

SPONSORED BY: Consent
PROPOSED BY: PDS
INTRODUCTION DATE: _____

Resolution # _____

A RESOLUTION APPROVING A CONDITIONAL USE PERMIT AND DEVELOPMENT
AGREEMENT FOR THE PONDEROSA ESTATES MOBILE HOME PARK

WHEREAS, Whatcom County Planning and Development Services received an application for a conditional use permit and a development agreement between Whatcom County and Ponderosa Estates MHC LLC pursuant to RCW 36.70B.170 through .210; and

WHEREAS, on December 16, 2024, a SEPA Mitigated Determination of Non-significance (MDNS) was issued. No appeals of this determination were filed; and

WHEREAS, WCC 22.05.030 consolidates the review and decision on two or more project permits subject to Title 22 that relate to a proposed action; and

WHEREAS, WCC 2.11.205 requires the hearing examiner to conduct an open record public hearing for development agreements; and

WHEREAS, the hearing examiner held an open record public hearing for the conditional use permit and development agreement on March 10, 2025; and

WHEREAS, pursuant to WCC 22.05.120 the Whatcom County hearing examiner received testimony and made a recommendation of approval to the Whatcom County Council for the conditional use permit and development agreement on March 17, 2025 (Exhibit 'A'); and

WHEREAS, WCC 22.05.120(6) requires any deliberation or decision of the County Council shall be solely based upon consideration of the record established by the hearing examiner, the recommendation of the hearing examiner and the criteria set forth in applicable county code, the county Comprehensive Plan, compliance with SEPA, Chapter 197-11 WAC as adopted and modified in the county code and the county's adopted SEPA policies; and

WHEREAS, RCW 36.70B.200 states a development agreement (Exhibit 'B') must be approved by the adoption of a resolution; and

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the conditional use permit and development agreement are approved, subject to conditions of approval identified in the Whatcom County hearing examiner's recommendation to council.

APPROVED, this ____ day of April, 2025.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Cathy Halka,
Clerk of the Council

Kaylee Galloway,
Council Chair

APPROVED as to form:

approved by Kellen Kooistra/LB
Civil Deputy Prosecutor

WHATCOM COUNTY HEARING EXAMINER

re: The application of a Conditional Use Permit and Development Agreement by Ponderosa Estates MHC, LLC

CUP 2023-00003
DEV 2024-00002

Ponderosa Estates Mobile Home Park

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION TO COUNTY COUNCIL

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant, Ponderosa Estates MHC, LLC, is proposing to install, in a phased development, 122 new manufactured homes at the existing Ponderosa Estates Mobile Home Park, for a total of 163 units. In addition to the new units, the clubhouse and surrounding recreational area would be improved, storage areas created, the road would be widened for emergency vehicle access at fire hydrant locations, and additional parking would be created. Improvements to adjacent fencing, landscaping, and stormwater systems would also occur.

Decision: The requested Conditional Use Permit and Development Agreement has been recommended for approval by the Whatcom County Council, subject to the conditions of approval outline herein.

INTRODUCTION

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

FINDINGS OF FACT

I.

Applicant / Agent: Andrew Petersen
Huitt-Zollars, Inc.
1102 Broadway, Suite 301
Tacoma, WA 98402

Property Owner: Ponderosa Estates MHC, LLC
3015 NE 44th Avenue
Portland, OR 97213

Site Address: 4672 Birch Bay Lynden Road
Blaine, WA 98230

Assessor's Parcel Number (s): 400119 309063

Zoning: Urban Residential – Medium (URM6)

Comprehensive Plan: Urban Growth Area – Birch Bay

Subarea: Birch Bay – Blaine

Shoreline Designation: N/A

Lot Size: Approximately 23 acres

Roads: Birch Bay Lynden Road

Water Supply: Birch Bay Water and Sewer District

Sewage Disposal: Birch Bay Water and Sewer District

Fire Protection: North Whatcom Fire and Rescue

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Blaine School District

SEPA Review: An administrative Mitigated Determination of Non-significance (MDNS) was issued on December 16, 2024 and the comment period ended December 30, 2024. The appeal period for this MDNS ended January 9, 2024. No appeals of this determination were filed.

Application Date: Conditional Use Permit, February 12, 2023
Development Agreement, August 7, 2024

Determination of
Completeness: March 28, 2023

Date of Notices: Notice of Application published in Bellingham Herald, April 11, 2023
Revised Notice of Application published in the Bellingham Herald, August 21, 2024
Notice of Hearing mailed, February 14, 2025
Published in Bellingham Herald and online, February 23, 2025

Major Authorizing Codes, Policies, Plans, and Programs:

- Revised Code of Washington (RCW)
 - RCW 36.70A, Growth Management
 - RCW 36.70B, Local Project Review
 - RCW 43.21C, State Environmental Policy Act (SEPA)
- Washington Administrative Code (WAC) Chapter 197-11, SEPA Rules
- Whatcom County Code (WCC)
 - WCC Title 2, Administration and Personnel
 - WCC 2.11, Hearing Examiner
 - WCC Title 12, Roads and Bridges
 - WCC 12.08, Construction Standards
 - WCC Title 15, Buildings and Construction
 - WCC Title 16, Environment
 - WCC 16.08, Whatcom County SEPA Administration
 - WCC 16.16, Critical Areas
 - WCC Title 20, Whatcom County Zoning Ordinance
 - WCC 20.22, Urban Residential – Medium Density
 - WCC Title 22, Land Use and Development
 - WCC Title 24, Health Code
- Whatcom County Comprehensive Land Use Plan
- Business Rules of the Whatcom County Hearing Examiner (BRWCHE), pursuant to WCC 2.11.220, approved by Whatcom County Council on 04/23/2024 per Res. 2024-021

Hearing Date: Monday, March 10, 2025 – 1:30

Parties of Record Testifying:

Amy Keenan, Special Projects Manager

Whatcom County Planning & Development Services

Tecla Levy, Engineering
Whatcom County Public Works

Matt Mahaffie, Critical Areas
Whatcom County Planning & Development Services

Kellen Kooistra, Prosecuting Attorney
Whatcom County

Ross Rongner
Ponderosa Estates HMC LLC

Courtney Flora, Attorney
McCullough Hill PLLC

Dale & Sheila Giffen
4620 Birch Bay Lynden Rd.
Blaine, WA

Hearing Examiner Admitted Exhibit List:

1. 1972-1988 Interim Zoning Ordinance Whatcom County
2. Zoning Adjuster Decision - CUP1977-00023, dated 6/6/1977
3. Zoning Adjuster Decision - CUP1977-00023 Modification, dated 7/20/1977
4. Staff Report - CUP1982-00010, dated 1/1/1982
5. Hearing Examiner Decision - CUP1982-00010, dated 3/18/1983
6. Baywood Park - Final Site Plan, dated 6/16/1983
7. Public Rural Local and Minor Access Road Detail - Drawing 505.B-1, dated 5/4/2004
8. Conditional Use Permit Application, dated 2/17/2023
9. Traffic Impact Analysis Report, dated 2/17/2023
10. Site Plan, dated 2/17/2023
11. Survey - Drainage and Wetland, dated 2/17/2023
12. Preliminary Stormwater Proposal, dated 2/17/2023
13. SEPA Checklist, dated 2/17/2023
14. Project Narrative, dated 2/17/2023
15. Hydrant Flow Test Report, dated 2/17/2023
16. Critical Areas Assessment, dated 2/17/2023
17. Geotechnical Engineering Report, dated 2/17/2023
18. Fire Flow Service and Deficiencies, dated 2/17/2023
19. Water and Sewer Availability, dated 2/17/2023
20. School Will Serve Letter, dated 2/17/2023
21. Wetland A Discharge Check, dated 2/17/2023

- 22.** Wetland B Discharge Check, dated 2/17/2023
- 23.** Fire Concurrency Letter, dated 2/17/2023
- 24.** Determination of Incompleteness, dated 3/3/2023
- 25.** Receipt, dated 3/8/2023
- 26.** Conditional Use Permit Application, dated 3/14/2023
- 27.** Title Documents, dated 3/14/2023
- 28.** Preliminary Landscape Plan, dated 3/14/2023
- 29.** Preliminary Traffic and Concurrency Form, dated 3/14/2023
- 30.** Preapplication Conference Waiver Request, dated 3/14/2023
- 31.** Additional Title Documents, dated 3/14/2023
- 32.** Preliminary Hydrogeologic Engineering Report, dated 3/14/2023
- 33.** Deed of Trust, dated 3/14/2023
- 34.** Fill and Grade Application, dated 3/14/2023
- 35.** Determination of Completeness, dated 3/28/2023
- 36.** Vicinity Map, dated 4/3/2023
- 37.** Notice of Application Labels, dated 4/10/2023
- 38.** Notice of Application, dated 4/11/2023
- 39.** Notice of Application Mailing Certification, dated 5/22/2024
- 40.** Public Comment – Giffen, dated 5/21/2023
- 41.** Public Comment – Giffen, dated 4/24/2024
- 42.** Public Comment – Dittmann, dated 5/1/2024
- 43.** Water and Sewer Availability, dated 6/10/2024
- 44.** SEPA Checklist, dated 6/10/2024
- 45.** Preliminary Stormwater Report, dated 6/10/2024
- 46.** NOAR Response, dated 6/10/2024
- 47.** Project Narrative, dated 6/10/2024
- 48.** Site Plan, dated 6/10/2024
- 49.** Conceptual Mitigation Plan, dated 6/10/2024
- 50.** Critical Areas Assessment, dated 6/10/2024
- 51.** Traffic Impact Analysis Report, dated 6/10/2024
- 52.** Bus Stop Confirmation Email, dated 6/10/2024
- 53.** Development Agreement, dated 8/2/2024
- 54.** Notice of Application Mailing Certification – Revised, dated 8/21/2024
- 55.** Notice of Application Postcard – Revised, dated 8/21/2024
- 56.** Notice of Application – Revised, dated 8/21/2024
- 57.** Notice of Application Labels – Revised, dated 8/21/2024
- 58.** Public Comment – Giffen, dated 8/28/2024
- 59.** NOAR v.2, dated 9/10/2024
- 60.** Preliminary Stormwater Report, dated 10/15/2024
- 61.** Development Agreement, dated 10/15/2024
- 62.** Site Plan, dated 10/15/2024
- 63.** Landscape Plan, dated 10/15/2024
- 64.** NOAR Response, dated 10/15/2024
- 65.** Project Narrative, dated 10/15/2024

- 66.** SEPA Checklist, dated 10/15/2024
- 67.** Site Plan, dated 11/18/2024
- 68.** Preliminary Stormwater Report – Final, dated 11/18/2024
- 69.** NOAR Response, dated 11/18/2024
- 70.** Traffic Impact Analysis Report – Final, dated 11/19/2024
- 71.** Health Memo, dated 11/19/2024
- 72.** SEPA MDNS – Published, dated 12/15/2024
- 73.** SEPA LINTHPO Comment, dated 12/17/2024
- 74.** Phasing Plan, dated 1/23/2025
- 75.** Preliminary Landscape and Sign Plan – Final, dated 1/23/2025
- 76.** Impact Assessment and Mitigation Plan, dated 1/23/2025
- 77.** Site Plan – Final, dated 2/24/2025
- 78.** Phasing Plan – Final, dated 2/24/2025
- 79.** Staff Report, dated 2/27/2025
- 80.** Development Agreement, dated February 27, 2025
- 81.** Certificate of Mailing, dated 2/14/2025
- 82.** Certificate of Posting, dated 3/4/2025
- 83.** Payment of Legal Notice, dated 2/18/2025
- 84.** Revised Staff Report, dated 3/7/2025
- 85.** Photos – drainage, fencing, fill, property, added 3/10/2025

II.

Introduction

The applicant, Andrew Petersen, on behalf of Ponderosa Estates MHC, LLC, has applied for a conditional use permit (CUP) and development agreement, for a similar use to the existing CUP use; however, the proposed use, would exceed the 10% increase in lot coverage allowed by the CUP revision criteria listed in WCC 22.05.026. Modern CUP criteria differs greatly than the original 1982 zoning laws accounted for and much of the permitted use under the old CUP has lapsed or been removed and could no longer be considered pre-existing under the code,¹ so a modern CUP alone would not allow the development as proposed. Only a Development Agreement approved by the Whatcom County Council would allow the flexibility in development standards, phasing, and critical areas impact mitigation that would allow the applicant to update the site with additional structures and recreational facilities that were not shown on the 1983 site plan.

¹ See Findings of Fact §IV, below

III.

Use History

On June 6, 1977, a conditional use permit (CUP) was granted for a recreational vehicle park and amenities in the proposed development area. The zoning at the time was General Protection (GP) and a total of 168 fully serviced recreational vehicle park pads were permitted. Shortly after the initial approval on July 20, 1977, a modification to the CUP was approved to allow both mobile homes and recreational vehicles.

In 1982, an application was submitted for a second modification to the original 1977 CUP. The 1982 request included approval for transfer of ownership, change in facility name from 'Holiday Court' to 'Baywood Park,' elimination of recreation amenities and new recreation amenities identified, and gradual elimination of the remaining recreational vehicle sites to be replaced with mobile homes. The clubhouse was reduced in size and the swimming pool was eliminated.

The Whatcom County Hearing Examiner approved the modifications along with a transfer of ownership in March of 1983. In 1982, the zoning was Urban Residential Medium which allowed mobile home parks with CUP approval at seven units per acre. In compliance with the CUP approval, a final site plan including amenities and utilities was submitted to Planning and Development Services (PDS) in accord with the zoning laws at the time.

It appears development of the site and use of the site for a mobile home park continued through the 1990s and 2000s consistent with the approved and amended CUP, however, over time units were removed and not replaced. Much of the infrastructure including water and sewer hookups, electricity and to some extent, gravel pads still exist despite the units being removed.

In 2021, Ponderosa Estates MHC, LLC purchased the mobile home park with the intent of replacing all units and upgrading the facility.

IV.

The Proposal

The applicant has applied for a CUP and development agreement to place 122 manufactured units within the mobile home park. Although originally approved for 164 units, only 41 manufactured units exist today.

The redevelopment or site plan (received by PDS on February 24, 2025) for the site closely follows the previous mobile home park approvals. Proposed new units would occupy roughly the exiting pad sites; on the perimeter of the site the new units would generally be single wide models, units placed within the interior of the site will generally be double wide models. Each unit would include two parking spaces, and 42 guest parking spaces would be identified onsite. In addition, each unit will be allowed up to 175 square feet of accessory structures including sheds, carports, porch coverings or similar structures. It is proposed that replacement units could use the 175 square feet of accessory space to increase the size of the unit with no accessory structure then being allowed.

The existing 20-foot-wide road of and would be widened to a width of 26 feet for a length of 40 feet at all fire hydrant locations. Landscaping would be installed in all non-hard surfaced areas. The public road intersections of Birch Bay-Lynden Road with Blaine Road and Kickerville Road would be improved with funds from the applicant.

The clubhouse building has already been remodeled, but pickleball courts, a walking path, outdoor patio with fire pit and BBQ facilities, and a new pool would be added. The existing recreational vehicle and boat storage site located in the center of the park would be moved to the southwest corner near the existing storage building to allow for an expansion to the recreational amenities.

Stormwater infrastructure would be modified for all new impervious surfaces and water and sewer will be served by the Birch Bay Water and Sewer District.

V.

There are three wetlands onsite, and the site is surrounded on the west, north and eastern boundaries by wetlands and associated buffers as well. The existing wetland buffer is highly degraded with the developed and disturbed nature of the site from the existing mobile home park and infrastructure. The site is located in the Urban Growth Area (UGA), is zoned for higher density uses and has public water and sewer throughout the site.

The proposed development agreement proposes that some of the impacts to critical areas with offsite wetland mitigation in order to preserve the higher density use and existing infrastructure appropriate for the UGA.

VI.

The Whatcom County Technical Review Committee (“TRC”) has recommended approval of the requested Conditional Use permit and Development Agreement in the Whatcom County Planning and Development Services Staff Report (“Revised Staff Report,” **Exhibit 84**), subject to the Staff Findings and Conditions. The Applicant has indicated there are no factual inaccuracies in the Staff Report’s findings or conclusions, and that they agree to the conditions proposed.

VII.

WCC 2.11.220 and BRWCHE §20(B) allows the Hearing Examiner to issue subpoenas and compel attendance of witnesses— but in this case no party requested the Hearing Examiner to compel a witness to appear in person and be cross examined.

VIII.

There were public comments received during the public comment period for the Notice of Application. Those comments consisted of concerns regarding garbage and maintenance of the site, inadequate fencing of the site, increase in traffic impacts, drainage and stormwater. These concerns were addressed by staff in the staff report, as well as the property owner in the hearing itself. The public testimony given at the hearing itself primarily dealt with concerns about stormwater runoff and the lack of adequate fencing to prevent free travel of humans from the development to the neighboring recreational center. The Hearing Examiner has modified conditions being recommended to address the concerns about fencing, and has found that the stormwater requirements being put forward by staff will meet the stormwater concerns.

IX.

BRWCHE §14(A) grants parties the right to object to evidence and to cross-examine. In the case at hand, with full knowledge of the evidence being admitted, no objection was made to any of the 85 exhibits that were admitted into the record. Admitted exhibits 1-85 are deemed to have evidentiary weight in regard to the facts represented therein, to the extent they are not contradicted by articulated findings in this decision.

X.

After hearing the testimony and reviewing the record, the findings of staff set forth in the Staff Report (a copy of which is attached hereto) are supported by the record as a whole and are incorporated herein as findings of fact by this reference, to the extent they are not contradicted by articulated findings in this decision.

XI.

Any Conclusion of Law below 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.

