

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT) SHR2011-0007
SHORELINE CONDITIONAL USE) SHC2011-0010
SHORELINE VARIANCE) SHV2011-0002
Application for)
)
Patti White/Parker & Newman Grove, LLC) FINDINGS OF FACT,
"Tide Catchers") CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting approval of a Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit, and a Shoreline Variance to redevelop, relocate and expand two existing nonconforming resort cabins within a conforming commercial resort.

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

FINDINGS OF FACT

INTRODUCTION

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

I.

PRELIMINARY INFORMATION

Applicant: Patti White / Parker & Newman Grove, L.L.C.

Applicant Representative Mr. Mark Bratt

Property Location/Address: 8074 Birch Bay Drive
Blaine, Washington

Assessor's Parcel Number 405125-557559

Adjacent Water Body: Birch Bay

Shoreline Designation: Urban Resort

Shoreline of State-Wide Significance: Yes

Zoning: Resort Commercial

<u>Authorizing Ordinances:</u>	SMP 23.50	Applicability
	SMP 23.70.010	Administration
	SMP 23.70.030	Hearing Examiner

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.020	Official Shoreline Map
SMP 23.30.040	Urban Resort Shoreline Area Designation
SMP 23.40	Shorelines of Statewide Significance
SMP 23.50.070	Non-conforming Development
SMP 23.60.010	Shoreline Substantial Development Permit Criteria
SMP 23.60.030	Variance Permit Criteria
SMP 23.60.040	Conditional Use Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.050	Commercial Use

SEPA Review: Determination of Nonsignificance issued by Whatcom County Planning & Development Services on June 16, 2011.

Legal Notices: Published – June 16, June 27 and September 29, 2011
Posted – September 28, 2011
Mailed – June 27 and September 23, 2011

Hearing Date: October 12 and continued on October 29, 2011

Parties of Record:

Patti White
Parker & Newman Grove, LLC
PO Box 4091
Bellingham, WA 98225

Mr. Mark Bratt
1604 Main St.
Lynden, WA 98264

Sam McDaniel
Planning and Development Services

Exhibits:

- 1 Land Use Application with attachments
 - 1-1 Supplemental Applications
 - 1-2 Agent Authorization, April 22, 2011
 - 1-3 Fee Responsibility
 - 1-4 Pre-application Narrative, December 28, 2010
 - 1-5 PDS Form Letter- Property Owners, June 27, 2011
 - 1-6 SEPA Distribution List
 - 1-7 Letter of Completeness, June 2, 2011
 - 1-8 PDS Property Owners Form Letter, June 27, 2011
 - 1-9 Mailing Labels
 - 1-10 Certificate of Mailing, Notice of Application, June 27, 2011
 - 1-11 Certificate of Mailing, June 28, 2011

- 2 Staff Report, October 6, 2011

- 3 Site Plan

- 4 Bellingham Herald Tear-Sheet: SEP Notice, June 16, 2011

- 5 Legal Notice of Application, June 27, 2011

- 6 Certificate of Mailing, Notice of Public Hearing, September 23, 2011

- 7 Certificate of Posting Notice of Public Hearing, September 28, 2011

- 8 Legal Notice of Pubic Hearing, September 29, 2011

- 9 Drawing Samples referred to in Applicant's Architect's Testimony

- 10 Email correspondence betw Nick Smith and John Gargett, 9/14-15/2011 with WCC
20.97.040 Building Height Definition attached

- 11 Email correspondence betw Mark Bratt and Sam McDaniel, October 5 and 6; June 2, 7;
July 25, August 18, 30, 26; Sept 21, 20, 19; June 14, 21; July 25, 2011

- 12 Legal Notice of Application, June 27, 2011

- 13 Agency Comments

- 14 Memo, dated September 8, 2011, from Nick Smith to Sam McDaniel

- 15 Revised Staff Report, dated October 19, 2011

16 Revised Site Plan

17 Email correspondence: Mark Bratt and Sam McDaniel, Oct 12 to Oct 17, 2011

II.

The Applicant is requesting approval of shoreline permits to redevelop, relocate, and expand two existing nonconforming resort cabins located in Birch Bay at the "Tide Catchers Resort."

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 at the hearing. The Findings of Fact and Conclusions of Law of the Shoreline Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Revised Staff Report, Exhibit #15, dated October 19, 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 Planner has recommended approval of the requested Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Shoreline Variance for the proposed redevelopment, relocation, and expansion of two existing nonconforming cabins within the commercial resort, known as "Tide Catchers Resort."

Findings of Fact and Conclusions of Law are set forth in the Revised Staff Report, Exhibit #15, dated October 19, 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, and with the Goals and Policies of the Whatcom County Shoreline Management Program. 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 Shoreline Variance are hereby granted to Patti White and Parker and Newman Grove, L.L.C. for the redevelopment, relocation, and expansion of two existing nonconforming commercial resort cabins. The property in question is located at Tide Catchers Resort, 8074 Birch Bay Drive, Blaine Washington. The permits are granted subject to the following conditions:

1. The proposed shoreline developments shall be consistent with the scope and site plans approved by this shoreline substantial development permit, shoreline conditional use permit, and shoreline variance. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. Construction and/or demolition debris shall be wholly removed from the 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. Offsite deposition of excavation spoils, concrete debris, etc. within unincorporated Whatcom County will require a Land Disturbance Permit from Whatcom County Planning and Development Services.
3. If archaeological materials (shell midden, faunal remains, stone tools) or human remains are observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all other applicable laws pertaining to archaeological resources is required.
4. The Applicant shall comply with all of the requirements of the Whatcom County Public Works Department, Division of Engineering prior to any development approvals, as outlined in the July 5, 2011 memorandum, unless modified by the Engineering Division, or appealed to the appropriate agency.
5. The Applicant shall comply with all of the requirements outlined in the Whatcom County River & Flood Division comments prior to any development approvals, as outlined in the July 25, 2011, email, unless modified by the River & Flood Division or appealed to the appropriate agency.
6. The Applicant shall comply with all of the requirements of the Whatcom County Plans Examiner prior to any development approvals as outlined in the July 28, 2011 memorandum unless modified by the Building Official, or appealed to the appropriate agency.

