

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit)	CUP2013-0010
Application for)	
Nooksack Salmon)	FINDINGS OF FACT,
Enhancement Association)	CONCLUSIONS OF LAW,
)	AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to expand a nonconforming use business to allow the nursery and office operations for NSEA.

Decision: The requested Zoning Conditional Use Permit is approved, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

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

I.

Applicant: Nooksack Salmon Enhancement Association [NSEA]

Site Location/Address: 3057 East Bakerview Road
Bellingham, Washington

Legal Description: Block 23 of the Garden Addition to the Town of Whatcom in Section 9, Township 38 North, Range 3 East, W.M., Whatcom County, WA

Assessor's Parcel Number(s): 380309 217040

Zoning: Urban Residential District (UR6)

Comprehensive Plan: City of Bellingham Urban Growth Area

Subarea: Urban Fringe

Total Acreage: 6 acres

Roads: Private

Water Supply: Well

Sewage Disposal: On-site sewage system

Fire Protection: Whatcom County Fire District No. 4

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham School District

Topography: Location of proposed development is generally level.

Vegetation: Vegetated portions of the site include mown lawn, shrubs, with a few scattered trees.

<u>Adjacent Land Uses:</u>	North:	Single-family residential
	East:	Single-family residential
	South:	Industrial/Single-family residential
	West:	Single-family residential

Easements: None.

Authorizing Codes, Policies, Plans, and Programs

Revised Code of Washington (RCW) Chapter 36.70

Whatcom County Comprehensive Plan

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

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

Whatcom County Code, Title 14, Use of Natural Resources

Whatcom County Code Chapter 12.08, Development Standards

Whatcom County Code Chapter 15, Building Code/Fire Code

State Environmental Policy Act (SEPA); Washington Administrative Code Chapter 197-11,

Whatcom County Environmental Policy Administration Chapter 16.08

Whatcom County Code Chapter 16.16, Critical Areas

Whatcom County Code Title 24, Health Regulations

Legal Notices:

- Posted – Notice of Public Hearing, May 22, 2014
- Mailed – Notice of Public Hearing, May 20, 2014
- Published – Notice of Application, January 16, 2014
- Notice of Public Hearing, May 22, 2014

Hearing Date: June 4, 2014

Parties of Record

Nooksack Salmon Enhancement Association
PO Box 32594
Bellingham, WA 98228

Jaime White
Whatcom Land Use Consulting, LLC
PO Box 30696
Bellingham, WA 98228

Amy Keenan
Planning and Development Services

Exhibits:

- 1 Land Use Application with attachments
 - 1-1 Supplemental Application
 - 1-2 Agent Authorization
 - 1-3 Fee Responsibility
 - 1-4 Statutory Warranty Deed
 - 1-5 Customer Receipt
 - 1-6 Land Disturbance and Clearing Application
 - 1-7 Preliminary Traffic & Concurrency Information
 - 1-8 Preliminary Stormwater Proposal
 - 1-9 Preliminary Drainage Analysis Addendum, prepared by Freeland and Assoc, Dec 5, 2013
 - 1-10 Revocable Encroachment Permit Application
 - 1-11 PDS Hearing Examiner Checklists, April 30, and May 21, 2014
 - 1-12 On-Site Sewage System Report of System Status, 7/24/13
 - 1-13 Determination of Completeness, January 6, 2013
 - 1-14 Property Owner Mailing Labels
- 2 Staff Report, May 21, 2014
- 3 Agency Comments: Critical Areas, May 20, 2014; Environmental Health, Jan 29, 2014; PW Engineering, April 22, 2014; Fire Inspector, April 17, 2014; Plans Examiner, Jan 16, 2014, with General Guidelines for Commercial Buildings attached
- 4 SEPA DNS, April 25, 2014, with attached: Distribution List; Notice of Application, Legal Notice, dated Jan 16, 2014; Pre-Application Routing Checklist; SEPA Checklist
- 5 Northwest Ecological Services, LLC memo, dated Nov 25, 2013 re: CAO Impact and Mitigation Assessment for NSEA Property
- 6 Northwest Ecological Services, LLC memo, dated Mar 17, 2014 re: Wetland Hydrology Verification
- 7 Wetland Delineation Report, Nov 2013, prepared Northwest Ecological Services, LLC
- 8 Three Large Plans: EX 1 Site Plans; EX 2 Existing Conditions; EX 3 Landscape Plan

- 9 Graphic Design: House / Office Layout
- 10 Aerial Site Photo
- 11 (2) Intersection Sight Distance Maps
- 12 Project Description: Fourth Corner Nurseries, with attached Statutory Warranty Deed, Exh B: Fourth Corner Nurseries General Information; Exh H: General Provisions, Chapter 20.04; Whatcom County Agenda Bill No. 1995-442, with attached Ordinance No. 95-061, Amending Title 20 regarding Plant Nurseries
- 13 Bellingham Herald Tear-Sheet, Notice of Application, Jan 16, 2014
- 14 Certificate of Mailing, Notice of Public Hearing, May 20, 2014
- 15 Certificate of Posting, Notice of Public Hearing, May 22, 2014
- 16 Legal Notice of Pubic Hearing, May 22, 2014

II.

