

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) CUP2011-0002
Application for )
) FINDINGS OF FACT,
James Lohse ) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting Zoning Conditional Use Permit Approval to operate a commercial business as a cottage industry, composed of two parts: "garden weddings" and "business retreats" on a 4.23 acre parcel, where the Applicant resides. The Applicant proposes to host 30 wedding events, yearly, any weekend during May through September, with up to 150 guests. Business Retreats are proposed to be held in the wedding "off-season," October through April, with up to 20 participants at each event.

Decision: The Whatcom County Hearing Examiner grants the Applicant a Zoning Conditional Use Permit in order to conduct garden weddings and business retreats on the nine acres of contiguous land currently owned by the Applicant and addressed as 4566 Anderson Way, Bellingham, Washington 98226, 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: James R. Lohse

Site Location/Address: 4566 Anderson Way
Bellingham, Washington 98226

Legal Description: A tract of land lying within the southeast quarter of Section 3, Township 38 North, Range 3 East, W.M., Whatcom County, WA. (Please see the deed for a complete legal description.)

Assessor's Parcel Number(s): 380303 245110

Zoning: Rural (R5A)

Comprehensive Plan: Rural

Subarea: Urban Fringe

Total Acreage: 4.23 acres

Roads: Private

Water Supply: Private Well

Sewage Disposal: On-Site Sewage System (OSS)

Fire Protection: Whatcom County Fire District No. 4

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Mt. Baker School District No. 501

Topography: Developed portions of the parcel are relatively flat, with undeveloped portions sloping gently into a large pond.

Vegetation: The vegetated portions of the site include mostly lawn, grassy areas, shrubs, and a few coniferous trees.

Adjacent Land Uses: North: R5A - Single-family residences  
East: R5A - Single-family residences  
South: R5A - Single-family residences  
West: R5A - Single-family residences

Easements: Easements for ingress egress, and easement for on-sewage drainfield on the neighboring property owned by Paul and Connie Hill.

AUTHORIZING CODES, POLICIES, PLANS, AND PROGRAMS:

Revised Code of Washington (RCW) Chapter 36.70

Revised Code of Washington (RCW) Chapter 58.17

Whatcom County Comprehensive Plan

Whatcom County Code, Title 2, Chapter 2.33 – Permit Review Procedures

Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance

Whatcom County Code, Title 14, Use of Natural Resources

Whatcom County Code Chapter 12.08, Development Standards  
Whatcom County Code Chapter 15, Building Code/Fire Code  
State Environmental Policy Act (SEPA); Washington Administrative Code Chapter 197-11, Whatcom  
County Environmental Policy Administration Chapter 16.08  
Whatcom County Code Chapter 16.16, Critical Areas  
Whatcom County Code, Title 17 – Flood Damage Prevention Code  
Whatcom County Code, Title 23 – Shoreline Management Program  
Whatcom County Code Title 24, Health Regulations

Legal Notices: Mailed – Notice of Application: April 13 and March 30, 2011  
Notice of Public Hearing: June 15, 2011  
Published – Notice of Application: March 30, 2011  
Notice of Public Hearing: July 7, 2011  
Hearing Date: July 20, 2011

Parties of Record:

James R. Lohse  
4566 Anderson Way  
Bellingham, WA 98226

Mark Lee  
Brownlie Evans Wolf & Lee, LLP  
230 East Champion Street  
Bellingham, WA 98225

Paul and Connie Hill  
4570 Anderson Way  
Bellingham, WA 98226

Dirk Petty  
1376 Van Wyck Road  
Bellingham, WA 98226

Dale Andert  
1399 Van Wyck Road  
Bellingham, WA 98226

Adrian Wolfe  
1414 Van Wyck Road  
Bellingham, WA 98226

Paul Vautaux  
4626 Van Wyck Lane

Bellingham, WA 98226  
Erin Osborn  
Planning and Development Services

Charles Sullivan  
Environmental Health Department

Sanja Barisic  
Public Works, Division of Engineering

Royce Buckingham  
Civil Deputy Prosecutor

Exhibits:

- 1 Land Use Application with attachments
  - 1-1.1 Fee Responsibility
  - 1-1.2 Receipt
  - 1-1.3 PDS Instructions
  - 1-1.4 Address Labels
  - 1-1.5 Supplemental Application
  - 1-1.6 Checklist, March 29, 2011
  - 1-1.7 Staff email, March 28, 2011
  - 1-1.8 First American Title, October 25, 1994
  - 1-1.9 PDS Notice of Application Letter, March 30, 2011
  - 1-1.10 Combined Distribution List- SEPA and Application Notice
  - 1-1.11 Legal Notice, March 30, 2011
  - 1-1.12 Determination of Completeness, March 22, 2011
  - 1-1.13 Email, March 23, 2011 [Staff/Applicant]
  - 1-1.14 Email, March 23 and January 7, 10 and 20, 2011 [Staff/Applicant]
- 2 Staff Report, July 13, 2011, with vicinity map attached [last page]
- 3 Zoning Map
- 4 Plat Map
- 5 Aerial Map and site photos showing main house and carriage house
- 6 Hydrology maps
- 7 Urban Fringe Subarea Plan Update Map
- 8 Letter dated April 13, 2011 from Mark Lee and Heather Wolf, with attachments  
A: Superior Court, No. 06-2-02856-9, Judgment on Petitioners' LUPA Appeal

B: Hearing Examiner Decision, APL2006-0022

- 9 Agency Comments:
  - Environmental Health, May 3, 2011
  - PW Engineering Services, April 28, 2011
  - Critical Areas Review, April 11, 2011
  - Fire Marshal, April 14, 2011
  - Plans Examiner, April 19, 2011
  - Letters dated March 25, 1985 and August 3, 1987 from Public Works to Michael Tasker
  - Building Permit Application, August 14, 1987
- 10 Email from Lt. Scott Rossmiller, County Sheriff's Office to Erin Osborn, May 23, 2011 with Memorandum from Osborn to Rossmiller, dated April 28, 2011, attached
- 11 Public Comments:
  - Paul and Connie Hill
  - Adrian Wolfe
  - James Bochsler
  - Mark Hubert
  - Towers Rockwell
  - Dirk Petty
  - Dale Andert
- 12 Colored GIS Map showing Property Owners by Support, Objection, No Comment
- 13 County Public Health, Sewage Disposal Permit, dated Sept 21, 1987, with On-Site Sewage System Report of System Status, date of inspection, February 16, 2011 attached
- 14 Preliminary Stormwater Proposal
- 15 Land Disturbance Application
- 16 Endangered Species Act Checklist
- 17 Revised SEPA / Notice of Application Combined Distribution List, with PDS Form Letter dated April 13, 2011 and DNS, dated May 10, 2011 and SEPA Checklist attached
- 18 Notice of Application, Certificate of Mailing, April 13 and March 30, 2011
- 19 Bellingham Herald Tear Sheet, published March 30, 2011
- 20 Legal Notice of Public Hearing, July 7, 2011
- 21 Hearing Examiner's Decision, CUP1995-0053, application by Leslie Lohse

- 22 Brief in Opposition from Paul and Connie Hill and Adrian Wolfe, dated July 15, 2011, prepared by Mark Lee, with attached Superior Court, No. 06-2-02856-9, Judgment on Petitioners' LUPA Appeal
- 23 Certificate of Mailing: Notice of Public Hearing, June 15, 2011
- 24 Addendum to Staff Report, July 19, 2011

## **II.**

Whatcom County's Technical Review Committee is recommending approval of a modified, lower-intensity Zoning Conditional Use Permit. The Findings of Fact, Conclusions of Law, and Recommended Conditions of the Technical Review Committee are set forth in a Staff Report, prepared by Whatcom County Planning and Development Services, dated July 13, 2011, Exhibit #2 of the Hearing Examiner file.

The Staff Report, consisting of 34-pages, addresses each of the applicable legal criteria or standards, which must be met in order to grant Conditional Use Approval for a Cottage Industry, consisting of occasional garden weddings and business retreats on the nine acres owned by the Applicant. Staff members communicated with neighboring property owners and their agents, listed and addressed all of the concerns raised by concerned and/or affected citizens, and has recommended approval to a much lower intensity Cottage Industry than that proposed by the Applicant.

The Hearing Examiner has reviewed the Staff Report and all other exhibits in the file, considered the testimony at the public hearing, and has concluded that the factual information contained within the Staff Report is consistent with the record as a whole. The Hearing Examiner, by this reference, adopts the factual findings within the Staff Report, a copy of which is attached hereto, and incorporates them herein by this reference.

## **III.**

The Applicant currently owns nine acres. This nine acre property has three Assessor's Parcel Numbers. The nine acre property is not a legal lot of record. It was created when the Applicant sold contiguous 20-acres without subdivision approval. The nine acres currently owned by the Applicant constitute a single parcel and cannot be further subdivided under the existing five acre density for this Rural zone site.

Based on the aerial photograph, marked as Exhibit No. 12, it appears that the nearest residence to the onsite location proposed for the weddings and business retreats is over 450-feet away. The next nearest residence is approximately 575-feet away.

Access to this site is via a private easement through the adjoining parcel (Wolfe) which comes within 200-feet of the residence on that property. Whatcom County Division of Engineering has

concluded the public roads in the area are adequate and that the existing easement road is adequate for limited local two-way traffic, but may have to be widened if larger vehicles will be accessing the Applicant's property over this easement road. Engineering will review the proposal at the time of application for the needed building permits to convert the use of the carriage house on the property and will finalize conditions required to ensure safe and adequate road access.

#### **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 Hearing Examiner adopts the legal conclusions reached by the Technical Committee and set forth in the Staff Report, Exhibit No. 2 in the Hearing Examiner file, subject to minor modifications in the limits (conditions) placed on the frequency and size of events allowed on the property.

Subject to the Conditions of Approval the Hearing Examiner will attach hereto, the proposal will not have significant adverse environmental impacts. It will only have modest impacts on the surrounding community. The Hearing Examiner sees no reason to repeat Staff's detailed analysis of the proposal's conformance with applicable local regulations and with the Whatcom County Comprehensive Plan.

Subject to the Conditions of Approval proposed by Staff, with minor alterations by the Hearing Examiner, the Hearing Examiner finds that the proposal will be consistent with the local, applicable Development Standards, the Standards and Requirements for approval of a Cottage Industry within the Rural zone, and with the Zoning Conditional Use Criteria set forth in WCC 20.84.220, 1 through 8.

