

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2010-0016
Application for)
) FINDINGS OF FACT,
Gulf Aire, LTD / Kenneth Taves) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to expand a nonconforming use, proposing to decrease the open space of an existing nonconforming Mobile Home Park, Gulf Aire, from 11.42 acres to eight acres

Decision: The requested Zoning Conditional Use Permit is approved, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

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

I

Applicant: Gulf Aire, LTD and Kenneth Taves

Site Location/Address: 1721 Benson Road
Point Roberts, Washington

Legal Description: Lot A of the Amended Gulf Aire Short Plat, AFN 2030406172

Assessor's Parcel Number(s): 405303 425230

Zoning: Transitional Zone (TZ)

Comprehensive Plan: Resort/Recreational Subdivisions

Subarea: Point Roberts Subarea

Total Acreage: Approximately 11.42 acres

Roads: Private internal roads

Water Supply: Whatcom County Water District No.4

Sewage Disposal: Onsite septic system

Fire Protection: Whatcom County Fire District No. 5

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Blaine School District #503

Topography: The site is described as mostly level with a lower area of wetlands on the southern portion of the property.

Vegetation: The western portion of the site is vegetated with pasture grasses and the remainder of the site has scattered shrubs, trees, and grassy areas.

Adjacent Land Uses: North: Residential
East: Forested/Residential
South: Forested/Residential
West: Residential

SEPA: Determination of Non-significance, issued February 22, 2011

Legal Notices: Posted – April 28, 2011
Mailed – January 6 and April 15, 2011
Published – January 6, March 24 [revised application], May 5, 2011

Hearing Date: May 18, 2011

Parties of Record:

Ken Taves
PO Box 2031
Point Roberts, WA 98281

Jesse Stoner
1629 Fruitland Drive
Bellingham, WA 98226

Mary Elizabeth Hoffman
1721 Benson Road, Unit 203
Point Roberts, WA 98281

Amy Keenan
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Fee Responsibility
 - 1-2 Agent Authorization
 - 1-3 PDS Fee Form
 - 1-4 Determination of Complete Application, December 21, 2010
 - 1-5 PDS Form Letter, Notice of Application to Property Owners
 - 1-6 Property Owner Mailing Labels
 - 1-7 Staff Scheduling Email Correspondence
 - 1-8 Application Tracking Form
 - 1-9 Hearing Examiner Checklist Forms: April 4, 19, and May 4, 2011
- 2 Staff Report, dated May 18, 2011
- 3 Agency Comments
- 4 Public Comments
- 5 DNS, dated February 22, 2011, with Checklist and Distribution attached
- 6 Preliminary Stormwater Proposal
- 7 Revocable Encroachment Permit Application
- 8 Whatcom County Land Disturbance and Clearing Application
- 9 Preliminary Traffic and Concurrency Information
- 10 Statutory Warranty Deed Information
- 11 Legal Notice of Application, January 6, 2011
- 12 Revised Legal Notice of Application, March 24, 2011
- 13 Certificate of Mailing, Notice of Application, January 6, 2011

- 14 Certificate of Mailing, Notice of Public Hearing, April 15, 2011
- 15 Certificate of Posting, Notice of Public Hearing, April 28, 2011
- 16 Legal Notice of Public Hearing, May 5, 2011
- 17 Email correspondence between Mary Elizabeth Hoffman and Ken Taves, dated May 13, 2011, with attached Letter dated May 17, 2011 from Whatcom County Health Department to Gulf Aire, LTD, re: 1721 Benson Road, Unit 203, Tax Parcel 405303-425230

II

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff report, Exhibit #2, dated May 18, 2011, a copy of which is attached hereto and incorporated herein by this reference.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to any of the Conditions of Approval requested by Staff.

One of the tenants in the Gulf Aire Mobile Home Park submitted comments [Hearing Examiner Exhibit No. 17] at the public hearing. Other public comments on this matter were submitted to Planning Staff and were addressed in the Staff Report, Hearing Examiner Exhibit No. 2, dated May 18, 2011.

