

**WHATCOM COUNTY HEARING EXAMINER**

RE: SHORELINE SUBSTANTIAL DEVELOPMENT ) SHR2011-0006  
SHORELINE CONDITIONAL USE ) SHC2011-0009  
ZONING CONDITIONAL USE ) CUP2011-0005  
Application for )  
)  
*Public Utility District No. 1 of Whatcom County* ) FINDINGS OF FACT,  
*“Water Treatment Plant 2 Improvements”* ) CONCLUSIONS OF LAW,  
) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: Public Utility District No. 1 of Whatcom County (PUD No. 1) seeks a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Zoning Conditional Use Permit for the proposed capital improvements to its Water Treatment Plant No. 2. The Applicant proposes a variety of capital improvements to improve plant reliability, increase electrical safety, and add redundancy to ensure back up for vulnerable systems.

Decision: The requested permits are granted, subject to conditions.

**FINDINGS OF FACT**

**INTRODUCTION**

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

**I.**

**PRELIMINARY INFORMATION**

Applicant: Public Utility District No. 1 of Whatcom County

Property Owner: Public Utility District No. 1 of Whatcom County

Site Location/Address: 1705 Trigg Road, Ferndale, WA

Assessor’s Parcel Number(s): 390209 115066

Zoning: Rural (R5A) / Agriculture

Comprehensive Plan: Rural / Agriculture

Subarea: Ferndale Cherry Point

Adjacent Water Body: Nooksack River

Shoreline Designation: Resource

Shoreline of State-Wide Significance: Yes

Total Acreage: 73 acres

Roads: Public

Water Supply: Municipal Group A (City of Ferndale)

Fire Protection: Whatcom County Fire District No. 21

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Ferndale School District # 502

Topography: The site is generally level.

Vegetation: Undeveloped areas are covered with grass, shrubs and trees and some wetlands.

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

Easements: Easements are granted to PSE for Enterprise Substation, and to WSDOT for wetland mitigation area.

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: Published – March 24, April 15, May 20, and October 20, 2011  
Posted – October 18, 2011

Hearing Date: November 1, 2011

Parties of Record

Public Utility District No. 1 of Whatcom County  
Duane Holden, Project Manager  
1705 Trigg Road  
Ferndale, WA 98248

Murray, Smith and Associates, Inc.  
Attn: Toby Coenen  
2707 Colby Avenue, Suite 1110  
Everett, WA 98201

Sanja Barisic  
Division of Engineering

Erin Osborn, Zoning, and Sam McDaniel, Shorelines  
Planning and Development Services

Exhibits:

- 1 Conditional Use Application with attachments
  - 1-1 Fee Responsibility
  - 1-2 Agent Authorization
  - 1-3 PDS Form Instructions for Obtaining Names, Addresses
  - 1-4 Property Owner List/labels
  - 1-5 Project Overview
  - 1-6 Supplementary Application Responses, Zoning CUP
  - 1-7 Supporting Information, Zoning CUP
  - 1-8 Sewer and Water Availability Zoning CUP
- 2 Master Land Use Application – Shorelines, with attachments
  - 2-1 Fee Responsibility
  - 2-2 Agent Authorization
  - 2-3 Supplemental Application, SHC2011-0009
  - 2-4 Supplemental Application, SHR2011-0006
  - 2-5 Supplementary Application Responses, SHR and SHC

3 Staff Report, October 20, 2011  
4 Agency Comments  
5 Maps: Zoning and Vicinity  
6 Large Aerial Site Map  
7 Sample, Form Letter dated May 19, 2011 from PUD re: proposed project  
8 Revised Engineering "No-Rise" Certification, dated July 27, 2011  
9 DOE Letter, July 7, 2011 re: attached US Army Corps of Engineers approved Nationwide Permit  
12, dated June 21, 2011, and Washington State 401 Water Quality Certification and Coastal Zone  
Management Act Consistency Under NWP #12  
10 Figure 1, "Water System Overview and Figure 2, "Water Treatment Plant 2 Improvements,  
February 2011 – Large Colored Aerial Drawings  
11 Revised Site Plans, July 2011, prepared by Murray, Smith & Associates, Inc. – large set  
12 Letter of Completeness, May 9, 2011  
13 Tech Review Committee Memo, May 11, 2011  
14 Pre-Application Meeting Report, March 21, 2011  
15 MSR Letter of Transmittal, Application Package for CUP, May 5, 2011  
16 PDS Hearing Examiner Checklists, May 12 and August 31, 2011  
17 Memo dated July 27, 2011 from Duane Holden re: Revised Permit Application Modification  
18 PUD Memorandum, July 26, 2011 re: Summary of Impacts and Mitigation  
19 Bellingham Herald Tear Sheet, March 24, 2011, Notice of Application/SEPA  
20 Bellingham Herald, April 15, 2011, SEPA DNS Legal Notice  
21 PDS Legal Notice, May 20, 2011, notice of application  
22 Environmental Checklist  
23 Preliminary Stormwater Proposal  
24 Preliminary Stormwater Report, April 2011, prepared by Murray, Smith & Association  
25 Preliminary Traffic & Concurrency  
26 Revocable Encroachment Permit Application, May 5, 2011  
27 Endangered Species Act Checklist  
28 Project SEPA Earthwork Quantities  
29 Cultural Resource Consultants, Inc., Technical Memo 1012A-1, March 21, 2011  
30 Warranty Deed  
31 Plat Certificate  
32 Staff Email, September 29, 2011 re: hearing schedule  
33 Certificate of Posting, Notice of Hearing, October 18, 2011  
34 Legal Notice of Hearing, October 20, 2011  
35 Biological Evaluation, prepared by GeoEngineers, May 4, 2011  
36 Preliminary Design Manual, prepared by MSA, March 2011  
37

## II.

Public Utility District No. 1 of Whatcom County (PUD No. 1) seeks a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Zoning Conditional Use Permit for the proposed capital improvements to its Water Treatment Plant No. 2. The Applicant proposes a variety of capital improvements to improve plant reliability, increase electrical safety, and add redundancy to ensure back up for vulnerable systems.

### III.

The Applicant has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter. The Findings of Fact and Conclusions of Law of the Shoreline Administrator and Zoning Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit #3, dated October 20, 2011, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

### IV.

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

#### CONCLUSIONS OF LAW

##### I.

The Whatcom County Shoreline and Zoning Planners have recommended approval of the requested Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Zoning Conditional Use Permit for the proposed capital improvements to Water Treatment Plant No. 2 to improve plant reliability, increase electrical safety, and add redundancy to provide back up for vulnerable systems.

The Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #3, dated October 20, 2011. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58; the Goals and Policies of the Whatcom County Shoreline Management Program; and is in conformance and consistent with the applicable Whatcom County Code, Titles 15, 16, 17, 20, 24; as well as Whatcom County Development Standards, and Whatcom County Comprehensive Plan. The Conclusions of Law adopted by Staff in the Staff Report are incorporated herein as Conclusions of Law.

##### II.

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

#### DECISION

A Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Zoning Conditional Use Permit are hereby granted to the Public Utility District No. 1 of Whatcom County for capital improvements to Water Treatment Plant No. 2, located on Assessor's Parcel

No. 390209 115066, at 1705 Trigg Road, Ferndale, Washington. The permits are granted subject to the following conditions:

A. *PDS – Current Planning*

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. 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 spaces shall be provided at a rate of one parking space per every 200 sq. ft. of floor area for the cumulative total of square footage of service buildings, offices, and administrative buildings on the site. 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.
3. 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.
4. Glare: Parking lot design shall incorporate measures to mitigate potential glare reflecting off windshields and impacting neighboring properties, or adjacent uses.
5. Trash and storage areas: Pursuant to WCC 20.80.355, at time of commercial building permit all trash and/or garbage collection receptacles, shall be clearly identified on the site plan, and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
6. 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.
7. Landscaping Requirements: An approved landscaping plan conforming to the requirements of 20.80.30 shall be submitted prior to issuance of the required commercial building permit. A Letter of Agreement may accepted in lieu of a security bond for maintenance and installation of any required landscaping, subject to review and approval by Whatcom County Planning and Development Services Department.
8. CUP Nontransferable: Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the hearing examiner.

9. 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. PDS – Building Services Division*

1. A commercial 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. PDS – Fire Marshal's Office*

1. Fire flow required. Fire flow shall be a minimum 2500 gpm for Type V-B building or 2000 GPM for Type IIB or IIIB building. Fire hydrants shall be located within 300 feet of all buildings.
2. Fire sprinkler system may be required if the International Building Code occupancy requires it. Plans and specification shall be submitted to the Fire Marshal's Office for review and permitting.
3. If a fire alarm system is required than plans and specification shall be submitted to the Fire Marshal's Office for review and permitting.
4. Fire extinguisher size shall be 2A:10BC in the building at locations approved by the Fire Marshal.
5. Fire department access shall meet the requirements of the Whatcom County Development Standards for Roads.
6. Hazardous Materials Safety Data Sheets and Quantities shall be provided to the Fire Marshal's Office.
7. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.