7. The Applicant shall comply with the requirements of the Whatcom County Fire Marshal, as outlined in the September 20, 2011, memorandum unless modified by the Fire Marshal, or appealed to the appropriate agency.
8. Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas, and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening.
9. The proposal shall comply with the elevation plans, date stamped by Whatcom County PDS on May 26, 2011, approved by this shoreline substantial development permit, shoreline conditional use permit, and shoreline variance. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
10. The proposal must comply with all bulk and dimensional setback requirements as required by the Whatcom County Shoreline Management Program.
11. Issuance of this shoreline permit does not release the Applicant from any other State, regional or Federal statutes or regulations applicable to the proposed development.
12. The Applicant shall submit a Temporary Erosion and Sedimentation Control Plan for review by the Shoreline Administrator prior to issuance of future development permits.
13. 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 1st day of November 2011.



Michael Bobbink, Hearing Examiner

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



J.E. "Sam" Ryan
Director

EXHIBIT
#15

Revised

October 19, 2011

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

The application of
Parker & Newman Grove, LLC.
For a Shoreline Substantial Development Permit &
Shoreline Conditional Use Permit & Shoreline
Variance

FINDINGS, CONCLUSIONS
AND RECOMMENDATIONS
SHR2011-00007/SHC2011-
00010/SHV2011-00002

I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant is requesting approval of a shoreline substantial development permit, a shoreline conditional use permit, and a shoreline variance to redevelop, relocate and expand two existing nonconforming resort cabins within a conforming commercial resort.

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

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Parker & Newman Grove, LLC.
PO Box 4091
Bellingham, WA 98225

Applicant Representative: Mr. Mark Bratt
1604 Main St.
Lynden, WA 98264

Property Location/Address: 8074 Birch Bay Drive

Assessor's Parcel Number: 405125-557559

Adjacent Water Body: Birch Bay

Shoreline Designation: Urban Resort

Shoreline of State-Wide Significance: Yes

Zoning: Resort Commercial

B. PROCEDURAL INFORMATION

Authorizing Ordinances: SMP 23.50 Applicability
SMP 23.70.010 Administration

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.020	Official Shoreline Map
SMP 23.30.040	Urban Resort Shoreline Area Designation
SMP 23.40	Shorelines of Statewide Significance
SMP 23.50.070	Non-conforming Development
SMP 23.60.010	Shoreline Substantial Development Permit Criteria
SMP 23.60.030	Variance Permit Criteria
SMP 23.60.040	Conditional Use Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.050	Commercial Use

SEPA REVIEW:

Determination of Nonsignificance issued by Whatcom County Planning & Development Services on June 16, 2011.

III. FINDINGS

The subject property is located 8074 Birch Bay Drive and is approximately 10,018 square feet in size. The subject structures are located within the "Tide Catchers Resort" (Resort). The resort has eight existing resort cabins and one workshop located on site. The subject property is designated as Urban Resort pursuant to WCC Title 23, Whatcom County Shoreline Management Program (SMP), is zoned Resort Commercial in accordance with Whatcom County Code, Title 20, and is designated as Urban Growth Area in the Whatcom County Comprehensive Plan. As with most properties in the area, the subject property has been significantly impacted over the years and contains very little if no native vegetation.

Birch Bay 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 Urban Resort shoreline area. Pursuant to 23.30.020, the lateral extent of the shoreline jurisdiction shall be determined on a case-by-case basis based on the location of the ordinary high water mark (OHWM), floodway and presence of associated wetlands. Staff determined that the OHWM is located at the base of the existing rip rap revetment located on the waterward side of Birch Bay Drive.

Analysis was conducted by Whatcom County in 2006 through application for nonconforming status, and it was verified that eight resort cabins and one workshop have been on the site were established prior to the adoption of the SMP and other Whatcom County regulations and development standards. The existing "Mallard" cabin is located approximately 100 feet from OHWM at its closest point (South Eastern Corner). The "Brant" cabin is located approximately 80 feet from the OHWM at its closest point (South Eastern Corner). Both cabins are located on the landward side of Birch Bay Drive and are nonconforming structures as defined in the SMP. Pursuant to 23.100.050.C Water-oriented resort oriented commercial use and development is permitted subject to the policies and regulations.

A shoreline substantial development permit is required for the proposed developments within SMP jurisdiction as the project does not fall within any of the listed exemptions from such permit review pursuant to 23.60.020.2.

The proposal requires approval of a Conditional Use Permit as the applicant is proposing to expand both cabins vertically within the existing footprint. Pursuant to 23.05.070.D "Non-conforming structures that are expanded or enlarged must obtain a variance or be brought into conformance with this Program and the Act; provided that, non-conforming single family residences may be expanded without a variance where the provisions of SMP 23.50.07.I apply; and provided further, **that non-conforming structures with conforming uses within commercial or mixed-use developments may be expanded or enlarged within the existing building footprint as a conditional use pursuant to Ch 23.100.05.B.1(e).**" In order for a conditional use permit to be approved the applicant/proponent can demonstrate compliance with the

criteria outlined in 23.060.040.B. These criteria are outlined below in the Conditional Use section of the Staff Report.

