

WHATCOM COUNTY HEARING EXAMINER

RE: Development Agreements)	PLN2010-0024 / PLN2010-0025
Non-Project Rezones)	
)	FINDINGS OF FACT,
<i>Caitac USA, Corporation</i>)	CONCLUSIONS OF LAW,
)	AND RECOMMENDATION TO THE
)	WHATCOM COUNTY COUNCIL

SUMMARY OF APPLICATION AND RECOMMENDATION

Application: Caitac USA, Corporation seeks approval of two Development Agreements in association with two Non-Project Rezones of property located within Whatcom County’s Rural [R10A] Comprehensive Plan Designation bordering the City of Bellingham.

The Development Agreement for PLN2010-0024 will govern development within an area of approximately 550-acres proposed for rezone from R10A to R5A. The second Development Agreement, PLN2010-0025, will govern an area of approximately nine acres proposed for rezone from R10A to Tourist Commercial (TC), as a Limited Area of More Intensive Rural Development (“LAMIRD”).

Recommendation: If the Whatcom County Council grants the requested Rezones and Map Amendment, the Whatcom County Hearing Examiner recommends that the Whatcom County Council grant approval to the Development Agreements attached hereto.

FINDINGS OF FACT

INTRODUCTION

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

I.

Applicant: Caitac USA, Corporation

Property Address: 205 West Smith Road
Bellingham, Washington 98226

Legal Description: Located within the NE¼, the SE¼ and all of NW ¼ of Sec36, T39N, R2E, W.M. and NW ¼ of Sec01, T38N, R3E, W.M.

Assessor’s Parcel Numbers: 390236 200270, 390236 445440, 380201 074504, 380201 202508

Zone: Rural (R10A)

Subarea: City of Bellingham Urban Growth Area

Comprehensive Plan: Rural

SEPA Review: SEP2010-00085 is a phased Determination of Non-Significance (“DNS”) for a Non-Project Action to rezone approximately 550 acres of Caitac’s property from Rural Ten Acres (R10A) to Rural Five Acres (R5A), and approval of a Development Agreement, issued on June 1, 2011. The second Determination, SEP2010-00088, was also issued on June 1, 2011. The second Determination is a phased DNS for a Non-Project Action to rezone approximately nine acres of Caitac property from Rural (R10A) to Tourist Commercial (TC) zone, which will also require a Comprehensive Plan Amendment (initiated by the County Council) and approval of a Development Agreement

Authorizing Ordinances and Policy

Whatcom County Comprehensive Land Use Plan
Whatcom County Code Chapter 15, Building Code
State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
Whatcom County Code Chapter 16.16, Critical Areas
Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
Whatcom County Code Title 24, Health Regulations
Revised Code of Washington 36.70B.170 through .210 and Chapter 58.17

Legal Notices: Certificate of Mailing of Notice of Public Hearing, September 14, 2011
Certificate of Posting, Notice of Public Hearing, September 14, 2011
Legal Notice of Public Hearing, September 15, 2011

Hearing Date: September 28, 2011

Parties of Record:

Caitac USA Corporation
Counsel: Robert Carmichael and Simi Jain
Zender Thurston, Attorneys At Law
1700 D Street, Bellingham, WA 98225

City of Bellingham
Counsel: Alan Marriner
Office of the City Attorney
210 Lottie Street, Bellingham, WA 98225

Whatcom County

Royce Buckingham, Whatcom County Civil Deputy Prosecutor
 Tyler Schroeder and Gary Davis, Whatcom County Planning and Development Services

Exhibits:

- 1 Staff Report, dated September 12, 2011, prepared by Tyler Schroeder with attached Final Draft Development Agreements as approved by Whatcom County Planning Commission, September 22, 2011
 Exhibit #72 Draft Development Agreement, R10A to R5A
 Exhibit #73 Draft Development Agreement, R10A to TC
- 2 Black binder of materials submitted by Zender Thurston to Gary Davis, Long Range Planner, for Planning Commission, August 30, 2011, indexed as follows:

Zoning Map Amendment: R10A to R5A

Tab	Document Description	Source	Date
1	Memorandum in Support of Application	Caitac USA Corp.	8/30/2011
2	Application for Zoning Map Amendment – R10A – R5A	Caitac USA Corp.	7/20/2010
3	SEPA Checklist – R10A – R5A	Caitac USA Corp.	5/20/2011
4	Preliminary Stormwater Proposal for R5A Rezone Area	Jones Engineering	10/14/10
5	Letter re previous and current Critical Areas Ordinance and the Morey Report	Charles J. Newling, Wetland Science Applications, Inc.	9/29/2010
6	Wetland Delineation Report at the North Bellingham Golf Course Site	Scott A. Morey, MRM Consulting LLC	6/30/2003

Zoning Map Amendment: R10A to Tourist Commercial

Tab	Document Description	Source	Date
1	Memorandum in Support of Application	Caitac USA Corp.	8/30/2011
2	Application for Zoning Map Amendment – R10A – TC	Caitac USA Corp.	8/3/2010
3	SEPA Checklist – R10A – TC	Caitac USA Corp.	5/20/2011
4	Council minutes, page 2: Direction/Request to initiate Comprehensive Land Designation Amendment and Action Taken	Whatcom County Council	9/14/2010
5	Preliminary Stormwater Proposal for TC Rezone Area	Jones Engineering	10/1/2010
6	Addendum to Preliminary Stormwater Proposal for LAMIRD Area	Jones Engineering	10/14/2010
7	Wetland Delineation of Potential Limited Area of More Intensive Rural Development (“LAMIRD”) and Proposed CAITAC Tourist Commercial Rezone, North Bellingham, Whatcom County, WA Wetland Delineation	Charles J. Newling, Wetland Science Application Inc	1/1/2011

Supplemental SEPA Materials

Tab	Document Description	Source	Date
1	Traffic Assessment	Transpo Group	4/5/2011
2	<i>Excerpt: Bellingham UGA – Five Year Review Areas and Property Owner Requests, 2006 Bellingham Comprehensive Plan EIS</i>		Submitted 6/24/2010
3	<i>Excerpt: Chapter 3: Transportation Element, Bellingham Comprehensive Plan</i>		Submitted 6/24/2010

Materials Submitted to Planning Commissioners 9/8/2011

Tab	Document Description		

	Caitac Presentation – 9/8/2011		
	Memo, dated August 6, 2011 from Ballard Management Co. to Bob Carmichael: History of Wilder Ranch and Holiday Inn Express tax revenue		
	2009 Water System Plan Distribution System Map Larrabee Springs Vicinity Zoning Map Letter, dated August 30, 2011 from Loni Rahm, Bellingham Whatcom County Tourism to Mr. Naoyuki Ishii, Caitac USA Memo, dated September 8, 2011 from Darcy Jones to Bob Carmichael/Simi Jain re: Larrabee Springs Annual Water Budget (attached) Email Memo dated September 7, 2011 from Wayne Schwandt to PDS re: Larrabee Springs Email Memo betw Hart Hodges to Ted Mischaikov, September 1 and 2, 2011 re: Construction multipliers		

3 Cover Letter, dated September 22, 2011 from Karen Reich re: Development Agreements Hearing, re PLN2010-00024 & PLN2010-00025, documents attached include:

- 3-1 Development Agreement/R10A to R5A Draft
 - Exhibit A Caitac Property Description
 - Exhibit B Caitac Property to be Zone R5A
 - Exhibit C WCC20.36
 - Exhibit D Distribution List SEP2010-00085, DNS, Checklist, Maps
 - Exhibit E Rural Major Collector Arterial Road Detail
 - Exhibit __ Special District Alternative Street Section