*D. Public Works – Division of Engineering*

1. All development shall comply with Whatcom County Development Standards.
2. An Engineered Stormwater Design Report with TESC Plan shall be submitted for review and approval with the building permit application. Stormwater Report shall address water quality and quantity.

3. As per Chapter 2, Sec. 218, (B), the applicant shall post a maintenance security with the Division of Engineering for any proposed drainage facilities. The security shall be for an amount of 10% of the engineer's construction cost estimate or \$5,000 (whichever is greater). The security shall be in effect for 2 years from the date of provisional acceptance of new drainage facilities.
4. Prior to any Certificate of Occupancy an As-built drawings-Record Drawing for the new drainage system/ facility must be provided to the Engineering Services for permanent file record.
5. The proposed development may require a transportation concurrency evaluation, based on Preliminary Traffic Information that needs to be submitted with the building permit application.
6. The Applicant may need to enter into a Haul Route Agreement based on proposed truck traffic analysis that needs to be submitted with the building permit application.
7. All appropriate permits must be obtained before construction. Obtaining a county permit does not replace or over-ride other state and federal statutes and regulations that may apply to this project.

*E. Whatcom County Health Department*

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

**Sewage:** If water is to be run to any new building, then an approved on-site sewage permit will be required. Any new buildings may not interfere with existing on-site sewage systems.

*F. Public Works – River & Flood Division*

1. A building permit will be required for the proposed pump house expansion and floodway mitigation area and specific flood conditions will be incorporated on the permit at that time.

*G. Shoreline Management Program*

1. The proposed project shall conform to the design, configuration, size and location as approved, except as modified by this approval. Any alteration of the approved design shall require additional review approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. Construction and/or demolition debris shall be wholly removed from water/shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority.

3. If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2298) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
4. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.160.

### NOTICE

In addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000. Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.

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

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any opponent of record, or any County department. Appeal to County Council. Within ten calendar days of the date of the written 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:

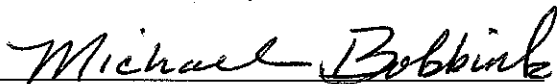
- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

Any party of record may request a closed record review of the Hearing Examiner's Decision, issued under SMP 23.60.15.H.4, by the County Council. Such an appeal shall be filed with the County Council on forms supplied by the County within ten (10) calendar days of the written decision. If appeal is made to the County Council, notice of appeal shall be provided to all parties of record at least fifteen (15) days prior to consideration by the County Council. The Council shall meet to review the Hearing Examiner's decision within twenty-one (21) days of

transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830 and Section 23.60.15.H. 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 1<sup>st</sup> day of November 2011.

  
Michael Bobbink, Hearing Examiner



Assessor's Parcel Number(s): 390209115066

Zoning: Rural District (R5)/Agriculture District

Comprehensive Plan: Rural/Agriculture

Subarea: Ferndale Cherry Point

Adjacent Water Body: Nooksack River

Shoreline Designation: Resource

Shoreline of State-Wide Significance: Yes

Total Acreage: 73 acres

Roads Public

Water Supply: Municipal Group A (City of Ferndale)

Fire Protection: Whatcom County Fire District No. 21

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Ferndale School District # 502

Topography: The site is generally level.

Vegetation: Undeveloped areas are covered with grass, shrubs and trees and some wetlands.

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

Easements: Easements are granted to PSE for Enterprise Substation, & WSDOT for wetland mitigation area.

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**

Application materials submitted for review for the zoning conditional use permit included the following: Narrative outlining project components and identifying Preliminary Traffic Impacts, and Preliminary Stormwater Analysis. Also submitted by the applicant were a general and stormwater site plan and aerial photos identifying existing and proposed development on the site, including existing and proposed structures.

#### **Proposed Plant 2 Improvements:**

- A 320 square foot addition to accommodate electrical safety improvements on the landward side of the existing Nooksack River intake pump station. Application materials indicate that the addition was originally proposed as a 300 square foot addition. The Agent for the Applicant clarified that application materials should have stated that the proposal was for a 320 square foot addition.

Revision Note: On July 28, 2011, PUD No. 1 submitted revisions to increase the building foot print of the proposed intake pump house by approximately 6'-8" for a total of 19'-4" landward, for a proposed 488 square feet, to accommodate electrical equipment requiring more room than originally anticipated.

- 2,000 lineal feet of a parallel 24-inch raw water transmission main extending from the intake pump station to the existing plant control building for pumping redundancy. Redundant underground electrical and communication services are proposed to follow the alignment of the 2,000-foot raw water transmission main.
- A 500 SF addition to the plant control building for additional process mixing improvements.
- Two new open concrete settling basins (each approximately 23' X 150') located east of the existing four settling basins.
- Sludge removal and maintenance improvements for two existing sludge settling ponds.
- A new 4,000 SF high head pump station building and clearwell.
- A new 6,100 SF maintenance building with attached garage and shop.
- A new 2,100 SF covered storage shed.
- 38,000 SF new asphalt surfacing and 10,000 SF new gravel surfacing (parking/access).
- Stormwater facilities to provide treatment and detention of peak runoff from new pavement and gravel surface areas.

#### **Request for Modifications:**

The application narrative included a number of requests for modified conditions of approval. These requests are discussed in each section in accordance with applicable code.

**Proposed Project Schedule:**

Preliminary project design was completed in December 2010. Construction activities are proposed to begin in spring of 2012 to be completed near the end of 2013 or early 2014 i.e. an estimated 2 year completion schedule.

**IV. SITE DESCRIPTION**

The subject property is a mostly level, vegetated, and partially developed 73 acre site that is found abutting the eastern bank of the Nooksack River. Site address is 1705 Trigg Road, and is located just east of the City of Ferndale. From the subject parcel, the Nooksack River continues to meander in a southwesterly direction through the City of Ferndale, and then through agricultural land to the south of Ferndale, where eventually it drains into Bellingham Bay.

The subject parcel is split zoned with approximately 2 acres of the southeast corner of the parcel designated Rural one dwelling per five acres (R5A) subject to a Comprehensive Plan designation of Rural, and the remainder of the tract is zoned Agriculture with a Comprehensive Plan of Agriculture.

PUD No. 1 of Whatcom County operates one of its two water treatment plants at the Trigg Road site (Plant No. 2), withdrawing and treating water from the Nooksack River and delivering it as non-potable water to British Petroleum Refinery BP (Cherry Point Plant) at Grandview Road, and to local farms for irrigation purposes, and also to the City of Ferndale for municipal purposes.

Existing development on the site includes PUD No. 1 administrative offices, one existing modular office, an existing control building, existing basins, and two settling ponds, a small intake pump station located on the banks of the Nooksack River, and gravel access roads that flank the west, south and east property boundaries. An existing double-wide manufactured home is located on the site of the proposed new High Head Pump Station, and is proposed to be removed to accommodate the proposed new construction.

Please note that although several of the site plans show an "existing" *single-wide* modular office on the Rural portion of the site, this unit has been removed since application submittal, and is not proposed to be replaced. There is an existing temporary double-wide modular office just north of the administrative offices building. This structure is proposed to be removed at the completion of the proposed development.

Puget Sound Energy (PSE) Enterprise Substation is located on the site, as is a Washington State Department of Transportation (WSDOT) wetland mitigation site, under easement.

*Special Note: There is no new development proposed on the approximately 2 acre portion of the parcel subject to Rural zoning and Comprehensive Plan designation. All proposed development is on portions of the site zoned Agriculture, with a corresponding Comprehensive Plan designation of Agriculture.*

Portions of the site are within the jurisdiction of the Shoreline Management Program. Portions of the development also lie within the FEMA 100-year floodplain, as shown on maps that are part of the record.

**V. PUBLIC NOTICE AND COMMENT**

Requirements for public notice are contained in Chapter 2.33 WCC.

Notice of Application: The Notice of Application for this proposal was published on May 20, 2011. The thirty (30) day comment period ended on June 20, 2011.

On May 20, 2011, Notices of Application were mailed to property owners whose boundaries lie within 1,000 feet of the subject property. The comment period ended on June 20, 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 did not receive any public comments.

*The Technical Review Committee finds that in regards to public notice and comment, the applications have been processed in accordance with WCC 2.33 – Permit Review Procedures.*

#### **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.

Whatcom County Public Utility District No. 1 assumed lead agency and conducted environmental review under SEPA for the scope of development that is proposed under SHR2011-00006, SHC2011-00009, and CUP2011-00005. The Responsible SEPA Official reviewed a completed SEPA checklist and supporting documentation and made a determination that no probable significant adverse impacts to the environment would be likely to occur as a result of project completion.

A Determination of Non-significance (DNS) was issued on April 15, 2011. The comment period for this DNS ended on April 29, 2011. No written comments were received. The appeal period for this DNS ended on May 9, 2011. No appeals to this determination were filed.

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

##### **Shoreline Management Program Review:**

Whatcom County Public Utility District No. 1 has submitted an application for a shoreline substantial development permit and shoreline conditional use permit to conduct necessary improvements to the existing PUD #1 Water Treatment Plant #2.

