the current appearance of the building. The proposed design leaves much of the southern one-third of the development free from structures and thus maintaining a substantial view of the marine shoreline from neighboring properties and Marine Drive consistent with the above criteria.

**According to 20.84.220, in order to be approved, specific standards enumerated within the use district defining the conditional use must be fulfilled.**

Staff Comment:

The subject property is located within the Resort Commercial District according to WCC Title 20. In addition, the development is subject to the Point Roberts Special District enumerated in 20.72 of Title 20. The following standards are applicable to the project and require compliance in order to approve the proposed conditional use permit:

20.64.250 Minimum Lot Size

According to 20.64.254, hotels and motels shall have a minimum net parcel size of 8,000-square feet in order to be approved. The subject property measures nearly four-acres in size and such, clearly meets the above-referenced minimum lot size associated with a hotel/motel operation.

20.64.260 Maximum Density

According to 20.64.266, Resort-oriented hotels and motels shall not exceed a floor area ratio (FAR) of 0.56. Section 20.97.150 defines FAR as the square footage of the building divided by the square footage of the area of the site the building is to be located on (i.e. Site area). Site area is defined by 20.97.423 as the measured square footage of any lot, tract or parcel of land, or contiguous lots, tracts or parcels of land to be utilized by a single-development and shall exclude all areas devoted to existing access and easements not usable to the present or future surface owner of the parcel.

The square footage of the proposed resort hotel building is 37, 747 square feet. The site area of the

subject property is 190,075-square feet. The FAR associated with the proposed project is 0.20 and thus does not exceed the maximum FAR of 0.56 required for resort-oriented hotels.

#### 20.64.350 Building Setbacks

Building setbacks shall be administered pursuant to 20.64.550 and 20.80.200. The provisions of 20.64.550 do not apply to the subject property as adjoining properties are located within the Resort Commercial district. Note that according to 20.80.210.2, waterfront lots shall comply with the building setback requirements set forth in the Whatcom County Shoreline Management Program (SMP). For a discussion of setback requirements for those portions of the project within 200-feet of the shoreline of Georgia Strait, please see the shoreline substantial development permit section of this approval recommendation. According to the setback table included in 20.80.210, setback requirements within the resort commercial district include a 30-foot front yard setback along Marine Drive and a five-foot side yard setback for all structures located outside of the SMP jurisdiction. Based on review of the proposal, structures located outside of SMP jurisdiction meet the required minimum side yard setback. In addition, no structures are proposed within the minimum front yard setback along Marine Drive.

#### 20.72.400 Height Limitations

According to 20.72.402, the maximum building height shall be 25-feet unless further restricted by the Whatcom County Shoreline Management Program (SMP) or the requirements of the adopted character plan. Height of structures shall also conform to the general requirements of 20.80.675 where applicable.

In this case, the height limitations outlined within Title 20 are more restrictive than those of the SMP and are therefore controlling. As the subject property is not located adjacent to an airport, the provisions of 20.80.675 do not apply. This approval recommendation has been conditioned that the proposed additions not exceed 25-feet in height.

#### 20.72.651 Facility Design

All commercial use structures and appurtenant signs shall conform to the requirements of the Point Roberts Character Plan. In addition, all commercial structures shall screen roof-mounted mechanical equipment so as not to be visible by surrounding uses or roads.

This approval recommendation has been conditioned that prior to issuance of a building permit, the project requires review by The Point Roberts Character Plan Advisory Committee to determine whether or not the design meet the applicable provisions of the Point Roberts Character Plan.

#### 20.72.652 Archaeological Resources

This section of Title 20, coupled with the Archaeological, Historic and Cultural Resource policies and regulations enumerated in SMP Section 23.90.07, outline the process initiated by WCPDS when a project proposal is located within 500-feet of a known historic and/or cultural site. A professional assessment to determine the presence of such resources was conducted by Drayton Archaeological Research (DAR) was received by WCPDS on February 11, 2009. According to the DAR report, no archaeological materials were recorded during testing conducted on the subject property and the no additional oversight was recommended. The DAR report did recommend that the permit be conditioned to address the proper protocols in the event that archaeological resources are inadvertently discovered during the construction phase of the project. Such conditions have been incorporated into this approval recommendation. No comments were received from the State Department of Archaeology and Historic Preservation, Nooksack Tribe or the Lummi Nation during staff's review of the project.

#### 20.72.654 Site Design / View Corridors

All structures or developments other than single-family residences shall conform to the requirements of the adopted Point Roberts Character Plan. Scenic views and open space shall be considered in all

developments and site plans designed to ensure view access is maximized while maintaining reasonable use of the development site.

As mentioned previously, a recommended condition of approval is that the project be reviewed and approved by the Point Roberts Character Plan Advisory Committee.

#### 20.72.655 Public Restrooms and Trash Facilities

All new and redeveloped commercial establishments on Point Roberts that are open to the public shall make adequate provision for trash disposal and handicapped-accessible public restrooms. Establishments with less than four employees on premises at one time may utilize a unisex facility. Commercial complexes may provide common restrooms and/or trash disposal, or two or more establishments in one commercial area may jointly provide for such facilities, subject to appropriate agreements or covenants to ensure the facilities are available and properly maintained. Dumpsters within commercial areas shall be screened from public view using landscaping or building walls.

Based on the above provisions, proper trash disposal provisions and handicapped-accessible public restrooms are required as a condition of this permit approval recommendation. Designs of such developments will be required for staff review prior to issuance of a building permit(s).

#### 20.72.656 Vehicular Access

Driveways and curb cuts shall be minimized along all collector roads. Each existing lot shall be allowed only one driveway or curb cut. In new developments, lots or leased sites shall be oriented toward internal driveways, parking areas, or roads, with limited access to collector roads. These access points should normally not be closer than 400 feet apart.

No new curb cuts or driveways are proposed as part of the proposed project.

#### 20.72.657 Non-Vehicular Access

According to 20.72.657.1, Commercial development or redevelopment of any parcel along Marine Drive shall be required to install appropriate street improvements along the road frontage of the parcel which may include curbs, gutters, sidewalks, boardwalks, benches, lighting, and appropriate provisions for bicycle and equestrian facilities in accordance with applicable Comprehensive Plan policies, land use regulations and current road standards. Planting of street trees along the road frontage of the subject parcel shall be required. These requirements may be waived if a local improvement district, road improvement district, or transportation benefit district is formed for the purpose of providing the aforementioned improvements. Commercial development of any parcel along a collector street shall require a no-protest agreement to participate in a local improvement district, road improvement district, or transportation benefit district.

