



WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

July 30, 2010

The application of **Lily Point, LLC**  
**and Cassimar U.S., Inc.** for a Long  
Subdivision (Point Roberts Beach  
Club)

LSS2007-00005, CUP2008-00010 &  
SHR2010-00005 and APL2010-00016  
FINDINGS, CONCLUSIONS, AND  
RECOMMENDATIONS

**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: The project consists of 103 single-family residential lots located on an approximately 103 acre site within the Transitional (TZ) zoning designation.

Recommendation: The Technical Review Committee recommends approval of the requested subdivision, subject to the attached conditions.

**II. PRELIMINARY INFORMATION**

A. BACKGROUND INFORMATION

Applicant: Anders Kruus  
Lily Point, LLC  
8015 SE 28<sup>th</sup> Street, Suite 215  
Mercer Island, WA 98004

Wayne Knowles  
Cassimar U.S., Inc.  
355 West Bluff Road  
Point Roberts, WA 98281

Agent: Lafe Hermanson  
Core Design, Inc.  
14711 NE 29<sup>th</sup> Place, Suite 101  
Bellevue, WA 98007

Appellant: Resource Management Group  
Point Roberts Conservation Society  
PO Box 675  
Point Roberts, WA 98281

Site  
Location/Address: 2200 APA Road, Point Roberts  
Legal Description: Located within a portion of the NW ¼ of Section 11  
and the NW ¼ of Section 12, Township 40 N, Range

<u>Assessor's Parcel Numbers:</u>	3 W WM. 405311506427, 405312065477, and 405312014420
<u>Zoning:</u>	Transitional-R5A/RR1 (TZ)
<u>Comprehensive Plan:</u>	Resort/Recreational Subdivisions
<u>Subarea:</u>	Point Roberts
<u>Number of Lots:</u>	103 single family residential
<u>Open Space:</u>	2,600,000 square feet (59 acres)
<u>Total Acreage:</u>	103 acres
<u>Roads:</u>	Public
<u>Water Supply:</u>	Point Roberts Water District No 4
<u>Sewage Disposal:</u>	Private Community Septic System
<u>Fire Protection:</u>	Whatcom County Fire District No. 5
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Public Schools:</u>	Blaine School District
<u>Adjacent Land Uses:</u>	North: Residential East: Residential South: Strait of Georgia West: Residential
<u>Utilities Easements:</u>	Necessary easements will be established prior to recording the final plat.
<u>Variances:</u>	No variances requested
<u>Shoreline Designation:</u>	Natural
<u>SEPA Review:</u>	<ul style="list-style-type: none"><li>• Determination of Non-significance issued April 16, 2010 (SEP2007-00074)</li><li>• Withdrawal and Reissuance of Determination of Non-significance issued June 4, 2010</li><li>• Appeal of Determination of Non-significance submitted June 28, 2010</li></ul>

## B. AUTHORIZING ORDINANCES:

1. Revised Code of Washington Chapter 58.17
2. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
3. State Environmental Policy Act (SEPA) Revised Codes of Washington 43.21C
4. Whatcom County Comprehensive Land Use Plan
5. Whatcom County 2001 Point Roberts Sub-Area Plan
6. Whatcom County Code Chapter 12.08, Development Standards
7. Whatcom County Code Chapter 15, Building Code
8. Whatcom County Environmental Policy Administration Chapter 16.08
9. Whatcom County Code Chapter 16.16, Critical Areas
10. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
11. Whatcom County Code Title 23, Shoreline Management Program
12. Whatcom County Code Title 21, Subdivision Regulations
13. Whatcom County Code Title 24, Health Regulations

## **III. SITE DESCRIPTION**

The subject property is approximately 103-acres, and is located on the south side of APA Road. The site is bordered on the west by Paul's Drive and on the east by single family residential homes off Claire Lane. The south side of the property borders the Strait of Georgia. The upland portion of the site is relatively flat with slopes to the southwest toward the Strait of Georgia ranging from five to ten percent. An 80 to 100 foot high bluff extends from east to west along the shoreline.

The site is predominately vegetated with evergreen and deciduous trees. Some areas of the site are vegetated with tall grasses. The site includes a wetland located throughout the central portion of the site. Property surrounding the site is zoned Transitional Zone (TZ) with mostly single-family residences and undeveloped land.

## **IV. PROJECT PROPOSAL**

The Point Roberts Beach Club development is a four phase 103 lot single-family residential development with associated tracts which include open space, access, stormwater, community septic system, shorelines, critical areas and buffers and easements. Approximately 2,600,000 square feet will be set-aside as open space. Access to the site will be provided off APA Road with secondary access from Paul's Road. Water will be provided by Point Roberts Water District No. 4. Sewer will be provided by a private on-site community septic system.

The subdivision is proposed to be phased with Phase I consisting of lots 8-40 (excepting lot 30), Phase II consisting of lots 1-7, Phase III consisting of lots 41-68 and lot 30 and Phase IV consists of lots 69-103. The subdivision is proposed to be completed within five years of preliminary approval.

Final project design and phasing shall be substantially in conformance with the plans dated 7/1/2010 in Revisions (attached).

Assessor's parcel numbers 405311 506427, 405312 065477 and 405312 014420 are considered lots of record per the lot record determination dated February 23, 2007.

## **V. PUBLIC NOTICE AND COMMENT**

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on July 21, 2008. Notice was also mailed to property owners within 1000 feet of the site.

Public Input: During the public comment period for the Notice of Application, the County received several written and e-mailed comments from the neighbors and residents of Point Roberts. The following discussion outlines the most often cited concerns. The remainder of the staff report also addresses the concerns listed in comment letters.

### **Process and Procedures**

There were several comments regarding the notice of application process and noticing. The permits have been processed according to the procedures set forth in WCC Chapter 2.33 Permit Review Procedures. Once the Determination of Completeness was made (July 17, 2008) the Notice of Application was sent to the Bellingham Herald, jurisdictional agencies, and neighbors within 1000 feet of the proposal as required per WCC 2.33.060 with a fifteen day comment period. The public was also allowed a fourteen day comment period for the SEPA determination.

The application materials and submitted revisions have been available on-line at <http://www.co.whatcom.wa.us/pds/plan/current/projects/pt-roberts/index.jsp> and are available upon request.

The project has followed the requirements of WCC 2.33 regarding the Determination of Completeness, the Notice of Application and SEPA processing. The Notice of Hearing for the project is also consistent with WCC 2.33.

### **Point Roberts Border Crossing**

Several comments were received regarding the impact of the proposed project on the Point Roberts Border Crossing. The border crossing is under the jurisdiction of the United States Department of Homeland Security (USDHS). Whatcom County can analyze and mitigate traffic impacts to the county road system, but has no authority to analyze or place conditions regarding potential impacts to the border crossing.

## **Bluff Stability and Erosion**

Several geological reports have been submitted providing analysis on the bluff stability and recommendations. These reports demonstrate that the proposed activities will avoid any geologically hazardous area (erosion/landslide) or their buffers.

## **Loss of habitat/trees/owls/eagles**

Loss of trees and habitat has been raised as a concern by several concerned neighbors. The project will be required to maintain fifty percent of the on-site tree canopy per WCC 20.72.653. The applicant is also required to preserve fifty percent of the site in open space which includes all identified wetlands, shorelines, geohazard areas and associated buffers. The Critical Areas Assessment Report and Mitigation Plan, Talesaea Consultants, Inc., August 2007 has indicated there are no regulated habitat conservation areas required on site.

The parcel lies partially within the shoreline management zones of the Point Roberts South Beach bald eagle territory #1216 and the Point Roberts bald eagle territory #926. The eastern portion of the site also falls within one quarter mile of the Point Roberts communal winter roost #615. A bald eagle nest site management plan has been approved by the Washington State Department of Fish and Wildlife on July 15, 2010. All conditions of approval for the management plan have been included as conditions of approval for this project.

## **Extension of Boundary Bay Road**

The applicants are not extending Boundary Bay Road. They have proposed to access the site approximately 300 feet east of Boundary Bay Road and more than 150 feet west of McLaren Road on the south side of APA Road. The applicant has met development standards for the proposed access road.

## **Traffic**

Review of the ADT generated by the project and the Whatcom County Development Standards has shown that APA Road, Paul's Road and Boundary Bay Road need improvements. Mitigation will include widening portions of those roads to 22 foot wide pavement with four foot gravel shoulders.

No pedestrian analysis was done, however the Whatcom County Bikeway Plan requires that a trail be constructed through the project tying into Lily Point. The developer has provided both a bicycle/pedestrian path along APA Road and a pedestrian path along the bluff. Both trails will be available for public use.

## **Historical Significance/Archaeological Impacts**

The proposal must be consistent with WCC 20.72.652 Archeological Resources and the Washington State Department of Archeology and Historic Preservation (DAHP) requirements. The proposed site is located within 500 feet of a known archaeological site and an Archaeological Investigation Report, by ERCI dated March 2007, has been prepared for the property.

## **Code Enforcement Issues**

A code enforcement complaint was filed against the property on June 5, 2006. On April 9, 2007 Code Enforcement staff delivered an Order to Correct to one of the applicant's representatives. The Order represented an administrative determination that there were development actions on the subject property that were in violation of the Shoreline Management Program (SMP) and Critical Areas Ordinance (CAO). Specifically, PDS staff had documented the following unpermitted activities:

1. Construction of a stairway for beach access.
2. Tree cutting and vegetation removal within CAO buffers and SMP jurisdiction.
3. Replacement of agricultural drainage system within regulated wetlands and/or buffers.
4. Unmitigated discharge of water off bluff face via a flexible drainpipe.

Through the review of the application process these items have been reviewed and will be addressed through conditions of approval. If the subdivision is not approved or not completed, these enforcement items must be resolved through the enforcement process.

## **Trails**

Several comments have been received regarding the current use of the property by the neighborhood in an attempt to reach Lily Point. The applicants have agreed to do both a pedestrian trail along the bluff and a bike trail along APA Road. These trails will be maintained by the Whatcom County Parks Department and available and open to the public.

## **Ownership**

The subdivision was initially submitted under the ownership and agent authorization for Stanton Land Development. In the three years since original submittal Stanton Land Development is no longer involved in the project. The approximately 40 acres on the eastern portion of the site is owned by Lily Point, LLC with Anders Kruus as the responsible party. The two western parcels totaling approximately 60 acres are owned by Bradbury Enterprises, LLC with a signed agent authorization allowing Wayne Knowles to act as agent for the purpose of this application.

## **Water/Septic systems**

Water will be supplied by the Point Roberts Water District No. 4. The applicant submitted a water availability letter signed by the water district dated February 17, 2010. The applicant will be required to install water infrastructure as required by the water district prior to final approval.

The septic systems are proposed to be a community drainfield to serve the entire site. Approval of the community drainfield design and construction of the drainfields will be approved by the Washington State Department of Health.

## **Viability**

Several questions have been raised regarding the financial viability of the project. As proposed the project will be phased with construction of all infrastructures required to serve each phase. Each phase will be reviewed to ensure that all lots created will be served with adequate roads, stormwater, and other improvements. Whatcom County does not review a project to determine its financial feasibility, only that the project meets the requirements of Whatcom County regulations.

## **Stormwater**

The applicant submitted a preliminary stormwater report and a Shoreline Substantial Development Permit indicating stormwater will be treated on site and released through the Paul's Road right-of-way to the Strait of Georgia. Diverting the road run-off, via swales, water quality ponds, and pipe system, to the shore will reduce the potential impacts of stormwater on the bluff. A final stormwater report shall be submitted and approved prior to construction plan approval. The Whatcom County Public Works Department (Engineering) as well as shorelines and staff geologist will review and approve the final report.

## **Gated community**

The applicants are not proposing a gated community. The current proposal includes internal public roads. Whatcom County will be responsible for maintenance of the internal roads and will not allow the roads to be gated.

Notice of SEPA Threshold Determination: The Notice of Decision for the SEPA determination was issued twice. The original Mitigated Determination of Non-significance was issued on April 16, 2010. After the original determination was made, staff became aware of a large list of interested parties that did not receive a copy of the original SEPA determination. Therefore, staff withdrew and reissued the Determination of Non-significance on June 4, 2010. The reissuance of the determination verified that notices were sent to affected state and local agencies and all Parties of Record for the project. A significant amount of public and agency comments were received by Whatcom County on the Determination.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site and the notice was included in a one-time newspaper publication.

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

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist and associated studies submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project. As indicated above, two SEPA determinations were made by Whatcom County. The current determination, issued June 4, 2010, is a Determination of Non-Significance. An appeal of the determination was submitted on June 28, 2010, within the required timeframes.