The water treatment plant produces non-potable water used primarily by the industrial customers at Whatcom County's Cherry Point industrial area.

The proposal includes a 488 square foot expansion on the landward side of the existing Nooksack River intake pump station to accommodate electrical safety and redundant equipment. The applicant is also seeking approval to install 2,000 feet of 24-inch raw water transmission main extending from the intake pump station to the existing plant control building. This new line will run mostly parallel to the existing 20-inch transmission pipe and provide pumping redundancy. Lastly, the applicant is seeking approval to install redundant underground electrical and communication services that will follow the alignment of the 2,000-foot raw water transmission main.

The subject property is 73 acres in size. Currently the center of the parcel is used for agricultural purposes. The existing intake pump station is located at the eastern property line west of and adjacent to the Nooksack River, and other existing structures are located on the western side of the property. Terrestrial habitats surrounding the project site are influenced by agricultural activity and some residential development. Upland habitats within the action area have to been developed contain agricultural fields with small areas of coniferous forest surrounded by development and agricultural fields. Riparian vegetation immediately adjacent to the intake building, where temporary construction impacts will occur, do not include any shrubs or trees and is limited to a degraded herbaceous community.

Nooksack River is a shoreline of the state and thus subject to the provisions of the SMP. According to the Official Shoreline Map (Map) as outlined in 23.30.020.A, the subject lot is located within the Resource

designation area. Pursuant to 23.30.020.B, exclusive of associated wetlands the lateral extent of shoreline jurisdiction along the mainstem of the Nooksack River is indicated on the official map.

According to 23.90.130, shore setbacks within jurisdiction of the SMP are determined based on the buffering standards outlined within the Whatcom County Critical Areas Ordinance (CAO) incorporated by reference within the SMP pursuant to 23.10.060.A. Nooksack River is classified as a Shoreline Stream pursuant to 16.16.700 and according to 16.16.740, has a prescribed buffer/setback of 150-feet as measured landward on a horizontal plane from the OHWM. A portion of the proposed PUD #1 developments are within wetlands that are located within the floodplain of the Nooksack River and therefore meet the definition of "Associated Wetlands" outlined in the SMP. Therefore, jurisdiction is extended to the landward edge of the associated wetlands.

A shoreline substantial development permit is required for the proposed developments within SMP jurisdiction as the project does not specifically meet any of the listed exemptions from such permit review pursuant to 23.60.020.2. In order for a Shoreline Substantial Development Permit (SSDP) to be approved, the proposal must satisfy the criteria of section 23.60.010 of the SMP. These criteria are outlined and discussed in the conclusions section of the staff report.

Pursuant to 23.30.085.F, Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, may be permitted as a conditional use, provided there is not feasible location outside the shoreline. In order for a Shoreline Conditional Use Permit (SCUP) to be approved, the proposal must satisfy the criteria of section 23.60.040 of the SMP. These criteria are outlined and discussed in the conclusions section of the staff report.

In the granting of all SSDP's and SCUP's, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if SSDP's and SCUP's were granted for other developments in the area where similar circumstances exist, the sum of the permits and their impacts should also remain consistent with the policy of RCW 90.58.020 and should not produce a significant adverse effect to the shoreline ecological functions and processes or other users.

Pursuant to 23.40.01, development on Shoreline of Statewide Significance the statewide interest should be recognized and protected over local interest, agencies and local interest groups should be consulted and responses solicited. The natural character of the shorelines should be preserved, intensive development should be concentrated in areas already developed and limited in areas of low-density development. The use of Shorelines of Statewide Significance should result in long term benefit to the people of the state, resources and ecological systems should be protected and scarce or rare sites should be left in their natural state. Public access to publicly owned areas on Shorelines of Statewide Significance should be increased.

#### IV. CONCLUSIONS

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

In the review of the SSDP, the Administrator or Hearing Examiner, as appropriate, must find that the proposal is consistent with the following criteria:

- 1. All regulations of the SMP appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance pursuant to 23.60.030.**

**2. All policies of the SMP appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.**

General and use-specific policies and regulations associated with utility developments are found within Sections 23.90 and 23.100.160, respectively. Applicable policies and regulations associated with the proposed development are listed and discussed below:

**Ecological Protection and Critical Areas**

**23.90.030.A Policies**

- Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas designated in WCC 16.16, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, in so far as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; littoral drift; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.
- In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.
- Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the Administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

**23.90.030.B Regulations**

- Mitigation Sequencing - To comply with the policies of SMP 23.90.030.A, a shoreline permit applicant or project proponent shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts. Mitigation shall occur in the following prioritized order:
- Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
- Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
- Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment.
- Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.
- Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.
- Because of its incorporation by reference herein under Section 23.10.060.A. above, the provisions of the Whatcom County Critical Areas Ordinance, WCC 16.16, shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or written

statement of exemption is required. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with WCC 16.16 and the Program, provided that alteration for a water-oriented use may be allowed in accordance with WCC 16.16.225.B.3. Within shoreline jurisdiction, the regulations of WCC 16.16 shall be liberally construed together with the Program to give full effect to the objectives and purposes of the provisions of the Program and Act.

- Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this Program and WCC 16.16.
- The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.
- Whenever the administrator issues a determination or recommendation and/or conditions of approval on a proposal, which will result in the denial or substantial alteration of a proposed action, such determinations will be provided in writing stating the relationship(s) between the ecological factors, the proposed action and the condition(s).

Staff Comment:

*The proposed project is consistent with the ecological protection and critical areas policies and regulations. Pursuant to 23.90.130.7.b underground utilities area exempt from buffers and setbacks. Temporary impacts will occur with the placement of the 2,100 feet of water transmission and 1,650 feet of buried power communication conduits. The Biological Evaluation submitted indicates that 29,108 square feet of wetland impacts and 6,642 of wetland buffer impacts will occur as a result of the utility installation. The impacts associated with the installation of water main and electrical conduit will be temporary in nature and will be mitigated through restoration of impacted areas, including replanting with erosion control seed mix, native wetland seed mix, and other wetland species as appropriate. The proposed 488 square foot expansion of the water intake building will be located landward of the existing structure and will be constructed over an area that is gravel and concrete and provides very limited function. No new functioning buffer will be eliminated as a result of the project. The applicant has demonstrated compliance with the mitigation sequencing requirement outlined in 23.90.030. This recommendation of approval has been conditioned to require the submittal and approval of a TESC plan prior to issuance of the development permits. The proposal was reviewed by a wetland technical administrator and determined that the proposal will have no wetland or habitat conservation area impacts. The PUD #1 issued a Determination of nonsignificance for the proposal. There is no evidence that the project will have long term adverse impacts to shoreline ecological functions or processes. Staff believes that the approval as conditioned will achieve no net loss of shoreline ecological functions as outlined in 23.90.030.*

**Water Quality and Quantity**

**23.90.040.A Policies**

- The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality of surface and ground water over the long term.
- Shoreline use and development should minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.
- Appropriate buffers along all wetlands, streams, lakes, and marine water bodies should be provided and maintained in a manner that avoids the need for chemical treatment.

**23.90.040.B Regulations**

- Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws.
- New development shall provide stormwater management facilities designed, constructed, and maintained in accordance with the current stormwater management standards. Deviations from

these standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.

- Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control (TESC) plan, or administrative conditions.

Staff Comment:

*The proposed project is consistent with the above water quality and quantity policies and regulations. This recommendation of approval has been conditioned to comply with the Whatcom County Department of Engineering Stormwater requirements and submittal of a TESC plan prior to ground disturbing activities.*

**Vegetation Conservation**

**23.90.060.A Policies**

- Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. Important functions of shoreline vegetation include, but are not limited to:
  - Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.
  - Regulating microclimate in riparian and nearshore areas.
  - Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macro invertebrates.
  - Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.
  - Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.
  - Improving water quality through filtration and vegetative uptake of nutrients and pollutants.
  - Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.
  - Providing habitat for wildlife, including connectivity for travel and migration corridors.

**23.90.060.B Regulations**

- Shoreline developments shall comply with the vegetation conservation policies of this Program through compliance with the critical area standards of WCC 16.16.335, 16.16.360, 16.16.630 and 16.16.740 for protection and maintenance of critical area and buffer vegetation.
- Where compliance with SMP 23.90.060.B.1 is not feasible or required, new developments shall be required to develop and implement a vegetation management plan. When required, vegetation management plans shall be prepared by a qualified professional and shall be consistent with the requirements in WCC 16.16.260.B and .C, provided that the Administrator may establish prescriptive standards for vegetation conservation and management as an alternative to requiring a specific plan for a development. Vegetation management plans shall describe actions that will be implemented to ensure that buffer areas provide ecological functions equivalent to a dense native vegetation community to the extent possible given the area that is feasibly available. Required vegetation shall be maintained over the life of the use and/or development by means of a conservation easement or similar legal instrument recorded with the Whatcom County Auditor.
- Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.

- Removal of noxious weeds and/or invasive species shall be incorporated in vegetation management plans, as necessary, to facilitate establishment of a stable community of native plants.