- 3-2 Development Agreement/R10A to TC Draft
 - Exhibit A Caitac Property Description
 - Exhibit B Legal Description
 - Exhibit C WCC 20.63
 - Exhibit D SEP2010-00088: Distribution, DNS, Checklist, Maps
 - Exhibit E Wetland Delineation of Potential LAMIRD, January 11, 2011
 - Exhibit __ Rural Major Collector Arterial Road Detail
 - Exhibit __ Special District Alternative Street Section

3-3 Letter dated September 13, 2011 from TranspoGroup to Whatcom County Planning Commission

3-4 Zoning Map

3-5 Larrabee Springs Aerial Map – 114 Lots/Clusters

3-6 Larrabee Springs Aerial Map – TC Area

3-7 Larrabee Springs Aerial Map – 114 Lots/Clusters and TC Area

4 Email memo from Tyler Schroeder to Carole Magner and Royce Buckingham re: Caitac Development Agreement Notices

5 Certification of Mailing Notice of Public Hearing, dated September 14, 2011, with mailing labels attached

6 Legal Notice of Open Record Hearing, published September 15, 2011

7 Certificate of Posting Notice of Public Hearing, September 14, 2011

8 Email correspondence betw Karen Reich and Carole Magner regarding Exhibit List suggestions for changes

- 9 Email Comments from Donna Macomber, September 27, 2011 with Letter, dated June 15, 2011 from DOE to Tyler Schroeder re: Caitac SEPA2010-0088 attached

Exhibits 10 thru 31, PLN2010-0024/SEP2010-00085/APL2011-00011 submitted to Hearing Examiner by Planning and Development Services

- 10 Letter dated May 13, 2011, from Simi Jain to Tyler Schroeder re: SEPA Checklist Updates
- 11 Draft Development Agreement/R10A to R5A
- 12 Application for Zoning Amendment, R10A to R5A: Updates for SEPA Checklist submitted 7/20/10
- 13 Application for Zoning Amendment, R10A to TC: Updates for SEPA Checklist submitted 7/20/10
- 14 LAMIRD Proposal: Updates for SEPA Checklist submitted 9/27/10
- 15 Draft R5A Development Agreement: Updates for SEPA Checklist submitted 10/14/10
- 16 Draft TC Development Agreement: Updates for SEPA Checklist submitted 10/14/10
- 17 Technical Review Committee Routing Memo dated October 8, 2010 from Amy Keenan
- 18 Determination of Completeness, August 2, 2010
- 19 Cover Letter, October 4, 2010 re: final, signed Stormwater Proposal for LAMIRD from Robert Carmichael, with Preliminary Stormwater Proposal, Jones Engineering, October 1, 2010 attached
- 20 Cover Letter, October 1, 2010 re: Preliminary Traffic Assessment, from Robert Carmichael, with Preliminary Traffic Assessment, TranspoGroup, October 1, 2010 attached
- 21 Whatcom County Rural Land Study: A Collaborative Report Identifying Rural Areas of Agricultural Significance, 2007
- 22 Cover Letter, September 30, 2010, from Robert Carmichael to Sam Ryan, no enclosures attached
- 23 Economic Land Use Classification for Whatcom County (1945) [excerpts]
- 24 Letter dated September 29, 2010 from Wetland Science Applications, Inc. to Robert Carmichael re: Comparison of Standard for Wetland Delineation
- 25 Email from Kate Blystone to reviewteam@commerce.wa.gov dated Jan 18, 2011 re: North Bellingham Rural Area
- 26 Department of Commerce: Notification for 60-Day Review
- 27 Cover Letter, dated May 20, 2011, from Simi Jain re: SEPA Checklist Updates, with enclosures: R5A proposal and TC proposal
- 28 PDS Application for Zoning Amendments, completed by Robert Carmichael
- 29 Memorandum, July 19, 2011, from Michael Bobbink to Parties of Record, re: Rezone of Caitac, SEPA Appeals, and Motions to Dismiss
- 30 SEPA Appeal, APL2011-0011/SEP2010-00085