III

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

CONCLUSIONS OF LAW

I

The proposed expansion of a nonconforming Mobile Home Park by decreasing its open space from 11.42 acres to 8-acres can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (2 through 8). Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Zoning Conditional Use Permit should be granted, subject to conditions.

II

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

A Zoning Conditional Use Permit is hereby granted to Gulf Aire, LTD/Ken Taves for the proposal to decrease the open space of the existing non-conforming Gulf Aire Mobile Home Park from 11.42-acres to 8-acres, located on Assessor's Parcel No.405303 425230, 1721 Benson Road, Point Roberts, Washington, subject to the following conditions:

1. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Hearing Examiner.
2. Archaeological Findings: Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
3. Right to Farm: Pursuant to WCC, Title 14, the owners of the property upon which this conditional use permit approval is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on forms provided by Whatcom County, which shall then be recorded in the Whatcom County Auditor's office.

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

4. The Applicant shall comply with all of the conditions of the Critical Areas Administrator, as outlined in the memorandum, dated January 5, 2011, unless modified by the Critical Areas Administrator or appealed to the appropriate agency.
5. Prior to final approval per WCC16.16.265.C, the critical areas and required buffer located on the site shall be protected using one of the following mechanisms:
 - a. Placed in a separate tract or tracts owned in common by all lots within a subdivision;

- b. Covered by a protective easement, or public or private land trust dedication; or
 - c. Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as designation of a separate tract or tracts as determined by the County Technical Administrator and agreed to by the Applicant or Appealed to the Hearing Examiner.
6. The Applicant shall record the Conservation Easement or other protective covenant prior to or at the time of mylar recording.
 7. The Applicant shall seek Whatcom County Health Department (WCHD) review of the septic system for any change of use or expansion of its septic system.
 8. The Applicant shall complete construction or, if no construction is contemplated as a part of this permit, shall demonstrate compliance with all of the conditions of this permit within 24 (twenty-four) months of the date of the issuance of this decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this permit. Substantial progress toward completion may satisfy the terms of this condition if approved by Whatcom County Planning & Development Services and the Hearing Examiner. The applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion or compliance. An extension shall be granted if the Hearing Examiner finds that the applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning & Development Services before granting any extension.

NOTICE

This approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing.

Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

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

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

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

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office.

After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 24th day of May 2011.

Michael Bobbink, Hearing Examiner



WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

Hearing Date: May 18, 2011

The application of Gulf Aire LTD for a Zoning Conditional Use Permit		CUP2010-00016 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary: The applicant is requesting a zoning Conditional Use Permit for the expansion of a non-conforming use. The applicant proposes to decrease the open space of an existing non-conforming Mobile Home Park (Gulf Aire) from 11.42 acres to 8.00.

Recommendation: The Technical Review Committee recommends approval of the the request.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

<u>Applicant:</u>	Gulf Aire LTD Ken Taves PO Box 2031 Point Roberts, WA 98281
<u>Site Location/Address:</u>	1721 Benson Road, Point Roberts
<u>Legal Description:</u>	Lot A of the Amended Gulf Aire Short Plat, AFN 2030406172
<u>Assessor's Parcel Number(s):</u>	405303 425230
<u>Zoning:</u>	Transitional Zone (TZ)
<u>Comprehensive Plan:</u>	Resort/Recreational Subdivisions
<u>Subarea:</u>	Point Roberts Subarea
<u>Total Acreage:</u>	Approximately 11.42 acres

<u>Roads:</u>	Private internal roads
<u>Water Supply:</u>	Whatcom County Water District #4
<u>Sewage Disposal:</u>	Onsite septic system
<u>Fire Protection:</u>	Whatcom County Fire District No. 5
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Public Schools:</u>	Blaine School District #503
<u>Topography:</u>	The site is described as mostly level with a lower area of wetlands on the southern portion of the property.
<u>Vegetation:</u>	The western portion of the site is vegetated with pasture grasses and the remainder of the site has scattered shrubs, trees, and grassy areas.
<u>Adjacent Land Uses:</u>	<u>North:</u> Residential <u>East:</u> Forested/Residential <u>South:</u> Forested/Residential <u>West:</u> Residential
<u>SEPA Review:</u>	Determination of Non-significance issued February 22, 2011.

