



WHATCOM LAW GROUP

A PROFESSIONAL SERVICES CORPORATION

Roger L. Ellingson, JD
Rajeev D. Majumdar, MAIS, MPA, JD
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March 11, 2021

City of Lynden
Attn: Mike Martin, Lynden City Administrator
300 4th Street
Lynden, WA 98264

RE: Request for Qualifications and Proposals for Hearing Examiner Services

To Mayor Korthuis and the Lynden City Council:

My goal is to affect meaningful and positive change in people's lives through public service, while building a life for my family in a rural environment. To further this goal, I am seeking appointment to the position of Land Use Hearing Examiner, which would enhance and complement my ongoing law practice, and is a position I am well trained for. Our law office has provided hearing examiner services to the City of Blaine since 2005, and I personally have served without contract as the Land Use Hearing Examiner *Pro Tem* for the City of Oak Harbor, Island County, and Whatcom County, as well as being contracted since 2019 as the ongoing Land Use Hearing Examiner *Pro-Tem* for Island County.

My advanced studies in graduate and law school, my experience with the federal government, and my judicial experience give me a skill-set that I believe would serve City of Lynden well. My abilities to write, present, and present arguments persuasively in the legal field have not only been tested by peer-reviewed publication, but by pursuing an active criminal and civil motion practice in Federal, Tribal, and Superior Courts throughout northwest Washington. I have maintained a stable private practice in Whatcom County for the last thirteen years.

I have built a reputation for competency and honesty in my professional life, and as a result I have been entrusted with wide-ranging judicial opportunities. I have served as Judge *Pro Tem* in the cities of Blaine and Sumas, as well as for Whatcom Superior Court. From 2013 to 2016, I served as a Commissioner *Pro Tem* for Whatcom Superior Court in an ongoing capacity, until I was elected to represent Congressional District #2

✉ PO Box 1258, Blaine, WA 98231

289 H Street, Blaine, WA 98230 | 2417 Main Street, Ferndale, WA 98248



on the Washington State Bar Association’s Board of Governors. This judicial experience has given me a practiced outsider neutrality that is applicable to City of Lynden’s task in question.

I have a strong work ethic and drive. The initiative that drove me to investigate the totalitarian state of Myanmar and interview members of their Attorney General’s Office for my graduate research, and later to take a job with the U.S. Government’s National Nuclear Security Administration enforcing our country’s Weapons of Mass Destruction counter-proliferation efforts, is the same initiative that I will bring to my work for City of Lynden.

Thank you for your time and consideration. My attestation of qualifications and proposal follows below, and please additionally find enclosed and referenced below: a résumé outlining my professional and personal experiences; three Hearing Examiner Decision writing samples; a list of local governmental references; and a list of additional professional references.

Respectfully,

Rajeev D. Majumdar

Enclosures (5)

**CITY OF LYNDEN
LAND USE HEARING EXAMINER
QUALIFICATIONS & CONTRACT PROPOSAL**

I. A summary of my qualifications, including my education and employment background that demonstrates my familiarity with land use law and hearing processes.

An Attorney in Good Standing

I have practiced law since 2007;¹ I am licensed and in good standing with Washington State Bar Association which regulates the practice of law in Washington, and

¹ - Washington State Bar Association #39753



I am also in good standing in every other jurisdiction I have been admitted to. I have never had any adverse disciplinary findings against my license, and no criminal charges levied against me except a charge of Minor in Possession of Alcohol when I was twenty to which I pled guilty in Idaho.

From 2008 to present, I have been in private practice at the Whatcom Law Group, P.S., where I am now the managing partner. No attorney at my firm can foresee a potential conflict of interest arising. My career thus far has been a well-rounded one characterized by wearing many hats including academic, judicial, and prosecutorial roles in addition to my private practice. My professional life is balanced by a long standing commitment to public service. **See Exhibit A, Resume.**

A proposed *pro-tem* under this contract would be Roger Ellingson, who has been the hearing examiner of Blaine since 2005. He has practiced law since 1985,² and in Washington since 1989.³ He is licensed and in good standing with Washington State Bar Association and is also in inactive but good standing in every other jurisdiction he has been admitted to. He has never had any adverse disciplinary findings against his license, or no criminal charges levied against him. Mr. Ellingson is transitioning to a reduced case load and “of counsel” status at the end of the year but would be available for conflicts; as he will no longer be in the office actively in 2022 he will be screened from all potential conflicts that could arise.

Previous Experience with Land Use and as a Hearing Examiner and Qualifications Related Thereto

Since 2008, I have managed a portfolio that includes prosecutorial services for public institutions and a private practice primarily focused around business and real estate transactions and property development. During that time, Mr. Ellingson, the founding partner of my firm, has served as the Hearing Examiner of Blaine, WA, since 2005 and I am assuming that role later this year. I personally have served without contract as Land Use Hearing Examiner *Pro Tem* for the City of Oak Harbor, Island County, and Whatcom County, as well as being contracted since 2019 as the ongoing Land Use Hearing Examiner *Pro Tem* for Island County. I have never missed a deadline in preparing any decision. **See Exhibits B, C, & D Sample Written Decisions.**

Work as a hearing examiner requires practiced dispassion. The right of a property owner to use their property in their own way and for their own purposes is deemed both a liberty and a property right in our country. As a consequence, when a government body exerts its right to safeguard the common good through land use restrictions, emotions often run high. Further, legal requirements imposed on local governments by the State and the inevitable changes thereto result in increasingly complex issues regarding the regulations or ordinances that apply to any given project. This can be difficult for the public to understand, and further there has been an increased politicization regarding land

2 - Oregon State Bar Association #851935

3 - Washington State Bar Association #19292



use issues. This has resulted in an increased number of hearings with multiple attorneys representing various interests, longer hearings, and an ever expanding list of legal issues which need to be resolved by a hearing examiner in issuing a Decision.

My experience on the bench, not only as a hearing examiner but as a Superior Court judicial official, has given me the experience to handle contentious hearings while treating each participant with respect. I have managed contentious hearings with significant in-person public comment for the City of Oak Harbor, Island County, and Whatcom County. In each of those scenarios I was able to control the room through clear messaging about the purpose of public comment and its importance.

I have reviewed the City of Lynden's recently passed Ordinance 1615 and surveyed the associated land use codes— they are straightforward and logical, and I am confident in my ability to apply the rules as written. I have not reviewed Lynden's land use regulations in their entirety, but the layout of the code is familiar and logical. I have a great deal of experience of making factual findings and applying law to those facts in ways the Lynden Code would expect.

“Good Results” — Cultivating Respect for the Process with all Stakeholders

As I mentioned above, an understanding of the tensions surrounding land use hearing exams is necessary to effectuate control of a hearing when a room can be raucous, but for any situation the key to smooth hearings and sound decisions are functional relationships and a cultivation of the participants respect for the process. Making clear that an orderly and nondisruptive process is the best way for all participants to have their voice heard is critical. In particular, the Hearing Examiner's relationship with land use planning staff is key to enabling the coordinating of a functional process that facilitates a meaningful comment period and analysis. In the jurisdictions that I have done the greatest number of hearings for, Island and Whatcom Counties, I have extremely good relationships with staff that I have worked with repeatedly. In fact, I have a solid reputation with all municipal and county agencies I have provided services for. **See Exhibit E, Local Jurisdiction References.**

All stakeholders, however, must be treated with respect— this is something I am practiced at. I have developed a good reputation throughout the County as someone who listens and leads throughout the course of my career. Working with varied stakeholders I have worked on contentious issues of youth homelessness in Whatcom County for which I have been recognized locally and statewide. Similarly, having led the 41,000 member Washington State Bar Association as its President, I have successfully balanced the wants and needs of a rather litigious population while representing them to the Supreme Court, the State Legislature, the Governor's Office, and the media. These experiences speak not only to my abilities, but also to my journey and the experiences from which I have gleaned lessons learned and added them to my toolkit and the value I put on functional relationships. **See Exhibit F, Professional References.**

Ability to Travel to and Familiarity with Lynden



Though I do not reside in Lynden, I have been domiciled in rural Whatcom County since 2008. During that time, I have visited Lynden habitually, for both work and pleasure— in fact, Lynden is often a lunch time destination, whether or not I have court or am meeting with a client. I consider myself comfortably familiar with Lynden, its environs, and its businesses.

II. Contract Proposal:

Nature of Contract

1. Whatcom Law Group, P.S. (herein “Whatcom Law Group”) would be an independent contractor and shall perform its duties in a manner so as to accomplish the goals of the City of Lynden (herein “City”), in compliance with applicable state and local laws and regulations. Whatcom Law Group shall have control over and shall be solely responsible for the manner in which it fulfills its responsibilities under the contract, and shall be responsible to the City only to the extent that suitable means are utilized to attain the goals of the City as stated herein or as otherwise communicated to the Whatcom Law Group; provided however that in all circumstances Whatcom Law Group shall comply with all applicable State of Washington laws and regulations and City codes, regulations, ordinances and policies with respect to the performance of its obligations herein.
2. Whatcom Law Group will provide without additional charge experienced support staff to assist the Hearing Examiner in communications and to assist in administrative and technical editing of decisions, but the City will also need to provide clerical support. The City shall provide reasonable clerical support without cost to the Whatcom Law Group as requested to enable it to fulfill its duties under the contract. The support provided by the City shall include, but not be limited to: acceptance and processing appeal applications and fees; preparation of technical reports, exhibits, and other documents necessary to conduct a hearing; mailing and publication of required notices and decisions; scheduling of hearings and recording hearings as required by statute or ordinance; keeping of records post-hearing; and facilitating meetings between City Staff and the Hearing Examiner to improve processes and communication.
3. To the extent permitted by law, the City agrees to hold harmless and indemnify the Whatcom Law Group and its employees from and against all claims, suits, actions, and costs arising from acts or omissions on the part of the City of Lynden or the Whatcom Law Group in the good faith performance of its duties herein.

Contractor's Duties

1. The Whatcom Law Group shall fulfill all the functions of Hearing Examiner for the City as set forth in the Lynden Municipal Code's Ordinance 1615.



2. The Whatcom Law Group shall cooperate with the City's efforts to respond to public record requests in identifying responsive records and providing such records to City staff or providing the City with an exemption log that identifies clearly all the records that were not provided, either in whole or in part, together with an explanation as to why the record was withheld.
3. The Whatcom Law Group shall actively avoid *ex-parte* contact with any applicant or appellant, as well avoid engagement on any matters that could result in an actual, potential, or perceived conflict of interest or its ability to fulfill this contract.
4. The Whatcom Law Group shall provide feedback to the City on the issues with the process or the code and their implementation.
5. The Whatcom Law Group shall bill the City for services provided on a monthly basis. All bills shall indicate thereon the amount of time and the item or matter on which such time was spent (broken down to the nearest 1/10th of the hour).