- 31 SEPA Comments
 - 1 City of Bellingham letter, June 15, 2010
 - 2 Dept of Ecology letter, June 15, 2011
 - 3 Jori Burnett, email, June 2, 2011
 - 4 Robert Carmichael memo, June 21, 2011
 - 5 Robert Carmichael and Simi Jain letter, June 24, 2011, with Supplemental Environmental Information attached
 - 6 SEPA Distribution List, with DNS Notice, dated June 1, 2011 and SEPA Environmental Checklist, SEP2010-00085, attached
 - 7 Draft Development Agreement, R10A to R5A
 - 8 Preliminary Stormwater Proposal, October 14, 2010, Jones Engineers
 - 9 Preliminary Traffic Assessment, October 1, 2010, TranspoGroup
 - 10 Preliminary Traffic Assessment, April 5, 2011, TranspoGroup
 - 11 Comparison of Standard for Wetland Delineation, September 29, 2010, Wetland Science Applications, Inc.
 - 12 Wetland Delineation Report, June 30, 2003, MRM Consulting L.L.C.

Exhibits 32 thru 69, PLN2010-0025/SEP2010-00088/APL2011-00012 submitted to Hearing Examiner by Planning and Development Services

- 32 Letter dated May 13, 2011, from Simi Jain to Tyler Schroeder re: SEPA Checklist Updates
- 33 Draft Development Agreement/R10A to TC
- 34 Application for Zoning Amendment, R10A to R5A: Updates for SEPA Checklist submitted 7/20/10
- 35 Application for Zoning Amendment, R10A to TC: Updates for SEPA Checklist submitted 7/20/10
- 36 Draft R5A Development Agreement: Updates for SEPA Checklist submitted 10/14/10
- 37 Draft TC Development Agreement: Updates for SEPA Checklist submitted 10/14/10
- 38 Technical Review Committee Routing Memo dated October 8, 2010 from Amy Keenan
- 39 Determination of Completeness (PLN2010-00025), August 18, 2010
- 40 Letter from Sam Crawford, September 23, 2010 to Sam Ryan re: clarifying the intent of Council's September 14, 2010 Motion
- 41 Economic Land Use Classification for Whatcom County (1945) [excerpts]
- 42 Whatcom County Rural Land Study: A Collaborative Report Identifying Rural Areas of Agricultural Significance, 2007
- 43 Soil Survey of Whatcom County Area, Washington
- 44 1,000-foot property owners mailing labels, from Zender Thurston
- 45 Cover Letter, dated May 20, 2011, from Simi Jain re: SEPA Checklist Updates, with enclosures: R5A proposal and TC proposal
- 46 PDS Application for Zoning Amendments, completed by Robert Carmichael [PLN2010-00025]
- 47 Letter dated September 27, 2010 from Robert Carmichael and Simi Jain to Sam Ryan
- 48 Larrabee Springs Vicinity Map
- 49 Larrabee Springs Boundary and TOPO Map
- 50 Larrabee Springs LAMIRD Map
- 51 Parties with Legal Interest in Property
- 52 Property Owners within 300-feet
- 53 Customer Receipt, August 3, 2010
- 54 SEPA Checklist
- 55 Appeal Application, APL2011-0012/SEP2010-00088, filed by City of Bellingham, with Appeal Statement, from Mayor Pike, dated June 15, 2010 attached
- 56 SEPA 2010-00088 City of Bellingham: Index Description
 - 56-2 Excerpt: Chapter 4: Elements of the Built Environment – 2004 Final EIS-Bham UGA, Urban Fringe Area
 - 56-3 Excerpt: Bham UGA – Five Year Review Areas and Property Owner Requests, 2006 Bham Comprehensive Plan EIS
 - 56-4 Excerpt: Chapter 3: Transportation , Bham Comp Plan
 - 56-5 Arterial Streets 101, Public Works/Engineering, Transportation Section –July