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

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

III. APPLICATION PROPOSAL

The applicant, Gulf Aire, LTD has applied for a conditional use permit for the expansion of a non-conforming use (CUP2010-00016) to decrease the open space for the existing 23 space non-conforming Gulf Aire Mobile Home Park from 11.42 acres to 8.00 acres. The number of mobile home spaces will remain unchanged. The applicants have also applied for a short subdivision (SSS2009-00014) to create one 3.42 acre lot and one 8.00 acre lot on the exiting 11.42 acre site.

The purpose of this conditional use permit is to reduce the density of the open space to allow for this future subdivision which will consist of one single-family residence. The future subdivision is not the subject of this proposal.

IV. SITE DESCRIPTION

The subject property is located at 1721 Benson Road in Point Roberts, which is in Section 3, Township 40, Range 3 West W.M. in Whatcom County, WA. The site is generally located on the south side of Benson road approximately half way between Tyee Road and South Beach Road.

There are 23 mobile homes and associated garages and outbuildings located on the northeastern portion of the site. The northwestern portion of the site is primarily characterized by mowed grass. A storage building, permitted by CUP2004-00022, exists on the parcel and there are several recreational vehicles and boats stored in the open field.

The southern portion of the site includes four wetlands and associated buffers. The vegetation includes areas of trees and shrubs interspersed with grassy areas.

Neighboring properties zoning:

North: Rural 5

East: Rural 5

South: Rural 5

West: Rural 5

V. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in Chapter 2.33 WCC.

Notice of Application: The Notice of Application for this proposal was published on January 6, 2011. The fifteen (15) day comment period ended on January 21, 2011.

Pursuant to WCC 20.84.235(2), Notices were mailed on February 6, 2011 property owners whose property boundaries lie within 1000 feet of the subject property.

Notice of Public Hearing: The Notice of Public Hearing for this application was

published in a one-time newspaper publication in the Bellingham Herald.

Public Comments:

During the public comment period the County received written and verbal comments in opposition of the proposal. A summary of the concerns and staff's response is outlined below:

- Opposition to the mobile home park

There were several discussions regarding the proposed CUP. However, most concerns were with regard to expanding the mobile home park. The proposal is not for actual expansion of the number of units for the mobile home park nor for an increase in storage or other associated mobile home park use. The CUP is for an expansion to the nonconforming use to decrease the amount of open space to allow a future short subdivision.

VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project. Whatcom County codes and regulations adequately mitigate for these anticipated environmental impacts. Therefore, a Determination of Non-Significance (DNS) is the appropriate threshold determination for this project. The DNS was issued on February 22, 2011 and no appeals were filed.

VII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS

A. Roads and Bridges (WCC Chapter 12.08)

WCC Chapter 12.08 adopts and gives authorization for development standards for development within Whatcom County. Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as "Whatcom County development standards" and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with county regulations.

The Whatcom County Public Works Engineer Department reviewed the proposal and had no conditions to add to the approval of the conditional use permit. Conditions will be added to the short plat approval as appropriate.

The Technical Review Committee has determined that the project meets the requirements of WCC Chapter 12.08.

B. Fire Code (WCC Title 15)

WCC Title 15 adopts and amends the applicable fire codes. The Fire Marshal is authorized to promulgate such rules, policies and/or procedures as deemed necessary for safety, designated in IBC Section 103.1, and hereby referred to as the Office of the Fire Marshal.

The Whatcom County Fire Marshal submitted a memo dated April 6, 2011. The Fire Marshal has reviewed the project and has no comments or conditions.

The Technical Review Committee has determined that the project meets the requirements of WCC Title 15.