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

### **A. Building Code (WCC Title 15)**

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 July 21, 2008 with conditions of approval for this proposal. The applicant shall comply with all of the conditions of the Chief Plans Examiner's unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

The comments are for the Point Roberts Beach Club and the associated club house. The 103 Residential lots shall each apply individually for permits for a construction of single family residents. All common areas shall apply for permit under the commercial permit regulations.

Due to the scope of this project, the 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 conditions are general comments and are not intended to be the final comments or requirements for any one project.

The Whatcom County Plans Examiner required conditions for the above permit.

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

## **B. SEPA (Title 16.08)**

As indicated above, Whatcom County issued the current threshold Determination of Non-significance on June 4, 2010. This determination was sent to all parties of record and affected agencies as required by SEPA rules. A significant amount of comments were received within the comment period expressing concerns regarding the county's SEPA threshold determination. Also, an appeal of the determination was submitted on the June 28, 2010.

The appellant and the majority of the comments are concerned that the SEPA Determination of Non-Significance is incorrect because the project will have probable, significant adverse environmental impacts. The appellants contend that the County should have issued a Determination of Significance and prepare an Environmental Impact Statement on the project. The main issues of the appeal are broad and surround the following elements of the environment:

- Earth
  - Geology
  - Soils
  - Erosion/Enlargement of land area
- Water
  - Surface water
  - Runoff/absorption
  - Ground water
- Plants and Animals
  - Habitat for and numbers or diversity of plants, fish or other wildlife
- Energy and Natural Resources
  - Conservation of Natural Resources
- Environmental Health
  - Noise
- Land and Shoreline Use
  - Historic and Cultural Preservation
- Transportation
  - Transportation systems

SEPA appeals are made under WCC 16.08.170, RCW 43.21C.075 and WAC 197-11-680. SEPA appeals of the procedural compliance with Chapter 197-11 WAC must be submitted within the 10 days of the date the determination is final. Staff agrees that the appeal was filed in a timely manner as required by Whatcom County code. The Hearing Examiner is authorized to consider this appeal and according to WCC 16.08.170(3); the determination by the county's responsible official shall carry substantial weight in any appeal proceeding. Also, WCC 16.08.170 indicates that the Hearing Examiner shall reverse the threshold determination of the responsible official if the determination is found to be clearly erroneous. A determination is clearly erroneous when, although

there is evidence to support it, the Hearing Examiner, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed.

At this time, the alleged likelihood of significant adverse impacts to the elements of the environment indentified by the appellants has not been substantiated. The elements of the environment that are alleged to have significant adverse impacts are the same elements that are typically impacted to some degree by this type of development. It is not the intent of the report to imply that the proposed project will not result in any adverse environmental impacts; rather, the purpose is to demonstrate that any potentially significant adverse impacts have been sufficiently mitigated for by the existing development regulations outlined in this document.

The appellant indicates that the "SEPA responsible official" should be directed to obtain more information before making a threshold determination. The information submitted to the permit record is extensive. The environmental checklist has been prepared by the applicant, has been reviewed by staff and determined that the required elements of the checklist has been sufficiently satisfied. Along with the environmental checklist the following documents or prepared studies have been submitted to the permit record (all reports are on the record);

- Critical Areas Assessment Report and Mitigation Plan, Talesaea Consultants, Ice., August 2007
- Geotechnical Report, Golder Associates, June 2006
- Arborist Report, Gilles Consulting, December 2009
- Archaeological Report, ERCI, March 2007
- Core Design Preliminary Drainage Report, Core Design, December 2009
- Traffic Impact Analysis, Transpo Group, February 2010

All of these reports, and others, have been reviewed by the Technical Review Committee and appropriate mitigation has been recommended as a condition of approval to the underlying permit. Therefore, it has been determined that no additional conditions are necessary to mitigate specific probable adverse environmental impacts. WCC 16.08.160(B) indicates that the county may attach conditions to a permit or approval for a proposal so long as...(4) The county has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the indentified impacts. The following sections of the staff report is an overview of the elements of the environment that the appellants allege have not been mitigated for and the coincided local, state or federal regulations that are required to be met to recommend approval of the project.

### **C. Critical Areas (Title 16)**

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate

potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

## Wetlands

A Critical Areas Technical Administrator reviewed and approved the wetland report and mitigation. The report concluded that there are nine wetlands on site with eight Category IV wetlands identified and delineated on site and one Category III. Please see the following table to identify wetlands, categories and buffers.

**Wetland Category and Buffers**

Wetland Name	Category	Buffer
A	IV	50
B	IV	50
C	IV	50
D	IV	50
E	IV	50
F	IV	50
G	IV	50
H	IV	50
Z	III	80

The project has been designed to avoid impacts to environmentally sensitive areas to the greatest extent possible. However, some impacts will be unavoidable due to a necessary road alignment and open space requirements. No wetland will be filled as a result of this project. Approximately 14,733 square feet of buffer will be impacted due to construction of this project.

To avoid and minimize impacts to Wetland Z, a proposed road crossing will bridge over the wetland at the narrowest wetland width (approximately 30 feet in length). The project proposed to impact buffers on both Wetlands G and Z. Approximately 1505 square feet of Wetland G will be impacted due to the proposed road alignment. The buffer impact on wetland G results from avoidance of wetland and buffer impacts to Wetlands A through F while providing adequate traffic circulation and building density.

Other road alignments and lot configurations were considered and submitted for county review. In comparison to previously submitted site plans, no other alignment of roads and lots provides better protection to sensitive areas or buffers than the present site plan. Bridging the road over the narrowest part of the western end of Wetland Z avoids and minimizes direct impacts to the wetland. This is also an area of the wetland with only pasture vegetation. Hydrologic connectivity within the wetland will be maintained with this alternative.

The buffer impacts are proposed to be mitigated through buffer averaging. A total of approximately 14,773 square feet of buffer for Wetland G and Z will be impacted due to the necessary road alignment. Sufficient area exists around both Wetlands G and Z to offset the impacted buffer area. The additional areas are identified on Sheet W1.1 Appendix C and D. Approximately 59,489 square feet of buffer will be added to Wetlands G and Z for a net gain of approximately 44,716 square feet of buffer. The buffer added to the wetlands will provide similar functions and values to the standard buffer that will be impacted.

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

### **Habitat Conservation Areas**

The parcel lies partially within the shoreline management zones of the Point Roberts South Beach bald eagle territory #1216 and the Point Roberts bald eagle territory #926. The eastern portion of the site also falls within one quarter mile of the Point Roberts communal winter roost #615. A bald eagle management plan has been approved by the Washington State Department of Fish and Wildlife on July 15, 2010. All conditions of approval for the management plan have been included as conditions of approval for this project.

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

### **Geologically Hazardous Area Review**

The Preliminary Geotechnical Investigation, dated June 28, 2006, Section L, and the Geologically Critical Areas and Hydrogeologic Assessment, dated April 17, 2007, Section M, both provided by Golder and Associates, were included in the application materials as submitted May 29, 2007, and accepted as complete on July 17, 2008. These documents are considered professional assessments as required by the Critical Areas Ordinance, are approved and satisfy the Critical Areas Ordinance, Geologically Hazardous Areas.

These reports demonstrate that the proposed activities will avoid any geologically hazardous area (erosion/landslide) or their buffers. The professional assessments also demonstrate that the anticipated bluff recession rates shall not pose a risk to the proposed building lots within the expected lifetime of a building structure (50 years), and that a Lily Point-like landslide is very unlikely at this location.

The entire length of the subject marine bluff is a feeder bluff as defined by the Shoreline Master Program, and is erosive and unstable.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 16.*

**D. Point Roberts Transitional Zone (WCC Chapter 20.37)**

The project site is zoned Point Roberts Transitional Zone. WCC Chapter 20.37 outlines the land use controls for development within the TZ zone.

The Maximum Density and Minimum Lot Size Chart, WCC Section 20.37.253, establishes the basic density and lot size requirements for residential development in the TZ zone. The requirements for the TZ zoning district for cluster subdivisions with water, sewer and permanent open space reserve areas are listed in the table below.

Minimum Lot Size and Density Requirements

District	Density	Minimum Lot Size		Minimum Reserve Area
		Conventional	Cluster	
Cluster subdivision w/water, sewer and permanent open space reserve areas	1 dwelling unit per one acre	N/A	5000 sq ft	50%

The site is 103 acres in size with a density of one unit per acre. The applicant is proposing 103 residential lots in four phases. The lots will be greater than 5,000 square feet. The proposal meets the minimum lot size and density requirements for the TZ zone.

WCC Section 20.37.254 outlines the width at street line, width at building line and minimum mean depth requirements for cluster lots within the TZ zone.

Lot Width and Depth Requirements

District	Width at Street Line		Width at Building	Min. Mean Depth
	Conventional	Cluster		
TZ	NA	30 ft.	60 ft.	100 ft.

All proposed lots meet the requirements of WCC 20.20.255.

WCC Section 20.37.310 outlines the Cluster design standards in the TZ zone.

**WCC 20.37.310.** The creation of new building lots, pursuant to this section, shall be subject to the following design standards:

- (1) Clustered building lots may only be created through the subdivision process, short subdivision process, or binding site plan process pursuant to WCC Title [21](#).

*The applicant is going through the long subdivision process to create a cluster subdivision.*

(2) A cluster subdivision shall include a permanent open space reserve area consisting of at least 50 percent of the parent parcel. The open space reserve area shall meet the criteria established in WCC [20.37.322](#).

*The applicant is proposing approximately 2,600,000 square feet (57 percent of the project site) to be placed in permanent open space and a club house.*

*Open Space*

Tract	Size (sq.ft.)
Tract 'A' Open Space	623,915
Tract 'B' Open Space/drainfield	644,600
Tract 'C' Open Space	524,688
Tract 'D' Open Space	262,403
Tract 'E' Open Space	481,416
Tract 'F' Open Space	3,743
Tract 'G' Open Space	5,306
Tract 'H' Open Space	5,345
Tract 'I' Open Space	8,974
Tract 'J' Open Space	2,226
Tract 'K' Open Space	6,100
Tract 'L' Open Space/Club House	31,599
Tract 'T' Open Space	6,954
Tract 'U' Open Space	13,503
<b>TOTAL:</b>	<b>2,620,000</b>

(3) Building lots shall be designed and located to be compatible with, and avoid disturbance of, critical areas, other valuable or unique natural resource features or known archaeological sites, as well as physical constraints of the site.

*The building sites are located outside of the on-site wetlands and associated buffers as well as located outside of the shoreline setback and the setback from the top of the shoreline bluff. As conditioned, no known archaeological sites will be disturbed and the applicant and builders will be required to notify the appropriate parties if an archaeological site is inadvertently found through the construction process.*

(4) Building lots shall be arranged in a cluster/concentrated pattern.

*The single family residential lots are arranged in clusters along the internal access roads.*

(5) A cluster subdivision shall have no more than two common encroachments on existing county roads unless site constraints require additional road access. The arrangement of clustered building lots shall be

designed to avoid development forms commonly known as linear, straight-line or highway strip patterns.

*The applicants are proposing one access to the site off APA Road. A secondary access will be provided off Pauls Road. The proposal follows a meandering road pattern throughout the project to minimize the effects of linear development.*

(6) As applicable, interior streets shall be designed to allow future vehicular access to any portion of the reserve tract which may be divided into future building lots; provided, that the minimum required permanent open space reserve area, pursuant to WCC [20.37.320](#), shall not be further divided.

*As proposed, there is vehicular access to all portions of the permanent open space reserve area.*

(7) In order to preserve rural character, the maximum number of lots in a lot cluster shall be 10. Any number of lot clusters may be used.

*The proposal includes several clusters of lots. There are no more than ten lots per cluster and all of the clusters are separated by at least 80 feet, including roads, easements and trails.*

(8) Clusters containing two or more lots of less than one acre within a proposed development shall be separated by at least 80 feet.

*All of the proposed clusters are separated by at least 80 feet.*

The open space reserve area requirements are found under WCC 20.37.320. For the purposes of the TZ zone the open space reserve area "shall be defined as that portion of a subdivision or short subdivision set aside in accordance with this chapter, and permanently dedicated for active or passive recreation, critical area protection, natural resource or archaeological site preservation, wildlife habitat and/or visual enjoyment, and shall be consistent with the definition of "open space" pursuant to WCC [20.97.275](#)."