WCC requires integration and consolidation of the review and decision on two or more project permits that relate to a proposed project action unless the applicant requests otherwise.² Such consolidated permits shall be reviewed under the process required for the permit of the highest process type.³

Pursuant to WCC, the application is undergoing a consolidated permit review under the review authority of the Whatcom County Council, which is the highest final decision maker for the two issues at hand. As development agreements are Type IV decisions made by the County Council after an open record fact-finding hearing conducted by the Whatcom

² WCC 22.05.030

³ WCC 22.05.020

County Hearing Examiner, both the CUP⁴ and Development Agreement must be approved by the County Council.⁵

II.

The purpose of the Urban Residential – Medium Density (URM) District is to accommodate the county’s need for medium and higher density residential areas along with compatible nonresidential areas in urban growth areas.⁶

These types of use typically include single-family dwellings, duplexes, multifamily dwellings, boarding homes, and adult family homes; public parks and other recreational opportunities; storage buildings; and appropriate mental health and substance abuse facilities.⁷ Mobile Home Parks are an authorized conditional use in this zone.⁸

III.

The “Development Agreement” procedure by which local governments can allow for deviations from development standards is authorized by state law.⁹

Development agreements must set forth the development standards and other provisions that would apply to, govern, and vest the development, use, and mitigation of the development of the real property for a specific duration; further the development agreement must be consistent with the existing and applicable local development regulations.¹⁰ Such development standards that can be adjusted include:

- a. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
- b. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

⁴ CUPs are a Type III decision where the Hearing Examiner is the final decision maker when not consolidated with a Type IV decision.

⁵ WCC 2.11.205(C); and 22.05.020 at Table

⁶ WCC 20.22.010

⁷ See *generally* WCC 20.22.050

⁸ WCC 20.22.156

⁹ RCW 36.70B.170

¹⁰ RCW 36.70B.170(1)

- c. Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;
- d. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
- e. Affordable housing;
- f. Parks and open space preservation;
- g. Phasing;
- h. Review procedures and standards for implementing decisions;
- i. A build-out or vesting period for applicable standards; and
- j. Any other appropriate development requirement or procedure.¹¹

“The execution of a development agreement is a proper exercise of county and city police power and contract authority...” and the County can obligate the applicant “to fund or provide services, infrastructure, or other facilities” as part of the agreement.¹²

The applicant proposes to address the following through the development agreement:

1. Parking space depth and width;
2. Guest parking;
3. Unit density;
4. Park ownership;
5. Timing/Phasing of units and infrastructure;
6. Impacts to critical areas buffers and offsite mitigation; and
7. Road standards and driveway spacing.

The proposal would require deviations from all of these standards for the newly proposed use to somewhat match the pre-existing but now lapsed use under the 1983 CUP operating under the zoning laws of 1982.

¹¹ RCW 36.70B.170(3)

¹² RCW 36.70B.170(4)

Given the already developed nature of the park and the desire to not increase impervious surface or impact additional critical areas, it would be difficult for the applicant to meet the requirement to provide for 81 guest parking spaces, especially given the stormwater and critical area constraints onsite. While the proposal is a reduction in the required guest parking, the reduction is not unreasonable given the existing nature of the site and the prior uses.

Although the majority of originally permitted units have been removed, much of the infrastructure still exists. Allowing 163 units to use the existing water and sewer hookups, electricity, and gravel pads is consistent with the original approvals and is consistent with Whatcom County's goal of providing affordable housing in an area with water and sewer infrastructure.

Importantly, a part of this proposal includes 'offsite critical areas mitigation' which is authorized by the WCC as a usable policy tool in Development Agreements,¹³ so long as such offsite mitigation proposals are reviewed concurrently with the underlying land use permits.¹⁴ Modern zoning laws require mitigation of impacts to critical areas, and the existing wetland buffer is highly degraded. The offsite mitigation will occur on the same wetland complex, which is desired will result in no net loss of functions of values of the wetlands affected. The offsite wetland and buffer enhancement site will be protected in perpetuity, and it will allow the preservation of the prior use and the existing infrastructure which would preserve the higher density use and existing infrastructure appropriate for the UGA.

The use of the development agreement will allow road and stormwater infrastructure upgrades that the public and nearby property owners will benefit from and protection of critical areas, while also maximizing the number of units onsite in the already "infrastructured" park.

¹³ WCC 16.16.261(A)

¹⁴ WCC 16.16.261(C)

The Fire Marshall has approved the road and driveway deviations being proposed which are being mitigated by road widening in fire hydrant areas, which addresses public safety concerns about these deviations.

The Hearing Examiner finds, independently from the findings in the Staff Report, that with appropriate conditions of approval, a Development Agreement would be appropriate. Due to the prior uses of the parcel, the goals of the Whatcom County Comprehensive Plan, the normative uses of the Urban Residential – Medium Zone, and the already developed and existing infrastructure on-site, this is an appropriate use of the Council’s power to adjust the development standards given the benefits to the public, the adjacent neighbors, and the opportunity to restore residential housing use at similar densities to previous permitting.

Consequently, the project’s Development Agreement is recommended for approval by the County Council.

IV.

As proposed, the proposed Conditional Use Permit could be approved if consistent with the Conditional Use Criteria of WCC 22.05.026 (3) (§a. through i.):

- a.** Will be harmonious and in accordance with the general and specific objectives of Whatcom County’s Comprehensive Plan, zoning regulations, and any other applicable regulations.
- b.** 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.
- c.** If located in a rural area (as designated in the Comprehensive Plan), will be consistent with rural land use policies as designated in the rural lands element of the Comprehensive Plan.
- d.** Will not be hazardous or disturbing to existing or future neighboring uses.
- e.** Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, 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.

- f. 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.
- g. 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.
- h. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.
- i. Will not result in the destruction, loss or damage of any natural, scenic, or historic feature of major importance.

The Hearing Examiner finds after a review of the record, independently from but in concurrence with the findings in the attached Staff Report, that with appropriate conditions of approval *and the approval of a Development Agreement*, the project would be compliant with the Conditional Use Criteria, and that the use is an authorized conditional use in the URM zone.

Consequently, the project should be recommended for approval by the County Council, for a Conditional Use Criteria Permit.

V.

Any Conclusion of Fact that is actually 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:

RECOMMENDATION

A Conditional Use permit and Development Agreement for Ponderosa Estates MHC, LLC for the redevelopment of the Ponderosa Estates Mobile Home Park, has been recommended for approval to the Whatcom County Council, for Assessor Parcel No. 400119 309063,

addressed as 4672 Birch Bay Lynden Road, Blaine, Washington, subject to the following conditions:

Public Works – Engineering Services

1. All development shall comply with Whatcom County Code and the Whatcom County Development Standards (WCDS).
2. The engineer shall submit a land fill and grade permit with the civil plans (construction drawings) and design documents for the required improvements as shown on the preliminary site plan including but not limited to access road, utilities, drainage facilities, stormwater Best Management Practices (BMPs), and other amenities for County review and approval.
3. The final civil plans and design documents shall be stamped by a Washington State licensed civil engineer. Final civil plans and design documents shall be approved by PWES prior to any land disturbance.
4. Following County approval of the construction drawings and prior to commencement of construction, a pre-construction conference with Whatcom County Public works will be required. Contact the Public Works project reviewer Tecla Levy at 360-778-6250 to set up a mutually agreed upon time for the conference to be held.
5. Changes to the approved drawings and specifications shall require a County-approved Design Revision in accordance with WCDS Chapter 205.B (4).
6. A final engineered stormwater design report demonstrating conformance with the requirements of the 2024 Department of Ecology Stormwater Management Manual for Western Washington (2024 SWMMWW), must be submitted with the LFG application and must be approved by PWES prior to any land disturbance. The report shall be prepared by a civil engineer licensed in the state of Washington.
7. The Construction Stormwater Pollution Prevention Plan (CSWPPP) and Temporary Erosion and Sediment Control (TESC) plans shall be submitted with the LFG application and approved prior to any clearing or grading on the site. A Sediment Control Lead (CESCL) is required to determine which BMPs are necessary as site conditions change during construction. The contractor or CESCL shall add any BMP specifications that have not already been included in the CSWPPP.

- 8.** The project is subject to NPDES general construction permit by Washington Department of Ecology (DOE). Submit a copy of the CSWPPP approved by DOE with the LFG application.
- 9.** Certified record drawings for all new roads and stormwater systems shall be submitted to PWES for review and acceptance upon completion of construction and prior to approval of the next phase. Record drawings shall include the Record Drawing Certification statement as per WCDS Chapter 5. A final submitted record drawing package shall also include copies of all required materials testing results and construction observation/inspection reports.
- 10.** A designated project engineer shall provide certified construction compliance assurance statement per WCDS Ch. 2.B(8) following completion of approved work and prior to requesting PWES final inspection.
- 11.** The applicant shall maintain the intersection sight triangle per WCDS, chapter 5, section 505.H for the private access road and Birch Bay Lynden Road intersections. The intersection sight triangles shall be clear of obstructions (including but not limited to vegetation, cut banks, signs, landscaping, fencing, parking, buildings, and other improvements) that might block a driver's view of potentially conflicting vehicles.
- 12.** The applicant shall post a Stormwater Maintenance Security for on-site stormwater system improvements in accordance WCDS Chapter 2 Section 205.B(11). The security value shall be based on an accepted constructed cost estimate for all stormwater conveyance, treatment, and flow control system components and must be prepared by the project engineer. The security shall be for the amount of 10% of the engineer's construction cost estimate or \$5,000, whichever is greater. The security shall be in effect for two (2) years from the date of provisional acceptance of the completed development.
- 13.** A Declaration of Covenant and Grant of Easement (DCGE) for the maintenance and operations of stormwater facilities shall be recorded. The design details, figures, operation and maintenance instructions for each on site stormwater management facility shall be attached and recorded as an Exhibit supplementing the recorded declaration of covenant grant of easement document.
- 14.** Applicant shall obtain an Encroachment Permit for any and all work in the County right-of-way, including any temporary work and construction/modification of any site access feature(s).

- 15.** Traffic mitigation fees shall be paid prior to issuance of the first building permit for each phase and shall include all fees associated with the number of units in the phase.

Building

- 16.** Structures shall comply with the Building code setback requirements with a minimum 10' wall-to-wall or 6' eave-to-eave. Structures or eave overhangs within these measurements shall be constructed pursuant to Section R302 Fire Resistant Construction Section R302.1 Exterior Walls. Construction, projections, openings and penetrations of exterior walls of dwellings and accessory buildings shall comply with table R302(1).
- 17.** Building permits are required for all non-exempt work Per Whatcom County Chapter 15.04 building codes, section 105.2 (work exempt from permit).
- 18.** Manufactured homes requiring a building permit will be reviewed at the time of application. The applicant must show adjacent units on the site plan at time of building permit application.

Fire Marshal's Office

- 19.** Access roads shall be a minimum of 20 feet wide with 2 foot shoulders on each side per Whatcom County Road Standards. The access road shall be 26 feet wide by 40 feet long centered on the fire hydrant at those locations. Hydrant access shall remain clear at all times and shall be marked. Road improvements shall occur prior to Phase 1B.
- 20.** Speed bumps shall be removed to allow timely response of emergency vehicle. Any calming devices shall meet Whatcom County Engineering Development Standards Chapter 5 Section R for Traffic Calming Devices. All traffic calming devices shall be designed by a professional engineer and approved by the County Engineer. Traffic calming shall occur prior to Phase 1B if proposed by the applicant.
- 21.** Fire hydrants are required every 500 feet along access roads. Separate fire permit is required for installation of underground fire lines and hydrant. Fire flow is required to be 500 gallons per minute at 20 psi for one-hour. Road improvements shall occur prior to Phase 1B.

- 22.** Fire permit is required for electronic gates if installed and shall have an optical sensor to allow emergency vehicle access.
- 23.** Common area buildings shall be reviewed at time of submittal for compliance with the current adopted fire code that time.
- 24.** Any overlooked hazardous condition and/or violation of applicable codes does not imply approval of such condition or violation.

Critical Areas

- 25.** Prior to the issuance of any permits for work authorized in Phase 1B, applicant shall set up an assignment of savings (AOS) to be established in accordance with WCC 16.16.260(D)(1)(a-g). The amount is listed in the preliminarily approved mitigation plan. The AOS shall be documented on a form provided by Whatcom County.
- 26.** A deed restriction (in the form of a conservation easement) shall be recorded with the Whatcom County Auditor for all areas of the site considered wetland buffer not associated with a building pad or the 10' setback around said pads. The conservation easement mapping shall indicate all areas of the property considered critical area or buffer shall be considered conservation easement. The applicant shall use the PDS supplied conservation easement document and prepare a map for PDS review. After obtaining staff approval (via staff review and signage of document), the easement document shall be recorded with the Whatcom County Auditor. This shall be completed prior to Phase 1B.
- 27.** The mitigation proposed relies upon an offsite mitigation proposal to take place on property not currently owned by the applicant. Prior to authorizing Phase 2, the applicant shall provide the ownership documents or contractual documents that satisfactorily dictate that the applicant can fulfill the full obligation of the mitigation proposal for all offsite mitigation parcels either identified in the Impact Assessment and Mitigation Plan (January 2025) or on different property.
- 28.** Prior to authorizing Phase 3, the applicant must verify that the Impact Assessment and Mitigation Plan (January 2025) prepared by Northwest Ecological Services is the final document for submittal for the offsite mitigation proposal or updated plan if applicable. Final plan shall be submitted to the Washington State Department of Ecology for review; technical guidance garnered from said review may be incorporated into conditions of approval for the mitigation plan at PDS discretion.
- 29.** Site review to include that of wetland boundary demarcation on offsite mitigation parcels shall be conducted under separate Land Fill & Grade (LFG) permit application that will account for all associated mitigation work to take place. A mitigation case

will be opened with the LFG for as-built and monitoring of mitigation. Applicable fees will be levied at that time.

- 30.** A deed restriction (in the form of a conservation easement) shall be recorded with the Whatcom County Auditor for each of the three separate parcels that comprise the mitigation schema, or other parcels to meet offsite mitigation requirements. The conservation easement mapping shall indicate all areas of the property considered critical area or buffer shall be considered conservation easement. The applicant shall use Department supplied conservation easement document and prepare a map for PDS review. After obtaining staff approval (via staff review and signage of document), the easement document shall be recorded with the Whatcom County Auditor.
- 31.** If utilizing the identified parcels on Blaine Road and unless a Covenant to Bind or similar mechanism is used to merge parcels, tax parcel APN 4001194751110000 shall have recorded with the Whatcom County Auditor an Environmental Covenant with a form provided by Whatcom County that states the parcel shall be utilized for no use other than environmental conservation.
- 32.** All property taxes for the tax year that the conservation easements are filed shall be paid in full for all offsite mitigation parcels.
- 33.** The applicant shall provide and PDS shall approve split rail cedar fencing, signage or other protective measures along the wetland buffer edge on mitigation parcels as approved by PDS Natural Resources staff prior to Phase 3 approval.
- 34.** Native Growth Protection Area signs (as approved by Whatcom County PDS) shall be placed upon the fence at edge of conservation easement area on mitigation parcels, unless deemed not applicable by PDS.
- 35.** Prior to issuance of Phase 3 permits, the mitigation must be installed. An as-built plan (hard copy) shall be submitted to the County for approval within 30 days of installation. The as-built shall include photographs of the mitigation area, nursery plant receipts, a site plan showing the location of the mitigation, and a brief narrative of the installation. It shall be approved in conjunction with an on-site as-built inspection per WCC 16.16.260(C)(1-3).
- 36.** Following the as-built report approval, a mitigation report will be required for a period of five years on the 1st, 2nd, 3rd and 5 7 an 10th year after installation showing that mitigation is meeting its approved criteria. Funds will be released from the assignment of savings with the approval of each monitoring report.

Planning and Zoning

- 37.** The use and location on the site as approved by this Use Permit, as shown on the revised site plan received February 24, 2025 and shall not be amended or

changed in any way except to comply with regulations without review from Staff and further approval of the Whatcom County Council.

- 38.** Placement of units onsite and infrastructure improvements shall occur consistently with the approved revised Phasing Plan dated February 24, 2025.
- 39.** *The applicant shall designate a minimum of 17 short-term bicycle spaces within the community facility area. The bicycle parking racks/spaces shall be included within the final landscape plan and shall be installed at the same time as the landscaping is installed.*
- 40.** The applicant shall submit a final landscaping plan with the LFG application. The landscape plan shall be consistent with landscaping requirements pursuant to WCC 20.80.300. Said plan shall specify species name, size, and location, open space landscaping, buffer areas. Landscaping shall be installed prior to Phase 2 development.
- 41.** Provided that a Stormwater Report that meets the requirements of Whatcom County Development Standards, Chapter 2: Stormwater Management and the 2024 Washington State Department of Ecology (DOE) Stormwater Management Manual for Western Washington (SWMMWW), each mobile home unit is entitled up to 175 sq. ft. of maximum accessory structures, defined as small sheds, carports, porch coverings over doorways, etc. Such accessory structures cannot be located in setbacks and designated parking areas, etc. If accessory structures are located in critical areas buffers, the final mitigation plan must demonstrate the impact mitigation is provided. Accessory structures shall meet building and fire code separation requirements to other structures that are applicable. This Stormwater Report shall be submitted with the LFG application.
- 42.** The applicant shall maintain common facilities and operate recreational facilities in perpetuity.
- 43.** Each rental or lease space shall be numbered on the site plan and the number shall be prominently displayed on the site.
- 44.** The applicant has proposed a storage area in the southwest portion of the site. The storage area will be fenced and has existing vegetative screening on the western and southern boundary. The existing screening will be maintained and additional screening of the fence area will be required on the revised landscape plan.