Staff Comment:

*The proposed project is consistent with the vegetation conservation policies and regulations. No native shoreline vegetation will be removed as part of the proposal. The proposed expansion of the pump station expansion will be conducted on an area that is currently graveled and concrete and provides limited if any ecological function. Temporary impacts will occur with the placement of the 2,100 feet of water transmission and 1,650 feet of buried power communication conduits. The Biological Evaluation submitted indicates that 29,108 square feet of wetland impacts and 6,642 of wetland buffer impacts will occur as a result of the utility installation. The temporary impacts will occur from equipment access and trenching during installation of pipe and electrical conduit. Temporary impacts to vegetation will be mitigated through restoration of impacted areas, including replanting with erosion control seed mix, native wetland seed mix, and other wetland species as appropriate. No additional impacts to shoreline ecological functions or processes were identified in association with the permit review. The application indicates that the vegetation to be cleared is the minimum necessary to accommodate the development.*

**Landfill and Excavation**

**23.90.100.A Policies**

- Landfill and excavation should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat are encouraged.
- Landfills and excavation should be located and developed so that water quality, hydrologic and runoff patterns are not altered.
- The predicted economic benefits of landfills and excavation should be weighed against long term cumulative impacts on ecological processes and functions.

**23.90.100.B Regulations**

- Landfill and excavation shall be minimized to the maximum extent practicable and allowed only along with approved shoreline use and development activities that are consistent with this Program.
- A temporary erosion and sediment control (TESC) plan shall be provided for all proposed landfill and excavation activities.

Staff Comment:

*The proposed project is consistent with the above landfill and excavation policies and regulations. No significant impacts to shoreline ecological functions or processes were identified in association with the permit review. The recommended approval has been conditioned to require the submittal of a Temporary Erosion and Sediment control plan prior to ground disturbing activities. The applicant has designed the proposal to represent the minimum necessary to accommodate the development.*

**Utilities**

**23.100.160.A Policies**

1. New public or private utilities should be located inland from the land/water interface, preferably out of the shoreline jurisdiction, unless:
  - a. Perpendicular water crossings are unavoidable; or
  - b. Utilities are required for authorized shoreline uses consistent with this Program.

2. Utilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural resources.
3. Utilities should be located, designed, constructed, and operated to result in no net loss of shoreline ecological functions and processes with appropriate mitigation as provided in SMP 23.90.03.
4. All utility development should be consistent with and coordinated with all local government and state planning, including comprehensive plans and single purpose plans to meet the needs of future populations in areas planned to accommodate growth. Site planning and rights-of-way for utility development should provide for compatible multiple uses such as shore access, trails, and recreation or other appropriate use whenever possible; utility right-of-way acquisition should also be coordinated with transportation and recreation planning.
5. Utilities should be located in existing rights-of-way and corridors whenever possible.
6. Utilities serving new development should be located underground, wherever possible.
7. Development of pipelines and cables on aquatic lands and tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which would disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.

#### **23.100.160.B Utilities – Regulations**

##### **23.100.160.B.1 Design and Operation**

- i. Site Coverage: Maximum site coverage for utility development including parking and storage areas shall not exceed standards in the underlying zoning in WCC Title 20 and shall not exceed fifty percent (50%) on Urban, Urban Resort and Shoreline Residential shorelines, thirty-five percent (35%) on Rural and Resource shorelines and twenty percent (20%) on Urban Conservancy and Conservancy shorelines.

##### *Staff Comment:*

*The proposal aims to upgrade an existing water treatment plant. The proposal includes a 488 square foot expansion on the landward side of the existing Nooksack River intake pump station to accommodate electrical safety and redundant equipment. The applicant is also seeking approval to install 2,000 feet of 24-inch raw water transmission main extending from the intake pump station to the existing plant control building. This new line will run mostly parallel to the existing 20-inch transmission pipe and provide pumping redundancy. Lastly, the applicant is seeking approval to install redundant underground electrical and communication services that will follow the alignment of the 2,000-foot raw water transmission main. The subject site will comply with the maximum site coverage requirements outlined above. The proposed developments will not affect public recreation and public access. No adverse effects to ecological function and processes were identified through the review of the proposal.*

##### **23.100.160.B.2 Application Requirements**

All applications for new or expanded utilities shall be accompanied by adequate documentation that the proposal meets the policies and regulations of this Program, including but not limited to:

- a. **Documentation that the facility cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to cross shore lands to connect specific end points. An analysis of alternatives may be required. New or expanded public or private utilities should be located inland from the land/water interface, preferably out of shoreline jurisdiction.**

*Shoreline jurisdiction extends west from the edge of the Nooksack River approximately 1,600 feet to the edge of the associated wetlands. The districts basic function – providing customers with water – involves (1)*

*withdrawing water from the river, (2) piping it across SMP jurisdiction to the treatment plant, and (3) pump the treated water on to customers.*

*The proposed expansion is landward. Other alternatives would clearly have greater impacts to shoreline resources. The applicant has identified that the proposed expansion is the minimum necessary to accommodate the desired purpose.*

*The new transmission main between the intake and the treatment plant is configured to minimize shoreline impacts. The alignment generally follows the route of the existing pipe except where a different alignment has been selected to minimize impacts to critical areas.*

*Two alternatives were examined. The first considered moving the improvements away from the river and outside the floodway. This scenario would require constructing a separate building to house the intake's electrical equipment. To avoid the floodway, the new structure would be at least 400 feet west of the existing intake. At this location, the building floor would be 13 feet above grade to be above the 100-year floodplain, and a road through wetlands would be required for access. The critical area impacts of this scenario are greater than those associated with the current proposal.*

*The second alternative would be to construct an entirely new intake building away from the river. This is not possible because the intake must be very close to the water source to function; direct withdrawal of river water requires each pump intake to be submerged and hydraulically connected to the water source. A long pipe connection between intake and river is impractical due to the inability to remove silt and other obstructions.*

*The assessment of alternative indicates the proposed building addition location minimizes critical area impacts and represents the only practical option and is the minimum necessary to achieve the desired outcome.*

*The applicant submitted a Biological Evaluation (BE) which describes specific mitigation efforts. The evaluation describes the different critical area and buffer impacts associated with the project. Because all the impacts are considered short-term or temporary, the mitigation measures are limited to re-establishing grasses and vegetation removed during construction and utilization of BMP's to mitigate disturbance during construction.*

***b. Documentation that the proposed facilities comply with critical area regulations in WCC 16.16.***

*Pursuant to 16.16.225.2 Alteration of critical areas and/or buffers is permitted when necessary to accommodate an essential public facility or public utility where no feasible alternative location will accommodate the facility and the facility is designed, and constructed to minimize and, where possible, avoid critical area disturbance to the maximum extent feasible.*

*The applicant submitted a Biological Evaluation which describes specific mitigation efforts. The evaluation describes the different critical area and buffer impacts associated with the project. Because all the impacts are considered short-term or temporary, the mitigation measures are limited to re-establishing grasses and vegetation removed during construction and utilization of BMP's to mitigate disturbance during construction.*

*The proposed expansion of the pump station expansion will be conducted on an area that is currently graveled and concrete and provides limited if any ecological function. Temporary impacts will occur with the placement of the 2,100 feet of water transmission and 1,650 feet of buried power communication*

conduits. The Biological Evaluation submitted indicates that 29,108 square feet of wetland impacts and 6,642 of wetland buffer impacts will occur as a result of the utility installation.

- c. **Documentation of how the location, design and use achieves no net loss of shoreline ecological functions and incorporates appropriate mitigation in accordance with SMP 23.90.030.**

*The applicant has demonstrated compliance with the mitigation sequencing requirement outlined in 23.90.030. The expansion of the intake building will be landward of the existing structure and will be constructed over an area that is gravel and concrete and provides limited function. The impacts associated with the installation of water main and electrical conduit will be temporary in nature and will be mitigated through restoration of impacted areas, including replanting with erosion control seed mix, native wetland seed mix, and other wetland species as appropriate. Staff reviewed and approved the Biological Evaluation submitted by GeoEngineers that demonstrates that no mitigation is required because impacts are either temporary or are on substantially developed surfaces. This recommendation of approval has been conditioned to require the submittal and approval of a TESC plan prior to issuance of the development permits. Staff believes that the approval as conditioned will achieve no net loss of shoreline ecological functions as outlined in 23.90.030.*

- d. **Documentation that facilities will avoid public recreation areas and significant natural, historic, archaeological or cultural sites, and that all feasible measures to minimize adverse impacts to such resources have been incorporated into the proposal.**

*The site is entirely on property and controlled by the P.U.D. No. 1 of Whatcom County. As private property, the land provides no recreation opportunities to the public. The proposal will not change the public access. The applicant employed a consultant to conduct archeological review of the site for compliance with the archeological regulations outlined in the RCW and the SMP. The consultant concluded that the investigation "did not identify any historical or archeological resources within the project's area of potential effects" and recommended no further investigation. Additionally, the Washington State Office of Department of Archeology and Historic Preservation and appropriate tribes were notified of the project pursuant to WCC 2.33 and no comments were received.*

- e. **Applications must demonstrate adequate provisions for preventing spills or leaks, as well as procedures for mitigating damages from spills or other malfunctions and shall demonstrate that periodic maintenance will not disrupt shoreline ecological functions.**

*The proposal is restricted to the conveyance of water; no hazardous materials will be stored, conveyed, consumed or otherwise used as part of the permanent project. Because no damage is anticipated as the result of a potential water spill or leak, no specific prevention or mitigation measures are included with the proposal.*

*During construction, the use of diesel fuel and hydraulic fluid will be needed for heavy equipment. The contractor conducting these operations will be required to develop and comply with a spill prevention and countermeasures plan.*

**Shoreline Conditional Use Permit:**

The applicant has requested approval of a shoreline conditional use permit to conduct necessary improvements to the existing PUD #1 Water Treatment Plant 2. The proposal includes a 488 square foot expansion on the landward side of the existing Nooksack River intake pump station to accommodate electrical safety and redundant equipment. The applicant is also seeking approval to install 2,000 feet of 24-inch raw water transmission main extending from the intake pump station to the existing plant control building. This new line will run mostly parallel to the existing 20-inch transmission pipe and provide pumping redundancy. Lastly, the applicant is

seeking approval to install redundant underground electrical and communication services that will follow the alignment of the 2,000-foot raw water transmission main.