City Duties

1. The City shall tender payment for invoices within thirty (30) days after receipt by the City.
2. The City shall provide and be responsible for the following clerical support:
 - a. Delivering a complete and up-to-date case file including all correspondence, exhibits, and a written staff report(s) to the Hearing Examiner at least ten (10) days prior to hearing, whenever possible, as well as maps and such other exhibits as may be necessary regarding each matter to be heard;
 - b. The City shall make all required copies of such correspondence, notices and hearing exhibits and shall keep and maintain all official files and records of the hearings and perform all other activities necessary to administratively process said material, and provide them to the Hearing Examiner as needed, including current updates up to the time of each hearing;
 - c. Schedule all hearings after conferring with Hearing Examiner's availability;
 - d. Sending out and/or publishing public notices of hearings;
 - e. Mailing written Findings, Conclusions, and Recommendations or Decisions and any notices of appeal rights;
3. Responding to public records requests when addressed to Hearing Examiner, involving Hearing Examiner, or related to Hearing Examiner's cases or duties herein.
4. The City will provide support for responses to public or media inquiries or requests referred directly to the Hearing Examiner.



5. The City shall furnish a hearing room, speaking system, and an audio/video recording system. The City shall make that recording available to the Hearing Examiner to review online within 12 hours of the hearing.
6. The City shall identify, advise, and provide copies to the Hearing Examiner of any changes or enactments to all pertinent Ordinances, Resolutions, and Policies as well as applicable and current State/Federal Statutes and Administrative Codes.

Cost Proposal

1. A flat rate reimbursement of \$1,800.00 for each appeal hearing. This flat rate fee shall include up to 9 hours of attorney time as well as any support, travel time, and mileage.
2. A flat rate reimbursement of \$1,400.00 for each hearing that does not involve an appeal. This flat rate fee shall include up to 7 hours of attorney time as well as any support, travel time, and mileage.
3. Hours worked in excess of the hours included in the flat rate fees, other services requested by the City not contemplated by any contract, or for administrative matters with the City, shall be reimbursed at the rate of \$200.00 per hour.⁴ Rates will be billed in 1/10th of an hour increments, but never be less than 2/10^{ths} of an hour on any given day.
4. No additional travel time shall be billed.
5. No additional support staff time shall be billed.
6. The City shall reimburse expenses incurred in the course of carrying out the duties of Hearing Examiner, including but not limited to postage and copies at 20¢ per sheet.

⁴ - This is the rate paid to Whatcom Law Group, P.S. by the City of Blaine, my usual private practice rate ranges between \$250 and \$375.

Rajeev D. Majumdar

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(206) 214-5177

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EDUCATION:

Passed exams & admitted to *Tulalip Indian Nation* and the *Washington State Bars*; admitted without exam to *Lummi Indian Nation, Nooksack Indian Nation, Pala Band of Mission Indians, Swinomish Nation, and Federal Western District of Washington Bars*.

Juris Doctorate –cum laude, Seattle University, May 2007.

An Associate Editor of the *Seattle University Law Review*; Teaching Assistant for Property Law (2005-2007).

Master's Degree in International Affairs, University of Washington, June 2004.

Master's Degree in Public Administration, University of Washington, June 2004.

Bachelor of Science in Biology and Philosophy, with a minor in Chemistry, Albertson College of Idaho, June 1999.

RECENT HONORS and ACHIEVEMENTS:

- Recognized by LAW Advocates for Outstanding Service (2021)
- Fellow of the American Bar Foundation (2020- present)
- Fellow of the Washington Judicial Institute (2019)
- Local Hero Award from Washington State Bar Association (2015)
- Graduate of the Washington State Bar Association's Washington Leadership Initiative (2015)
- Graduate of The National Institute on the Prosecution of Domestic Violence (2013)
- *Pro Bono* Public Service Commendations from Washington State Bar Association (2010, 2012-19)
- Joint Acknowledgement for *pro bono* legal services provided to the victims of Hurricanes Katrina and Rita, from the Supreme Court of Louisiana and the Louisiana Bar Association (2007)

CURRENT EMPLOYMENT:

Whatcom Law Group, P.S. - Attorney, Blaine, WA (since 2008, managing partner since 2020)

- Supervises eight employees.
- Manages a broad litigation practice with emphasis on general civil litigation.
- Manages a thriving real property, business formation, and transactional practice.
- Cultivated broad clientele with additional focus on Canadian, Indian, Native, and Persian communities.

City of Blaine – Prosecuting Attorney, Blaine, WA (since 2011)

- Responsible for filing charges and prosecuting criminal, civil infraction, appellate, and code enforcement cases for the City of Blaine.
- Providing review and advice to the police department, city manager, and city council on questions of law, including ordinance revision.

City of Bellingham – Special Prosecuting Attorney, Bellingham, WA (since 2014)

- Developed as part of a team a Wellness Court for Mental Health.
- Responsible for representing the City of Bellingham in criminal mental health diversion in Wellness Court, and further developing that court.
- Responsible for representing the City of Bellingham in attorney represented contested traffic cases, as well as providing review and advice to the police department's traffic unit.

JUDICIAL ROLES:

Nooksack Court of Appeals – Appellate Court Judge, Deming, WA (since 2019)

- Responsible for *en banc* reviews and appeals from the trial court.

Island County Hearing Examiner – Conflict Hearing Examiner, Coupeville, WA (since 2019)

- Responsible for performing the judicial duties of the County Land Use Hearing Examiner.

Whatcom County Hearing Examiner – Conflict Hearing Examiner, Bellingham, WA (since 2019)

- Responsible for performing the judicial duties of the County Land Use Hearing Examiner.

Nooksack Tribal Court – Judge *Pro Tem*, Deming, WA (since 2018)

- Responsible for performing the judicial duties of the tribal court in both civil and criminal matters.

City of Oak Harbor Hearing Examiner – Conflict Hearing Examiner, Oak Harbor, WA (since 2018)

- Responsible for performing the judicial duties of the Municipal Land Use Hearing Examiner

Sumas Municipal Court – Judge *Pro Tem*, Sumas, WA (2018)

- Responsible for performing the judicial duties of the municipal court in both infraction and criminal matters.

Blaine Municipal Court – Judge *Pro Tem*, Blaine, WA (2010, 2013-14)

- Responsible for performing the judicial duties of the municipal court in both infraction and criminal matters.

Whatcom County Superior Court – Commissioner *Pro Tem* on ongoing basis, Bellingham, WA (2013-16)

- Responsible for performing the judicial duties of the superior court, subject to revision by an elected judge.
- Appearing for felony first appearances, domestic relations motions, mental health commitments, dependency proceedings, truancy proceedings, juvenile criminal proceedings & conducting settlement conferences.

COMMUNITY INVOLVEMENT:

Prior Service

- Washington State Board for Judicial Administration, Board member (2019- 20)
- Board Member of Sun Community Services, providing transitional housing in Whatcom County (2010- 2020)
- Board Member for North West Youth Services, providing resources to at-risk youth (2013- 2019)
- *Pro-bono* research on Federal legislation for the Indian Institute of Estate Planning and Probate (2007-08)
- *Pro-bono* Expert Witness in custody disputes and family law matters, regarding South Asian culture (2006-10)
- Volunteered at NOLAC and the Pro Bono Project in New Orleans to help Hurricane Katrina victims (2006)
- President of Seattle University School of Law’s South Asian Law Student Association (2006-07)
- Board Member of the UW Jackson School of Intl. Studies Alumni Association (2004-06)

Current Service

- Eagle Scout (1992- present)
- Washington State Bar Association, Member (2007- present)
 - Elected President, and served as President-elect and Immediate Past President (2018- present)
 - Elected Governor representing Congressional District 2 on the Board of Governors, (2016-18)
 - CLE Committee of the Washington Young Lawyers Division (2010- 12)
- Whatcom County Bar Association, Member (2008- present)
 - Editor of the Whatcom County Bar Journal (2010- present)
- American Bar Association, Member (2010- present)
 - Delegate to the ABA House of Delegates (2020- present)
- Board Member of LAW Advocates, providing civil legal assistance to the indigent (2012- present)
 - Elected Chairman (2015-16)
 - Served as Interim Executive Director (2015)
 - *Pro-bono* attorney for individual clients and at LAW Advocates clinics for the indigent in Bellingham, WA (2008- present)
- Washington State Municipal Attorneys Association, Member (2014- present)
- National Conference of Bar Presidents, Member (2018- present)
 - Diversity, Equity, and Inclusion Committee (2020- present)
- Washington State Bar Foundation, Trustee (2019- present)

PRIOR WORK EXPERIENCE:

WWU, Fairhaven College – Adjunct Professor, Bellingham, WA (2015-18)

- Responsible for teaching “Rights, Liberties, and Justice in America,” a constitutional and civil rights course.

Nooksack Indian Nation - Prosecutor, Deming, WA (2016-18)

- Responsible for filing charges and prosecuting criminal, civil infraction and code enforcement cases for the Nooksack Tribe.

- Providing review and advice to the law enforcement and tribal council on questions of law and statute revision.

City of Ferndale – Special Prosecuting Attorney, Ferndale, WA (regularly since 2010)

- Prosecution of conflict criminal cases for the City of Ferndale.

WA State DSHS, Division of Child Support’s Hearings Unit – Claims Officer, Seattle, WA (2008)

- Facilitated administrative child support and criminal contempt proceedings, as well as supporting Claims Officers and Support Enforcement Officers in extracting child support and arrears owed to the State.
- Developed and analyze a database of over 2300 individuals currently in contempt for cost-benefit and policy analysis with regards to pursuing criminal contempt.
- Audited cases with excessive outstanding arrears with little probability of collection for write-off.

King County Superior Court - Extern Clerk to Judge Mary Yu, Seattle, WA (2006)

- Reviewed and summarized pleadings arising from the Unified Family Court calendar.
- Researched policy and issues presented to the judge for decision, applying law to the facts and drafting findings.

Tulalip Indian Nation – Summer Prosecutor, Tulalip, WA (2006)

- Filed charges, declined cases, established plea agreements, tracked the case calendar and conducted arraignments as well as all court appearances.
- Provided consultations for the tribal police and the community.
- Conducted in-depth research of tribal and federal law for code writing and policy advancement.