- 45.** No mobile home, structure or outdoor storage shall be located closer than 25 feet to the perimeter of the site.
- 46.** The buffer shall be maintained in perpetuity.
- 47.** The current development appears to have fencing on the west, east and north sides. The applicant shall replace and maintain fencing on these three sides as necessary to reasonably prevent people from physically passing through or under such fences, and shall maintain said fences in perpetuity.
- 48.** The applicant shall obtain an LFG for any proposed site development work (unless associated with a building permit application) as required by Whatcom County regulations. The LFG shall be approved prior to Phase 1B.
- 49.** A minimum of 40 percent of the site shall be maintained in open space pursuant to WCC 20.22.200. The total roof coverage of all structures on the project shall not exceed 35% as required by WCC 20.22.450. The applicant shall verify through appropriate plans and calculation that the total of existing and proposed roof areas shall not exceed this 35% limit. For the existing property acreage of 23.37 acres, total lot coverage cannot exceed 8.18 acres.
- 50.** A minimum of 42 guest parking spaces shall be shown on the site plan submitted as part of the LFG application. Parking stalls may be reduced to 9' x 18' for standard spaces and 8' x 15' for compact spaces.
- 51.** All guest parking spaces shall be striped as required by WCC 20.80.575.
- 52.** Pursuant to WCC 20.80.620, no development shall exceed the maximum environmental noise level established by WAC 173-60.
- 53.** Any parking area which is intended to be used primarily during non-daylight hours shall continue to be properly illuminated to avoid accidents. Any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property, the public road and the wetlands and buffers.
- 54.** Lighting shall be designed to avoid excessive glare onto neighboring properties, and to not create safety hazards or unreasonable interference with adjacent uses. *An outdoor lighting plan shall be submitted with the landscape plan at LFG application. The lighting shall be approved and installed with the road and stormwater improvements.*
- 55.** Two monument signs as shown on the landscape and signage plan dated January 23, 2025 are approved as part of this conditional use permit and

development agreement. The signs will require a building permit and shall meet the sight triangle requirements per WCCS, chapter 5, section 505.H. The engineer shall provide an exhibit ensuring the signs will not meet the sight triangle requirements. Additional future signage shall be in accordance with WCC 20.80.400 and will require a new conditional use permit and a separate building permit.

- 56.** Development of the site including road improvements, fire hydrant upgrades, stormwater, landscaping, critical areas mitigation, community amenities, lighting, guest parking spaces and bicycle parking shall be installed within five years of recording of the development agreement. After the infrastructure has been completed, mobile home units can be placed, removed, and replaced consistent with the site plan. Replacement units can be increased in size but are limited to no more than 175 square feet which will be a commensurate reduction in the allowance for accessory structures associated with any unit.

Health and Community Services

- 57.** Prior to Land, Fill and Grade (LFG) permit approval or any other land use permit approval or civil plan approval, the applicant must demonstrate they have satisfied any infrastructure improvements required by Birch Bay Water and Sewer District
- 58.** A WCHCS approved Water Availability Form from Birch Bay Water and Sewer District for each space that does not currently have a manufactured or mobile home may be required at the time of building permit application.
- 59.** The proposed pool facility will require design approval from the Washington State Department of Health prior to building permit or tenant improvement application. A water recreation permit from the WCHCS will be required prior to final occupancy.

SEPA Conditions

- 60.** Inadvertent Discovery of Archaeological Resources: Should archaeological resources (e.g. shell midden, animal 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 (Stephanie Jolivet, Local Government Archaeologist 360-628-2755) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-961-7752; Tamela Smart, Deputy THPO 360-927- 2944) 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.

- 61.** Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055): 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 must be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains must be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains must 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 (DAHP).
- 62.** Traffic: The applicant shall pay the following monetary contributions to mitigate for the project's proportional impacts to the following intersections as determined by the approved Traffic Impact Analysis Report (TIAR) by Armen D. Hovanessian dated November 19, 2024:
- a.** \$125,151.00 dollars for the intersection of Birch Bay Lynden Road at Blaine Road
 - b.** \$61,755.00 dollars for the intersection of Birch Bay Lynden Road at Kickerville Road

The payment is due prior to the issuance of the first building permit. Whatcom County Public Works shall expend these funds on the specified intersection improvement projects planning, permitting, or construction within five years or return the money to applicant upon receipt of a written request after the five-year period has elapsed. The five-year time period will begin upon Whatcom County Public Works receipt of the specified funds.

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

This action of the Hearing Examiner is not a final decision as it is only a recommendation to the Whatcom County Council.

There is no right of appeal from this recommendation.

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 17th day of March 2025.



Rajeev D. Majumdar
Whatcom County Hearing Examiner



WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

Issue Date: February 26, 2025

Revised: March 7, 2025*

Hearing Date: March 10, 2025

I. Summary of Application and Recommendations

Application

The application by Ponderosa Estates MHC, LLC for a conditional use permit and development agreement for redevelopment of the Ponderosa Estates Mobile Home Park.

Project Numbers

CUP2023-00003, DEV2024-00002, SEPA 2023-00016

Summary

The applicant is proposing to install, in a phased development, 122 manufactured home units at the existing Ponderosa Estates Mobile Home Park, for a total of 163 units. In addition to the new units, the clubhouse and surrounding recreational area will be improved, a storage area for boats and recreational vehicles will be established in the southwest corner, the road will be widened for emergency vehicle access at fire hydrant locations, two parking spaces will be provided for each unit and additional guest parking identified. Landscaping and stormwater improvements will also be installed. Water and sewer service are proposed to be provided by Birch Bay Water and Sewer.

Recommendation

The Technical Review Committee recommends that the Whatcom County Hearing Examiner recommend approval of the Applicant's request to the Whatcom County Council, subject to the recommended conditions located in Section IX of this report.

* Revised to clarify condition #41 to allow placement of units within the critical areas buffer if mitigated through the final impacts and mitigation plan.

II. Preliminary Information

Owner:	Ponderosa Estates MHC LLC
Authorized Agent:	Andrew Petersen Huitt-Zollars, Inc 1102 Broadway, Suite 301 Tacoma, WA 98402
Site Location/Address:	4672 Birch Bay – Lynden Road
Parcel Number:	400119 309063
Zoning:	Urban Residential – Medium (URM6)
Comprehensive Plan:	Urban Growth Area – Birch Bay
Subarea:	Birch Bay – Blaine
Shoreline Designation:	N/A
Total Acreage:	Approximately 23 acres
Roads:	Birch Bay - Lynden Road
Water Supply:	Birch Bay Water and Sewer District
Sewage Disposal:	Birch Bay Water and Sewer District
Fire Protection:	North Whatcom Fire and Rescue
Law Enforcement:	Whatcom County Sheriff's Office
Public Schools:	Blaine School District
Conditional Use Permit Application Date:	February 12, 2023
Determination of Completeness:	March 28, 2023
Development Agreement Application Date:	August 7, 2024

Authorizing Codes, Policies, Plans and Programs:

Revised Code of Washington (RCW) Chapter 36.70
Whatcom County Comprehensive Plan
Whatcom County Code Chapter 12.08, Development Standards
Whatcom County Code Title 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 20, Official Whatcom County Zoning Ordinance
Whatcom County Code, Title 22, Land Use and Development Procedures
Whatcom County Code, Title 24, Health Regulations

History

On June 6, 1977 a conditional use permit (CUP) was granted for a recreational vehicle park and amenities. The zoning at the time was General Protection (GP) and a total of 168 fully serviced recreational vehicle park pads were permitted. Shortly after the initial approval on

July 20, 1977, a modification to the CUP was approved to allow both mobile homes and recreational vehicles.

In 1982, an application was submitted for a second modification to the original 1977 CUP. The 1982 request included approval for transfer of ownership, change in facility name from 'Holiday Court' to 'Baywood Park,' elimination of recreation amenities and new recreation amenities identified, and gradual elimination of the remaining recreational vehicle sites to be replaced with mobile homes. The clubhouse was reduced in size and the swimming pool was eliminated.

The Whatcom County Hearing Examiner approved the modifications and transfer of ownership in March of 1983. In 1982, the zoning was Urban Residential Medium which allowed mobile home parks with CUP approval at seven units per acre. In compliance with the CUP approval, a final site plan including amenities and utilities was submitted to Planning and Development Services (PDS).

It appears development of the site and use of the site for a mobile home park continued through the 1990's and 2000's consistent with the approved and amended CUP, however, units were removed at some time and not replaced. In 2021, Ponderosa Estates MHC, LLC purchased the mobile home park with the intent of replacing all units and upgrading the facility. After a preapplication meeting with PDS and several discussions, it was determined a new conditional use permit was necessary. The replacement structures will exceed the 10% increase in lot coverage allowed by the revision criteria listed in WCC 22.05.026 and a new CUP allows the applicant to update the site with additional structures and recreational facilities that were not shown on the 1983 site plan.

[Application Proposal](#)

The applicant, Andrew Petersen, on behalf of Ponderosa Estates MHC, LLC, has applied for a CUP and development agreement to place 122 manufactured units within the mobile home park. Although originally approved for 164 units, only 41 exist today.

The redevelopment or site plan (received by PDS on February 24, 2025) for the site closely follows the previous mobile home park approvals. Proposed new units will occupy roughly the exiting pad sites; on the perimeter of the site the new units will generally be single wide models, units placed within the interior of the site will generally be double wide models. Each unit will include two parking spaces and 42 guest parking spaces will be identified onsite. In addition, each unit will be allowed up to 175 square feet of accessory structures including sheds, carports, porch coverings or similar structure. Replacement units may use the 175 square feet to increase the size of the unit, and no accessory structure will be allowed. The existing road will remain a minimum of 20' wide and will be widened to 26' wide for a length of 40' at all fire hydrant locations. Landscaping will be installed in all non-hard surfaced areas.

The clubhouse building has already been remodeled, but pickleball courts, a walking path, outdoor patio with fire pit and BBQ facilities, and a new pool will be added. The existing

recreational vehicle and boat storage site located in the center of the park will be moved to the southwest corner near the existing storage building to allow for an expansion to the recreational amenities. Stormwater infrastructure will be modified for all new impervious surfaces and water and sewer will be served by the Birch Bay Water and Sewer District. In recognition of the existing mobile home park, a development agreement was submitted to allow flexibility in development standards, phasing and critical areas impacts. There are three wetlands onsite and the site is surrounded on the west, north and eastern boundaries by wetlands and associated buffers as well. The development agreement is also proposed to allow the impacts to critical areas with offsite wetland mitigation, as per the provisions of WCC 16.16.261.

For purposes of this proposal the terms “mobile home,” “manufactured home,” and “mobile home park” are used throughout the code and analysis.

WCC 20.97.130 defines these terms as:

Mobile Home (a.k.a Manufactured Home). “Mobile home” means a dwelling unit designed for long-term human habitation by one family and having complete living facilities; constructed and fabricated into a complete unit at a factory and capable of being transported to a location of use on its own chassis and wheels; identified by a model number and serial number by its manufacturer; and designed primarily for placement on an impermanent footing. This includes manufactured tiny homes (see “Tiny home”). A unit that was originally built as a mobile home but has substantially lost its mobility by being placed on a permanent footing, the tongue and axle removed, skirting is installed, and that wholly meets state standards for such units, shall not be considered to be a mobile home and shall be treated as a single-family dwelling for the purpose of this code.

Mobile Home Park. “Mobile home park” means any parcel or adjacent parcels of land in the same ownership that is used for occupancy by more than two mobile homes. This term shall not be construed to mean campgrounds, recreational vehicle parks, or tourist facilities for camping.

Mobile homes were built prior to June 15, 1976 and manufactured homes were built after that date. Both are regulated by the United States Department of Housing and Urban Development (HUD) and both require a building permit from PDS.

Development Agreement

As authorized through RCW 36.70B.170, the applicant is utilizing the development agreement process to allow full redevelopment of the site. To balance the existing nature of the mobile home park, identified critical areas, the removal of units over time, the addition of larger units and current Whatcom County Development Standards the applicant has applied for a development agreement. The applicant is proposing to address the following through the development agreement:

- Parking space depth and width

- Guest parking
- Unit density
- Park ownership
- Timing/Phasing of units and infrastructure
- Impacts to critical areas buffers and offsite mitigation
- Road standards and driveway spacing

The use of the development agreement will allow road and stormwater infrastructure upgrades and protection of critical areas, while also maximizing the number of units onsite in the developed park.

Site Description

The subject property is located at 4672 Birch Bay Lynden Road in Blaine, WA in Section 19, Township 40, Range 1 E.W.M, Whatcom County, WA. The subject property is located within the Urban Residential – Medium (URM6) zoning district within the Birch Bay Urban Growth Area.

The approximate 23-acre parcel is currently developed as a mobile home park with a road, two driveway entrances onto Birch Bay – Lynden Road and 41 units. Existing water, sewer, stormwater and fire infrastructure exists onsite. The site is mostly flat and has wetlands on the west, north and east boundaries of the property as well as three onsite wetlands.

Noted Submitted Plans/Map Data/Reports (see exhibit list for all items)

Critical Areas Assessment, Northwest Ecological Services	June, 2024
Conceptual Mitigation Plan, Northwest Ecological Services	June, 2024
SEPA Environmental Checklist, Huit Zollars	June, 2024
Preliminary Stormwater Report – Final, Huit Zollars	November 11, 2024
Traffic Impact Analysis Report – Final, AHTC Inc.	November 11, 2024
Preliminary Landscape and Sign Plan – Final, Huit Zollars	January 23, 2025
Impacts Assessment and Mitigation Plan, Huit Zollars	January 23, 2025
Site Plan – Final, Huit Zollars	February 24, 2025
Phasing Plan – Final, Huit Zollars	February 24, 2025

III. Public Notice and Comment

Requirements for public notice are contained in Chapter WCC 22.05.080.

Notice of Application:

The Notice of Application for this proposal was published on April 11, 2023 in the Bellingham Herald and on the County website. A Notice of Application was also sent to owners of property within 300 feet of the parent parcel and the site was posted. The comment period ended April 25, 2023.

The project was re-noticed when the applicant submitted a development agreement application. The revised Notice of Application for this proposal was published on August 21, 2024 in the Bellingham Herald and the County website. The revised Notice of Application was also sent to owners of property within 300 feet and the site was posted on that same date. The second comment period ended September 4, 2024.

Public Comment

During the public comment period for the Notice of Application and the revised Notice of Application, PDS received comments. A summary of these comments and a brief response to those comments are listed below:

Comment 1: Concerns regarding garbage and maintenance of the site.

Response: Each unit have individual garbage and recycling bins and will be required to use them. The park management will have oversight and enforcement authority to require tenants to utilize garbage services.

Comment 2: Concerns regarding ineffective fencing of the site.

Response: The current development appears to have fencing on the west, east and north sides. The applicant shall replace and maintain all fencing as necessary.

Comment 3: Increase in traffic impacts.

Response: Whatcom County Public Works – Engineering Services (PWES) has reviewed the application for impacts to roads. PWES has determined the proposal will impact both the intersections at Birch Bay-Lynden Road at Blaine Road and Birch Bay-Lynden Road at Kickerville Road. To mitigate the impacts at these intersections, a SEPA mitigating condition was added for fair share contribution of money for intersection improvements. The contributions will be used for planned improvements at these intersections. Additional analysis can be found in Section V.A of this report.

Comment 4: Drainage and stormwater.

Response: PWES has also reviewed the proposal for stormwater and drainage. For any new impervious surface, the applicant is required to meet new stormwater requirements as further explained in Section V.A of this report. The applicant will also be required to construct the new stormwater improvements and maintain existing infrastructure in perpetuity.

IV. State Environmental Policy Act

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 total number of units on the site exceeds the categorical exemption thresholds in WAC 197-11-800(1)(b)(i) and WCC 16.08.070(A)(1) and thus SEPA review is required.

The Whatcom County SEPA Official reviewed the completed SEPA checklist submitted by the applicant, and determined that with 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 Mitigated Determination of Non-significance (MDNS) was issued on December 16, 2024 and the comment period ended December 30, 2024. The appeal period for this MDNS ended January 9, 2024. No appeals of this determination were filed.

The Whatcom County SEPA Official found that, pursuant to Substantive Authority, as allowed by WCC 16.08, the following SEPA mitigating conditions are required as a condition of the underlying permit:

1. **Inadvertent Discovery of Archaeological Resources:** Should archaeological resources (e.g. shell midden, animal 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 (Stephanie Jolivet, Local Government Archaeologist 360-628-2755) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-961-7752; Tamela Smart, Deputy THPO 360-927- 2944) 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.
2. **Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055):** 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 must be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains must be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains must 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 (DAHP).
3. **Traffic:** The applicant shall pay the following monetary contributions to mitigate for the project's proportional impacts to the following intersections as determined by the approved Traffic Impact Analysis Report (TIAR) by Armen D. Hovanessian dated November 19, 2024:

- a. \$125,151.00 dollars for the intersection of Birch Bay Lynden Road at Blaine Road
- b. \$61,755.00 dollars for the intersection of Birch Bay Lynden Road at Kickerville Road

The payment is due prior to issuance of the first building permit. Whatcom County Public Works shall expend these funds on the specified intersection improvement projects planning, permitting, or construction within five years or return the money to applicant upon receipt of written request after the five-year period has elapsed. The five-year time period will begin upon Whatcom County Public Works receipt of the specified funds.

Agency Response to MDNS:

After the SEPA MDNS was issued, the Lummi Nation Cultural Department reviewed the SEPA MDNS and responded on December 17, 2024 recommending inadvertent discovery of archaeological resources language and inadvertent discovery of human skeletal remains language be included. These two comments were included in the SEPA mitigating conditions.

V. Consistency with Regulations and Findings of Fact

A. Roads and Bridges (WCC 12.08)

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 issued a memo dated December 4, 2024 with the following discussion:

PWES staff has reviewed the proposed Ponderosa Estates Mobile Home Park located with Whatcom County Parcel Number 4001193090630000. The project is a new Conditional Use Permit (CUP) application to replace the existing 1983 CUP which permitted 163 mobile home units. The existing 1983 CUP currently has 41 active mobile homes. The proposal is to add 122 housing units to the existing 41 manufactured homes with some improvements but closely matching the original approved 1983 CUP. All housing units share a privately maintained existing access road, utilities and stormwater facilities.

The following comments and findings are based on documents that have been submitted for review.