According to the Engineering Division of Whatcom County Public Works, no road improvements are required as a result of the proposal. This approval recommendation has been conditioned that street trees be incorporated as part of the required landscape plan. In addition, as a conditional of approval, prior to the issuance of the building permit a non protest agreement will be required to be submitted.

#### 20.72.658 Drainage

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted. No project permit shall be issued prior to meeting the stormwater management requirements of this title and the Whatcom County Development Standards.

An Engineered Stormwater Design Report along with a Temporary Erosion and Sedimentation Control (TESC) Plan have been required by the Engineering Division of WCPW as outlined within a

memorandum from Sanja Barasic dated November 13, 2009. The plan will require review and approved by WCPW to determine consistency with all applicable development standards.

#### 20.72.659 Parking

Parking shall conform to the requirements of 20.80.500 unless otherwise specified in this section. The proposed parking plan as illustrated on the revised plans dated October 14, 2009 have been reviewed and determined to meet the applicable parking regulations for hotel use.

#### 20.64.500 Open Space

For uses other than single-family dwellings or duplexes, a minimum of 40 percent of the site shall be reserved as open space. The applicant proposes approximately 40% open space and as such, exceeds the 40 percent minimum.

#### 20.64.600 Sign Regulations

Sign regulations shall be administered pursuant to 20.80.400 except that no off-premises advertising signs are allowed other than those specified in 20.80.470. According to 20.80.400, no sign or any portion of a sign shall be located on or over public property, such as road rights-of-way and easements, transmission line corridors or utility easements. Standard building height limits and setbacks shall apply to all signs unless otherwise provided elsewhere in this title or in other county codes or regulations including the Point Roberts Character Plan. All freestanding signs advertising on premises operations may be located within required landscaping areas, except that no such sign shall be closer than 10-feet to the road right-of-way. This distance shall be increased if it can be shown to present a traffic hazard. 20.80.440 outlines specific sign regulations associated with the Resort Commercial District. According to this section, one freestanding sign for each road frontage, not to exceed 10-feet in height, and one wall sign with total surface area of all signs not to exceed 40-square feet for each road frontage for hotels and motels provided that on any road frontage exceeding 160 feet, 60-square feet shall be allowed. Lighted signs shall only be internally or indirectly illuminated and shall be nonmoving, nonfluttering, and nonrotating with exception of pennants, banners, small lights and similar decorations of a seasonal or holiday or special event character are allowed for up to 90-days per year. In addition to the above-referenced sign regulations, signs located within Point Roberts are also subject to the sign provisions of the Point Roberts Character Plan.

No off-premises advertising signs have been proposed by the applicant. The applicant proposes a single entrance sign located approximately five-feet from the Marine Drive right-of-way. The proposed sign measures approximately 90-square feet in size according to the plans. Both the size and the location of the current sign are not consistent with the applicable sign regulations outlined above. In order to be approved, the sign shall be located a minimum of 10-feet from the Marine Drive right-of-way and be reduced to no greater than 60-square feet. This approval recommendation has been conditioned by staff that such revisions are made. In addition, the proposed sign requires review and approval by the Point Roberts Character Plan Advisory Committee to determine compliance with the Point Roberts Character Plan. A design that meets both criteria shall be reviewed and approved by WCPDS prior to issuance of a building permit.

#### 20.64.652 Landscaping

Landscaping requirements are administered pursuant to 20.80.300. According to 20.80.310, The purpose of this section is to provide minimum landscape development and buffering requirements in order to maintain and protect property values, enhance the appearance of development by softening the impact of structures, protect the aesthetic assets of the community, provide screening between incompatible land uses, reduce erosion and stormwater runoff, provide pervious surfacing to allow natural ground water recharge, promote energy conservation and use of solar energy, reduce heat and air and noise pollution, and promote safety through reduced glare and reduction of congestion and visual separation of traffic movement. The landscaping standards in this chapter are minimum requirements.

Prior to the issuance of a building permit a scaled landscape site plan shall be submitted to and approved by WCPDS consistent with the provisions of 20.80.300. This plan shall specify species name, size and location of all proposed plant materials and all existing trees over eight inches in caliper including those to be removed which shall be indicated. Existing trees which are part of a cluster of trees need not be individually identified. An irrigation plan or specified method of watering and the type and location of all proposed lighting shall also be included. Existing plants or native species which may need no watering should be so noted. The plan shall specify the treatment of the soil to protect its structure including method of protecting existing trees to remain and their root zones. The preferred scale of a plan shall be one inch equals 20 feet; but other scales may be used if approved by the zoning administrator, adequate detail can be conveyed and the scales correlate to other required site plans.

Note that the landscaping plan also requires review and approval by the Point Roberts Character Plan Advisory Committee to determine consistency with the landscaping provisions of the Point Roberts Character Plan.

#### 20.64.653 Off-Street Parking and Loading

A bicycle parking area at a rate of one space per 1,000 square feet of floor area or a minimum of one space, whichever is greater, shall be provided for each use. Each bicycle parking space shall consist of a rack or other structure designed for the lock-up of a bicycle. Off-street parking and loading is also subject to 20.80.500.

As stated previously, the floor area of the proposed structure measures 37, 747-square feet. Application of the above provision requires a minimum of 38 bicycle parking spaces be provided in the form of bike racks or other specifically designed structure. Staff has recommended that the applicant demonstrate that such structures are provided prior to granting final occupancy of the futures structures on the property.

#### 20.64.654 Sidewalks

Sidewalks shall be installed pursuant to the requirements of the county engineer. According to the Whatcom County Public Works – Engineering Division, sidewalks are not required in association with the proposed project.

#### 20.64.656 Driveways

Consistent with 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of Highways, as applicable.

#### 20.64.658 Lighting

Lighting shall be designed to avoid excessive glare onto neighboring properties, and to not create safety hazards or unreasonable interference with adjacent uses.

