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3 **BEFORE THE HEARING EXAMINER FOR THE TOWN OF**  
4 **LA CONNER, WASHINGTON**

5 David Lowell, Hearing Examiner  
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8 RE: Atkinson Development / KSA Investments CUP 9 Conditional Use Permit 10 Case No.: LU21-56CU	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b>
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12 **DECISION**

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14 The Conditional Use Permit is approved, subject to the conditions listed on pages 15 to  
15 18 of this Decision.

16 **INTRODUCTION**

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18 The subject project (hereinafter “project”) is the construction of a three-story building  
19 containing 14 multi-family dwelling units on the 2<sup>nd</sup> and 3<sup>rd</sup> floors and six lodging (i.e.  
20 hotel) rooms on the first floor of a new structure at 306 Center Street (Skagit County  
21 Assessor’s Parcel Number: P74143), La Conner, WA (hereinafter “site”).

22 **EXHIBITS**

23  
24 Exhibits Submitted by the Town of La Conner

- 25 A. Staff Report from Michael Davolio to the Hearing Examiner dated March 10,  
26 2022 that includes the below-listed items:
- 27 1: Application
  - 28 2: SEPA Checklist
  - 3.: Public Notices

- 1 4. Department of Ecology Site Information
- 2 5. Geotechnical Evaluation
- 3 6. Phase II Environmental Site Assessment: Subsurface Investigation
- 4 Report
- 5 7. Cultural Resources Survey
- 6 8. Public Comments

- 7 B. Memo from Michael Davolio to the Hearing Examiner dated April 6, 2022 containing
- 8 additional points of reference
- 9 C. Meeting minutes from the Town of La Conner's Planning Commission meeting held
- 10 on March 15, 2022 and includes a list of those who spoke at the Commission's
- 11 hearing
- 12 D. Letter dated April 2, 2020 [sic] from Maggie Wilder
- 13 E. Letter dated April 1, 2022 from Georgia Johnson
- 14 F. Letter dated April 1, 2022 from Gary and Heike Nelson
- 15 G. Letter dated April 2, 2022 from Brandon Atkinson/KSA Investments
- 16 H. Email dated April 4, 2022 from Don Pendleton and Kathy Shiner
- 17 I. Letter dated April 4, 2022 from Linda Talman
- 18 J. Email dated April 6, 2022 from Linda Talman

## 19 **ORAL TESTIMONY**

20 Witnesses – present at the March 31, 2022 virtual hearing

- 21 ○ Michael Davolio, (Planning Director for the Town of La Conner)
- 22 ○ Brandon Atkinson, (Applicant)
- 23 ○ Katie Atkinson (Applicant):
- 24 ○ Maggie Wilder (party of record)
- 25 ○ Heiki Nelson (party of record)
- 26 ○ Debra Aldrich (party of record)
- 27 ○ Gary Nelson (party of record)
- 28 ○ Linda Talman (party of record)
- Charlie Morgan (Applicant's Architect)
- Frank Liddell (party of record)

- Roger Vallo (Applicant’s representative)

Following is a summary of the oral testimony heard by the Examiner. A complete recording of the hearing is on file with the Town of LaConner and is with this reference made part of this decision.

The Examiner made brief introductory remarks noting the proceeding was being recorded and the Staff Report (Exhibit A) with its associated Attachments identified as 1 - 8 were being admitted into the record. The Examiner then swore in the Town’s representative Michael Davolio, their Planning Director.

**Michael Davolio** (Town’s Planning Director). Mr. Davolio provided an overview of his staff report. Mr. Davolio stated the preliminary SEPA determination issued on November 6, 2021 was properly posted on the site, published, and mailed to property owners within 300 feet of the project site. Mr. Davolio explained that following the issuance of the preliminary SEPA determination he was made aware that an abutting property was historically a gas station that had been investigated for potential contamination by the Department of Ecology (DOE) and the site and this abutting property were under common ownership when the referenced DOE investigation occurred. Since the SEPA checklist submitted by the applicant had no indication of this prior neighboring use, or of any existing soil or environmental conditions that may have an impact on the proposal, Mr. Davolio notified the applicant that their application was deemed incomplete until appropriate studies were completed to determine existing soil conditions. The Applicant completed these studies and submitted them to the Town before the final SEPA determination for this project was issued.

**Brandon Atkinson** (the Applicant): Mr. Atkinson outlined when they purchased the property and their goals for it. He apologized about the controversy regarding the earlier demolition, and stated he did feel the Town’s Public Works staff make sure the demolition was done safely. He then spoke in general about the additional

1 work that needed to be completed to address the environmental concerns. He feels  
2 this project will be of great benefit to the Town and it will look very beautiful.