The Nooksack Salmon Enhancement Association is requesting a Zoning Conditional Use Permit for the expansion of a nonconforming use for the operation of a nursery business and office for NSEA on property addressed as 3057 East Bakerview Road, Bellingham, Washington.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit No. 2, dated May 21, 2014, a copy of which is attached hereto and incorporated herein by this reference.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to any of the Conditions of Approval requested by Staff. There was no public comment on this matter at the public hearing.

III.

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 proposed operation of a nursery business and office can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (2 through 8). Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Zoning Conditional Use Permit should be granted, subject to conditions.

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 Zoning Conditional Use Permit is hereby granted to NSEA for the proposed operation of a nursery and office for the Nooksack Salmon Enhancement Association business to be located on Assessor's Parcel No.380309 217040, at 3057 East Bakerview Road, Bellingham, Washington, subject to the following conditions:

Planning Division

1. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Hearing Examiner.
2. Pursuant to WCC 20.80.523; the Applicant shall arrange lighting to be directed away from the adjoining property and the public road.
3. The Applicant shall identify the location of refuse containers on an approved site plan at the time of approval of the commercial building permit for the proposed development.
4. The Applicant shall submit an approved landscape plan prior to the issuance of the commercial building permit required for the proposed development.
5. Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.
6. Pursuant to WCC, Title 14, the owners of the property upon which this conditional use permit approval is granted shall sign a statement of acknowledgment containing

a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on forms provided by Whatcom County, which shall then be recorded in the Whatcom County Auditor's Office.

7. The Applicant shall complete construction, or if no construction is contemplated as a part of this permit, shall demonstrate compliance with all of the conditions of this permit within 36 (thirty-six) months of the date of the issuance of this Decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this permit. Substantial progress toward completion may satisfy the terms of this condition if approved by Whatcom County Planning and Development Services and the Hearing Examiner.

The Applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion of compliance. An extension shall be granted if the Hearing Examiner finds that the Applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning and Development Services before granting any extension.

Critical Areas

1. In conformance with WCC 16.16.690, the Applicant shall submit a mitigation plan for review that demonstrates conformance with WCC 16.16.680. Approval of this mitigation plan is required prior to making an appointment for a building permit.
2. In conformance with WCC 16.16.265, and prior to issuance of a building permit, the Applicant shall prepare and submit for review and approval to Whatcom County Critical Areas Staff a Notice on Title Form with an attached site plan showing all known critical areas on the Applicant's parcel. Once approved by Critical Areas Staff, the Applicant shall file this form with the Auditor's Office. Once filed with the Auditor, the Applicant shall submit a copy to WCPDS. The Notice on Title Form is available at: <http://www.co.whatcom.wa.us/pds/forms/pdf/form-notice-on-title-of-ca-restriction-on-use-alteration-20130807.pdf>
3. The Applicant shall establish an Assignment of Savings (AOS) in accordance with WCC 16.16.260(D)(1)(a-g), in the amount listed in the mitigation plan x 125% and submit a copy along with a signed and notarized Assignment of Savings form to the Critical Areas Administrator prior to issuance of a building permit. Please refer to the County website for this form at: <http://www.whatcomcounty.us/pds/forms/pdf/assignment-of-savings-20110808.pdf>
4. The Applicant shall submit a signed agreement to maintain the mitigation site to the Whatcom County Critical Areas Administrator. This form can be found on Whatcom

County's website at: <http://www.whatcomcounty.us/pds/forms/pdf/form-agreement-maintain-mitigation-site20101014.pdf>

Building Services

1. The Applicant shall obtain a commercial building permit for each new building. A separate building permit is also required for additions, change of use, and/or change of occupancy to the existing buildings. Each permit application 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. The Applicant shall set up a pre-application screening prior to obtaining a building permit application 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. The Applicant can set up the screening meeting with the Building Department Supervisor or a Plans Examiner by calling 360-676-6907.

Fire Marshal

1. Fire flow is required at 1000 gallons per minute at 20 psi. Separate Fire Permit is required for the installation of fire lines. Fire Hydrant shown on plans is in an acceptable location.
2. If the Applicant adds any gates, a separate fire permit shall be required.
3. Fire extinguishers size shall be 2A10BC and the locations shall be approved by the Fire Marshal.
4. Fire Department access shall meet the requirements of the Whatcom County Development Standards for Roads.