Applicable Codes and Standards:

1. Whatcom County Code (WCC) 12.08.035; 20.04.035; 20.80.630;
2. Whatcom County Development Standards (WCDS) Chapter 2
3. Whatcom County Development Standards (WCDS) Chapter 5
4. WCC 20.78.070 Certificate of Transportation Capacity

Associated Documents:

1. Preliminary Stormwater Site Plan prepared by Huitt-Zollars, Inc. dated Nov. 18, 2024
2. Soils report prepared by Geotest Services, Inc. dated Oct. 13, 2024
3. Preliminary Site Plan prepared by Huitt-Zollars, Inc. dated Nov. 18, 2024.
4. Ponderosa Estates Traffic Impact Analysis by Armen D. Hovanessian dated November 19, 2024.

Findings

1. The project proposes to utilize the existing access point from Birch Bay Lynden Road, a 34-foot Urban Major Collector Road with one lane of traffic in each direction.
2. The project also proposes to utilize the existing 20-foot wide on-site access road to serve the development.
3. WCDS Section 505.D requires a minimum of 24 feet wide access road for commercial development.
4. The applicant requested a variance to reduce the commercial access road requirement of 24 feet wide per Table 505-3 of WCDS Section 505.D and utilize the existing 20-foot wide access road. The variance request is granted based on the criteria for variance approval per WCDS Chapter 5, Section 504.F and Development Agreement associated with this application.
5. The project will generate a net increase of 870 average daily traffic (ADT) and 79 afternoon peak hour trips per the project's Traffic Impact Analysis (TIA) prepared by Armen D. Hovanessian dated November 19, 2024. The TIA concluded that the project does not have major adverse effects on capacity, delay, access, safety, and circulation in the roadway system within the study area or at the analyzed intersections. Engineering Services has issued Preliminary Concurrency Determination (PCD), certificate no. PCD2025-002. The Final Certificate of Transportation Capacity (CTC) will be issued after development permit approval. The CTC will formally reserve transportation capacity for the project's peak hour trips on county roads within the study area.
6. As part of the SEPA review process, the project is conditioned to pay monetary fair share contributions as determined by the TIA and in accordance with WCDS Chapter 5 Section 506 to mitigate for the project's proportional impacts to the following intersections improvements identified in the current County Council-approved 6-Year Transportation

Improvement Plan (6YTIP): Birch Bay Lynden Road at Blaine Road and Birch Bay Lynden Road at Kickerville Road.

7. The project is located outside the NPDES Phase II stormwater area but within the Birch Bay Stormwater Special District therefore shall comply with Whatcom County Code (WCC) 20.80.635 modified stormwater threshold. The site is also located in the Birch Bay Water Resource Special Management Area (Whatcom County Code 20.80.735), and shall comply with the modified requirements for Temporary Erosion and Sediment Control Urban Stormwater Area. This project is considered high land use intensity for stormwater management therefore it is subject to Stormwater Management Manual for Western Washington (2019 SWMMWW) per WCC 20.80.630. The project as conditioned satisfies the said requirements.
8. The project preliminary SSP prepared by Huitt-Zollars, Inc. dated Nov. 18, 2024 proposes Vegetated Filter Strips Best Management Practices (BMPs) on each side of the onsite access road to manage stormwater run-off and provide water quality treatment and wetland protection to comply with the minimum requirements of DOE 2024 SWMMWW manual. An 18" gravel spreader will be installed on each side of the access road to disperse stormwater run-off into the proposed Vegetated Filter Strip treatment BMP.

Finding: The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 12.08 and the Whatcom County Development Standards.

B. Buildings and Fire (Title 15)

i. 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.

Building Services reviewed the proposal and is recommending approval of the project subject to conditions of approval.

Finding: Building Services has reviewed the application and recommends approval with conditions.

ii. Fire Code

The Whatcom County Fire Marshal is recommending approval of the project subject to conditions of approval.

Finding: The Whatcom County Fire Marshal's Office has determined that, as conditioned, the project meets the requirements of WCC Title 15.

C. Whatcom County Critical Areas Ordinance (Title 16)

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. The review applied the entirety of Chapter 16.16 WCC to the proposal as applicable. This analysis reviews specific provisions, which summarize the standards, guidelines, criteria, and requirements of Chapter 16.16 WCC.

The applicant submitted the following reports:

- Critical Areas Assessment (Wetland Delineation/HCA Assessment), NW Ecological Services. November 2022
- Critical Areas Assessment (Wetland Delineation/HCA Assessment), NW Ecological Services. June 2024
- Impact Assessment and Mitigation Plan, NW Ecological Services. January 2025

Alternative or Innovative Mitigation Plans (WCC 16.16.261)

A. The county shall consider and may approve alternative or innovative mitigation plans for major developments (as defined in Article 9 of this chapter), planned unit developments (pursuant to Chapter 20.85 WCC), and/or development agreements (pursuant to RCW 36.70B.170 through 36.70B.210).

The applicant has applied for a development agreement to allow alternative and or innovative mitigation.

B. If approved, said plan shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:

1. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;
2. The proponent(s) demonstrate that long-term management, maintenance, and monitoring will be adequately funded and effectively implemented;
3. There is a clear likelihood for success of the proposed plan based on supporting scientific information or demonstrated experience in implementing similar plans;
4. In terms of functional value, the proposed mitigation plan results in equal or greater protection and conservation of critical areas functions, services, and values than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;

5. The plan is consistent with the general purpose and intent of this chapter, the Shoreline Management Program (WCC Title 23), and the comprehensive plan;
6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and
7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.

The applicant has submitted a preliminary Impacts Assessment and Mitigation Plan. The plan identifies the existing degraded wetland buffer and development onsite and the proposed mitigation offsite. The plan preliminarily demonstrates the lift in functions and values from the proposal. A final mitigation plan showing long term maintenance and monitoring along with organizational and fiscal capabilities will be required prior to Phase 3 authorization. An assignment of savings will also be required to ensure ongoing monitoring and maintenance of the mitigation area.

C. Alternative mitigation plans shall be reviewed concurrently with the underlying land use permit(s) and decisions to approve or deny such plans shall be made in accordance with the underlying permit process. The plan shall be reviewed by the technical administrator to ensure compliance with the general purpose and intent of this chapter and to ensure accuracy of the data and effectiveness of proposed management strategies. In making this determination the technical administrator shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts. If the technical administrator finds the plan to be complete, accurate, and consistent with the purposes and intent of this chapter, the designated decision maker shall solicit comment pursuant to the public notice provisions of Chapter 22.05 WCC prior to final approval/denial of permission of the plan to substitute for the requirements and standards of this chapter. (Ord. 2018-032 § 1 (Exh. C); Ord. 2017-077 § 1 (Exh. A); Ord. 2005-068 § 1. Formerly 16.16.260(E)).

The Impacts Assessment and Mitigation Plan is draft in nature as the offsite mitigation parcels have not yet been purchased. Through the development agreement, the phasing plan outlines the timeline the property must be under contract for purchase and when the mitigation must be completed. When a final mitigation plan has been received, PDS will solicit comments pursuant to the public notice provisions of WCC as well as reach out to consulting agencies.

Wetlands Designation, Rating and Mapping (WCC 16.16.610)

Three wetlands were identified onsite and are identified below:

Wetland	Size (Acres)	Category	Buffer
A	132	II	275
C	.03	IV	50

E	.84	IV	50
---	-----	----	----

Wetland A is a Category II palustrine forested/scrub-shrub/emergent depressional wetland. The wetland is a large complex mostly located offsite with some portions extending along the west, north and northeastern portion of the site. Wetlands C and E are much smaller Category IV wetlands located onsite.

Wetland Buffer Widths (WCC 16.16.630)

Standard buffer widths were assigned to the wetlands as noted in the table in the section above and as found in Table 1, WCC 16.16.630(D). The proposal is considered a high land use intensity.

Findings: The applicant is proposing significant buffer reductions. The buffer reductions proposed are not consistent with WCC 16.16.640 Wetland Buffer Reduction, discussed below. The standard buffers extend across the internal access roads, infrastructure and existing units. WCC 16.16.630(a) "...Buffers shall not include areas that are functionally and effectively disconnected from the wetland by an existing legally established road or other substantial developed surface."

Although the buffer for Wetland A is 275' and Wetlands C and E are 50', the actual buffer is much less and would stop at the road and exclude the existing units located within the buffer area. This buffer impact area has been calculated as 3.85 acres (Figure 4, Impact Assessment and Mitigation Plan, January 2025) which includes the proposed house sites, the 10' building setback, and associated parking and stormwater infrastructure.

To acknowledge the existing development and infrastructure onsite, the location of the existing road, the urban growth area, existing infrastructure and the need for affordable housing a development agreement has been proposed to vary from standards outside of the code, including allowable buffer reductions.

Wetland Buffer Reduction (WCC 16.16.640)

The technical administrator shall have the authority to reduce the standard buffer widths identified in WCC 16.16.630; provided, that the general standards for avoidance and minimization per WCC 16.16.260(A)(1)(a) and (b) shall apply; and provided further, that all of the following apply:

- A. The buffer reduction shall not adversely affect the functions and values of the adjacent wetlands;

The applicant has proposed to fully mitigate for the reduction in buffer as preliminarily identified in the Impacts and Mitigation Assessment. The mitigation will occur offsite and include all 3.85 acres of buffer impact.

- B. The buffer of a Category I, II, or III wetland shall not be reduced to less than 75 percent of the required buffer or 50 feet, whichever is greater;

The applicant is proposing to reduce the buffer below the 75 percent allowed for the Category II wetland. Acknowledging the existing nature of the development, the already degraded buffer and the affordable housing opportunity, a development agreement has been submitted to allow reduction of the buffer below the 75 percent, with mitigation of all buffer impacts to occur offsite.

- C. The buffer of a Category IV wetland shall not be reduced to less than 50 percent of the required buffer, or 25 feet, whichever is greater;

The buffer for Wetlands C and E will be reduced to less than 25'. As noted above, a development agreement has been submitted to allow reduction of the buffer below 25' with mitigation to occur offsite.

- D. The applicant implements all reasonable measures to minimize the adverse effects of adjacent land uses and ensure no net loss of buffer functions and values. Such measures may include, but are not limited to, the following:

1. Direct lights away from the wetland and buffer.
2. Locate activities that generate noise away from the wetland and buffer.
3. Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered.
4. Establish covenants limiting use of pesticides within 150 feet of wetland.
5. Apply integrated pest management.
6. Retrofit stormwater detention and treatment for roads and existing adjacent development.
7. Prevent channelized flow from lawns that directly enters the buffer.
8. Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns.
9. Post signs at the outer edge of the critical area or buffer to clearly indicate the location of the critical area according to the direction of the county.
10. Use privacy fencing.
11. Plant with dense native vegetation appropriate for the county to delineate buffer edge and to discourage disturbance.
12. Use low impact development where appropriate.
13. Establish a permanent conservation easement or tract to protect the wetland and the associated buffer.
14. Use best management practices to control dust. (Ord. 2017-077 § 1 (Exh. A); Ord. 2005-068 § 1).

Although the buffers are proposed to be reduced and mitigated offsite. Several requirements of WCC 16.16.640D will be applied to the development.

The applicant will ensure lighting is directed away from the wetland and buffer.

The applicant is proposing vegetated filter strips BMP's on each side of the onsite access road to manage stormwater run-off and provide water quality treatment for new pollution generating

impervious surface and wetland protection to comply with the minimum requirements of DOE 2024 SWMMWW manual.

Placing signs along nearly the entire perimeter of the mobile home park is not reasonable, however the applicant shall propose and PDS shall approve Native Growth Protection Area (NGPA) signage for the park such that the community is advised that vegetation removal and dumping is prohibited.

Additionally, buffer appropriate planting will occur along the perimeter of the mobile home park.

Review and reporting requirements (WCC 16.16.670).

A. When county critical area maps or other sources of credible information indicate that a site proposed for development or alteration may contain or abut wetlands or wetland buffers, the technical administrator may require a site evaluation (reconnaissance) or critical area assessment report by a qualified professional to determine whether or not a regulated wetland is present and, if so, its relative location in relation to the proposed project area or site. If no regulated wetlands are present, then wetland review will be considered complete.

A critical areas assessment was completed in November 2022 and updated in June 2024. The updated report meets the requirements of WCC 16.16.255 and PDS has accepted the updated report for accuracy and recommendations and conclusions.

Wetland mitigation (WCC 16.16.680)

In addition to the applicable general protective measures found in WCC 16.16.265, activities that adversely affect wetlands and/or wetland buffers shall include mitigation sufficient to achieve no net loss of wetland function and values in accordance with WCC 16.16.260 and this section.

A. In determining the extent and type of mitigation required, the technical administrator may consider all of the following when applicable:

1. The ecological processes that affect and influence critical area structure and function within the watershed or sub-basin;
2. The individual and cumulative effects of the action upon the functions of the critical area and associated watershed;
3. Observed or predicted trends regarding the gains or losses of specific wetland types in the watershed, in light of natural and human processes;
4. The likely success of the proposed mitigation measures;
5. Effects of the mitigation actions on neighboring properties; and
6. Opportunities to implement restoration actions formally identified by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a watershed plan prepared pursuant to Chapter 400-12 WAC, a salmonid recovery plan or project that has been identified on the watershed management board habitat project list or by the Washington State Department of Fish and Wildlife as

essential for fish and wildlife habitat enhancement, a fully authorized mitigation bank (WCC 16.16.263), or an in-lieu-fee program.

The existing wetland buffer is currently degraded with the road, existing development, mowed grass, gravel pads and homes and mitigation performed onsite prohibit full redevelopment of the mobile home park.

The mitigation proposed on Blaine Road is designed to ensure no net loss of critical areas functions and values. The wetland on the Blaine Road is an extension of Wetland A and has historically been used as pasture. The mitigation proposed will enhance the buffer to improve the wetland and buffer function for the same wetland system.

B. Type of Mitigation.

1. Wetland Alterations. Compensatory mitigation projects shall restore, create, rehabilitate, enhance, and/or preserve equivalent wetland functions and values pursuant to no net loss of function and area. Compensation for wetland alterations shall occur in the following order of preference:

- a. Reestablishing (also referred to as restoring) wetlands on upland sites that were formerly wetlands.
- b. Creating wetlands on disturbed upland sites such as those consisting primarily of nonnative, invasive plant species.
- c. Rehabilitation of existing wetlands for the purposes of repairing or restoring natural and/or historic hydrologic functions.
- d. Enhancing existing significantly degraded wetlands.
- e. Preserving Category I or II wetlands that are under imminent threat; provided, that preservation shall only be allowed in combination with other forms of mitigation and when the technical administrator determines that the overall mitigation package fully replaces the functions and values lost due to development.

The degraded wetland buffer at the Blaine Road site will be improved to offset the 3.85 acres of buffer impact at the Ponderosa Estates Mobile Home Park. This will include invasive species removal, habitat features and plantings with wood chip mulch. The mitigation is expected gain in ecological function and provide lift for water quality, hydrology and wildlife habitat.

2. Buffer Alterations. Compensatory mitigation for buffer impacts:

- a. Shall be consistent with WCC 16.16.630 through 16.16.660; and
- b. May include enhancement of degraded buffers by planting native species, removing structures and impervious surfaces within buffers, and other measures to achieve equivalent or greater buffer functions.

C. Mitigation Ratios.

1. Compensation for wetland buffer impacts shall occur at a minimum 1:1 ratio on an area basis.

The applicant has proposed a 1:1 ratio for the wetland buffer impacts. The 3.85 acres of buffer impacted on the Ponderosa Estates Mobile Home Park will be fully mitigated on the Blaine Road property.

Compensatory wetland mitigation plan (WCC 16.16.690)

A. In addition to meeting the requirements of WCC 16.16.260(B), a compensatory mitigation plan for wetland and wetland buffer impacts shall meet the following:

1. Provide an analysis of existing wetland functions and values and a detailed description of the effects of the proposed development on wetland and buffer function and value, including the area of direct wetland disturbance, area of buffer disturbance, area of buffer reduction, and area of buffer averaging, including documentation that the functions and values will be increased through reduction or average; effects of stormwater management; proposed hydrologic alteration including changes to natural drainage or infiltration patterns; effects on fish and wildlife species and their habitats; clearing and grading impacts; temporary construction impacts; and effects of increased noise, light, and human intrusion.
2. The plan shall be based on applicable portions of the Washington State Department of Ecology's Guidelines for Developing Freshwater Wetland Mitigation Plans and Proposals, 2004, or other appropriate guidance document that is consistent with best available science.
3. The plan shall contain sufficient information to demonstrate that the proposed activities are logistically feasible, constructible, ecologically sustainable, and likely to succeed. Specific information to be provided in the plan shall include:
 - a. The rationale for site selection;
 - b. General goals of the plan, including wetland function, value, and acreage;
 - c. Description of baseline (existing) site conditions including topography, vegetation, soils, hydrology, habitat features (e.g., snags), surrounding land use, and other pertinent information;
 - d. Field data confirming the presence of adequate hydrology (surface and/or groundwater) to support existing and compensatory wetland area(s);
 - e. Nature of mitigation activities, including area of restored, created, enhanced, rehabilitated and preserved wetland, by wetland type;
 - f. Detailed grading and planting plans showing proposed post-construction topography; general hydrologic patterns; spacing and distribution of plant species; size and type of proposed planting stock; watering or irrigation plans; and other pertinent information;

- g. A description of site treatment measures including invasive species removal, use of mulch and fertilizer, placement of erosion and sediment control devices, and best management practices that will be used to protect existing wetlands and desirable vegetation;
- h. A demonstration that the site will have adequate buffers sufficient to permanently protect the wetland functions.

The Impacts Assessment and Mitigation Plan submitted is consistent with the requirements of WCC 16.16.690. The functions and values of the wetlands and buffers onsite have been evaluated. A critical areas assessment analyzing full functions and values of the Blaine Road site has not been submitted or fully evaluated by PDS, but conceptually appears to result in an overall increase in functions and values for Wetland A. The Plan does meet appropriate guidance regarding best available science.