Carney Badley Spellman P.S. – Summer Associate, Seattle, WA (2005)

- Wrote legal briefs, drafted orders, formed contracts, conducted research and prepared evidence in support of a variety of ongoing cases, as well as contributing to mediation & client development meetings.
- Developed a *pro bono* action that removed racially restrictive covenants from property titles.
- In-depth participation in plaintiff’s litigation from initiation to trial.

National Bureau of Asian Research (NBR) – Fellow, Seattle, WA (2003-04)

- Tracked the development of conventional military power and policy, as well as the proliferation of Weapons of Mass Destruction (WMD), and using this information to update and maintain the Strategic Asia Database, which details the state of affairs in Asia at the time.
- Provided research support to the various authors contributing to the annual journal, *Strategic Asia*, and individual analysis publications put out by NBR.
- Developed a distribution plan, targeting key policy makers in government and the private sector as the recipients of policy reports generated by NBR.

National Nuclear Security Administration – Graduate Resident, Washington D.C. (2001-02)

- Primary responsibilities included policy construction and analysis of issues related to the nuclear fuel cycle and WMD: understanding their construction and providing advice on the wide array of national and foreign technical means that can be brought to bear on national security dilemmas.
- Program Management of projects relevant to national security interests; involved in a project that required thorough study for modifying technical and legal protocols between the USA and foreign nations.
- Participated in interagency working groups with Depts. of Defense, Energy, and State. Served as the liaison from NA-22 to DOE Office of Science’s Office of Nuclear & High-Energy Physics.
- Conducted extensive policy analysis of the new strategic outlook of national security priorities to combat global terrorism and technical implications, as derived from the President’s directives following the events of Sept. 11th.

PUBLICATIONS:

Washington State Court Special Immigrant Juvenile Status Bench Book and Resource Guide

- Co-authored through Washington Leadership Initiative in response to a statewide need identified by judicial officers who requested an SIJS Bench Book to educate judiciary (2015).

The Underutilized Sovereign Right to Eminent Domain: A Primer for Tribes.

- Awarded the Viola Spencer Memorial Award for Legal Writing in Indian Law (2007).

- Selected to be published in 4 UCLA INDIGENOUS PEOPLE'S J. L. CULTURE & RESISTANCE 1 (2008), but journal was terminated.

Racially Restrictive Covenants in the State of Washington: A Primer for Practitioners.

- Published in 30 SEATTLE U. L. REV. 4 (2007).

OTHER EXPERIENCE:

- Presidential Law Scholarship from Seattle University's School of Law (2004-07)
- Foreign Language Area Studies (FLAS) Fellowship (2000, 03-04)
- Grants awarded from the University of Washington's Grad. School, as well as the Jackson School of Intl. Studies' Center for Intl. Studies, and Center of S.E. Asian Studies, for a research expedition to Myanmar (2003)
- Twice awarded an IAWW Fellowship (2000-01, 02-03)
- Pacific Northwest National Laboratory Graduate Student Fellow (2002)
- Argonne National Laboratory Guest Graduate Student Fellow (2001)
- Honors Scholarship from Albertson College, four years consecutively (1995-99)
- Harold and Phyllis Thomas Scholarship, Albertson College, four years consecutively (1995-99)
- Accepted to "Bioethics in the New Millennium," an international conference at Princeton University (1999)
- Selected to live in Queensland, Australia for seven weeks, to study environmental, industrial, and international policies relating to the area, as well as to do ecological research (1998)
- Papers accepted and presented to Northwest Undergraduate Philosophy Conference (1997-98)
- University of Washington Graduate Student Senator for 2 terms (1999-2001)
- President of the Albertson College Philosophy & Religion Association (1997-99)
- Albertson College Student Senator for 6 terms, President *Pro-tem* for final term (1996-99)
- Extensive travel in North America, Europe, Asia & Australia; conducted research in Burma
- **Language Skills:** Working knowledge of spoken and written Hindi, Urdu, and Bengali, with studies continuing. Familiarity with Burmese, Perso-Arabic, Tibetan, Gurumukhi, & Gujarati Scripts.

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2017-0007
Application for)
)
John Karuza) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant seeks a Zoning Conditional Use Permit for the construction of a 2,400 sq. ft. indoor commercial dog kennel, with an approximately 2,880 sq. ft. outdoor kennel area for boarding onsite a total of up to 60 dogs on 10.26 acres, addressed as 6460 Sisters Drive, Everson, Washington.

Decision: The requested permit is granted, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

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

**I.
PRELIMINARY INFORMATION**

Applicant: John Karuza
Property Location: 6460 Sisters Drive
Everson, Washington 98247
Assessor's Parcel No. 390314 331482
Zoning: Rural District [R10A]
Comprehensive Plan: Rural
Subarea: Lynden Nooksack

Total Acreage: 10.26 acres

Water Supply: Public Water – Hemmi Road Water Association

Sewage Disposal: On-site sewage system

Solid Waste Disposal: Nooksack Valley Disposal

Fire Protection: Fire District No. 1

Law Enforcement: Whatcom County Sheriff's Office

Adjacent Land Uses: North: Single Family Residential
 East: Single Family Residential
 South: Vacant Lot
 West: Residential

Easements: As recorded under WC Auditor's file No. 207-0402896 - Notice on Title for Regulated Critical Areas/Buffers Pursuant to Title 16.16

Authorizing Ordinances:

1. Revised Code of Washington [RCW] Chapter 36.70
2. Whatcom County Comprehensive Plan
3. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
4. Whatcom County Code, Title 14, Use of Natural Resources
5. Whatcom County Code Chapter 15, Building Code/Fire Code
6. State Environmental Policy Act (SEPA)
7. Washington Administrative Code Chapter 197-11
8. Whatcom County Environmental Policy Administration Chapter 16.08
9. Whatcom County Code Chapter 16.16, Critical Areas
10. Whatcom County Code Title 22, Whatcom County Project Permit Procedures
11. Whatcom County Code Title 24, Health Regulations

SEPA Review: The Whatcom County SEPA Official has determined that the proposal is categorically exempt from SEPA review.

Legal Notices: Published – Notice of Application, May 19, 2017

Mailed – Notice of Application, February 14, 2017

Published – Notice of Public Hearing, February 21, 2019

Posted – Notice of Public Hearing, February 21 & Feb 28, 2019

Mailed – Notice of Public Hearing, February 14, 2019

Mailed – Notice of Public Hearing to Interested Parties, February 21, 2019

Hearing Date: March 6, 2019

Parties of Record

John Karuza
27 Shorewood Drive
Bellingham, WA 98225

Dannon Traxler
Langabeer & Traxler, P.S.
2701 Meridian Street
Bellingham, WA 98225

Royce Buckingham
Whatcom County Civil Deputy Prosecutor

Sam McDaniel, Planner
Planning and Development Services

Sarah Cierebiej
Whatcom County Environmental Health Specialist

Douglas Ranney
Whatcom County Public Works Engineering Manager / Development

Linda Abitia
2048 Central Road
Everson, WA 98247

Scott Barker
1824 Central Road
Everson, WA 98247

Bernard and Mary Brower
1832 Central Road
Everson, WA 98247

Scott & Jill Conner
1860 Central Road

Everson, WA 98247

Matt and Aimee Galley
1910 McBeath Drive
Everson, WA 98247

Bob and Sabrina Hlebichuk
2045 Central Road
Everson, WA 98247

Bernard and Christine Loudon
2033 Central Road
Everson, WA 98247

Timothy and Brooke Lucas
20168 Central Road
Everson, WA 98247

Denise Macris, Real Estate Trainer
No address given

Steven and Connie Regan
1724 Central Road
Everson, WA 98247

Charles Rossi
6565 Everson Goshen Road
Everson, WA 98247

Ronald and Martha Snyder
1832 Central Road
Everson, WA 98247

Garett and Rhonda Wise
1950 Central Road
Everson, WA 98247

Exhibits:

1. Conditional Use Application with attachments
 - 1-1 Determination of Completeness May 2, 2017
 - 1-2 PDS Comment Letter, with Project Description, May 2, 2017
 - 1-3 Address Mailing Labels
 - 1-4 First American Title Insurance: Statutory Warranty Deed
 - 1-5 Nooksack Valley Disposal Services, November 18, 2016

- 1-6 On-Site Sewage System Construction Permit, 6-3-05 to 6-3-10
 - 1-7 Water Availability: Public Water System, County Health Dept 11-10-2017
 - 1-8 Hemmi Road Water Association Membership Certificate, Dec 13, 2012
 - 1-9 Preliminary Traffic & Concurrency Information, 3-18-2017
 - 1-10 Staff Memo, Pre-Application Routing Checklist, May 19, 2017
 - 1-16 Staff Report, August 30, 2018
2. Project Narrative with Exhibits
- 2-1 Exh A: Noise Mitigation for Proposed Kennel
 - 2-2 Exh B: Nooksack Valley Disposal & Recycling, Nov. 18, 2016
 - 2-3 Exh C: Business Insider: Factors that lower your home's value
 - 2-4 Exh D: List of homes sold w/in 2000-in the area
 - 2-5 Exh E: Steve Moore Real Estate Business; Renay Daniels, Realtor; Don Montgomery, Realtor, comments, Oct. 30, 2017
 - 2-6 Exh F: Fire Chief Mel Blankers, Fire District No. 1, letter Nov 6, 2018; County Fire Inspector, memo, dated June 1, 2017
 - 2-7 Exh H: Response to Tim and Brooke Lucas, letter dated 6/03/2017 from Ms. Rebecca Zaiss and John Karuza, with attached letter from Mr. Lucas, dated May 31, 2017
 - 2-8 Exh G: Letter dated July 17, 2018 from Mr. Karuza to Ms. Barisic re: Sight Line Survey work for CUP
3. Staff Report, dated February 25, 2019
4. Agency Comments:
- Nooksack Valley Disposal, 11/18/2016
 - Plans Examiner-Building Services, Revised June 01, 2017, with General Conditions for Commercial Buildings
 - Environmental Health, June 1, 2017
 - Natural Resources, June 1, 2017
 - Fire Marshal, June 1, 2017
 - Engineering Services, February 1, 2019
 - Engineering Services, Exemption from Concurrency Evaluation, June 1, 2017
5. Public Comments
- Allen and Anne Greer, opposing project, May 30, 2017, and March 2, 2019
 - Charles and Laurel Rossi, concerns, June 2, 2017, and March 2, 2019
 - Bernie Loudon, opposed, June 2, 2017
 - Marisue Williams, opposed, June 3, 2017
 - Bernie and Mary Brower, opposed, no date
 - Connie and Steve Regan, not directly affected, June 2, 2017
 - Ron and Marty Snyder, opposed, May 31, 2017