Submitted application materials indicate that the district's current operating demands for the entire distribution system total approximately 23 mgd. This includes 2.3 mgd to the City of Ferndale from Plant 1 and the remaining 20.7 mgd to the Cherry Point service area. As defined in the Comp Plan, plant capacities to meet current operating demands from the Cherry Point service area are evenly split between Plant 1 and Plant 2 at 10.5 mgd each.

Current and future contract obligations cannot exceed the District's water rights. Therefore the maximum instantaneous flows through the treatment cannot exceed, the maximum instantaneous withdrawals allowed under the District's water right which at Plant 2 is 18.1 mgd. The maximum annual flow through Plant 2 cannot exceed the maximum annual withdrawal allowed under the District's water right for Plant 2, which is 16.5 mgd.

The capacity of the treatment plant to accommodate the full beneficial use of the Plant 2 water right is referred to as "build-out" capacity. The application materials indicate that build out capacity at the treatment plant will be required in order to meet current and projected industrial contract demands, in addition to significant regional water supply needs that exist in Whatcom County

Pursuant to 23.30.085.F, "Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline" may be approved via conditional use subject the policies and regulations outlined in the SMP. The proposed developments meet the definition of utility developments outlined in the SMP.

In order for a Shoreline Conditional Use Permit to be approved, the proposal must satisfy the criteria of section 23.60.040 of the Program. These criteria are set forth and discussed below.

**23.60.040.B.1. That the proposed use will be consistent with the policy of RCW 90.58.020 and this Program.**

*SMP 23.30.080.5.F indicates that regional utility developments not serving adjacent uses may be permitted as conditional use subject to the policies and regulations of the SMP. The proposed project is an expansion of the existing PUD #1 Water Treatment Plant 2. The proposal includes a 488 square foot expansion on the landward side of the existing Nooksack River intake pump station to accommodate electrical safety and redundant equipment. The applicant is also seeking approval to install 2,000 feet of 24-inch raw water transmission main extending from the intake pump station to the existing plant control building. This new line will run mostly parallel to the existing 20-inch transmission pipe and provide pumping redundancy. Lastly, the applicant is seeking approval to install redundant underground electrical and communication services that will follow the alignment of the 2,000-foot raw water transmission main.*

*As stated in RCW 90.58.020 above industrial developments which are particularly dependent on their location on or use of the shoreline is a preferred use of the shoreline. As indicated within this staff report the proposal as conditioned complies with the policies and regulations outlined in the SMP. Additionally, the project has been reviewed and approved by the Whatcom County Critical Areas staff. A determination of significance was issued by PUD #1 on April 15, 2011. Accordingly, staff finds the material on record indicates the proposal complies with the policies of RCW 90.58.020 as a preferred use. There is no*

*evidence that the proposed project will result in any resultant damage to the ecology and environment of the shoreline area.*

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

*The subject site is located on property that is owned by the Whatcom County Public Utility District. There are no public access points at the location. The project proposal will not interfere with public use of public shorelines.*

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

*Single family residences surround the subject site and the general area is zoned for agriculture and residential purposes. The subject site will remain significantly unchanged from what currently exists. The proposed development will be compatible with other permitted uses in the area.*

**23.60.040.B.4. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.**

*No adverse environmental impacts were identified through review of the project. The proposal was reviewed by the wetland technical administrator and unconditionally approved. A Determination of Nonsignificance was issued by PUD #1 on April 15, 2011. No significant long term adverse affects to the shoreline environment were identified through review of the proposal.*

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

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

**3. In the granting of all shoreline substantial development permits and conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes and other users.**

*Comment:*

*As stated previously within this staff report, as conditioned, staff anticipates no net loss of shoreline ecological functions or processes as a result of the proposed project. Any impacts will be temporary in nature. As such, mitigation measures are limited to re-establishing grasses and vegetation removed during construction and utilization of BMP's to mitigate disturbance during construction. The location of the water treatment plant is water dependent. As stated in RCW 90.58.020, industrial developments which are particularly dependent on their location on or use of the shoreline is a preferred use of the shoreline. The proposal as conditioned complies with the policies and regulations of the SMP and is consistent with the policy of RCW 90.58.020 and will not produce significant adverse effects to shoreline ecological functions and processes and other users.*

**4. In accordance with the criteria of RCW 90.58.030(2)(e), the legislature designated the Mainstem of the Nooksack River as a Shoreline of Statewide Significance. Pursuant to 23.40.01, development on Shoreline of Statewide Significance the statewide interest should be recognized and**

protected over local interest, agencies and local interest groups should be consulted and responses solicited. The natural character of the shorelines should be preserved, intensive development should be concentrated in areas already developed and limited in areas of low-density development. The use of Shorelines of Statewide Significance should result in long term benefit to the people of the state, resources and ecological systems should be protected and scarce or rare sites should be left in their natural state. Public access to publicly owned areas on Shorelines of Statewide Significance should be increased.

*Comment:* Staff has reviewed the proposal, and found that all reasonable efforts have been taken to ensure that significant adverse impacts to wetland and habitat management areas will occur as a result of the proposed development. The proposal will not affect public access to the shoreline. Views and public access will remain unaffected by this development. Other reviews on record demonstrate the project, as conditioned, should satisfy the public safety, health and welfare requirements of applicable Whatcom County regulations and concurrently protect the interest of the public on a regional basis and is compliance with 23.40.01.

**Zoning Conditional Use Permit Review:**

In the preceding paragraphs, the proposed development has been reviewed for conformance and consistency with provisions of the Whatcom County Shoreline Management Program. The remainder of this Section is devoted to a review of the proposed development for conformance and consistency with applicable Whatcom County Code, Titles 15, 16, 17, 20, 24, Whatcom County Development Standards, and Whatcom County Shoreline Management Program (Title 23) by reference.

**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 Applicant requested that Public Works Division of Engineering accept a Letter of Agreement in lieu of the requirement for a security bond to ensure maintenance and operations of stormwater drainage facilities that were identified as a requirement in the pre-application meeting. Public Works Division of Engineering considered this request at length, and because of the large scale of the project, denied the request. This information was communicated to PUD No. 1, and accepted.

The initial proposal and revision to increase the size of the pump house was reviewed by Whatcom County Public Works Division of Engineering on June 15, 2011 & August 10, 2011, respectively. Comments on the proposal are listed below, and conditions of approval are listed in Section IX of this document.

1. Trigg Road is a partially in the City Limits (Ferndale) and partially county maintained road for approximately 1,520 feet. Trigg Road is classified as an Urban Local Access with 276 ADT (average daily trip). Operational width of the road is 22 ft. of which 16 ft. is pavement and 3 ft. gravel shoulder on each side of the road.

2. Based on the July 27, 2011 PUD No. 1 memo to increase the size of the pump house by an additional 6'-8", we have no concerns or comments.

*The Technical Review Committee has determined that subject to the proposed conditions located in Section IX of this document, the proposed project 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 June 16, 2011 & with comments & proposed conditions of approval. 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 Chief Plans Examiner submitted comments on the proposed revision to the intake pump station in an email dated August 15, 2011 indicating that the revision does not affect any of the conditions of approval listed in the June 16, 2011 memo.