The Impacts Assessment and Mitigation Plan does include the rationale for site selection, the general goals of the plan, description of the baseline, field data for the Ponderosa Estates Mobile Home Park site, proposed mitigation actions and adequate protection. A final Impacts Assessment and Mitigation Plan will be required with a full delineation of the Blaine Road site and final mitigation measures identified. The final report will need to be approved by PDS prior to work Phase 3 development of the Ponderosa Estates Mobile Home Park.

B. All compensatory mitigation projects shall be monitored in accordance with WCC 16.16.260(C) for a period necessary to establish that performance standards have been met. The technical administrator shall have the authority to extend the monitoring period for up to 10 years and require additional monitoring reports when any of the following conditions apply:

1. The project does not meet the performance standards identified in the mitigation plan.
2. The project does not provide adequate replacement for the functions and values of the impacted critical area.
3. The project involves establishment of forested plant communities, which require longer time for establishment.

The proposal does not meet standards with regard to buffer impacts per WCC 16.16.640. As part of the development agreement to allow additional buffer impacts outside of adopted code, PDS will require ten years of monitoring.

C. Reports shall be submitted annually for the first three years following construction and at the completion of years five, seven and 10 if applicable to document milestones, successes, problems, and contingency actions of the compensatory mitigation. (Ord. 2017-077 § 1 (Exh. A); Ord. 2005-068 § 1).

As recommended in conditions of approval, monitoring reports shall be submitted annually for the first 3 years and a year 5, 7 and 10.

Finding: Whatcom County has determined that, as conditioned, the project meets the requirements of WCC Title 16.

D. Zoning Ordinance (Title 20)

i. Urban Residential – Medium Density (WCC 20.22)

The subject property is located within the Urban Residential – Medium Density (URM6) district and is located with the Birch Bay Urban Growth Area.

Conditional Use (WCC 20.22.150)

WCC 20.22.156 Mobile Home Parks

The applicant is requesting approval for placement of 122 units in the existing mobile home park. The total unit count will not exceed the original approvals in 1977 and 1982, however, the size of the units will be larger than originally approved resulting in an increase in total lot coverage (WCC 25.05.026(5)). A conditional use permit is necessary.

Maximum Density and Minimum Lot Size – Specific uses (WCC 20.22.253)

(2) Mobile home parks shall have a density consistent with WCC 20.22.252(I) and a minimum net parcel size of two acres.

WCC 20.22.252(1)

District	Density Requirements	Minimum Lot Size – Conventional	Minimum Lot Size – Cluster	Maximum Lot Size	Minimum Reserve Area (Cluster Divisions)
				Clustered Lots	
URM-6: with public sewer and water, and stormwater collection and detention facilities	Maximum gross density: 6 dwelling units/acre Minimum net density: 6 dwelling units/acre	3,500 sq. ft.	2,500 sq. ft.	N/A	20%

Findings: The site has public water and public sewer and the total site area is approximately 23.37 acres. Per WCC 20.22.252(1) a maximum of six units per acre is allowed for a total of 140 units, however, PDS is recognizing the original CUP approvals in 1977 and 1983 and recommends approval of 163 units as originally approved and requested through this CUP as part of the development agreement.

Building Setbacks (WCC 20.22.350)

Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback requirements), except as provided in 20.80.253(4).

Urban Residential – Medium Density	
Road Type	Other

Commercial, Industrial, I-5, State Hwys, Principal & Minor Arterials	Urban Collector Arterials and Rural Major Collectors	Minor Collectors	Local Access Streets	Minor Access Streets	Side Yard	Rear Yard
45'	30'	25'	25	20'	5'	5'

Note: Depending on circumstances, some RC setbacks may differ pursuant to WCC 20.64.550 and 20.80.253(4).

The front property line is adjacent to an Urban Collector road as classified by Whatcom County Public Works, the setback from the front property line is 30 feet. Per WCC 20.64.350, the minimum setback is 30' for front yard and 5' for side and rear yard, except as increased by 20.80.253(4) for buffer and landscape purposes.

Height limitations (WCC 20.22.400)

Maximum height shall be limited to 45 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

The proposed height of the units will be less than 45 feet and will be reviewed individually at the time of building permit submittal.

Lot Coverage (WCC 20.22.450)

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 is defined as:

Lot Coverage. "Lot coverage" means the percent of a lot or parcel which is, or will be, covered by all structures located thereon. Coverage is determined by measuring areas covered by a weather tight roof. For properties within the jurisdiction of the Shoreline Management Program (WCC Title 23), submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used to compute lot coverage (WCC 20.97.120).

The applicant has identified the following lot coverage calculations:

Existing Roof Area	61,410 square feet (1.41 acres)
Proposed Roof Area	263,780 square feet (6.06 acres)
Total Roof Area	325,190 square feet (7.47 acres)

With total occupancy of the site, the roof area will not exceed 7.47 acres. The total gross property acreage is 23.37. Each unit will be allowed no more than 175 square feet of additional lot coverage for accessory structures including sheds, carports, porch covering or other similar features. The accessory structure cannot be located within setbacks, buffer area, critical areas

or buffers, designated parking areas or other protected area. The accessory structure shall also meet building and fire code separation requirements and require a building permit, as applicable. The total lot coverage will be less than 35 percent.

Open Space (WCC 20.22.500)

Mobile Home Parks (WCC 20.22.502).

Mobile home parks shall maintain a minimum of 40 percent of the site free of buildings, structures, hard surfacing, parking areas and other impervious surfaces.

Findings: The development is proposed to maintain a minimum of 40 percent of the site free from buildings, hard surfacing, parking areas and all other impervious surfaces. The open space will be landscaped and maintained in perpetuity.

Buffer Area (WCC 20.22.550)

When parcels situated in this district adjoin an Urban Residential, Residential Rural or Rural district, and are developed for uses other than single-family dwellings or duplexes, any side or rear yards contiguous to those districts shall have their setbacks increased to 25 feet. Said area is to be landscaped consistent with the requirements of WCC 20.80.345.

The parcel is surrounded by URM6 zoned parcels. No buffer area per WCC 20.22.550 is required, however, both previous approvals included a 25' landscaped buffer around the park. The mobile home park standards also require the following per WCC 20.90.950(5) and (6):

(5) Along the edges of mobile home parks, walls or vegetative screening shall be provided where needed to protect residents from undesirable views, lighting, noise, or other off-site influences, or to protect occupants of adjoining property from potentially adverse influences within the mobile home park. In particular, extensive off-street parking areas and service areas for loading and unloading other than passenger vehicles, and for storage and collection of trash and garbage, shall be screened.

(6) There shall be landscaping developed consistent with WCC 20.80.300 (Landscaping) within open areas of mobile home parks not otherwise used for park purposes. Such open areas and landscaping shall be continually and properly maintained.

Use of existing vegetation may also be used to buffer the mobile home park residents from offsite influences as stated in WCC 20.80.345:

Buffers are required when the proposed use is in a commercial or industrial zone and is directly adjacent to and shares a common boundary with property in a rural or residential zone. They are normally 25 feet wide unless otherwise approved by the administrator upon receipt of a detailed planting plan prepared by a landscape architect or qualified landscape designer. Buffering plantings are intended to provide an all-season visual screen between commercial or industrial uses on one side, and rural or residential uses on the other side. Landscape buffers may be required on road frontages as a condition of development for commercial or industrial development that includes outside

storage of materials, outside parking of equipment or vehicles other than vehicles for sale on the site, and similar uses that can be a visual distraction or unsightly to persons on the public right-of-way. Plant materials that have minimal irrigation needs and are native or have a demonstrated suitability for Whatcom County are required. Vegetation-based LID BMPs (such as bioretention facilities and rain gardens) may be used within buffers where the primary screening and buffering functions are not compromised. Twenty-five-foot planted buffers shall, at a minimum, consist of two offset rows of predominantly coniferous trees at an average spacing of 15 feet triangulated on center or an equivalent effect. Some deciduous trees shall be included and shrubs may be interspersed to provide interlocking root structures to reduce windthrow. Fifty-foot planted buffers will require four rows of trees in the same triangulated pattern as required in 25-foot buffers. Existing natural buffers are encouraged but may need additional width or be augmented with additional landscaping or fencing to provide the required sight barrier.

Maintenance of the 25' buffer onsite pursuant to the original proposals is appropriate. The applicant shall submit a landscape plan detailing the 25' buffer around the park with required buffer plantings and the landscaping must be installed prior to Phase 1B. Landscaping is also discussed below.

Sign Regulations (WCC 20.22.600)

Sign regulations shall be administered pursuant to WCC 20.80.400.

WCC 20.80.400 Sign controls.

Whenever reference is made in this ordinance to sign controls, the following provisions shall apply.

(1) No sign or any portion of a sign shall be located on or over public property, such as road rights-of-way and easements, transmission line corridors or utility easements. Standard building height limits and setbacks shall apply to all signs unless otherwise provided elsewhere in this title or in other county codes or regulations including the county's Shoreline Management Program. All freestanding signs advertising on-premises operations may be located within required landscaping areas, except that no such sign shall be closer than 10 feet to the road right-of-way. This distance shall be increased if it can be shown to present a traffic hazard.

(2) On-premises signs meeting the requirements of WCC 20.80.420 to 20.80.465 are permitted. Other than exempt signs under WCC 20.80.470, all other signs in the Recreation and Open Space District are prohibited and all other signs in other districts conditionally permitted subject to meeting the requirements of WCC 22.05.026.

WCC 20.80.420-20.80.465 do not apply to the URM zone and therefore all signs, except as allowed through WCC 20.80.470, must be considered through CUP approval. The applicant is requesting two monument style signs at the two entrance points to the development. No off-premises signs are proposed.

The two signs would be located as shown on the Ponderosa Estates Landscape Plan, submitted on January 23, 2025, on the east and west sides of the entrance area along Birch Bay – Lynden Road. The signs will be 18’ long by 5’ high and will say “Ponderosa Estates.” A building permit for each sign will be required. The signs will be at least 10’ from the right-of-way of Birch Bay – Lynden Road or in a location approved by the Whatcom County Public Works – Engineering Services at the time of building permit review.

Development Criteria (WCC 20.22.650)

The requirements of WCC 20.22.651, 20.22.652, 20.22.653 and 20.22.654 do not apply to single-family or duplex residences. (Ord. 2004-021 § 1, 2004; Ord. 96-056 Att. A § A1, 1996).

The proposed development is not a single-family residence nor a duplex. The development criteria are not applicable.

Facility design (WCC 20.22.651)

(1) In the Bellingham Urban Growth Area, the city of Bellingham’s design and development standards and guidelines shall apply (see WCC 20.22.665).

Findings: The proposal is not located within the Bellingham Urban Growth Area.

(2) All Developments. Each development shall screen roof mechanical equipment so as not to be visible by surrounding uses or roads.

Findings: The mechanical equipment for manufactured homes will not be visible from surrounding uses or roads.

(3) Conditional Uses. All conditional uses provided by WCC 20.22.150 shall be designed consistent with the scale of a project, to:

- (a) Consider solar access and wind exposure;
- (b) Provide coordinated landscape and architectural designs;
- (c) Provide integrated circulation for pedestrians, vehicles and bicycles;
- (d) Provide integrated circulation that complements the architectural design of the project, considers adjoining land use activities and meets adopted county standards;
- (e) Provide integrated street and land use with appropriate sized roadways to meet anticipated traffic demands;
- (f) Minimize ingress and egress points to arterials;
- (g) Utilize valuable or unique natural features as part of the site design; and
- (h) Accommodate physical constraints of a site.

Findings: The manufactured home units will not be of the size and scale to impact solar access or wind exposure on the existing or neighboring properties. The applicant has submitted a preliminary landscape plan and will be required to submit a final landscape plan consistent with WCC 20.80.300. The proposal provides for internal walking paths as well as a loop road for

pedestrians, vehicles and bicycles. Access and roads to the site are minimum necessary to provide for adequate fire and emergency vehicle access and maintenance of the roads.

Landscaping (WCC 20.22.652)

(1) In the Bellingham Urban Growth Area, the city of Bellingham's design and development standards and guidelines shall apply (see WCC 20.22.665).

This proposal is not located within the Bellingham Urban Growth Area.

(2) Refer to WCC 20.80.300 for landscaping requirements. (Ord. 2004-021 § 1, 2004; Ord. 89-117, 1989).

WCC 20.80.320 Plans.

Prior to the issuance of a building permit a scaled landscape site plan shall be submitted to and approved by the land use division of planning and development services consistent with the provisions herein. This plan shall specify species name, size and location of all proposed plant materials and all existing trees over eight inches in caliper including those to be removed which shall be indicated. Existing trees which are part of a cluster of trees need not be individually identified. An irrigation plan or specified method of watering and the type and location of all proposed lighting shall also be included. Existing plants or native species which may need no watering should be so noted. The plan shall specify the treatment of the soil to protect its structure including method of protecting existing trees to remain and their root zones. The preferred scale of a plan shall be one inch equals 20 feet; but other scales may be used if approved by the zoning administrator, adequate detail can be conveyed and the scales correlate to other required site plans. (Ord. 2013-057 § 1 (Exh. A), 2013).

WCC 20.80.325 Landscaping location and spacing.

All required open space or any areas of the property not committed to a use requiring pervious surface must be landscaped. This may consist of any combination of trees, lawn, ground cover and shrubs and up to 20 percent of a nonvegetative decorative pervious material such as washed rock, bricks or paving stones. However, at least one tree will be required for every 2,000 square feet of open space including walkways in addition to screening or planting along the property lines. Existing vegetation may be used to meet the standards of this chapter. Deciduous trees will also be required parallel to all public rights-of-way. Small trees will be spaced approximately 25 feet on center; medium trees, 35 feet on center; and large trees, 45 feet on center. Alternatively, informal clusters of coniferous or broad-leaved evergreen trees and/or deciduous trees may be used in an amount equivalent to a row of trees spaced 25 feet on center. Small, medium and large trees, shrubs and ground cover approved for use in county rights-of-way are listed in the Whatcom County Development Standards, Chapter 5, Road Standards, Appendix I. Additional landscaping and screening is required as noted in other sections of this chapter.

WCC 20.80.350 Parking areas.

A minimum five-foot-wide landscape strip shall be provided around the perimeter of all parking areas. Natural or planted buffers may be considered to meet this requirement. Tree

spacing will be as required parallel to rights-of-way. Whenever a nonresidential parking lot containing more than 10 parking spaces is located in or adjacent to a residential zone, it shall also be screened on any side facing residential uses or zones where there is no intervening street. This screen shall consist of a fence, wall or acceptable planting screen at least four feet in height. The visual impact of parking areas shall be minimized by separating the area into modules that contain no more than 12 vehicles in a row. Each module shall be separated from other areas by a five-foot-wide planting strip containing trees, shrubbery, or other ground cover in such substantial density as to break up long sight lines and overviews of parked cars. Adjacent uses on separate parcels may combine their parking lots to enhance circulation without the necessity for intervening landscaping except for maintaining the module pattern. Vegetation-based LID BMPs (such as bioretention facilities and rain gardens) may be used within landscape strips and modules provided they meet the other applicable landscaping requirements such as screening or buffering. These shall be designed in accordance with the Stormwater Management Manual for Western Washington (Ecology Manual), as amended. (Ord. 2016-045 § 1 Att. A, 2016).

The applicant submitted a preliminary landscape plan on October 15, 2024 which includes landscaping of all open space areas as well as all areas not covered by impervious surfaces. The plan shows existing trees, and indicates all other areas will continue to remain in sod. The landscape plan does not meet WCC 20.80.320 or .325. The plan does detail all existing trees onsite however, the applicant does not indicate which trees will be removed. The plan also does not indicate how plants are to be irrigated, nor does the plan specify the names, size and location of all proposed plant materials. Finally, the plan does not provide a five-foot-wide landscape module for parking areas where more than 12 parking spaces are located in a row. The final landscape plan including buffer plantings shall be approved prior to Phase 1B and must be installed prior to Phase 2 development.

WCC 20.80.360 Special requirements for individual zone districts.

References to front yard landscaping in subsections (1) through (5) of this section shall be based on the property line except where the county engineer determines the road is developed at its ultimate width, then the back of the sidewalk can be used.

(1) Urban Residential Medium Density (URM), Neighborhood Commercial (NC), Resort Commercial (RC), and for nonresidential uses in the Residential and Rural districts: 15 feet within the front yard setback and situated adjacent to the road shall be landscaped with vegetative material, except for driveways, walkways and signs. The remainder of the front yard setback may be used for parking.

The applicant has proposed to maintain the large landscaped area along Birch Bay – Lynden Road. This area will be enhanced with additional shrubs and trees which shall be included on the landscape plan and approved by PDS.

Parking Requirements (WCC 20.22.653)

(1) In the Bellingham Urban Growth Area, the city of Bellingham's design and development standards and guidelines shall apply (see WCC 20.22.665).

(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. (Ord. 2004-021 § 1, 2004).

Pursuant to WCC 20.80.580(35) and WCC 20.80.950(1), each mobile home unit requires two parking spaces. Guest parking is required at one space for each two mobile home units. As shown on the site plan, the applicant has provided two spaces for each unit adjacent to the unit for a total of 82 guest parking spaces. The applicant has proposed a total of 42 guest parking spaces. As discussed under V.G.i, the applicant has requested to reduce the guest parking requirement.

WCC 20.80.527 also requires bicycle parking facilities in UGA's and limited areas of more intensive rural development (LAMIRD). The section requires bicycle parking where a land use or development will anticipate general visitor traffic, but does exempt single family and two-family residential dwellings. While the development is not likely to produce bicycle traffic from offsite, it is likely the community facility and recreation amenities will generate bicycle usage internally. The standard requires bicycle racks at a capacity equal to five percent of all required off-street parking. The applicant shall designate a minimum of 17 short-term bicycle spaces within the community facility area. The bicycle parking racks/spaces shall be included within the final landscape plan and shall be installed at the same time as the landscaping is installed.