#### 20.64.700 Performance Standards

There shall be no storage or handling of hazardous, explosive, highly flammable materials which would cause fire, explosion or safety hazards, except the storage and dispensing of gasoline service stations. There shall be no production of noise at any property line of any use in this district in excess of the average intensity of street and traffic noise found in the district. There shall be no emission of dust, dirt, odors, smoke or toxic gases and fumes. There shall be no production of heat, glare or vibration perceptible from any property line of the premises upon which such heat, glare or vibration is being generated. There shall be no storage outdoors. There shall be no off-site release to soil or surface drainageways of water borne or liquid pollutants. Applicable health department permits must be secured

before any development permit is issued. The above performance standards have been incorporated as conditions of staff approval. According to the applicant, smoke and fumes typical of restaurant operations will occur on the subject property. The condition has been modified to exempt such smoke and fumes associated with typical restaurant operations as long as such emissions are compliant with all applicable regulations regarding such operations.

### **Shoreline Substantial Development Permit:**

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:

- 23.60.01.A 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.**
- 23.60.01.B 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.**
- 23.60.01.C 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.**

General and use-specific policies and regulations associated with commercial developments are found within Sections 23.90 and 23.100.05, respectively. Applicable policies and regulations associated with the proposed development are listed and discussed below:

### **Land Use**

#### **23.90.02.A Policies**

- Shoreline uses that are water-dependent or water-related should be given preference (RCW 90.58.020). Such uses should be located, designed, and maintained in a manner that minimizes adverse impacts to shoreline ecological functions and/or processes. Nonwater-oriented development may be allowed, provided that existing water-dependent uses are not displaced and the future supply of sites for water-dependent or water related uses is not compromised.
- Adequate space should be reserved on shorelines to meet the current and projected demand for water-dependent uses, in conjunction with areas provided in cities, towns and area under tribal jurisdiction.

#### **23.90.02.B Regulations**

- Restoration of ecological functions and processes shall be allowed on all shorelines and shall be located, designed and implemented in accordance with applicable policies and regulations of the SMP.
- Shoreline uses and developments should be located, designed, and managed so that other appropriate uses are neither subjected to substantial or unnecessary adverse impacts, nor

deprived of reasonable, lawful use of navigable waters, other publicly owned shorelines, or private property.

- Shoreline uses and developments should be located in a manner so that shoreline stabilization is not likely to become necessary in the future.

Staff Comment:

The proposed use and development of the subject property is consistent with the above policies and regulations. The proposed use is not consistent with the definition of water-dependent or water-related; however no such competing uses were identified nor foreseeable on the subject property. The proposal incorporates a restoration element in the form of buffer enhancement and overall landscape enhancement of the subject property.

The applicant retained a state-licensed geotechnical engineer to demonstrate that future shore stabilization measures would be unlikely during the lifetime (100 years) of the existing and proposed structure. The report was reviewed and approved by the Doug Goldthorp, Staff Geologist for WCPDS.

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. No additional impacts to shoreline ecological functions or processes were identified in association with the permit review. With exception of the existing building footprint, the prescriptive protective buffer to the marine shoreline is 150-feet, as measured landward 150-feet from the OHWM of Georgia Strait. With exception of footpaths and native landscaping, no structures have been proposed within the required 150-foot buffer. Note that according to 16.16.740.G, buffers shall not be extended across roads or other lawfully established structures or hardened surfaces. As such, the location of the proposed addition meets the buffer requirement as it is proposed in an area currently developed with an asphalt parking lot.

This approval recommendation has been conditioned that the proposed hot whirlpool, hot and cold tubs etc. be re-located 20-feet to the east in order to avoid the 150-foot marine shoreline buffer along the southern portion of the subject property. The “high water line” as depicted on the site plans is inconsistent with the OHWM determination made by staff and thus the purpose of the required relocation of the above structures.

The buffer area on the subject property is predominantly vegetated with various grasses with exception of a natural beach berm consisting of log racking and native dune grasses. The applicant has provided a conceptual landscaping plan that proposes enhancement of the buffer areas on the property utilizing

native vegetation and beach logs and rounded cobbles. The applicant has proposed to utilize an area of the buffer on occasion to host outdoor catering events such as weddings etc. No permanent structures would be constructed in this area but temporary structures including a large tent, catering kitchen/deck and fire pit would be placed in this area. According to the applicant, use of the area would be limited to two to three days per month. The proposed landscape plan illustrates this area will be planted with native beach grasses. The applicant has stated that the area will not be maintained as lawn and no mowing or chemical fertilizers or pesticides will be applied. This permit recommendation has been conditioned that a final landscape/buffer enhancement plan be reviewed and approved by WCPDS prior to issuance of the required building permit for the project. The plan shall include measures for annual monitoring and maintenance of the buffer area for a period of five-years. The monitoring plan shall include analysis of the above-described temporary day-use area to determine whether or not the occasional use of this buffer area has a significant impact on buffer vegetation. If the practice of using this area results in poor vegetative conditions, such use shall be ceased or altered in a way that protects buffering functions.

### 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.

#### Staff Comment:

The proposed project is consistent with the above water quality and quantity policies and regulations. The applicant has proposes numerous measures to minimize stormwater runoff including maximization of landscaped areas and use of pervious surfacing. The Engineering Division of Whatcom County Public Works has recommended that an engineered stormwater design report and temporary erosion and sediment control plan be submitted for review and approval prior to issuance of the required building permit. Such a plan shall be consistent with the Washington State Department of Ecology Stormwater Manual and all applicable Whatcom County Development Standards.

## Views and Aesthetics

### 23.90.05.A Policies

- Shoreline use and development activities should be designed and operated to minimize obstructions of the public's visual access to the water and shoreline.
- Shoreline use and development should not significantly detract from shoreline scenic and aesthetic qualities that are derived from natural or cultural features, such as shoreforms, vegetative cover and historic sites/structures.
- Aesthetic objectives should be implemented through regulations and criteria for site planning, maximum height, setbacks, siting of buildings and accessories, screening, vegetation conservation, architectural standards, sign control regulations, appropriate development siting, designation of view corridors and maintenance of natural vegetative buffers.
- Clearing, thinning, and/or limbing for limited view corridors should only be allowed where it does not adversely impact ecological and/or aesthetic values, and/or slope stability. Vegetation conservation should be preferred over the creation or maintenance of views from property on the shoreline to protect shoreline ecological functions and aesthetics.