The proposal requires approval of a Shoreline Variance as the proposal includes minor lateral expansion for both cabins Pursuant to 23.50.070.E, "Non-conforming structures that are expanded or enlarged must obtain a variance or be brought into conformance with this Program and the Act; provided that, non-conforming single family residences may be expanded without a variance where the provisions of SMP 23.50.07.1 apply..."

In the granting of all substantial development permits and conditional use permits and variance approvals, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if substantial development permits and conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts should also remain consistent with the 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 Shoreline Substantial Development Permits, 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 23.60.03.**
- 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 applicable use-specific policies and regulations associated with the various developments are found within Sections 23.90 and 23.100, respectively. Applicable policies and regulations associated with the proposed development are listed and discussed below:

Ecological Protection and Critical Areas

23.90.03.A Policies

- Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas designated in WCC 16.16, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, in so far as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water

temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; littoral drift; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.

- In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.
- Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the Administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

23.90.03.B Regulations

- Mitigation Sequencing - To comply with the policies of SMP 23.90.03.A, a shoreline permit applicant or project proponent shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts. Mitigation shall occur in the following prioritized order:
 - Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
 - Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
 - Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment.
 - Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.
 - Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.
- Because of its incorporation by reference herein under Section 23.10.06.A. above, the provisions of the Whatcom County Critical Areas Ordinance, WCC 16.16, shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with WCC 16.16 and the Program, provided that alteration for a water-oriented use may be allowed in accordance with WCC 16.16.225.B.3. Within shoreline jurisdiction, the regulations of WCC 16.16 shall be liberally construed together with the Program to give full effect to the objectives and purposes of the provisions of the Program and Act.
- Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this Program and WCC 16.16.
- The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.

- Whenever the administrator issues a determination or recommendation and/or conditions of approval on a proposal, which will result in the denial or substantial alteration of a proposed action, such determinations will be provided in writing stating the relationship(s) between the ecological factors, the proposed action and the condition(s).

Staff Comment:

The proposed project is consistent with the ecological protection policies and regulations. The existing cabins are on the landward side of Birch Bay Drive and are functionally and effectively disconnected from Birch Bay pursuant to 16.16.740.A.

Section 23.90.130(C) of the SMP requires that setbacks be established pursuant to the Habitat Conservation Area requirements found in the Critical Areas Ordinance. WCC 16.16.740.D allows for the reduction of Habitat Conservation Area buffer widths on a case by case basis, provided that the general standards for avoidance and minimization per 16.16.260.A(1)(a) and (b) shall apply. The project was reviewed for compliance with WCC 16.16.740.D.

- 1. The buffer reduction shall not adversely affect the habitat functions and values of the adjacent habitat conservation area or other critical area*
- 2. The buffer shall not be reduced to less than seventy-five (75%) percent of the standard buffer as defined in WCC 16.16.740.*
- 3. The slopes adjacent to the habitat conservation area within the buffer area are stable and the gradient does not exceed thirty percent (30%).*

The subject cabins are on the landward side of Birch Bay Drive and is functionally and effectively disconnected from the critical area. Therefore, reducing the buffer will not adversely affect the habitat functions and values of the HCA or Birch Bay. The buffer will not be reduced to less than seventy-five (75%) percent (112.5 feet) of the standard buffer as defined in WCC 16.16.740.C. Adjacent slopes to the HCA are stable and the gradient is less than 30%.

Pursuant to the reduction standards outlined in 16.16.740, the shore setback has been established at 112.5 feet from OHWM. Approximately 200 square feet of redevelopment footprint of the "Mallard" cabin is proposed waterward of the setback. The "Brant" cabin includes approximately 550 square feet of redevelopment area waterward of the setback. The existing "Mallard" cabin will be relocated 2 feet 6 inches to the north to conform to current side yard setback requirements. This relocation will create 75 square feet of new residential development on the north side of the cabin while eliminating 75 square feet on the southern side of the cabin. The development associated with the "Brant" cabin includes removing 52 square feet of existing development and expanding the cabin footprint by 70 square feet to the south. In total, the new net residential development area within jurisdiction is approximately 23 square feet.

No vegetation removal is proposed as part of the development. No new buffer will be eliminated; the proposed new development footprints are in an area that is currently maintained lawn. Approval of the project will not adversely affect the Critical Area or buffer function. As such mitigation is not required. The proposal demonstrates compliance with 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. No cumulative effects were identified through the review of the proposal.

Water Quality and Quantity

23.90.04.A Policies

- The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality of surface and ground water over the long term.

- Shoreline use and development should minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.
- Appropriate buffers along all wetlands, streams, lakes, and marine water bodies should be provided and maintained in a manner that avoids the need for chemical treatment.

23.90.04.B Regulations

- Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws.
- New development shall provide stormwater management facilities designed, constructed, and maintained in accordance with the current stormwater management standards. Deviations from these standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.
- Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control (TESC) plan, or administrative conditions.

Staff Comment:

The proposal is consistent with the water quality and quantity policies and regulations. The future development permits will be reviewed for conformance with the special stormwater standards outlined in WCC 20.80.636. A Preliminary Stormwater proposal with detailed site plan shall be submitted with future building permits to address all clearing activities. The Whatcom County Department of Engineering Services reviewed the proposal and has conditioned this recommendation to require submittal of a Stormwater Design Report at time of building permit submittal. Additionally, this recommendation of approval has been conditioned that the applicant submits a TESC plan with the development application for review and approval.

Vegetation Conservation

23.90.06.A Policies

- Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. Important functions of shoreline vegetation include, but are not limited to:
 - Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.
 - Regulating microclimate in riparian and nearshore areas.
 - Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macro invertebrates.
 - Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.

- Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.
- Improving water quality through filtration and vegetative uptake of nutrients and pollutants.
- Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.
- Providing habitat for wildlife, including connectivity for travel and migration corridors.