3  
4 **Katie Atkinson** (the Applicant): Mrs. Atkinson stated the property will look great  
5 and beautiful and will be quite an improvement over the "vacant run down shed" that  
6 was once present on the property.

7  
8 **Maggie Wilder** (Party of Record): Ms. Wilder's comments were against the project.  
9 She feels there will be too many "negative effects" to the surrounding neighborhood  
10 such as: traffic issues, privacy and that the project is just "too big a project". Ms.  
11 Wilder stated the Applicant should work to get the property rezoned first, the  
12 Applicant wants a quick "turn around profit" project, and that the Applicants are not  
13 really interested in the long-term well-being of La Conner. She thinks applicant  
14 should re-zone it as residential then live up to these requirements. She does not  
15 think applicant being truthful from beginning of application - as they were said to be  
16 rentals - when really condos. She feels the Planning Commission acted on "good  
17 faith" and principle in rejecting this proposal. She is against the "sheer size" of a 3-  
18 story building. She has privacy concerns and fears people will be looking down at  
19 us. She said it is not an attractive project, the scale is uncharacteristic of  
20 surrounding buildings, it is urban density and is unfriendly to families. Ms. Wilder  
21 also has written comments that are exhibits to this Decision.

22  
23 **Heiki Nelson** (Party of Record): Ms. Nelson's comments were against the project.  
24 Mrs. Nelson stated she has been civil engineer for 25 years and has vast experience  
25 with these sorts of projects. Mrs. Nelson is concerned about the impacts to the Town  
26 as a whole. She does not feel there is a conditional use for something like this in the  
27 code, and that the project is too big; and if it were in a different area no more than  
28 10,000 sq. ft. would be allowed. She has not seen proper landscape plans. Also,  
she was very upset about how applicant handled the demolition issue and called it  
very arrogant. She also focused on negative effects of project and this is too big a  
project for that location. She expressed grave environmental concerns. She has  
concerns regarding parking and thinks the project will alter the character of

1 surrounding area. Ms. Nelson also has written comments that are exhibits to this  
2 Decision.

3  
4 **Debra Aldrich** (Party of Record): Ms. Aldrich's comments were against the  
5 project. She feels it is too tall and too big a project. She feels La Conner needs  
6 more residential areas but not this project. She has parking concerns. She stated that  
7 La Conner is a tourist town not a big city like Burlington. She is not against a  
8 "special use permit" but not a conditional use permit. She worries about garbage  
9 (pollution) concerns; she is concerned that the Fire Department has not signed off on  
10 this project. She feels the 30-foot-tall building will hurt views of nearby neighbors;  
11 and she is concerned about parking issues (in that not enough spaces planned). She  
12 said there might also be drainage issues. Ms. Aldrich also has written comments that  
13 are exhibits to this Decision.

14 **Gary Nelson** (Party of Record): Mr. Nelson's comments were against the project.  
15 He worries that this project has not received the Fire Chief's approval which could be  
16 an issue because the ladder of fire department only goes 35 feet which could be  
17 problematic. Mr. Nelson expressed concerns over right-of-way utilities issues and  
18 asked if garbage trucks will have proper access to the site. He stated this project  
19 will block view of the surrounding hills and nearby areas. He is worried about this  
20 project to the overall public, life, health and safety of the community and is  
21 concerned about parking. He said historically this was a filling station on south side  
22 of the lot and it was a bulk/oil fill station on station on north. He does not think  
23 enough environmental testing has occurred on the north side of Lot 1. His  
24 recollection was that this was the historical use from approximately 1950-1976.

25 **Linda Talman** (Party of Record): Ms. Talman's comments were against the  
26 project. She is very concerned about parking issues. She brought up the overall  
27 "Comprehensive Plan" for La Conner's future – and wondered if this project is  
28 really going to create "affordable housing"? She stated there will be a parking gate  
and that this is not affordable housing, etc. She feels if this project was in a

1 residential zone it would be limited to 10,000 sq ft in size. Ms. Talman also has  
2 written comments that are exhibits to this Decision.

3  
4 **Charlie Morgan** (Applicant's Architect): Mr. Morgan is the architect for the  
5 applicant/project. He said they have followed the law. He stated that he has  
6 empathy and understands that change is hard, and he understand the legitimate  
7 concerns of the folks who are against the project; however, he feels the project  
8 totally complies with all aspects of the La Conner code. Also, he said the State of  
9 Washington is giving tax credits to entities that fix up old gas stations and thus this is  
10 a positive for this project. He said they have successfully met the conditional use in  
11 this case: no more than 50% of ground floors are multiple family dwelling units -  
12 this is done correctly. The code allows what they are doing.