Health Department

1. The Applicant must demonstrate adequate potable water supply and sewage disposal capacity for the proposed project. Approved water availability will be required at the time of building permit application for the conversion of the existing residence and all other building permit proposals with potable water. A private water supply may be used for this proposal.
2. Irrigation water use must be compliance with State Water Rights Regulations. For more information, the Applicant can contact Washington State Department of Ecology, Bellingham Field Office, at 360-715-5222.
3. The Applicant must demonstrate adequate sewage capacity for the proposed project. There is an existing unpermitted on-site sewage system (OSS) that is serving the existing four bedroom single-family residence (SFR). The Applicant is proposing to convert the existing four bedroom single-family residence into an office for six employees. The Applicant has provided a Report of System Status (ROSS) for the

existing OSS. There are no other sewage disposal requirements for the proposal to convert the existing SFR into an office.

4. If the Applicant proposes an expansion to the existing SFR, new construction with plumbed facilities, additional employees, or other sewage generating activities, a permit for an OSS that demonstrates adequate sewage disposal capacity may be required.

Public Works – Engineering

1. All development shall comply with the Whatcom County Development Standards.
2. Proposed development is subject to NPDES Phase 2 Area minimum technical requirements, as per DOE 2012. The Applicant shall submit a Stormwater Pollution Prevention Plan (SWPPP) with the building permit application.
3. The proposed development may require a transportation concurrency evaluation, based on Preliminary Traffic Information. The Applicant shall submit a Preliminary Traffic & Concurrency form with the building permit application.
4. A commercial paved apron is required for the existing access approach and shall meet current sight distance criteria, as per Whatcom County Development Standards. The Applicant has submitted a sight distance analysis that meets current standards.
5. The Applicant shall obtain a Revocable Encroachment Permit from Engineering Services for installation of required commercial paved apron prior to the onset of any construction in the County Right Of Way.
6. East Bakerview Road is classified as an Urban Local Access Road with 2,867 ADT. The Developer's direct traffic impact onto the County road system shall be evaluated. It requires the Developer to reasonably and proportionately mitigate the direct impacts of their respective development. The frontage improvement requirements shall, therefore, be determined at the time of building permit application.

NOTICE

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing.

Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

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

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

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

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office.

After an Appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 17th day of June 2014.



Michael Bobbink, Hearing Examiner

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



RECEIVED
MAY 22 2014
J.E. "Sam" Ryan
Director
WHATCOM COUNTY
HEARING EXAMINER

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

EXHIBIT
2

Date: May 21, 2014
Hearing Date: June 4, 2014

The application of Nooksack Salmon Enhancement Association for a Zoning Conditional Use Permit	CUP2013-000 08 10 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary: The Nooksack Salmon Enhancement Association (NSEA) is requesting approval of a conditional use permit (CUP) for an expansion to a non-conforming use to allow the nursery and office operations for NSEA.

Recommendation: The Technical Review Committee recommends that the Whatcom County Hearing Examiner approve the Applicant's request, subject to the requested conditions located in Section IX of this report.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Nooksack Salmon Enhancement Association
2445 East Bakerview Road
Bellingham, WA 98226

Owner: Harold and Allison Jones
5757 Sand Road
Bellingham, WA 98226

Authorized Agent: Jaime White
Whatcom Land Use Consulting, LLC
PO Box 30696
Bellingham, WA 98228

Site Location/Address: 3057 East Bakerview Road

Legal Description: Block 23 of the Garden Addition to the Town of Whatcom in Section 9, Township 38 North, Range 3 East, W.M., Whatcom County, WA;

Assessor's Parcel Number(s): 380309 217040

Zoning: Urban Residential District (UR6)

Comprehensive Plan: City of Bellingham Urban Growth Area

Subarea: Urban Fringe

Total Acreage: 6 acres

Roads: Private

Water Supply: Well

Sewage Disposal: On-site sewage system

Fire Protection: Whatcom County Fire District No. 4

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham School District

Topography: Location of proposed development is generally level.

Vegetation: Vegetated portions of the site include mown lawn, shrubs, with a few scattered trees.

Adjacent Land Uses:

North:	Single-family residential
East:	Single-family residential
South:	Industrial/single-family residential
West:	Single-family residential

Easements: None.

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

1. Revised Code of Washington (RCW) Chapter 36.70
2. Whatcom County Comprehensive Plan
3. Whatcom County Code, Title 2, Chapter 2.33 – Permit Review Procedures
4. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
5. Whatcom County Code, Title 14, Use of Natural Resources
6. Whatcom County Code Chapter 12.08, Development Standards
7. Whatcom County Code Chapter 15, Building Code/Fire Code
8. State Environmental Policy Act (SEPA); Washington Administrative Code Chapter

- 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
9. Whatcom County Code Chapter 16.16, Critical Areas
10. Whatcom County Code Title 24, Health Regulations

III. APPLICATION PROPOSAL

The applicant, Nooksack Salmon Enhancement Association (NSEA), is proposing a conditional use permit (CUP) to formally establish legal nonconforming status of the retail nursery business located at 3057 East Bakerview Road and allow the expansion of that nonconforming use to allow for the business operations for NSEA.