23.90.06.B Regulations

- Shoreline developments shall comply with the vegetation conservation policies of this Program through compliance with the critical area standards of WCC 16.16.335, 16.16.360, 16.16.630 and 16.16.740 for protection and maintenance of critical area and buffer vegetation.
- Where compliance with SMP 23.90.06.B.1 is not feasible or required, new developments shall be required to develop and implement a vegetation management plan. When required, vegetation management plans shall be prepared by a qualified professional and shall be consistent with the requirements in WCC 16.16.260.B and .C, provided that the Administrator may establish prescriptive standards for vegetation conservation and management as an alternative to requiring a specific plan for a development. Vegetation management plans shall describe actions that will be implemented to ensure that buffer areas provide ecological functions equivalent to a dense native vegetation community to the extent possible given the area that is feasibly available. Required vegetation shall be maintained over the life of the use and/or development by means of a conservation easement or similar legal instrument recorded with the Whatcom County Auditor.
- Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.
- Removal of noxious weeds and/or invasive species shall be incorporated in vegetation management plans, as necessary, to facilitate establishment of a stable community of native plants.

Staff Comment:

The proposed project is consistent with the vegetation conservation policies and regulations. The proposal is on the landward side of Birch Bay Drive and pursuant to 16.16.740 is functionally and effectively disconnected from Birch Bay. No vegetation removal is proposed. The proposed new redevelopment areas will occur on an area that is currently maintained lawn. The applicant has indicated that the amount of clearing is the minimum necessary to accommodate the development.

Site Planning

23.90.09.A Policies

- Development and use should be designed in a manner that directs land alteration to the least sensitive portions of the site to maximize vegetation conservation; minimize impervious surfaces and runoff; protect riparian, nearshore and wetland habitats; protect wildlife and habitats; protect archaeological, historic and cultural resources; and preserve aesthetic values. This may be accomplished by minimizing the project footprint, the use of clustering and other appropriate design approaches.

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

23.90.09.B Regulations

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

- Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and water-related recreation shall be protected through specific provisions to avoid impacts, or provide access as applicable.
- Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas, and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening.
- All facilities shall be located and designed to avoid impediments to navigation and to avoid depriving other properties of reasonable access to navigable waters. Review and approval by the U.S. Coast Guard may be required as a condition of issuance of building or development permits to assure compliance. All in-water structures shall be marked and lighted in compliance with U.S. Coast Guard regulations.
- All shoreline use and development shall provide setbacks from adjacent properties in accordance with SMP Table 23.90.13.C. Setbacks shall be of adequate width to attenuate proximity impacts such as noise, light and glare, and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual screen.

Staff Comment:

The proposed project is consistent with the site planning policies and regulations. This recommendation of approval has been conditioned to require a Preliminary Stormwater proposal with detailed site plan and submittal of a Stormwater Design Report at time of building permit submittal to ensure compliance with Whatcom County Development Standards and Stormwater regulations. This recommendation of approval has been conditioned to appropriately restrict exterior lighting as outlined above. This recommendation of approval has been conditioned to ensure compliance with the bulk and dimensional setbacks outlined in 23.90.130.C prior to approving any development permits.

Landfill and Excavation

23.90.10.A Policies

- Landfill and excavation should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat are encouraged.
- Landfill in water bodies, floodways, and/or wetlands should not be permitted for creation of new uplands, unless it is part of an approved ecological restoration activity. Landfill should be permitted in limited instances to restore uplands where recent erosion has rapidly reduced upland area, to build beaches and protective berms for shore stabilization or recreation, to restore or enhance degraded shoreline ecological functions and processes, or to moderately elevate low uplands to make such uplands more suitable for purposes consistent with this Program.
- Landfills and excavation should be located and developed so that water quality, hydrologic and runoff patterns are not altered.
- The predicted economic benefits of landfills and excavation should be weighed against long term cumulative impacts on ecological processes and functions.

23.90.10.B Regulations

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

Staff Comment:

The proposed project is consistent with the 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 to proposal to represent the minimum necessary construct the scope of work.

Commercial Use

23.100.05 Commercial Use – Policies

- In securing shoreline locations for commercial use, preference should be given first to water-dependent commercial uses, then to water-related, and water-enjoyment commercial uses.
- Restoration of impaired shoreline ecological functions and processes should be encouraged as part of commercial development.

- Commercial uses located in the shoreline should provide public access in accordance with constitutional or other legal limitations unless such improvements are demonstrated to be infeasible or present hazards to life and property.

23.100.05 Commercial Use - Regulations

23.100.05.B.1 Allowed Use

Commercial uses that result in no net loss of shoreline ecological functions and processes are allowed subject to the policies and regulations of SMP 23.90.03 and the specific criteria below:

- a. Water-dependent commercial uses shall be given preference over water-related and water-enjoyment commercial uses. Prior to approval of water-dependent uses, the Administrator shall review a proposal for design, layout and operation of the use and shall make specific findings that the use qualifies as a water-dependent use.
- b. Water-related commercial uses may not be approved if they displace existing water-dependent uses. Prior to approval of a water-related commercial use, the Administrator shall review a proposal for design, layout and operation of the use and shall make specific findings that the use qualifies as a water-related use.
- c. Water-enjoyment commercial uses may not be approved if they displace existing water-dependent or water-related uses or if they occupy space designated for water-dependent or water-related use identified in a substantial development permit or other approval. Prior to approval of water-enjoyment uses, the Administrator shall review a proposal for design, layout and operation of the use and shall make specific findings that the use qualifies as a water-enjoyment use.
- d. Nonwater-oriented commercial uses may be permitted as a conditional use where located on a site physically separated from the shoreline by another property in separate ownership or a public right-of-way such that access for water-oriented use is precluded, provided that such conditions were lawfully established prior to the effective date of this Program. All other nonwater-oriented commercial uses are prohibited in the shoreline unless the use provides significant public benefit with respect to the objectives of the Act and is:
 - (1) part of a mixed use project that includes a water-oriented use; or
 - (2) proposed on a site where navigability is severely limited.
- e. When permitted, nonwater-oriented commercial uses shall provide access and/or restoration as follows:
 - (1) Nonwater-oriented commercial uses shall provide public access in the form of unrestricted open space. The Administrator shall determine the amount of access in accordance with the provisions of SMP 23.90.08 on a case-by-case basis.
 - (2) If no water-oriented commercial uses are located on or adjacent to the water as part of a mixed use development, eighty percent (80%) of the shoreline and associated buffers shall be preserved or restored to provide shoreline ecological functions that approximate the functions provided by the site in natural conditions.
 - (3) The requirement in SMP 23.100.05.B.1.e(1) and (2) may be modified when:
 - (a) The site is designated as a public access area by a shoreline public access plan, in which case public access consistent with that plan element shall be provided; or

- (b) Specific findings are made demonstrating that the size of the parcel and the presence of adjacent uses preclude restoration of shoreline ecological functions. Where on-site restoration is infeasible, equivalent off-site restoration shall be provided consistent with the policies and regulations of this Program.
- (4) Where restoration is proposed, buffers shall be designed as appropriate to protect shoreline resources based on a specific restoration plan and may differ from the standard critical area buffer dimensions provided in WCC 16.16, provided that the building envelope for the proposed nonwater-oriented use shall be based on current site conditions.
- (5) The requirements of this section (e) shall not apply to those nonwater-oriented commercial uses located on a site physically separated from the shoreline where access to the land/water interface is precluded.
- f. If water-oriented commercial uses are located on or adjacent to the water, the remaining undeveloped water frontage that is not devoted to water-dependent use shall be preserved in a substantially undeveloped condition until such time that an appropriate water-dependent use has been identified for the area. If the site has been previously altered by past development, the balance of the site may be reserved for future water-related use.

Staff Comment:

The proposed project is consistent with the above-referenced use policies and regulations associated with commercial development. As stated previously within this staff report, the proposal complies with the policies and regulations outlined in 23.90. The subject property is designated as Urban Resort, is zoned Resort Commercial in accordance with Whatcom County Code, Title 20, and is designated as Urban Growth Area in the Whatcom County Comprehensive Plan. The subject structures are located within the existing Tidecatcher Resort which contains eight cabins and one workshop which has existed prior to the adoption of the SMP and other Whatcom County regulations. Pursuant to 23.30.040.B, Water-oriented commercial developments are identified as a permitted use. Hotels and motels are identified in the "Commercial Development" definition contained in the SMP. The subject property is currently zoned Resort Commercial. The Resort Commercial zone outright permits hotels and motels accommodating 16 or less sleeping units. The continued use of the resort meets the Water-enjoyment definition outlined in the SMP and offers substantial public access to the shoreline. There is no evidence that redeveloping and expanding the nonconforming "Mallard" and "Brant" cabins will have long term adverse impacts to shoreline ecological functions or processes.

Tabular Regulations: Setbacks, Height and Open Space for Commercial Development

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

Staff Comment:

The development permits will be reviewed for compliance with the tabular regulations contained in section 23.90.13 of the SMP.

SHORELINE CONDITIONAL USE:

Section 23.50.070.E states that Non-conforming structures that are expanded or enlarged must obtain a variance or be brought into conformance with this Program and the Act; provided that, non-conforming single family residences may be expanded without a variance where the provisions of SMP 23.50.07.1 apply; and provided further, **that non-conforming structures with conforming uses within commercial or mixed-use developments may be expanded or enlarged within the existing building footprint as a conditional use pursuant to Ch 23.100.05.B.1(e).** The applicant has requested approval of a shoreline

conditional use permit to redevelop and vertically expand two nonconforming cabins within an existing commercial resort. The existing cabins are well within the shore setback required in the current SMP and are therefore considered a nonconforming structure with respect to the shore setback as defined in the SMP. As stated in the findings section of this staff report the buffer reduction provision contained in WCC 16.16 has been utilized in this scenario to reduce the shore setback to 112.5 feet from OHWM.

The "Mallard" cabin currently consists of 523 square feet of living area and 520 square feet of storage area in an existing structure located directly behind the cabin. Redeveloping the "Mallard" cabin includes the construction of a 1,114 square foot second story addition that will be located within the existing building footprint. Approximately, 200 square feet of the vertical expansion will be located within the shore setback. The proposed height complies with the bulk and dimensional requirements set forth in the SMP.

The "Brant" cabin currently consists of 826 square feet of living area. Redeveloping the "Brant" cabin includes a vertical expansion to meet the 25 foot height limit 550 square feet of which will be located waterward of the shore setback.

The subject property is located within the existing Tidecatcher Resort which contains eight cabins and one workshop. The subject property is located in the Urban Resort designation. Pursuant to 23.30.040.B, Water-oriented commercial developments are identified as a permitted use. Hotels and motels are identified in the "Commercial Development" definition contained in the SMP. The subject property is currently zoned Resort Commercial. The Resort Commercial zone outright permits hotels and motels accommodating 16 or less sleeping units. Therefore, the existing "Mallard" and "Brandt" cabins are located within a conforming commercial development.

Section 23.60.04.B states that uses specifically classified or set forth in the SMP as conditional uses may be authorized provided the applicant/proponent can demonstrate all of the following:

1. That the proposed use will be consistent with the policy of RCW 90.58.020 and the SMP.
2. That the proposed use will not interfere with normal public use of public shorelines.
3. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.
4. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.
5. That the public interest suffers no substantial detrimental effect.