13 **Frank Liddell** (Party of Record): Mr. Liddell's were against the project. Mr.  
14 Liddell has lived near the project site for 17 years (he lives across the street from  
15 project). He stated the project is not providing the type of housing that La Conner  
16 so desperately needs. He stated these are single bedrooms and not family units. He  
17 is concerned there will be no yards, room for pets, and that it won't help with school  
18 enrollment. He stated the foundation of La Conner is multi-generational families  
19 and he wants to keep it a small town and not a city and that the project does not help  
20 in this quest. He foresees poop pollutions issues. He said this project will result in  
21 less sunlight and he has privacy concerns because the building is 30 feet tall.

22 **Roger Vallo** (Applicant's consultant/representative): Mr. Vallo is a consultant  
23 working for the applicant. Mr. Vallo stated wants to clarify the concern about  
24 utilities. He will make sure that there is proper approval at all levels (Public Works  
25 in LC and Fire Department) and plans are being reviewed once they are given permit.

26 **Michael Davolio** (Town's Planning Director). Mr. Davolio made rebuttal comments  
27 stating short term rentals are defined as those rented for less than 30 days, and there  
28 is nothing in the Town's Code that limits residential density in commercial zones.

Mr. Davolio encouraged those in attendance to contact Town Council if they believe

1 the municipal code should be changed and noted the Applicant is entitled to develop  
2 his property under the codes in effect when they submitted a complete application.

3  
4 The Hearing Examiner concludes the meeting and stated he will keep the record open  
5 for five (5) business days.

6 Materials Received After the March 31, 2022 Hearing While the Record was Open:

- 7 A. Supplemental Staff Report from Michael Davolio to the Hearing Examiner dated  
8 April 6, 2022
- 9 B. Letter dated April 2, 2020 [sic] from Maggie Wilder
- 10 C. Letter dated April 1, 2022 from Georgia Johnson
- 11 D. Letter dated April 1, 2022 from Gary and Heike Nelson
- 12 E. Letter dated April 2, 2022 from Brandon Atkinson/KSA Investments
- 13 F. Email dated April 4, 2022 from Don Pendleton and Kathy Shiner
- 14 G. Letter dated April 4, 2022 from Linda Talman
- 15 H. Email dated April 6, 2022 from Linda Talman

16 Upon consideration of the testimony and exhibits submitted as part of the hearing, the  
17 Hearing Examiner enters the following Findings and Conclusions as the basis for the  
18 decision as issued herein:

19  
20 **FINDINGS OF FACT**

- 21 1. **Owners.** The owner is identified as KSA Investments, LLC – this LLC is governed  
22 by Kate and Brandon Atkinson.
- 23 2. **Site.** The site is addressed as 306 Center Street, La Conner, WA and is identified by  
24 the Skagit County Assessor as tax parcel P74143.
- 25 3. **Virtual Hearing.** A virtual hearing was held on March 31, 2022, via Zoom web  
26 application, Zoom Meeting ID No. 885 9114 1934.
- 27 4. **Procedural.** LCMC 15.135.050 classifies the subject Conditional Use Permit as a  
28 Type IV permit with a recommendation made by the Planning Director or Planning  
Commission and a final decision made by the Hearing Examiner.

- 1 a. Chapter 13.10 LCMC designates the Town planner as the person responsible  
2 for the administration of the Town’s SEPA procedures and policies. Unless a  
3 SEPA appeal is filed the Hearing Examiner has no authority in the SEPA  
4 process. There were no SEPA appeals filed for this project.
- 5 b. The La Conner Planning Commission held a meeting on March 15, 2022,  
6 where they made a 3-0 motion to deny the subject Conditional Use Permit.
- 7 5. **Zoning.** The site has a zoning designation of Commercial. The zoning regulations  
8 for the Commercial Zone are codified under Chapter 15.35 of the La Conner  
9 Municipal Code (LCMC). The site is not located within the Town’s Historic  
10 Preservation District Overlay Zone and is not within what is defined as the Morris  
11 Street Commercial District under LCMC 15.50.025.
- 12 6. **Surrounding Zoning.** To the north and east of the site on the opposite sides of  
13 Center Street and North Fourth Street, respectively, are properties within the  
14 Residential Zone.
- 15 7. **Conditional Use Permit and Site Uses.** The permit brought before the Hearing  
16 Examiner is a Conditional Use Permit to allow what is described by Town staff as  
17 “six short-term dwelling units” on the ground floor of the proposed three-story  
18 structure. The second and third stories of the proposed structure are described by  
19 Town staff as containing a total of “14 long-term dwelling units”. On the Town of  
20 La Conner Master Permit Application the project description provided by the  
21 Applicant states, “1 apartment building with 14 dwelling units, 6 transient housing  
22 units, associated parking”. The Conditional Use Application Narrative submitted by  
23 the Applicant also describes the ground floor uses as “transient housing”.
- 24 a. LCMC 15.35.020(10) allows “lodging establishments such as hotels, motels,  
25 and inns” as permitted uses. LCMC 15.10.525 defines “hotel, motel, or  
26 apartment hotel” as “any building containing six or more guest rooms  
27 intended or designed to be used, or which are used, rented or hired out to be  
28 occupied, or which are occupied for sleeping purposes by guests.”
- b. LCMC 15.35.030(2) states “Dwelling units, attached or unattached, are not to  
exceed 49 percent of the square footage of the building(s), for all uses, of the  
properties of a development on the ground floor. Dwelling units located  
above the ground floor are not limited in square footage except that the