- 2000
 - 56-6 Certificates of Ground Water Rights (12/13/1963
 - 56-7 Waterbody Quality Assessment Reports, EPA, 2004
 - 56-8 Waterways and Sub-basin Maps
 - 56-9 Excerpt: Bham Parks, Recreation & Open Space Plan
- 57 Robert Carmichael and Simi Jain memo, June 21, 2011 to Tyler Schroeder DNS comments for SEP 2010-0085 and 2010-0088
 - 58 City of Bham SEPA Comments, June 15, 2010
 - 59 Dept of Ecology SEPA Comments, June 15, 2011
 - 60 Jori Burnett, City of Ferndale SEPA Comments, 6/2/2011 with attached SEPA Distribution List, SEP2010-00088, DNS Notice of SEPA Determination, June 1, 2011, SEPA Checklist, and Legal Notice, dated for publication 6/01/10
 - 61 Wetland Delineation Report, June 30, 2003, MRM Consulting L.L.C.
 - 62 Comparison of Standard for Wetland Delineation, letter dated September 29, 2010, from Wetland Science Applications, Inc. to Robert Carmichael
 - 63 Preliminary Stormwater Proposal for LAMIRD at Larrabee Springs, September 29, 2010, Jones Engineers
 - 64 Addendum to LAMIRD at Larrabee Springs: Preliminary Stormwater Proposal, October 14, 2010, Jones Engineers
 - 65 Draft Development Agreement / R10A to TC
 - 66 Vicinity Map
 - 67 Wetland Delineation of Potential Limited Area of More Intensive Rural Development (“LAMIRD”) and Proposed Caitac Tourist Commercial Rezone, prepared by Charles Newling, Wetland Science Applications, Inc., 01/11/2011
 - 68 Cover Letter, October 1, 2010 from Robert Carmichael to Sam Ryan with enclosed Preliminary Traffic Assessment, memorandum dated October 1, 2010, from TransporGroup
 - 69 Memorandum dated April 5, 2011 from TranspoGroup to Robert Carmichael, re: Preliminary Traffic Assessment – Larrabee Springs
 - 70 Pre-hearing Memorandum, prepared by Robert Carmichael, dated September 27, 2011
 - 71 Email, from Gary Davis, dated Sept 28, 2011 re: attached staff memo
 - 71- 1 Memorandum to Whatcom County Planning Commission from Roxanne Michael and Gary Davis, dated September 20, 2011 re: Caitac USA Rezones
 - 72 Final Draft Development Agreement, R10A to R5A, as approved by Planning Commission, September 22, 2011
 - 73 Final Draft Development Agreement, R10A to TC, as approved by Planning Commission, September 22, 2011
 - 74 Written copy of Mr. Carmichael’s Slide Presentation
 - 75 Written copy of Mr. Marriner’s comments, letter dated September 28, 2011, to Michael Bobbink, with attachments
 - Exhibit A Letter dated September 8, 2011 from Mayor Dan Pike to County Planning Commission
 - Exhibit B Letter dated June 15, 2010 from Mayor Dan Pike to Tyler Schroeder, PDS
 - Exhibit C Memo, September 20, 2011 to County Planning Commission from Roxanne Michael and Gary Davis, PDS-Long Range Planning
 - Exhibit D Washington State Dept of Ecology, Kasey Ignac Letter dated June 15, 2011 to Tyler Schroeder, re: SEPA 2010-0088
 - 76 City of Bellingham Street Section Standards, Secondary or Principal Arterial Drawing submitted at hearing
 - 77 Supplemental materials re: water rights (submitted to Planning Commission 9/13/2011
 - 77-1 Memo to file, Robert Carmichael, 9/13/2011
 - 77-2 Materials re: Ground Water Certificate 4878
 - 77-3 Materials re: Ground Water Certificate 4702
 - 77-4 Materials re “Barn Well”