Per WCC 20.37.322 the minimum open space reserve area required by WCC [20.37.253](#) shall be subject to the following provisions:

(1) A permanent protective mechanism shall be legally established to ensure that the required open space reserve area is preserved and protected in a manner sufficient to protect the open space reserve area in perpetuity in a form that is acceptable to both the applicant and the county and filed with the county auditor's office. A permanent open space reserve area shall be protected using one of the following mechanisms:

(a) Placement in a separate non-building tract owned in common by all lots within the subdivision;

(b) Covered by a protective easement or public or private land trust dedication which protects at least the minimum required 50 percent open space reserve area;

(c) Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as subsection (1)(a) of this section as determined by the county zoning administrator or hearing examiner which applies to at least the minimum required 50 percent open space reserve area.

*The applicant is proposing to place all open space reserve area lands in separate non-buildable tracts to be owned in common by all lots within the subdivision.*

(2) The 50 percent open space reserve area shall contain the following:

(a) A minimum 20-foot buffer along the perimeter of the parent parcel, exclusive of dedicated vehicular and non-vehicular site access; and

(b) Unique or known archaeologically significant sites, high value natural resource areas, and/or critical areas and associated buffers as defined in Chapter [16.16](#) WCC.

*The perimeter of the site is bordered with at least 20 feet of commonly owned land in several tracts. The wetlands and associated buffers, the shoreline setback and the slope setback are all located within the open space reserve area.*

(3) The boundaries of the open space portion of the reserve area may be altered only if the county finds that in dedicating adjacent reserve areas it would further the objectives listed in WCC [20.37.305](#) by altering the reserve area and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in open space reserve area.

*To alter the reserve area after final subdivision approval the applicant would be required to go through the plat alteration process per WCC 21.06.030.*

(4) The definition of open space reserve area, as stated in WCC [20.37.321](#), shall be recorded as a restriction on the face of the final plat or short plat.

*A note shall be recorded on the face of the final subdivision mylar. This will be added as a condition of preliminary approval.*

(5) The remaining unused development density on the parcel containing the open space reserve area, based on the gross density of the parent parcel, may be assigned to that portion of the reserve area not subject to the

minimum reserve area requirements of subsection (1) of this section. The remaining density shall be recorded on the face of the final plat or short plat.

*As proposed, the applicant is proposing 103 single family residential lots on 103 acres in the TZ zone with public water and sanitary sewer. There will be no remaining density allowed on site.*

(6) The mechanism(s) implemented under subsection (1) of this section, as well as the above stated requirements of subsections (2) and (3) of this section shall be recorded as a restriction on the face of the final plat or short plat, and shall constitute an agreement between Whatcom County and the current/future owner(s) of record that shall run with the land. Restrictions under subsections (2) and (3) of this section may be amended by mutual agreement between said parties after review for consistency and compliance with the official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Comprehensive Plan.

*A note shall be recorded on the face of the final subdivision mylar. This will be added as a condition of preliminary approval.*

**WCC 20.37.350 Building setbacks.** Building setbacks shall be administered pursuant to WCC [20.80.200](#) (Setback Requirements).

*Building setbacks will be determined at the time of building permit review.*

**WCC 20.37.400 Height limitations.** Maximum height shall be limited to 25 feet. Height of structures shall also conform, where applicable, to the requirements of WCC [20.80.675](#), [20.72.400](#), and the provisions of the Shoreline Management Program, whichever is more restrictive.

*The maximum height of any buildings shall be no higher than 25 feet. The building height of individual buildings will be determined at the time of building permit review. No building are proposed within the shoreline setback.*

**WCC 20.37.450 Lot coverage.** No structure or combination of structures shall occupy or cover more than 2,500 square feet or 35 percent, whichever is greater of the total area.

*Lot coverage shall be determined at the time of building permit review. In no case, shall the structures occupy more than 2,500 square feet or 35 percent of the total lot area.*

**WCC 20.37.650 Development criteria.**

**WCC 20.37.651 Use of natural resources.** All discretionary project permits for land on or within one-half mile of an area designated as Rural or within 300 feet of an area upon which farm operations are being conducted shall be subject to the right to

farm, right to practice forestry and mineral land disclosure policies contained in WCC Title [14](#), Use of Natural Resources.

*The site is bordered by Rural (R(5)) zoning on the northern boundary of the site. Right to farm and right to practice forestry disclosure notes will be added to the final subdivision mylar.*

**WCC 20.37.652 Landscaping.** Refer to WCC [20.80.300](#) for landscaping requirements.

*Per WCC 20.80.300 the subdivision and associated single-family residences are exempt from landscaping requirements.*

**WCC 20.37.653 Parking requirements.** Parking shall conform to the requirements of WCC [20.80.500](#).

*WCC 20.80.500 requires two parking spaces per single family residence. The parking spaces must be provided on-site with no more than two parking spaces located within the front yard setback. This requirement will be reviewed at time of building permit submittal.*

**WCC 20.37.654 Livestock regulations.** The keeping of livestock shall be administered pursuant to WCC [20.80.800](#).

*The proposal is for a single family residential subdivision. Any livestock will have to be permitted per WCC 20.80.800.*

**WCC 20.37.655 Drainage.** All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted. No project permit shall be issued prior to meeting the stormwater requirements of this title and Chapter 2 of the Whatcom County Development Standards.

*This proposal shall be in compliance with the stormwater management development standards. Prior to construction all stormwater review and approvals shall be completed.*

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

## **E. Point Roberts Special District (WCC Chapter 20.72)**

WCC Chapter 20.72 Point Roberts Special District is an overlay zone that applies to the entire Point Roberts area which imposes additional land use controls. This district is designed to protect the rural character of Point Roberts while allowing opportunities for community growth and self-reliance.

**WCC 20.72.251 Minimum Lot Size.** Where the cluster subdivision option is used to protect a critical area:

- (1) A parcel size reduction of five percent may be granted where average parcel size (except the reserve tract) is less than 10,000 square feet; or
- (2) A parcel size reduction of 10 percent may be granted where average parcel size (except the reserve tract) is 10,000 square feet; or
- (3) More of a reduction may be granted only if the resultant lots are able to meet the applicable development standards of this title and other county ordinances, including setbacks and minimum reserve tract area.

*The applicants are not proposing a reduction to minimum lot size requirements.*

**WCC 20.72.260 Maximum density.**

.261 Except as modified by this chapter, all residential densities in the General Commercial, Small Town Commercial and Resort Commercial Zones shall not exceed 10 units per acre.

.262 For the purpose of developing an air park facility only, the parcels zoned R5A that are located west of the Point Roberts Marina and east of Marine Drive, including the airstrip property, may be developed as a cluster development at a maximum density of one dwelling unit per acre.

*The proposed property is zoned TZ.*

**WCC 20.72.270 Subdivision requirements.**

.271 Lands within the Rural Zone District in Point Roberts shall be exempt from the provisions of the Agriculture Protection Overlay District, Chapter [20.38](#) WCC.

*The Agricultural Protection Overlay District does not apply to this proposal.*

**WCC 20.72.350 Building setbacks/buffer areas.**

(1) Building setbacks along Tyee Drive and Roosevelt Road are increased to 50 feet and 40 feet respectively. In existing treed areas along Tyee Drive and Roosevelt Road, a 50-foot/40-foot vegetative buffer comprised of existing trees shall be maintained for visual or aesthetic purposes except for necessary ingress and egress points. In open areas a 50-foot/40-foot planted buffer shall be developed as part of the normal landscape requirements for site development.

(2) Within the Small Town Commercial Zone along Gulf Road, commercial, institutional and mixed use building setbacks shall be reduced to 10 feet.

Buildings oriented towards the street edge shall be encouraged and the front of buildings shall be designated for landscaping and pedestrian traffic.

(3) The provisions of WCC [20.64.353](#) shall not apply to single-family residences in the Resort Commercial District at Point Roberts.

*The subject property is location within the TZ zone and is not located along Tyee, Roosevelt or Gulf Roads.*

### **WCC 20.72.400 Height limitations.**

.401 The maximum building height within the Small Town Commercial Zone along Gulf Road shall be 45 feet. Height of structures shall also conform to the view corridor provisions of WCC [20.72.653](#) and the general requirements of WCC [20.80.675](#).

.402 The maximum building height in all other zones shall be 25 feet unless further restricted by the Whatcom County Shoreline Management Program or the requirements of the adopted character plan. Height of structures shall also conform to the general requirements of WCC [20.80.675](#) where applicable.

.403 Through the variance process established in Chapter [20.84](#) WCC, the maximum building height for any use outside of the Small Town Commercial Zone may be increased to 45 feet under the following conditions:

(1) The resultant higher structure will not unreasonably impede views from other properties any more than would a similar structure of the same mass which conforms to the 25-foot maximum building height.

(2) Building setbacks pursuant to this chapter and WCC [20.80.200](#) shall be increased by one foot for each foot of building height in excess of 25 feet as applicable to all setbacks.

*The building height shall be no greater than 25 feet for any structure within this project. The building height will be reviewed at the time of building permit.*

### **WCC 20.72.650 Development criteria.**

#### **WCC 20.72.651 Facility design.**

(1) All commercial and institutional use structures and appurtenant signs shall conform to the requirements of the Point Roberts Character Plan.

(2) All commercial and institutional structures shall screen roof-mounted mechanical equipment so as not to be visible by surrounding uses or roads.

*Single family residences are not required to meet the Point Roberts Character Plan standards. The Club House will be required to meet the standards of the Point Roberts Character Plan and the rooftop structures shall be screened. Compliance with the Character Plan and rooftop screen will be reviewed at the time of building permit.*

**WCC 20.72.652 Archaeological resources.**

(1) Applicability. This section shall apply to regulated development activities within 500 feet of all known archaeological sites, including all recorded sites listed with the Washington State Office of Archaeology and Historic Preservation. The provisions of this section shall also apply to any archaeological resources that are inadvertently discovered in association with regulated development activities pursuant to this title; provided, that the provisions of this section may be waived if the technical administrator determines that the proposed development activities do not include any ground-disturbing activities and will not impact a regulated archaeological resource.

*The proposed 103 lot subdivision is located with 500 feet of a known archaeological site. An Archaeological Investigation Report, by ERCI dated March 2007, has been prepared for the property.*

(2) Archaeological Resource Protection.

(a) Upon receipt of application for a development permit on properties within 500 feet of a site known to contain archaeological resources, the department shall require an archaeological resources site assessment. The site assessment shall be conducted by a professional archaeologist at the expense of the applicant or project proponent to determine the presence of significant archaeological resources.

(b) If the archaeological resources site assessment identifies the presence of significant archaeological resources, an Archaeological Resource Management Plan (ARMP) shall be prepared by a professional archaeologist. The professional archaeologist shall solicit comments from the Washington State Office of Archaeology and Historic Preservation, Lummi Nation Historic Preservation Office, and Nooksack Tribe. Comments received shall be incorporated into the conclusions and recommended conditions of the ARMP to the maximum practicable.

(i) An ARMP shall contain the following minimum elements:

(A) The purpose of the project, an examination of project on-site design alternatives, and an explanation of why the proposed

activity requires a location on, or access across and/or through, a significant archaeological resource; and

(B) A description of the archaeological resources affected by the proposal; and

(C) An assessment of the archaeological resource and an analysis of the potential adverse impacts as a result of the activity; and

(D) An analysis of how these impacts have been avoided; or

(E) Where avoidance is not possible, how these impacts have been mitigated/minimized; and

(F) A recommendation of appropriate mitigation measures, which may include but are not limited to the following:

1. Recording the site with the State Office of Archaeology and Historic Preservation;
2. Reinterment in the case of grave sites;
3. Covering the site with a nonstructural surface to discourage pilferage (e.g., maintained grass or pavement);
4. Excavation and recovery of resources;
5. Inventorying prior to covering of resources with structures or development; and
6. Monitoring of construction excavation.

(ii) The recommendations and conclusions of the ARMP shall be used to assist the technical administrator in making final administrative decisions concerning the presence and extent of archaeological resources and appropriate mitigating measures. The technical administrator shall consult with the Washington State Office of Archaeology and Historic Preservation, Lummi Nation Historic Preservation Office, and Nooksack Tribe prior to approval of the ARMP.

(iii) The technical administrator may reject or request revision of the conclusions reached in an ARMP when the technical administrator can demonstrate that the assessment is inaccurate or does not fully address the archaeological resource management concerns involved.