#### **II.**

The Hearing Examiner has concluded that a modest increase in the intensity of the proposed use over that recommended by the Technical Committee would increase the economic feasibility of the project without imposing significant additional impacts on surrounding property owners.

The Hearing Examiner concludes that the condition recommended by Staff that no audible noise leave the boundaries of the property is unrealistic and has modified the condition to require compliance with the Noise Standards of WAC 173-60-040 for a Class A Residential Source and Receiving Properties [55dBA].

### III.

The Hearing Examiner concludes that a Zoning Conditional Use Permit should be granted to James Lohse, subject to the conditions set forth below.

### IV.

Since the nine acre parcel was an illegal subdivision, pursuant to RCW 58.17.210, the requested Conditional Use Permit cannot be approved unless there is a specific Finding and Conclusion that the public interest will not be adversely affected thereby. The contiguous nine acres owned by the Applicant is larger than the current minimum parcel size of five acres required for the creation of new parcels in the Rural zone. The nine acres cannot be further subdivided or sold pursuant to the current Whatcom County Zoning Ordinance.

The Applicant has requested a Zoning Conditional Use Permit, which is subject to the Conditional Use Criteria in WCC 20.84.220. These criteria are designed to implement the Comprehensive Plan and ensure development allowed in the zone is in the public interest. Subject to the conditions attached to this Permit, the public interest will not be adversely affected by the granting of the permit.

### V.

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**

*James Lohse is hereby granted a Zoning Conditional Use Permit allowing garden weddings and business retreats on the nine acres owned by the Applicant and addressed as 4566 Anderson Way, Bellingham, Washington, subject to the following conditions:*

#### **A. Planning Division**

1. Permit Changes or Modifications: The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Garden Weddings:
  - A maximum of 36 Wedding Events are permitted per calendar year.
  - A maximum of 2 weekend Wedding Events are permitted per month. An additional one Wedding Event is allowed on a weed day each month.
  - A maximum of 65 persons including wedding guests and all associated service staff are permitted on site at any given time.

- Approved Hours for Wedding Events are 11 am to 6 pm. Employees and service staff may be onsite from 8 a.m. to 8 p.m. Weddings and/or Business Retreats are not allowed on consecutive days.
  - A maximum of 20 vehicles, excluding vehicles owned by the residents of the home, are permitted on site at any given time.
  - Required licenses or permits must be obtained if alcohol is served.
  - Notification shall be provided to the Whatcom County Sheriff's Office describing the conditions of approval associated with this cottage industry, along with contact information of the property owner/Applicant.
3. Business Retreats:
- One business retreat per week may be held on site and shall not coincide with a wedding event. Weddings and/or Business Retreats are not allowed on consecutive days.
  - A maximum of 20 business retreat participants are permitted on site at any given time.
  - Approved Hours of Operation are 8 am – 5 pm.
  - A maximum of 20 vehicles are permitted on site at any given time during a Business Retreat.
4. Employees: A maximum number of two employees outside of residents living on site are permitted to be engaged in operations of the cottage industry (this does not include various support staff that may be on the site associated with wedding events and business retreat events such as musicians, photographers, and caterers).
5. Parking: Pursuant to WCC 20.80.500, adequate parking shall be established. An approved parking plan shall be submitted prior to issuance of the required commercial building permit. Parking shall be provided at a rate of one parking space for every three guests. Parking shall be installed in accordance with federal and state regulations for ADA accessibility. In the event, there is a conflict between the state and the federal regulation(s), the state regulation(s) shall apply.
6. Music: No amplified music or voices are permitted at any time.
7. Noise: The Applicant is required to ensure that sounds related to the weddings and business retreats held on the property comply with the Class A Residential Source to Residential Receiving Property Standards of WAC 173-60-040. The Applicant shall take additional, available, reasonable steps to reduce the noise emanating from the property to a level below the Noise Standards allowed by the WAC.
8. Lighting: Pursuant to WCC 20.80.523; any lights shall be so arranged as to direct the light away from the adjoining property and the public road.

9. Glare: Parked vehicles shall be situated on the lot to prevent sun from reflecting glare visible to neighboring properties.
10. Notification: The Applicant is required to notify the Whatcom County Sheriff's Office that the site is used for a cottage industry featuring weddings and business retreats. The Applicant shall provide the Sheriff's Office with a record of conditions that apply to the approved cottage industry activities permitted on the site.
11. Refuse: At time of Change of Use Commercial Building Permit required for use of the Carriage House, the Applicant shall identify a method of refuse collection and disposal, and clearly identify the location of refuse containers on an approved site plan.
12. Signage: All signs allowed shall be on the Applicant's property. Whatcom County will allow one non-illuminated freestanding sign, visible from the road and not exceeding six feet in height. One additional non-illuminated sign may be attached to the building for a maximum total signage of 16 square feet. No portion of any sign shall extend above the lowest portion of the roof pursuant to WCC 20.36.161(3). A building permit is required prior to installation of a sign.
13. Buffer Requirements: A landscape plan showing a buffer of native trees and bushes along a portion of the west property line running in a north-south direction shall be approved by Whatcom County prior to building permit issuance. The trees shall be installed prior to the issuance of a Certificate of Occupancy for the Carriage House Change of Use Commercial Building Permit.
14. CUP Nontransferable: Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.
15. Right to Farm: Pursuant to WCC, Title 14, the owners of the property for 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.
16. The Applicant (James Lohse) shall file an affidavit recorded on title to the nine acre remainder tract, upon which CUP2011-00002 is granted, that includes the following:
  - a. A legal description of the nine acre remainder tract which was created by Lohse selling Hill 20 acres (Deed of Conveyance, Auditor's File No. 2060400670) of the 29 acre former lot of record conveyed from Chamberlain to Lohse in 1994 (Deed of Conveyance, Auditor's File No. 941107134) to Hill;

- b. A statement of acknowledgement that this nine acres is considered one “tract” and, further, that this tract of land is the property upon which development authorized under CUP2011-00002 is approved;
  - c. A site plan depicting the entire nine acres, showing all existing structures and approved development;
  - d. A statement of understanding that the nine acre tract shall not be further divided through sale without first obtaining approval from Whatcom County.
17. The Applicant shall request from the Assessor a single parcel number for the nine acres and provide this Assessor’s Parcel Number to Planning. If the Assessor does not grant the request, the Applicant shall provide a written statement from the Assessor indicating the request was made but denied.

**B. Building Services Division**

- 1. A building permit is required for this proposal.
- 2. Due to the scope of the proposed project, the applicant must apply to the Building Official for a pre-application screening prior to building permit application submittal. At the Building Official’s discretion a pre-application meeting may be required.

**C. Fire Marshal**

- 1. Fire Flow is required. The old drafting port from the pond shall be upgraded with a fire pump. Fire flow shall be not less than 1500 GPM. Fire flow is allowed to be reduced if the building(s) that are open to the public are provided with a fire sprinkler system then the fire flow can be 500 GPM or sprinkler demand GPM.
- 2. If any tents over 400 square feet will be used as a part of the wedding, Chapter 24 of the Fire Code shall be complied with. A separate fire permit is required for tents.
- 3. No open flame or cooking allowed in the carriage house. The future commercial kitchen requires a separate permit and approval from the Fire Marshal and the Building Department prior to using it as a commercial kitchen.
- 4. The Carriage House appears to have an occupant load over 100 with the consumption of food and drink. This building is classified as an A-2 on the ground floor and will require a fire sprinkler system.
- 5. The driveway / fire department access on the property of this application shall be not less than 20 feet wide and be marked clearly “fire lane no parking.” All other roads shall meet the Whatcom County Road Development Standards.

6. If three or more rooms are to be use for the bed and breakfast, then a fire sprinkler system shall be required.
7. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County. Any overlooked hazardous condition and/or violation of applicable code does not imply approval of such condition or violation.

**D. Public Works – Engineering Division**

1. All development shall comply with Whatcom County Development Standards.
2. The Applicant shall participate in joint road maintenance of Anderson Way and the private driveway easement that branches off Anderson Way and serves the proposed development, or if an agreement cannot be reached, the Applicant shall maintain the easement road himself.

**E. Health Department**

**Water:**

If employees or the public have access to water, then public water is required.

**Sewage:**

If plumbing is run to any building, an approved on-site sewage permit is required. Any alternate sewage disposal method will be required to be reviewed by WCHD to ensure adequate provisions for sewage disposal have been made.

**Food Service:**

If food is to be prepared for the public, a food handling permit is required. Any caterer serving food to guests must have a valid permit from WCHD.

**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 29<sup>th</sup> day of July 2011.

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Michael Bobbink, Hearing Examiner



WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

Date: July 13, 2011  
Hearing Date: July 20, 2011

The application of <b>James Lohse</b> for a Zoning Conditional Use Permit	CUP2011-00002 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: The applicant is requesting zoning conditional use approval to operate a commercial business as a cottage industry, composed of two parts: "garden weddings" and "business retreats" on a 4.23 acre parcel upon which the applicant resides. The applicant proposes to host 30 wedding events per year with 150 guests, every weekend during May-September. Business Retreats are proposed to be held in the wedding "off-season" October – April with up to 20 participants at each event.

Recommendation: The Technical Review Committee recommends that the Whatcom County Hearing Examiner approve Mr. Lohse's application for a conditional use permit subject to requested conditions located in Section IX of this report. It is the Technical Review Committee's recommendation that by approving the use as conditioned, the interests of the public will not be adversely affected. The requested conditions substantially reduce the scale and intensity of the use as proposed. Requested conditions would permit a maximum of 20 wedding events per year, with 60 wedding participants, twice a month throughout the year, and business retreats no more than once per week throughout the year, with a maximum of 20 participants.

**II. PRELIMINARY INFORMATION**

A. BACKGROUND INFORMATION

Applicant: James R. Lohse  
4566 Anderson Way  
Bellingham, WA 98226

Site Location/Address: 4566 Anderson Way

Legal Description: A tract of land lying within the southeast quarter of Section 3, Township 38 North, Range 3 East, W.M., Whatcom County, WA. (Please see the deed for a complete legal description.)

Assessor's Parcel Number(s): 380303245110

Zoning: Rural (R5A)

Comprehensive Plan: Rural

Subarea: Urban Fringe

Total Acreage: 4.23 acres

Roads: Private

Water Supply: Private Well

Sewage Disposal: On-Site Sewage System (OSS)

Fire Protection: Whatcom County Fire District No. 4

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Mt. Baker School District # 501

Topography: Developed portions of the parcel are relatively flat, with undeveloped portions sloping gently into a large pond.