C. Critical Areas (Title 16)

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

The following wetland reports were submitted and reviewed:

- Wetland Delineation from Northwest Ecological Services, LLC. dated August 2009.

The above Conditional Use Permit was been routed to critical areas staff in conformance with WCC16.16. A wetland delineation was previously submitted as part of the review process for SSS2009-14. Wetlands and habitat conservation areas are located on the parcels. A site inspection was made to verify the delineation. Critical areas staff concur with the wetland delineation.

The critical areas technical administrator reviewed and approved the wetland report on January 5, 2011. Four wetlands and associated buffers exist on site. Please see the following table for the type and buffer widths for each wetland.

Critical Areas Categories and Buffers

Wetland	Category	Buffer Width
Wetland 'A'	IV	50
Wetland 'B/D'	IV	50
Wetland 'C'	IV	50

Information was also submitted regarding the location of the proposed OSS systems and reserve areas for the above project. A portion of one OSS is proposed within the outer edge of a critical area buffer. However, this area is currently mowed lawn so the installation of the OSS will be a temporary impact and no mitigation will be required. A portion of the communal reserve is proposed within the buffer of a critical area. At this time, mitigation will not be required. However, if at any time in the future the reserve area must be utilized for the OSS, mitigation will be required. Also any critical area impacts resulting from the installation of a driveway within the easement located along the west property line will required the submission of a mitigation plan.

There are no critical area impacts proposed with this subdivision. The proposal has received critical area approval.

The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 16.16.

D. Transitional Zone Use and Site Requirements (WCC Chapter 20.37)

Pursuant to WCC 20.37, a mobile home park is not permitted, nor is it allowed as an accessory use or by a conditional use permit. However, WCC 20.80.950 allows mobile home parks subject to several criteria and establishes density requirements.

The mobile home park was established in 1972 under the General Protection (GP) zone. In 1990 the site became non-conforming with the adoption of the Point Roberts Subarea. In 1990 the zoning of the site was R5. The current zoning of the site is Transitional (TZ).

In 2004 the applicant, Ken Taves, submitted a conditional use permit (CUP) to allow the use of two existing buildings and 340 square feet of new construction to provide additional storage space for the existing nonconforming mobile home park. The Whatcom County Hearing Examiner approved the CUP on May 10, 2005, subject to several conditions of approval.

The applicant has also applied for an additional CUP and a binding site plan (BSP). These additional permits were either denied or have expired. Today, the non-conforming use consists of a 23 unit mobile home park and associated storage space.

Per WCC 20.83.020 an expansion of a nonconforming use must meet the requirements of the zone, with the exception of the use regulations.

WCC 20.37.251 Minimum lot size and density requirements.

For the purpose of creating new building lots within the Transitional Zone District, two options are provided for calculating land use densities. The minimum building lot size and maximum density requirements for new

construction vary according to the method of subdivision and whether or not public water and/or sewer are available to serve the site.

(1) Where the conventional subdivision method is used to create new building lots, the minimum lot size shall be five acres.

(2) The cluster subdivision method shall only be used to create new building lots if a permanent "open space reserve area" meeting the requirements of WCC [20.37.321](#) and [20.37.322](#) is created as part of the subdivision. The minimum building lot size for a cluster subdivision with public water shall be 12,500 square feet and the minimum building lot size for a cluster subdivision with public water and public sewer shall be 5,000 square feet.

WCC 20.37.253 Minimum lot size and maximum density.

District	Gross Density	Minimum Lot Size		Min. Reserve Area (Cluster Subdivisions)
		Conventional	Cluster	
A cluster subdivision with public water and a permanent open space reserve area	1 dwelling unit/ 1 acre	N/A	12,500 sq. ft.	50%

Although the applicants are not requesting to subdivide the mobile home park through the conditional use permit process the applicants are requesting approval to reduce the acreage dedicated to open space and subsequently complete a short subdivision (SSS2009-00014).