*The ERCI Archaeological Resource Management Plan was prepared and is consistent with the ARMP requirements. The plan offers the following management recommendations:*

1. *We recommend that prior to any ground disturbing activity the isolated unifacially flaked cobble tool be collected and curated at Western Washington University in Bellingham Washington.*
2. *We recommend that the final development plans be reviewed by a professional qualified archaeologist to confirm that the testing program*

- carried out in this survey provided adequate testing for the proposed development.*
- 3. We recommend that the developer provide onsite training by a qualified professional cultural resource manager to the contractor with regard to the correct protocol should an unanticipated discovery of cultural material happen during the implementation of this project.*
  - 4. In the event that any ground-disturbing activities or other project activities related to this development or in any future development uncover protected cultural material (e.g., bones, shell, or stone tools), the onsite project manager or superintendent should have all work in the immediate vicinity stop, the area should be secured, and any equipment moved to a safe distance away from the location. The UDP should be followed.*
  - 5. In the case of an unanticipated discovery of human remains, the project manager or superintendent will cease excavation, completely secure the immediate area, move people and equipment away from the immediate area and follow the protocol in the UDP.*

(c) Within 15 days of receipt of a complete development permit application in an area of known archaeological resources, the county shall notify and request a recommendation from appropriate agencies such as the Whatcom Museum, Western Washington University Anthropology Department, the Office of Archaeology and Historic Preservation, the Lummi Nation Historic Preservation Office, and Nooksack Tribe. Recommendations of such agencies and other affected persons shall be duly considered and adhered to whenever possible and reasonable. Notification shall include the following information:

- (i) The date of application, the date of notice of completion for the application, and the date of the notice of application;
- (ii) The date, time, place, and type of the hearing, if applicable, and scheduled at the date of notice of the application;
- (iii) A site map including the street address, tax parcel number, township, range, and section of the proposed project area;
- (iv) A description of the proposed project action and a list of the project permits included in the application, and, if applicable, a list of any studies requested by the county;
- (v) The identification of other permits not included in the application to the extent known by the county;
- (vi) The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;
- (vii) Any other information determined appropriate by the county;
- (viii) A statement indicating those development regulations that will be used for project mitigation or a determination of consistency if they have been identified at the time of notice;

(ix) A statement of the limits of the public comment period, the right of each agency to comment on the application within a 15-day time period, receive notice of and participate in any hearings, request a copy of the decision once made, and to appeal a decision when allowed by law. In addition, the statement shall indicate that any agency wishing to receive personal notice of any hearings must notify the hearing examiner's office within 15 days of the date of the notice of application.

(d) In granting development permits, the county may attach reasonable conditions to provide sufficient time and/or conditions for consultation with the Washington State Office of Archaeology and Historic Preservation, Lummi Nation Historic Preservation Office and Nooksack Tribe, and to assure that valuable information and materials are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provision for the protection and preservation of archaeological sites shall be incorporated to the maximum extent possible.

*This proposal shall be conditioned to meet the recommendations as outline in ERCI Archaeological Resource Management Plan. Further, the Department of Archaeology and Historic Preservation (DAHP) submitted a comment letter, dated April 28, 2010, acknowledging receipt and review of the ERCI plan. That department made a strong emphasis on the final development plans being reviewed by a professional and qualified archaeologist and that the training associated with inadvertent discovery is important.*

*Also, DAHP acknowledge that there are at least 8 houses or house foundations observed on the property, four of which were still standing. According to DAHP, the report recommends that one of the houses or remnants were eligible for the National Register of Historic Places (NRHP), however, no information has been provided regarding the age of the resources, nor were the standing houses evaluated for eligibility by someone meeting the Secretary of Interior standards for historic architecture, architectural history, or history. Based on this information an additional condition will be recommended for approval, as follows:*

- 1. The final development plan shall include information in regards to the standing houses and they be recorded on Historic Property Inventory forms and evaluated for listing on the NRHP and Washington Heritage Register (WHR) prior to issuance of demolition permits for the structures.*

(3) Inadvertent Discovery.

(a) Whenever historic, cultural or archaeological sites or artifacts of potential significance are discovered in the process of development,

work on that portion of the development site shall be stopped immediately and the find reported as soon as possible to the county.

(b) The administrator shall then notify the Washington State Office of Archaeology and Historic Preservation, Lummi Nation Historic Preservation Office, Nooksack Tribe and other appropriate agencies and shall request that an immediate site assessment be conducted by a professional archaeologist pursuant to subsection (2)(a) of this section to determine the significance of the discovery. If a positive determination is not received within 14 days of receipt of such request, or if a negative determination is received, such stopped work may resume.

(c) On receipt of a positive determination of the site's significance, the administrator may invoke the provisions of subsection (2)(b) of this section.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.72.652.*

#### **WCC 20.72.653 Tree canopy retention.**

In addition to compliance with all other requirements of this title and other titles of the Whatcom County Code, development activities in Point Roberts are required to preserve tree canopy.

(1) In the RC, GC and STC Districts, existing tree canopy areas (as defined by the dripline of the tree(s)) may be used to meet all or part of the open space requirements of this title. If existing tree canopy areas do not fully satisfy the minimum open space requirements of the applicable zone district, the remainder of the required open space shall be subject to the landscaping requirements established in WCC [20.80.300](#).

*The applicant is located within the TZ zone district.*

(2) In the RR, TZ and R Districts:

(a) Residential Development.

(i) Lots less than one-half acre may remove 100 percent of the existing tree canopy on-site; provided, that 30 percent of the pre-existing tree canopy shall be replanted.

(ii) Lots greater than, or equal to, one-half acre shall retain 30 percent of the existing tree canopy area on a lot. Trees may be removed within areas to be cleared for purposes of a building site, driveways, parking areas, and areas to be landscaped, but such areas shall not exceed

5,000 square feet or 70 percent, whichever is greater, of the total lot area.

(iii) On lots greater than one acre, no more than 50 percent of the existing tree canopy area shall be removed.

(b) Commercial, institutional and recreational development may use existing tree canopy areas to meet all or part of the landscaping requirements of this title.

*The property is approximately 103 acres and a single-family residential development is being proposed. The applicant must preserve at least 50 percent of the existing tree canopy. The applicant submitted a tree canopy plan, date stamped December 17, 2009 which indicates retention of over 74 percent of the existing tree canopy. All trees within the shoreline setback will be retained.*

*The applicant is proposing to retain a large number of trees in the northeastern portion of the site where the community drainfield is also located. Staff requested a qualified arborist verify the survival of trees located in the effected area.*

*Brian Gilles prepared a report titled Arborist Response to Whatcom County Planning and Development Services, Gilles Consulting, December 11, 2009. The report stated that with some minor tree protection measures and changes in installation, the installation of the septic system will not have an immediate damaging or long-term negative impact on the trees. The recommended tree protection measures and changes in installation are included as conditions of approval.*

(3) The following criteria shall be used to determine which tree canopy areas are to be prioritized for retention:

(a) Stands of mature native trees;

(b) Trees on sensitive slopes, on lands classified as having landslide hazards, or high erosion hazards, as defined under the critical areas ordinance;

(c) Trees within critical areas or their associated setback and/or buffer areas as defined under WCC Title [16](#) or [23](#); or

(d) Trees with significant habitat value as identified by a qualified wildlife biologist or by the technical administrator, per WCC Title [16](#).

*The applicant has proposed to protect large stands of trees in the northern and southern portion of the lots. The applicant has also proposed to retain all of the trees within the shoreline setback and the associated steep slope buffer. The*

*majority of the trees associated with the nine wetlands and buffers will be retained except where trees must be removed for construction of the road.*

(4) A 200-meter protective buffer of existing trees and vegetation shall be maintained around the Heronry.

*No heronry has been identified on the proposed site.*

(5) Buffering which recognizes the need for safety and the unique features of Lily Point shall be required on the Point. No development shall take place in such areas.

*All critical and shoreline areas and associated buffers are being preserved. A 20 foot buffer surrounds the entire site and many significant stands of trees are being preserved.*

(6) The county shall require that tree canopy areas to be retained are identified on a site plan and clearly flagged, or delineated, on the site. A tree canopy area retention plan must accompany a project or clearing permit application and be approved by the technical administrator before clearing activity takes place. The plan shall contain the following components:

- (a) A scaled drawing identifying the following:
  - (i) North arrow;
  - (ii) Property boundaries;
  - (iii) Existing structures;
  - (iv) Site access;
  - (v) Tree canopy areas to be removed;
  - (vi) The outer dripline of tree canopy areas to be retained;
  - (vii) Critical areas including, but not limited to, slopes, wetlands, and habitat conservation areas;
  - (viii) Protection measures to be utilized for areas that will be undisturbed
  - (ix) Areas to be replanted pursuant to subsection (9) of this section; and
  - (x) Proposed roadways shown.
- (b) A planting schedule that indicates the timeframe for replanting of trees as applicable; and
- (c) Provisions for maintenance and monitoring.

*The applicant has provided a tree canopy plan for the site dated December 17, 2010. The plan includes information regarding general location of existing trees and canopy, percentages of canopy to be retained, location of critical areas, and associated notes. Prior to any land disturbance the applicant must provide a final tree canopy plan with all required components including protection*

*measures, areas to be replanted (if necessary), and a survey of tree canopy along the right of way and lots.*

(7) Prior to any land clearing activity or development activity, any tree canopy areas designated for retention shall be delineated by temporary fencing, tape, or other indicators around the outer dripline of the trees. Temporary fencing, tape, or other indicators shall be clearly visible and shall be maintained for the duration of the proposed clearing or development activity. Any tree canopy areas designated for retention shall be field verified by the technical administrator before clearing activities begin. Trees within canopy areas designated for retention shall not be damaged by clearing, excavation, ground surface level changes, soil compaction, or any other activities that may cause damage of roots or trunks. Machinery, impervious surfaces, fill and storage of construction materials shall be kept outside of the dripline of tree canopy areas designated for retention.

*Prior to any land disturbance the applicant must provide a final tree canopy plan incorporating these requirements.*

(8) Tree canopy areas may be removed when limited to those canopy areas affected under the following circumstances:

- (a) Fire prevention methods when supported by the county fire marshal;
- (b) Hazard trees, as defined in Chapter [20.97](#) WCC, are identified (an evaluation and determination by a licensed arborist or forester may be required);
- (c) Encroachments where the trunk, branches or roots would be, or are, in contact with main or accessory structures; or
- (d) Where installation and/or maintenance of roads or utilities would unavoidably require removal or cut through the root system.

*The applicant is proposing to retain approximately 74 percent of the existing tree canopy for construction of the infrastructure and lot development. If, after construction is complete, trees need to be removed the homeowner or homeowners must contact Planning and Development Services to determine if removal is allowed per the above code.*

(9) In the event that tree canopy areas in excess of the applicable threshold must be removed to facilitate reasonable use of the site, or to eliminate hazard trees, not less than two replacement trees shall be planted for every tree removed. Replacement trees shall:

- (a) Be of the same, or similar, native species as those trees removed from the site;
- (b) Be planted to re-establish tree clusters where they previously existed, or to enhance protected tree clusters;

- (c) Be planted in locations appropriate to the species' growth habitat and horticultural requirements; and
- (d) Be located away from areas where damage is likely.

*The applicant is proposing to retain well over the 50 percent requirement. If trees in excess of the 50 percent requirement must be removed in the future, after development of the plat, then the homeowners or homeowners association must replace the trees according the above requirements.*

- (10) If any trees within canopy areas designated for retention are damaged or destroyed through the fault of the applicant, agent or successor, the applicant, their agent or successor shall restore the site pursuant to a restoration plan approved by the county.

*The applicant will be required to submit a restoration plan prior to land disturbance. If any trees are damaged or destroyed through the fault of the applicant then the site shall be restored.*

- (11) The county may require a bond or other security in an amount not to exceed 125 percent of the merchantable timber to guarantee retention of existing trees within designated tree canopy areas during construction. In the event of a dispute between the landowner and the county over the established value, an assessment will be made by a professional forester or arborist whose selection will be made by mutual agreement between the county and the landowner. The fee for the services of the professional forester or arborist shall be paid by the landowner or responsible party. In the event any trees designated to be retained are removed, the county shall require that sufficient trees be replanted to replace those previously in existence. In the event that replanting does not occur, the county may enforce upon any bond posted. Each tree removed or destroyed shall constitute a separate violation.

*A bond will be required prior to ground disturbance.*

#### **WCC 20.72.654 Site design/view corridors.**

All structures or developments other than a single-family home on an individual lot shall conform to the requirements of the adopted Point Roberts Character Plan. Scenic views and open space shall be considered in all developments and the site plan designed to ensure view access is maximized while maintaining reasonable use of the development site.

*The proposal will be required to meet the standards of the Point Roberts Character Plan.*

**WCC 20.72.655 Public restrooms and trash facilities.**

All new and redeveloped commercial establishments on Point Roberts that are open to the public shall make adequate provision for trash disposal and handicapped-accessible public restrooms. Establishments with less than four employees on premises at one time may utilize a unisex facility. Commercial complexes may provide common restrooms and/or trash disposal, or two or more establishments in one commercial area may jointly provide for such facilities, subject to appropriate agreements or covenants to ensure the facilities are available and properly maintained. Dumpsters within commercial areas shall be screened from public view using landscaping or building walls.