Vegetation: The vegetated portions of the site include mostly lawn, grassy areas, shrubs, and a few coniferous trees.

Adjacent Land Uses:

North:	R5A - Single-family residences
East:	R5A - Single-family residences
South:	R5A - Single-family residences
West:	R5A - Single-family residences

Easements: Easements for ingress egress, and easement for on-sewage drainfield on the neighboring Hill property.

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

1. Revised Code of Washington (RCW) Chapter 36.70

2. Revised Code of Washington (RCW) Chapter 58.17
3. Whatcom County Comprehensive Plan
4. Whatcom County Code, Title 2, Chapter 2.33 – Permit Review Procedures
5. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
6. Whatcom County Code, Title 14, Use of Natural Resources
7. Whatcom County Code Chapter 12.08, Development Standards
8. Whatcom County Code Chapter 15, Building Code/Fire Code
9. State Environmental Policy Act (SEPA); Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
10. Whatcom County Code Chapter 16.16, Critical Areas
11. Whatcom County Code, Title 17 – Flood Damage Prevention Code
12. Whatcom County Code, Title 23 – Shoreline Management Program
13. Whatcom County Code Title 24, Health Regulations

### **III. APPLICATION PROPOSAL**

On February 24, 2011, the applicant, James Lohse, applied for a zoning conditional use permit (CUP) for approval to operate a small business as a Cottage Industry on a 4.23 acre parcel upon which he resides. The applicant proposes to use an existing 1,348 square foot carriage house and 17,500 square feet of his parcel as a venue for hosting "Garden Weddings" and "Business Retreats".

Cottage Industries may be approved administratively or approved through conditional use permit in the Rural Zoning District. Because of the scale and intensity of the proposed use, staff required the proposed use be processed as an application for a conditional use permit, subject to a public hearing and decision issued by the Hearing Examiner.

**Garden Weddings:** The application submitted describes a proposal to allow a maximum of two "small" weddings per week during May through September for a total of 30 wedding events with 150 guests during the five month time period proposed between the proposed hours of 10 AM & 3 PM. It is further proposed that any food or beverages served at these events would be catered from a licensed purveyor. Musical entertainment is proposed as "soft wedding music" inaudible beyond the subject property boundaries. Alcohol served would be limited to bottled beer and wine which the applicant states may serve to avoid "drunkenness".

The site plan identifies a 40' X 80' (3,200 sq. ft) grassy area as a location for outdoor wedding ceremonies with outdoor seating. The application states that the existing carriage house is proposed to be used for holding indoor wedding events.

The application proposal is to utilize the existing bed & breakfast operation approved under CUP95-0053 to provide lodging and meals for to up to 8 of the wedding guests. The applicant added anecdotally that the approved bed & breakfast operation had not been in active use for a period of time, but operations would resume pending approval of the subject application.

**Business Retreats:** The application submitted describes a proposal to allow a “Business Retreats” in the existing Carriage House identified on the site plan. The carriage house would be utilized to sponsor a venue for business retreats with no more than 20 participants at any given time to be conducted within the hours that correspond with the activities of the approved bed and breakfast operation on the site.

**Traffic & Parking:** The applicant has proposed 30 parking spaces that are shown on the site plan submitted with this application. The method of transportation to the site would be either by passenger car or in some cases when wedding or business guests stay at the same hotel, arrangements would be made to bus them to the site. The entrance to the Lohse property is off of a private easement that crosses the Wolfe property off of Anderson Way (See attached map with private easement highlighted in yellow). Anderson Way is accessed from Van Wyck Road. Anderson Way continues northward to serve the Paul & Connie Hill property where it terminates. After entering the Lohse driveway traffic may branch off to the left taking a circular route around a large maintained grassy area along the north side of the Lohse residence and garage, completing the circle back at the beginning of the main driveway. The larger of the two circular driveways completely circles the Lohse residence and serves the carriage house, and returns to the main driveway where it began. Parking spaces are accessible from the set of two circular driveways.

**Facility:** The applicant proposes to upgrade the landscaping on the site, and to remodel the interior of the Carriage House to provide for restroom(s), food preparation area, and meeting assembly occupancy. The exterior of all structures on the site will remain unchanged. The site is served with “fire flow” from water in the onsite pond.

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

The subject property is located in the Urban Fringe Subarea with a Comprehensive Plan designation of Rural. The zoning is Rural One Dwelling Unit per Five Acres (R5A). The subject parcel is 4.93 acres and lies north of Van Wyck Road and is accessed by private Anderson Way in Bellingham, Washington. The site address is 4566 Anderson Way.

The developed portions of the parcel are relatively flat, with the remainder of the parcel consisting of a gently sloping grassy mowed lawn that drains into a large pond that has two small vegetated islands at either end. A small footbridge spans the pond at a narrow point at the center of the pond. The vegetated portions of the site include moved lawn, grassy areas, shrubs, and a few coniferous trees.

Development on the site includes an expansive six bedroom residence with attached garage, and a carriage house.

All properties surrounding the subject site are zoned Rural (R5A). A majority of the surrounding parcels are developed with residential homesites.

Two conditional use permits have been granted to property owners at this site. A conditional use permit was issued to a prior property owner (Tasker) in 1987 to operate a private school with up to 55 students with four teachers when the property was 65 acres (C.U. 35-87). The drainfield of the existing septic system is installed on a portion of the property which is no longer on the subject 4.23 acre site, but is granted an easement from the now neighboring Hill property. And in 1995, a conditional use permit was issued to Leslie Lohse to convert the large single family residence into a commercial bed & breakfast, utilizing four of the bedrooms in the six bedroom residence (CUP95-0053).

## **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 March 30, 2011. The fifteen (15) day comment period ended on April 15, 2010.

On March 30, 2011, Notices of Application were mailed to property owners whose boundaries lie within 1,000 feet of the subject property. On April 13, 2011 an additional notice of application was mailed to a single property owner (Andert) within 1000 feet of the subject property because it was discovered by staff that the list of mailing labels submitted by the applicant did not include that property owner. The comment period was extended for that property owner ending on April 28, 2011.

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 Comment: During the public comment period for the Notice of Application, Whatcom County Planning & Development Services Department received eight written comments. Of the eight comments received, seven protested the proposed use, and one was in support. A map was created by the Whatcom County GIS staff which identifies the Parties that submitted comments of support or objection, identifying the relative location to the proposed use. This map is part of the record and is hereby attached to this report by reference. A summary of the comments and a brief response to those comments is listed below:

### Comments in Protest:

- Increased traffic on private road will make it unsafe for recreational use.
- Increased potential for fire.
- Increased potential for theft.
- Impacts to property views (aesthetics).
- Impacts to water quality.
- Impacts to wildlife, especially birds.
- Noise from large gatherings of 150 people, speaking in loud voices (potentially intoxicated).
- Use of alcohol will increase noise & decrease safety on roads.

- Offensive smells or odors (from porta-potties).
- Decrease in property values.
- Use does not conform to definition of cottage industry.
- Application does not propose a method of refuse disposal.
- Proposal does not meet criteria of RCW 58.17.210.

Comment in Support:

- Wedding events will be a wonderful use of the property.

The Technical Review Committee reviewed the scope of the potential impacts addressed in public comment, met with several Parties of Record (Parties) on multiple occasions, and held telephone conversations with Parties, and the Attorney of Record for two of the Parties to discuss the proposed use. Staff asked several of the Parties if they had ideas about how the proposal could be modified to be acceptable. One Party indicated that if the use was reduced in frequency and volume then it might be less of an impact and easier to accept. Other Parties indicated that the use at any scale as proposed or modified was unacceptable for the reasons briefly highlighted in the above list.

In response to public comment, additional information was requested from the applicant to clarify the proposed hours of operation for the “Business Retreats” portion of the proposed cottage industry. In telephone meeting held, the applicant submitted anecdotal comments to staff about his business retreat proposal. Mr. Lohse stated that he would like to hold one business retreat per week throughout the year during the hours of 8 am – 5 pm, (instead of as previously proposed to be held during October – April, with proposed hours associated with bed & breakfast operations). Staff asked the applicant whether he wished to revise the “Garden Weddings” element of his proposal to address some of the concerns raised in public comment about scope and intensity. The applicant stated that he would be willing to revise his proposal to limit the number of events to 20 per year with no monthly limit on the events taking place. The applicant also stated that he would be willing to revise his original proposal of 150 guests at wedding events down to a maximum of 75 wedding guests.

In order to address the points of objection that have been raised in public comment, staff is recommending conditions that limit both the frequency and size of the proposed garden wedding element of the proposed cottage industry. These recommendations and proposed conditions are discussed in the context of proposal evaluation for conformance with approval criteria, and are located in the following pages of this report. Public comments that address traffic, fire, safety, noise, decrease in property values, use of alcohol on the site, refuse disposal, smells or odors are also addressed within the body of this report in the context of proposal evaluation for conformance with approval criteria. Staff response to public comment stating that the proposal should not be approved because it fails to meet provisions in state law is discussed below:

Comment: Proposal does not meet criteria of RCW 58.17.210

Public comment has been received from two Parties and the Attorney of Record for those two Parties about whether permits may be issued on a lot that does not meet the definition of a “lot of record”. The Attorney of Record has stated (paraphrased here) that the subject parcel is the remainder of an illegal land division in that the subject parcel was created illegally by Mr. Lohse when he sold 20 acres to Paul & Connie Hill without obtaining subdivision approval from Whatcom County. Information about the specific details of that past action and related court decisions have been submitted for the record by the Attorney of Record.

The comment further states that the proposed development is subject to the provisions of state law as follows:

"no building permit, septic tank permit, or other development permit, shall be issued for any lot, tract, or parcel of land divided in violation of this chapter or local regulations adopted pursuant thereto unless the authority authorized to issue such permit finds that the public interest will not be adversely affected thereby" (RCW 58.17.210).

The Attorney of Record and one individual Party have stated that the authority of RCW 58.17.210 should be invoked to render a decision of denial on the proposed conditional use permit application.

The Technical Review Committee finds that the subject application is proposed on a tract of land which does not appear to meet the County definition of a “Lot of Record” as defined below (WCC 20.97.220).

