

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) BSP1988-0007  
Application for )  
 )  
**Western Refinery Services** ) FINDINGS OF FACT,  
 ) CONCLUSIONS OF LAW,  
 ) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting a Binding Site Plan Map Alteration to amend the access prohibition on Grandview Road [WSDOT SR 548] to allow a new driveway location directly to SR 548 for Western Refinery Services.

Decision: The requested Binding Site Plan Map Alteration is approved, subject to conditions.

**FINDINGS OF FACT**

**INTRODUCTION**

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

**I.**

Applicant: Western Refinery Services

Site Location/Address: 2380 Grandview Road  
Ferndale, Washington 98248

Assessor's Parcel Number(s): 390206 166042

Zoning: Light Industrial [LII]

Comprehensive Plan: Ferndale Urban Growth Area

Subarea: Ferndale / Cherry Point

Lot Size: Two Lots

Fire Protection: Whatcom County Fire District No. 7

Law Enforcement: Whatcom County Sheriff's Office

Adjacent Land Uses:

North:	Light Impact Industrial
East:	Light Impact Industrial
South:	Single-Family Residential
West:	Multi-Family & Light Impact Industrial

Authorizing Codes, Policies, Plans, and Programs

Revised Code of Washington [RCW] Chapter 36.70 and Chapter 58.17  
Whatcom County Comprehensive Land Use Plan  
Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance  
Whatcom County Code, Chapter 12.08, Development Standards  
Whatcom County Code Chapter 15, Building Code/Fire Code  
State Environmental Policy Act (SEPA); Washington Administrative Code Chapter 197-11,  
Whatcom County Environmental Policy Administration Chapter 16.08  
Whatcom County Code Chapter 16.16, Critical Areas  
Whatcom County Code, Title 21, Subdivision Regulations  
Whatcom County Code Title 24, Health Regulations

Legal Notices:

Notice of Application, May 23, 2018
Published Notice of Public Hearing, August 2, 2018
Mailed Notice of Public Hearing, July 25, 2018

Hearing Date: August 15, 2018

Parties of Record

Jerry Libolt  
Western Refinery Services  
2380 Grandview Road  
Ferndale, Washington 98264

Amy Keenan, Senior Planner  
Planning and Development Services

Exhibits

- 1 Interim General & Specific Binding Site Plan Application, with attachments
  - 1-1 Parcel Information
  - 1-2 Fee Responsibility
  - 1-3 Agent Authorization
  - 1-4 PDS Address Instructions

- 1-5 Mailing Labels
- 1-6 Customer Receipt, April 27, 2018
- 1-7 Determination of Complete Application, May 17, 2018
- 1-8 PDS Routing Checklist
- 1-9 PDS Comment Form Letter, May 23, 2018: Notice of Application
- 1-10 Current Planning Hearing Examiner Checklist, June 12 & August 7, 2018
  
- 2 Staff Report, dated August 6, 2018
  
- 3 Agency Comments
  - Environmental Health, May 22, 2018
  - Engineering Services, May 23, 2018
  
- 4 Original Access Connection Permit, dated October 8, 2015
  
- 5 Binding Site Plan Modification No. 7, prepared by Compass Point Survey, LLC
  
- 6 Aerial Site Photo
  
- 7 Binding Site Plan Deeds: Subdivision, Issued by Chicago Title Insurance Company: Compass Point Survey, LLC, Guarantees Certificate, Schedule A, dated April 16, 2018, and Schedule B, recorded 1979 thru 2015
  
- 8 Certificate of Mailing, Notice of Application, May 23, 2018
  
- 9 Bellingham Herald Tear-Sheet, with attached Legal Notice of Application, May 23, 2018
  
- 10 Certificate of Mailing Notice of Public Hearing, July 25, 2018
  
- 11 Bellingham Herald Affidavit of Legal Notice of Public Hearing, August 2, 2018

## II.

The Applicant seeks approval for a Binding Site Plan Map Alteration to amend the approved Binding Site Plan, in order to relocate the access from the property to SR548.

The Land Use Division of Whatcom County Planning and Development Services Staff recommended approval of the requested Binding Site Plan Map Alteration, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit No.2, dated August 6, 2018, in the Hearing Examiner's file. The Hearing Examiner finds that the factual findings set forth in the Staff Report, a copy of which is attached hereto, are supported by the record as a whole and are incorporated as Findings

of Fact herein by this reference.