- Bob and Sabrina Hlebichuk, opposed, comment form May 19, May 30, May 31, July 3, 2017
 - Cole Hilton, opposed, May 26 and June 9, 2017
 - Timothy and Brooke Lucas, opposed, June 8, 2017
 - Scott Barker, concerns, June 2, 2017
 - Scott and Jill Conner, opposed, May 26, May 30, 2017, and Feb 28, 2019
 - Kristen Reid, Attorney, June 1, 2017
 - Peter and Becky Harder, opposed, June 2, 2017
 - Matt Galley, concerns, no date
 - Garrett and Rhonda Wise, opposed, May 31, 2017
 - Nathan Lovegren, concerns opposing project, March 4, 2019
 - Tami Scott, opposed, March 3, 2019
 - James and Marna Vinup, opposed, March 3, 2019
 - Larry Bouma, opposed, March 5, 2019
6. Preliminary/Conceptual Stormwater Design Report, prepared by Associated Project Consultants, Inc., P.S., prepared April 24, 2018
 7. Bellingham Herald Tear-Sheet Legal Notice of Application, published May 19, 2017
 8. Certificate of Mailing Notice of Public Hearing, February 14, 2019
 9. Certificate of Mailing Notice of Public Hearing to Interested Parties, February 21, 2019
 10. Certificate of Posting Notice of Public Hearing, February 21 and February 28, 2019
 11. Affidavit of Publication Legal Notice of Public Hearing, February 21, 2019
 12. Revised Site Plan, prepared by Associated Project Consultants, Inc. dated Mar. 14, 2017
 13. Large Site Plan, prepared by Fuller Building Design, dated March 15, 2017
 14. Testimony read into the record by Bernie Loudon re: Real Estate values, letter from Meralee Byker, Feb 25, 2019
 15. Chris Weitzel comment's dated March 5, 2019
 16. Brad Howell Windemere Real Estate email, March 4, 2019
 17. Sabrina Hlebichuk written comments stated at hearing

18. Tina Loudon's statements from written testimony at hearing
19. Aerial photo of kennel site showing adjacent property owner's property, submitted by Applicant's Attorney

II.

John Karuza, the Applicant, is seeking approval for a Zoning Conditional Use Permit to authorize a commercial kennel consisting of one new building to be constructed on a 10.26 acre site located at 6460 Sister's Drive for the purposes of boarding up to a total of 60 dogs for a fee. The proposed internal square footage of the building is 2,400 (24 x 10). Building construction as proposed is a typical ranch house style construction with enclosed outdoor kennel areas extending from the main body of the building. The subject parcel is zoned as a Rural District.

III.

The Whatcom County Technical Review Committee has recommended approval of the Zoning Conditional Use Permit and issued a report entitled, "Findings, Conclusions, and Recommendations," dated February 25, 2019 (herein "Staff Report"). The Applicant has indicated that the staff report is factually correct, and the Applicant otherwise stated no objection to the Conditions of Approval recommended by Staff. There was significant public comment on this matter, both written and at the hearing, falling into four primary areas: Potential noise, potential traffic concerns, potential water quality impacts, and potential decreases in property values.

IV.

Specific Findings as to Noise. The structure is proposed to be insulated for sound control in such a way to meet or exceed commercial kennel industry standards, as follows:

Sound-proofing, with 6-ft. studs, and sound-proof insulation in the walls and ceilings as well as sound absorbing acoustical panels on the walls

and suspended from the ceiling. Each wing of the building will have heat and conditioning and an air exchange system so that no windows or doors will need to be opened that would allow sound to escape.

The building will be constructed in a low spot on the property, and there is a berm to the North and East sides of the building, with the rest of the property surrounded by acres of large fir, cedar, maple, cottonwood, and alder trees, which will further minimize noise issues for other properties in the area.

The Applicant indicated that drop-off and pick-up times will be limited to the following hours: Monday through Friday, from 7-11 a.m. and 3-6 p.m.; and Saturday and Sunday from 7-9 a.m. and 3-6 p.m. The Applicant proposed that dogs will only be allowed outside during pick-up and drop-off and between certain hours of the day for outside play. The limited hours of outside play and nature walks will be allowed in a supervised and controlled manner and will occur at 8 a.m., 12 p.m., 4 p.m., and 8 p.m., for approximately 15-20 minutes at a time.

If the use is approved, the Applicant has agreed to post a security bond in the amount of \$1,000.00 to be used by the County to hire an independent sound analyst should legitimate complaints be made to indicate that the approved measures to condition impacts were not successful, warranting random review, and further mitigation. This bond is proposed to be maintained for the duration of the approved use.

V.

Specific findings as to traffic impact. Preliminary Traffic Information was reviewed by the Whatcom County Engineering Services Department. Through their review, it was determined that the proposed development will generate nine or less, new p.m. peak hour trips. This number of peak hour trips is no more than what would be expected for a new single-family residence in the area. Additional impacts to traffic should not be disturbing to existing or future uses. There is one nearby residence to the

north that could directly be impacted, and to this end the Staff Report has recommended roadway and driveway access improvements designed to mitigate any increase in traffic to the site.

Testimony from Douglas Ranney of Whatcom County Public Works was particularly enlightening regarding why a traffic study was not required and why a site-distance analysis was more appropriate in this case, given the level of expected traffic.

VI.

Specific findings as to water quality. The Applicant has proposed that pet waste will be collected and disposed of by Nooksack Valley Disposal off-site. If approved, the subject property will be serviced with public water by the Hemmi Road Water Association which allows for two water connections, one of which will serve the kennel (the other serves the single-family residence onsite). The site will also be served by an existing septic system that has been determined to be adequate for the use. The Technical Review Committee has recommended that prior to issuance of any development permit, the Applicant must demonstrate how any non-residential wastewater generated onsite will be properly held and disposed, and that any non-residential wastewater generated on site (including grooming wastewater) cannot be directed into the OSS system.

VII.

Specific Findings as to the effect on surrounding property values. The evidence presented was primarily anecdotal and hearsay in nature as presented by both sides about the effect on property values. In any case, the issue did not seem to be germane and it does appear that the Rural Zoning status that applies to the subject property did contemplate the existence of the boarding and kenneling of domestic animals as indicated by the existence of WCC 20.36.156 authorizing such use with a conditional use permit. This shows the legislative intent that, subject to conditions minimizing impacts, the use be allowed in appropriate locations in this Zone. General

objections to the use based on issues that would apply to most sites throughout the Zone, such as impacts on property values, are not relevant to Conditional Use Approval.

VIII.

The Findings and Conclusions of the Technical Review Committee of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit No. 3, dated February 25, 2019, a copy of which is attached hereto, are hereby adopted as findings of fact by the Hearing Examiner and incorporated herein by this reference.

IX.

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

CONCLUSIONS OF LAW

I.

The project is consistent with the Whatcom County Comprehensive Plan and Zoning Ordinances, but further requires a Conditional Use Permit pursuant to WCC 20.36.156 which requires such for commercial kennels and stables intended for the boarding or training of domestic animals in Rural Districts. The establishment of commercial dog kennels appears to be a contemplated and appropriate use for this property under its current zoning, and the Applicant is not required to show that "the proposed location is the most efficient place for the proposed use with respect to providing needed services to the public" under that Code.

II.

The proposed Application for the dog kennel can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (1 through 9). Subject to the Conditions of Approval attached hereto, the proposed use will be consistent with the Conditional Use Criteria, and a Zoning Conditional Use Permit should be granted with those conditions.

III.

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

DECISION

A Zoning Conditional Use Permit is hereby granted to John Karuza for the construction of 2,400 sq. ft. indoor commercial dog kennel, with an approximately 2,880 sq. ft. outdoor kennel area on Assessor's Parcel No. 390314 331482, addressed as 6460 Sisters Drive, Everson, Washington. The permit is granted subject to the following required conditions:

Planning Division – Current Planning

1. The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. A maximum total of four (4) full time employees may be employed in the operations of the commercial kennel.
3. Landscaping shall be maintained pursuant to WCC 20.80.300. A scaled landscape site plan detailing the existing and proposed vegetative buffers screening the use from adjacent uses shall be submitted and approved by planning and development services department prior to issuance of the commercial building permit as required in Section IX (D) of these conditions.
4. Pursuant to WCC 20.36.656, approval of this application shall be subject to the stormwater management provisions of the Whatcom County Development Standards, unless specifically exempted.
5. Pursuant to WCC 20.80.500, adequate parking shall be established on an approved customer, employee, and parking plan that shall be submitted prior to issuance of the required commercial building permit [see Section IX (D)].
6. Hours of Operation for customer visits to the site are between 7 am – 6 pm seven days per week but pick-up and drop-off times will be limited, as follows: Monday through Friday, from 7-11 a.m. and 3-6 p.m.; and Saturday and Sunday from 7-9 a.m. and 3-6 p.m.
7. Pursuant to WCC 20.80.523; any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.

8. The buildings will be insulated to control sound to industry standards for commercial kennels, and all animals are to be confined within the interior walls of the approximately 2,400 square feet of proposed structure comprising the kennel operations. Except that dogs will only be allowed outside during pick-up and drop-off and between certain hours of the day for outside play. The limited hours of outside play and nature walks will be allowed in a supervised and controlled manner and will occur at 8 a.m., 12 p.m., 4 p.m., and 8 p.m., for approximately 15-20 minutes at a time.
9. Security Bond For Independent Noise Analysis: In order to alleviate any future public costs associated with dispatch of enforcement to answer potential complaints about noise from barking dogs, the applicant has agreed to post a security bond in the amount of \$1000.00 to be used by the County to hire an independent sound analyst should legitimate complaints be made to indicate that the approved measures to condition impacts from potential noise from barking dogs were not successful, warranting random review, and further mitigation. This bond shall be maintained for the duration of the approved use.
10. Pursuant to WCC 20.80.355; all trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high. Trash and storage areas shall be submitted prior to issuance of the required commercial building permit.
11. Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
12. Title 14, Right to Farm – Disclosure: The owners of the property upon which this conditional use permit approval is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on forms provided by Whatcom County, which shall then be recorded in the Whatcom County Auditor's office.