“Lot of record” means a lot which is described by final plat, short plat, or metes and bounds, and is established pursuant to applicable local and state regulations at the date a legal instrument creating the lot is recorded at the Whatcom County auditor’s office.

Although, no official determination has been made as to whether the lot in question is a lot of record, all available facts lead staff to believe that the parcel was not established pursuant to applicable local and state regulations at the date of its creation. The Technical Review Committee agrees that the Lohse property is not a lot of record.

Applications for conditional use permits are subject to conformance and consistency with criteria set forth in WCC 20.84.220 (1-8). In addition, a cottage industry must conform to the definition of a cottage industry found in WCC 20.97.089. Whatcom County Code states that before approving an application for a conditional use permit, the hearing examiner shall find adequate evidence showing that the proposed use at the proposed location is in conformance with eight criteria established in WCC 20.84.220 (1-8). Staff recommends that

subject to conditions, the proposed use will conform to the criteria in 20.84.220 (1-8).

As stated above, a decision of approval may be issued by the hearing examiner, only if it is found that the proposed use is in conformance with the eight criteria 20.84.220 (1-8). In summary, it must be found by the hearing examiner that the proposed use:

Will be harmonious and in accordance with the County's comprehensive land use goals and policies and implementing regulations; will be designed, constructed, maintained so as to be harmonious with the intended character of the general vicinity; will not change the essential character of the same area; will not be hazardous or disturbing to existing or future neighboring uses; will be serviced adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools, or that persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services; will not create excessive additional public cost for public facilities and services, and it will not be detrimental to the economic welfare of the community; 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; and finally, will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.

Staff finds that subject to the proposed conditions, the use will be in conformance with the criteria summarized above. Correspondingly, it is also staff's finding that the proposed use will not adversely affect the public interest. Staff will recommend that the hearing examiner find the same. If the hearing examiner concurs with staff, that approving the use subject to conditions will not cause adverse affects to the public interest, the "unless" clause referenced above in 58.17.210 RCW, is satisfied. The law states that development permits shall not be issued "unless the authority authorized to issue such permit finds that the public interest will not be adversely affected thereby". In this case, the hearing examiner is the authority authorized to issue a decision of approval on an application for a conditional use permit. If the hearing examiner finds that the criteria for approval are met (which are meant to protect the public from adverse impacts), it follows that the use will not adversely affect the public interest, thereby fulfilling the provision in State law that allows development permits to be issued on a lot created in violation of 58.17.210 RCW.

*The Technical Review Committee finds that concerns about whether or not a conditional use permit for a proposed cottage industry permit should be issued on the subject parcel re: RCW 58.17.210 have been adequately addressed in the above discussion.*

## **VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment unless the proposal is categorically exempt from SEPA threshold review.

The Whatcom County SEPA Official has reviewed the completed SEPA checklist submitted by the applicant, and has made a determination that with proper mitigation and by compliance with applicable codes and requested conditions, no significant adverse impacts to the environment would be likely to occur as a result of approving the proposed zoning conditional use.

A Determination of Non-significance (DNS) was issued on May 10, 2011 after utilizing the Optional DNS process (WAC 197-11-355). The original comment period for this DNS ended on April 14, 2011. No written comments were received; however, staff received an anecdotal comment from several parties of record indicating that one property owner with 1000 feet of the subject application (Andert) was omitted from the earlier notice of application and Optional DNS distribution. Staff responded accordingly by sending a Revised Notice of Application & Optional DNS determination with a new 15 day comment period (to Andert); this revised comment period for Andert ended on April 28, 2011. Two comments were received during the Optional DNS comment period. One of the comments included a statement indicating that the Party believed that an Environmental Impact Statement (EIS) should be prepared to fully analyze impacts to the environment that would result if the application were to be approved. The second comment included a statement indicating that the Party believed that the SEPA checklist was not thoroughly filled out, and included additional information that should be considered as relevant to the review of the proposal. All comments were considered and in part formed the basis for recommended conditions of approval. The appeal period for this Optional DNS ended on May 20, 2011. No appeals to this determination were filed.

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

### **A. WCC Chapter 12.08 – Roads and Bridges**

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 submitted a memo dated April 28, 2011 with comments listed below and conditions of approval listed in Section IX of this document.

1. The site is accessed of Van Wyck Road via Anderson Way and private driveway easement.
2. The existing private road is wide enough to provide for two-way traffic.

*The Technical Review Committee has determined that as conditioned the proposed use meets the requirements of WCC Chapter 12.08.*

## **B. WCC Title 15 – Buildings & Construction**

**Building Code:** WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County Planning and Development Services Department.

The Whatcom County Chief Plans Examiner submitted a memo dated April 19, 2011 with comments listed in this section on Pages 10-15. Chief Plans Examiner conditions of approval for this proposal are listed in Section IX of this document. The applicant shall comply with all conditions of the Chief Plans Examiner's unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

The following initial conditions are required for this permit. They are subject to change and additional conditions will be included when more detailed plans are submitted. These findings are based on review of the applicant's February 4, 2011 Conditional Use Application – Master, and March 25, 2011 Cottage Industry Supplemental Application, a project narrative and the following schematic drawings: Site Plan and Floor Plan.

Project description: Change of use from unheated, storage to a heated, commercial use building. County records indicate the subject building was originally permitted in 1985 as an unheated 22' x 48' barn with a 10' x 48' enclosed shed on one side and an 18' x 48' open shed (2,400sf total). These types of structures are referred to as accessory structures and are governed by the International Residential Code (IRC).

In 1987 an application was made to convert it into a classroom(s) for school use. It was unclear from available records if that work was completed. The following comments are based on that application being incomplete. Due to the change of building use, a new commercial building permit is required for this proposal. It will be reviewed under the 2009 International Building Code (IBC) and must comply with all other applicable codes and ordinances adopted by Whatcom County. A pre-application screening is required prior to building

permit submittal. Contact the Building Services division to schedule and for submittal requirements.

1. The following requirements/findings are from the 2009 IBC.
  - a. Preliminary occupancy classifications:  
1st floor: Reception area - Assembly Group A-2  
2nd floor: Storage – Storage Group S-2 (currently Utility - Group U or possibly Education - Group E under the IBC).
  - b. Where required, occupancy separation shall be constructed per IBC Table 508.3.3.
  - c. Exits shall meet the requirements of Chapter 10.
  - d. Minimum plumbing facilities (restrooms) are required in accordance with WA State Amendments (WAC) to IBC Chapter 29.
2. Fire protection systems: Due to the preliminary nature of the Floor Plan submittal, it was difficult to determine the square footage of the Reception area. Based on an estimated 1,025sf, the allowable occupant load varies from 68 with tables and chairs (15sf per person) to 204 for standing space (5sf per occupant). Per IBC section 903.2.1.2, an automatic sprinkler system is required for A2 occupancies when:
  - a. Fire area exceeds 5,000sf.
  - b. Fire area has an occupant load of 100 or more.
  - c. Fire area is 2-story.
3. No change of use or occupancy shall be made in any building unless the building is made to comply with the requirements of with all current applicable codes (IBC Section 3408.1). If the new use is less hazardous, based on life and fire risk, than the existing use, the building official may waive or modify some code requirements. Subject to additional review, one or more of the following actions may be required for this project:
  - a. Prior to application for a building permit, a special inspection of the existing facilities (at the applicant's expense) by the Building Inspector and/or Fire Marshal will be required by to determine current occupancy classification and code compliance.
  - b. If the existing structure does not meet IBC requirements for conventional light-frame wood construction, a WA State Professional Engineer will be required to inspect the existing structure(s), identify any deficiencies and prepare a report documenting the findings.
  - c. The building code allows accessory structures to be designed to a lower structural standard (Occupancy Category I) than that required for a residence or commercial building (Occupancy Category II). Structural upgrades may be required.

4. The project shall meet the barrier-free, handicap accessible requirements of IBC Chapters 10, 11 and Appendix E; ICC/ANSI A117.1-03; and WAC 51-50. Accessible parking and restrooms are required.
5. Heating, cooling and lighting shall comply with the 2009 WA State Nonresidential Energy Code (NREC). Ventilation shall comply with the 2009 International Mechanical Code (IMC).
6. All signage (free-standing and building-mounted) requires a separate permit.
7. A future commercial Kitchen area was noted on the Floor plan. This type of cooking facilities typically require a Type I hood which includes makeup air and fire suppression. Refer to the International Mechanical Code (IMC) Sections 506 thru 509 for additional information. A grease interceptor would also be required per the Uniform Plumbing Code (UPC).

Additional General Conditions for Commercial Buildings and building permit information and requirements are listed below:

1. This project is subject to compliance with the following codes as adopted by Whatcom County:
  - Chapter 19.27 RCW State Building Code Act;
  - 2009 International Building Code (IBC);
  - 2003 ICC/ANSI A117.1 - Accessible and Usable Buildings and Facilities;
  - 2009 International Mechanical Code (IMC) including WAC 51-52 ventilation requirements;
  - 2009 International Fire code (IFC);
  - 2009 Uniform Plumbing Code (UPC);
  - 2009 International Fuel Gas Code (IFGC);
  - 1997 Uniform Abatement for Dangerous Buildings;
  - 2006 Washington State Energy Code (WSEC), WAC 51-11;
  - Note: 2009 WSEC is scheduled to be adopted January 1, 2011.
  - All applicable Washington State Amendments to the above referenced codes;
  - All applicable code referenced manuals and standards;
  - Whatcom County ordinance adopting and amending the current State Building Code Chapter 15.04 of the Whatcom County Code.
2. A Washington State licensed architect may be required by the Building Official to prepare construction documents and act as the registered design professional in responsible charge (IBC Sections 107.1 and 107.3.4, RCW 18.08.410). All construction documents prepared by the architect must be stamped and signed (RCW 18.08.410[9]).
3. Full engineering by a WA State licensed engineer is required. The engineer shall perform a complete structural analysis for the proposed building(s) per IBC Chapter 16. Calculations must be submitted along with plans and should

state all design criteria utilized (wind, seismic, snow, roof & floor loads, soil bearing). The calculations and all drawings prepared by the engineer shall be stamped and signed.