Sidewalks (WCC 20.22.654)

(1) In the Bellingham Urban Growth Area, the city of Bellingham's design and development standards and guidelines shall apply (see WCC 20.22.665).

(2) Sidewalks shall be installed pursuant to the requirements of the county engineer. (Ord. 2004-021 § 1, 2004).

The proposal is not located within the Bellingham UGA. The County Engineer has determined sidewalks are not required for this proposal.

Drainage (WCC 20.22.655)

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

As discussed in Section V.A., the proposal has been reviewed for consistency with WCC 20.80.630 through .635 and the Stormwater Management Manual for Western Washington.

Access and roadways (WCC 20.22.657)

(1) In the Bellingham Urban Growth Area, the city of Bellingham's design and development standards and guidelines shall apply (see WCC 20.22.665).

(2) Access shall conform to the provisions of WCC 20.80.565. Roadways shall be provided pursuant to the requirements of the county engineer. (Ord. 2004-021 § 1, 2004; Ord. 87-12, 1987; Ord. 87-11, 1987).

The proposal is not located within the Bellingham UGA. There are two existing access points on Birch Bay – Lynden Road. The County Engineer, through PWES, has approved the use of the two access points.

Lighting (WCC 20.22.658)

(1) In the Bellingham Urban Growth Area, the city of Bellingham's design and development standards and guidelines shall apply (see WCC 20.22.665).

(2) Outdoor lighting shall be provided to adequately illuminate on-site streets, parking and, where applicable, pedestrian walkways. Light shall comply with the requirements of the county engineer, and shall be sized and directed to avoid adverse impacts on adjacent properties. (Ord. 2004-021 § 1, 2004).

An outdoor lighting plan shall be submitted with the landscape plan. The lighting shall be approved and installed with the road and stormwater improvements.

ii. Transportation Concurrency (WCC 20.78)

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

Whatcom County Public Works Department Engineering Services issued a Preliminary Concurrency Determination on February 10, 2025. A Certificate of Transportation Capacity will be issued prior to final plat approval.

The Technical Review Committee has determined the project is consistent with the requirements of WCC Chapter 20.78.

iii. Concurrency (WCC 20.80.212)

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 existing development.
2. No county facilities will be reduced below applicable levels of service as a result of the existing development.

Water & Sewer

The applicant has made application for water and sewer service to the Birch Bay Water and Sewer District, and received a service a “Limited Availability of Water and/or Sewer Service” acknowledgement dated May 22, 2024.

Prior to construction approval, the applicant will need to demonstrate they have water and sewer infrastructure approval from Birch Bay Water and Sewer District and that no additional approvals are necessary from the district. At the time of building permit applications, the applicant or developer will be required to provide a WCHD approved Public Water Availability Form from Birch Bay Water and Sewer District.

Schools

The application was routed to Blaine School District #503 on the day of public noticing. The applicant submitted a letter from the School District to the applicant stating that it will serve the proposed development. The Technical Review Committee finds that no county school facilities will be reduced below applicable levels of service as a result of the development.

Fire Protection

North Whatcom Fire and Rescue submitted a letter dated November 22, 2022 to PDS confirming concurrency. The letter acknowledges the existing nature of the development and no mitigation is necessary.

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

iv. Mobile Home Park Standards (WCC 20.80.950)

All mobile home parks shall meet the following standards:

(1) Mobile home parks shall be developed through either a binding site plan pursuant to WCC Title 21 (Land Division) or by condominium pursuant to Chapter 64.34 RCW (Condominium Act). In either case:

(a) An organization or individual with proper funding to maintain common facilities and operate the parks shall be provided.

(b) A declaration of covenants addressing and ensuring long-term compliance with the appropriate requirements herein shall be submitted for review and approval.

(c) Each rental or lease space shall be numbered on the site plan and the number shall be prominently displayed on the site.

Findings: The existing mobile home park was not developed through a binding site plan or through the Condominium Act, but contains a single property owner with individual leased sites. The applicant is not proposing to change the ownership/management structure of the existing park. The applicant will be responsible for all maintenance of common space, landscaping and recreation facilities. Prior to LFG approval, the applicant will be required to show on the final site plan each site numbered and the number shall be displayed on the unit.

(2) Where not specified by the applicable zoning district, mobile home parks shall have:

- (a) A maximum density of seven lease spaces per acre when public water and sewer are provided;
- (b) A maximum density of three lease spaces per acre when public water and sewer are not provided;
- (c) A minimum parcel size of two acres.

Findings: Water and sewer are available to the site. The URM zone specifies the density for mobile home parks (six units per acre), however PDS does support maintaining the previous approvals for the current seven units per acre. See Maximum Density discussion under Section V. D.i.

(3) Mobile home parks shall provide storage area for boats, recreational vehicles, and other large items. Said storage areas shall be screened consistent with these standards.

Findings: The applicant has proposed a storage area in the southwest portion of the site. The storage area will be fenced and has existing vegetative screening on the western and southern boundary. The screening will be maintained and additional screening of the fenced area will be required on the revised landscape plan.

(4) Within a mobile home park, no mobile home, other major structure, or outdoor storage shall be located closer than 20 feet to the perimeter of the site.

Findings: The original 1977 and 1983 approvals required a 25-foot setback and buffer that is included on the proposed site plan. No mobile home, structure or outdoor storage shall be located closer than 25 feet to the perimeter of the site.

(5) Along the edges of mobile home parks, walls or vegetative screening shall be provided where needed to protect residents from undesirable views, lighting, noise, or other off-site influences, or to protect occupants of adjoining property from potentially adverse influences within the mobile home park. In particular, extensive off-street parking areas and service areas for loading and unloading other than passenger vehicles, and for storage and collection of trash and garbage, shall be screened.

Findings: A 25-foot buffer is required around the perimeter of the site to protect the residents as well as any adjoining property owners. The buffer will be landscaped in accordance with WCC

20.80.300. The buffer shall be maintained in perpetuity by the applicant. Additional buffer discussion can be found in Section V. D. i.

(6) There shall be landscaping developed consistent with WCC 20.80.300 (Landscaping) within open areas of mobile home parks not otherwise used for park purposes. Such open areas and landscaping shall be continually and properly maintained.

Findings: The applicant has submitted a preliminary landscape plan. The plan is inadequate for approval at this time, however, as identified in Section V. D. i., several conditions of approval have been identified. A final landscape plan, installation and a mechanism for continued maintenance will be required.

(7) Mobile home parks shall keep 40 percent of the site free of buildings, structures, parking areas, and other impervious surfaces.

Findings: The applicant has proposed to keep 40 percent of the site free of buildings, structures, parking areas and other impervious surfaces. After full placement of units and construction of amenities and accessory structures identified in this report, additional impervious surface will be prohibited.

(8) On-site recreational amenities with at least one substantial facility serving the users of a park or identified area shall be provided. Such substantial facilities may include tennis courts, children's play areas with equipment, or a swimming pool. The type and size of facility shall be appropriate to the type and amount of clientele being served.

Findings: The applicant has proposed to modify and upgrade the existing approved recreational facilities. The proposal includes three sports courts, a pool, walking paths and an outdoor BBQ and gathering area. In addition, a commercial building permit was issued on January 23, 2024 to reconfigure 926 square feet, install new windows and doors, replace the kitchen and bath fixtures and gas fireplace, as well as new heating and cooling units for the existing clubhouse. The proposed recreational facilities appear to include the substantial recreation facility (sports courts and swimming pool) and appears to be appropriate in type and for clientele being served.

(9) Interior roads within mobile home parks shall be private, unless the county engineer determines that the development of public roads is necessary.

Findings: The internal access is currently and will continue to be privately maintained.

(10) For each mobile home space there shall be provided and maintained at least two parking spaces conforming to the requirements of WCC 20.80.500 et seq. (Off-street parking and loading requirements). In addition to occupant parking, guest and service parking shall be provided within the boundaries of the park at a ratio of one parking space for each two mobile home spaces.

Findings: The applicant has proposed a minimum of two parking spaces for each unit. The spaces will be immediately adjacent to the unit. The applicant has also proposed 42 guest parking spaces. This is a reduction in the code requirement for 81 guest parking stalls. As discussed in Section V.G., PDS is in support of the reduction in required guest parking due to stormwater and critical area constraints and the existing nature of the infrastructure.

(11) There shall be a minimum of 10 feet of separation maintained between all mobile homes on the site. Accessory structures may be located no closer than 10 feet to any mobile home or five feet to other accessory structures.

Findings: Through review of building permits, no structure will be allowed with less than ten feet of separation.

(12) All mobile home parks shall comply with WCC Chapter 24.04 (Recreational Vehicle Park and Subdivision Rules) regarding utility provision. Utility (wastewater, water, electricity) hook-ups shall be provided for each rentable or leasable space.

Findings: The site is serviced by Birch Bay Water and Sewer District. The district has indicated an adequate number of connections. The applicant will need to ensure no additional infrastructure or utility improvements are necessary. As required by the Whatcom County Health and Community Services (WCHCS), a Public Water Availability Form will be required at the time of building permit for each unit.

E. Health Code

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.

With regard to water supply and sewage disposal, the applicant has provided a Limited Availability of Water and Sewer Service letter for the project dated May 22, 2024 from Birch Bay Water and Sewer District. With regard to the pool facility, the proposed pool facility will require design approval from the Washington State Department of Health prior to building permit or tenant improvement application.

WCHCS recommends CUP approval with the following conditions:

Prior to Land, Fill and Grade (LFG) permit approval or any other land use permit approval or civil plan approval, the applicant must demonstrate they have satisfied any infrastructure improvements required by Birch Bay Water and Sewer District

A WCHCS approved Water Availability Form from Birch Bay Water and Sewer District for each space that does not currently have a manufactured or mobile home may be required at the time of building permit application.

Water Recreation

The proposed pool facility will require design approval from the Washington State Department of Health prior to building permit or tenant improvement application. A water recreation permit from the WCHCS will be required prior to final occupancy.

The Technical Review Committee has determined that, as conditioned, 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 and complies with WCC 22.05.026(3)(a) to (i).

Findings: Staff finds that subject to the attached recommended conditions, that the proposed multi-family development is consistent with the above referenced goals and policies of the Whatcom County Comprehensive Plan. The Technical Review Committee finds further that as discussed above, and subject to the requested conditions listed in Section VII of this report, that the proposed use will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan.

Policy 2A-1: Concentrate urban levels of development within designated urban growth areas.

Goal 3C: Create opportunity for a broad range of housing types and encourage mixed affordability.

Goal 3D: Encourage adequate housing types at every income level.

Goal 3H: Facilitate maintenance and rehabilitation of existing housing.

The proposal is consistent and supported by the Whatcom County Comprehensive Plan.

G. Development Agreement

WCC 2.11.200 Hearing Examiner – Duties and Powers

WCC 2.11.205 Recommended Decisions

In accordance with the provisions of WCC 22.05, the hearing examiner shall conduct an open record hearing and prepare a record thereof, and make recommendations to the county council for approval or disapproval of:

C. Development agreements, as authorized in Chapter 36.70B RCW;

1. A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to govern and vest development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning and chapter 36.70A RCW.
2. RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.
3. For the purposes of this section, "development standards" includes, but is not limited to:
 - a. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
 - b. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
 - c. Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW
 - d. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
 - e. Affordable housing;
 - f. Parks and open space preservation;
 - g. Phasing;
 - h. Review procedures and standards for implementing decisions;
 - i. A build-out or vesting period for applicable standards; and
 - j. Any other appropriate development requirement or procedure.

i. Development Standards

The applicant is proposing to deviate from the development standards for the following items:

Code Requirement	Standard	Requirement	Proposal
WCC 16.16.640	Wetland Buffer Reduction	75 or 50%	Full Reduction
WCC 20.22.252(1)	Density	139 units	163 units
WCC 20.80.510	Parking Stall Width	10' x 20'	9' x 18'

WCC 20.80.950(1)	Ownership	BSP/Condominium	Park Management
WCC 20.80.950(10)	Guest Parking	82 spaces	42 spaces
Development Standards (Drawing 505.D-1)	Minor Access Road	24' wide road	20' wide road
Development Standards (Drawing 508.D-3)	Driveway Spacing	300'	262'

Critical Areas (Chapter 16.16)

WCC 16.16.640 Wetland Buffer Reduction

The applicant is proposing to reduce the required wetland buffers by more than allowed through WCC 16.16.640 and to mitigate impacts offsite. The existing wetland buffer is highly degraded with the developed and disturbed nature of the site from the existing mobile home park and infrastructure. The site is located in the UGA, is zoned for higher density uses and has public water and sewer throughout the site.

The offsite mitigation site preliminarily identified through this process will benefit from wetland and buffer enhancements as identified in the Impacts Assessment and Mitigation Plan. The offsite mitigation will occur on the same wetland complex. As proposed, there will be no net loss of functions or values of the wetlands. The offsite wetland and buffer enhancement site will be protected in perpetuity and WCC 16.16.271 allows for alternative mitigation plans.

Zoning (Chapters 20.22 and 20.80)

WCC 20.22.252(1) Density Requirements

As noted in Section V.D.i, the density is six units per acre. The total density at six units per acre would be 139 units, however the original CUP approvals in 1977 and 1982 allowed 163 units. The URM zone at the time of the original approvals allowed seven units per acre (23 acres x 7 units/acre = 163 units).

Although most of the units have been removed, much of the infrastructure including water and sewer hookups, electricity and to some extent, gravel pads still exist. Allowing 163 units is consistent with the original approvals and is consistent with Whatcom County's goal of providing for affordable housing in an area with water and sewer infrastructure.

WCC 20.80.510 Parking Stall Width

At the time of a complete application, the parking stall width requirement was a minimum of 10' in width and 20' in length. If the parking area exceed six or more spaces, then 50% of all spaces may be reduced to 8' in width by 15' in length. Subsequently, Whatcom County Ordinance 2023-018 was passed by the Whatcom County Council to allow 9' x 18' parking stalls. The proposal was supported in part because it would result in a reduction in impervious surfaces as well as a recognition that 10' x 20' parking stalls are not consistent with most jurisdictions. PDS supports the reduction in parking stall width to allow more parking stalls with less impervious surface as well as to facilitate meeting the landscaping standards.

WCC 20.80.950(1) Mobile Home Park Ownership

In 2022, after the initial establishment of this mobile home park, Whatcom County Code was amended (Ord. 2022-013) to require mobile home parks be developed through a binding site plan or by condominium pursuant to Chapter 64.34 RCW (Condominium Act). The ownership of Ponderosa Estates Mobile Home Park is through a land owner/operator of the park who then leases spaces to individuals. The applicant's preference is to continue with this ownership model. PDS is supportive of the ownership model proposed by the applicant with recommended conditions to ensue proper maintenance and operations of the park.

WCC 20.80.950(10) Guest Parking

After the initial approval of the park, guest parking was added as a requirement for mobile home park development in Whatcom County Code. A minimum of one parking space for each two mobile home unit is required. The 1977 and 1982 approvals did not require guest parking. Given the already developed nature of the park and the desire to not increase impervious surface or impact additional critical areas, the applicant is requesting to deviate from the guest parking standards. Per WCC 20.80.950(10), the applicant would be required to provide for 81 guest parking spaces. Given the stormwater and critical area constraints onsite, the applicant has proposed 42 guest spaces. While this is a reduction in the required guest parking, PDS supports the reduction due to the existing nature of the site as well as the current development constraints.

Development Standards (Whatcom County Development Standards Chapter 5: Roads and Related Work)

Minor Access Road (Table 505-3, Drawing 505.D-1)

The applicant has proposed to utilize the existing private road for interior access of the units. Pursuant to Whatcom County Development Standards, commercial streets are required to be 24' and meet the standards in Drawing 505.D-1. The road is proposed to be a minimum of 20' wide. The road will be 26' wide for 40' at all fire hydrant locations. An additional 18" gravel spreader will be installed on each side of the access road to disperse stormwater run-off into the proposed Vegetated Filter Strip treatment BMP. The proposed road meets the minimum requirements for the Fire Marshal's Office and meets the administrative variance criteria in Chapter 5, Section 504.F.

Driveway Spacing

Table 508-1 Driveway Spacing from Intersection requires 300' between driveway approaches. The existing mobile home park has two entrances onto Birch Bay – Lynden Road and there is 262' between approaches. PWES has approved the existing approach locations.

i. Phasing/Vesting

In addition to the development standards deviations discussed above, the applicant has also proposed a phasing plan for full buildout. The proposed phasing plan is as follows:

Phase	New Units	Placement
1A	5	After Development Agreement Approval and Signature
1B	21	After the road and stormwater upgrades are complete
2	44	Mitigation site acquired
3	52	After offsite mitigation is completed

The applicant has been storing five manufactured homes in the recreational vehicle storage area for some time and is requesting placement of those units as soon as possible (Phase 1A). The units are vulnerable to damage while in storage and PDS recognizes that placement of these units as soon as possible is necessary. According to the phasing plan, these units could be placed after approval by Whatcom County Council, signature by the Whatcom County Executive and recording of the development agreement with the Whatcom County Auditor's office. Building permits will be required for each unit.

The second phase of development (Phase 1B) would include 21 units and would not occur until the road and stormwater improvements and landscaping have been installed. The current road improvements are not adequate to support additional units from a fire and emergency services perspective. Once the road has been widened, the fire hydrant widening and stormwater improvements have been made, the infrastructure will meet development standards for access for the number of units onsite. Phase 1A and 1B total 26 units.

Phase 2 development, placement of 44 units, would not occur until the offsite mitigation parcels are purchased by the applicant. Proof of ownership of the mitigation parcels will be required. The last phase will include the remaining 52 units, primarily on the exterior of the loop road (Phase 3). These units will be placed after the wetland mitigation has been installed and maintenance security provided. These units are located within the wetland buffer associated with the offsite wetlands and cannot be placed until the critical areas impacts have been mitigated.