The site has been the location of Fourth Corner Nurseries since 1988. The property was purchased by Harold (Todd) and Nancy Jones in 1987 with nursery operations beginning in 1988 with growing, storing and selling of nursery stock.

NSEA is one of fourteen Regional Fisheries Enhancement Group in Washington State and they operate as part of a statewide effort to educate and involve the public in community-based salmon recovery activities. NSEA works with landowners, agencies, tribes, businesses, service organizations, schools and volunteers.

Activities on the site will include office space for NSEA's full-time, intern and volunteer staff including the Washington State Conservation Corps work crew. The conservation crew members will work off-site on various NSEA restoration projects around the county.

The applicant is proposing to utilize the existing house for the office space and several of the storage/outbuildings will remain for storage and operations purposes. A 3,000 square foot storage building is also proposed to be constructed. The applicant is proposing a total of 21 parking stalls in two locations as well as one ADA parking stall adjacent to the office structure. An existing onsite septic system will provide sanitary disposal for the project and potable water is proposed to be provided by a well. An existing irrigation pond is to be converted into a fire pond to provide fire flow.

IV. SITE DESCRIPTION

The subject property is located in the City of Bellingham Urban Growth Area and is zoned Urban Residential (UR6). A single family residence, detached garage and several storage/outbuildings are located in the northeastern portion of the site and several hoop houses (greenhouses) are located in the southeastern portion of the site. A cleared nursery area is located in the center of the site. The primary access to the nursery site is located off East Bakerview Road in the center of the frontage. A secondary access is located near the northern portion of the frontage.

There are three on-site wetlands and associated buffer. The proposed development does not have any direct impacts to wetlands; however, the wetland buffer will be

impacted for well installation and driveway/access modifications. A mitigation report has been received and approved.

The majority of the land surrounding the subject site is zoned Urban Residential (UR6) with the exception of the property to the west which is zoned Light Impact Industrial (LII). Property to the southwest is within the boundaries of the City of Bellingham.

V. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in Chapter 2.33 WCC.

Notice of Application: The Notice of Application and Optional SEPA DNS for this proposal was published on January 16, 2014. The fifteen (15) day comment period ended on January 31, 2014.

On December 16, 2013, Notices of Application were mailed to property owners whose boundaries lie within 300 feet of the subject property.

Notice of Public Hearing: The Notice of Public Hearing for this application was published in a one-time newspaper publication in the Bellingham Herald.

Public Comment: During the public comment period for the Notice of Application, Whatcom County Planning & Development Services (PDS) received no comments.

The Technical Review Committee finds that public comment submitted during the 15 day public period has been adequately addressed in the above discussion, and in requested conditions of approval located in Section IX of this report.

VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

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

A Determination of Non-significance (DNS) was issued on April 25, 2014 after utilizing the Optional DNS process (WAC 197-11-355). The appeal period for this Optional DNS ended on May 5, 2014. No appeals to this determination were filed.

VII. CONSISTENCY WITH REGULATIONS, FINDINGS OF FACT

A. WCC Chapter 12.08 – Roads and Bridges

WCC Chapter 12.08 adopts and gives authorization for development standards for development within Whatcom County. Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as "Whatcom County development standards" and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with county regulations.

The Whatcom County Public Works Department Division of Engineering reviewed the proposal and submitted a memo dated April 22, 2014 with the following discussion:

The applicant is seeking Conditional Use Permit approval in order to relocate to a 5.93 acre parcel at the above address. The property has an existing home, multiple outbuildings for nursery and storage uses, gravel parking and maneuvering areas, and an existing irrigation pond. NSEA is proposing additional development on the property to include one 3,000 sq. ft. shop/storage building.

The proposed site will utilize the existing access off of E. Bakerview Rd. The proposed development will have total of 48 employees, as stated in the Preliminary Traffic & Concurrency Information.

E. Bakerview Rd is a county maintained road classified as an Urban Local Access road that carries approximately 2,867 ADT (average daily traffic).

****All appropriate permits must be obtained before construction. Obtaining a county permit does not replace or over-ride other state and federal statutes and regulations that may apply to this project.**

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

B. WCC Title 15 – Buildings & Construction

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

The Whatcom County Plans Examiner submitted a memo dated January 16, 2014 with comments, listed below Plans Examiner conditions of approval for this proposal are listed in Section IX of this document. The applicant shall comply with all

conditions of the Chief Plans Examiner's unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

In addition, Building Services noted the following initial Building Permit conditions for approval. They are subject to change and additional conditions will be included when more detailed plans are submitted.

This application was submitted on December 23, 2013 and is subject to review under Title 15 (ORD 2010-041).