Staff Comment:

1. *The proposal includes the redevelopment, lateral expansion, and vertical expansion of two resort cabins within an existing commercial development. The applicant is proposing to add a second story to the existing cabin (Mallard) which will be contained substantially within the existing footprint. The proposed 2 foot 6 inch relocation of the cabin to the north will result in approximately 35 square feet of new residential foot print which will contain the second story within the shore setback. The proposed height for the "Mallard" cabin will comply with the bulk and dimensional requirements of the SMP. The applicant is proposing the vertical expansion of the "Brant" cabin to 25 feet in height within the existing residential footprint which complies with the bulk and dimension setbacks of the SMP. RCW 90.58.020 identifies commercial developments which are particularly dependent on their locations on or use of the shorelines of the state as preferred use. Section 23.100.050.C indicates Water-oriented resort oriented commercial use and development is permitted subject to the policies and regulations. As described in the previous section of this staff report, the proposal as conditioned, meets all of the applicable policies and regulations outlined within the SMP. The location of the existing "Tide Catchers Resort" allows for substantial public access to the shoreline. RCW 90.58.020 requires that "Permitted uses in the shorelines of the States shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water". No significant cumulative adverse impacts were identified through the review of the application. Additionally, no adverse comments were received during the comment period for the proposal. It has*

been determined by staff that the proposed project meets this overall policy of the Shoreline Management Act (SMA) and the SMP.

2. No impacts to existing public access or use of the shoreline was identified through review of the project proposal. The project area is located on the landward side of Birch Bay Drive on privately owned property. The subject property is physically separated from the OHWM of the Birch Bay. Public access to the Birch Bay is located directly across the birch bay drive.
3. The proposed use and design of the project is compatible with other permitted uses in the area. This portion of Birch Bay contains various types and scales of commercial developments. Currently, there is a RV Park neighboring the parcel to the north that contains approximately 48 RV's of various types and size and a resort approximately 700 feet to the north that contains 10 cabins. An 18 unit commercial resort that is four stories in height was permitted in 2003 and is located approximately 230 feet to the south of the subject lot.
4. The subject cabins are located approximately on the landward side of Birch Bay Drive and functionally and effectively disconnected from Birch Bay. No vegetation removal has been proposed. Whatcom County Planning & Development Services issued a SEPA threshold determination of Nonsignificance on June 16, 2011. No adverse effects to the shoreline environment were identified through the review of the proposal.
5. The proposed developments will occur substantially within an already developed area on the landward side of Birch Bay Drive. The proposed development is located on privately owned land, and will have no effect on existing access to the shoreline. No negative impacts to views were brought forth during the public comment period by adjoining landowners. There is nothing in the record that indicates that granting approval would result in the public suffering substantial detrimental effect.

SHORELINE VARIANCE:

Pursuant to 23.50.070.E, "Non-conforming structures that are expanded or enlarged must obtain a variance or be brought into conformance with this Program and the Act; provided that, non-conforming single family residences may be expanded without a variance where the provisions of SMP 23.50.07.I apply..." As stated in the findings section of this staff report the buffer reduction provision contained in WCC 16.16 has been utilized in this scenario to reduce the shore setback to 112.5 feet from OHWM.

The applicant is proposing to redevelop and laterally expand two existing commercial cabins. The applicant is proposing to relocate the existing "Mallard" cabin 2 feet 6 inches to the north to comply with the five foot side yard setback requirement on the southern property line. Relocating the cabin 2 feet 6 inches to the north would result in approximately 35 square foot of new residential footprint within the shore setback while eliminating approximately 35 square feet of footprint on the southern side.

A redevelopment activity for the "Brant" cabin includes eliminating 20 square feet of development on the waterward side of the cabin. The applicant is proposing to expand the existing cabin to the south by approximately 25 square feet the south within the shore setback.

The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Program and any associated standards appended to this Program such as critical areas buffer requirements where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Program would impose unnecessary hardships on the applicant/proponent or thwart the policy set forth in RCW 90.58.020.

For a Shoreline Variance to be approved, the proposal must satisfy the criteria of section 23.60.03.D of the Program. These criteria are set forth and addressed below.

23.60.03.D.1 That the strict application of the bulk or dimensional criteria in this Program precludes or significantly interferes with a reasonable permitted use of the property.

Relocating the "Mallard" cabin 2 feet 6 inches to the north as proposed will help mitigate potential fire hazard and create an improved view access to the shoreline from landward properties. The relocation would result in approximately 35 square feet of new development footprint within the shore setback on the northern side of the "Mallard" cabin while eliminating 35 square feet of footprint on the southern side, resulting in no net increase of development area. A second story will be constructed on the 35 square feet of new development footprint. The relocation will bring the cabin into conformance with side yard setback requirements. Developments associated with the "Brant" cabin include removal of 20 square feet of existing residential footprint on the existing cabin and expanding the cabin by 25 square feet within the shore setback to the south with a vertical expansion in the new residential footprint. Resulting in a net increase of new development area of approximately 5 square feet within the shore setback. The total expanded development area for both cabins within the shore setback is approximately 60 square feet. Staff has determined that strictly implementing the bulk and dimensional criteria of the SMP would significantly interfere with the reasonable permitted use of the property. Requiring the reconstruction of the cabins to conform to the current setback requirement would require observance of the 150-foot marine setback and would effectively eliminate an existing cabin on site, reducing the overall number of cabins on the site. Therefore strictly applying the bulk and dimensional criteria of the SMP significantly interferes with reasonable use of the property.

23.60.03.D.2 That the hardship described in 20.60.03.A above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this Program, and not, for example, from deed restrictions or the applicant's own actions.