Development of the site including road improvements, fire hydrant upgrades, stormwater, landscaping, critical areas mitigation, community amenities, lighting, guest parking spaces and bicycle parking shall be installed within five years of approval of the CUP and Development Agreement. After the infrastructure has been completed, mobile home units can be placed, removed, and replaced consistent with the site plan. There shall be no increases in impervious surface from replacement units except that an applicant may use the 175 square feet of additional impervious surface to increase the square footage of the replacement unit. In that circumstance, no accessory structure will be allowed.

4. The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

The Whatcom County Council has the authority to approve the development agreement.

VI. Recommendation

Pursuant to WCC 22.05.030, the review and determinations regarding two or more permit projects shall be consolidated to the highest process type. The CUP is a Type III permit, which shall be processed concurrently with the Development Agreement (a Type IV permit). The Whatcom County Council is the decision maker for all permits associated with this project.

The Technical Review Committee recommends that the Whatcom County Hearing Examiner recommend approval to the Whatcom County Council for the conditional use permit and development agreement for redevelopment of the Ponderosa Estates Mobile Home Park.

VII. SEPA Conditions

1. **Inadvertent Discovery of Archaeological Resources:** Should archaeological resources (e.g. shell midden, animal 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 (Stephanie Jolivette, Local Government Archaeologist 360-628-2755) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-961-7752; Tamela Smart, Deputy THPO 360-927- 2944) 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.
2. **Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055):** 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 must be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains must be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains must 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 (DAHP).
3. **Traffic:** The applicant shall pay the following monetary contributions to mitigate for the project's proportional impacts to the following intersections as determined by the approved Traffic Impact Analysis Report (TIAR) by Armen D. Hovanessian dated November 19, 2024:

- a. \$125,151.00 dollars for the intersection of Birch Bay Lynden Road at Blaine Road
- b. \$61,755.00 dollars for the intersection of Birch Bay Lynden Road at Kickerville Road

The payment is due prior to issuance of the first building permit. Whatcom County Public Works shall expend these funds on the specified intersection improvement projects planning, permitting, or construction within five years or return the money to applicant upon receipt of written request after the five-year period has elapsed. The five-year time period will begin upon Whatcom County Public Works receipt of the specified funds.

VII. Recommended Conditions of Approval

Public Works – Engineering Services

1. All development shall comply with Whatcom County Code and the Whatcom County Development Standards (WCDS).
2. The engineer shall submit a land fill and grade permit with the civil plans (construction drawings) and design documents for the required improvements as shown on the preliminary site plan including but not limited to access road, utilities, drainage facilities, stormwater Best Management Practices (BMPs), and other amenities for County review and approval.
3. The final civil plans and design documents shall be stamped by a Washington State licensed civil engineer. Final civil plans and design documents shall be approved by PWES prior to any land disturbance.
4. Following County approval of the construction drawings and prior to commencement of construction, a pre-construction conference with Whatcom County Public works will be required. Contact the Public Works project reviewer Tecla Levy at 360-778-6250 to set up a mutually agreed upon time for the conference to be held.
5. Changes to the approved drawings and specifications shall require a County-approved Design Revision in accordance with WCDS Chapter 205.B (4).
6. A final engineered stormwater design report demonstrating conformance with the requirements of the 2024 Department of Ecology Stormwater Management Manual for Western Washington (2024 SWMMWW), must be submitted with the LFG application and must be approved by PWES prior to any land disturbance. The report shall be prepared by a civil engineer licensed in the state of Washington.
7. The Construction Stormwater Pollution Prevention Plan (CSWPPP) and Temporary Erosion and Sediment Control (TESC) plans shall be submitted with the LFG application and approved prior to any clearing or grading on the site. A Sediment Control Lead (CESCL) is required to determine which BMPs are necessary as site

conditions change during construction. The contractor or CESCL shall add any BMP specifications that have not already been included in the CSWPPP.

8. The project is subject to NPDES general construction permit by Washington Department of Ecology (DOE). Submit a copy of the CSWPPP approved by DOE with the LFG application.
9. Certified record drawings for all new roads and stormwater systems shall be submitted to PWES for review and acceptance upon completion of construction and prior to approval of the next phase. Record drawings shall include the Record Drawing Certification statement as per WCDS Chapter 5. A final submitted record drawing package shall also include copies of all required materials testing results and construction observation/inspection reports.
10. A designated project engineer shall provide certified construction compliance assurance statement per WCDS Ch. 2.B(8) following completion of approved work and prior to requesting PWES final inspection.
11. The applicant shall maintain the intersection sight triangle per WCDS, chapter 5, section 505.H for the private access road and Birch Bay Lynden Road intersections. The intersection sight triangles shall be clear of obstructions (including but not limited to vegetation, cut banks, signs, landscaping, fencing, parking, buildings, and other improvements) that might block a driver's view of potentially conflicting vehicles.
12. The applicant shall post a Stormwater Maintenance Security for on-site stormwater system improvements in accordance WCDS Chapter 2 Section 205.B(11). The security value shall be based on an accepted constructed cost estimate for all stormwater conveyance, treatment, and flow control system components and must be prepared by the project engineer. The security shall be for the amount of 10% of the engineer's construction cost estimate or \$5,000, whichever is greater. The security shall be in effect for two (2) years from the date of provisional acceptance of the completed development.
13. A Declaration of Covenant and Grant of Easement (DCGE) for the maintenance and operations of stormwater facilities shall be recorded. The design details, figures, operation and maintenance instructions for each on site stormwater management facility shall be attached and recorded as an Exhibit supplementing the recorded declaration of covenant grant of easement document.
14. Applicant shall obtain an Encroachment Permit for any and all work in the County right-of-way, including any temporary work and construction/modification of any site access feature(s).
15. Traffic mitigation fees shall be paid prior to issuance of the first building permit for each phase and shall include all fees associated with the number of units in the phase.

Building

16. Structures shall comply with the Building code setback requirements with a minimum 10' wall-to-wall or 6' eave-to-eave. Structures or eave overhangs within these measurements shall be constructed pursuant to Section R302 Fire Resistant Construction Section R302.1 Exterior Walls. Construction, projections, openings and penetrations of exterior walls of dwellings and accessory buildings shall comply with table R302(1).
17. Building permits are required for all non-exempt work Per Whatcom County Chapter 15.04 building codes, section 105.2 (work exempt from permit).
18. Manufactured homes requiring a building permit will be reviewed at the time of application. The applicant must show adjacent units on the site plan at time of building permit application.

Fire Marshal's Office

19. Access roads shall be a minimum of 20 feet wide with 2' foot shoulders on each side per Whatcom County Road Standards. The access road shall be 26 feet wide by 40 feet long centered on the fire hydrant at those locations. Hydrant access shall remain clear at all times and shall be marked. Road improvements shall occur prior to Phase 1B.
20. Speed bumps shall be removed to allow timely response of emergency vehicle. Any calming devices shall meet Whatcom County Engineering Development Standards Chapter 5 Section R for Traffic Calming Devices. All traffic calming devices shall be designed by a professional engineer and approved by the County Engineer. Traffic calming shall occur prior to Phase 1B if proposed by the applicant.
21. Fire hydrants are required every 500 feet along access roads. Separate fire permit is required for installation of underground fire lines and hydrant. Fire flow is required to be 500 gallons per minute at 20 psi for one-hour. Road improvements shall occur prior to Phase 1B.
22. Fire permit is required for electronic gates if installed and shall have an optical sensor to allow emergency vehicle access.
23. Common area buildings shall be reviewed at time of submittal for compliance with the current adopted fire code that time.
24. Any overlooked hazardous condition and/or violation of applicable codes does not imply approval of such condition or violation.

Critical Areas

25. Prior to the issuance of any permits for work authorized in Phase 1B, applicant shall set up an assignment of savings (AOS) to be established in accordance with WCC 16.16.260(D)(1)(a-g). The amount is listed in the preliminarily approved mitigation plan. The AOS shall be documented on a form provided by Whatcom County.
26. A deed restriction (in the form of a conservation easement) shall be recorded with the Whatcom County Auditor for all areas of the site considered wetland buffer not associated with a building pad or the 10' setback around said pads. The conservation easement mapping shall indicate all areas of the property considered critical area or buffer shall be considered conservation easement. The applicant shall use the PDS supplied conservation easement document and prepare a map for PDS review. After obtaining staff approval (via staff review and signage of document), the easement document shall be recorded with the Whatcom County Auditor. This shall be completed prior to Phase 1B.
27. The mitigation proposed relies upon an offsite mitigation proposal to take place on property not currently owned by the applicant. Prior to authorizing Phase 2, the applicant shall provide the ownership documents or contractual documents that satisfactorily dictate that the applicant can fulfill the full obligation of the mitigation proposal for all offsite mitigation parcels either identified in the Impact Assessment and Mitigation Plan (January 2025) or on different property.
28. Prior to authorizing Phase 3, the applicant must verify that the Impact Assessment and Mitigation Plan (January 2025) prepared by Northwest Ecological Services is the final document for submittal for the offsite mitigation proposal or updated plan if applicable. Final plan shall be submitted to the Washington State Department of Ecology for review; technical guidance garnered from said review may be incorporated into conditions of approval for the mitigation plan at PDS discretion.
29. Site review to include that of wetland boundary demarcation on offsite mitigation parcels shall be conducted under separate Land Fill & Grade (LFG) permit application that will account for all associated mitigation work to take place. A mitigation case will be opened with the LFG for as-built and monitoring of mitigation. Applicable fees will be levied at that time.
30. A deed restriction (in the form of a conservation easement) shall be recorded with the Whatcom County Auditor for each of the three separate parcels that comprise the mitigation schema, or other parcels to meet offsite mitigation requirements. The conservation easement mapping shall indicate all areas of the property considered critical area or buffer shall be considered conservation easement. The applicant shall use Department supplied conservation easement document and prepare a map for PDS review. After obtaining staff approval (via staff review and signage of document), the easement document shall be recorded with the Whatcom County Auditor.

31. If utilizing the identified parcels on Blaine Road and unless a Covenant to Bind or similar mechanism is used to merge parcels, tax parcel APN 4001194751110000 shall have recorded with the Whatcom County Auditor an Environmental Covenant with a form provided by Whatcom County that states the parcel shall be utilized for no use other than environmental conservation.
32. All property taxes for the tax year that the conservation easements are filed shall be paid in full for all offsite mitigation parcels.
33. The applicant shall provide and PDS shall approve split rail cedar fencing, signage or other protective measures along the wetland buffer edge on mitigation parcels as approved by PDS Natural Resources staff prior to Phase 3 approval.
34. Native Growth Protection Area signs (as approved by Whatcom County PDS) shall be placed upon the fence at edge of conservation easement area on mitigation parcels, unless deemed not applicable by PDS.
35. Prior to issuance of Phase 3 permits, the mitigation must be installed. An as-built plan (hard copy) shall be submitted to the County for approval within 30 days of installation. The as-built shall include photographs of the mitigation area, nursery plant receipts, a site plan showing the location of the mitigation, and a brief narrative of the installation. It shall be approved in conjunction with an on-site as-built inspection per WCC 16.16.260(C)(1-3).
36. Following the as-built report approval, a mitigation report will be required for a period of five years on the 1st, 2nd, 3rd and 5 7 an 10th year after installation showing that mitigation is meeting its approved criteria. Funds will be released from the assignment of savings with the approval of each monitoring report.

Planning and Zoning

37. The use and location on the site as approved by this use permit, as shown on the revised site plan received February 24, 2025 and shall not be amended or changed in any way except to comply with regulations without review from Staff and further approval of the Whatcom County Council.
38. Placement of units onsite and infrastructure improvements shall occur consistent with the approved revised Phasing Plan dated February 24, 2025.
39. The applicant shall designate a minimum of 17 short-term bicycle spaces within the community facility area. The bicycle parking racks/spaces shall be included within the final landscape plan and shall be installed at the same time as the landscaping is installed.
40. The applicant shall submit a final landscaping plan with the LFG application. The landscape plan shall be consistent with landscaping requirements pursuant to WCC

20.80.300. Said plan shall specify species name, size, and location, open space landscaping, buffer areas. Landscaping shall be installed prior to Phase 2 development.

41. Provided that a Stormwater Report meeting the requirements of Whatcom County Development Standards, Chapter 2: Stormwater Management and the 2024 Washington State Department of Ecology (DOE) Stormwater Management Manual for Western Washington (SWMMWW), each mobile home unit is entitled up to 175 sq. ft. of maximum accessory structures, defined as small sheds, carports, porch coverings over doorways, etc. Such accessory structures cannot be located in setbacks, ~~critical areas~~, designated parking areas, etc. If accessory structures are located in critical areas buffers, the final mitigation plan must demonstrate that impact mitigation is provided. Accessory structures shall meet building and fire code separation requirements to other structures that are applicable. This Stormwater Report shall be submitted with the LFG application.
42. The applicant shall maintain common facilities and operate recreational facilities in perpetuity.
43. Each rental or lease space shall be numbered on the site plan and the number shall be prominently displayed on the site.
44. The applicant has proposed a storage area in the southwest portion of the site. The storage area will be fenced and has existing vegetative screening on the western and southern boundary. The existing screening will be maintained and additional screening of the fence area will be required on the revised landscape plan.
45. No mobile home, structure or outdoor storage shall be located closer than 25 feet to the perimeter of the site.
46. The buffer shall be maintained in perpetuity.
47. The current development appears to have fencing on the west, east and north sides. The applicant shall replace and maintain all fencing as necessary and maintain in perpetuity.
48. The applicant shall obtain an LFG for any proposed site development work (unless associated with a building permit application) as required by Whatcom County regulations. The LFG shall be approved prior to Phase 1B.
49. A minimum of 40 percent of the site shall be maintained in open space pursuant to WCC 20.22.200. The total roof coverage of all structures on the project shall not exceed 35% as required by WCC 20.22.450. The applicant shall verify through appropriate plans and calculation that the total of existing and proposed roof areas shall not exceed this 35% limit. For the existing property acreage of 23.37 acres, total lot coverage cannot exceed 8.18 acres.

50. A minimum of 42 guest parking spaces shall be shown on the site plan submitted as part of the LFG application. Parking stalls may be reduced to 9' x 18' for standard spaces and 8' x 15' for compact spaces.
51. All guest parking spaces shall be striped as required by WCC 20.80.575.
52. Pursuant to WCC 20.80.620, no development shall exceed the maximum environmental noise level established by WAC 173-60.
53. Any parking area which is intended to be used primarily during non-daylight hours shall continue to be properly illuminated to avoid accidents. Any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property, the public road and the wetlands and buffers.
54. Lighting shall be designed to avoid excessive glare onto neighboring properties, and to not create safety hazards or unreasonable interference with adjacent uses. An outdoor lighting plan shall be submitted with the landscape plan at LFG application. The lighting shall be approved and installed with the road and stormwater improvements.
55. Two monument signs as shown on the landscape and signage plan dated January 23, 2025 are approved as part of this conditional use permit and development agreement. The signs will require a building permit and shall meet the sight triangle requirements per WCDS, chapter 5, section 505.H. The engineer shall provide an exhibit ensuring the signs will not meet the sight triangle requirements. Additional future signage shall be in accordance with WCC 20.80.400 and will require a new conditional use permit and a separate building permit.
56. Development of the site including road improvements, fire hydrant upgrades, stormwater, landscaping, critical areas mitigation, community amenities, lighting, guest parking spaces and bicycle parking shall be installed within five years of recording of the development agreement. After the infrastructure has been completed, mobile home units can be placed, removed, and replaced consistent with the site plan. Replacement units can be increased in size but are limited to no more than 175 square feet which will be a commensurate reduction in the allowance for accessory structures associated with any unit.

Health and Community Services

57. Prior to Land, Fill and Grade (LFG) permit approval or any other land use permit approval or civil plan approval, the applicant must demonstrate they have satisfied any infrastructure improvements required by Birch Bay Water and Sewer District

58. A WCHCS approved Water Availability Form from Birch Bay Water and Sewer District for each space that does not currently have a manufactured or mobile home may be required at the time of building permit application.
59. The proposed pool facility will require design approval from the Washington State Department of Health prior to building permit or tenant improvement application. A water recreation permit from the WCHCS will be required prior to final occupancy.

Prepared by:

Amy Keenan, AICP, Special Projects Manager, for the Technical Review Committee

Return Document to:
Whatcom County Council Office
311 Grand Avenue; Suite 105
Bellingham, WA 98225

Exhibit B

DOCUMENT TITLE:

Development Agreement between Whatcom County and Life Front Communities

Reference number(s) of documents assigned or released:

Resolution Number:

Grantor(s) (land name, first name and initials):

Whatcom County

Grantee:

Ben Kilo, President, Life Front Communities

Abbreviated Legal Description:

PTN of SW1/4 of the SE1/4 of S19, T40N, R01E

Parcel Numbers:

400199 309063

DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into this ____ day of ____, 2025 (the "Effective Date") by and between Life Front Communities, a Washington corporation ("Developer"), or its assignee, and Whatcom County, a Washington municipal corporation ("County"). Developer and the County are each a "Party" and collectively the "Parties" to this Agreement.

RECITALS

A. The Washington State Legislature has authorized the execution of development agreements between a local government and an entity having ownership or control of real property within its jurisdiction, pursuant to RCW 36.70B.170 through 36.70B.210 ("Development Agreement Statute"). This Agreement is authorized pursuant to the Development Agreement Statute and Chapter 2.11 of the Whatcom County Code ("WCC").

B. Developer owns a 23.37- acre parcel ("Property") located at 4672 Birch Bay Lynden Road in Whatcom County (Assessor's Parcel Number (APN) 400119309630000), legally described on Exhibit A which is attached hereto and incorporated herein by reference. The Property is zoned Urban Residential (URM6) and developed with the Ponderosa Estates Mobile Home Park ("Ponderosa Estates," or "Park") which was approved by the County via a Conditional Use Permit ("CUP") issued in 1977, which was subsequently modified in 1983.

