

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2009-0004
Application for)
)
Bode's Precast, Inc.) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to establish and construct a portable concrete batch plant and on-site precast manufacturing activity located at 1861 E. Pole Road, on parcel number APN 390311 220507. No concrete will be batched for direct sale or retail customer delivery. The land use proposal includes the portable batch plant, aggregate storage, pre-casting slabs and storage buildings. An existing building partially used for office activities will continue to be used as office space.

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

FINDINGS OF FACT

INTRODUCTION

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

I.

Applicant: Bode's Precast, Inc.

Property Location/Address: 1861 East Pole Road
Everson, Washington

Legal Description: APN 390311 220507

Zoning: Rural 10 Acre (R10A) with Mineral Resource Land (MRL) Special Overlay District

Comprehensive Plan: MRL

Subarea: Lynden/Nooksack

Legal Notices: Notice of Complete Application – February 26, 2009
Notice of Application, Mailed – March 2, 2009
Legal Notices Publication – May 13 and June 18, 2009
Certificate of Mailing, Hearing Notice, dated June 11, 2009
Certificate of Posting, Hearing Notice, dated June 18, 2009

Hearing Date: July 1, 2009

Parties of Record:

Bode's Precast, Inc.
144 River Road
Lynden, WA 98264

Lesa Starkenburg-Kroontje
PO Box 231
Lynden, WA 98264

Brad DeHaan
Ferndale Ready Mix & Gravel, Inc.
144 River Road
Lynden, WA 98264

Doug Goldthorp
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Supplemental Application
 - 1-2 Project Narrative
 - 1-3 Agent Authorization
 - 1-4 Receipt
 - 1-5 Cover Letter, dated February 20, 2009, from Lesa Starkenburg-Kroontje
 - 1-6 Determination of Completeness, dated February 26, 2009
- 2 Preliminary Traffic Analysis
- 3 Sewage Disposal Permit
- 4 Quit Claim Deed

- 5 Preliminary Stormwater Proposal
- 6 Conditional Use Permit Application, pages 19-20, with Erosion Control Map attached
- 7 Staff Report, dated May 28, 2009
- 8 Agency Comments
- 9 Revised Site Plan, dated May 28, 2009
- 10 Aerial Site Photos
- 11 Vicinity Maps
- 12 Letter dated March 13, 2009 from Ferndale Ready Mix
- 13 DNS, dated May 13, 2009, with Environmental Checklist attached
- 14 Distribution Lists, Notices, Mailing Labels, Certificate of Mailing, dated March 2, 2009
- 15 Affidavit of Posting, dated April 15, 2009
- 16 Legal Notice of SEPA, dated May 13, 2009
- 17 Certificate of Mailing, dated June 11, 2009
- 18 Legal Notice of Hearing, dated June 18, 2009, Affidavit attached
- 19 Certificate of Posting, dated June 18, 2009
- 20 Email correspondence between Kroontje and Magner

II.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #7, dated May 28, 2009, a copy of which is attached hereto and incorporated herein by this reference.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to any of the Conditions of Approval requested by Staff. Public comment from a neighboring property owner, who expressed no opposition to the requested permit, spoke to the County's need to preserve Mineral Resource Lands in the county, an issue outside the Hearing

Examiner's jurisdiction. There was no other public comment, either in writing or at the public hearing, on this matter.

III.

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

CONCLUSIONS OF LAW

I.

The proposed construction and operation of a portable concrete batch plant and on-site precast manufacturing business can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (1 through 8). Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Zoning Conditional Use Permit should be granted, subject to conditions.

II.

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

DECISION

A Zoning Conditional Use Permit is hereby granted to Bode's Precast, Inc. for the proposed construction and operation of a portable concrete batch plant and on-site precast manufacturing business to be located on Assessor's Parcel No.390311 220507, 1861 East Pole Road, Everson, Washington, subject to the following conditions:

1. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Hearing Examiner.
2. The proposal shall comply with any applicable requirements of the Whatcom County Zoning Code, particularly WCC 20.73.650 and 20.73.700.
3. The proposal shall comply with any requirements of the Department of Ecology unless modified by that Department or as appealed to the appropriate agency. Unless already in effect, a General Permit shall be obtained if required before beginning work authorized by this permit.
4. The proposal shall comply with any requirements of the Northwest Clean Air Agency, unless modified by them or as appealed to the appropriate agency.