- The disclosure shall contain the following language:

The subject property is within or near designated agriculture lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. You may be subject to inconveniences or discomforts arising from such

operations, including but not limited to noise, odors, flies, fumes, dust, smoke, the operation of machinery of any kind during any 24-hour period (including aircraft), the storage and application of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Whatcom County has determined that the use of real property for agricultural operations is a high priority and favored use and will not consider to be a nuisance those inconveniences or discomforts arising from farm operations, if such operations are consistent with commonly accepted good management practices and otherwise comply with local, state, and federal laws.

Health Department

1. Water: The applicant must have an approved public water supply for this proposal. The applicant has provided an approved water availability notification form from the Hemmi Road Water Association for 2 connections: one for the proposed single family residence and one for the proposed kennel.
2. Sewage: The applicant must demonstrate adequate sewage disposal capacity for the proposed project. The applicant has an approved on-site sewage system (OSS) design for 4 bedrooms that has been installed. The applicant has recently been approved to build a 3 bedroom single family residence on the property. The applicant may use the existing OSS to support the kennel office bathroom. A septic tank only permit for the kennel bathroom may be required at the time of building permit application.
3. Wastewater: Any non-residential wastewater generated on site (including grooming wastewater) cannot be directed into the OSS system. At the time of building permit application, the applicant must demonstrate how any non-residential wastewater generated onsite will be properly held and disposed.
4. Solid Waste: Animal wastes generated by the proposal must be disposed of properly. The applicant has provided a copy of the letter from Nooksack Valley Disposal for dog waste collection and disposal.

Building Services Division: The Whatcom County Plans Examiner requires the following condition(s) for the above permit.

1. A commercial building permit is required for this project. It will be reviewed under the current adopted edition of the International Building Code (IBC) and must comply with all other applicable codes and ordinances adopted by Whatcom County.
2. A pre-application screen meeting will be required prior to submittal for permit to determine if a Building Services pre-application meeting will be required or waived. If a Conditional Use Permit is required, it must be approved prior to the screening

meeting date. Call 360-778-5900 to set up a screening meeting with the Building Department supervisor or a plans examiner.

3. When you have completed your screening and have completed any requirements indicated on your screening form or you have completed your pre-application meeting and have completed any requirements from that meeting you may set up your appointment for permit submittal. Appointments are available on Mondays through Friday. To schedule an appointment, contact Planning and Development Services (369-778-5900). Please have your pre-application number and/or your contact information and geographic (tax parcel) number available when you call to schedule. The commercial building permit application form is available on-line at: www.whatcomcounty.us/pds under Quick Links > Applications/Forms.
4. No Building plans were provided for the Residents or the Kennel at the time of the review; therefore comments will be general in nature and will be more complete once plans are provided.
5. The following requirements/findings are from the 2015 IBC for the Kennel. Requirements for the residents will be per the 2015 International Residential Code 2015 (IRC 2015)
 - Preliminary occupancy classifications:
 - a. - R3 for the Residents (IRC 2015)
 - b. - B; Kennel
 - Exiting for the kennel shall meet the requirements of IBC Chapter 10 – Means of Egress. Maximum occupant load shall be determined and proper egress widths shall be shown on plans.
 - Minimum plumbing facilities (restrooms) (Kennel) are required in accordance with WA State Amendments (WAC) to IBC Chapter 29 – Minimum Plumbing fixtures and sanitation facilities. Occupant count for plumbing shall be calculated per CH 29.
 - The site and Kennel building shall meet the barrier-free, handicap accessible requirements of the IBC Chapters 10, 11 and Appendix E; ICC/ANSI A117.1-10; and WAC 51-50.
 - Heating, cooling, lighting and building envelope shall comply with the current adopted edition of the Washington State Energy Code (WSEC)
 - Ventilations shall comply with the current adopted edition of the International Mechanical Code (IMC)
6. Refer to the attached General Conditions for Commercial Buildings for additional building permit requirements.

Fire Marshal's Office

1. Access road from the county right of way shall meet commercial standards and is required to be widened to a minimum of 20-foot drivable surface as

required by Whatcom County Fire Marshal's Office road standards. This is from the county road to the purposed business.

2. Fire Truck turn-a-round is required to meet the commercial standard and not the residential standard as shown on the site plan presently.
3. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County. Any overlooked hazardous condition and/or violation of applicable code does not imply approval of such condition or violation.

Public Works – Engineering Division

1. Preliminary Stormwater Report prepared by licensed civil engineer was submitted, reviewed, and accepted for the CUP application. However, Final Stormwater Report including details, calculations and drainage design site plan shall be submitted with building permit application for the final approval.
2. Preliminary Traffic Information has been reviewed. Subject development will generate 9 or less new p.m. peak hr. trips. Exemption from Concurrency evaluation has been issued, ECE2017-00034.
3. Certified Record Drawings (as-built) for the installation of any new drainage system/facility shall be provided and approved by the PW Engineering Services upon construction completion, and prior to any Certificate of Occupancy.
4. As per Chapter 2, Sec. 218, (B), the applicant shall post a Stormwater Maintenance Security with the PW Engineering Services for new drainage facilities installation. The security shall be for an amount of 10% of the engineer's construction cost estimate or \$5,000 (whichever is greater). The security shall be in effect for 2 years from the date of provisional acceptance of newly constructed drainage facilities.
5. Pursuant to DOE 2012/14 Manual, Vol. I, Chapter 3, applicant shall complete and record a Declaration of Covenant and Grant of Easement for the stormwater maintenance purposes. Document is required to be recorded prior to issuance of any Certificate of Final Occupancy.
6. The applicant shall obtain a Revocable Encroachment Permit from the Engineering Services prior to the onset of any construction in the County Right of Way, including paved apron and any off-site construction.
7. Interior traffic circulation shall be designed as per FM requirements and WC Development Standards.

8. All roads, stormwater facilities, and grading plans shall be designed and stamped by a Washington State Licensed Civil Engineer and submitted for county engineering review and approval prior to construction.

Critical Areas

1. All proposed expansion outside the already developed portions of the parcel (Approved Development Area dated April 26, 2017 and site plan review dated June 1, 2017) shall be reviewed under the building structural permit (such as a final site plan review and clearing limits inspection). If additional impacts to critical areas are identified, a critical areas assessment report may be required.

NOTICE OF POTENTIAL REVOCATION AND PENALTIES

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

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

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 13th day of March 2019.



Rajeev D. Majumdar, Hearing Examiner *Pro Tem*

WHATCOM COUNTY HEARING EXAMINER

re: The application of **Lynden Public Works** for a Shoreline Substantial Development Permit and Shoreline Variance Permit

“Berthusen Park Restroom Facility”

SHR2020-0007; and
SHV2020-0003

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION

SUMMARY OF APPLICATION AND DECISION

Application: Lynden Public Works seeks a Shoreline Substantial Development Permit and Shoreline Variance Permit to replace a park restroom building within the City of Lynden Berthusen Park. The project proposes the demolition of the eastern most restroom and replacing it with a CXT Precast Montrose restroom building. The restroom facility is within a Shoreline Buffer associated with Bertrand Creek and the overall roof area of the structure will be expanded from 280 SF to 570 SF.

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

INTRODUCTION

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

FINDINGS OF FACT

I.

PRELIMINARY INFORMATION

Applicant: The City of Lynden Public Works
Property Location: Berthusen Park, 8837 Berthusen Road,
Lynden, WA 98264
Legal Description: Within Section 14, Township 40 North, Range 02 East, W.M.

Parcel Number: 400214 306442
Adjacent Water Body: Bertrand Creek
Shoreline Designation: Conservancy
Statewide Significance: No
Application Submitted: March 11, 2020
Notice of Completeness: March 23, 2020
Notice of Application: March 25, 2020
End of Comment Period: April 24, 2020

Authorizing Ordinances: SMP 23.50 Applicability
 SMP 23.70.010 Administration
 SMP 23.70.030 Hearing Examiner

Applicable Shoreline Program Provisions

SMP 23.20 Goals and Objectives
SMP 23.30.020 Official Shoreline Map
SMP 23.30 Shoreline Designations
SMP 23.40 Shoreline of Statewide Significance
SMP 23.60.010 Substantial Development Permit Criteria
SMP 23.60.030 Variance Permit Criteria
SMP 23.60.130 Public Hearings
SMP 23.90 General Policies & Regulations
SMP 23.100 Shoreline Use Policies & Regulations

SEPA Review: Categorically Exempt pursuant to WAC 197-11-800(1)(a)(iv)

Legal Notices: Published – Notice of Public Hearing, July 16, 2020
 Posted – Notice of Public Hearing, July 16, 2020
 Mailed – Notice of Public Hearing, July 9, 2020

Hearing Date: July 29, 2020

Parties of Record

Steve Banham
Lynden Public Works
300 4th Street
Lynden, WA 98264

Mark Sandal

Lynden Programs Manager
300 4th Street
Lynden, WA 98264

Olivia Moseley
Reichhardt & Ebe Engineering
PO Box 978
Lynden, Washington 98264

Andrew Hicks, Shoreline Administrator
Planning and Development Services
Whatcom County

Ryan Ericson
Planning and Development Services
Whatcom County

Exhibits:

1. Shoreline Substantial Development Master Land Use Application with attachments
 - 1-1 Shoreline Substantial Supplemental Application
 - 1-2 Shoreline Variance Master Land Use Application & Supplemental Application
 - 1-3 PDS Guidelines for Finding Property Owners for Hearing Notices
 - 1-4 Fee Responsibility
 - 1-5 Agent Authorization
 - 1-6 Project Narrative
 - 1-7 Determination of Completeness, dated March 23, 2020
 - 1-8 PDS Comment Letter, with Project Description, March 25, 2020
 - 1-9 Customer Receipt, March 11, 2020
2. Staff Report, July 17, 2020
3. R&E/Reichhardt & Ebe, Engineering, Inc, Berthusen Park Restrooms – Alternatives Analysis Memorandum, prepared by Olivia Moseley, EIT, dated March 9, 2020, with attached Site Map Exhibit
4. R&E/Reichhardt & Ebe, Engineering, Inc, Berthusen Park Restrooms- Recorded Deed & Easements Memorandum, prepared by Olivia Moseley, EIT, with attached Statutory Warranty Deed, 11/18/1998
5. Natural Resources: Conservation Service: Web Soil Survey: National Cooperative Soil Survey, dated 11/1/2019 -Soil Map—Whatcom County Area, Washington, with attached maps: Bertrand Cr./Fishtrap Cr.; Bull Trout; Coho; Fall Chum; Sockeye; Winter Steelhead; and Fish Habitat Conservation Areas
6. Whatcom County Preliminary Traffic & Concurrency Information, with Trip Generation Information, prepared by Olivia Moseley, March 5, 2020