Although the mobile home park has been determined to be non-conforming, there is criteria in the code for mobile home parks with regard to density and open space. Per WCC 20.80.900(2)(b) A maximum density of three lease spaces per acre are allowed when public water and sewer are not provided. Water is provided to the site by Whatcom County Water District #4, however no sewer is provided to the site. The applicants have 23 existing mobile home units which would require a minimum of 7.67 acres. The applicants are proposing the site be reduced from 11.42 acres to 8 acres, which is greater than the minimum required. Therefore, the proposal to reduce the density of the mobile home park will not make the site more non-conforming. The proposal complies with Whatcom County codes and regulations and will continue to comply with the recreational vehicle park standards of WCC 20.80.950.

WCC 20.80.900(8) also requires mobile home parks keep at least 40 percent of the site free of buildings, structures, parking areas and other impervious

surfaces. By reducing the mobile home park parcel from 11.42 acre to 8 acres the applicants will be reducing the amount of open space. The applicant has provided information stating that even after the short subdivision the mobile home park parcel will retain 8 acres with approximately 6.37 acres of open space which meets the requirements of WCC 20.80.900(8).

Utilizing the density and open space requirements in the WCC 20.80.900 the site is consistent with WCC Title 20.

WCC 20.37.254 Minimum lot width and depth.

District	Width at Street Line		Width at Bldg. Line	Minimum Mean Depth
	Conventional	Cluster		
A cluster subdivision with public water, an open space reserve area, and/or public sewer	N/A	30'	60'	100'

No portion of the parcel will be reduced by the proposed conditional use permit. Minimum lot width and depth requirements will be reviewed at the time of the short subdivision.

WCC 20.37.350 Building setbacks.

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

No building setbacks will be reduced through the proposed conditional use permit. Building setbacks will be reviewed at the time of the short subdivision or building permit submittal as appropriate.

WCC 20.37.400 Height limitations.

Maximum height shall be limited to 25 feet. Height of structures shall also conform, where applicable, to the requirements of WCC [20.80.675](#), [20.72.400](#), and the provisions of the Shoreline Management Program, whichever is more restrictive.

There will be no increases in height through this conditional use permit. Height limitations will be reviewed at the time of building permit submittal.

WCC 20.37.450 Lot coverage.

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

After the reduction of the parcel from 11.42 acres to 8 acres approximately 6.37 acres will remain free from buildings, structures, parking areas and other impervious surfaces.

WCC 20.37.651 Use of natural resources.

All discretionary project permits for land on or within one-half mile of an area designated as Rural or within 300 feet of an area upon which farm operations are being conducted shall be subject to the right to farm, right to practice forestry and mineral land disclosure policies contained in WCC Title [14](#), Use of Natural Resources.

As conditioned, the applicants will be required to record a notice to title including the right-to-farm disclosure.

WCC 20.37.653 Parking requirements.

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

There are two parking spaces for each mobile home unit and additional spaces near the rental office.

WCC 20.37.654 Livestock regulations.

The keeping of livestock shall be administered pursuant to WCC [20.80.800](#).

There are no livestock as part of the proposal.

WCC 20.37.655 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 requirements of this title and Chapter 2 of the Whatcom County Development Standards.

The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.37.

E. Transportation Concurrency (WCC Chapter 20.78)

WCC Chapter 20.78 gives authority to ensure adequate transportation facilities are available or provided concurrent with development.

The Engineering Division determined that an Engineered Traffic Study would not be required since the proposed project is an existing mobile home park and there will be no additional traffic generated. Since a traffic study is not required, the proposed development will not result in an "impacted transportation facility" per WCC 20.78.030(5) and therefore, will not require a transportation concurrency evaluation.

The Technical Review Committee has determined the project is exempt from the requirements of WCC Chapter 20.78.

F. Compliance with WCC 20.83.020

WCC 20.83.020 Expansion of nonconforming use.