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

**III.**

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

**CONCLUSIONS OF LAW**

**I.**

Subject to the Conditions of Approval attached hereto the Technical Review Committee has determined that the proposed Amendment will comply with applicable Whatcom County and Washington State regulations regarding the Amendment of a Binding Site Plan. The requested Amendment granting the alteration of the Grandview Light Industrial Park Specific BSP #2 [modification #7], to allow direct access to SR548, a State highway, should be granted, subject to the Conditions of Approval recommended by the Technical Review Committee.

**II.**

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

**DECISION**

*An alteration to the specific Binding Site Plan Map is hereby granted to Western Refinery Services to relocate the access prohibition on Grandview Road [WSDOT SR 548] to allow a new driveway location directly to SR 548, located on Assessor's Parcel No. 390206 166042, addressed as 2380 Grandview Road, Ferndale, Washington, subject to the following conditions:*

**Planning Division**

1. The use and location on the site as shown on the site plans dated March 23, 2018 and shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner unless consistent with WCC 21.08.
2. Approval of this specific BSP alteration shall become invalid unless the specific alteration is submitted in proper form for final approval within five (5) years of the date of preliminary alteration approval.
3. An Applicant requesting final approval of an alteration shall submit to the administrative official copies of the materials and fees specified in WCC 22.25.

**Public Works – Engineering Division**

4. All development shall comply with the WC Development Standards.
5. Formal letter of access approval from WSDOT shall be obtained by the applicant and submitted to the County for the records.
6. Final Specific Binding Site Plan shall provide a signature block for the County Engineer's approval as stated in Chapter 4- Land Division Standards, Sec. 414 (F).

NOTICE

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

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

This action of the Hearing Examiner is final.

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

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

DATED this 15<sup>th</sup> day of August 2018.



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Michael Bobbink, Hearing Examiner

**WHATCOM COUNTY**  
Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-778-5900, TTY 800-833-6384  
360-778-5901 Fax



**EXHIBIT**

**Mark Personius, AICP**  
Director

#2

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT  
August 6, 2018

The application by <b>Western Refinery Services</b> for an alteration to the Grandview Light Industrial Park Specific Binding Site Plan #2		BSP1988-00007 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: An alteration to the specific binding site plan map to relocate the access prohibition on Grandview Road (WSDOT SR 548) to allow a new driveway location directly to SR 548 for Western Refinery Services.

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

**II. PRELIMINARY INFORMATION**

**A. BACKGROUND INFORMATION**

<u>Owner:</u>	Grandview Investment, LLC 2380 Grandview Road Ferndale, WA 98248
<u>Applicant:</u>	Jerry Libolt Western Refinery Services 2380 Grandview Road Ferndale, WA 98248
<u>Surveyor:</u>	David Leighton Compass Point Survey 523 Front Street Lynden, WA 98264
<u>Assessor's Parcel Number:</u>	390206166042
<u>Zoning:</u>	Light Impact Industrial
<u>Comprehensive Plan:</u>	Ferndale Urban Growth Area

<u>Subarea:</u>	Ferndale/Cherry Point
<u>Number of Lots:</u>	Two lots
<u>Total Acreage:</u>	Approximately 5.4 acres
<u>Roads:</u>	Public and Private Roads
<u>Water Supply:</u>	Grandview Northgate Public Water
<u>Sewage Disposal:</u>	Onsite Septic System
<u>Fire Protection:</u>	Whatcom County Fire District #7
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Public Schools:</u>	Ferndale School District
<u>Topography:</u>	The site is described as mostly flat.
<u>Vegetation:</u>	Landscape vegetation typical to a developed light impact industrial development.
<u>Adjacent Land Uses:</u>	North: Light impact industrial East: Light impact industrial South: Single family residential West: Multifamily and light impact industrial
<u>Utilities Easements:</u>	Necessary utility easements have been established.
<u>Variances:</u>	No variances requested
<u>SEPA Review:</u>	Not applicable.