- Due to the scope of the project, a WA State registered architect and professional engineer (PE) will be required to prepare the construction documents (IBC Section 107.3.4).
- If the proposed new construction does not meet IBC requirements for conventional light-frame wood construction, a structural analysis by a Washington State Professional Engineer (PE) will be required.
- The following requirements/findings are from the 2009 IBC.
 - Exiting shall meet the requirements of IBC Chapter 10 – Means of Egress.
 - Minimum plumbing facilities (restrooms) are required in accordance with WA State Amendments (WAC) to IBC Chapter 29 – Minimum Plumbing Fixtures and Sanitation Facilities. Subject to Whatcom County Health Department approval.
- The site and building(s) shall meet the barrier-free, handicap accessible requirements of IBC Chapters 10, 11 and Appendix E; ICC/ANSI A117.1-03; and WAC 51-50.
- Heating, cooling and lighting shall comply with the current adopted edition of the Washington State Energy Code.
- Ventilation shall comply with the current adopted edition of the International Mechanical Code (IMC).
- Refer to the attached *General Conditions for Commercial Buildings* for additional building permit requirements.

Fire Code: The Whatcom County Fire Marshal submitted a memo dated April 17, 2014 with conditions of approval.

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

C. WCC Title 16 – Whatcom County Critical Areas Ordinance

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

Whatcom County Planning & Development Services Department Natural Resources Division Critical Areas wetlands staff reviewed the proposal and on March 18, 2014 submitted a memo with the following discussion:

The above case has been routed to critical areas for review. This conditional use permit application is to permit the expansion of the existing nursery and conversion of a house to an office for staff. Grading and fill associated with 3,000 shop building will be located in an

existing nursery area and removal of gravel from wetland buffers and restore with grass seed mix.

On December 23, 2013 a wetland delineation report authored by Northwest Ecological Services, LLC was submitted for review. On February 13, 2014, a site inspection and wetland delineation verification was performed by critical areas staff. It appears from review of the currently submitted site plan (from Freeland & Associates dated December 5, 2013). The following was observed:

- The currently submitted site plan (from Freeland & Associates dated December 5, 2013) and wetland delineation maps are consistent with one another, and both show no proposed new impact to critical areas or their buffers.
- A soil test pit was dug adjacent to "SP3" the wetland test pit for both wetland A and wetland B. Critical areas staff agree with the wetland indicators and wetland boundary line proposed by NES.
- Flags for wetland C, located along E. Bakerview Road, were no longer present. Critical areas staff did a wetland test pit in what presumed to be due east to test pit SP6, the upland plot for wetland C. Although hydrophytic vegetation and hydric soil indicators were present, staff had a hard time determining wetland hydrological indicators.

Erin Page of critical areas staff called NES to discuss Wetland C on February 13. It was agreed that NES would visit Wetland C and dig an additional pit to check on wet season conditions, as recommended in the submitted report. In order to inform the applicant of current status of the application, a Notice of Additional Requirements memo was sent to Amy Keenan in current planning, requesting an addendum to the currently submitted wetland delineation report.

On March 18, 2014, NES submitted a memo to Erin Page of Critical Areas stating that additional field visits to Wetland C were performed on February 17th and March 17, 2014. During these site visits wetland C had distinct hydrological indicators in the delineated wetland in the form of inundation (primary hydrology indicators "A1 – High Surface Water" and "A3 – soil saturation". As a result, this submitted wetland delineation has been accepted by critical areas staff.

However, it has been determined that impacts to critical areas will occur. Mitigation is proposed in a letter from Northwest Ecological Services dated November 25, 2013, but a mitigation plan that meets the criteria set forth in WCC 16.16.690 has not been submitted for review as of yet. At the time of the submittal of the mitigation proposal letter, a mitigation case was opened (case number MIT2014-00030).

As a result, the above CUP has received preliminary critical areas pending submittal to, and approval of conditions.

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

D. WCC Title 20 – Official Whatcom County Zoning Ordinance

Chapter 20.20 – Urban Residential District

WCC 20.22.350 – Building Setback Criteria:

Building setbacks shall be administered pursuant to WCC 20.80.200.

All of the existing buildings appear to meet minimum setback requirements. The proposed storage building will meet building setbacks but will be reviewed at the time of building permit.

WCC 20.20.400 – Height Limitations:

Maximum height shall be limited to 35 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

Maximum height of structures in this district is 35'. Height of the proposed storage building will be less than 35' and will be reviewed at the time of building permit submittal.

WCC 20.20.450 – Lot Coverage:

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

Lot coverage will be well under 35% of the parent parcel. Lot coverage will also be reviewed at time of building permit submittal.

WCC 20.20.652 Use of natural resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 300 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

The Technical Review Committee is recommending that the Hearing Examiner require the applicant to comply with natural resources disclosure policies contained in WCC Title 14. As discussed above, and subject to the requested condition, the proposed use meets the requirements of WCC 20.20.652.

WCC 20.20.653 Landscaping.