(1) Nonconforming uses may be extended throughout any building partially occupied by such use at the time of passage of the ordinance codified in this section, except for nonconforming adult businesses, which shall not be extended to other parts of the building.

(2) The expansion of a nonconforming use by addition or enlargement shall require a conditional use permit, except for nonconforming adult businesses, which shall not be expanded. The expansion must be on the parcel as it existed at the time the use became nonconforming and the use shall not expand on adjacent parcel(s). The expansion shall be approved if it is consistent with the applicable zoning regulations except the use restrictions and complies with WCC [20.84.220](#)(2) to (8).

It has been previously determined that the existing mobile home park is nonconforming. The proposal to reduce the amount of open space on the site is an expansion of the nonconforming nature of the mobile home park. The proposal must be consistent with the applicable zoning regulations and the comply with WCC 20.84.220(2) through (8).

The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.83.

G. Compliance with WCC 20.84.200 & WCC 20.84.220 Criteria

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

Per WCC 20.83.020 an expansion of a nonconforming use must be consistent with WCC 20.84.220(2) through (8).

(2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.

The existing 23 unit mobile home park has been located at this site since 1972 and as such as become part of the character of the area. The site is buffered with mature forest on the eastern and southern portion and has residential landscaping throughout the mobile home area.

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

The mobile home park is an existing use which has been in the neighborhood since 1972. The site is not hazardous or disturbing to the existing neighbors, and as there will be no increase in the number of units there is unlikely to be in impact to future neighbors.

(4) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

The site is existing and is already utilizing public facilities. There will be no change to any of these public facilities with the approval of this CUP.

(5) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.

As stated before, the site is existing and already utilizing public facilities and services. There will be no increase in the use of these facilities with the approval of this CUP.

(6) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.

The site is currently used for residential purposes. The use and intensity of those uses will not be altered with the approval of the CUP. No uses or activities will be detrimental to the general welfare of the neighborhood.

(7) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.

The existing access has been reviewed by Whatcom County Public Works – Engineering and has been approved. No additional improvements will be necessary through the approval of the CUP.

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

The mobile home park is an existing use with no additional development planned. The site does not impact natural, scenic or historic features.

The Technical Review Committee finds the proposal as conditioned, will comply with WCC 20.80.200 and WCC 20.84.220.

H. Health Code (Title 24)

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

The Whatcom County Health Department submitted a memo dated January 19, 2011 with the following comments.

Water:

The project is to be served by the Point Roberts Water District #4.

Sewage:

Any change of use or expansion will require the Whatcom County Health Department (WCHD) to review the septic system.

The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 24.

VIII. RECOMMENDATION

The Technical Review Committee has determined that subject to the following proposed conditions, the proposed expansion of a nonconforming use complies with applicable Whatcom County regulations.

As stated above, the Technical Review Committee recommends approval of the CUP subject to the following conditions:

IX. CONDITIONS OF APPROVAL

A. Planning Division

1. The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Archaeological Findings: Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
3. Right to Farm: Pursuant to WCC, Title 14, the owners of the property upon which this conditional use permit approval is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on forms provided by Whatcom County, which shall then be recorded in the Whatcom County Auditor's office.

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

B. Critical Areas

1. The applicant shall comply with all of the conditions of the Critical Areas Administrator in the memo dated May 14, 2009, unless modified by the Critical Areas Administrator or appealed to the appropriate agency.
2. Prior to final approval per WCC265(C), the critical areas and required buffer located on the site shall be protected using one of the following mechanisms:

- a. Placed in a separate tract or tracts owned in common by all lots within a subdivision;
 - b. Covered by a protective easement, or public or private land trust dedication; or
 - c. Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as designation of a separate tract or tracts as determined by the county technical administrator or hearing examiner.
3. The Conservation Easement or other protective covenant must be recorded prior to or at the time of mylar recording.

C. Health Department

1. Any change of use or expansion will require the Whatcom County Health Department (WCHD) to review the septic system.

Report prepared for the Technical Review Committee by:

Amy Keenan, AICP
Senior Planner