1 maximum floor area for all development (commercial and residential) must  
2 not be more than two times the property area. Residential uses in the  
3 commercial zone to the extent practical must have their access located to the  
4 rear or side of the structure where they are located” with approval of a  
5 Conditional Use Permit.

- 6 c. LCMC 15.35.030(8) allows “Guesthouse/Guest Rental – Residential  
7 Dwelling Units Rented as Guesthouse. The guesthouse residential unit must  
8 also comply with all the provisions of this code that pertain to residential  
9 conditional uses in the Commercial Zone” with approval of a Conditional  
10 Use Permit. The Examiner finds neither the 14 multi-family residential units  
11 on the second and third floors or the six ground floor hotel rooms are  
12 classified as Guesthouse/Guest Rental – Residential Dwelling Units Rented  
13 as Guesthouse.
- 14 d. LCMC 15.10.380 defines “dwelling units” as “an enclosure containing  
15 sleeping, kitchen, and bathroom facilities designed for and used or held ready  
16 for use as permanent residence by one family”. LCMC 15.10.390 defines  
17 multifamily dwellings as a “detached building containing three or more  
18 dwelling units, each containing sleeping, kitchen, and bathroom facilities,  
19 and designed for and used or held ready for use by three or more families  
20 living independently of each other”.
- 21 e. The term “transient housing” is not used or defined in the LCMC. However,  
22 in the staff report provided to the Examiner staff states “The short-term  
23 residential uses (lodging establishment) proposed for the first floor are  
24 permitted per Section 15.35.020(10)” making clear that the six ground floor  
25 units are classified by staff as lodging establishments such as hotels, motels,  
26 and inns.
- 27 f. The six ground floor rooms shall be classified as lodging establishments such  
28 as hotels, motels, and inns.
- g. The 14 second and third floor units shall be classified as multi-family  
dwelling units.

8. **Conditional Use Permit Requirements.** The provisions that “pertain to residential  
conditional uses in the Commercial Zone” contained in LCMC 15.35.030(2) state (in

1 part), “Dwelling units located above the ground floor are not limited in square  
2 footage except that the maximum floor area for all development (commercial and  
3 residential) must not be more than two times the property area. Residential uses in  
4 the commercial zone to the extent practical must have their access located to the rear  
5 or side of the structure where they are located.” This means the floor area of all the  
6 combined commercial and residential floor area of the development on the 15,300 s.f.  
7 property must be less than 30,600 s.f. LCMC 15.10.475 defines usable floor area;  
8 and LCMC 15.10.480 defines “gross floor area”. Since LCMC 15.35.030(2) does  
9 not state the floor area is to be “usable” the definition of “gross floor area” must be  
used to determine compliance with the limitations of the maximum floor area.

- 10 a. LCMC 15.10.480 defines gross floor area as, “the total area of a building  
11 measured by taking the outside dimensions of the building at each floor level  
12 intended for occupancy or storage.”
- 13 b. The Application materials state “...the combination of on grade parking,  
14 interior space, setbacks, and pervious surface limits the development to  
15 approximately 20,488 sf” and these materials summarize the floor area of the  
16 main, second and third floor areas at 17,540 s.f. Neither of these square  
17 footages appear to meet the definition of gross floor area of the development.
- 18 c. The Application materials submitted by the Applicant list the total property  
area as 15,300 s.f.

19 9. **Setbacks.** The north and east property lines abutting Center and North Fourth  
20 Streets, respectively, are where front yard setbacks must be observed. The south  
21 property line must observe a 25-foot setback as it is considered a rear yard.