- 77-5 Memo re: Larrabee Springs annual water budget, Darcy Jones, 9/8/2011
- 77-6 Letter to Tyler Schroeder re: DNS Comments received by Planning Dept, from Robert Carmichael and Simi Jain, 6/21/2011
- 77-7 Rainwater collection information
- 78 Colored aerial site map
- 79 Email from Gary Davis, October 6, 2011 with attached Planning Commission findings and recommendations for the two rezone applications
- 80 Email memo from Bob Carmichael to Hearing Examiner, et al, October 12, 2011 re: Caitac Development Agreement Exhibits

The following Exhibits were prepared for the Open Record Hearing held August 17, 2011, on the Motions to Dismiss SEPA Appeals, SEP2010-00085 / APL2011-00011/ PLN2010-0024 and SEP2010-00088 / APL2011-00012 / PLN2010-0025. Applications submitted by Caitac, USA, Corporation. SEPA Appeals filed by the City of Bellingham. Hearing Examiner Decision on Motion to Dismiss, appealed to Whatcom County Council

- 1 Motion to Dismiss City of Bellingham's Appeal of Determinations of Non-Significance, brief prepared by Robert Carmichael, dated August 3, 2011, with attachments
 - 1-1 Declaration of Robert A. Carmichael in Support of Motion to Dismiss, dated August 2, 2011
 - 1-2 Declaration of Tyler Schroeder in Support of Motion to Dismiss, dated July 19, 2011
 - 1-3 Declaration of J.E. "Sam" Ryan in Support of Motion to Dismiss, dated July 19, 2011
 - 1-4 Declaration of Karen Reich in Support of Motion to Dismiss City of Bellingham's Appeal of Determinations of Non-Significance, dated August 3, 2011
 - 1-5 Declaration of Service, August 3, 2011
- 2 City of Bellingham's Motion to Dismiss, brief prepared by Alan Marriner, dated August 3, 2011, with attachments
 - 2-4 Declaration of Alan A. Marriner, dated August 3, 2011
 - 2-5 Certificate of Service, August 3, 2011
 - 2-6 Cover letter from Stephanie Landers, dated August 3, 2011
- 3 Response to City of Bellingham's Motion to Dismiss, submitted by Robert Carmichael, 08/12/2011, with attachments
 - 3-4 Declaration of Service, August 12, 2011
 - 3-5 Case Law
- 4 Declaration of Barbara Dykes, dated August 11, 2011, with attached Growth Management Hearings Board, Western Washington Region, State of Washington: C. Dean Martin, v Whatcom County, Final Decision and Order, Case No. 11-2-0002
- 5 Second Declaration of Alan Marriner, dated August 12, 2011
- 6 City of Bellingham's Response to Caitac's Motion to Dismiss, submitted by Alan Marriner, dated August 12, 2011
- 7 Certificate of Service [Exhibits 4, 5, 6 above], August 12, 2011 from Stephanie Landers, City of Bellingham
- 8 Declaration of Jennifer Paulson, dated August 16, 2011
- 9 Declaration of Dana Brown-Davis, dated August 16, 2011

II.

On September 28, 2011, the Whatcom County Hearing Examiner conducted an open record hearing on two proposed Development Agreements, submitted by Caitac USA, Corporation.

Such agreements are authorized pursuant to RCW 36.70B.170 through 30.70B.210. WCC 20.92.850 (1) and (2) require the Whatcom County Hearing Examiner to hold an open record public hearing on proposed Development Agreements and make a recommendation, based on the record established, to the Whatcom County Council, for approval or disapproval.

III.

Prior to the open record public hearing on the Development Agreements, the Whatcom County Planning Commission approved a recommendation to the Whatcom County Council that the Council approve the requested rezones.

A separate Development Agreement is directly associated with each of the proposed zoning changes. One of the agreements relates to approximately 550-acres, which is proposed to be rezone from R10A to R5A. The other is proposed for an approximately nine-acre parcel which the Applicants have requested to be rezoned from Rural to Tourist Commercial. The Tourist Commercial designation is a "LAMIRD," as described in RCW 36.70A.070(5)(d)(ii).