Refer to WCC 20.80.300 for landscaping requirements.

A preliminary landscape plan has been submitted and is generally consistent with WCC 20.80.300; a final landscape plan shall be submitted at the time of building permit.

WCC 20.20.654 Parking requirements.

(2) Parking shall conform to the requirements of WCC 20.80.500. However, recreation vehicles, and boat parking and storage shall be limited to side and rear yard areas.

The applicant is proposing 21 standard parking spaces on one (1) ADA space which is greater than the requirement of one (1) space per 200 square feet of office space.

WCC 20.22.655 Drainage.

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

The proposed development is subject to NPDES Phase 2 Area minimum technical requirements. As conditioned, a Stormwater Pollution Prevention Plan (SWPPP) will be required at the time of building permit submittal.

WCC Chapter 20.78 Transportation Concurrency

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

Public Works Engineering Services reviewed the Preliminary Traffic and Concurrency information submitted at time of application. Based on the information submitted, concurrency evaluation will be required at the time of building permit submittal.

The Technical Review Committee has determined that the proposal conforms to the requirements of WCC Chapter 20.78.

WCC 20.80.21 – Concurrency

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

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

Water & Sewer

The application states that water will be provided by individual on-site well and sewage disposal will be provided by an on-site septic system. The Technical Review Committee finds that no county facilities will be reduced below applicable levels of service as a result of the development.

Schools

The Technical Review Committee notes that public notice of the proposed use was published in a journal of record, and no comments were received from the School District indicating that the use would increase a requirement for services, or costs associated with improvements. The Technical Review Committee finds that no county facilities will be reduced below applicable levels of service as a result of the development.

Fire Protection

The proposed use is located within the service area designated as Fire District No. 4. The notice of application was published in the Bellingham Herald and distributed directly to the Fire District. No comments were received from the Fire District.

The Technical Review Committee has determined that, as discussed above, the project meets the requirements of WCC Chapter 20.80.212. The Technical Review Committee finds that no county facilities will be reduced below applicable levels of service as a result of the development.

WCC 20.83 – Nonconforming Uses and Parcels

WCC 20.83.010 Continuation.

Except as otherwise provided in this chapter, the lawful use of any building, land or premises, existing on the effective date of adoption or amendment of this chapter, may be continued although such use does not conform to the provisions hereof. If such nonconforming use is discontinued for a period of 12 months or more, any future use of said building, land or premises shall be consistent with the provisions of this chapter.

WCC 20.97.270 Nonconforming use.

"Nonconforming use" means a building or land occupied by a legally established use that does not conform to the use regulations of the zoning district in which it is located."

As stated in the above referenced code, nonconforming uses are those uses, that if demonstrated were legally established may be *continued* although such uses do not conform to requirements that would apply to the establishment of such uses according to current applicable code.

The subject property was purchased by Harold (Todd) and Nancy Jones on March 9, 1987 and the nursery operations started in the spring of 1988 with growing, storing and selling nursery stock under the name of Fourth Corner Nurseries. The applicant has provided original accounting statements and wholesale lists from this time. In 1987 the property appears to have been zoned Urban Residential (UR). A nursery was not specifically addressed at that time in Title 20, but likely was considered as a use consistent with Agriculture which was a permitted use under WCC 20.04.053.

In the 1995 update to Title 20 "plant nurseries" were added as a conditional use permit in the UR and other zones (ORD. 95-061). The criteria for a plant nursery included location of the plant nursery to be on a collector arterial or higher classified road pursuant to WCC 20.20.153(1). The site is located on an Urban Local Collector and became a nonconforming use with the adoption of ORD. 95-061.

WCC 20.83.020 Expansion of nonconforming use.

(2) The expansion of a nonconforming use by addition or enlargement shall require a conditional use permit, except for nonconforming adult businesses, which shall not be expanded. The expansion must be on the parcel as it existed at the time the use became nonconforming and the use shall not expand on adjacent parcel(s). The expansion shall be approved if it is consistent with the applicable zoning regulations except the use restrictions and complies with WCC 20.84.220 (2) through (8).

Discussion: The proposed expansion of the nonconforming use will include operation of a native plant nursery office space for operations of NSEA. The nursery component will be less intense than the nursery operations associated with the Fourth Corner Nurseries, but the office component will be a greater part of operations on site. The existing nursery has approximately six (6) employees while the proposal would have a maximum of 16 employees with five (5) of those less than full time.

The proposal will be reviewed for consistency with applicable zoning regulations except the use restrictions. It has been determined that the proposal to continue operations of the nursery and include a larger office component is an expansion of a nonconforming use, and accordingly, the application will be reviewed for conformance with conditional use approval criteria WCC 20.84.220 (2-8), in the following paragraphs, listed below this section.

WCC 20.84.220 - Conditional Use Permit Criteria

WCC 20.84.200 Conditional uses.

WCC 20.84.220 (2) through (8) Criteria.