4. The engineer shall provide analysis for any special loads such as those imposed by an automatic sprinkler system, mechanical equipment, concentrated loads, impact loads, cranes, etc. The engineer should also include any required anchorage of non-building structures (tanks, storage racks, equipment, etc.) to resist seismic loads.
5. The engineer shall specify whether any soil investigation reports, special inspections or structural observations are required. Provide two copies of any soils investigation report(s) at permit application when necessary.
6. The architect and/or engineer of record shall be designated on the permit submittal documents and drawings where appropriate. The architect/engineer of record shall be responsible for reviewing and coordinating all submittal documents prepared by others, including deferred submittal items, for compatibility with the design of the building. (IBC Section 107.3.4)
7. Deferred submittals are those portions of the design which are not submitted at the time of application (i.e. - design-bid mechanical systems, NREC lighting/mechanical compliance documentation, pre-fabricated building components, plumbing schematics and fixture load calculations, certain tenant improvements, etc.). Deferral of any submittal items must have prior approval of the Building Official and shall be listed on the plans. The architect/engineer of record must provide a schedule indicating time frames for intended submittal of deferred items. Deferred submittal items shall not be installed until they have been reviewed and approved by the Building Official.
8. When special inspections are required by an engineer or by IBC Section 1704, the engineer of record shall prepare an inspection program, which shall be submitted to the Building Official for approval prior to permit issuance. The special inspection program shall designate the portions of work requiring special inspections, the name of the individual or firm performing the inspections and the duties of the special inspectors.
9. A *Code Summary* is required for all projects and should be located on the cover sheet. The following specific Code design criteria should be included as applicable:
  - Use and Occupancy Classification  
(*single or mixed occupancy, incidental use and accessory use areas; occupancy group*)
  - Occupancy separation
  - Special use and occupancy requirements
  - General building heights and areas
  - Height and area modifications (*increases for frontage and/or fire sprinklers*) \*
  - Construction type

- Fire-resistance construction (*requirements for walls, penetrations, opening protectives*)
  - Fire protection systems (*fire sprinklers and alarms, smoke control*)
  - Means of egress analysis including occupant load calculation and exit system requirements (*a separate Floor Plan may be required to illustrate compliance*)  
\*For projects exceeding basic allowable heights and areas specified in IBC Table 503 provide justification for the size of the proposed building(s).
10. When applicable, sprinkler system and fire alarm system submittals shall be applied for at the same time as the building permit, unless otherwise approved by the Fire Marshal.
11. Listed/tested assembly numbers, specifications and details shall be submitted for all required and/or proposed fire-resistant construction and systems (walls, floor-ceilings, roof-ceilings, penetrations, openings, etc.), no exceptions. Fire-resistance information and data will not be accepted as a deferred submittal.
12. When applicable, the architect of record shall provide a detailed, complete fire-stop plan for review and approval, which is specific to the proposed project. All installed fire-stopping systems shall be inspected by an approved, certified fire-stopping inspector or inspection agency. All systems shall remain accessible until approved for cover.
13. All occupancies shall comply with IBC Chapter 8 - Interior Finishes including Table 803.9 – Interior Wall and Ceiling Finish Requirements by Occupancy. Documentation verifying classification (flame spread and smoke-developed indexes) of interior finish materials may be required, at the Public Service Inspector's discretion, prior to final inspection.
14. Fully heated, semi-heated and/or cooled buildings or portions of buildings shall comply with the 2006 WA State Non-residential Energy Code (NREC) for the building heated envelope and HVAC systems. All buildings must comply with NREC lighting requirements. Submittals for all projects are to include the following NREC compliance forms: Envelope (Zone 1), Mechanical and Lighting. Only semi-heated, warehouse/storage type buildings with prescriptive lighting will be reviewed in-house by Whatcom County Building Services. All other buildings require NREC review and/or inspection by a third party WA State certified NREC plans examiner or inspector. All submittals including compliance forms and plans shall be stamped & signed. Commissioning of all mechanical and lighting systems is required to ensure compliance with the approved plans and specifications. A complete report of test procedures and results shall be prepared and filed with the owner prior to issuance of a Certificate of Occupancy.
15. All occupancies shall comply with IBC Chapter 12 - Interior Environment and IMC Chapter 4 - Ventilation including the WAC 51-52 amendments. Provide complete information indicating how ventilation requirements will be met, including ventilation system plan drawings, system sizing calculations, etc. All

mechanical ventilation equipment shall be listed on the NREC summary forms and plans and shall be part of the required NREC submittals.

16. All centralized, HVAC systems shall be designed by a licensed mechanical engineer. The required engineer system design and plan drawings shall include listed/tested assembly numbers, specifications, details and locations for all required fire dampers per IBC Section 716. All submittals shall be stamped and signed by the mechanical engineer.
17. Storage of flammable or combustible materials and/or high-pile storage items shall be in accordance with the International Fire Code (IFC). Where conflicts exist between different applicable codes, such as the IBC and IFC, the most restrictive shall govern.
18. Minimum plumbing fixtures shall be provided in accordance with IBC Chapter 29 - Table 2902.1 and applicable WA State Amendments. The architect shall provide calculations verifying compliance with the required minimum number of plumbing fixtures, per the table. Provide plumbing schematics, which include fixture calculations, water distribution and waste discharge system sizing calculations.
19. The proposed project is required to meet handicap accessibility requirements per all applicable sections of IBC Chapter 10 & 11, Appendix Chapter E, Sections E101 thru E107, ICC/ANSI A117.1-2003 Accessible and Usable Buildings and Facilities and applicable WA State Amendments. An *Accessibility Analysis* should be provided addressing the following elements: exterior and interior routes of travel, parking, entrances/exits, restrooms, furnishings and equipment. Refer to the *"Code Analysis - Specific Findings"* section for any additional information.
20. Roof assemblies and roof structures are per IBC Chapter 15. Minimum roof covering classification according to type of construction is per Table 1505.1. Documentation will be required verifying the classification.
21. Washington State Amendments to the International Building Code, WAC Section 51-50-009, requires that space be provided for the storage of recycled materials and solid waste for all new buildings (except Group R-3 and Group U occupancies). The storage area shall be designed to meet the needs of the occupancy, efficiency of pickup, and shall be available to the occupants and haulers (service providers). See the Whatcom County *Recommended Solid Waste & Recycling Enclosure Guidelines* for additional information.
22. Demolition permit is required for the removal of all existing structures. Approval by the Northwest Clean Air Agency (NWCAA) is required prior to issuance of the permit by Whatcom County. NWCAA can be contacted at 800.622.4627 - ext. 212 or by email at <info@nwcleanair.org>. Building inspection is required after the demolition has occurred.

**Fire Code:** The Whatcom County Fire Marshal submitted a memo dated April 14, 2011 with conditions of approval for this proposal listed in Section IX of this document. The Fire Marshal had no additional comments at this time.

*The Technical Review Committee has determined that, as conditioned, the conditional use permit application meets the requirements of WCC Title 15.*

### **C. WCC Title 16 – Whatcom County Critical Areas Ordinance**

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.

Whatcom County Planning & Development Services Department Natural Resources Division Critical Areas wetlands staff reviewed the proposal and submitted a Memo on April 11, 2011 with the following comments:

1. Critical Areas recommends approval for CUP2011-00002.
2. The proposal includes the use of existing facilities and does not require any development; therefore, no additional review is required per the Critical Areas Ordinance.
3. Any development activity (dirt work or land disturbance) on the parcel would require critical areas review due to the presence of potential wetlands and a pond.

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

### **D. WCC Title 17 – Flood Damage Prevention**

WCC Title 17 contains standards that regulate development within a flood hazard area as established in WCC 17.04.050. The subject property is not within a flood hazard zone.

*The site is not located within a flood hazard area, therefore the proposed use is exempt from the requirements of Title 17.*

### **E. WCC Title 20 – Official Whatcom County Zoning Ordinance**

#### **Chapter 20.36 – Rural District**

The purpose of the Rural District is to implement the Rural designation of the appropriate subarea Comprehensive Plan which calls for the maintenance of rural character and environmentally fragile areas by allowing a variety of low intensity uses that are compatible and complementary with the conservation of agricultural, forestry and related uses.

**WCC 20.36.161** – Cottage industries employing no more than four people on-site, other than family members residing on the premises, conducted in a structure(s) other than the dwelling unit; provided, that in addition to the criteria found in WCC [20.84.220](#) and [20.97.087](#):

- (1) The hearing examiner, at his discretion, may place limitations on the square footage used in an existing or new structure used for a cottage industry and construction of new buildings to house said activity shall not, in any case, exceed 2,500 square feet of total floor area. The total land area used for buildings and outside storage or uses related to the cottage industry shall not exceed one acre or 25 percent of the site, whichever is less.

*Discussion: The proposal is to use an existing 1,348 square foot carriage house. No new construction is proposed. From review of the site plan submitted, the Technical Review Committee estimates the total land area including parking and the proposed outdoor wedding area to be approximately 17,500 square feet which is less than one acre (and less than 25% of the site).*

- (2) In the event materials will be stored outdoors, the hearing examiner shall require adequate landscaping, screening or other devices in order that the material will not be visible by surrounding uses or roads.

*Discussion: The applicant proposes that wedding guests will assemble on the mowed lawn in the location shown on the site plan. Technical Review Committee finds that guests will not be confined to this area on the property, and will inadvertently roam the grounds to take in views, and enjoy the pond's wildlife, and disperse to socialize as is the custom at weddings. As a condition of approval, the Technical Review Committee recommends that the Hearing Examiner require adequate landscaping and screening to buffer neighboring properties from the visual impacts of a large groups gathering on the subject property.*

- (3) One nonilluminated freestanding sign, visible from the road, and not exceeding six feet in height, may be permitted. One additional nonilluminated sign may be attached to the building for a maximum total signage of 16 square feet. No portion of any sign shall extend above the lowest portion of the roof.

*Discussion: The applicant has requested approval to install a sign for directional purposes only. The Technical Review Committee recommends approval of one non-illuminated sign not to exceed six feet in height to be installed at a location to be specified on an approved site plan. Staff further recommends that this sign shall be installed at the beginning of the Lohse driveway on the subject parcel. It is further recommended that one additional sign may be permitted to be attached to the Carriage House, with no portion of the sign extending above the lowest portion of the roof. Pursuant to this subsection, it is further recommended that total signage shall not exceed a maximum of 16 square feet.*

- (4) In the R-10A zone, where the cottage industry involves production or processing of forestry or agricultural related products on parcels larger than 10 acres, the maximum number of employees outside the family may be increased at the rate of one additional employee for each additional 10 acres to a maximum of 10 employees outside the family. In the event that the property is reduced in size below the acreage used to qualify for additional employees under this section, the number of employees shall be proportionately reduced.