**B. AUTHORIZING ORDINANCES:**

1. Revised Code of Washington Chapter 58.17
2. Whatcom County Comprehensive Land Use Plan.
3. Whatcom County Code Chapter 12.08, Development Standards
4. Whatcom County Code Chapter 15, Building Code
5. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
6. Whatcom County Code Chapter 16.16, Critical Areas
7. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
8. Whatcom County Code Title 21, Subdivision Regulations
9. Whatcom County Code Title 24, Health Regulations

### **III. SITE DESCRIPTION**

The project area consists of lots 12 and 13 of the Grandview Light Industrial Park General and Specific Binding Site Plan #2 recorded in 1995 as part of the Grandview Industrial Park. To comply with the Whatcom County Zoning Ordinance the lots have been bound together by a covenant to bind recorded under Auditor's File Number (AFN) 2051203647. The approximately 5.4-acre site is developed with a nearly 9,000 square foot office building for Western Refinery Services (WRS) which also includes parking, a large gravel area and storage. Vehicular access is located on both Salashan Parkway and Grandview Road (State Route 548 (SR548)). The site is in the Light Impact Industrial (LII) zone within the City of Ferndale Urban Growth Area (UGA). Properties to the north, east, south and west are also zoned LII.

### **PROJECT PROPOSAL**

A building permit (COM2015-00076) was submitted on August 26, 2015 for an expanded office building, parking and storage for WRS. All impacts of the building permit including access, stormwater, critical areas, parking and landscaping were reviewed at the time of the building permit. The building permit was issued on October 1, 2015 with a planned vehicular access from both Salashan Parkway as well as a new location on SR548. A condition of approval for final occupancy required an alteration to the binding site plan (BSP) to alter the location of the access prohibition for SR548. The applicant is proposing to relocate the access to SR548 from the southeast corner of the property to a 40 foot portion of the southern property line as shown on plans submitted March 23, 2018.

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

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on May 23, 2018. Notice was also mailed to property owners within 300 feet of the site.

Public Input: During the public comment period for the Notice of Application the County received no written comments.

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

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

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project.

A SEPA determination was done in 1995 reviewing the impacts associated with development of the BSP. After review of the alteration to the specific BSP it has been determined this action is exempt from any additional environmental review.



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

### **A. Roads and Bridges (WCC Chapter 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. Engineering Services reviewed the proposal and submitted a memo dated May 23, 2018 with the following discussion:

Engineering Services has received and reviewed the application packet for the specific binding site plan alteration related to Grandview Light Industrial Park. As stated by the applicant the proposal is for an alteration to the specific binding site plan map to remove an access prohibition on Grandview Road (WSDOT SR 548) to allow a driveway directly to Grandview Road for Western Refinery Services.

Engineering Services recommends the approval with conditions of approval.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 12.08.*

### **B. Building and Fire Code (WCC Title 15)**

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

WCC Title 15 adopts and amends the applicable fire codes. The Fire Marshal is authorized to promulgate such rules, policies and/or procedures as deemed necessary for safety, designated in IBC Section 103.1, and hereby referred to as the Office of the Fire Marshal.

Building and Fire codes were reviewed through the building permit. The alteration to the access prohibition and the new access location on SR548 was reviewed and approved through COM2015-00076.

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

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

Through the building permit (COM2015-00076) critical area impacts were reviewed. California Creek runs through a portion of Grandview Industrial Park, however all development on this site will be outside of the identified 100-foot buffer.

*Direct access to SR548 in the new location will not affect any identified critical areas, and as such the Technical Review Committee has determined that the project meets the requirements of WCC Chapter 16.16.*

### **D. Light Impact Industrial (LII) District (WCC Chapter 20.66)**

The building permit was reviewed for consistency with the LII district. The permit was issued on October 1, 2015 and, as conditioned with the building permit, is consistent with the development standards with the exception of the location of the new access point and the recorded access prohibition to SR 548.

*With approval of this alteration to a specific BSP the Technical Review Committee has determined the project will be consistent with the requirements of WCC Chapter 20.66.*

### **E. Transportation Concurrency (WCC Chapter 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 reviewed concurrency at the time of the building permit (COM2015-00076). No additional concurrency review is necessary.

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

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

WCC Chapter 21.08 regulates policies and procedures for general and specific BSPs. Section 21.08.040 requires:

#### **WCC 21.08.040 Binding site plan vacation and alteration.**

The vacation and alteration of a binding site plan shall be processed in accordance with RCW 58.17.212 and 58.17.215, respectively, when the vacation or alteration involves a public dedication. Other vacations and alterations shall be approved by the hearing examiner, except for alterations to lot lines, which may be accomplished through the boundary line adjustment process. (Ord. 2018-032 § 1 (Exh. E); Ord. 2000-056 § 1).