Conditional use permits issued to authorize expansions of nonconforming uses are reviewed for conformance with the same criteria as other conditional uses with the exception of consistency with WCC 20.84.220 (1) which states that the use "Will be

harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations."

Before approving an application for a conditional use permit for an expansion of a nonconforming use, the hearing examiner shall find adequate evidence showing that the proposed conditional use at the proposed location:

(2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.

Discussion: The proposal involves a similar use to the nursery that has been operating on site since 1988 with the additional of a storage building near the center of the property. The area is characterized by low density residential development with single family residences and associated structures. The site is well buffered from surrounding areas and does appear to be harmonious and appropriate in appearance with the general character of the vicinity.

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

Discussion: As conditioned, the proposed expansion is use will not be hazardous or disturbing to existing or future neighboring uses.

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

Discussion: As noted above, the site is serviced adequately by necessary public facilities.

(5) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.

Discussion: The proposal is sponsored by the NSEA, an organization that will realize all costs associated with the proposed development and maintenance upon approval.

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

Discussion: Subject to the proposed conditions, the proposed expansion will not be detrimental to any person's property, or the general welfare by reasons of excessive traffic, noise, smoke, fumes, glare, or odors.

(7) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.

Discussion: Whatcom County Public Works Engineering Services reviewed the site plan, and the preliminary traffic proposal submitted with the application, and determined, and found that, as conditioned, the proposal does not create an interference with traffic on surrounding public streets.

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

Discussion: The proposal was routed to the Whatcom County natural resources team for review of potential impacts to critical areas at the time of application for the land disturbance permit associated with construction of the expansion. No scenic or historic features of major importance have been identified on or in close proximity to the site.

Finding: The Technical Review Committee finds that the proposal as conditioned will be consistent with applicable zoning regulations except the use restrictions and will conform to criteria in WCC 20.84.220 (2) to (8).

E. Health Code (Title 24)

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

On January 29, 2014 the representative from Environmental Health submitted the following comments: The Whatcom County Health Department (WCHD) reviewed the proposed project in accordance with WCC 24.05 On-Site Sewage Regulations.

WCC 24.11 Drinking Water. The applicant must demonstrate adequate potable water supply and sewage disposal capacity for the proposed project. Approved water availability will be required at the time of building permit application for the conversion of the existing residence and all other building permit proposals with potable water. A private water supply may be used for this proposal.

Irrigate water use must be compliance with state water right regulations. Contact Kasey Ignac, with the Washington State Department of Ecology, at 715-5222 for more information.

Sewage Disposal. The applicant must demonstrate adequate sewage capacity for the proposed project. There is an existing unpermitted on-site sewage system (OSS) that is serving the existing 4 bedroom single family residence (SFR). The applicant is proposing

to convert the existing 4 bedroom single family residence into an office for 6 employees. The applicant has provided a Report of System Status (ROSS) for the existing OSS. There are no other sewage disposal requirements for the proposal to convert the existing SFR into an office.

If the applicant proposed an expansion to the existing SFR, new construction with plumbed facilities, additional employees, or other sewage generating activities, a permit for an OSS that demonstrates adequate sewage disposal capacity may be required.

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

F. Whatcom County Comprehensive Plan

Zoning regulations of a specific use district are meant to implement the goals and policies of the County's Comprehensive Plan. Conditional uses are those uses that may be approved within a zoning district if it is determined that the specific use requested is consistent with the general and specific objectives of the Whatcom County Comprehensive Plan, unless the proposed use is an expansion of a nonconforming use; and in that case the expansion of a nonconforming use by addition or enlargement shall require a conditional use permit, and shall be approved if it is consistent with the applicable zoning regulations except the use restrictions and complies with WCC 20.84.220 (2) to (8).

Finding: The Technical Review Committee finds that the application for conditional use permit is to authorize an expansion of a nonconforming use and therefore is exempt from WCC 20.84.220 (1) the requirement that the proposed use be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations.

VIII. RECOMMENDATION

The Technical Review Committee recommends that the Whatcom County Hearing Examiner approve the Nooksack Salmon Enhancement Association's request for a zoning conditional use permit to authorize the expansion to the nonconforming use of the site for a nursery and office space, subject to the requested conditions in Section IX of this report.

IX. CONDITIONS OF APPROVAL

A. Critical Areas

1. In conformance with WCC 16.16.690, a mitigation plan shall be submitted for review that demonstrates conformance with WCC 16.16.680. Approval of this mitigation plan is required prior to making an appointment for a building permit.