22 10. **Floodplain Regulations.** The site is located within the 100-year floodplain, and as  
23 such, the maximum building height is 30 feet measured from one-foot above the  
24 base flood elevation to the highest point on the building. The site is located in  
25 FEMA zone A7 with a base flood elevation of 8 measured using the National  
26 Geodetic Vertical Datum of 1929 (NGVD 29) (Community-Panel Number 530156  
27 0001 B, with an effective date of 12/18/1984). The maximum building height is  
28 limited to 30 feet from elevation 9 (using NGVD 29 datum) to the highest point on  
the building. The materials provided to the Examiner note the floodplain elevation

1 as being 11.8' and the finished floor as 12.8'. However, these materials do not  
2 indicate the datum these elevations are based on.

3 **11. Parking Requirements.** LCMC 15.90.030(3)(c)(iv) requires hotels and motels to  
4 have one off-street parking space per each paid unit plus one per on-site manager.  
5 The six ground floor rooms are required to have six off-street parking spaces plus  
6 one per on-site manager. LCMC 15.90.030(1)(b) requires two off-street parking  
7 spaces per multifamily, dwelling or apartment; however, LCMC 15.90.030(3)(c)(vii)  
8 allows residential uses in commercial zones to provide one space for the first 1,200  
9 s.f. of the unit and one additional space if the unit is larger than 1,200 s.f.. All of the  
10 proposed multifamily units on the second and third floors are less than 1,200 s.f. in  
11 size. The 14 multifamily units necessitate 14 off-street parking spaces. A total of 21  
12 off-street parking spaces must be provided if an on-site manager for the hotel rooms  
13 is present and 20 off-street parking spaces must be provided if an on-site manager  
14 for the hotel rooms is not present.

15 a. The Applicant's materials show 90-degree parking being provided on the  
16 site; and as such LCMC 15.90.010 requires the following:

17 i. These parking spaces be an unencumbered 9 feet wide by 18.5 feet  
18 deep and 10 feet wide by 18.5 feet deep if abutting a wall.

19 ii. An access drive no less than 24 feet in width be provided between the  
20 two rows of parking spaces.

21 iii. No more than 50% of the required parking space be compact with  
22 dimension of 8.5' by 16 feet.

23 b. The Site Plan submitted by the Applicant appears to indicate at least four of  
24 the compact parking spaces and at least five of the full-size parking spaces  
25 are partially encumbered with structural supports for the proposed building.  
26 Note 1 within LCMC 15.90.010 indicates parking spaces must be  
27 unencumbered. Conditions ensuring the minimum dimensions of the parking  
28 spaces and drive aisle are included as part of this decision since the Examiner  
is not able to verify compliance with these requirements.

**12. Screening Requirements.** LCMC 15.90.010(8) requires screening be required  
when a commercial property abuts a "residential area". The Examiner notes this  
refers to a "residential area" not a residential zone. The property abutting the west

1 property line of the site is a residential area as it contains a single-family residential  
2 structure even though it is zoned Commercial. The property abutting the south  
3 property line of the site is zoned Commercial and is developed with non-residential  
4 uses and therefore is not a residential area. Therefore, the project is required to  
5 incorporate the screening requirements outlined within LCMC 15.90.040 along the  
6 west property line of the site.

7 **13. Landscaping Requirements.** Chapter 15.105 LCMC contains the landscaping  
8 requirements for the Town. The project is subject to the street frontage landscaping  
9 requirements in LCMC 15.105.120, the parking lot landscaping requirements in  
10 LCMC 15.105.140, and the screening requirements in LCMC 15.105.150. The  
11 Applicant's materials identify improvements (e.g. ADA Ramp, stairs, and landings)  
12 being constructed in the street frontage area; these improvements are either touching  
13 or are within less than five feet of the back of the sidewalk. The Examiner finds the  
14 Applicant has not complied with the street frontage landscaping requirements  
15 codified within LCMC 15.105.120.

- 16 a. There isn't enough information in the record for the Examiner to determine if  
17 the screening requirements codified within LCMC 15.105.150 required along  
18 the south and west property lines of the site are being satisfied.
- 19 b. LCMC 15.105.120 states planting along street frontages are required to be  
20 designed to "soften and enhance the development on the site and provide a  
21 pleasant pedestrian environment".

22 **14. Conditional Use Permit Criteria.** Compliance with the conditional use permit  
23 criteria found in LCMC 15.135.190 will be satisfied, as conditioned, as follows:

- 24 (a) The use is listed as a conditional use in the underlying district.
- 25 • LCMC 15.35.030(2) lists attached dwelling units as a conditional use.
- 26 (b) The characteristics of the site are suitable for the proposed use  
27 considering size, shape, location, topography, existence of improvements and  
28 natural features.
- The size, shape, location, topography, existing of improvements and  
natural features of the site are suitable, as conditioned, to allow the 14  
multi-family dwelling units on the second and third floors of the

1 project structure. Exhibits A and B submitted by the Town contain  
2 additional details relied upon by the Examiner.