### 23.90.05.B Regulations

- Protection and/or enhancement of critical areas and their associated buffers shall be preferred over provisions for visual access, when the two are in conflict.
- The following standards shall apply to developments and uses within the jurisdiction of the SMP:
  - Where commercial, industrial, mixed use, multifamily and/or multi-lot developments are proposed, primary structures shall provide for reasonable view corridors between buildings.
  - Buildings shall incorporate architectural features that reduce scale such as setbacks, pitched roofs, offsets, angled facets, and recesses.
  - Building surfaces on or adjacent to the water shall employ materials that minimize reflected light.
  - Building mechanical equipment shall be incorporated into building architectural features, such as pitched roofs, to the maximum extent possible. Where mechanical equipment cannot be incorporated into architectural features, a visual screen shall be provided consistent with building exterior materials that obstructs views of such equipment.
  - Any other design standards included in community plans or regulations adopted by Whatcom County.
  - Fences, walls, hedges and other similar accessory structures shall be limited to four-feet in height between the OHWM and structures, and within shoreline view areas as defined by 23.110; provided that, within shoreline view areas, the Administrator may approve a greater height where a fence or other feature is parallel to the right-of-way and does not extend above a line of sight between the OHWM and a point 3.5 feet above the centerline of the road.

- Where permitted, fences, walls, hedges and other similar structures shall be limited to four feet in height within critical area buffers. Outside of critical area buffers, fences shall be limited to six feet in height.

Staff Comment:

The proposed project is consistent with the above policies and regulations for views and aesthetics. The expansion of the existing second story of the former cannery structure will not extend higher than the existing roofline which will not further impact existing views from neighboring properties, roadways or from the water. The proposed addition has been conditioned to meet the applicable height limitations outlined within WCC Title 20 which is more restrictive than the height limitation enumerated in Title 23. The project maintains a large view corridor along the southern third of the subject property consistent with the above regulations. In addition, the design of the project requires review and approval for consistency with the Point Roberts Character Plan as discussed previously within this staff report.

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:

As conditioned, the proposed project meets the above policies and regulations. Please refer to earlier staff comments under Ecological Protection and Critical Areas.

Archaeological, Historic and Cultural Resources

Staff Comment:

As discussed previously within this staff recommendation, the proposed project has been conditioned to comply with all applicable policies and regulations associated with cultural and/or historic resources.

Public Access

23.90.08.A Policies

- Use and development that provide an opportunity for substantial numbers of people to enjoy the shorelines of the state are a preferred use.
- Physical or visual access to shorelines should be incorporated in all new development when the development would either generate a demand for one or more forms of such access, and/or would impair existing legal access opportunities or rights. Public health and safety concerns should also be adequately addressed and maintenance of shoreline ecological functions and/or processes should be assured. As required by the governing principles, all such conditions should be consistent with all relevant constitutional and other legal limitations on regulation of private property.
- Public access should be provided for water-oriented uses and nonwater-dependent uses and developments that increase public use of the shorelines and public aquatic lands, or that would impair existing, legal access opportunities.
- Nonwater-related uses or activities located on the shoreline should provide public access as a public benefit.
- Public access area and/or facility requirements should be commensurate with the scale and character of the development and should be reasonable, effective and fair to all affected parties including but not limited to the land owner and the public.
- Public access design should provide for public safety and minimize potential impacts to private property, individual privacy, and shoreline ecological functions and processes.

23.90.08.B Regulations

- In the review of all shoreline substantial development and conditional use permits, consideration of public access shall be required, subject to the test stated in 23.90.08.A.2. When appropriate,

provisions for adequate public access shall be incorporated into such proposals, unless the applicant/proponent demonstrates that one or more of the following provisions apply:

- Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means;
  - Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
  - The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access is unreasonably disproportionate to the total long term cost of the proposed development;
  - Significant environmental impacts will result from the public access that cannot be mitigated;
  - Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.
- When provisions for public access are required as a condition of project approval, the Administrator shall prepare written findings, pursuant to SMP 23.60, demonstrating consistency with the principles of nexus and proportionality and the test stated in 23.90.08.A.2 and 23.50.08.A.
  - Prior to deciding public access are required per 23.90.08.B.1.a through e, the County must determine that all reasonable alternatives have been exhausted; including, but not limited to:
    - Regulating access by such means as maintaining a gate and/or limiting hours of use;
    - Designing separation of uses and activities (e.g. fences, terracing, use of one-way glazing, hedges, landscaping, etc; and
    - Providing for access at a site geographically separated from the proposal such as a street end, vista, tideland or trail system.
  - Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area, or other area serving as a means of view and/or physical approach to public waters and may include interpretive centers and displays.
  - Public access shall incorporate the following location and design criteria:
    - Where open space is provided along the shoreline, the public access can be provided in a manner that will not impact shoreline ecological functions and/or processes, a public pedestrian access walkway parallel to the OHWM of the property is preferred. The walkway shall be buffered from sensitive ecological features and provide limited and controlled access to sensitive features and the waters edge where appropriate. Fencing may be provided to control damage to plants and other sensitive ecological features and where appropriate. Trails shall be constructed of permeable materials and limited to five feet in width to reduce impacts to ecologically sensitive resources.
    - Public access shall be located adjacent to other public areas, accesses and connecting trails, connected to the nearest public street; and include provisions for handicapped and physically impaired persons where feasible.
    - Where views of the water or shoreline are available and physical access to the waters edge is not present or appropriate, a public viewing area shall be provided.
    - Design shall minimize intrusions on privacy by avoiding locations adjacent to the windows and/or outdoor private open spaces or by screening or other separation techniques.
    - Design shall provide for the safety of users, including the control of offensive conduct through public visibility of the public access area, or through provisions for oversight. The Administrator may authorize a public access to be temporarily closed in order to develop a program to address offensive conduct. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved through a permit revision.

- Public amenities appropriate to the use of a public access area such as benches, picnic tables and sufficient public parking to serve the users shall be provided.
- Commercial developments that attract a substantial number of persons and developments by government/public entities may be required to provide public restrooms, facilities for disposal of animal waste and other appropriate public facilities.
- The minimum width of public access easements shall be ten feet, unless the Administrator determines that undue hardship would result. In such cases, easement widths may be reduced only to the extent necessary to relieve the hardship.
- The requirement for public access on a specific site may be fulfilled by participation in a public access plan incorporated in the SMP, or with provisions specified in a permit approval.
- Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.
- Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.
- Public access provisions shall run with the land and be recorded via a legal instrument such as an easement. Such legal instruments shall be recorded with the County Auditor's Office prior to the time of building permit approval, occupancy or plat recordation, whichever comes first.
- Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the County Auditor's Office.
- Public access facilities shall be available to the public 24-hours per day unless specific exceptions are granted through the shoreline permit process subject to the provisions of 23.90.08.B.1
- The standard State-approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites.