7. County Preliminary Stormwater Proposal: Berthusen Park Restrooms, with Site Plan Requirements, prepared by Olivia Moseley, March 5, 2020, and Memorandum dated March 2, 2020 re: Stormwater Evaluation of Project Area, with attached Existing Stormwater Areas, Predeveloped Storm Exhibit Map, Exhibit A; Exhibit B- Flow Charts
8. GeoEngineers: Wetland and FWHCAs Assessment and Buffer Mitigation Report: Berthusen Park Restroom Replacement, dated February 6, 2020, with attached Vicinity Map, Figure 1; Wetlands and Stream Site Plan, Figure 2; Appendix A-Site Photographs- Figure A-1, Figure A-2, Figure A-3; Appendix B-Background Data and Maps: NWI Map, Wetlands & Critical Areas Ordinance-Wetlands Map
9. Washington Department of Fish and Wildlife Priority Habitats and Species Report, 11/01/2019, with an attached WDFW Test Map, Nov. 1, 2019; Appendix C Wetland Determination Datasheets: Wetland Determination Data Form-Western Mountains, Valleys, and Coast Region; Cowardin Classes-Figure 1; Hydroperiods, Figure 2; Contributing Basin, Figure 3; Habitat, Figure 4; Washington State Water Quality Atlas/Department of Ecology: Whatcom County: Water quality improvement projects; Appendix E: Site Plans-Preliminary Site Plans, prepared by R&E, dated 3/09/2020
10. Certificate of Mailing Notice of Application dated March 25, 2020
- 11 Bellingham Herald Legal Notice of Application, March 25, 2020
12. Certificate of Posting: Notice of Public Hearing, July 15, 2020
13. Certificate of Mailing: Notice of Public Hearing, July 10, 2020
14. Legal Notice of Zoom Public Hearing, July 16, 2020

II.

The proposed project is for the demolition of an existing restroom building with a roof area of 280 SF and installation of a CXT Precast Montrose restroom building with a roof area of 570 SF. The footprint of the existing structure is approximately 215 SF and the proposed footprint area is 433 SF. In addition to the new restroom building approximately 115 linear feet of 1-inch water service, 55 linear feet of 4-inch sanitary sewer, and 90 linear feet of underground power service will be installed.

III.

The Whatcom County Shoreline Administrator has recommended approval of the requested Shoreline Substantial Development Permit and Shoreline Variance for the proposed replacement of an existing restroom building with a roof area of 280 SF and installation of a CXT Precast Montrose restroom building with a roof area of 570 SF. The Staff Report entitled "Findings, Conclusions, and Recommendations," dated July 17, 2020,

a copy of which is attached hereto. The Applicant has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the hearing. The Findings of Fact contained in the Staff Report are adopted and incorporated herein by this reference.

IV.

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

CONCLUSIONS OF LAW

I.

The Conclusions of Law are set forth in the Staff Report, Exhibit No. 2 in the Hearing Examiner file, dated July 17, 2020, are adopted and incorporated herein by this reference as Conclusions of Law. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, and with the Goals and Policies of the Whatcom County Shoreline Management Program.

II.

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

DECISION

A Shoreline Substantial Development Permit and Shoreline Variance Permit are hereby granted to Lynden Public Works Department to replace the existing eastern most restroom of a park restroom building within Lynden Berthusen Park located on Assessor's Parcel Number 4002147 306442, addressed as 8837 Berthusen Road, Lynden, Washington. The Permit is granted subject to the following Conditions of Approval:

1. The proposed shoreline developments shall be consistent with the scope and site plans stamped "Site Plan Review Approval" and initialed by the Shoreline Administrator on July 20, 2020. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline

Administrator and/or Whatcom County Hearing Examiner.

2. The project must be constructed in accordance with the submitted plans/drawings and supporting documentation and comply with all agency permit conditions.
3. Issuance of this shoreline permit does not release the applicant from any other Local, State, regional or Federal statutes or regulations applicable to the proposed development.
4. Washington State Department of Ecology Water Quality Standards shall be maintained.
5. The project shall not result in significant degradation of ground or surface waters and shall be completed during periods of dry weather.
6. A commercial building permit is required for this project. It will be reviewed under the current adopted edition of the International Building Code (IBC) and must comply with all other applicable codes and ordinances adopted by Whatcom County.
7. Prior to building permit issuance, the Berthusen Park bridge must be evaluated by an engineer, to see if it meets the requirements of the International Fire Code. The bridge is required to be rated to AASHTO HB-17 Construction standards. If the bridge does not meet this standard, it may require additional structural modification or replacement.
8. Stormwater from the proposed development shall be controlled in a manner which does not degrade any critical areas or surface waters or direct water onto neighboring properties.
9. All construction debris shall be removed from the shoreline environment upon completion of the project and disposed of in accordance to all applicable regulations.
10. Mitigation Requirements:
 - a. Mitigation measures and BMPS shall be installed per the GeoEngineers Report dated February 06, 2020 and date stamped Mar 11, 2020 Titled Wetland and FWHCAs Assessment and Buffer Mitigation Report.
 - b. Recorded Conservation Easement. Prior to building permit issuance a conservation easement with mitigation form must be submitted and approved by the Natural Resource Department. The signed Conservation Easement by the Natural Resource Department must be recorded with the Whatcom County Auditor. The applicant will provide the County with the document recording _____ numbering.
<http://www.co.whatcom.wa.us/DocumentCenter/View/2192/Conservation-Easement-Including-Mitigation-PDF>
 - c. Monitoring. The monitoring period for this project is 5 years, unless an

annual report fails to meet performance standards, then an additional year is added to the period. The following spring after the approved as-built inspection begins the monitoring period. The project has been approved to use the standard Mitigation-Monitoring report form.

<http://www.co.whatcom.wa.us/DocumentCenter/View/33014/Mitigation-Monitoring-Report-Form->

- d. Mitigation Case. A mitigation case will be created at the time of building permit submittal. The case will be for the 5 years of monitoring.
 - e. As-built Mitigation Approval. The project has been approved to use the As-Built documentation form. Prior to requesting an as- built inspection <http://www.co.whatcom.wa.us/DocumentCenter/View/28923/As-built-Documentation-Form->
 - f. Fees. Applicant will pay for all outstanding fees at time of building permit issuance.
 - g. Any change in site plan shall have further review by Natural Resource staff.
 - h. If any part of the proposed project is creating unanticipated impacts to the environment a contingency plan shall be authored by the applicant's biological consultant. The contingency plan shall tailor a different approach to offsetting critical areas losses from the construction of the project, and be reviewed and approved by the Whatcom County Critical *Areas staff*.
11. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
12. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of

Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

13. Construction shall be commenced within two (2) years of the effective date of this shoreline permit, as defined by 23.60.190(A)(3), and shall be completed in five (5) years. The Shoreline Administrator may grant a single extension for a period of not more than one (1) year based on a showing of good cause. Such request must be filed with the Shoreline Administrator before the expiration date described above.

NOTICE OF POTENTIAL REVOCATION AND PENALTIES

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

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

Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both. This approval does not release the applicant from any regulations and procedures required of any other public agency, or any County requirements other than the requirement to obtain a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit. This permit may be rescinded pursuant to RCW 90.58.140(8)

in the event the permittee fails to comply with the terms or conditions thereof. Pursuant to Whatcom County Shoreline Management Program Section 23.60.151 this permit shall expire within two years of the date of its approval and a new permit will be required, if the permittee fails to make substantial progress toward completion of the project for which it was approved. Pursuant to Section 23.60.152 it shall expire if the project is not completed within five years of the date of the approval, unless the permittee has requested a review, and upon good cause shown, been granted an extension of the permit.

THIS PERMIT IS NOT VALID (AND NO CONSTRUCTION NOR OPERATION AUTHORIZED BY THIS PERMIT SHALL BEGIN) UNTIL THIRTY (30) DAYS AFTER THE DATE OF FILING AS DEFINED BY RCW 90.58.140(6) AND WAC 197-14-090, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN THIRTY DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(A)(B)(C).

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

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

Dated this 6th day of August 2020



Rajeev Majumdar, Hearing Examiner *Pro-Tem*

ISLAND COUNTY HEARING EXAMINER

RE: *Site Plan Review for Conditional Use Permit*

Cove Club Crestwood, LLC

No. SPR 262/19

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION**

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant seeks a Site Plan Review for a Type III Approval for the construction of a 400 sq. ft. indoor shooting range, situated on a 7.4 acre site, addressed as 1865 Crestwood Cove Ct, Freeland, WA.

Decision: The Hearing Examiner hereby approves the installation of the indoor shooting range, subject to conditions.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing held on October 31, 2019.

FINDINGS OF FACT

I.

PRELIMINARY INFORMATION

Applicant: Cove Club Crestwood, LLC

Property Location: 1865 Crestwood Cove Ct
Freeland, Washington

Assessor's Parcel No. R22902-077-3140

Zoning: Rural [R]

Allowable Density: 1DU/ 5AC

Critical Overlays: Not within the area of the site of proposed shooting range.

Total Acreage: 7.4 acres

Law Enforcement: Island County Sheriff's Office

Authorizing Ordinances:

1. Revised Code of Washington [RCW] Chapter 36.70
2. Island County Code, Title 11, Land Development Standards
3. Island County Code, Title 12, Roads and Bridges
4. Island County Code, Title 13, Public Works
5. Island County Code, Title 16, Planning and Subdivisions
6. Island County Code, Title 17, Zoning
7. State Environmental Policy Act (SEPA)
8. Washington Administrative Code Chapter 197-11-800

SEPA Review: The Island County SEPA Official has determined that the proposal is categorically exempt from SEPA review.