*Discussion: The subject parcel is in the R5A zone, therefore this provision does not apply to the subject application.*

- (5) Seasonal employees working less than 21 days per year will not be counted as employees if they are engaged in work directly related to agriculture or forestry.

*Discussion: The Cottage Industry Supplemental Application states that there will be no more than two employees engaged in the operations of the proposed cottage industry at any time. Although this section allows the hearing examiner to approve up to four employees, staff recommends that the Hearing Examiner approve only two employees, as proposed by the applicant.*

**WCC 20.36.350 - Building Setback Criteria:**

Building setbacks shall be administered pursuant to WCC 20.80.200.

*Discussion: Whatcom County Public Works, Division of Engineering has identified Anderson Way as a Private Road. No new structures are proposed, therefore no setbacks are identified.*

**WCC 20.36.400 – Height Limitations:**

Maximum height shall be limited to 35 feet of the highest gable from average finished grade. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

*Discussion: No new structures are proposed; therefore the proposed use is exempt from this subsection.*

**WCC 20.36.450 – Lot Coverage:**

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

*Discussion: No new structures are proposed in this application; therefore the use is exempt from this section.*

**WCC 20.36.652 – Use of Natural Resources:**

All discretionary project permits for land on or within one-half mile of an area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 300 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or 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.

*Discussion: As a condition of approval, the Technical Review Committee is recommending that the Hearing Examiner require the applicant to comply with right to farm disclosure policies contained in WCC Title 14.*

**WCC 20.36.653 – Landscaping:**

Landscaping shall conform to the requirements of WCC 20.80.300.

**WCC 20.36.654 – Parking Requirements:**

Parking shall conform to the requirements of WCC 20.80.500.

*Discussion: The applicant has shown preliminary parking on the site plan. Since WCC 20.80.580 does not list a specific requirement about the number of parking spaces associated with a Wedding Facility, staff is extrapolating that the parking for a Wedding facility would be similar to that of the requirements that apply to Churches with one parking space provided for every four people. However, since many people who regularly go to the same church may carpool, and are not coming from out of area, staff is recommending that the parking requirement be increased to account for some unpredictability in the transportation plans of guests who attend weddings. Staff recommends that at the time of commercial building permit submittal for the required change of use of the Carriage House, the applicant will be required to submit a site plan identifying parking spaces at a rate of one parking spot for every three guest. Staff further recommends that all parking comply with the standards specified in WCC 20.80.500.*

**WCC 20.80.523 – Lighting Criteria:**

Any parking area which is intended to be used primarily during non-daylight hours shall be properly illuminated to avoid accidents. Any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.

**WCC 20.36.656 – 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 submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

**WCC Chapter 20.71 Water Resource Protection Overlay District**

Water Resource Protection Overlay areas are defined in WCC Chapter 20.71 and include the entire geographic area of the Lake Whatcom, Lake Samish, and Lake Padden watersheds within Whatcom County's jurisdiction. These areas are also designated stormwater special districts pursuant to WCC 20.80.635 and water resource special management areas pursuant to WCC 20.80.735.

*The proposed conditional use permit is not located within a regulated watershed and therefore is exempt from the requirements of WCC Chapter 20.71.*

**WCC Chapter 20.78 Transportation Concurrency**

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

Public Works Engineering Services reviewed the Preliminary Traffic and Concurrency information submitted at time of application. Based on the information submitted, a determination was made to evaluate the proposal at time of the review of the required commercial building permit application.

*The Technical Review Committee has determined that the proposed use will be reviewed for conformance with WCC Chapter 20.78 at time of the review of the required commercial building permit application.*

**WCC 20.80.21 - Concurrency**

WCC Section 20.80.212 states that no conditional use permit shall be approved without a written finding that:

1. All providers of water, sewage disposal, schools, and fire protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
2. No county facilities will be reduced below applicable levels of service as a result of the development.

### **Water & Sewer**

*Discussion: The application states that water will be served from an on-site well. The application contained final septic approval for a large capacity on-site sewage system, that is located to the north of the subject parcel. The Whatcom County Health Department submitted a memo dated May 3, 2011 with conditions of approval for this proposal.*

### **Schools**

With regard to schools and fire protection, RCW 82.02.050(b) states: "...To promote orderly growth and development by establishing standards by which counties, cities and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve the growth and development..."

No such ordinance is in place in Whatcom County, and RCW 82.02.020 is clear that the county has no authority to require such fees. However RCW 82.02.020 "...does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of the proposed development, subdivision or plat."

*Discussion: Bellingham School District No. 501 was sent a combined notice of application along with notice of Environmental Review under the State Environmental Policy Act (SEPA), utilizing the Optional Determination of Non-Significance (DNS) process. During the 15 day comment period, no comments were received from the School District indicating that the use would increase a requirement for services.*

### **Fire Protection**

*Discussion: The proposed use located within the service area designated as Fire District No. 4. The Fire District was sent a combined notice of application along with notice of Environmental Review under the State Environmental Policy Act (SEPA), utilizing the Optional Determination of Non-Significance (DNS) process. During the 15 day comment period, no comments were received from the Fire District indicating that the use would increase a requirement for services.*

*The Whatcom County Deputy Fire Marshal submitted a memo dated April 14, 2011 with conditions of approval for this proposal.*

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.80.212.*

**WCC 20.84.220 - Conditional Use Permit Criteria**

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

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

Many residents in rural Whatcom County depend on cottage industries, home occupations, small businesses, and natural resource-based jobs for their livelihood. These types of businesses support the local economy and are compatible with the rural lifestyle desired by county residents.

Chapter Seven of the Whatcom County Comprehensive Plan encourages locally owned and operated businesses to re-invest profits and wages in the local community. Policy 7F-1 of this chapter states: "Support existing local business as the major contributors of job creation and regeneration and afford them every opportunity to continue their success in the community."

The purpose of the Whatcom County Comprehensive Plan, Rural Designation, is to provide opportunities for a variety of low-density residential development including cluster development. It is meant to provide flexibility to practice farming or forestry, operate home occupations and cottage industries and still retain a sense of community. The rural character and lifestyle is described as open space areas that are quiet and offer privacy. These rural areas offer a lower density population where there is less noise and congestion than urban areas. The rural designation also provides for agricultural uses.

Whatcom County finds that *as proposed in the application* the operation of a cottage industry featuring garden weddings & business retreats would *not* be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations.

As an isolated component of the proposed cottage industry, the *business retreats aspect* by itself as originally proposed could be considered harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations: The business retreat proposal includes the use of an existing building to allow 20 participants to assemble indoors for meeting purposes during the fall and winter months October- April. This level of operation could be considered harmonious when operations are conducted indoors and hours of operation are associated with

the bed & breakfast. However, a wedding venue serving up to 150 guests every weekend during May – September on a 4.23 parcel with access over private property is too large scale of an operation, and too great in intensity of use to be considered harmonious and in accordance with the general and specific objectives of the County's comprehensive plan for land designated Rural. The impacts of this type of use can be assuaged when proposed on a larger tract of land from 10-40 acres or more, or on smaller tracts when access is off a public road, but this is not the case.

As discussed in Section V of this report, additional information was requested from the applicant to clarify the proposed hours of operation for the "Business Retreats" portion of the proposed cottage industry. The applicant clarified his business retreat proposal, stating that he would like to hold one business retreat per week (with flexibility as to which day, but in no case not back to back) throughout the year during the hours of 8 am – 5 pm, (instead of as previously proposed to be held during October – April, with proposed hours associated with bed & breakfast operations). The applicant also stated that in order to address concerns stated in public comment, he would be willing to revise his proposal for the "Garden Weddings" reducing the number of wedding guests from 150 down to 75 and from 30 events per year during May – September to 20 events per year, with no monthly limit on the events taking place.

The Technical Review Committee is recommending that the Hearing Examiner approve the use at a scale and intensity that is somewhere between what was proposed in the application, and what the applicant has countered as a proposed reduction, subject to conditions that will scale down the proposal to be more harmonious and in accordance with the general and specific objectives of the comprehensive plan and implementing zoning regulations.

Staff has conducted research on previous decisions issued by the Hearing Examiner and has found that conditional use approvals have been granted in the past to wedding venues that are associated with bed and breakfast operations or other conditional use permits on property in the Rural Zoning District. Staff noted that the Hearing Examiner has typically approved no more than 50 guests associated with wedding events (CUP2000-00006 – Davoli-Raab; CUP98-0019 – Muson; CUP2005-00012 – Miller).

The Technical Review Committee is recommending that the business retreat portion of the cottage industry be approved with a specific frequency: no more than one of these event per week (not to coincide with wedding events) with up to 20 participants who will primarily gather indoors, and may use the grounds for recreation during the hours of 8 am & 5 pm as proposed by the applicant. Staff further recommends that a maximum of 20 wedding events be permitted at the site throughout the year, but not to exceed two events per month with no more than 50 guests not including associated catering staff, and other technical support staff not to exceed 10 people, and in no case shall

the number of persons on the site exceed 60. This maximum number persons permitted on the site associated with the cottage industry shall also include the number of guests being served at the existing bed & breakfast operation on the site.

**(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.**

As conditioned, the proposed cottage industry will operate in such a way so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity. The applicant proposes that income from hosting events to groups of people will allow him to improve the landscaping of the property, and establish vegetative screening to buffer views of adjacent property owners. As conditioned, large groups of no more than 60 persons consisting of family and friends of will gather on the property, to enjoy themselves as paying guests of the applicant, or in the case of business retreats no more than 20 persons, and these activities are similar in nature to many uses that rural property owners enjoy. The volume of traffic to the site will be limited to a maximum total of 20 vehicles on the site at any given time. There is adequate parking in the margins of the extensive driveways circling the large existing residence. The proposed use as conditioned will not change the essential character of the area.

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

As conditioned, the use will not be hazardous or disturbing to existing or future neighboring uses beyond the level of what could be expected from the allowable uses permitted in the zone.

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

The site is serviced adequately by necessary public facilities. The level of service for access, fire, and police will remain unchanged as discussed below:

Roads:

Access to the site is from an approximately ¼ mile stretch of Anderson Way which is a private road that is accessed off of Van Wyck. Public Works Engineering Services has proposed that as a condition of approval the

applicant be required to enter into a joint road maintenance agreement with all users of Anderson Way.