Staff Comment:

Staff has determined that public access is required in association with the proposed project. According to the applicant, the proposed development will function as a destination resort that will predominantly draw visitors from areas outside of Point Roberts. The location of the proposed development immediately adjacent to Georgia Strait is likely the primary draw to future patrons of the proposed resort or other future resort commercial developments on adjacent properties zoned for such uses. Such an increase in tourist activity to the Point Roberts peninsula creates a demand for one or more forms of increased public access consistent with the nexus provisions of 23.90.08.A. Staff does not believe that the proposed project causes a negative impact on existing forms of public access in the area of the subject property.

The applicant has proposed direct physical access to the shoreline by means of a pedestrian footpath from the proposed parking lot along the southern portion of the subject property to the beach along Georgia Strait. Based on staff review, such a proposal represents a suitable form of access in this situation and clearly meets the proportionality provisions of 23.90.08.A. Staff has determined that the proposed public access meets the applicable location and design criteria outlined within the above regulations. This permit recommendation has been conditioned so that the above public access regulations are met prior to issuance of a building permit.

## Site Planning

### 23.90.09.A Policies

- Development and use should be designed in a manner that directs land alteration to the least sensitive portions of the site to maximize vegetation conservation; minimize impervious surfaces and runoff; protect riparian, nearshore and wetland habitats; protect wildlife and habitats; protect archaeological, historic and cultural resources; and preserve aesthetic values. This may be accomplished by minimizing the project footprint, the use of clustering and other appropriate design approaches.
- Low impact and sustainable development practices such as rain gardens, and pervious surfacing methods including but not limited to, porous paving blocks, porous concrete and other similar materials, should be incorporated in developments where site conditions allow to maintain shoreline ecological functions and processes. Topographic modification, vegetation clearing, use of impervious surfaces and alteration of natural drainage or other features should be limited to the minimum necessary to accommodate approved uses and development. An engineering geologist should be consulted prior to using infiltration practices on shore bluffs.
- Accessory development or use that does not require a shoreline location should be located outside of shoreline jurisdiction unless such development is required to serve approved water-oriented uses and/or developments. When sited within shoreline jurisdiction, uses and/or developments such as parking, service buildings or areas, access roads, utilities, signs and storage of materials should be located inland away from the land/water interface and landward of water-oriented developments and/or other approved uses.
- Development should be located, designed, and managed so that impacts on shoreline or upland uses are minimized through bulk and scale restrictions, setbacks, buffers, and control of proximity impacts such as noise or light and glare.
- Shoreline uses should not deprive other uses of reasonable access to navigable waters. Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and water-related recreation should be preserved and enhanced. The rights of treaty tribes to resources within their usual and accustomed areas should be accommodated.

### 23.90.09.B Regulations

- Vehicle and pedestrian circulation systems shall be designed to minimize clearing, grading and alteration of topography and natural features. Roadway and driveway alignment shall follow the natural contours of the site and minimize width to the maximum extent feasible.
- Impervious surfacing for parking lot/space areas shall be minimized through the use of alternative surfaces where feasible, consistent with the May 2005 Low Impact Development Technical Guidance Manual for Puget Sound.
- Utilities shall be located within roadway and driveway corridors and right-of-ways wherever feasible.
- Design of structures should conform to natural contours and minimize disturbance to soils and native vegetation. Foundations shall be tiered with earth retention incorporated into the structure.
- Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate.
- Fencing, walls, hedges and similar features shall be designed in a manner that does not preclude or significantly interfere with wildlife movement to/from important habitat areas.
- Accessory uses that do not require a shoreline location shall be sited away from the land/water interface and landward of the principal use, unless otherwise specified, shall observe critical areas regulations and buffers in WCC 16.16.
- Development shall be located, designed, and managed so that impacts on public use of the shoreline are minimized.

- Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and water-related recreation shall be protected through specific provisions to avoid impacts, or provide access as applicable.
- Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas, and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening.
- All shoreline use and development shall provide setbacks from adjacent properties in accordance with Table 23.90.13.C. Setbacks shall be of adequate width to attenuate proximity impacts such as noise, light and glare, and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual screen.

Staff Comment:

The proposed project meets the above policies and regulations. The project utilizes an existing structure and parking/access drive. New parking areas have been reduced to the maximum extent feasible in order to maximize open space and landscaping utilizing native vegetation. New parking areas will be constructed of pervious materials and stormwater collection systems have been designed to encourage stormwater infiltration. No impacts to the public use of the shoreline are impacted as a result of the project. This project approval has been conditioned to meet the above lighting design regulations.

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.
- Landfill in water bodies, floodways, and/or wetlands should not be permitted for creation of new uplands, unless it is part of an approved ecological restoration activity. Landfill should be permitted in limited instances to restore uplands where recent erosion has rapidly reduced upland area, to build beaches and protective berms for shore stabilization or recreation, to restore or enhance degraded shoreline ecological functions and processes, or to moderately elevate low uplands to make such uplands more suitable for purposes consistent with this Program.
- Landfills and excavation should be located and developed so that water quality, hydrologic and runoff patterns are not altered.
- 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.
- Landfill and excavation within wetlands or waterward of the ordinary high water mark shall only be permitted in limited instances for the following purposes only, with due consideration given to specific site conditions, and only along with approved shoreline use and development activities that are consistent with this Program:

- Port development for water-dependent uses where other upland alternatives or structural solutions, including pile or pier supports are infeasible.
- Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible.
- Ecological restoration or enhancement such as beach nourishment, habitat creation, or bank restoration when consistent with an approved restoration plan.
- Maintenance of lawfully established development.
- Development of shore stabilization projects, flood control and instream structures.
- Except for landfill for county-approved ecological restoration, fill and excavation waterward of the OHWM or in a wetland may only be authorized as a conditional use.
- Landfills, beach nourishment and excavation shall be designed to blend physically and visually with existing topography whenever possible, so as not to interfere with long term appropriate use including lawful access and enjoyment of scenery.
- Perimeter banks shall generally be sloped no steeper than 1 foot vertical for every 3 feet horizontal unless a specific engineering analysis has been provided, and the Administrator determines that the landfill blends physically and visually with existing topography.
- A temporary erosion and sediment control (TESC) plan shall be provided for all proposed landfill and excavation activities.