1. Scope of project: there are items or projects listed in the proposal that would not require a building permit and are not listed below:
  - 488 sf (revised from 320 square feet) addition to Nooksack River intake pump house.
  - 200-foot, 24-inch raw water transmission main extending from the intake to existing control building
  - 500 sf addition to the existing plant control building
  - Two new open concrete settling basins (each 23' x 150')
  - A 2000 kw generator
  - A new 4000 SF high head pump station
  - A new 6100 sf maintenance building with attached garage and shop
  - A new 2100 sf covered storage building
2. Due to the scope of this project, these comments do not address any specific requirements. Specific requirements will be discussed at time of application of each individual building pre-application meeting and or submittal when more detailed plans are available. The following are general comments are not intended to be the final comments or requirements for any one project. Individual permits may be required for each proposed project.
3. Applicable code references for this project proposal are the 2009 International Building Code (IBC); the 2009 International Fire Code (IFC); the 2009 International Mechanical Code (IMC); the 2009 International Fuel Gas Code (IFGC); the 2009 Uniform Plumbing Code (UPC); all applicable code referenced manuals and standards; all applicable Washington State Amendments to the above referenced codes; the 2009 Washington State Non-residential Energy Code (NREC) and Ventilation & Indoor Air Quality Code per 2009 IBC.
4. A Washington State Professional Engineer shall engineer the proposed buildings and projects. The engineer shall perform a complete structural analysis for the proposed building(s).

5. 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 (signs, tanks, storage racks, equipment, etc.) to resist seismic loads.
6. A Washington State registered architect is required to design and stamp plans for all "non-exempt" structure of 4,000 square feet or greater in size.--- A Washington State licensed architect will be required by the Building Official to prepare plans and construction documents. (IBC Section 106.1, RCW 18.08.410) Plans prepared by a WA State licensed architect must be stamped and signed by the architect. (RCW 18.08.410[9]).
7. **(REQUIRED) Provide a code data summary sheet on the plan drawing submittals.** List all applicable code data specific to the proposed project, including but not limited to types of occupancy, type(s) of construction, allowable height and area justification, occupant loads, egress path and travel distance, required exits and widths, non-separated or separated use, mixed occupancy, incidental and or accessory uses, fire protection systems, building design criteria, plumbing fixture counts, etc.
8. Geotechnical engineer may be required, per the request of the engineer of record or the building official.
9. A design professional of record (licensed architect or engineer of record) shall be designated on the permit submittal documents and drawings where appropriate. The design professional of record shall be responsible for reviewing and coordinating all submittal documents prepared by others, including deferred submittal items, for compatibility with the design of the building. (IBC Section 106.3.4)
10. All materials and components used in construction of listed projects shall be approved by the engineer of record or the design professional of record, and upon request may require listings to be provided to the building inspector or the building official.
11. Occupancy separation shall be constructed as required per the current adopted edition of the International Building Code (IBC). (shop/office)
12. Exits shall meet the requirements of Chapter 10 of the International Building Code.
13. The proposal shall meet the barrier-free, handicap accessible requirements of the International Building Code, Chapters 10 & 11; IBC Appendix E; ICC/ANSI A117.1-03; applicable sections of the Washington State Amendments, per WAC 51-50. Accessibility design details shall be indicated on the plan drawings and submitted with the building permit.
14. Heating, cooling, ventilation and/or lighting (interior and exterior) of the building shall require compliance with the current adopted edition of the Washington State Nonresidential Energy Code (NREC) and Ventilation and Indoor Air Quality Code per 2009 IBC.
15. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.
16. Sprinkler system and fire alarm system submittals (when required) shall be applied for at the same time as the building permit, unless otherwise approved by the Fire Marshal.
17. Required plans for this project shall include but not be limited to. (Suggested scales)

- a. Site plan (1/10<sup>th</sup> scale)
  - b. Foundation plan (1/4" = 1' scale)
  - c. Floor plan (plan views) (1/4" = 1' scale)
  - d. Elevation plans (1/4" = 1' scale)
  - e. Structural plans (1/4" = 1' scale)
  - f. Section views (1/2" = 1' scale)
  - g. Details (special construction and or connections) (1/2" = 1' scale)
18. Minimum plumbing facilities (restrooms) are required in accordance with Washington State Amendments to the International Building Code, Chapter 29.
19. When special inspections are required by an architect/engineer or by IBC Section 1704, the architect/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. (IBC Section 1704)

**Fire Code:**

The Applicant requested that based on a different interpretation of applicable fire code an alternative standard for fire flow be considered. This issue was considered by the Fire Marshal, and a meeting was held with PUD No. 1, Murray Smith and Associates (contracted Engineering Firm) and the Fire Marshal, and was resolved to the satisfaction of all Parties. PUD No. 1 will be providing their own fire flow as approved by the Fire Marshal.

The Whatcom County Fire Marshal submitted a memo dated August 5, 2011 with conditions of approval for this proposal listed in Section IX of this document. This memo also covers the July 28, 2011 proposed revision to the intake pump station.

*The Technical Review Committee has determined that as discussed above, and subject to the proposed conditions, the proposed development 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 June 6, 2011 with the following comments:

The Critical Areas Assessment (wetland delineation) was reviewed and approved under PRE2011-00004 (preapplication meeting for PUD No. 1 proposed improvements held on February 10, 2011). The Biological Evaluation submitted by GeoEngineers dated May 4, 2011 is approved. The report establishes that no mitigation is required because impacts are either temporary or are on substantially developed surfaces. The project meets the standards of the Whatcom County Critical Areas Ordinance and is approved.

In addition, Critical Areas staff, also submitted a memo on August 30, 2011 indicating that there would be no expected critical area impacts from the proposed expansion to the intake pump station, and that the earlier June 6, 2011 comments remain unchanged by the revision.

*The Technical Review Committee has determined that as discussed above, 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. Portions of the proposed development are within an area subject to these regulations.

- The Applicant requested that the proposed development be vested to Title 17 requirements in place at time of application in regards to ESA checklist, and any requirements for Habitat Assessment. This issue was considered by Public Works Engineering, and was resolved to the satisfaction of all Parties.
- The Applicant also requested that the proposed development not be considered a Critical Facility as was previously discussed at the pre-application meeting for this project. Critical Facility status would result in higher standards for flood protection, and the Applicant questioned whether this standard should be imposed on the development as proposed. This request was approved as discussed in the comments listed below.

Public Works River and Flood submitted a memo dated September 19, 2011 with comments and conditions of approval that apply to the proposed development. River and Flood comments are listed below, with conditions of approval listed in Section IX of this report.

Parcel: **390209-115066**

FEMA Flood Insurance Rate Map (FIRM) Panel: **O690 D**

FEMA Flood Zone: **AE-Floodway**

FEMA Base Flood Elevation (BFE): **34.0 Feet (NGVD29)**

FEQ BFE: 34.2 Feet (NGVD29)

The revised floodway encroachment or “no-rise” certification prepared by Murray Smith and Assoc. for the subject permit(s) has been reviewed by our staff engineer for compliance with Whatcom County Flood Code (Title-17). We have determined that the analysis satisfies the requirements of Title-17 and the project may proceed as designed. However, a building permit will be required for the proposed pump house expansion and floodway mitigation area and specific flood conditions will be incorporated on the permit at that time. Furthermore, additional flood protection standards that apply to Critical Facilities will not be necessary for this project to comply with Title 17.

The submitted Biological Evaluation (BE) for the subject permit(s) prepared by GeoEngineers, Inc. with the determination that the project “is not likely to affect” listed species and/or habitat satisfies the associated requirements of the Endangered Species Act (ESA).

*The Technical Review Committee has determined that as discussed above, and subject to the requested conditions, the proposed development meets the requirements of WCC Title 17.*

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

*The proposed development is located entirely on portions of the site zoned Agriculture, with a corresponding Comprehensive Plan designation of Agriculture. There is no new development*

*proposed on the approximately 2 acre portion of the parcel subject to a Rural Comprehensive Plan designation and R5A zoning.*

**Chapter 20.40 – Agriculture District**  
**20.40.150 – Conditional Uses**

**20.40.156 – Public Utilities** (pursuant to WCC 20.82.020)

**WCC 20.40.350 - Building Setback Criteria:**

Building setbacks shall be administered pursuant to WCC 20.80.200.

*Discussion: Whatcom County Public Works, Division of Engineering has reviewed Trigg Road and determined that the portion of Trigg Road within jurisdiction of Whatcom County is a Urban Access Road. Required zoning setbacks for structures from Trigg Road will be 50 feet, and 20 feet from side and rear yard property lines.*

**WCC 20.40.450 – Lot Coverage:**

No structure or combination of structures, including accessory buildings, shall occupy or cover more than 25 percent of the total area of the subject parcel. Exceptions to the maximum lot coverage may be allowed when any of the following can be demonstrated:

- (1) Proposed structures, in excess of the allowed maximum lot coverage, are located on lesser quality soils.
- (2) Proposed structures in excess of the allowed maximum lot coverage support additional agricultural production on parcels other than the subject parcel.
- (3) Expansion of facilities that were in operation prior to the adoption of the ordinance codified in this section if it can be demonstrated that substantial on-site investment has been made and location of additional structures off-site would cause an economic hardship to the farm operation. (Ord. 2006-048 § 1 (Exh. A), 2006).