3 (c) The site and proposed development is timely, considering the adequacy of  
4 transportation systems, public facilities and services existing or planned for  
5 the area affected by the use.

- 6 • As conditioned, transportation systems, public facilities and services  
7 are adequate for the proposed use. Exhibits A and B submitted by the  
8 Town contain additional details relied upon by the Examiner.

9 (d) The proposed use will not alter the character of the surrounding area in a  
10 manner which substantially limits, impairs, or precludes the use of  
11 surrounding properties for the primary uses listed in the underlying district.

- 12 • The character of the surrounding area will not be altered by the  
13 proposed multi-family dwelling units in a manner that substantially  
14 limits, impairs, or precludes the use of surrounding properties for the  
15 primary uses listed in the underlying district(s). The surrounding  
16 areas to the north and east of the site are zoned Residential; and the  
17 Residential district allows multifamily residential units or apartments  
18 with approval of an Administrative Conditional Use Permit (LCMC  
19 15.20.055). This is noteworthy because the surrounding areas zoned  
20 Residential are also allowed to develop the same use as the subject  
21 conditional use permit. The surrounding areas to the south and west  
22 of the site share the Commercial zoning designation of the site. The  
23 property to the south of the site is already developed with commercial  
24 uses and the property immediately west of the site is currently  
25 developed with a single-family residential home; however, this  
26 property could be redeveloped to contain any of the uses allowed in  
27 the Commercial zone. Exhibits A and B submitted by the Town  
28 contain additional details relied upon by the Examiner for this  
29 criterion.

(e) The proposal, through findings, satisfies the goals and policies of the  
comprehensive plan, Shoreline Management Act, and floodplain ordinance,  
which apply to the proposed use, if applicable.

- The Examiner has reviewed the goals and policies of the comprehensive plan and finds, as conditioned, they are satisfied with the subject project. The site is not subject to the Shoreline Management Act. The structure is located within the floodplain and will be required to comply with all applicable floodplain regulations.

(f) Setbacks or buffers proposed by applicant are shown to mitigate potential adverse impacts that might emerge from the proposed conditional use.

- As conditioned the project will have setbacks and buffers to mitigate the potential adverse impacts that might emerge from the proposed conditional use. Specifically, the Examiner is requiring additional frontage landscaping along the north and east property lines, which means there will be larger setbacks from the north, east, and west property lines, and screening along the south and west property lines to ensure these criteria are met.

(g) The use must cause no adverse effect on the surrounding area due to traffic, parking, noise, odor, air or water pollution.

- As conditioned, the use will have no adverse effect on the surrounding area due to traffic, parking, noise, odor, air or water pollution. Traffic, parking, noise, odor, air and water pollution impacts are all mitigated by compliance with the Town's applicable development regulations. Findings of Fact #11 and 12 (above) outline the parking and screening requirements the project will be required to comply with. Without a Conditional Use Permit the Applicant could create second and third story hotel rooms instead of dwelling units. The potential adverse effects of these two uses, hotel rooms versus multi-family dwelling units, are substantially similar.

(h) Consideration shall be given to the cumulative impact of like uses within the neighborhood.

- The Examiner is not aware of any other like uses within the neighborhood, and no evidence of other like uses within the neighborhood were submitted as part of the record. Therefore, the

1 Examiner finds there are no cumulative impacts that need to be taken  
2 into consideration.

### 3 **CONCLUSIONS OF LAW**

- 4
- 5 1. The procedural and substantive requirements for the SEPA process and for the  
6 Conditional Use permit have been satisfied.
  - 7 2. As conditioned, the project will comply with the Conditional Use permit criteria codified  
8 within LCMC 15.35.030(2), 15.135.190, and the dimensional standards within LCMC  
9 15.35.090.
  - 10 3. As conditioned, the project will comply with the parking, screening and landscaping  
11 requirements codified in Chapters 15.90 and 15.105 LCMC.

### 12 **DECISION**

13 Based on the findings of fact and conclusion of law contained herein, it is the decision of  
14 the Hearing Examiner to approve the proposed Conditional Use Permit subject to the  
15 below-listed conditions of approval:

- 16 1. The six hotel rooms shall be consistent with the definition of such in LCMC  
17 15.10.525. In addition, the Applicant shall comply with all applicable duration  
18 of stay regulations adopted by the Town.
- 19 2. The 14 multi-family units shall be consistent with the definition of such in  
20 LCMC 15.10.390. This does not preclude the Applicant from creating  
21 condominiums of these multi-family units consistent with State and local laws.
- 22 3. The floor area of all the combined commercial and residential floor area of the  
23 development on the 15,300 s.f. property must be less than 30,600 s.f. When  
24 calculating the square footage of the combined commercial and residential floor  
25 areas the Applicant shall use the definition of “gross floor area” codified in  
26 LCMC 15.10.480.
- 27 4. A total of 21 off-street parking spaces must be provided if an on-site manager for  
28 the hotel rooms is present and 20 off-street parking spaces must be provided if an  
on-site manager for the hotel rooms is not present. Consistent with LCMC