Staff Comment:

The project is consistent with the above policies and regulations associated with landfill and excavation. No landfill waterward of OHWM or within wetlands is proposed as part of this project. Proposed landfill and excavation appears to be the minimum necessary to fully construct the project and existing topography will remain generally unchanged. A requirement of a TESC plan is incorporated within the conditions outlined within this approval recommendation.

Commercial Use

23.100.05.A Commercial – Policies

- In securing shoreline locations for commercial use, preference should be given first to water-dependent commercial uses, then to water-related, and water-enjoyment commercial uses.
- Restoration of impaired shoreline ecological functions and processes should be encouraged as part of commercial development.
- Commercial development should ensure visual compatibility with adjacent non-commercial properties.
- Commercial uses located in the shoreline should provide public access in accordance with constitutional or other legal limitations unless such improvements are demonstrated to be infeasible or present hazards to life and property.

Staff Comment:

The proposed project is consistent with the above-referenced use policies associated with commercial development. At this time, there is no competing interest in developing the subject property with a water-dependent or water-related use. The proposed use is considered water enjoyment with the applicant's

proposal to provide public access to the shoreline. The applicant has proposed shoreline buffer enhancement as part of the overall landscape plan for the property.

#### 23.100.05.B.1 Commercial Regulations – Allowed Use

- Water-enjoyment commercial uses may not be approved if they displace existing water-dependent or water-related uses or if they occupy space designated for water-dependent or water-related use identified in a substantial development permit or other approval. Prior to approval of water-enjoyment uses, the Administrator shall review a proposal for design, layout and operation of the use and shall make specific findings that the use qualifies as a water-enjoyment use.

#### Staff Comment:

Section 23.110 defines water-enjoyment use as a use facilitating public access to the shoreline as the primary character of the use, or a use that provides for recreation use or aesthetic enjoyment of the shorelines for a substantial number of people as a general character of the use and that through the location, design and operation assure the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the water-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

The proposed development meets the above definition by providing both physical access to the shoreline to the general public and also through the primary function of the structure as a destination resort. The resort operations are open to the public and will provide a form of recreation and aesthetic enjoyment of the shoreline for a substantial number of people.

#### 23.100.05.B.2 Commercial Regulations – Recreation Facilities

- Commercial recreation-oriented uses, including commercial resorts shall provide adequate access to water areas for their patrons or shall provide adequate on-site outdoor recreation facilities so that such resort will neither be dependent on nor place undue burdens upon public access and recreational facilities.

#### Staff Comment:

The proposed commercial resort development will provide direct shoreline access to patrons of the resort as well as to the general public. The proposed design also incorporate numerous outdoor recreation opportunities other than the physical shoreline including, demonstration gardens, lawn/outdoor entertainment areas etc. Public restrooms are also required by the official zoning code. No burdens to other public recreation facilities were identified during the review of the project.

#### 23.100.05.B.3 Commercial Regulations – Access and Utilities

- New and expanded commercial development shall install or establish access roads of sufficient capacity and with appropriate improvements to provide vehicular and pedestrian access to the site. Utilities shall be adequate to serve the demands of the proposed uses.

#### Staff Comment:

Such requirements were reviewed by the Whatcom County Public Works (WCPW) – Engineering Division. Any requirements by WCPW have been incorporated as conditions of this approval recommendation.

#### 23.100.05.B.6 Commercial Regulations – Setbacks, Height and Open Space for Commercial Development

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

Staff Comment:

As discussed previously within this staff report, required shore and sideyard setbacks have been met.

**Shoreline Conditional Use Permit**

In the review of shoreline conditional use permits, the Administrator or Hearing Examiner, as appropriate, must find that the proposal is consistent with all of the following criteria:

**23.60.04.B.1. That the proposed use will be consistent with the policies of RCW 90.58.020 and the SMP:**

Staff Comment:

As described in the previous section of this staff report, the proposed project as conditioned, meets all of the applicable policies and regulations outlined within the Whatcom County SMP. RCW 90.58.020 prefers development such as the proposed project that fosters public access and enjoyment of the shoreline environment to a substantial number of people as long as such development does not alter the shoreline environment in a negative manner. It has been determined by staff that the proposed project meets this overall policy of the Shoreline Management Act (SMA).

**23.60.04.B.2 That the proposed use will not interfere with normal public use of public shorelines:**

Staff Comment:

No impacts to existing public access or use of the shoreline were identified through review of the project proposal. The project will increase public access to the shoreline both by the provision to provide physical access to the shoreline as well as the through the overall use of the site as a destination resort.

**23.60.04.B.3 That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.**

Staff Comment:

Adjacent properties to the north and south of the subject property are zoned for resort commercial use within an urban shoreline designation. The proposed commercial resort use is consistent with both the applicable zoning district and shoreline reach designation. In addition, all commercial development on Point Roberts is subject to the Point Roberts Character Plan. Such review also assures that the proposed use will be consistent with other future commercial developments in the future.

**23.60.04.B.4 That the proposed use will cause no unreasonable adverse effects to the shoreline environment in which it is to be located:**

Staff Comment:

No adverse environmental impacts were identified through review of the project. The existing shoreline buffer area will be enhanced with native landscaping and thus should represent an increase in shoreline ecological

function as a result of the planting. The project was reviewed by a State-Licensed Geotechnical Engineer who determined that shore defense works are not likely necessary throughout the lifetime of the structure.

**23.60.04.B.5 That the public interest suffers no substantial detrimental effect:**

Staff Comment:

No substantial detrimental effects to the public interest were identified by staff during review of the project.

**23.60.04.D In the granting of all conditional use permits, consideration shall be given to the cumulative environmental impact of additional request for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts should also remain consistent with the policies of RCW 90.58.020 and should not produce a significant to the shoreline ecological functions and processes or 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. As such, additional approvals for additional developments where similar circumstances exist, are not likely to represent a cumulative environmental impact to the shoreline consistent with the above criteria.

V. PUBLIC COMMENTS

The following public comments were received during staff's review of the project proposal:

An electronic mail transmission was received by WCPDS on February 8, 2009 by Kitty and Paul Doyle in favor of the project as proposed.

An electronic mail transmission was received by WCPDS on February 9, 2009 by Jay Lewis, Store Manager of Point Roberts Marketplace in support of the project.

An electronic mail transmission was received by WCPDS on February 10, 2009 by Kelly and Joyce Kiniski in support of the project.