*The applicant is not proposing a commercial establishment open to the public. The applicant is proposing a club house which will contain associated restrooms and trash facilities.*

**WCC 20.72.656 Vehicular access.**

Driveways and curb cuts shall be minimized along all collector roads. Each existing lot shall be allowed only one driveway or curb cut; adjacent lots are encouraged to share access points. In new developments, lots or leased sites shall be oriented toward internal driveways, parking areas, or roads, with limited access to collector roads. These access points should normally not be closer than 400 feet apart.

*The applicant is proposing the primary access to the site off APA Road with a secondary access off Paul's Road. All driveways will be off the internal access road.*

**WCC 20.72.657 Nonvehicular access.**

(1) Commercial development or redevelopment of any parcel along Tye Drive, Gulf Road, Marine Drive and APA Road shall be required to install appropriate street improvements along the road frontage of the parcel which may include curbs, gutters, sidewalks, boardwalks, benches, lighting, and appropriate provisions for bicycle and equestrian facilities in accordance with applicable Comprehensive Plan policies, land use regulations and current road standards. Planting of street trees along the road frontage(s) of the subject parcel shall be required. These requirements may be waived if a local improvement district, road improvement district, or transportation benefit district is formed for the purpose of providing the aforementioned improvements.

(2) Commercial development of any parcel along a collector street shall require a no-protest agreement to participate in a local improvement district, road improvement district, or transportation benefit district.

*The applicant is not proposing any commercial development.*

**WCC 20.72.658 Drainage.**

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted. No project permit shall be issued prior to meeting the stormwater management requirements of this title and the Whatcom County Development Standards.

*This proposal shall be in compliance with the stormwater management development standards. Prior to construction all stormwater review and approvals shall be completed.*

**WCC 20.72.659 Parking.**

Parking shall conform to the requirements of WCC [20.80.500](#) unless otherwise specified in this section.

Within the Small Town Commercial Zone:

- (1) Parking lots shall be provided only at the rear or side of buildings.
- (2) New parking lots shall connect with existing parking facilities and allow for connection to future lots where applicable.
- (3) Minimum parking standards may be reduced if a shared parking agreement has been filed with the county auditor's office establishing a shared parking lot for land uses with noncompeting hours of operation, or for multitenant retail and commercial facilities; provided, the parking lot is not located further than 700 feet from any of the uses it is intended to serve.
  - (a) The minimum required parking in shared facilities shall be based on the land use with the highest parking demand.
  - (b) Mixed use development with similar operating hours may be required to submit a parking demand study to determine if parking can be combined.
- (4) Minimum parking standards along Gulf Road may be reduced to the minimum required emergency, ADA, and/or service parking only; provided, that it can be demonstrated that a public benefit parking area or other similar consolidated parking concept will adequately serve the proposed use.
  - (a) A parking demand study shall be submitted which determines whether all land uses intending to utilize the consolidated parking area will be adequately served.

(b) Pedestrian walkways connecting the proposed use with a consolidated parking area shall be provided. Refer to the Point Roberts Character Plan for design guidelines.

*The applicant is not proposing a commercial use and is located within the TZ zone.*

### **G. Concurrency (WCC Section 20.80.212)**

WCC Section 20.80.212 states that no subdivision shall be approved with out 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.

In addition, RCW 58.17.110 (2) requires that a proposed subdivision shall not be approved unless the city, town or county legislative body makes written findings that:

Appropriate provisions are made for the public health, safety, and general welfare and.... schools and school grounds and all other relevant facts.

RCW 82.02.050(b) also 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..."

At the time of permit submittal, no such ordinance was 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."

#### **Water**

A letter of water availability was received from the Point Roberts Water District No. 4.

#### **Sewage Disposal**

The applicant is proposing an on-site community drainfield.

## Schools

The applicant submitted a will-serve letter for this proposal dated March 2, 2007 from the Blaine District No. 503. The school district received notice of the proposal and made no further comments.

## Fire Protection

The subject site is located within Whatcom County Fire District No. 5. Fire District No. 5 has submitted a written verification of fire protection service for this proposal dated February 28, 2007. This letter states that the site is located within the fire and emergency service area of Fire District No. 5, and the district does provide fire protection services and will serve the property site identified as Point Roberts Beach Club. Fire District No. 5 did note that the service is provided by volunteer responders and a timely response is not assured. They also did state that the owner/developer must install a fire hydrant system that meets county standards as administered by the Whatcom County Fire Marshal.

The Whatcom County Deputy Fire Marshal submitted a memo dated July 22, 2008 with conditions of approval for this proposal.

## H. Conditional Use Permit (WCC 20.84)

The applicant is proposing a 6,000 square foot club house and associated parking. A temporary internal model home/lot sales office is also proposed.

**WCC 20.84.220 Criteria.** Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:

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

*The applicant is proposing a club house for use as a community center for the residents of the Point Roberts Beach Resort plat. The club house will provide a place for neighbors to socialize and entertain outside of the residences.*

*WCC 20.37.151 states that "Public and community facilities which includes recreational uses including police and fire stations, libraries, community centers, recreation facilities, activity centers, and other similar noncommercial uses." are allowed as a CUP if "...the applicant can demonstrate that the proposed use is needed to comply with legal requirements or standards; or that the proposed location is the most efficient place for the proposed use with respect to providing needed services to the public."*

*While the proposed use of a "club house" is not specifically listed, a club house would serve the function of several of the items listed including a community center, recreation facility and activity center. The following definitions from Chapter 20.97 Definitions are examples of the types of uses allowed with a CUP.*

WCC 20.97.070 Community center. "Community center" means land and/or building(s) owned by a public agency or private nonprofit entity used for social, civic, educational or recreational purposes, which serves mainly the community where located; including but not limited to community halls and centers, grange halls, senior citizen centers, teen centers, youth clubs, field houses and churches. The facilities are available for occasional public meetings. They may also have the minimal kitchen facilities required for occasional banquets. Private clubs as defined in this ordinance are not included.

20.97.315 Private club. "Private club" means land and/or building that is privately owned and normally restricted from use by the general public, and which is operated as an assembly area by and for a nonprofit organization, society, lodge, fraternity, yacht club or similar entity. The facility may or may not feature eating, drinking, dancing or similar activities.

20.97.007.1 Activity centers. "Activity centers" are typically indoor facilities owned and managed by a government entity, which provide recreation, community interaction or educational opportunities. These facilities may include indoor shooting ranges and may also include some outdoor facilities. Examples include senior and community centers; historic structures such as the Roeder Home; indoor recreation centers; indoor aquatic facilities; and space for meetings, receptions and cultural arts programs.

*Although the club house is not a public entity, it is a community facility operated by the homeowners association of the Point Roberts Beach Club for use of all residents of the subdivision community.*

*In addition to the Whatcom County Comprehensive Plan, the Point Roberts Sub-Area Plan and Point Roberts Character Plan include goals and policies applicable to non-residential development. In particular the Character Plan requires non-residential buildings to gain approval through the Point Roberts Character Plan Advisory Committee to verify compliance with the Point Roberts Character Plan. Prior to approval of the building permit the proposed club house must comply with the Character Plan receive approval from the Point Roberts Character Plan Advisory Committee.*

(2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended

character of the general vicinity, and that such use will not change the essential character of the same area.

*The proposal includes a 103 lot subdivision with an associated club house. The club house will be no larger than 6,000 square feet and will be designed to be consistent with the scale of the surrounding residential development. Development of the site will include retention of more than 50 percent of the existing tree canopy and preservation of critical areas.*

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

*Residential properties bordering the eastern portion of the site may be disturbed during the construction of the club house and subdivision; however, there should be no long term hazardous or disturbing effects.*

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

*The club house will be access through the internal access road constructed for the use of the entire subdivision. The club house will utilize a water share and a portion of the on-site community drainfield. There will be no impacts to the school system.*

(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.

*There will be no additional requirements for public facilities and services and will not be detrimental to the economic welfare.*

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

*The proposed club house will not involve excessive 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.

*The access to the club house will be from the internal road. No interference on public streets is anticipated.*

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

*The construction and operation of the club house itself will not result in the destruction, loss or damage of a feature of major importance. The approval of the subdivision and the CUP will include language regarding protection of tree canopy and critical areas and archaeological resources if found.*

*The Technical Committee has determined that, as conditioned, the CUP is consistent with WCC 20.84.*

## **J. Subdivision Regulations (Title 21)**

WCC Chapter 21.05 regulates policies and procedures for approval of a long subdivision. Section 21.05.030(h)(i and ii) require:

Approval of a preliminary long subdivision shall be accompanied by written findings of fact and conclusions that:

- i. Appropriate provisions have been made for the public health, safety, and general welfare and for such open spaces, drainage ways, stormwater management, streets or roads, pedestrian and bicycle paths, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and the public use and interest will be served by the platting of such subdivision and dedication; and

1. With Regard to the public health, safety and general welfare, the Technical Committee submits the following findings:

*The Technical Review Committee finds that, as conditioned the development has made adequate provisions for public health, safety, and general welfare.*

2. With regard to open space, parks and playgrounds the Technical Review Committee finds the following:

*Approximately fifty-seven percent of the parent parcel will be set aside as open space. A playground must be constructed for the use of the lots within the subdivision. In addition, the applicant is required to construct a public pedestrian trail along the bluff and a bicycle trail along APA Road.*

*The Technical Review Committee finds that, as conditioned, the development has made adequate provisions for open space, parks and playgrounds.*

3. With regard to streets or roads, alleys, other public ways and transit

stops, the Technical Review Committee finds the following:

*The plat will utilize a circular internal road system from the main entrance off APA Road. A temporary secondary access will be constructed off Chets Road for Phases I and II. A permanent secondary access will be constructed off Paul's Road for Phases III and IV.*

*The Technical Review Committee finds that the development will be adequately served by roads, subject to implementation of the conditions proposed by the Division of Engineering.*

4. With regard to drainage Technical Review Committee finds the following:

*The Technical Review Committee has determined that the proposal, with required mitigation and as conditioned, is not expected to generate significant levels of air, water or soil pollution, as it is a residential development.*

5. With regard to schools the Technical Review Committee finds the following:

*The Blaine School District was notified of the project and provided a letter of availability; therefore, the Technical Review Committee has determined that the proposal provides adequately for schools.*

6. With regard to compliance with the relevant policies of the Whatcom County Comprehensive Plan the Technical Review Committee finds the following:

*The Whatcom County Comprehensive Plan adopted in May of 1997 and revised January 2010 applied the Resort/Recreational Subdivisions designation to the subject site. Applicable goals of the Resort/Recreational Subdivisions designation are as follows:*

**GOAL 2KK: Recognize the existing mixture of recreational and residential development of resort and recreational subdivisions and ensure that future growth can be serviced appropriately.**

Policy 2KK-1: Require unplatted areas to obtain "ability to serve" letters from schools, water and fire districts and demonstrate adequate road capacity in order to receive county approval for new development. In addition, any new building permits on existing lots must be able to demonstrate that the water service is available to provide adequate water as a precondition to the issuance of a permit.

Policy 2KK-2: Recognize the diversity of the different developments and the differing goals of the residents while working with the community associations to establish common ground.

*The Whatcom County 2001 Point Roberts Sub-Area Plan contains goals and policies specific to Point Roberts. Applicable goals of the Plan are as follows:*

**Goal 1.8 Residential densities should be based on the lands natural capacity for development, the ability to provide required public facilities/services and the preservation of Point Robert’s community character.**

**Policy 1.8.1** Zoning and development regulations should be flexible to respond to changes in infrastructure capacities. Regulations should anticipate infrastructure improvements and respond when new services are available.

**Policy 1.8.2** Design standards shall be used to enhance community character, preserve open space, and maximize development opportunities.

**Policy 1.8.3** In areas designated Transitional, provision shall be made for sanitary sewer (community drain fields, STEP systems, etc), cluster design for utility consolidation, open space retention, and (where feasible) pedestrian trail development.

**Project 1.8.1** – Whatcom County shall develop a Transitional Zoning designation (TZ), to be included in the development regulations required to implement this Sub-Area Plan. The TZ regulations will summarize the identified Levels of Service and other standards required for higher density residential development within areas zoned Transitional. These standards shall specifically address the requirements associated with water service, sewer/STEP service, street standards, emergency, fire, medical, and police standards, transportation capacity and the provision (if necessary) for park and recreational facilities. Residential development at the Transitional higher density shall be processed administratively as a “site specific reclassification” concurrent with project approval when the specified standards are met.

**Project 1.8.2** – The subdivision code should be revised to encourage residential development that maximizes the provision of open space, clusters development to consolidate utility placement, and enhances community character.