Police and Fire Protection:

Emergency Services are provided by Whatcom County Fire District #4 and the Whatcom County Sheriff's Department. Notices of application were sent to the Sheriff's Office and the Fire District, and Whatcom County Fire Marshal. The Fire District did not comment or state any concerns about inability to provide service to the site. The Whatcom County Fire Marshal reviewed that application and submitted conditions of approval that once met will address any fire safety issues at the site.

Since, public comments were received about the potential for wedding participants leaving the site in an intoxicated condition, a memorandum and a copy of the subject application and supplemental materials, along with all public comments received was sent to the Whatcom County Sheriff's Office for review and comment. Comments from the Sheriff's Office indicated that it would be helpful if a record of the proposed use was placed on file with the Sheriff's Office (if approved). That way if called to the site to investigate a complaint it could be assessed as to whether activities were in conformance with an approval of record. The Sheriff's Office stated that if the applicant or guests were serving alcohol, they should be required to obtain the necessary permits regarding service of alcohol.

Environmental Health

The application was submitted to the Whatcom County Health Department. Health Department staff reviewed the application and submitted conditions of approval that address requirements pertaining to the requirement of an approved water source, on-site sewage, and food preparation.

**(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.**

The Technical Review Committee finds as conditioned, that the conditional use will not create additional public costs for public facilities and services, and will not be detrimental to the economic welfare of the community. The proposal may actually generate economic opportunities for the property owner, photographers, musicians, wedding planners and designers, caterers, clothiers, and transportation services, to name a few.

**(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.**

Subject to the proposed conditions, the cottage industry, will not be detrimental to any person's property, or the general welfare by reasons of excessive traffic, noise, smoke, fumes, glare, or odors. A maximum of twenty vehicles will be on the site at any time; no amplified music will be allowed; the property owner will be required to ensure that audible voices from a gathering of 60 people or less will be confined within the boundaries of the property lines; no smoke or fumes will be created in any amount or duration that would exceed what would be expected from uses permitted in the zone; and conditions will be in place that requires parked cars be positioned in such a way so as not to reflect sun or cause glare to neighboring properties.

**(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.**

Whatcom County Public Works Engineering Services has reviewed vehicular access to the subject parcel, and determined that Private Anderson Way would accommodate two-way traffic. The Technical Review Committee recommends approval of the proposed use subject to a condition that the applicant enter into a joint road maintenance agreement with all users with legal easement to Anderson Way.

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

The proposed use was routed to the Whatcom County natural resources team for review of potential impacts to critical areas. A determination was made that there are no shoreline, critical areas, geohazard or flood concerns regarding this proposal. No scenic or historic features of major importance have been identified on or in close proximity to the site.

**WCC 20.97.089 – Definition of Cottage industry**

"Cottage industry" means a small light industrial, commercial, or service operation, on a parcel where the operator resides; frequently with an art or craft orientation or related to information processing or to the natural resources of the area, which meets all of the following criteria:

*Discussion: The proposed garden wedding & business retreat cottage industry is a commercial operation conducted on a parcel where the operator resides. The property owner is offering a commercial service venue to business people, and wedding guests who wish to pay for the opportunity to gather or assemble upon his rural acreage, enjoying the pleasant rural landscape, and territorial views.*

(1) The size and scale of the operation is in keeping with the surrounding area and off-site impacts are comparable in intensity to those generated by uses allowed in the zone.

*Discussion: As discussed previously, the Technical Review Committee found that a proposed 150 person wedding venue would not be in keeping with the surrounding area, and off-site impacts would not be comparable in intensity to those generated by uses allowed in the zone. Gatherings of up to 150 people per weekend on a property where access is across property in separate ownership via easement during the spring and summer months when most people like to the weekends with some expectation of relative peace and quiet is not comparable to the intensity of uses allowed in the zone. The Technical Review Committee has reviewed the applicant's alternative proposal that was submitted anecdotally after he learned of public comment and objections to his original application. After review of the applicants counter proposal, the Technical Review Committee is recommending conditions that will substantially limit the scale and intensity of the use, and that the cottage industry as a whole will be in keeping the surrounding area, and off site impacts will be comparable to those generated by uses allowed in the zone. These proposed conditions are located in Section IV – Conditions of Approval.*

- (2) Building size, lot coverage and number of employees shall be consistent with the standards of each district.

*Discussion: There will be no changes in building size or lot coverage are proposed. Two employees are proposed. Existing development is consistent with the standards of the district.*

- (3) The use of the dwelling unit or accessory structure for the cottage industry shall be clearly incidental and subordinate to its use for residential purposes and the purpose of the applicable zoning district.

*Discussion: The conditional use permit holder will be required to live on site. The primary use of the property is for residential purposes. The applicant has stated that the proposed cottage industry is to augment his income and assist him with mortgage and upkeep costs of his residence. The Rural District permits a mix of uses, and as conditioned the use will be clearly incidental to the use of the site for rural purposes.*

- (4) There shall be no change in the outside appearance of the building or premises inconsistent with the residential character of the dwelling or use of the surrounding zoning district, other than signage consistent with the zoning regulations of the applicable district.

*Discussion: There will be no change in the outside appearance of any building on the property. Large groups of people are often seen gathering on property in the Rural District.*

- (5) No traffic shall be generated by such cottage industry in greater volume than would normally be expected in the applicable zoning district and appropriate for the road classification which serves the property.

*Discussion: Subject to the proposed conditions, traffic generated by the cottage industry will not be in greater volume than would be expected in the zone. Anderson Way was reviewed by Public Works Engineering, and no comments were submitted that indicated that the road could not accommodate the proposed traffic.*

- (6) Any need for parking generated by the conduct of such cottage industry shall meet the off-street parking requirements as specified in this title. At least one additional space shall be provided for each nonresident on-site employee.

*Discussion: Wedding venues or business retreat venues are not specifically listed in Title 20 parking requirements. Based on a review of similar uses (Churches) the Technical Review Committee has recommends that for every one parking space provided for every three persons who visit the site, and that the applicant should provide a minimum of 20 parking spaces, and that all Parking shall be installed in accordance with federal and state regulations for ADA accessibility. The applicant has shown space for up to 30 parking spaces on the application site plan. The Technical Review Committee is recommending that at time of application for the Change of Use commercial building permit required for use of the carriage house, an approved parking plan will be required prior to its occupancy.*

- (7) No equipment, process, or materials shall be used in such cottage industry which creates noise, vibration, glare, fumes, odors or electrical interference off the lot in sufficient amounts and of such characteristics and duration as is likely to be injurious or cause damage to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

*Discussion: As conditioned, no aspect of the cottage industry will create noise, vibration, glare, fumes, odors or electrical interference off the lot in sufficient amounts and of such characteristics and duration as is likely to be injurious or cause damage to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.*

- (8) Sales in connection with the activity are limited to merchandise manufactured or repaired on the premises, items accessory to a service (such as hair care products for a beauty salon), catalog or e-commerce sales or other products related to or incidental to the primary business.

*Discussion: No sales are proposed in connection with the cottage industry, and it is recommended that none be approved without further review and approval.*

- (9) Customers/clients are prohibited on the premises prior to 7:00 a.m. and after 8:00 p.m. unless an exception is specifically granted by the administrator.

*Discussion: The Technical Review committee is recommending that cottage industry hours of operation are as follows:*

1. Business Retreats: 8 am – 5pm
2. Garden Weddings: 8 am – 5pm

- (10) The portion of the structure housing the cottage industry shall comply with life/safety regulations.

*Discussion: As a condition of approval, the Whatcom County Chief Plans Examiner, is requiring a Change of Use Commercial Building permit for the proposed use of the Carriage House. An inspection from a Public Service Inspector will be required to ensure that the structure complies with life/safety regulations prior to its occupancy and use for holding meetings and assembly.*

- (11) Cottage industries should be limited to the manufacture and assembly of finished products that shall not include the primary manufacture of petroleum products, rubber, plastics, chemicals, asbestos products or primary metal industries. Such uses shall be sufficiently enclosed to mitigate potential impacts.

*Discussion: No manufacturing or assembly is proposed as part of this cottage industry.*

*The Technical Review Committee finds the proposal as conditioned, will conform to the definition of a cottage industry as provided in WCC 20.97.089.*

#### **F. WCC Title 23 – Shoreline Management Program**

WCC Title 23 contains standards that regulate development within the shorelines of the state pursuant to the State of Washington Shoreline Management Act (SMA). The purpose and intent of the Whatcom County Shoreline Management (SMP), Title 23, is to promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of Whatcom County shorelines; and to manage shorelines in a positive, effective, and equitable manner.

*The site is not located within a jurisdiction of the SMP, therefore the proposed use is exempt from the requirements of Title 23.*

## **G. 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 (WCHD) submitted a memo dated May 3, 2011 with conditions that are located in Section IX of this document:

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

## **H. Whatcom County Comprehensive Plan**

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

**Goal 2FF:** Provide employment opportunities in the rural parts of Whatcom County.

**Policy 2FF-1:** Support small businesses, cottage industries, home occupations, resource-based and other appropriate light industry in the rural areas of Whatcom County.

### Whatcom County County-Wide Planning Policies:

**Goal # 8** – Economic development should be encouraged that: a) does not adversely impact the environment; b) is consistent with community values; c) encourages development that provides jobs to county residents d) addresses industries for a more diversified economic base; e) promotes reinvestment in the local economy; and f) supports retention and expansion of existing businesses.

The Technical Review Committee finds that the application for a conditional use permit to allow for a full service commercial horse boarding and riding facility in the Rural zone district is consistent with the goals and policies of the Whatcom County Comprehensive Plan.

## **VIII. RECOMMENDATION**

The Technical Review Committee recommends that the Whatcom County Hearing Examiner approve Mr. Lohse's application for a conditional use permit subject to requested conditions listed below. It is the Technical Review Committee's recommendation that by approving the use as conditioned, the interests of the public will not be adversely affected. The requested conditions substantially reduce the scale and intensity of the use as proposed. Requested conditions would permit a maximum of 20 wedding events per year, with 60 wedding participants, twice a month throughout the year, and business retreats no more than once per week throughout the year, with a maximum of 20 participants.