An electronic mail transmission was received by WCPDS on February 11, 2009 by Renee Coe of 1385 Gulf Road requesting an extension of the prescribed comment period so that more community members would have an opportunity to comment. Staff can not formally extend the comment periods outlined within the respective regulations; however comments are accepted up to the date of the open record public hearing. Comments can also be heard at the open record public hearing without prior written correspondence during the requisite comment period.

An electronic mail transmission was received by WCPDS on February 11, 2009 by Maureen Buckley in support of the project.

An electronic mail transmission was received by WCPDS on February 11, 2009 by James Linde of 2046 APA Road in support of the project.

An electronic mail transmission was received by WCPDS on February 12, 2009 by Deborah Shields in support of the project.

An electronic mail transmission was received by WCPDS on February 13, 2009 by Kyle German in support of the project.

An electronic mail transmission was received by WCPDS on February 14, 2009 by Beverly Griffith of 1677 Seymour Place in support of the project.

An electronic mail transmission was received by WCPDS on February 15, 2009 by Stuart McFarlane in support of the project.

An electronic mail transmission was received by WCPDS on February 23, 2009 by Pinky Betts in support of the project.

A letter was received by WCPDS on February 26, 2009 from Joe Davis of 766 Marine Drive, directly across the street from the project proposal. Mr. Davis is in general support of the project as long as all applicable regulations are met.

An electronic mail transmission was received by WCPDS on February 27, 2009 by Donald Studney of 745 Marine Drive who outlines concerns over lighting. This approval recommendation has been conditioned that lighting be designed to eliminate nuisance to nearby properties. According to the applicant, the existing lighting within the parking lot will be replaced with shielded low level lighting.

An electronic mail transmission was received by WCPDS on February 28, 2009 by Jay and Jody Hackleman of 604 Calhoun Drive in support of the project.

A letter from Beverly Mar of 2003 APA Road was received by WCPDS on February 13, 2009 in support of the project as proposed.

A letter from David Niles of 254 Elizabeth Drive was received by WCPDS on February 13, 2009 in support of the project as proposed.

A letter from Gary and Carole Vinner of 1411 Edwards Drive was received by WCPDS on February 18, 2009 in favor of the project.

An electronic mail transmission by Rick Sande of 753 Marine Drive was received by WCPDS on February 23, 2009. Mr. Sande raises issues regarding outside lighting, compliance with the Point Roberts Character Plan, concerns over septic management, future maintenance of the facility and grounds and concerns that "emergency variances" will be submitted as a "back door way for the developer to bypass compliance of codes and character plans."

## VI. AGENCY COMMENTS

The following agency comments associated with other Whatcom County Code outside of Title 20 and Title 23 were received during staff's review of the project proposal:

On November 13, 2009, Ms. Sanja Barasic of Whatcom County Public Works – Engineering Division, provided comments and requirements. These requirements have been incorporated as conditions within this approval recommendation.

On January 1, 2009, Mr. Bill Hewett, Whatcom County Fire Inspector provided conditions of approval for compliance with the Whatcom County Fire Code. These conditions have been incorporated into this approval recommendation by staff.

On February 26, 2009, Mr. Charles Sullivan of the Whatcom County Health Department provided comments and conditions to demonstrate compliance with applicable health regulations. These conditions have been incorporated within this approval recommendation.

## VII. RECOMMENDATIONS

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

1. The proposed uses and developments shall be consistent with the scope and site plan (Revised October 14, 2009) approved by this zoning conditional use permit, shoreline substantial development permit and shoreline conditional use permit. Any changes to the proposed use or development in the future may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner and/or the Washington State Department of Ecology (DOE).
2. Prior to any development activity on the subject property including land disturbance, a commercial building permit(s) shall be obtained from the Building Services Division of Whatcom County Planning and Development Services (WCPDS) for all structures subject to the applicable building code as determined by Building Services. A pre-application screening is required prior to building permit submittal. Contract Building Services (360-676-6907) to schedule and for submittal requirements. A Washington State registered architect will be required to prepare the construction documents. A Washington State Professional Engineer shall engineer the proposed building. Prior to issuance of the building permit(s), all applicable conditions outlined within CUP2008-00019, SHR2008-00023 and SHC2008-00015 shall be met as determined by WCPDS Natural Resource Permitting and Current Planning staff.
3. Construction and/or demolition debris shall be wholly removed from water/shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority.
4. The proposed addition of the existing former cannery structure and addition to the existing storage barn shall not exceed 25-feet in height as determined by the definition of Building Height pursuant to 20.97.040 of the Whatcom County Zoning Code. Construction plans submitted in association with the above required building permit(s) shall clearly demonstrate compliance with such height restrictions.
5. Prior to issuance of a building permit, all applicable design elements outlined within the Point Roberts Character Plan (Section 8.0 of the 2001 Point Roberts Subarea Plan) shall be reviewed and approved by the Point Roberts Character Plan Advisory Committee pursuant to the process outlined in Section 3-001 of the Point Roberts Subarea Plan.
6. If during the course of ground disturbing activity on the subject property, archaeological materials (bone, shell midden, cobble tools, fire-cracked rock, dark-stained soils etc.) are observed, work in the area of discovery shall cease and the Whatcom County State Environmental Policy Act (SEPA) Administrator (360-676-6907), Lummi Nation Tribal Historic Preservation Office (LNTHPO) representative (360-384-2280) and the Washington State Office of Archaeology and Historic Preservation (DAHP) representative (360-586-3065) shall be contacted immediately to determine the significance of the inadvertent discovery. If evidence of human remains are observed, the Whatcom County Sheriff's Department (911), Lummi Nation Schel'lan"en Department (360-384-2312), the Whatcom County Medical Examiner (360-738-4557), the State Physical Anthropologist (360-586-3534) and the Nooksack Tribe (360-592-5176) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required. Applicable laws pertaining to this site include RCW 27.44, WAC25.48, and Lummi Nation Title 40. The applicant shall contact DAHP and/or LNTHPO to determine the specific applicability of these laws and regulations and to determine if any additional permits are required by such agencies prior to initiating ground disturbing activity on the subject property.