*The applicant has submitted “ability to serve” letters from Blaine School District, Point Roberts Water District No. 4 and Whatcom County Fire District No. 5. The applicant will be required to construct all infrastructure necessary to provide adequate services on the project site. This project is proposing a development of smaller lot sizes in clusters while retaining over fifty percent of the site in open space and over fifty percent of the existing tree canopy.*

*There will be a pedestrian trail along the bluff that will be open to the public and maintained by Whatcom County Parks and Recreation. The proposal will also include several internal trail systems and a pedestrian/bicycle trail.*

*The Technical Review Committee finds the proposal is in compliance with the relevant policies of the Whatcom County Comprehensive Plan and the Whatcom County 2001 Point Roberts Sub-Area Plan.*

- ii. The proposal is in conformity with the Whatcom County Comprehensive Plan, applicable land division, zoning, critical areas, shoreline management, other land use regulations and Chapter 58.17 RCW.

*As analyzed previously in this report, the Technical Review Committee finds that the project is in compliance with Title 20 and Title 21 and all other land use controls.*

## **K. Shoreline Management Program (Title 23)**

The southern portion of the subject property is located within the jurisdiction of the Whatcom County Shoreline Management Program (SMP) and State of Washington Shoreline Management Act (SMA). As such, the proposed long plat has been reviewed for consistency with the 1998 SMP as vested. Shoreline Jurisdiction includes those lands located landward 200-feet as measured on a horizontal plane from the ordinary high water mark (OHWM) of Georgia Strait in this case. The shoreline fronting the subject property is designated as Natural pursuant to the 1998 SMP. Residential development is prohibited within the Natural shoreline designation. As such, no residential lot development or infrastructure is allowed within shoreline jurisdiction.

Numerous developments are proposed as part of the long plat development within SMP jurisdiction including the following:

- A pedestrian trail system providing access to views of Georgia Strait and to the waters edge via a trail system down the marine bluff located on the site; and
- A stormwater outfall system to convey overflows from the upland developments to the Strait of Georgia.

The areas of the subject property subject to the SMP are currently undeveloped and vegetated primarily with native trees intermixed with an understory of native and non-native shrubs and pasture grasses. Portions of the shoreline area were historically utilized for agricultural purposes. The area is generally flat above an approximately 80 to 100-foot high marine bluff overlooking Georgia Strait. Areas between the top of the bluff and the OHWM are generally well-vegetated with exception of areas of relatively recent landslide activity. These areas are near vertical and devoid of vegetation.

According to the Official Shoreline Map, the area of the subject property is located within a Natural-designated shoreline reach. Residential development is prohibited within such areas. As such, the proposed residential lots have been configured to be outside of shoreline jurisdiction. The location of shoreline jurisdiction was determined based on an OHWM determination conducted by a qualified professional as surveyed on the proposed site plans.

The purpose of the Natural shoreline area is to ensure long term preservation of shorelines inside or outside urban growth areas that are ecologically intact. Permitted uses include low intensity water-oriented recreation, provided that facilities do not require substantive alterations to topography. The proposed trail development is consistent with such permitted uses. Utility development is prohibited within the Natural shoreline designation. The proposed stormwater outfall has therefore been proposed within the Pauls Road right-of-way that borders the subject property to the west. Such area is located within a Conservancy-designated reach of shoreline where such use is permitted. The trail system is a recreational development. According to Section 23.100.10.C.8, low intensity water-oriented recreational use and development consisting of primitive trails is permitted within the Natural shoreline designation.

A Shoreline Substantial Development permit was required prior to preliminary approval to review the above-referenced shoreline developments. Such a permit was filed by the applicant on March 23, 2010 and has been reviewed pursuant to the 2008 SMP as vested.

Pursuant to Section 23.60.01, in order for a substantial development permit to be approved, the decision maker 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;
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; and
3. Consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area.

The following general and use specific policies and regulations are applicable to the proposed use and development within shoreline jurisdiction:

#### Ecological Protection and Critical Areas

23.90.03.B.1 – 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 a prioritized order ranging from avoidance of impact

where feasible to compensation for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments.

*The proposed development is consistent with the above regulations as modified and conditioned by this staff recommendation. A majority of the proposed trail system along the top of the marine bluff follows an existing informal trail and as such, displacement of existing buffer vegetation will be avoided and limited in such areas. The permit recommendation has been conditioned that prior to trail construction, the exact route of the proposed upland trail be flagged by the applicant and verified by County Natural Resource staff prior to start of trail construction. This will ensure that no intact native vegetation is being impacted as a result of the proposed trail route.*

*The proposed stormwater outfall has been conditioned so that the final design will be consistent with the above regulation. A final engineered outfall design is required prior to start of construction and will require additional review and approval by Whatcom County. The outfall pipe shall be installed on the surface of the bluff face utilizing minimal anchoring and associated ground disturbance. The outfall itself shall be constructed utilizing natural-appearing materials such as large woody debris with root wads and beach cobbles and be designed to minimize interference with on-going geo-hydraulic processes.*

*This approval recommendation has also been conditioned that a compensatory mitigation plan be developed prior to any construction within shoreline jurisdiction to compensate for any impact to existing vegetation as a result of the shoreline developments.*

23.90.03.B.2 – Because of its incorporation by reference pursuant to Section 23.10.06.A, the provisions of the Whatcom County Critical Areas Ordinance, WCC 16.16 (CAO) shall apply to any use, alteration or development within shoreline jurisdiction.

*The marine shoreline is classified as a Habitat Conservation Area (HCA) according to the Whatcom County CAO which is incorporated into the SMP. The marine bluff along the southern boundary of the subject property is a Geologically Hazardous Area (GHA) pursuant to the CAO. Construction of trails is allowed pursuant to 16.16.720.1 where there is no other feasible route with less impact on the critical area. As stated previously, the trail route as conditioned is consistent with the above regulation. The locations of the proposed stairway/trail accesses to the beach were determined based on the recommendations outlined within an April 30, 2010 letter report from Golder and Associates. This permit recommendation has been conditioned to incorporate all of the recommendations outlined within the Golder report.*

*The outfall located has been sited as far west as feasible and outside of the natural shoreline designation where such developments are prohibited. Section 16.16.325 allows utility pipes and pipes within landslide hazard areas as long as*

*the pipes are above-ground, properly anchored and designed so that they will continue to function in the event of a slope failure or movement of the underlying materials and will not increase the risk or consequences of static or seismic slope instability or result in a risk of mass wasting. According to 16.16.320.G, allowed developments shall be engineered and/or constructed to minimize risk to health and safety, and protection occupants from the hazard. As such, an engineered design incorporating the above measures has been required as a condition of approval. Such design shall be conducted by a qualified professional as defined by Section 23.110.*

23.90.03.B.3 – Critical area buffers shall be protected and/or enhanced pursuant to the SMP and WCC 16.16.

*The entire area of the subject site within the jurisdiction of the SMP is required to be placed within a permanent protective easement, or public or private land trust dedication pursuant to 16.16.265.C.2. Such documentation is required prior to final approval and/or start of any development activity within SMP jurisdiction. Signage consistent with Section 16.16.265.A is also required to protect buffers.*

23.90.03.B.4 – Use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails specifically designated for such use. Motor vehicle use, except for vessels and float planes, is prohibited waterward of the OHWM, on tidelands, public or private beaches, wetlands and/or their associated buffers; except as necessary for public health and safety or permitted maintenance activities associated with approved developments or as otherwise permitted.

*Use of motor vehicles within shoreline jurisdiction is prohibited on the subject property with exception of those necessary for permitted maintenance of the shoreline developments in the future and/or to protect public health and safety.*

23.90.03.B.5 – Buildings, fencing, walls, hedges and similar features shall be designed, located, and constructed in a manner that does not preclude or significantly interfere with wildlife movement to/from important habitat areas consistent with the applicable provisions of WCC 16.16.

*The proposed shoreline developments are not believed to represent a barrier to wildlife movement.*

#### Water Quality and Quantity

23.90.04.B.2 – 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.

*The proposed trail surfaces will consist of pervious materials such as bark mulch. As such, no pollution generating impervious surfaces will be generated by the trail construction. The Golder and Associates report makes recommendations to control surface water runoff for portions of the trail system located on the marine bluff. These recommendations have been incorporated as conditions of this staff recommendation.*

23.90.04.B.3 – 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.

*This approval recommendation has been conditioned that a TESC plan be submitted and approved by Whatcom County prior to start of any development activities within shoreline jurisdiction.*

23.90.04.B.5 – All materials that may come into contact with water shall be constructed of materials such as untreated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals.

*The above regulation has been included as a condition of approval.*

#### Views and Aesthetics

23.90.05.B.2(c) – Building surfaces on or adjacent to the water shall employ materials that minimize reflected light.

23.90.05.B.3 – Stairs and walkways located within the shoreline or critical area buffers shall not exceed 4-feet in width. Stairways shall conform to the existing topography to the extent feasible and minimize impervious surfaces.

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

#### Vegetation Conservation

23.90.06.B.4 – Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.

23.90.06.B.5 – 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.

*As previously discussed, this permit recommendation has been conditioned that the exact trail alignment be staked and approved by the County prior to construction in order to verify that the proposed route avoids the removal of significant vegetation.*

*No removal of noxious weeds and/or invasive species shall occur on the subject property without review by the County. A vegetation management plan consistent with the above regulation is required to ensure areas of vegetation removal are re-established with native species along with necessary assurances to document survival of planted species.*

### Site Planning

23.90.09.B.6 – Design of structures should conform to natural contours and minimize disturbance to soils and native vegetation.

23.90.09.B.10 – Development shall be located, designed, and managed so that impacts on public use of the shoreline are minimized.

*The upland trail construction is consistent with the above regulations. The report submitted by Golder and Associates regarding the trail construction to the beach recommends that the trail location follow natural contours to minimize disturbance. Such recommendations have been incorporated as conditions within this staff report. By utilizing trails, the visual impact of the trail system will also be reduced for on-water users.*

### Landfill and Excavation

23.90.10.B.1 – 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 the SMP.

*As conditioned, the proposed trail construction and outfall development are consistent with the above regulation.*

### Recreation

Recreation policies and regulations applicable to the proposed trail and beach access system are found in Section 23.100.10 as follows:

23.100.10.B – Where significant adverse impacts are adequately mitigated, recreational development is a priority use for shoreline locations, subject to the following provisions:

1. Water-related and water-enjoyment uses do not displace water-dependent uses and are consistent with existing water-related and water-enjoyment uses.

*Due to the steep and unstable nature of the shoreline in the area of the subject site and the natural shoreline designation, water dependent uses could not likely exist on the subject property.*

2. Activities provided by recreational facilities must bear a substantial relationship to the shoreline, or provide physical or visual access to the shoreline. Facilities for water-dependent recreation such as fishing, clam digging, swimming, boating, and wading, and water-related recreation such as picnicking, hiking, and walking should be located near the shoreline, while nonwater-related recreation facilities shall be located inland.

*The proposed trail system is designed to allow the general public visual and physical access to the shoreline and is consistent with the above regulation.*

3. Recreation areas or facilities on the shoreline shall provide physical or visual public access consistent with the criteria of SMP 23.90.08.

*Section 23.90.08 outlines provisions associated with public access. The following regulations have been determined to be appropriate with the proposed public trail system and are incorporated as conditions of approval:*

*23.90.08.B.8(e) – Design shall provide for the safety of users, including the control of offensive conduct through provisions for oversight. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved through a permit revision.*

*23.90.08.B.9 – The minimum width of the public access easement shall be 10-feet.*

*23.90.08.B.11 – The public access shall be fully developed and available for public use at the time of occupancy or in accordance with other provisions for guaranteeing installation through a monetary performance insurance.*

*23.90.08.B.12 – Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.*

*23.90.08.B.13 – Public access provisions shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of the plat. Such legal instruments shall be recorded with the County Auditor's Office prior to the time of building permit approval, occupancy or plat recordation, whichever comes first.*

*23.90.09.B.14 – Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the County Auditor's Office.*

*23.90.09.B.15 – Public access facilities shall be available to the public twenty-four (24) hours per day unless specific exceptions are granted through the shoreline permit process subject to the provisions of 23.90.08.B.1.*

*23.90.09.B.16 – The standard State approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites.*

### Utility Development

Applicable policies and regulations associated with utility development are found in Section 23.100.16 of the SMP as follows:

23.100.16.B.1(a)(1) – Components of water systems which are not water-dependent shall be located away from shoreline jurisdiction unless alternative locations, including alternative technology, are demonstrated to be infeasible and it is demonstrated that the facilities do not result in a net loss of shoreline ecological functions and processes or significant adverse impacts to other shoreline resources and values such as parks and recreation facilities, public access and archaeological, historic, and cultural resources, and aesthetic resources.