C. The 1983 CUP modification approved 164 mobile home units and associated amenities, with a 25' perimeter buffer. All 164 home sites were established, and the Park has been continuously occupied since 1983, but it is not currently at full capacity.

D. Developer recently acquired the Park and desires to bring it back to full occupancy, with upgraded site improvements and reestablishment of 122 mobile home units, resulting in a total of 163 mobile home units (the "Project").

E. In February 2023, Developer applied to the County for a new CUP approval, per direction from County staff. Subsequently, the Developer and County engaged in extensive discussion regarding whether this should be processed as a minor modification to the approved CUP, or a new CUP. Ultimately, the Developer agreed to continue with the new CUP approval, contingent on the County's agreement to allow wetland buffer modifications necessary to allow placement of units in the perimeter of the site through a development agreement.

F. In August 2024, the Developer applied to the County for a Development Agreement to modify critical areas mitigation requirements, allow additional buffer reductions, development standards and phasing to recognize the existing nature of the development, the impacts to regulated critical areas and to allow full buildout of the mobile home park consistent with the historical use onsite, the Birch Bay Urban Growth Area and the Whatcom County Comprehensive Plan.

G. Redevelopment of the Property will be a substantial benefit to the County through implementation of the vision of the County's Comprehensive Plan and zoning, diversification of the County's housing stock, increasing the tax base, and providing new affordable housing options for County residents. However, redevelopment of the Property entails significant cost. This Agreement is

intended to provide predictability during the planning, entitlement and redevelopment process, benefitting both Parties in supporting the timely and cost-efficient delivery of housing to the County.

H. Environmental impacts of the Agreement were identified, considered and mitigation measures proposed through the provisions of this Agreement. The County issued a Mitigated Determination of Non-Significance on December 15, 2024 with conditions. No appeals were filed.

I. Full redevelopment of the Property will promote the goals and policies of the Comprehensive Plan.

J. By this Agreement, the Parties intend to set forth their mutual agreement and understandings as they relate to the development of the Property.

NOW THEREFORE, in consideration of the mutual benefits and agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Definitions. Each term identified in this Section shall have the specific meaning identified in this Section. Each term defined elsewhere in this Agreement shall have the specific meaning identified elsewhere in this Agreement. Undefined terms shall have their common and ordinary meanings.

1.1. "County Council" means the Whatcom County Council.

1.2. "Development Regulations" means those sections of the Whatcom County Code and any implementing policies, regulations, procedures or guidelines addressing the zoning, building and site design, utilities, environmental review (including SEPA procedures and substantive authority), transportation concurrency and any other elements that govern the development of real property within the County. A term defined in the Development Regulations shall have the meaning assigned to it within the Development Regulations.

1.3. "WCC" means the Whatcom County Code.

2. Approval of Conditional Use Permit (CUP) Site Plan. Developer will redevelop the Property as depicted in the CUP Site Plan dated February 24, 2025, which will establish 122 new mobile home units, for a total of 163. The CUP Site Plan is attached as Exhibit and incorporated herein by reference. This Agreement approves the redevelopment as depicted in the CUP Site Plan, subject to the provisions below and the conditions of approval for the CUP. Minor revisions subject to the criteria WCC 22.05.026(5) may be considered and subject to Hearing Examiner approval. Any other revision shall be considered by the County Council.

3. Phasing Plan. Recognizing the existing development onsite, the immediate need to place the units in storage onsite and the necessary infrastructure and critical areas mitigation requirements a phasing plan has been proposed by the applicant. Phase 1A development allows placement of five units as shown on the Home Site Phasing Plan dated February 24, 2025. Phase 1 units can be placed after recording of this development agreement. Phase 1B development allow placement of 21 units after the road, stormwater, landscaping, and associated improvements are complete. Phase 2 will allow 44 units after the critical areas mitigation site has been acquired and finally, Phase 3 development will include

the remaining 52 units after offsite mitigation has been completed. The shall demonstrate completion of each phase and the director shall issue an approval of each phase.

4. Modified Wetland Buffers. Developer has submitted a Critical Areas Assessment that documents current wetland and buffer delineations on the Property. The County will authorize placement of mobile home units in the locations depicted on the CUP Site Plan. The County will support critical areas buffer reductions necessary to allow placement of units in those locations. To the extent placement of units occurs in areas now defined as critical area buffer, Developer's critical areas consultant will identify and quantify impacts to buffers and prepare a mitigation plan to account for those impacts.

4.1 Impact Assessment. The Parties agree that the existing road on the Property constitutes an interrupted buffer, such that the buffer does not extend beyond the road. The Parties also agree that regardless of the amount of buffer reduction, the County will consider the impact a "buffer impact" only for mitigation purposes.

4.2 Mitigation Implementation. Impact mitigation shall be quantified and implemented consistent with an approved Mitigation Plan. Mitigation will occur off-site. The Parties acknowledge that on-site mitigation is not an option.

4.3 Mitigation Timing. An offsite mitigation area has been preliminarily identified located at APN's 400119507102, 40011947511, 400119507123. A draft Impacts Assessment and Mitigation Plan, prepared by Northwest Ecological Services, LLC (January 2025) has been prepared and conceptually approved. A final Impacts Assessment and Mitigation Plan will be required to ensure no net loss of critical areas functions and values. The final plan must be approved by PDS prior to Phase 3 development as identified in the phasing plan. If the offsite mitigation site identified above is not purchased, the applicant shall identify, purchase and complete critical areas mitigation consistent with the phasing timeline identified in Section 3.

4.4 Mitigation Plan. The final mitigation plan shall be submitted to the Washington State Department of Ecology for review pursuant to WCC 16.16.261(C). Technical guidance from Ecology may be incorporated into the final mitigation plan at PDS discretion.

5. Stormwater. Redevelopment of the Property shall be subject to the 2019 Stormwater Management Manual for Western Washington, subject to the Parties' agreement that treatment is required only for new pollution generating impervious surfaces. Treatment will only be required for areas where the project proposes new vehicle traffic which includes new guest parking stalls and roadway widening at fire hydrant locations. Stormwater analysis shall be based on the "wetland protection standard" identified in the DOE Manual.

6. Other Development Regulation Modifications. As a component of this Agreement, the County Council approves the following modifications from County Development Regulations for this Project:

6.1 Guest Parking. The County will authorize the proposed 42 parking spaces for the 163 home sites, which will include a guest parking space for every four units. This is a deviation from WCC 20.80.950(1), which requires one guest space per two units. The proposed guest parking is a substantial increase from current conditions, is sufficient to meet demand, as outlined in the Project Narrative supporting the CUP application and recognizes the need to reduce impervious surface and critical areas impacts Binding park regulations prohibit street parking by guests.

6.2 Parking Stall Width and Depth. The County will authorize the proposed parking for each unit and the guest parking to be 9' x 18' for standard spaces and 8' x 15' for compact spaces. The parking stall width and depth reductions were approved by the Whatcom County Council as part of Ordinance 2023-018 and are supported in this application to the reduction of impervious surface, facilitate additional guest parking spaces and meet the landscape requirements for this development.

6.3 Ownership. The current mobile home park does not have a recorded binding site plan and there are no plans for a condominium which is required by WCC 20.80.950(1). The owner will continue to maintain common facilities, landscaping and compliance with applicable standards. A copy of park regulations must be submitted to and kept on file by Whatcom County.

6.4 Density. Current density allows 139 units (six units per acre). The mobile home park as originally approved was allowed 163 units (seven units per acre). The requested 163 units per acre which consistent with the original approvals and meets Whatcom County's goal of providing for affordable housing in areas with existing water and sewer infrastructure.

6.5 Existing Access Road. The County agrees the existing 20' access road (with 18" gravel spreader per DOE vegetated filter strip detail on each side of the roadway) is sufficient to accommodate the redevelopment and will allow it to remain, subject to Developer's agreement to widen the roadway to 26' at fire hydrant locations for 20 feet of roadway each side of the hydrant for a total of 40 feet to provide for emergency vehicle parking and to meet Whatcom County Fire Marshal requirements. The existing driveway spacing of 262' requires a deviation from Table 508-3, which requires a minimum of 300.' This is an existing nonconformity that is allowed to remain.

7. Vesting. Developer is entitled to develop the Project under the Development Regulations and land use controls in effect as of the Effective Date of this Agreement ("Vested Code Provisions"). Development of the site including road improvements, fire hydrant upgrades, stormwater, landscaping, critical areas mitigation, community amenities, lighting, guest parking spaces and bicycle parking shall be installed within five years of approval and recording of the Development Agreement. After the infrastructure has been completed, mobile home units can be placed, removed, and replaced consistent with the site plan. If a phase is not completed, the approvals associated with this development agreement shall not apply and a new application is required.

7.1 On-Site Infrastructure and Landscaping. Once this Agreement is recorded and the CUP are approved, the County may immediately issue building permits authorizing placement of the five individual units, subject to the mitigation timing set forth in Section 3. The County understands that Developer has suffered significant financial harm related to its inability to place purchased mobile homes on existing pads.

7.2 Unpermitted Structures. Developer will request that unit owners remove or obtain permits for any unpermitted structures (i.e., sheds, enclosures, canopies) that require a building permit under County Code. When any site containing unpermitted structures is vacated and/or reoccupied, Developer will ensure that such unpermitted structures are removed before the site is reoccupied. Building permits may be withheld if, in the opinion of the Fire Marshal, the existence of

an unpermitted structure on the site results in insufficient clearances and poses a threat to public safety. Adjoining units will be required to be shown on building permits to ensure adequate separation.

8. Agreement to Run with the Land. For the term of this Agreement, the benefits and obligations of this Agreement shall run with the land and continue following the leasing, or transfer of ownership to Developer's successors and assigns.

9. Construction of Documents. In the event there are any conflicts or ambiguities between the terms of the body of this Agreement and the terms in any of the Exhibits, the terms of the body of this Agreement shall control.

10. Recitals. The Recitals are incorporated herein as material terms of this Agreement.

11. Indemnification. Except as otherwise specifically provided elsewhere in this Agreement and any Exhibits hereto, each Party shall protect, defend, indemnify and hold harmless the other Party and their officers, agents, and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, which are caused by or result from any negligent act or omission of the Party's own officers, agents, and employees in performing services pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against a Party, the Party whose sole negligent actions or omissions gave rise to the claim shall defend the other Party at the indemnifying Party's sole cost and expense; and if final judgment be rendered against the other Party and its officers, agents, and employees or be rendered jointly against the Parties and their respective officers, agents, and employees, the Party whose sole negligent actions or omissions gave rise to the claim shall satisfy the same; provided that, in the event of concurrent negligence, each Party shall indemnify and hold the other Party harmless only to the extent of the indemnifying Party's negligence. The indemnification to the County hereunder shall be for the benefit of the County as an entity, and not for members of the general public.

12. Agreement Consistency with RCW 82.02.020. The Developer agrees that the improvements, mitigation payments and dedications established by this Agreement shall be consistent with the requirements of RCW 82.02.020 and mitigate the Project's direct impacts.

13. Recording. This Agreement shall be recorded by Developer with the Whatcom County Auditor's Office.

14. Binding Effect; Assignability. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns. Developer shall have the right to assign or transfer its rights, subject to approval of the Designated Official which shall not be unreasonably withheld, in whole or in part, under this Agreement. Developer shall provide County with written notice of any transfer or assignment at least thirty (30) days prior to the closing of any transaction.

15. Interpretation. This Agreement has been reviewed and revised by legal counsel for both Parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Agreement. Nothing herein shall be construed as a waiver of the County's constitutional and statutory powers. Nothing herein shall be construed or implied

that the County is contracting away its constitutional and statutory powers, except as otherwise authorized by law.

16. Authority. Each signatory to this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the Party for which he or she is signing, and that he or she will defend and hold harmless the other Parties and signatories from any claim that he or she was not fully authorized to execute this Agreement on behalf of the person or entity for whom he or she signed. Upon proper execution and delivery, this Agreement will have been duly entered into by the Parties, will constitute as against each Party a valid, legal and binding obligation that shall run with the land, and will be enforceable against each Party in accordance with the terms herein.

17. Delays. If either Party is delayed in the performance of its obligations in this Agreement due to Force Majeure, then performance of such obligation shall be excused for the period of delay. Force Majeure means extraordinary natural events or conditions such as war, riot, pandemic (including but not limited to COVID-19 or its variants) or other causes beyond the reasonable control of the Developer, but does not include labor disputes. The County's or Developer's inability to fund, or decision not to fund, any of its obligations shall not be an acceptable reason for delay.

18. Notices. All notices, requests, demands, and other communications called for or contemplated by this Agreement shall be in writing, and shall be duly given by mailing the same by certified mail, return receipt requested; or by delivering the same by hand, to the following addresses, or to such other addresses as the Parties may designate by written notice in the manner aforesaid:

Owner: Life Front Communities
Attn: Ben Kilo, President, Life Front Communities
Phone: 971-201-2462
Email: benkilo@lifefrontcommunities.com

And to its Attorney: McCullough Hill PLLC
Attn: Courtney Flora
701 5th Avenue, Suite 6600
Seattle, WA 98104
Phone: 206-812-3376
Email: cflora@mhseattle.com

Whatcom County: Whatcom County Planning and Development Services
Attn: Mark Personius, Director
5280 Northwest Road
Bellingham WA 98226
Phone: 360 778-5943
Email: mpersoni@whatcomcounty.us

And to its Attorney: Deputy Prosecuting Attorney Attn:
Attn: Kellen Kooistra

311 Grand Ave., Suite 201
Bellingham, WA 98225
Phone: 360 778-5710
Email: kkooistr@whatcomcounty.us

20. Dispute Resolution. It is the Parties' intent to work cooperatively and to resolve disputes in an efficient and cost-effective manner. All disputes arising out of or relating to this Agreement shall be resolved as follows:

20.1. Settlement Meeting. If any dispute arises between the parties relating to this Agreement, then the parties shall meet and seek to resolve the dispute, in good faith, within ten (10) days after a Party's request for such a meeting. The County shall send the Designated Official and persons with information relating to the dispute, and Developer shall send a representative and any consultant or other person with technical information or expertise related to the dispute.

20.2 Mediation. If the Parties cannot resolve the issue within ten (10) days then they shall mediate the matter using a mediator from Judicial Dispute Resolution, LLC or if that entity fails or declines to serve, such other similar service or organization as agreed by the parties, or as appointed by the court if the parties cannot agree (collectively "JDR"), within seven (7) days of their failure to agree pursuant to Section 29.1. The Parties shall evenly split any fees charged by JDR, regardless of the outcome of the mediation. Each Party shall bear its own attorneys' fees in connection with the mediation.

20.3. Arbitration. If the Parties have still not resolved the matter, then and only then shall arbitration be permitted. "Arbitration" for purposes of this Agreement shall be limited exclusively to arbitration by one arbitrator, administered by JDR in accordance with the rules of practice and procedure from the American Association of Arbitration. The arbitrator shall be someone other than the mediator who served under Section 29.2. The arbitrator shall establish the procedures and allow presentation of written and oral information but shall render its final decision within thirty (30) days after the matter is referred to arbitration. The Parties shall pay equally the cost of the arbitration. Pursuant to Section 32, the prevailing Party (or the substantially prevailing Party, if no one Party prevails entirely) shall be entitled to an award of reasonable attorneys' and expert witness fees and costs. The arbitration proceedings shall be binding, conclusive and, except as provided below, not appealable, and any Party to any award rendered in any such arbitration proceeding shall be entitled to have judgment entered thereon. In no event, however, shall mediation or arbitration be available pursuant to this Section after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

21. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. To extent permitted, venue for any judicial action arising out of or relating to this Agreement shall lie in Whatcom County Superior Court.

22. Specific Performance. The Parties specifically agree that damages are not an adequate remedy for breach of this Agreement and that the Parties are entitled to compel specific performance of all material terms of this Agreement by any Party in default hereof. All terms and provisions of this Agreement are material.

23. Attorneys' Fees. In any arbitration or judicial action to enforce or determine a Party's rights under this Agreement, the prevailing Party (or the substantially prevailing Party, if no one Party prevails entirely) shall be entitled to reasonable attorneys' fees, expert witness fees, and costs, including fees and costs incurred in the appeal of any ruling of a lower court.

24. No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

25. Severability. This Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

26. Cooperation in Execution of Documents. The Parties agree to properly and promptly execute and deliver any and all additional documents that may be necessary to render this Agreement practically effective. This Paragraph shall not require the execution of any document that expands, alters or in any way changes the terms of this Agreement.

27. Exhibits. This Agreement includes the following exhibits which are incorporated by reference herein:

Exhibit A - Legal Description of Property

Exhibit B – Conditional Use Permit Site Plan

Exhibit C – Phasing Plan

28. Full Understanding. The Parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel and any other advisors with respect thereto; and that they are executing this Agreement after sufficient review and understanding of its contents.

29. No Joint Venture. This Agreement is not intended to and nothing in this Agreement shall create any partnership, joint venture or other arrangement between the Parties.

30. Final and Complete Agreement. This Agreement is integrated and constitutes the final and complete expression of the Parties on all subjects relating to the development of the Project. This Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all Parties. This Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects discussed herein, without limitation. No Party is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Agreement and the Exhibits hereto.

31. Covenant of Good Faith and Cooperation. The Parties agree to take further actions and execute further documents, either jointly or within their respective power and authority, to implement the intent of this Agreement. Each Party covenants to use its best efforts and work cooperatively in order to secure the benefits and rights under this Agreement. The Parties shall not unreasonably withhold approvals or consents provided for in this Agreement.

In WITNESS HEREOF, the Applicant and the County have caused this Agreement to be executed in their names and to be attested by their duly authorized officer(s) this _____ day of _____, 2025.

Applicant

By: _____

Ben Kilo, President, Life Front Communities

Date: _____

Whatcom County

By: _____

Satpal Sidhu, County Executive

Date: _____