The hardship is specifically related to the presence of the commercial resort located on site and the nonconforming location of the existing cabins that were constructed prior to the adoption of the SMP and other regulations. Staff has determined that strictly implementing the bulk and dimensional criteria of the SMP would significantly interfere with the reasonable permitted use of the property. Reconstructing the cabins to conform to the current setback requirement would require observance of the 150-foot marine setback and would effectively eliminate an existing cabin on site, reducing the overall number of cabins. Therefore, staff has determined that the applicant's hardship is specifically related to the property, and is a result of unique condition of the existing nonconforming commercial cabins within a conforming commercial resort and is not self-imposed or a result of the applicant's own actions.

23.60.03.D.3 That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.

The subject site is located within an area of densely developed commercial/residential area of Birch Bay. The proposal will be compatible with other permitted activities in the area. The proposal aims to redevelop two existing cabins. The proposed project area is on the landward side of Birch Bay Drive and is functionally and effectively disconnected from Birch Bay. No adverse effects to the shoreline environment were identified through the review of the proposal.

23.60.03.D.4. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.

This portion of Birch Bay contains various types and scales of commercial developments. Currently, there is a RV Park neighboring the parcel to the north that contains approximately 48 RV's of various types and size and a resort approximately 700 feet to the north that contains 10 cabins. An 18 unit commercial resort that is four stories in height was permitted in 2003 and is located approximately 230 feet to the south of the subject lot. These particular cabins are located in an existing commercial resort development that has eight cabins. It does not appear that granting the proposed relocation and redevelopment of the

nonconforming cabins is a grant of special privilege and the proposed development is similar to other properties in the area.

23.60.03.D.5 That the public interest will suffer no substantial detrimental effect.

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

23.60.03.D.6 That the public rights of Navigation and use of the shorelines will not be materially interfered with by the granting of the variance

The proposal will not materially interfere with the public rights of Navigation.

23.60.03.D.7 Mitigation is provided to offset unavoidable adverse impacts caused by the proposed development or use.

No mitigation has been proposed for the proposal as no critical area impacts were identified during the review of the proposal.

Cumulative Impact Analysis

Section 23.60.185 states that in the granting of all shoreline permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline permits were granted to other developments in the area where similar circumstances exist, the total of the shoreline permits should also remain consistent with the policies of RCW 90.58.020 and should not produce significant adverse effects to the shoreline environment or other users.

Comment:

Pursuant to 16.16.740 the shore setback for the site has been reduced to the maximum available and is established at 112.5 feet from OHWM. The proposed area of developments is located on the landward side of Birch Bay Drive and is functionally and effectively disconnected from Birch Bay. Approximately 150 square feet of redevelopment footprint of the "Mallard" cabin is proposed waterward of the setback. The "Brant" cabin includes approximately 550 square feet of redevelopment area waterward of the setback. The existing "Mallard" cabin will be relocated 2 feet 6 inches to the north to conform to current side yard setback requirements and includes the incorporation of an existing building for a detached garage, and the addition of a second story to meet the height limit outlined in the SMP. Relocating the cabin will result in new residential footprint of 75 square feet to the north while eliminating 75 square feet on the southern side of the cabin. Development associated with the "Brant" cabin includes removing 52 square feet of existing development; expanding the cabin footprint by 70 square feet to the south and expanding vertically to meet the height limit outlined in the SMP. In total, the new net residential development area within jurisdiction is approximately 23 square feet. There are existing similar commercial developments within the area that are of similar distance from the OHWM. The area is densely developed with commercial and residential developments and is designated Urban Resort, Resort Commercial in the Zoning code, within the Urban Growth Area. Therefore, the granting of similar permits in the area for similar developments appears to be consistent with the policies of RCW 90.58.020. The proposed development will continue to offer public access to the shoreline which is consistent with the policies of RCW.58.020. No significant adverse effect to the shoreline ecological functions and processes are anticipated nor are impacts to other users probable. As such, approval of additional projects were similar circumstances exist should not result in cumulative environmental impacts to the shoreline environment.

V. PUBLIC COMMENTS

No written adverse public comment was received during the time of this permit review.

VI. AGENCY COMMENTS

The Whatcom County **Fire Marshal's Office** submitted the following comments regarding the proposal on September 20, 2011:

The Whatcom County Fire Marshal's Office requires the following condition(s) for the above permit.

Fire sprinkler system required. Plans and specification shall be submitted to the Fire Marshal's Office for review and permitting. IFC and IBC require R-1 occupancies to have a fire sprinkler system.

Fire alarm system required. Plans and specification shall be submitted to the Fire Marshal's Office for review and permitting. IFC requires R-1 occupancies to have a fire alarm system.

Fire extinguisher size shall be 2A10BC and the locations shall be approved by the Fire Marshal.

The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County. Any overlooked hazardous condition and/or violation of applicable code does not imply approval of such condition or violation.

The Whatcom County **River and Flood Division** submitted the following comments via email regarding the proposal on July 25, 2011:

The subject permit(s) have been reviewed to ensure compliance with Whatcom County Flood Code (Title-17) and the associated requirements of the Endangered Species Act (ESA). The attached Digital Flood Insurance Rate Map (DFIRM) indicates that the proposed project to renovate, replace and expand 2-cabins (Mallard & Brant) is located within a Special Flood Hazard Area (SFHA) or Flood Zone AE with a Base Flood Elevation (BFE) of 11.0 Feet (NGVD29). According to submitted documentation, the proposed Brant cabin improvements are considered to be "less than substantial" or less than 50% of the fair market value of the structure and the building footprint will not change beyond 10% of its current size. Therefore, flood has no concerns/conditions in regards to the proposed improvements for the Brant cabin. The proposed Mallard cabin replacement/relocation will be a "substantial improvement" and subject to the provisions of Title-17 (WCC 17.16.080) and the ESA. Final flood conditions will be put on the building permit shortly after final drawings have been submitted for the building permit. The attached survey form (Sec. A) will need to be completed by a licensed surveyor and the attached ESA checklist will need to be completed by the applicant and submitted prior to final flood review.