*Discussion: Although the subject parcel consists of 73 acres, the portion of the parcel that is subject to the above listed regulations consists of approximately 71 acres. There is an approximately 2 acre portion of the site subject to Rural zoning upon which no development is proposed, and therefore is exempt from this review.*

*The intent of above regulations [(WCC 20.40.450 (1-3))] is to limit the amount of land that may be converted to uses that are inconsistent with use of the land for agriculture. In this case because there are existing structures that are proposed to be removed to make room for new permanent structures, Technical Review Committee is reviewing the approximate square footage of structures that will exist upon project completion.*

*Total proposed approximate square footage of structures upon project completion:*

- *Sedimentation Basins - Existing and Proposed New = 23,600 sq. ft.*
- *New High Head Pump Station = 4,000 sq. ft.*
- *New Maintenance Building with Attached Garage & Shop = 6,100 sq. ft.*
- *Plant Control Building – Existing and Proposed New = 5,300 sq. ft.*
- *Nooksack River Pump Station Existing and Proposed New = 1,388 sq. ft.*

*Total approximate square footage of structures on the site is 40,388 square feet, just less than one acre of the 71 acres subject to this code section. The total proposed development consisting of structures which include buildings, and sediment basins is 0.76% of the 71 parcel acres, which is less than the maximum 25% allowed, therefore the proposed development conforms with the above requirements of WCC 20.40.450 (3) – Lot Coverage.*

**WCC 20.40.651 – Landscaping:**

Landscaping shall conform to the requirements of WCC 20.80.300.

*Discussion: The Technical Review Committee has determined that conformance with the requirements of WCC 20.80.300 will be reviewed at time of building permit application submitted as required in Section IX of this report. However, the Applicant has specifically requested that a security bond for the installation of landscaping as specified in WCC 20.80.375 be waived in lieu of a Letter of Agreement to ensure that the approved landscaping is maintained in a healthy growing condition. The Technical Review Committee is recommending that the Hearing Examiner approve this request, and its associated condition listed in Section IX of this report.*

**WCC 20.40.652 – 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.

*Discussion: The proposed development has been reviewed by Public Works Division of Engineering to ensure that the project meets submittal requirements relating to stormwater management located in the appropriate chapters of the Whatcom County Development Standards. The Technical Review Committee has determined that subject to the requested conditions in Section IX, the proposal will conform to the requirements of WCC 20.40.652 - Drainage.*

**WCC 20.40.662 - Use of Natural Resources**

All discretionary project permits for land on or within one-half mile of the 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: The Technical Review Committee is recommending that the Hearing Examiner require the Applicant to comply with natural resources disclosure policies contained in WCC Title 14. As discussed above, and subject to the requested condition, the proposed use meets the requirements of WCC 20.40.662.*

**Chapter 20.82 – Public Utilities**

**20.82.010 Intent.**

The provisions of this chapter regulate the installation, maintenance and operation of public utility lines, pipelines for oil and gas, railroads (but not included switching yards or round houses), or maintenance facilities. The citizen initiative, enacted through Ordinance 90-124, regarding power line placement, Comprehensive Plan land use designations, Comprehensive Plan policy directives

and the specific provisions of this chapter, shall be the basis for decisions regarding utility development. This chapter applies to all zoning districts unless stated otherwise. (Ord. 2004-041 § 1, 2004; Ord. 2004-014 § 2, 2004; Ord. 96-056 Att. A § T1, 1996; Ord. 87-12, 1987; Ord. 87-11, 1987).

**20.82.020 Permitted Uses**

.021 Except as provided in WCC 20.82.030, the installation and maintenance, including replacement, of all utility lines including pipes, cables and wires; and associated service equipment together with associated structures such as pump stations and equipment vaults; provided, that above-ground structures shall conform to the size requirements of WCC 20.82.022.

*Discussion: The subject application includes a proposal for sludge removal and maintenance improvements to the two existing sludge settling ponds. The Technical Review Committee has determined that this activity is a primary permitted use as provided in WCC 20.82.021. In addition, the Technical Review Committee has also determined that the stormwater facilities proposed to provide treatment and detention of peak runoff from new pavement and gravel surface areas are also considered a primary permitted use. Although these uses are considered to be outright permitted, these activities and all associated construction and installation shall be reviewed for conformance with all applicable Whatcom County Codes and Ordinances.*

**20.82.030 Conditional Uses**

The following uses shall require a conditional use permit or major project permit and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance:

- (3) New sewer and/or water lines with an inside diameter greater than eight inches except for the following which shall be permitted outright:
  - (a) New sewer and/or water lines located and installed by a public utility or municipality in conformance with a state approved sewer and/or water comprehensive plan and consistent with the Whatcom County Comprehensive Plan.
- (6) Utility structures located above ground such as pump stations, equipment buildings and similar structures greater than 100 square feet in area.
- (7) Sewer and water treatment plants, except that sewer treatment plants are prohibited in the Airports Operations Zone.

*Discussion: The following list of development projects as described or revised in the subject application have been determined to require a conditional use permit subject to conformance with conditional use approval criteria in WCC 20.84.220 (1-8).*

- 1. A 320 square foot addition later revised to 488 square feet to accommodate electrical safety improvements on the landward side of the existing Nooksack River intake pump station.
- 2. 2,000 lineal feet of a parallel 24-inch raw water transmission main extending from the intake pump station to the existing plant control building for pumping redundancy. Redundant underground electrical and communication services are proposed to follow the alignment of the 2,000-foot raw water transmission main.
- 3. A 500 SF addition to the plant control building for additional process mixing improvements.

4. Two new open concrete settling basins (each approximately 23' X 150') located east of the existing four settling basins.
5. A new 4,000 SF high head pump station building and clearwell.
6. A new 6,100 SF maintenance building with attached garage and shop.
7. A new 2,100 SF covered storage shed.
8. 38,000 SF new asphalt surfacing and 10,000 SF new gravel surfacing (parking/access).

*The project narrative included a number of requests for modified conditions of approval. These requests and Technical Review Committee response and recommendations regarding these requests are discussed in each section in accordance with applicable code.*

**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.

*Discussion: The proposed development 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.

*Discussion: Public Works Division of Engineering reviewed the Preliminary Traffic and Concurrency information submitted at time of application. Engineering staff memo dated June 15, 2011 did not list any specific conditions for approval of the project in regards to transportation concurrency.*

*Finding: The Technical Review Committee has determined as discussed above, the proposed development is in conformance with WCC Chapter 20.78*

**WCC 20.80.212 - 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 the proposed development is served with potable water by the City of Ferndale. Sewage disposal is served by an approved on-site sewage system.*

### **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: Ferndale School District No. 502 was sent a Notice of Application. 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 is located within the service area designated as Fire District No. 7. The Fire District was sent a Notice of Application. During the 15 day comment period, no comments were received from the Fire District indicating that the use would result in an increased requirement for services.*

*The Whatcom County Fire Marshal submitted a memo dated August 5, 2011 with conditions of approval for this proposal.*

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

### **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.

*Discussion: Given the nature of PUD No. 1 operations, it's likely that its parking lot will be used at all hours of the day or night to facilitate maintenance and operations. The Technical Review Committee has determined that parking lot lighting will be reviewed for conformance with this code section at the time of the required building permit submittal.*

### **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.**

*Discussion: Chapter 20.40 WCC Agriculture District specifically provides for Public Utilities to be reviewed pursuant to Chapter 20.82 – Public Utilities (WCC 20.40.156). Whatcom County Comprehensive Plan land use designations, Comprehensive Plan policy directives and the specific*

*provisions contained within WCC 20.82 – Public Utilities, are the basis for review in making recommendations in regards to utility development in Whatcom County.*

*The proposed development has been reviewed for consistency with Comprehensive Plan Goals and policies that (1) support development and use of new utility and information technologies, (2) facilitate maintenance and rehabilitation of existing utility systems and facilities and encourage use of existing utility corridors, (3) support direct and indirect economic benefits to Whatcom County originating with energy or utilities in general, (4) recognize economic benefits derived from coordination of utilities with established and projected, (5) ensure adequate infrastructure to support existing and future business development and evolving technology, and (6) continue to work with all involved parties to ensure an adequate water supply and distribution system to support economic growth.*

*Whatcom County Comprehensive Plan Policies that specifically apply to PUD No. 1, state that it is a policy to work with Whatcom County PUD and other water purveyors to provide service to all existing and designated urban growth or industrial areas; and further that the County will work with the Port of Bellingham, the PUD, and local, regional, and state economic development agencies to ensure an adequate water supply to areas planned for industrial development.*

*Finding: The Technical Review Committee finds that as discussed above, and subject to the requested conditions listed in Section IX of this report, the proposed development conforms to the requirements of WCC 20.84.220 (1).*

**(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.**

Discussion: The site of the existing PUD No. 1 Plant No. 2 proposed improvements consists of 73 acres adjacent the Nooksack River upon which agricultural activity is conducted (hayfield). In addition, there are offices, both temporary and permanent, storage buildings, pump house, and equipment storage buildings. In addition there is an existing PSE Enterprise substation, an existing stormwater facility, a wetland mitigation site, and settling ponds associated with water treatment. Ponds, lagoons, equipment barns, loafing sheds, hay fields, pump houses, wetlands, and in some cases offices associated with commercial agricultural operations, are all examples of the types of development found in the Agriculture Districts of Whatcom County. New development on this site is generally consistent with what is existing, although future uses may be slightly more intensive, yet still compare to the scale and intensity of other uses that are typically found in the zone.