Legal Notices: Community Meeting, 1/4/19

Posting – Public Notice, 8/15/19

Mailing – Public Notice, 8/9/19

Mailing – Public Hearing Letter, 9/26/19

Hearing Date: October 31, 2019

Parties of Record

Michelle Pezley, Senior Planner
Island County Community and Development
P.O. Box 5000
Coupeville, WA 98239

James Ihnot, Attorney and Agent of Applicant
610 Market St. Ste. 100
Kirkland, WA 98033

Ted Clifton, Agent of Applicant
460 Kineth Point Place
Coupeville, WA 98239

Michael McInerney, Range Master and Agent of Applicant
4848 Pinewood Circle
Langley, WA 98260

Bob Posner
4019 Alder Ave.
Freeland, WA 98249

Marianne Edaine, Whidbey Environmental Action Network (WEAN)
P.O. Box 53
Langely, WA 98260

Peter Feichtmeir
5090 E Harbor Rd.
Freeland, WA 98249

Robin Charlwood
1842 Foliage St.
Freeland, WA 98249

Ron Knox
4010 Alder Ave
Freeland, WA

Tom Cahill
1895 Brainers Rd.
Freeland, WA 98249

Victor Eckland III
5127 E. Harbor Rd.
Freeland, WA 98249

Marge Buckley
P.O. Box 575
Freeland, WA 98249

Steve Erickson, WEAN
P.O. Box 53
Langley, WA 98260

Larry Nelsen
5196 E. Harbor Rd.
Freeland, WA 98249

Exhibits:

Staff Report

1. Staff Report

Site Data

2. Island County Request for Comments form; dated 7/29/19
3. Map of Parcel

Application & Reports

4. Letter re: project siting of a pre-engineered & constructed containerized gun firing range; from: Agent, Ted Clifton of Cove Club Crestwood, LLC; dated 7/14/19
5. Master Land Development Permit Application; dated 7/16/19
6. Form C – Application for SITE PLAN review
 - a. Directions to site with attached google map
 - b. S. ½ Sec. 2 Twp. 29 R.2E – Map ID: 285 (11X17 Map)
 - c. Transportation Concurrency letter with attached Certificate; from: Nikki Davis, Traffic Engineer w/ Public Works; dated received 7/16/19
 - d. Access to County Road Right of Way Application; issue date 6/1/04
 - e. Solid Waste Management Plan; signed and dated 3/20/19
7. Parcel Map of Legal Description with attached 11" X 17" Gun Range Site Map
8. Cove Club Range Facility Procedural Manual w/ attached Range Rules & Facility Waiver
9. Construction Plans titled, "Cove Club LLC 2-Lane 50 Feet Static Rifle Range; prepared by: Shooting Range Industries, LLC
10. Community Meeting Attendance Sheet w/ attached Notes; dated 1/4/19
11. Pre- Application Summary; dated 3/1/19

Notices

12. Affidavit of Posting the Public Notice Sign; dated 8/15/19
13. Affidavit of Mailing the public notice to Parties of Record & Property Owners within 300 feet w/ attached addresses; Dated 8/9/19
14. Notice of Public Hearing Letter; dated 9/26/19

Agency Comments/ Review letters

15. Letter re: Water availability verification and sewage disposal system; from: Clea Barenburg, Land Use Coordinator from Public Health; dated 8/16/19
16. Letter re: Building permit requirements from: Tamra Patterson, Plans Examiner/ Building Inspector; dated 8/19/19
17. Letter re: Site Plan Review; from: Bill Poss, Public Works Development Coordinator; dated 8/16/19

18. Email re: review with no objections as proposed; from: Chris Garden, Training Supervisor/ Marine Unit Supervisor, Reserve Liaison of Island County Sherriff's Office; dated 10/10/19
19. Inadvertent Discovery Plan w/ attached photos.

Public Comments

20. Email of Opposition; from: Victor Eckland III; dated 8/23/19
21. Letter of Opposition w/ attached google map illustrating location of gun range to residents property; from: Michael M. George; dated 8/22/19
22. Letter of Opposition; from: Wayne & Janice Bates; dated received 8/26/19
23. Letter of Opposition; from: Karen Knight; dated 8/22/19
24. Letter of Concern & request for information; from: Kathryn S. Beaumont; dated 8/23/19
25. Letter of Complaint; from: Marge Buckley & Victor Eckland; dated 8/23/19
26. Email of Opposition; from: Robin G. Charlwood; dated 8/27/19
27. Email of Opposition; from: Cheryl Weisz; dated 8/27/19
28. Email of Complaint w/ Concerns; from: Gretchen Luxenberg; dated 8/29/19
29. Letter of Opposition w attached Notice of Application; from: Larry and Rhonda Nelsen; dated 8/30/19
30. Letter of Opposition; from: Virginia Hale; dated 8/30/19
31. Email of Opposition; from: Lenore Norrgard; dated 9/2/19
32. Email of Opposition; from: Peter Feichtmeir & Sarah Patton; dated 9/2/19
33. Email of Concerns; from: Kim Kelzer; dated 9/3/19
34. Email of Opposition; from: Carolyn Tamler; dated 9/3/19
35. Email of Concern; from: Deborah Shibley; dated 9/3/19
36. Letter of Opposition; from: Robert Posner; dated 9/4/19
37. Email of Opposition; from: Dianne Shiner; dated 9/4/19
38. Email of comments w/ concerns; from: Marianne Edain w/ Whidbey Environmental Action Network (WEAN); dated 9/5/19
39. Email of concern; from: Rebecca Rickabaugh; dated 9/5/19

Additional Exhibits (exhibits that were received after the Hearing Examiner's binder of exhibits has been created)

40. CD – Sound Study prepared by: Shooting Range Industries, LLC
41. Staff Report Letter to Agent and Parties of Record; dated 10/16/19
42. Email of Opposition from: Ken Kortlever; dated 9/4/19
43. Email of Opposition; from: John Stroh Jr and Carla Stroh dated 9/4/19
44. Email of Opposition with attachment to complaint investigation request; from: mrobnett@whidbey.com dated 9/5/19
45. Email of clarification re: Detailed update; from: Michelle Pezley to Victoria Moore dated 10/16/19
46. Email of Opposition; from: Robin Charlwood dated 10/16/19
47. Email of Opposition; from: Marianne Edain with attachments dated 10/23/19
48. Email string from Janet St. Clair; re: Urgent community concern; dated 10/30/19

49. Email string of Opposition; from Dianne Shiner ; re: Urgent community concern; dated 10/30/19
50. Email of Opposition; from: Robin Charlwood; re: Urgent Community Concern; dated 10/30/19
51. Email sting of Opposition; from: Robin Charlwood; re: Urgent Community Concern; dated 10/31/19
52. Express annual Report with changes; submitted at hearing by Marianne Edain w/ WEAN; 10/31/19
53. Annual Report; submitted at hearing by Marianne Edain w/ WEAN; 10/31/19
54. Cove Club Crestwood Property Search; submitted at hearing by Marianne Edain w/ WEAN; 10/31/19
55. Notice of Appearance; submitted at hearing by Jim Ihnot, Attorney representing Cove Club Crestwood, LLC.; 10/31/19
56. Cove Club Crestwood Hearing, LLC Handout; submitted at hearing by Tom Cahill; dated 10/31/19

II.

The subject parcel is zoned as Rural.

The County received a code complaint that the property owner had moved the shooting range container to the property in January.

The applicant held a community meeting on January 4, 2019.

The applicant proposed to use a custom designed shipping container for the shooting range (herein "Container") to be next to an existing barn. The property is located off Crestwood Cove Court, a private road off East Harbor Road. The site consists of a single-family residence, guest cottage, detached accessory structure with a bedroom and a barn. The shooting range will be over 400 feet from any critical area, and 500 feet from any residence. The applicant proposes the shooting range will be private range that will only serve the property owners and guests.

III.

Island County staff has recommended approval of the Conditional Use Permit's Site Plan Review with conditions and issued a report entitled, "Staff Report & Recommendation, Type III Site Plan Review – SPR 262/19, Indoor Shooting Range," dated October 15, 2019 (herein "Staff Report"). The Applicant has indicated that the staff report is factually correct, and the Applicant otherwise stated no objection to the Conditions of Approval recommended by Staff. There was significant public comment

on this matter, both written and at the hearing, falling into four primary areas: Potential noise; prior bad acts of the applicant; the possession of firearms by foreign nationals and related safety concerns; and the fact that the applicant owns multiple adjacent lots which members of the public felt should be regulated comprehensively.

All oral testimony in favor and against the permit was made under oath.

IV.

Specific Findings as to Noise.

A great deal of public comment dealt with objection to noise, and existing objections to noise on the lot generated by outdoor shooting. The structure (Ex. 9) is proposed to be insulated for in such a way to minimize all sight and the majority of sound that would be produced by the firing of firearms. A video demonstration of the sound proofing construction was submitted and showed sound at 30 ft. away from the building being below speaking level (Ex. 40).

Michael McInerney, an agent of the applicant, testified as to the range guidelines submitted (Ex. 8) and to the limitations on caliber and speed of bullet and the noise generated- specifically noting the rules designed to maximize safety and minimize sound. Michael McInerney also testified about the discontinuation of outdoor firearm use should the permit be granted.

V.

Specific findings as to prior bad acts.

Much of the public comment made reference to prior applications or problems with code enforcement by this applicant on other parcels, and specifically to a code complaint made in regards to the moving of the Container onto the site prior to approval of any firearms range, and use of a sea plane to access the property.

In regards to public comment about prior violation and prior applications on other sites, and documentation (witness Marianne Edaine identifying Ex. 47) that previous violations should be resolved. Michelle Pezley testified that she was not aware of any legal basis to require an owner of to undergo such a review, and that any violations had been cured.

In regards to public comment about this specific site, Michelle Pezley testified

that there was a code complaint that the Container had moved on site and a stop-work order. Pezley also testified that granting the permit would cure the defect, and is a regular part of code compliance- that often the requirement for permits arises out of code complaints. There was testimony from Ted Clifton regarding his orders from the Applicant to get any and all applicants required, and information they received stating a permit wasn't needed for a container to be on the property. There was testimony from Jim Ihnot in regards to contacting the County Government on December of 2018 about the permit process and placing the container in place; and that the container has remained secured, locked, not accessed, and unused. Further, Ihnot testified a sea plane only arrived once, and that has never occurred again.

VI.

Specific findings as to multiple lot regulation.

Much of the public comment made demand for a site plan review for all parcels owned by the applicant. Michelle Pezley testified that she was not aware of any legal basis to require an owner of multiple lots to undergo such a review, and that general policy is to take applicants at their word as stated in the application and not to analyze intention.

VII.

Specific findings as to the use of firearms by foreign nationals and safety.