*The proposed stormwater outfall is water dependent. Through review of the long plat, discharge of stormwater for the upland residential development can not be contained on-site nor discharged into existing County drainage infrastructure. As discussed previously, this approval recommendation has been conditioned that the final design result in no adverse impact to existing shoreline processes and that a compensatory mitigation plan be completed to replace any vegetation removed as a result of the outfall installation.*

## **H. Health Code (Title 24)**

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

The applicants are proposing an on-site sewage disposal system that will utilize a community drainfield to be located in the northeastern portion of the property. The preliminary design anticipates a total flow of approximately 30,900 gallons per day. It is anticipated that that three to four community drainfields may be necessary to serve the entire plat.

The on-site systems will be built with the plat infrastructure to serve the houses being constructed, which will follow the proposed phasing plan. The individual

components of the septic systems required for each lot will be installed at the time of individual home construction.

The Washington State Department of Health (DOH) is responsible for approval of community drainfields. A letter was submitted dated November 8, 2007 from Mamdouh H. El-Aarag, P.E. with the DOH which preliminarily approved the soils for the proposed drainfield area. Full design of the drainfield must be submitted and approved by DOH prior to construction

The Point Roberts Water District No. 4 will be providing water for the entire project. The applicant submitted a water availability letter dated February 17, 2010 indicating the district has capacity to serve all 103 proposed lots.

The Whatcom County Health Department submitted a memo dated April 1, 2010 with the following comments.

Sewage:

The large on-site sewage system (LOSS) must receive design approval, then be installed and granted final approval by Washington State Department of Health (DOH).

Drinking Water:

Water service connections to each lot must be installed to the satisfaction of the Point Roberts Water District #4, and approval documentation from Point Roberts Water District #4 provided to the WCHD prior to final plat approval.

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

## **VIII. RECOMMENDATION**

A Technical Review Committee meeting was convened with the applicant to discuss the proposal. The committee determined that subject to the following proposed conditions, the project would comply with applicable Whatcom County and Washington State regulations.

As stated above the Technical Review Committee recommends approval of the long subdivision application, conditional use permit, and shoreline substantial development permit, subject to the following conditions:

## **IX. CONDITIONS OF APPROVAL**

### **A. Planning Division**

1. The use and location on the site, as depicted on preliminary drawings dated July 1, 2010 (Revision 2), shall not be amended or changed, except when in

conformance with WCC 21.05.110, or without further approval of the Whatcom County Hearing Examiner.

2. Signage for the site shall be limited to two site identification signs at both entrances to the site, per WCC 20.85.116 and WCC 20.80.470 (4). The subject signs shall be limited to 64 square feet each.
3. No sign shall be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit shall be obtained for any sign installed on the site.
4. Approval of this preliminary subdivision shall become invalid unless a final plat is submitted in proper form for final plat approval within seven years of the date of preliminary subdivision approval. This expiration date may be extended pursuant to WCC 21.05.030(5).
5. A playground facility shall be designated within the boundaries of the subject site prior to final approval and shall be shown on the face of the mylar. An approved plan for the playground shall be submitted to and approved by Planning and Development Services. The playground shall be installed prior to final plat approval. Playground amenities shall be at a minimum of \$5,000.
6. An applicant requesting final approval of a subdivision shall submit to the administrative official copies of the materials and fees specified in WCC 21.06.050, and the request shall be accompanied by a statement from the county engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the conditions of preliminary plat approval, or has received cost estimates and performance guarantees to assure completion thereof.
7. A code enforcement complaint was filed against the property on June 5, 2006. On April 9, 2007 Code Enforcement staff delivered an Order to Correct to one of the applicant's representatives. Through the review of the application process these items have been reviewed and will be addressed through conditions of approval. If the subdivision is not approved or not completed, these enforcement items must be resolved through the enforcement process.
8. The applicant shall obtain all necessary permits prior to construction.
9. The applicant shall comply with all of the conditions set forth by the Washington State Department of Fish and Wildlife Bald Eagle Nest Site Management Plan dated July 15, 2010 unless modified by the Washington State Department of Fish and Wildlife or appealed to the appropriate agency.
10. The proposed club house must meet the standards and requirements outlined in the Point Roberts Character Plan. Prior to approval of the building permit for the club house the applicant must obtain approval from the Point Roberts

Character Plan Advisory Committee verifying compliance with the Character Plan.

11. A cluster subdivision note shall be on the face of the mylar. The note will be provided through the checkprint process.
12. The definition of open space reserve area, as stated in WCC [20.37.321](#), shall be recorded as a restriction on the face of the final plat or short plat.
13. A permanent protective mechanism shall be legally established to ensure that the required open space reserve area is preserved and protected in a manner sufficient to protect the open space reserve area in perpetuity in a form that is acceptable to both the applicant and the county and filed with the county auditor's office. A permanent open space reserve area shall be protected using one of the following mechanisms:
  - (a) Placement in a separate non-building tract owned in common by all lots within the subdivision;
  - (b) Covered by a protective easement or public or private land trust dedication which protects at least the minimum required 50 percent open space reserve area;
  - (c) Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as subsection (1)(a) of this section as determined by the county zoning administrator or hearing examiner which applies to at least the minimum required 50 percent open space reserve area.
14. The mechanism(s) implemented under subsection WCC 20.73.322(1), as well as the requirements of WCC 20.73.332(2) and (3) shall be recorded as a restriction on the face of the final plat, and shall constitute an agreement between Whatcom County and the current/future owner(s) of record that shall run with the land. Restrictions under subsections WCC 20.73.332(2) and (3) may be amended by mutual agreement between said parties after review for consistency and compliance with the official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Comprehensive Plan.
15. No more than 50 percent of the tree canopy area shall be removed. The applicant has provided a tree canopy plan for the site dated December 17, 2010. The plan includes information regarding general location of existing trees and canopy, percentages of canopy to be retained, location of critical areas, and associated notes. Prior to any land disturbance the applicant must provide a final tree canopy plan with all required components including protection measures, areas to be replanted (if necessary), and a survey of tree canopy along the right of way and lots.

16. The final tree canopy plan must include the tree protection measures and changes in drainfield installation as outlined in the Arborist Response to Whatcom County Planning and Development Services, Gilles Consulting, December 11, 2009.
17. Prior to any land clearing activity or development activity, any tree canopy areas designated for retention shall be delineated by temporary fencing, tape, or other indicators around the outer dripline of the trees. Temporary fencing, tape, or other indicators shall be clearly visible and shall be maintained for the duration of the proposed clearing or development activity. Any tree canopy areas designated for retention shall be field verified by the technical administrator before clearing activities begin. Trees within canopy areas designated for retention shall not be damaged by clearing, excavation, ground surface level changes, soil compaction, or any other activities that may cause damage of roots or trunks. Machinery, impervious surfaces, fill and storage of construction materials shall be kept outside of the dripline of tree canopy areas designated for retention.
18. In the event that tree canopy areas in excess of the applicable threshold must be removed to facilitate reasonable use of the site, or to eliminate hazard trees, not less than two replacement trees shall be planted for every tree removed. Replacement trees shall:
  - a. Be of the same, or similar, native species as those trees removed from the site;
  - b. Be planted to re-establish tree clusters where they previously existed, or to enhance protected tree clusters;
  - c. Be planted in locations appropriate to the species' growth habitat and horticultural requirements; and
  - d. Be located away from areas where damage is likely.
19. If any trees within canopy areas designated for retention are damaged or destroyed through the fault of the applicant, agent or successor, the applicant, their agent or successor shall restore the site pursuant to a restoration plan approved by the county.
20. The following disclosure note shall be placed on the face of the plat:

**RIGHT TO PRACTICE FORESTRY COVENANT** (THIS PROPERTY IS LOCATED WITHIN ONE-HALF MILE OF THE AREA DESIGNATED AS FORESTRY ON THE MAPS COMPRISING THE WHATCOM COUNTY COMPREHENSIVE PLAN.) THE DEVELOPER AND ANY SUBSEQUENT PURCHASER OR SUCCESSORS IN INTEREST OF ALL OF THE LOTS WITHIN THIS LONG PLAT WILL REFRAIN FROM ANY LEGAL ACTION TO RESTRAIN OR COLLECT DAMAGES FROM OWNERS OR OPERATORS OF SUCH SAID FORESTRY LAND, OR FROM WHATCOM COUNTY, ARISING OUT OF ANY REASONABLE AND LAWFUL FORESTRY PRACTICES. THE SELLER SHALL REQUIRE THAT THE "DISCLOSURE STATEMENT" AS SET FORTH WCC TITLE 14.04 BE SIGNED BY THE PURCHASER AND RECORDED IN THE COUNTY AUDITOR'S OFFICE IN CONJUNCTION WITH THE DEED CONVEYING SAID LOT. THIS COVENANT SHALL RUN WITH THE LAND.

21. The following note shall be placed on the face of the plat:

**RIGHT-TO-FARM COVENANT**

(THIS PROPERTY IS LOCATED WITHIN ONE-HALF MILE OF AN OPERATING FARM, AGRICULTURE OR RURAL DISTRICT.) THE DEVELOPER AND ANY SUBSEQUENT PURCHASER OR SUCCESSORS IN INTEREST OF ALL OF THE LOTS WITHIN THIS LONG PLAT WILL REFRAIN FROM ANY LEGAL ACTION TO RESTRAIN OR COLLECT DAMAGES FROM OWNERS OR OPERATORS OF SUCH SAID AGRICULTURAL LANDS, OR FROM WHATCOM COUNTY, ARISING OUT OF ANY REASONABLE AND LAWFUL FARM OPERATIONS ON SAID AGRICULTURAL LANDS WHICH OCCURS IN THE NORMAL COURSE OF THEIR ESTABLISHED USE. UPON SALE OF EACH LOT, THE SELLER SHALL REQUIRE THAT THE "DISCLOSURE STATEMENT" AS SET FORTH IN TITLE 14.02 BE SIGNED BY THE PURCHASER AND RECORDED IN THE COUNTY AUDITORS OFFICE IN CONJUNCTION WITH THE DEED CONVEYING SAID LOT. THIS COVENANT SHALL RUN WITH THE LAND.

22. No land comprising any part of a proposed land division in the unincorporated area of Whatcom County shall be sold, leased, or offered for sale or lease unless approved under this title. Any person being the owner or agent of the owner of such land who shall sell, lease, or offer for sale or lease any lot or portion thereof shall be guilty of a gross misdemeanor. Each sale or lease, or offer for sale or lease shall be a separate and distinct offense for each separate lot or portion of said land, pursuant to WCC 21.11.010.

**B. Health Department**

1. The applicant shall comply with the conditions of the Whatcom County Health Department in the memo dated April 1, 2010, unless modified by that Department or appealed to the appropriate agency.
2. SEWAGE: The large on-site sewage system (LOSS) must receive design approval, then be installed and granted final approval by Washington State Department of Health (DOH).
3. DRINKING WATER: Water service connections to each lot must be installed to the satisfaction of the Point Roberts Water District #4, and approval documentation from Point Roberts Water District #4 provided to the WCHD prior to final plat approval.

**C. Natural Resources Division – Critical Areas Administrator**

1. In order to protect the wetland/mitigation area from encroachment, prior to final approval, split rail fencing shall be required along the following: South side of Lot 82, East side of Lot 72, and West sides of Lots 69, 70, 71.
2. Signage per WCC16.16 Appendix C shall be required prior to final approval along the perimeter of all wetlands and habitat conservation areas.

3. Prior to final approval per WCC265(C), the wetlands, habitat conservation areas and required buffers located on the site shall be protected using one of the following mechanisms:
  - a. Placed in a separate tract or tracts owned in common by all lots within a subdivision;
  - b. Covered by a protective easement, or public or private land trust dedication; or
  - c. Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as designation of a separate tract or tracts as determined by the county technical administrator or hearing examiner.