1 15.90.010 all parking spaces and the access drive to these spaces must be  
2 unencumbered and meet the following minimum dimensions and requirements:

- 3 a. Regular (non-compact) spaces must be 9 feet wide by 18.5 feet deep and  
4 10 feet wide by 18.5 feet deep if abutting a wall.
- 5 b. An access drive no less than 24 feet in width must be provided between  
6 the two rows of parking spaces.
- 7 c. No more than 50% of the required parking space can be compact with  
8 dimension of 8.5' by 16 feet.

9 5. The project is required to incorporate landscape screening along the length of the  
10 west property line, except the area between the north property line to the north  
11 face of the structure shall have street frontage landscaping versus screening  
12 landscaping installed. This screening shall be a minimum of five feet in width, it  
13 shall include a six-foot-tall fence along the property line and shall have  
14 landscape screen planting complying with LCMC 15.105.150(2) installed.

15 6. The project is required to incorporate street frontage landscaping along both  
16 Center and Fourth Streets except where the curb cut and the landings for the  
17 stairs are located. The intent of this condition is to soften and enhance the  
18 development on the site and to provide a pleasant pedestrian environment. This  
19 street frontage landscaping shall be a minimum of five feet in width from the  
20 back of the sidewalk and shall incorporate street trees, shrubs and groundcovers  
21 providing seasonal colors and interesting textures.

- 22 a. The Applicant shall work with Town staff to incorporate necessary  
23 elements, such as root barrier, to ensure this landscaping does not  
24 adversely impact the improvements in the abutting right-of-way.

25 7. The landscaping along the south property line of the site shall include no less  
26 than five trees along with shrubs and ground cover planted in quantities and  
27 spaces to provide for 80 percent ground coverage within three years.

28 8. All site improvements must comply with the corner vision requirements listed  
under LCMC 15.105.060.

9. The maximum building height shall be 30 feet measured from one foot above the  
base flood elevation to the highest point on the building. These measurements  
shall comply with Finding of Fact #10 (above) in this decision.



- 1 a. Any access to the roof of the structure shall be approved by the Fire Chief  
2 and shall not result in any portion of the structure exceeding the height  
3 limitations outlined within this condition.
- 4 b. Mechanical equipment and any other type of equipment or improvement  
5 cannot be placed such that it extends above the 30-foot height limitation  
6 outlined within this condition.

7 10. The plans submitted to the Examiner do not identify the location or design of a  
8 garbage dumpster. If a garbage dumpster is required, the Applicant shall be  
9 required to create a space on the site allowing the dumpster to be emptied in a  
10 safe and efficient manner. The dumpster shall be surrounded by an enclosure  
11 with a gate. The dumpster shall not be located in the frontage landscaping  
12 required under condition #6 (above). The exact dumpster location, enclosure,  
and other relevant details shall be prescribed by the Town.

13 11. The Applicant shall submit revised plans showing compliance with conditions 2  
14 – 10 (listed above) that must be approved by the Town Planner, the Public  
15 Works Department, as well as any other applicable Town staff before  
16 construction related permits (i.e. Building or Grading permits) are issued.

17 12. The following SEPA mitigation measure has been applied to this project:

18 “Once the existing residential structure is removed from the site,  
19 remediation of the contaminated soil identified near the former bulk fuel  
20 tanks shall be excavated and disposed of at a Subtitle D landfill. The  
21 excavation shall occur in the vicinity of boring #B3, as identified in the  
22 Phase II Environmental Site Assessment performed by Dixon  
23 Environmental Services, LLC (Dixon). Such excavation shall extend  
24 outward and in a northerly direction. The possibility of further  
contamination beneath the existing house shall be examined”.

25 In addition to this SEPA condition, the project is further conditioned such  
26 that if any contamination is found all work on the site shall cease until further  
27 studies are completed and submitted to the Town for their review and  
28 approval, or approval with additional conditions (as applicable).