Some public comment expressed concern at non-U.S. Citizens possessing or carrying firearms in the area, as it was not "part of their culture," because it was unlawful under RCW 9.41.175, or because no one would be monitoring their usage. RCW 9.41.175 is a criminal statute that deals with nonimmigrant aliens, who are not residents of Washington or a citizen of Canada. Michael McInerney testified as to the safety plan and gun range rules as well as to the legal requirements for nonimmigrant aliens to possess firearms. No evidence was presented that any nonimmigrant aliens, who are not residents of Washington or a citizen of Canada were in possession or carrying firearms in violation of the requirements of that law. Further, it is found that the applicant is not a nonimmigrant alien, but is a properly constituted Washington Business entity registered with the Washington Secretary of State as seen by documents

submitted at the hearing (Ex. 53).

Some public comment was made about guns in general, how they made neighborhoods feel unsafe, and that the applicant should use an existing business ("The Holmes Harbor Rod and Gun Club") nearby that was a gun range. There was testimony about law enforcement being called in response to gunfire, but no testimony about actual unlawful or violent acts involving firearm discharge. The Island County Sheriff's Office reviewed this proposal and had no objections (Ex. 18).

VIII.

The Factual Findings of the Island County staff, as set forth in the Staff Report, Exhibit No. 1, dated October 15, 2019, a copy of which is attached hereto, are hereby adopted as findings of fact by the Hearing Examiner and incorporated herein by this reference, except where explicitly contradicted by this decision.

IX.

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

CONCLUSIONS OF LAW

I.

The proper notices have been given. This matter was properly heard as a Type III Application with a required public hearing. This application is exempt from SEPA pursuant to WAC 197-11-800.

II.

For a parcel zoned Rural, a gun club or shooting range is a Type III conditional use permit application per Island County Code (ICC) 17.03.035.D. The conditional use review is under a Site Plan Review application per ICC 16.15.

A conditional use is appropriately granted only when based on the criteria outlined in ICC 16.15.060, including that the proposed use and its design fulfill the definition of rural character as defined in chapter 17.03, specifically 17.03.040.

The proposed use shall not result in a significant adverse environmental impact that cannot be mitigated by reasonable mitigation measures outlined in general

conditions of this decision. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

The establishments of shooting ranges appear to be a contemplated and appropriate use for this property under its current zoning, and the proposal complies with all of the applicable provisions of the applicable regulations, including prescribed development/performance standards and all applicable development standards and design guidelines.

The subject site is physically suitable for the type, density and intensity of the use being proposed. The location, size, design and operating characteristics of the proposed development/use would not be detrimental to the neighborhood, nor be detrimental to the public interest, health, safety, or welfare of the County in conformance with the standards of this chapter, chapters 17.02B, and 17.03. ***See additional specific findings on this subject below in §§ III-VI.***

The proposed use and its design fulfill the definition of rural character as defined in the ICC, specifically, it will remain the case that open space, the natural landscape, and vegetation predominate over the built environment; a shooting range and firearm shooting fosters traditional aspects of rural lifestyles; the visual landscapes that are traditionally found in rural areas and communities will be preserved; the use will not interfere with the use of the land by wildlife and for fish and wildlife habitat in a greater degree than already exists; the use will not result in inappropriate conversion of undeveloped land into sprawling, low-density development; the use does not require the extension of urban governmental services; and the use approved with conditions is consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

The proposed use meets all other statutory and code requirements and guidelines as outlined in the Staff Report.

III.

Specific conclusions as to noise and safety.

The overwhelming weight of the testimony and evidence demonstrated that the

proposed use is engineered to minimize or completely eliminate any and all sight and sound of firearms usage outside of the very immediate vicinity of the Container on the Applicant's premises. Further, the proposed use, its construction (Ex. 9) and its proposed guidelines for use (Ex. 8) seem designed to eliminate danger from the vicinity. However, mindful of community concerns about safety and levels of use, the nature of the neighborhood as testified to in public comment, representations by agents of the Applicant, and the possibility of defects in construction, the hearing examiner has specifically added conditions #1-3 to limit the use on the premises specifically to address all of those factors.

IV.

Specific findings as to prior bad acts and multiple lot regulation.

There was a code complaint that the Container had moved on site, prior to the acquisition for the installation or usage of the Container. There was mixed testimony as to the level of communication the Applicant had with the County prior to the Containers arrival, but it is an uncontested fact that there was a process underway with a public hearing being held as early as 1/4/19. The container was locked, and there was testimony that the Applicant was seeking to get approval from the County to place it permanently before it would be opened for use. It is not surprising that County Governments often require rectification and compliance after learning of deviation or failure to acquire permits. The stop-work order, and the requirement of this permitting process appear to be a reasonable and appropriate remedy decided upon by the County, especially in light of the fact that the Container was unusable and unused and it appears there was more likely than not communication on the part of the Applicant to the County about the Container's existence in December of 2018.

There is not a legal basis to require the applicant to undergo multi-site review, and any violations on other sites appear to have been cured or non-continuing based on the testimony before the hearing examiner. Prior violations, although troubling, do not constitute a valid reason to deny approval of a site plan.

V.

Specific findings as to the use of firearms by foreign nationals.

The concept of the County applying land use regulations differently to applicants based on ethnicity, race, country of origin, or culture is rejected absolutely. Requests by the community for the hearing examiner to prejudge, hold suspicions, make assumptions, or require special monitoring by law enforcement of land use due to any applicant's (or to any member, shareholder, or agent of an applicant) ethnicity, race, country of origin, or culture is not well taken and rejected absolutely. There is no legal basis to do so, and it would be unlawful for the County to do so under both the United States and Washington Constitutions.

VI.

Specific findings as to requiring the applicant to use an already existing business or club providing similar use services.

The establishment of shooting ranges appear to be a contemplated and appropriate use for this property under its current zoning, and the Applicant is not required to show that the proposed location is the most efficient place for the proposed use, or that alternatives are not available. Firearm shooting is a traditional aspect of rural lifestyles, and is therefore encompassed inside the definition of rural character as defined by the ICC. What might be inappropriate in an urban or commercial setting such as the discharge of firearms is not necessarily inappropriate in a rural setting. The zoning of the area clearly contemplates, specifically if not in great detail, the placement of shooting ranges or gun clubs.

It would be inappropriate for the County to steer business to an existing business. More so, when such uses (provided they meet the criteria for said use) are appropriate for the zoning in place. People buy property based on the zoning and the permitted or potentially permitted uses and have a proper expectation to engage in zoned uses providing they meet conditional criteria. People buying property in neighborhoods zoned for contemplated uses, should expect such contemplated uses to occur.

VII.

Any legal conclusions of the Island County staff, as set forth in the Staff Report, Exhibit No. 1, dated October 15, 2019, a copy of which is attached hereto, are hereby

adopted as conclusions of law by the Hearing Examiner and incorporated herein by this reference, except where explicitly contradicted by this decision.

VIII.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

IX.

The proposed Application for the gun range can be approved if it is consistent with the ICC. Subject to the Conditions of Approval attached hereto, the proposed use will be consistent with the ICC criteria including is consistent with all applicable zoning, land use, and environmental regulations, and therefore a Conditional Use Permit should be granted with those conditions. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

The Site Plan Review Application is approved for the construction of an indoor firing range on Assessor's Parcel No. R22902-077-3140, addressed as 1865 Crestwood Cove Ct., Freeland, Washington. The approval is granted subject to the following required conditions:

General Conditions:

1. All training or recreational firearms shooting activity on the property will take place inside the Container.
2. Use of the Container is to be strictly in compliance with the Cove Club Range Facility Procedural Manual submitted as **Exhibit 8**, including the limitation on types of firearms.
3. The Container is for the use of the owners and non-fee guests only-no public access. No guests who pay the applicant a fee for any service will be allowed to use the Container.
4. Site development activities approved by this decision shall be in substantial conformance to the site plan as shown on **Exhibit 7**.
5. For deviations from the approved plans, the approved firearms, or the approved users of the shooting range changes, revisions shall be reviewed and approved

through a formal site plan amendment process. Further, if the use of the approved structure changes, site plan review, and additional requirements may apply.

6. The applicants must adhere to all conditions and requirements outlined in the attached memorandum from Island County Public Building Department (See **Exhibit 16**).
7. The applicants must adhere to all conditions and requirements outlined in the attached memorandum from Island County Public Health (See **Exhibit 15**).
8. The applicants must adhere to all conditions and requirements outlined in the attached memorandum from Island County Public Works (See **Exhibit 17**).
9. All development activities on and use of the subject parcel shall be in compliance with all applicable Washington State laws and Island County codes.
10. The conditions of approval identified in this report are subject to change if any information provided by the applicants or their authorized representative are found to be inaccurate.
11. All noise must cease from 10:00 p.m. until 7 a.m. as required by ICC 9.60.030.
12. Dead or dying vegetation must be replaced immediately, or if in winter, within the next planting season per ICC 17.03.180.P.3.b(vi).
13. In the event that any ground-disturbing activities, other project activities related to this development, or in any future development uncover protected cultural materials (e.g. bones, shell, stone tools, beads, ceramics, old bottles, hearths, etc.), the actions as listed in Attachment E must be followed. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Failure to comply with this requirement could constitute a Class C Felony.
14. The property owner or designee shall arrange with the all emergency responders to have access to the gate.

Prior to Building Permit:

15. Site plan approval does not guarantee the issuance of a building permit. The applicants shall submit an application and applicable fees for building permits under a separate application, required for any building or construction activity on the subject property.
16. Prior to issuance of the building permit, the applicant shall provide a landscaping plan which shows screening from neighbors and public right-of-way

Prior to Occupancy

- 17. All lighting fixtures must be a full cut-off design that is shielded, hooded, and oriented in such a way as to not be visible past the property boundaries.
- 18. Prior to final occupancy of the building permit, landscaping shall be installed and inspected by County staff.

**NOTICE OF
EXPIRATION OF SITE PLAN APPROVAL**

This approval is valid for a period of five (5) years. The building permits for development of the site shall be obtained pursuant thereto being utilized within five years after the effective date of site plan approval per ICC 16.15.160. If the permit or permits are not used or construction work is not initiated within this time and carried on to Site Plan approval, the Site Plan shall become null and void and any approval, permit, or conditions granted thereby shall be deemed to have lapsed.

NOTICE OF POTENTIAL REVOCATION AND PENALTIES

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Island County Planning and Community Development Services.

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE ISLAND COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final.

This is a Final Land-use Decision. This Decision may be appealed as provided by State law to either the Island County Superior Court in accordance with the time limits and rules of the Land Use Petition Act, RCW 36.70C, or to an appropriate administrative agency, if applicable.

ENTERED this 9th day of November 2019, pursuant to authority granted under the Laws of the State of Washington and Island County.



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