7. Prior to issuance of building permit(s), the applicant shall demonstrate the proper provisions are in place for trash disposal.
8. Prior to issuance of building permit(s), the applicant shall demonstrate that handicapped-accessible public restrooms are provided on the subject property.
9. Prior to issuance of building permit(s), the applicant shall demonstrate that all commercial and institutional structures shall screen roof-mounted mechanical equipment so as not to be visible by surrounding uses or roads.
10. A final landscape plan is required prior to issuance of building permit(s) on the subject property. The plan shall incorporate the following elements for review by WCPDS Natural Resource and Current Planning staff, unless modified by or appealed to the appropriate agency:
  - Street trees along Maine Drive consistent with 20.72.657;
  - Consistent with the provisions of 20.80.300, the plan shall specify species name, size and location of all proposed plant materials and all existing trees over eight inches in caliper including those to be removed which shall be indicated. Existing trees which are part of a cluster of trees need not be individually identified. An irrigation plan or specified method of watering and the type and location of all proposed lighting shall also be included. Existing plants or native species which may need no watering should be so noted. The plan shall specify the treatment of the soil to protect its structure including method of protecting existing trees to remain and their root zones. The preferred scale of a plan shall be one inch equals 20 feet; but other scales may be used if approved by the zoning administrator, adequate detail can be conveyed and the scales correlate to other required site plans.
  - The final landscape/buffer enhancement plan be reviewed and approved by WCPDS Natural Resource Permitting staff prior to issuance of the required building permit for the project. The plan shall include measures for annual monitoring and maintenance of the buffer area for a period of five-years. The monitoring plan shall include analysis of the proposed temporary day-use area to determine whether or not the occasional use of this buffer area has a significant impact on buffer vegetation. If the practice of using this area results in poor vegetative conditions, such use shall be ceased or altered in a way that protects buffering functions as determined by WCPDS. The buffer enhancement portions of the plan shall be consistent with 16.16.260 and 16.16.760.
11. A no-protest agreement to participate in a future local improvement district, road improvement district, or transportation benefit district is required by the applicant prior to final occupancy issuance of the subject property, unless modified by or appealed to the appropriate agency.
12. A final Engineered Stormwater Design Report with a Temporary Erosion and Sediment Control (TESC) Plan shall be submitted for review and approval by the Engineering Division of Whatcom County Public Works (WCPW). The plan shall be consistent with the DOE Stormwater Manual for Western Washington and applicable Whatcom County Development Standards. Such review and approval is required prior to issuance of a building permit(s).
13. As-built drawings of any new drainage facilities on the subject property shall be provided and approved by WCPW Engineering Division prior to issuance of a Certificate of Occupancy in association with the building permit(s).
14. Pursuant to Chapter 2, Section 218(B), the applicant shall post a maintenance security with WCPW Engineering Division for all drainage facilities. The security shall be for an amount of 10% of the engineer's construction cost estimate or \$5,000.00, whichever is greater. The security shall be in effect for two years from the date of provisional acceptance of new drainage facilities.
15. Prior to issuance of a building permit(s), a revised sign plan shall be submitted for review and approval by WCPDS Current Planning Staff for consistency with 20.64.600.

16. A minimum of 38 bicycle parking spaces shall be provided in the form of bike racks or other specifically designed structures, unless modified by or appealed to the appropriate agency. The applicant shall install such structures prior to final occupancy of the building permit(s).
16. There shall be no storage or handling of hazardous, explosive, highly flammable materials which would cause fire, explosion or safety hazards. There shall be no production of noise at any property line of any use in this district in excess of the average intensity of street and traffic noise found in the district. There shall be no emission of dust, dirt, odors, smoke or toxic gases and fumes with exception of those generated through typical restaurant operation in compliance with all applicable regulations for such operations and emissions. There shall be no production of heat, glare or vibration perceptible from any property line of the premises upon which such heat, glare or vibration is being generated. There shall be no storage outdoors except within areas proposed and approved by this permit. There shall be no off-site release to soil or surface drainageways of water borne or liquid pollutants. Applicable health department permits must be secured before any development permit is issued.
17. The proposed hot whirlpool, hot and cold tubs etc. be re-located 20-feet to the east in order to avoid the 150-foot marine shoreline buffer along the southern portion of the subject property. The "high water line" as depicted on the site plans is inconsistent with the OHWM determination made by staff in the field and thus the purpose of the required relocation of the above structures. The applicant may have a future OHWM determination conducted by a qualified professional as determined by 23.110 to refute the County determination made to date. If such as determination is submitted and deemed consistent with DOE guidelines for conducting such determinations, the location of the above structures may be re-considered by the Whatcom County Shoreline Administrator.
18. A public access easement is required to establish the proposed pedestrian pathway to the marine shoreline on the subject property. The easement shall run with the land and be recorded with the County Auditor's Office prior to the time of building permit approval. A copy of the recorded easement shall be provided to the Shoreline Administrator. The minimum width of the public access easement shall be 10-feet. The proposed public access shall be fully developed and available for public use at the time of occupancy of the proposed project. The public access facility shall be maintained over the life of the use and development on the property. Maintenance of the public access facility shall be the responsibility of the property owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the County Auditor's Office. The standard State-approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the property owner. Such signs shall be posted in conspicuous locations at public access sites.
19. Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas, and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening.
20. The proposed water enjoyment commercial use shall remain open to the general public for the lifetime of the use and development.
21. Prior to issuance of a building permit(s), an on-site septic system (OSS) permit shall be obtained from the Whatcom County Health Department (WCHD).
22. A food service establishment plan review must be completed by the WCHD prior to health approval of the building permit(s). Contact Luis Flores at 360-676-6724 for more information.

23. A pool permit is required by the WCHD for any pools and/or hot tubs utilized by more than one guest or are not drained after each use. Contact Luis Flores at 360-676-6724 for more information.
24. A sprinkler system is required by the Whatcom County Fire Marshal's Office (WCFM). Such a system shall be designed in accordance with NFPA 13.
25. Fire extinguisher size shall be 2A:10BC in the building at locations approved by the WCFM prior to issuance of the building permit(s).
26. Fire department access shall meet the requirements of the Whatcom County Development Standards for roadway development.
27. A fire alarm system is required and shall meet the requirements of Chapter 9 of the IFC and NFPA 72.
28. Fire hydrants shall be located within 600-feet of all buildings on the subject property.
29. Authorization to conduct development activities shall terminate five (5) years after the effective date of these permits as defined by 23.60.19A.3. The Hearing examiner or Shoreline Administrator, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good cause if a request for extension has been filed with the Hearing Examiner or Administrator as appropriate before the expiration date of the permits and notice of the proposed extension is given to parties of record and DOE.

Report prepared by:

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