The draft proposed Development Agreements are attached to this recommendation. Both the Applicant and the Technical Committee have recommended approval of the Development Agreements. These Development Agreements are a result of detailed negotiations between Whatcom County Planning and Development Services, the Technical Committee, and the Applicant over approximately one year.

Changes in the draft Development Agreements as proposed prior to the open record hearing are incorporated into the attached draft Development Agreements. The attached agreements represent the final agreed draft.

Changes made to the agreements during the open record process included identifying a specific connection between the proposed arterial onsite and the road system to the south, which is within the City of Bellingham. Changes were made in the actual construction standards to further facilitate roads which could be easily modified to meet City road standards should the property be annexed. The southern boundary of the property is the City limits of Bellingham and the property has been discussed as a potential Urban Growth Area in prior zoning work undertaken pursuant to the Growth Management Act. These changes should meet concerns raised by the City regarding the proposed arterial road width, while still allowing the current proposed road to be consistent with the proposed Rural Five Acre zoning.

An additional change in the proposed Development Agreements includes language requiring the Cluster development within the Rural Five Acre portion to leave 90% in the open space reserve area, except for public and private arterials and roads, stormwater ponds, water tanks, water lines, septic, drainfield and wastewater infrastructure and other utilities which can be placed within the 90% reserve area. In any case, a minimum of 75% of the parcel zoned Rural must be left in open space.

IV.

The agreement requires Clustered development. Cluster development is favored by the Comprehensive Plan and is required in the Agricultural Protection Overlay. However this property does not contain sufficient high-grade agricultural soils to be included within the Agricultural Protection Overlay and clustering would not be required but for the Agreement.

The use of clustering will maintain the rural appearance of this large section of property until such time as it is rezoned or annexed into the City.

V.

The nine-acre parcel proposed to be amended from R10A to Tourist Commercial allows construction of up to an 80-unit hotel, plus additional 5,000-square feet of commercial space within the rezoned property. The rezoned property will also contain the current clubhouse and pro shop associated with the existing golf course on site.

VI.

Future proposed residential development and/or commercial development on the rezoned sections of the site will be subject to permit review and further State Environment Policy Act (“SEPA”) Review.

VII.

The City of Bellingham requested the Hearing Examiner consider recommending establishment of a 300-foot open space buffer on the north end of the property. The buffer issue was considered by the Planning Commission which decided to forward the Rezone and Map Amendment proposals without conditions.

The northern portion of the property abuts Smith Road. The property across Smith Road from the subject property is zoned Rural Five Acre.

A large portion of the northern property cannot be developed because of critical areas and the buffers associated with Larrabee Springs, or because it is part of the existing golf course, which will remain in the reserve area.

In general, buffers are not required or needed between properties with the same zoning designation and the Hearing Examiner is not recommending requiring an open space buffer on the northern portion of the property. The Clustered development will ensure significant open space in all areas of the Rural zoned property.

VIII.

The Hearing Examiner finds that the proposed Development Agreements allow future development consistent with the *Whatcom County Comprehensive Plan and Zoning Ordinances* if the properties are rezoned from R10A to R5A and Tourist Commercial, as recommended by the Whatcom County Planning Commission.

IX.

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

CONCLUSIONS OF LAW

I.

The proposed Development Agreements are allowed pursuant to the requirements of RCW 36.70B. The attached proposed agreements are consistent with the requirements of RCW 36.70B.

II.

The proposed Development Agreements allow specific uses which are permitted in the zoning designations covered by each agreement and should result in development consistent with the *Whatcom County Comprehensive Plan*. The future development will be subject to permit review and further SEPA review.

The Hearing Examiner should recommend to the Whatcom County Council that the Council approve the attached draft Development Agreements if the Council approves the proposed Rezones and Map Amendment.

III.

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

RECOMMENDATION

The Whatcom County Hearing Examiner recommends that the Whatcom County Council approve the attached Development Agreements.

DATED this 14th day of October 2011.

Michael Bobbink, Hearing Examiner