The Whatcom County **Plans Examiner** submitted the following comments regarding the proposal on July 28, 2011:

The following initial conditions are required for this permit. They are subject to change and additional conditions will be included when more detailed plans are submitted.

These findings are based on review of the applicant's Supplemental Applications for both Shoreline Substantial and Variance, Supplemental Application for Shoreline Conditional Use Permit, Master Land Use Application and a Site Plan drawing (4.26.11).

Project Description

The Tidecatcher Cabins is an existing development of (8) one-story units. There are (3) individual cabins, (1) duplex unit and (1) triplex unit. The initial proposed work is to replace one cabin with a new 2-story unit. Later work will consist of rebuilding the other units including the addition of a second level.

1. Initial Work - A building permit is required for this proposal. It will be reviewed under the current edition of the International Residential Code (IRC). All new work will be required to comply with the IRC as well as all other applicable codes and ordinances adopted by Whatcom County. A separate building permit is required for each separate building.

2. *Future Work - One and two-family dwellings (duplexes) are governed by the IRC. A one-hour fire-rated wall is required between units in a duplex building. Buildings with (3) or more units are regulated by the International Building Code (IBC). There is one exception to this. If multiple units are separated by a one-hour fire-rated wall, they can be classified as townhouses and are regulated by the IRC, not the IBC.*

3. *Repairs can be made to a building can be made without meeting current codes. Repairs are defined as the reconstruction or renewal of any part of an existing building for the purpose of it's maintenance. All new work must meet current codes.*

4. *If the proposed building does not meet IRC requirements for conventional light-frame wood construction, a structural analysis by a Washington State Professional Engineer will be required.*

5. *Mechanical equipment and plumbing system installations shall comply with the current adopted edition of the International Mechanical Code (IMC), International Fuel Gas Code (IFGC), and the Uniform Plumbing Code (UPC).*

6. *The building shall comply with the 2009 Washington State Energy Code (WSEC).*

7. *Provide approved verification from the Whatcom County Environmental Health Dept. of water and sewer availability. If property is on a septic system, provide an approved permit and design which demonstrates the inclusion and/or capacity for the proposed ADU.*

** Available on-line at: www.whatcomcounty.us/pds under Quick Links > Applications/Forms.*

8. *Submittal of a building permit application requires a prescheduled application appointment. Refer to the Residential and Detached Accessory Structures - Permit Application Packet* for additional information and a description of the submittal documents required to apply for a building permit.*

9. *A Demolition Permit is required for the removal of any existing buildings, structures or other such site improvements.*

The Whatcom County Department of Engineering Services submitted the following comments regarding the proposal on July 5, 2011:

*****All development shall comply with WC Development Standards.**

1. *The proposed development is subject to Birch Bay watershed review. Preliminary Stormwater proposal with detail site plan shall address all clearing activities associated with a fill and grade permit or building permit. Depending on the findings of drainage proposal a more in-depth Stormwater Design Report may be required.*

2. *The proposed development may require a transportation concurrency evaluation, based on Preliminary Traffic Information that will need to be submitted with a building permit application.*

3. *Existing access does not meet current Development standards. The applicant must apply for the Revocable Encroachment Permit in order to upgrade the existing driveway access to a paved commercial access. This permit shall be obtained during a building permit review.*

****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.**

The above comments have been incorporated as conditions of this approval recommendation.

VII. RECOMMENDATIONS

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

1. The proposed shoreline developments shall be consistent with the scope and site plans approved by this shoreline substantial development permit, shoreline conditional use permit, and shoreline variance. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. Construction and/or demolition debris shall be wholly removed from the 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. Offsite deposition of excavation spoils, concrete debris, etc within unincorporated Whatcom County will require a Land Disturbance Permit from Whatcom County Planning and Development Services.
3. If archaeological materials (shell midden, faunal remains, stone tools) or human remains are observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all other applicable laws pertaining to archaeological resources is required.
4. The applicant shall comply with all of the requirements of the Whatcom County Engineering Department prior to any development approvals as outlined in the July 5, 2011 memorandum unless modified by the Engineering Department or appealed to the appropriate agency.
5. The applicant shall comply with all of the requirements outlined in the Whatcom County River & Flood Division comments prior to any development approvals as outlined in the July 25, 2011 email unless modified by the River & Flood Division or appealed to the appropriate agency.
6. The applicant shall comply with all of the requirements of the Whatcom County Building Department prior to any development approvals as outlined in the July 28, 2011 memorandum unless modified by the Building Department or appealed to the appropriate agency.
7. The applicant shall comply with the requirements of the Whatcom County Fire Marshal's Office as outlined in the September 20, 2011 memorandum unless modified by the Fire Marshals' Office or appealed to the appropriate agency.
8. Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas, and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening.
9. The proposal shall comply with the elevation plans date stamped by Whatcom County PDS on May 26, 2011, approved by this shoreline substantial development permit, shoreline conditional use permit, and shoreline variance. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
10. The proposal must comply with all bulk and dimensional setback requirements as required by the Whatcom County Shoreline Management Program.

11. Issuance of this shoreline permit does not release the applicant from any other State, regional or Federal statutes or regulations applicable to the proposed development.
12. The applicant shall submit a Temporary Erosion and Sedimentation Control Plan for review by the shoreline administrator prior to issuance of future development permits.
13. 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 by:

Sam McDaniel
Whatcom County Shoreline Administrator