2. In conformance with WCC 16.16.265, a the notice on title form (available at <http://www.co.whatcom.wa.us/pds/forms/pdf/form-notice-on-title-of-ca-restriction-on-use-alteration-20130807.pdf>) with an attached site plan that shows all known critical areas on your parcel shall be submitted it to WCPDS for a counter review and signature. Once approved by staff, please file this form with the auditor's office. Once it is filed with the auditor, please submit a copy to WCPDS, prior to issuance of a building permit.
3. An assignment of savings (AOS) must be established in accordance with WCC 16.16.260(D)(1)(a-g), in the amount listed in the mitigation plan x 125% along with a signed and notarized assignment of savings form. Please submit a copy to WCPDS, prior to issuance of a building permit. Please refer to the County website for this form <http://www.whatcomcounty.us/pds/forms/pdf/assignment-of-savings-20110808.pdf>.
4. Signed agreement to maintain the mitigation site. This form can be found on Whatcom County's website here: <http://www.whatcomcounty.us/pds/forms/pdf/form-agreement-maintain-mitigation-site20101014.pdf>

B. Planning Division

1. Permit Changes or Modifications: The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Lighting: Pursuant to WCC 20.80.523; any lights shall be so arranged as to direct the light away from the adjoining property and the public road.
3. Refuse: At time of commercial building permit required to approve the construction, the applicant shall identify the location of refuse containers on an approved site plan.
4. Landscaping Requirements: An approved landscape plan shall be submitted prior to issuance of the commercial building permit required for the proposed development.
5. CUP Nontransferable: Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the hearing examiner.
6. Right to Practice Agriculture: Pursuant to WCC, Title 14, the owners of the property upon which this conditional use permit approval is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on forms provided by Whatcom County, which shall then be recorded in the Whatcom County Auditor's office.

7. The applicant shall complete construction, or if no construction is contemplated as a part of this permit, shall demonstrate compliance with all of the conditions of this permit within 36 (thirty-six) months of the date of the issuance of this decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this permit. Substantial progress toward completion may satisfy the terms of this condition if approved by Whatcom County Planning & Development Services and the Hearing Examiner.

The Applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion of compliance. An extension shall be granted if the Hearing Examiner finds that the Applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning and Development Services before granting any extension.

C. Building Services Division

1. A commercial building permit is required for each new building. A separate building permit is also required for additions, change of use and/or change of occupancy to the existing buildings. They 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 screening is required prior to building permit application 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 360-676-6907 to set up a screening meeting with the Building Department supervisor or a plans examiner.

D. Whatcom County Fire Marshal

1. Fire flow is required at 1000 gallons per minute at 20 psi. Separate Fire Permit is required for the installation of fire lines. Fire Hydrant shown on plans in an acceptable location.
2. If any gates are added a separate fire permit is required.
3. Fire extinguishers size shall be 2A10BC and the locations shall be approved by the Fire Marshal.
4. Fire department access shall meet the requirements of the Whatcom County Development standards for roads.

E. Whatcom County Health Department

1. The applicant must demonstrate adequate potable water supply and sewage disposal capacity for the proposed project. Approved water availability will be required at the time of building permit application for the conversion of the existing residence and all other building permit proposals with potable water. A private water supply may be used for this proposal.
2. Irrigate water use must be compliance with state water right regulations. Contact Kasey Ignac, with the Washington State Department of Ecology, at 715-5222 for more information.
3. Sewage Disposal. The applicant must demonstrate adequate sewage capacity for the proposed project. There is an existing unpermitted on-site sewage system (OSS) that is serving the existing 4 bedroom single family residence (SFR). The applicant is proposing to convert the existing 4 bedroom single family residence into an office for 6 employees. The applicant has provided a Report of System Status (ROSS) for the existing OSS. There are no other sewage disposal requirements for the proposal to convert the existing SFR into an office.
4. If the applicant proposed an expansion to the existing SFR, new construction with plumbed facilities, additional employees, or other sewage generating activities, a permit for an OSS that demonstrates adequate sewage disposal capacity may be required.

F. Whatcom County Public Works – Engineering

1. All development shall comply with the Whatcom County Development Standards.
2. Proposed development is subject to NPDES Phase 2 Area minimum technical requirements, as per DOE 2012. Stormwater Pollution Prevention Plan (SWPPP) shall be submitted with the building permit application.
3. The proposed development may require a transportation concurrency evaluation, based on Preliminary Traffic Information. A Preliminary Traffic & Concurrency form is required with the building permit application.
4. A commercial paved apron is required for the existing access approach and shall meet current sight distance criteria, as per Development Standards. The applicant submitted sight distance analysis that meets current standards.
5. The applicant shall obtain a Revocable Encroachment Permit from the Engineering Services for installation of required commercial paved apron prior to the onset of any construction in the County Right Of Way.
6. E. Bakerview Rd is classified as an Urban Local Access Road with 2,867 ADT. Developer's direct traffic impact onto county road system shall be evaluated. It

requires Developer to reasonably and proportionately mitigate the direct impacts of their respective development. Frontage improvements requirement shall be therefore determined at the time of building permit application.

Report prepared for the Technical Review Committee by:

Amy Keenan, Senior Planner