*The proposed alteration will relocate an access prohibition recorded on the original specific BSP. Alterations of lot lines can be accomplished through a boundary line adjustment; however all other actions must be approved by the Whatcom County Hearing Examiner.*

**RCW 58.17.215 Alteration of subdivision—Procedure.**

When any person is interested in the alteration of any subdivision or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to request the alteration to the legislative authority of the city, town, or county where the subdivision is located. The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.

*The applicant has submitted an application for the alteration of the Grandview Light Industrial Park Specific BSP #2 (modification #7). The alteration only applies to Specific BSP #2 and involves only the owner of that recorded specific. No additional owner signatures are necessary.*

*The Covenants, Conditions and Restrictions (CC&R's) recorded under AFN 920110139 for the site did include a 25-foot-wide landscape easement along Grandview Road. Prior to submittal of the alteration to the specific BSP the condition was revised (through review and approval of the building permit, COM2015-00076). Additional landscaping areas were designed around the office building and along the western boundary to create a buffer.*

Upon receipt of an application for alteration, the legislative body shall provide notice of the application to all owners of property within the subdivision, and as provided for in RCW 58.17.080 and 58.17.090. The notice shall either establish a date for a public hearing or provide that a hearing may be requested by a person receiving notice within fourteen days of receipt of the notice.

*Notice of Application for the alteration was published in the newspaper and mailed to surrounding property owners within 300 feet of the project site on May 23, 2018. No comments or requests for hearing notice were received.*

The legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.

*The alteration to relocate the access prohibition on specific BSP #2 will allow direct access to SR548, a state highway. When the Grandview Light Industrial Park was*

*originally approved, SR548 was a local road under the jurisdiction of Whatcom County. The road has since become a state highway and pursuant to RCW 47.50 access is governed by the Washington State Department of Transportation (WSDOT).*

*WSDOT issued an access permit (50265/AC15100028) on October 8, 2015 for the new location which was reviewed at the time of building permit. The new access has been constructed and is currently operational. This alteration merely removes the access prohibition note recorded on the specific to be consistent with conditions of the WSDOT access permit and the issued building permit.*

*No additional lots will result from approval of this alteration nor will any dedication to general use be affected.*

After approval of the alteration, the legislative body shall order the applicant to produce a revised drawing of the approved alteration of the final plat or short plat, which after signature of the legislative authority, shall be filed with the county auditor to become the lawful plat of the property.

*As conditioned, the applicant shall apply for a Final Specific BSP Application which will result in recording a final alteration to specific BSP #2 with appropriate signatures.*

This section shall not be construed as applying to the alteration or replatting of any plat of state-granted tide or shore lands.

*The proposed alteration will not alter or replat any state-granted tide or shore lands.*

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

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

The Whatcom County Health Department (WCHD) has reviewed the proposed project noted above in accordance with WCC 24.05 *On Site Sewage System Regulations*, WCC 24.11 *Drinking Water Code*, and WCC 21 *Land Division Regulations*. The WCHD submitted a memo dated May 22, 2018 stating the following:

The applicant has met the requirements for water supply and sewage disposal for the project. It does not appear the proposed alteration will impact the water supply or sewage disposal.

WCHD recommends final specific binding site plan alteration approval.

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

## **VIII. RECOMMENDATION**

The Technical Review Committee has determined that subject to the following proposed conditions, the project would comply with applicable Whatcom County and

Washington State regulations.

As stated above the Technical Review Committee recommends approval of the specific binding site plan alteration, subject to the following conditions:

### **IX. CONDITIONS OF APPROVAL**

#### **A. Planning Division**

1. The use and location on the site as shown on the site plans dated March 23, 2018 and shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner unless consistent with WCC 21.08.
2. Approval of this specific BSP alteration shall become invalid unless the specific alteration is submitted in proper form for final approval within five (5) years of the date of preliminary alteration approval.
3. An applicant requesting final approval of a alteration shall submit to the administrative official copies of the materials and fees specified in WCC 22.25.

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

4. All development shall comply with the WC Development Standards.
5. Formal letter of access approval from WSDOT shall be obtained by the applicant and submitted to the County for the records.
6. Final Specific Binding Site Plan shall provide a signature block for the County Engineer's approval as stated in Chapter 4- Land Division Standards, Sec. 414 (F).

Report prepared for the Technical Review Committee by:

Amy Keenan, AICP  
Senior Planner