*Finding: The Technical Review Committee finds that as discussed above, and subject to the requested conditions listed in Section IX of this report, the proposed development conforms to the requirements of WCC 20.84.220 (2).*

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

Discussion: During the construction phase of development there could be some inconvenience to neighboring uses, and an increase in employees at the site will cause more traffic. However, on May 19, 2011, PUD No. 1 proactively sent a letter to neighbors describing the proposed project and invited neighbors to an open house to discuss any concerns, or answer questions. In addition, property owners within 300 feet of the proposal were sent Notices of Application, and of these property owners, no comments were received to lodge objections to the proposed development.

*Finding: 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.**

*Discussion: The level of service for access, fire, and police is discussed below:*

*Roads: Access to the site is from Trigg Road. Public Works Division of Engineering reviewed the Preliminary Traffic Concurrency Evaluation submitted at time of application, and did not require any specific conditions of approval that would apply to the proposed development.*

*Police and Fire Protection: Fire Emergency Services are provided by Whatcom County Fire District No. 7 and Police Services are provided by Whatcom County Sheriff's Department. Notices of Application were sent to the Fire District and the Whatcom County Fire Marshal. 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. No comments were received from Whatcom County Fire District No. 7 indicating that the proposed development could not be served.*

*Environmental Health*

*The application was submitted to the Whatcom County Health Department. Health Department staff reviewed the application and submitted conditions of approval that pertain to required provisions for an approved water source and an approved on-site sewage system.*

*Finding: The site will be served adequately by necessary public facilities, or PUD No. 1 will provide adequately for any necessary public facilities.*

**(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.**

*Discussion: PUD No. 1 will bear financial responsibility for improvements that are proposed within the scope of this application.*

*Finding: The Technical Review Committee finds that as discussed above, the proposed development will not create additional public costs for public facilities and services, and will not be detrimental to the economic welfare of the community.*

**(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.**

*Discussion: Construction activities associated with the proposed development will cause a temporary inconvenience and additional noise created by equipment and machinery used in the construction, and depending on site conditions and weather, some dust may be raised from grading and trenching. Construction activity on the site is expected to require two years, beginning in early 2012, and is proposed to be complete in the beginning of 2014.*

*Finding: The Technical Review Committee finds that as discussed above, and subject to the requested conditioned, the proposed development will not involve uses, activities processes, materials, equipment and conditions of operation in any permanent duration 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.*

**(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.**

*Discussion: Whatcom County Public Works Division of Engineering Services has reviewed vehicular access to the subject parcel, and through this review did not require any improvements to the access for approval of the proposed development.*

*Finding: The Technical Review Committee has determined that as discussed above, the existing vehicular approaches are designed to accommodate the proposed development.*

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

*Discussion: 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 subject to the requested conditions, there are no shoreline, critical areas, geohazard or flood concerns that cannot be mitigated or resolved. No scenic or historic features of major importance have been identified on or in close proximity to the site.*

**F. Shoreline Management Program (Title 23)**

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.

*Discussion: The proposed development reviewed under File Numbers: SHR2011-00006 & SHC2011-00009 has been reviewed for conformance with the requirements of the Whatcom County Shoreline Management Program as discussed in Pages 6 through 20 of this report.*

*Finding: Subject to the requested conditions, located in Section IX of this report, the proposed development conforms to 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 August 31, 2011 with conditions of approval that apply to the proposed development that are located in Section IX of this report:

*Finding: The Technical Review Committee has determined that subject to the requested conditions, the proposed development conforms to the requirements of WCC Title 24.*

**H. Whatcom County Comprehensive Plan**

Zoning regulations are meant to implement the goals and policies of the County's Comprehensive Plan. Conditional uses are those uses that may be approved 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 development 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 5B:** Support development and use of new utility and information technologies.

**Policy 5B-2:** Support development and use of new technologies.

**Goal 5J:** Facilitate maintenance and rehabilitation of existing utility systems and facilities and encourage use of existing utility corridors.

**Goal 5L:** Support direct and indirect economic benefits to Whatcom County originating with energy or utilities in general.

**Policy 5L-1:** Recognize economic benefits derived from coordination of utilities with established and projected

**Policy 5L-2:** Require a utility proponent to show how the proposal provides local or regional benefit.

**Goal 5Q:** Work with Whatcom County PUD and other water purveyors to provide service to all existing and designated urban growth or industrial areas.

**Policy 5Q-7:** The County will work with the Port of Bellingham, the PUD, and local, regional, and state economic development agencies to ensure an adequate water supply to areas planned for industrial development.

**Goal 7C:** Ensure adequate infrastructure to support existing and future business development and evolving technology.

**Policy 7C-1:** Continue to work with all involved parties to ensure an adequate water supply and distribution system to support economic growth.

*Finding: The Technical Review Committee finds that the proposed development is consistent with the above listed Goals and Policies of the Whatcom County Comprehensive Plan.*

## **VIII. RECOMMENDATION**

The Technical Review Committee & the Whatcom County Shoreline Administrator recommend that the Whatcom County Hearing Examiner approve Whatcom County PUD No. 1's applications for a zoning conditional use permit, shoreline substantial development permit, and shoreline conditional use permit subject to requested conditions listed below. It is the Technical Review Committee's recommendation that by approving the proposed development and use permits described herein, as conditioned, the interests of the public and will not be adversely affected and the proposal is consistent with the policy outlined in RCW 90.58.020 and the SMP.

## **IX. CONDITIONS OF APPROVAL**

### **A. PDS – Current Planning**

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. 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 spaces shall be provided at a rate of one parking space per every 200 sq. ft. of floor area for the cumulative total of square footage of service buildings, offices, and administrative buildings on the site. 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.
3. 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.
4. Glare: Parking lot design shall incorporate measures to mitigate potential glare reflecting off windshields and impacting neighboring properties, or adjacent uses.
5. Trash and storage areas: Pursuant to WCC 20.80.355, at time of commercial building permit all trash and/or garbage collection receptacles, shall be clearly identified on the site plan, and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
6. 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.
7. Landscaping Requirements: An approved landscaping plan conforming to the requirements of 20.80.30 shall be submitted prior to issuance of the required commercial building permit. A Letter of Agreement may accepted in lieu of a security bond for maintenance and installation of any required landscaping, subject to review and approval by Whatcom County Planning and Development Services Department.
8. CUP Nontransferable: Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the hearing examiner.
9. 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. PDS – Building Services Division**

1. A commercial 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. PDS – Fire Marshal’s Office**

1. Fire flow required. Fire flow shall be a minimum 2500 gpm for Type V-B building or 2000 GPM for Type IIB or IIIB building. Fire hydrants shall be located within 300 feet of all buildings.
2. Fire sprinkler system may be required if the International Building Code occupancy requires it. Plans and specification shall be submitted to the Fire Marshal’s Office for review and permitting.
3. If a fire alarm system is required than plans and specification shall be submitted to the Fire Marshal’s Office for review and permitting.
4. Fire extinguisher size shall be 2A:10BC in the building at locations approved by the Fire Marshal.
5. Fire department access shall meet the requirements of the Whatcom County Development standards for roads.
6. Hazardous Materials safety data sheets and quantities shall be provided to the Fire Marshal’s Office.
7. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.

**D. Public Works – Division of Engineering**

1. All development shall comply with Whatcom County Development Standards.
2. An Engineered Stormwater Design Report with TESC Plan shall be submitted for review and approval with the building permit application. Stormwater Report shall address water quality and quantity.
3. As per Chapter 2, Sec. 218, (B), the applicant shall post a maintenance security with the Division of Engineering for any proposed drainage facilities. The security shall be for an amount of 10% of the engineer’s construction cost estimate or \$5,000 (whichever is greater). The security shall be in effect for 2 years from the date of provisional acceptance of new drainage facilities.
4. Prior to any Certificate of Occupancy an As-built drawings-Record Drawing for the new drainage system/ facility must be provided to the Engineering Services for permanent file record.
5. The proposed development may require a transportation concurrency evaluation, based on Preliminary Traffic Information that needs to be submitted with the building permit application.
6. The applicant may need to enter into a Haul Route Agreement based on proposed truck traffic analysis that needs to be submitted with the building permit application.
7. All appropriate permits must be obtained before construction. Obtaining a county permit does not replace or over-ride other state and federal statutes and regulations that may apply to this project.

**E. Whatcom County Health Department**

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

**Sewage:** If water is to be run to any new building, then an approved on-site sewage permit will be required. Any new buildings may not interfere with existing on-site sewage systems.

**F. Public Works – River & Flood**

1. A building permit will be required for the proposed pump house expansion and floodway mitigation area and specific flood conditions will be incorporated on the permit at that time.

**G. Shoreline Management Program**

1. The proposed project shall conform to the design, configuration, size and location as approved, except as modified by this approval. Any alteration of the approved design shall require additional review approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. Construction and/or demolition debris shall be wholly removed from water/shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority.
3. If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2298) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
4. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.160.

Report prepared for the Technical Review Committee by:

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Whatcom County Shoreline Administrator

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