#### **D. Shoreline Management Act**

1. Prior to construction of the proposed stormwater outfall system within the jurisdiction of the SMP, the applicant/proponent shall contact Whatcom County Public Works – Engineering Division (Engineering) to obtain any necessary permits or approvals as determined by Engineering.
2. A final trail location plan shall be submitted for review by the Shoreline Administrator prior to any use or development activity within shoreline jurisdiction. At a minimum, the plan shall include the following:
  - a. The final proposed trail route shall be flagged on the subject property so that the Shoreline Administrator can verify that the trail path represents the least damaging route to existing vegetation;
  - b. The plan shall incorporate all of the recommendations outlined in the April 30, 2010 Beach Access Recommendations completed by Golder Associates.
  - c. A Temporary Erosion and Sedimentation Control (TESC) plan shall be included to outline what best management practices (BMPs) will be implemented during construction.
3. A final outfall design shall be submitted for review by the Shoreline Administrator and County Geologist prior to any upland development phase which would trigger the need for such outfall. At a minimum, the plan shall include the following:
  - a. A design report completed by a qualified professional as defined by 23.110 of the Whatcom County Shoreline Management Program and Section 16.16.320.G of the Whatcom County Critical Areas Ordinance. Such design shall be above ground with the minimal amount of anchoring necessary so that the system will continue to function in the event of slope failure or movement of the underlying materials. The report shall also demonstrate that the design will not increase the risk or consequences of static or seismic slope instability or result in a risk of mass wasting of the bluff area in which it is proposed to be located.

- b. A design for the dissipation structure proposed at the end of the stormwater outfall. Such design shall be located as close to the ordinary high water mark (OHWM) of Georgia Strait as feasible and shall not interrupt natural shoreline processes such as littoral drift and wildlife movement. The design shall utilized natural appearing materials such as anchored driftlogs/rootwads and rounded beach cobbles.
  - c. A Temporary Erosion and Sedimentation Control (TESC) plan shall be included to outline what best management practices (BMPs) will be implemented during construction.
4. Prior to any use or development of the areas of the subject property within shoreline jurisdiction, a compensatory mitigation plan shall be submitted by the applicant/proponent to demonstrate that no net loss of shoreline ecological functions and processes occurs as a result of the proposed developments within shoreline jurisdiction. The plan shall be completed by a qualified professional pursuant to Section 23.110 of the Whatcom County Shoreline Management Program. The plan shall be consistent with the General Mitigation Requirements of Section 16.16.260 of the Whatcom County Critical Areas Ordinance.
5. The entire area of the site within shoreline jurisdiction shall be placed within a permanent protective easement, or public or private land trust dedication pursuant to 16.16.265.C.2. Such documentation is required prior to final approval and/or start of any development activity within shoreline jurisdiction.
6. Buffer areas shall include protective signage pursuant to Action 16.16.265.A.
7. Use of motor vehicles within shoreline jurisdiction on the subject property is prohibited with exception of those necessary for permitted maintenance of the shoreline developments in the future and/or to protect public health and safety.
8. All materials that may come in contact with water shall be constructed of materials that will not adversely affect water quality or aquatic plants or animals.
9. Materials utilized for the proposed shoreline developments shall blend in with the surrounding environment as much as feasible and shall be non-reflective.
10. Stairs and walkways located within the shoreline area shall not exceed 4-feet in width unless otherwise permitted in the future to accommodate a multi-use trail. Trails and stair structures shall conform to the existing topography to the extent feasible and minimize impervious surfaces.

- 11.No removal of noxious weeds and/or invasive species shall occur within shoreline jurisdiction without review by the Shoreline Administrator. A vegetation management plan is required pursuant to 23.90.06 is required to ensure areas of vegetation removal are re-established with native species along with necessary assurances to document survival of the planted species.
- 12.The public trail system shall provide for safety o users, including the control of offensive conduct through provisions for oversight. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved through a permit revision.
- 13.The minimum width of the public access easement shall be 10-feet.
- 14.The public access trail shall be fully developed and available for public use at the time of occupancy or in accordance with other provisions of guaranteeing installation through a monetary performance insurance. A phased construction plan can also be approved if the upland development is to be proposed in phases. Such a phasing plan requires additional review and approval by the Shoreline Administrator.
- 15.The public access trails shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of the public access area and associated improvements.
- 16.The public access trail system shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of the plat. Such legal instruments shall be recorded with the County Auditor's Office prior to the time of building permit approval, occupancy or plat recordation, whichever comes first.
- 17.Maintenance of the trail system and associated developments shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the County Auditor's Office. Whatcom County Parks and Recreation has agreed to assume maintenance after completion; a final agreement is anticipated at time of construction.
- 18.The public access trail system shall be open to the public twenty-four hours per day unless specific exceptions are granted by the Shoreline Administrator through 23.90.08.B.1.
- 19.The standard State approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites.

20. The existing unpermitted stairway down the marine bluff to the beach shall be removed from the subject property and the area restored prior to start of any upland development.
21. The existing unpermitted drainage outfall shall be removed from the subject property prior to the start of the first phase of upland development.

#### **E. Building Division**

1. The applicant shall comply with the conditions of the Whatcom County Chief Plans Examiner in the memo dated July 21, 2008 unless modified by the Chief Plans examiner or appealed to the appropriate agency.
1. Building permits will be required for Residential and Commercial structures for this site.
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 for all Commercial permit applications. At the Building Official's discretion a pre-application meeting may be required.
3. Applicable code references for this project proposal are the 2006 International Building Code (IBC); the 2006 International Fire Code (IFC); the 2006 International Mechanical Code (IMC); the 2006 International Fuel Gas Code (IFGC); the 2006 Uniform Plumbing Code (UPC); all applicable code referenced manuals and standards; all applicable Washington State Amendments to the above referenced codes; the 2006 Washington State Non-residential Energy Code (NREC) and Ventilation & Indoor Air Quality Code (VIAQ). (Or the most current codes at the time of application)
4. A Washington State Professional Engineer shall engineer all Commercial Buildings, and depending on design, each individual Residential Structure may require engineering. 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 Commercial "non-exempt" structure of 4,000 square feet or greater in size.--- A Washington State licensed architect may 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. **For all Commercial Structures (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 Commercial and Residential structures 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).
12. Exits shall meet the requirements of Chapter 10 of the International Building Code.
13. The Commercial Permit proposals 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 (VIAQ).
15. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.
16. Deferred submittals are those portions of the design that are not submitted at the time of application, (i.e. design-bid mechanical systems, NREC lighting/mechanical compliance documentation, pre-fab building components,

certain tenant improvements, etc.). Deferral of any submittal items must have **prior** approval of the Building Official and shall be listed on the plans. The architect/engineer of record must provide a schedule indicating time frames for intended submittal of deferred items. Deferred submittal items **shall not be installed** until they have been reviewed and approved by the Building Official.

17. Sprinkler system and fire alarm system submittals shall be applied for at the same time as the building permit, unless otherwise approved by the Fire Marshal.
18. 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)
19. For Commercial projects, minimum plumbing facilities (restrooms) are required in accordance with Washington State Amendments to the International Building Code, Chapter 29. Accessible facilities must be located in the new structure or conveniently in a building adjacent thereto on the same property.
20. Storage of flammable and combustible materials and/or high piled storage items shall conform to the requirements of the current adopted edition of the International Fire Code (IFC).
21. 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)
22. Roof assemblies and roof structures are per IBC Chapter 15. Minimum roof covering classification according to type of construction is per Table 1505.1. Documentation will be required verifying the classification.

## F. Fire

1. The applicant shall comply with the conditions of the Whatcom County Deputy Fire Marshal in the memo dated July 22, 2008 unless modified by the Deputy

Fire Marshall or appealed to the appropriate agency.

2. Fire flow required. Fire flow shall be a minimum 500 gpm at 20 psi. Hydrants shall be located within 600 feet of the building areas.
3. Fire department access shall meet the requirements of the Whatcom County Development standards for roads. This includes at least one secondary access point due to the number of lots.
4. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.

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

1. The applicant shall comply with all of the conditions set forth by the Whatcom County Division of Engineering in the memo dated July 27, 2010 unless modified by the County Engineer or appealed to the appropriate agency.
  - a. All development shall comply with Whatcom County Development Standards.
  - b. Sight distance at all intersections shall meet Whatcom County Development Standards.
  - c. An Engineered Traffic Impact Analysis has been submitted per WCDS Section 506 and Exhibit E of the Whatcom County Road standards.
  - d. For all interior roads, a modified local access road section, consisting of 22-feet of cross-sloped pavement with 2-foot gravel shoulder on the lower side and 5' shoulder on the upper side for all internal roads, excepting the following:
    - i. Any single/separated one-way road shall be a minimum of 14 feet wide (if used at the main entrance);
    - ii. A cross-section of 18' minimum width with 1-foot gravel shoulders is required for the side loop roads serving lot clusters.
  - e. Applicant shall dedicate to Whatcom County all new roads plus rights-of-way required for a 30-foot half-width rights-of-way for the full length of the property on APA Road and Pauls Road.
  - f. Off-site improvements to proportionally mitigate the traffic impacts of the development are to construct a total of 14, 100 square feet of pavement and 41,700 square feet of gravel shoulders along APA Road , Pauls Road, and Boundary Bay Road. The roads shall consist of a cross section of 22 feet wide pavement and 4' gravel shoulders. Work may be done on one side of the roadways as rights-of-way allows.

- g. Mitigation work shall be done on the following roads: APA Road from Clair Lane to Simundson Drive; Pauls Road from plat access to APA Road; and Boundary Bay Road from APA Road to Benson Road. Off-site improvement phasing shall be as follows:

Phase 1: The improvements required for APA Road between the access road and Boundary Bay Road to 22-foot paved width with 4-foot gravel shoulders, plus additional improvements equating to 8,600 square feet of pavement and 33,100 square feet of gravel shoulders, as agreed to by the County Engineer.

Phase 2: Additional improvements to equate to 100 square feet of both paved surface and gravel shoulders along APA Road.

Phase 3: The improvements required for Pauls Road from the plat access to APA Road to 22-foot wide with 4-foot gravel shoulders (5,400 SF each of pavement and shoulders).

Phase 4: All remaining shoulder work.

- h. A prohibited vehicle access note shall be placed on the face of the plat on all lots along APA Road, and Pauls Road.
- i. A public off-road bicycle route per Resolution #2003-037 (adopting ordinance for the Whatcom County Bikeway Plan) shall be constructed from Paul's Road along APA Road to the east property line, and a pedestrian path from Pauls Road, along the bluff toward the east property line, and up to Chets Road rights-of-way. The cross-section of the bike trail shall be 10 feet wide pavement with 1 foot gravel shoulders.
- j. All signing and striping shall be installed per MUTCD standards at the developer's expense.
- k. An Engineered Stormwater Design Report that addresses conveyance, detention, water quality measures, and stormwater infiltration affects on the bluff by a Washington State licensed civil engineer shall be submitted for approval by Whatcom County Engineering.
- l. Provision for maintenance of private stormwater system will be required as set forth in Whatcom County Development Standards, Chapter 2, Section 220.
- m. A Revocable Encroachment Permit will be obtained for work within the county right of way.

- n. Road, drainage, and erosion control plans must be reviewed and approved before any work is to be done on site.
- o. All easements, any physical appurtenances such as fences or structures which may indicate encroachment, lines of possession, or conflict of title must be shown on the final mylar. [WAC 332-130-050(1)(b)]
- p. Road name proposals for all roads must be submitted for approval. A map at 1"=400' scale of the lots shall be provided to Whatcom County Engineering for plat address assignment. The plat address fee shall be paid prior to recording.
- q. All road, drainage facilities, and grading plans shall be designed and stamped by a Washington State licensed civil engineer and submitted for county engineering approval prior to construction.
- r. As-built public road plans, public and private drainage plans, and a letter of certification from a licensed engineer must be submitted to the County Engineer prior to acceptance of any roads into the County Road System and approval of the plat by the Engineering Division.
- s. Developer shall provide a plat layout to the post office to get approved mailbox location(s).

#### **H. Archaeological resources**

1. Prior to any ground disturbing activity the isolated unifacially flaked cobble tool be collected and curated at Western Washington University in Bellingham Washington.
2. Verification that the final development plans have been reviewed by a professional qualified archaeologist to confirm that the testing program carried out in this survey provided adequate testing for the proposed development prior to ground disturbing activities.
3. The developer provide onsite training by a qualified professional cultural resource manager to the contractor with regard to the correct protocol should an unanticipated discovery of cultural material happen during the implementation of this project.
4. In the event that any ground-disturbing activities or other project activities related to this development or in any future development uncover protected cultural material (e.g., bones, shell, or stone tools), the onsite project manager or superintendent should have all work in the immediate vicinity stop, the area should be secured, and any equipment moved to a safe distance away from the location. The UDP shall be followed.

5. In the case of an unanticipated discovery of human remains, the project manager or superintendent will cease excavation, completely secure the immediate area, move people and equipment away from the immediate area and follow the protocol in the attached UDP in Appendix 6.
6. The final development plan shall include information regarding the standing houses. The review must be recorded on Historic Property Inventory forms and evaluated for listing on the NRHP and Washington Heritage Register (WHR). The review must be completed prior to issuance of demolition permits for the structures.

Report prepared for the Technical Review Committee by:

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