1 Dated this 11<sup>th</sup> day of May, 2022

2  
3 

4 David D. Lowell, Esq.

5 Town of La Conner Hearing Examiner

6 **APPEAL RIGHT AND VALUATION NOTICES**

- 7
- 8 1. A land use decision by the hearing examiner shall be appealed by filing a petition in  
9 superior court within 21 calendar days of the issuance of the land use decision. For  
10 the purposes of this section, the date on which a land use decision is issued is:
- 11 a. Three days after a written decision is mailed by the town or, if not mailed,  
12 the date on which the town provides notice that a written decision is  
13 publicly available.
  - 14 b. If the land use decision is made by order, ordinance or resolution by the  
15 hearing examiner or town council, the date the order, ordinance or  
16 resolution is passed.
  - 17 c. If neither of the above applies, the date the decision is entered into the  
18 public record.
- 19 2. Affected property owners may request a change in valuation for property tax  
20 purposes notwithstanding any program of revaluation.

21 **NOTES TO THE APPLICANT**

22 Following are items not subject to appeal the Applicant and subject project will be  
23 required to comply with:

- 24 1. Building permit(s) must be obtained from the Town of La Conner and Skagit County.  
25 2. Any signage to be added to the property shall require separate approval from the  
26 Town of La Conner.  
27 3. The below listed conditions from the Final Mitigated Determination of Non-  
28 Significance shall be complied with:

- 1 a. The maximum height of any portion of the building shall be not more  
2 than 30 feet, as measured from one foot above the base flood elevation to  
3 the highest point on the building. Any roof access must be approved by  
4 the fire chief.
- 5 b. Once the existing residential structure is removed from the site,  
6 remediation of the contaminated soil identified near the former bulk fuel  
7 tanks shall be excavated and disposed of at a Subtitle D landfill. The  
8 excavation shall occur in the vicinity of boring B3, as identified in the  
9 Phase II Environmental Site Assessment performed by Dixon  
10 Environmental Services, LLC (Dixon). Such excavation shall extend  
11 outward and in a northerly direction. The possibility of further  
12 contamination beneath the existing house shall be examined.
- 13 c. Performance monitoring shall be conducted by an environmental  
14 professional during remedial activities to direct advancement of the  
15 excavation. Once field screening indicates that the contamination has  
16 been successfully removed, confirmation soil samples shall be collected  
17 directly from the sidewalls and/or bottom of the remedial excavation.
- 18 d. Groundwater monitoring well shall be installed on the property, with  
19 subsequent sampling performed in accordance with the recommendations  
20 set forth in the Dixon report.
- 21 e. A resistant vapor barrier shall be installed beneath the new building to be  
22 constructed.
- 23 f. With regard to site archaeology, an Unanticipated Discoveries Protocol  
24 (UDP) shall be established. All workers on site shall be trained in this  
25 protocol, and a copy of the UDP shall be kept on site at all times.
- 26 g. All contractors and subcontractors must be licensed to conduct business  
27 in the Town of La Conner.
- 28 h. The permit holder must provide contact information on all contractors  
and subcontractors to the Town of La Conner prior to commencement of  
construction.
- i. All contractors and subcontractors must report sales tax transactions  
within the Town of La Conner. The La Conner sales tax number is 2905.

- 1 j. The following conditions have been identified that may be used to  
2 mitigate the adverse environmental impacts of the proposal:
- 3 i. Construction best management practices will be implemented as  
4 necessary for erosion control and to prevent waste materials  
5 from entering ground or surface waters.
  - 6 ii. Drainage report required.
  - 7 iii. Storm water runoff will be collected and drained from the site in  
8 a manner to be approved by the Public Works Director.
  - 9 iv. The lighting intended to be used directs light downwards to  
10 minimize light pollution, improve nighttime visibility and  
11 protect potential nocturnal ecosystems offsite. Measures  
12 anticipated are similar to those recommended by LEED 2009  
13 New Construction Credit 8 "Light Pollution Reduction".
  - 14 v. Prior to any ground-disturbing activities within the property  
15 boundary a professional archaeologist should give an  
16 unanticipated discovery protocol (UDP) training given to all  
17 construction personnel. A copy of the Unanticipated  
18 Discoveries Protocol (UDP) in the Cultural Resources Report  
19 prepared for the project is to be on site at all times.
  - 20 vi. In the event that any ground-disturbing activities (as outlined  
21 above) uncover protected cultural material (e.g., bones, shell,  
22 stone or antler tools), all work in the immediate vicinity shall  
23 stop, the area should be secured, and any equipment moved to a  
24 safe distance away from the location. The on-site superintendent  
25 shall then follow the steps specified in the UDP.
  - 26 vii. In the event that any ground-disturbing activities or other  
27 project activities related to this development or in any future  
28 development uncover human remains, all work in the immediate  
vicinity shall stop, the area shall be secured, and any equipment  
moved to a safe distance away from the location. The on-site  
superintendent shall then follow the steps specified in the UDP.