## **IX. CONDITIONS OF APPROVAL**

### **A. Planning Division**

1. Permit Changes or Modifications: The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Garden Weddings:
  - A maximum of 20 Wedding events are permitted per calendar year.
  - A maximum of 2 Wedding Events are permitted per month.
  - A maximum of 60 persons including wedding guests & associated service staff are permitted on site at any given time.
  - Approved Hours of Operation are 8 am – 5 pm.
  - A maximum of 20 vehicles are permitted on site at any given time.
  - Required licenses or permits must be obtained if alcohol is served.
  - Notification shall be provided to the Whatcom County Sheriff's Office describing the conditions of approval associated with the cottage industry, along with contact information of the property owner/applicant.
3. Business Retreats:
  - A maximum number of one business retreats per week may be held and shall not coincide with a wedding event on the same day.
  - A maximum of 20 business retreat participants are permitted on site at any given time.
  - Approved Hours of Operation are 8 am – 5 pm.
  - A maximum of 20 vehicles are permitted on site at any given time.
4. Employees: A maximum number of two employees are permitted to be engaged in operations of the cottage industry (this does not include various support staff that may be on the site associated with wedding events and business retreat events such as musicians, photographers, caterers).
5. Parking: Pursuant to WCC 20.80.500, adequate parking shall be established. An approved parking plan shall be submitted prior to issuance

- of the required commercial building permit. Parking shall be provided at a rate of one parking space for every three guests. Parking shall be installed in accordance with federal and state regulations for ADA accessibility. In the event there is a conflict between the state and the federal regulation(s), the state regulation(s) shall apply.
6. Music: No amplified music or voices are permitted at any time.
  7. Noise: Applicant is required to ensure that sounds from wedding guests, and business retreat participants are inaudible beyond the subject parcel.
  8. Lighting: Pursuant to WCC 20.80.523; any lights shall be so arranged as to direct the light away from the adjoining property and the public road.
  9. Glare: Parked vehicles shall be situated on the lot to prevent sun from reflecting glare visible to neighboring properties.
  10. Notification: Applicant is required to notify the Whatcom County Sheriff's Office that the site is used for a cottage industry featuring weddings and business retreats. Applicant shall provide Sheriff's Office with a record of conditions that apply to the approved cottage industry activities permitted on the site.
  11. Refuse: At time of Change of Use commercial building permit required for use of the Carriage House, the applicant shall identify a method of refuse collection and disposal, and clearly identify the location of refuse containers on an approved site plan.
  12. Signage: Whatcom County will allow one non-illuminated freestanding sign, visible from the road and not exceeding six feet in height. One additional non-illuminated sign may be attached to the building for a maximum total signage of 16 square feet. No portion of any sign shall extend above the lowest portion of the roof pursuant to WCC 20.36.161(3). A building permit is required prior to installation of a sign.
  13. Buffer Requirements: A landscape plan showing a buffer of native trees and bushes along a portion of the west property line running in a north south direction shall be approved by Whatcom County prior to building permit issuance. The trees shall be installed prior to the issuance of a Certificate of Occupancy for the Carriage House Change of Use commercial building permit.
  14. CUP Nontransferable: Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the hearing examiner.
  15. 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.

## **B. Building Services Division**

1. A building permit is required for this proposal.
2. Due to the scope of the proposed project, the applicant must apply to the Building Official for a pre-application screening prior to building permit application submittal. At the Building Official's discretion a pre-application meeting may be required.

## **E. Fire Marshal**

1. Fire Flow is required. The old drafting port from the pond shall be upgraded with a fire pump. Fire flow shall be not less than 1500 GPM. Fire flow is allowed to be reduced if the building(s) that are open to the public are provided with a fire sprinkler system then the fire flow can be 500 GPM or sprinkler demand GPM.
2. If any tents over 400 square feet will be used as a part of the wedding Chapter 24 of the fire code shall be complied with. A separate fire permit is required for tents.
3. No open flame or cooking allowed in the carriage house. The future commercial kitchen requires a separate permit and approval from the Fire Marshal and the Building Department prior to using it as a commercial kitchen.
4. The Carriage house appears to have an occupant load over 100 with the consumption of food and drink this building is classified as an A-2 on the ground floor and will require a fire sprinkler system.
5. The driveway / fire department access on the property of this application shall be not less than 20 feet wide and be marked clearly "fire lane no parking". All other roads shall meet the Whatcom County Road Development standards.
6. If three or more rooms are to be use for the bed and breakfast then a fire sprinkler system shall be required.
7. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County. Any overlooked hazardous condition and/or violation of applicable code does not imply approval of such condition or violation.

## **F. Public Works – Engineering Division**

1. All development shall comply with Whatcom County Development Standards.
2. The property owner shall participate in joint road maintenance of Anderson Way and the private driveway easement that branches off Anderson Way and serves the proposed development.

## **G. Health Department**

### **Water:**

If employees or the public have access to water then public water is required.

### **Sewage:**

If plumbing is run to any building, an approved on-site sewage permit is required. Any alternate sewage disposal method will be required to be reviewed by WCHD to ensure adequate provisions for sewage disposal have been made.

### **Food Service:**

If food is to be prepared for the public, a food handling permit is required. Any caterer serving food to guests must have a valid permit from WCHD.

Enclosure (1) - Map showing access to subject parcel off of Anderson Way

Report prepared for the Technical Review Committee by:

Erin Osborn,  
Planner

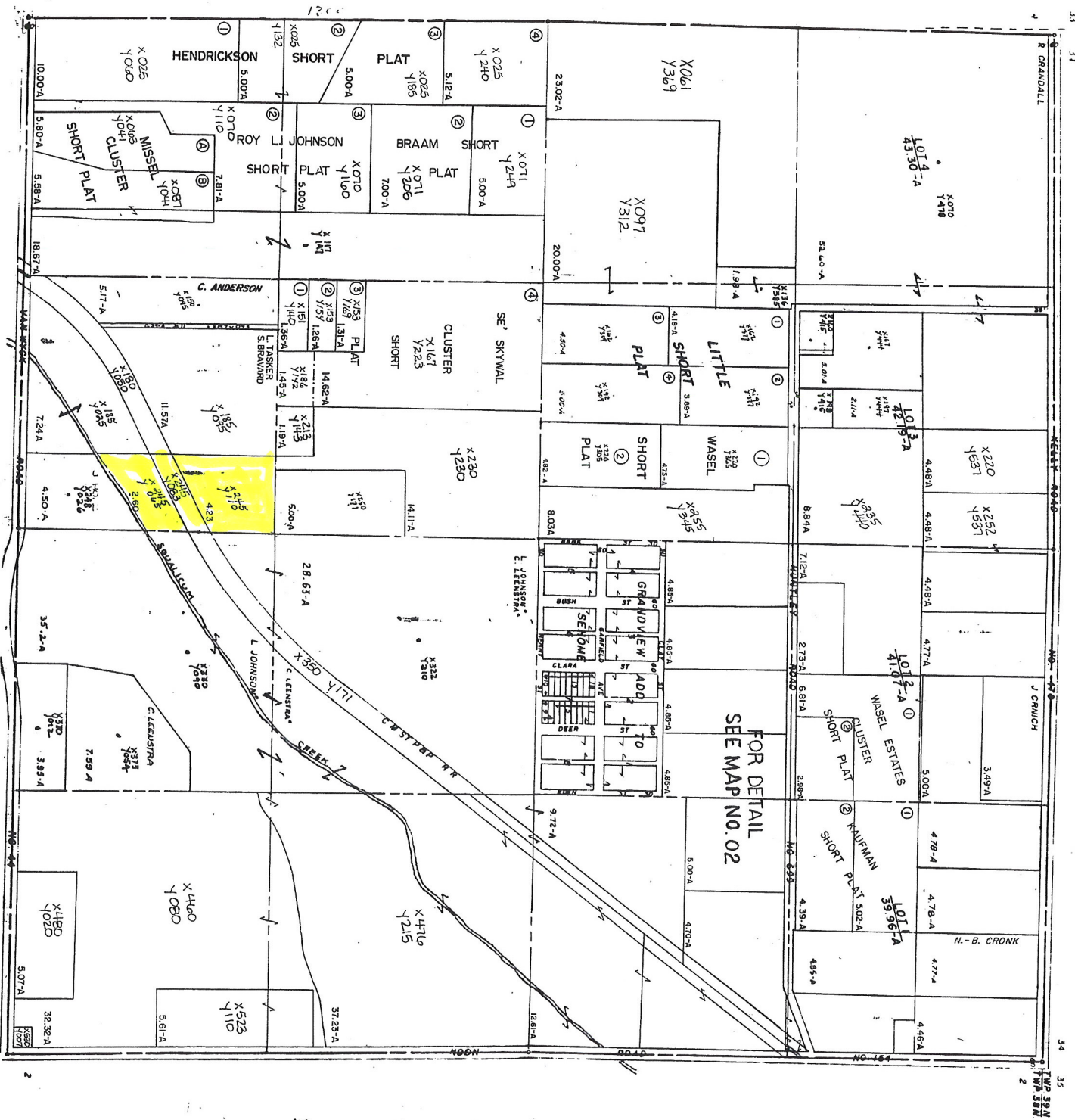


RECOMMENDATIONS:

Staff recommends that a record be established that accurately identifies the property upon which the subject conditional use permit is granted. The subject property is a nine acre remainder tract which resulted from Lohse selling Hill 20 acres of a 29 acre lot of record, in 2006.

Staff requests that approval of CUP2011-00002 be subject to the following conditions:

1. The applicant (James Lohse) shall file an affidavit recorded on title to the nine acre remainder tract, upon which CUP2011-00002 is granted, that includes the following:
  - a. A legal description of the nine acre remainder tract which was created by Lohse selling Hill 20 acres (Deed of Conveyance, Auditor's File No. 2060400670) of the 29 acre former lot of record conveyed from Chamberlain to Lohse in 1994 (Deed of Conveyance, Auditor's File No. 941107134) to Hill;
  - b. A statement of acknowledgement that this nine acres is considered one "tract", and further, that this tract of land is the property upon which development authorized under CUP2011-00002 is approved;
  - c. A site plan depicting the entire nine acres, showing all existing structures and approved development;
  - d. A statement of understanding that the nine acre tract shall not be further divided through sale without first obtaining approval from Whatcom County.



THIS MAP IS FOR  
 PROPERTY LOCATION  
 AND SIZE QUANTIFIED  
 MEASUREMENTS

JUL 18 2008

DATE  
 4/6/64

SCALE  
 1" = 400'

MAP NO.  
 01

SECTION  
 03

RANGE  
 3E

TOWNSHIP  
 38