5. If necessary, and if not already in effect, the Applicant shall obtain an access permit from the Washington Department of Transportation before beginning work authorized by this permit.
6. Ground water protection from potential contaminants shall be implemented as prescribed by the Whatcom County Public Works, Engineering Services Division.
 - a) An Engineered Stormwater Design Report with TESC Plan shall be submitted to and approved by the PW Engineering Services Division prior to any land disturbance or the issuance of any building permits.
 - b) As-built drawings for the new drainage facility shall be provided and approved by the PW Engineering Services Division prior to any Certificate of Occupancy.
 - c) As per Chapter 2, Sec. 218, (B), the Applicant shall post a maintenance security with the PW Engineering Services Division for drainage facilities. The security shall be for an amount of 10% of the engineer's construction cost estimate or \$5,000.00 (whichever is greater). The security shall be in effect for two (2) years from the date of provisional acceptance of new drainage facilities.

Other protective ground water measures may be required by Whatcom County on an as needed basis and shall be reviewed separately.

7. The proposal shall comply with any requirements of Chapter 2 of the Whatcom County Development Standards administered by the Whatcom County Public Works Department, Engineering Division, unless modified by that Department or as appealed to the appropriate agency.
8. The Applicant shall submit a copy of any Traffic Study that may be required by WSDOT to the Whatcom County Public Works Department, Engineering Services Division, with the building permit application.
9. The operations shall comply with the noise standards of WAC 173-60. The portable concrete batch plant shall be located as far away as possible and out of view from surrounding residences and from East Pole Road. It is recommended that berms of adequate height to deflect sound upward away from residences be constructed around the equipment. The Applicant may be required to implement additional noise reduction practices or structures to mitigate for noise impacts.
10. The Applicant shall complete construction or, if no construction is contemplated as a part of this permit, shall demonstrate compliance with all of the conditions of this permit within 24 (twenty-four) months of the date of the issuance of this decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this permit.

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

NOTICE

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

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

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

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

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

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

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 6th day of July 2009.

Michael Bobbink, Hearing Examiner

**WHATCOM COUNTY
DEPARTMENT OF PLANNING AND
DEVELOPMENT SERVICES
David Stalheim, Director
5280 Northwest Drive
Bellingham, WA 98226**

**NATURAL RES. SERVICES
Oliver Grah Division Manager**

May 28, 2009

**WHATCOM COUNTY, DEPARTMENT OF PLANNING
AND DEVELOPMENT SERVICES**

STAFF REPORT

The application of Bodes Precast, Inc.		CUP2009-00004 for a <u>Zoning</u>
		<u>Conditional Use Permit</u>
		FINDINGS, CONCLUSIONS,
		AND RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The Applicant, Bode's Precast, Inc. is requesting a Zoning Conditional Use Permit to establish and construct a portable concrete batch plant and on-site precast manufacturing activity located at 1861 E. Pole Road, on parcel number APN 390311 220507. No concrete will be batched for direct sale or retail customer delivery. The land use proposal includes the portable batch plant, aggregate storage, pre-casting slabs and storage buildings. An existing building partially used for office activities will continue to be used as office space.

Recommendation: Staff recommends APPROVAL of the request.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Bode's Precast, Inc.

Property Location/Address: 1861 E. Pole Road, Everson.

Legal Description: APN 390311 220507.

Zoning: Rural 10 Acre (R10A) with Mineral Resource Land (MRL) Special Overlay District.

Comprehensive Plan: MRL

Subarea: Lynden/Nooksack

Legal Notices: Notice of Complete Application – February 26, 2009.
Notice of Application, Mailed – March 2, 2009.
Notice of Legal Notice Publication – May 13, 2009.

Parties of Record:

Douglas Goldthorp
Lyn Morgan-Hill
Whatcom County Planning and Development Services
5280 Northwest Drive
Bellingham, WA 98226

Sanja Barasic
Whatcom County Public Works, Engineering
5280 Northwest Drive
Bellingham, WA 98226

Charles Sullivan
Whatcom County Health Department
509 Girard Street
Bellingham, 98225

Mr. Brad DeHaan
Ferndale Ready Mix & Gravel, Inc.
144 River Road
Lynden, WA 98264

B. PROCEDURAL INFORMATION

Authorizing Ordinances: Whatcom County Code, Chapter 20.73, Sections 20.73.152, 20.73.650, 20.73.701, and 20.73.702; Chapter 20.84, Section 20.84.220; Chapter 20.92; Official Whatcom County Zoning Ordinance

SEPA Review: Determination of Non-significance issued by Tyler Schroeder, Whatcom County PDS on May 13, 2009.

III. FINDINGS OF FACT

3.1 Applicable Policies

Comprehensive Plan:

Goal 8J *Sustain and enhance, when appropriate, Whatcom County's mineral resource industries, support the conservation of productive mineral lands, and discourage incompatible uses upon or adjacent to these lands.*

Policy 8L-3:

Allow accessory uses to locate near or on the site of the mineral extraction source when appropriate. Authorize crushing equipment to locate near the mineral extraction source as a conditional use provided that all pertinent regulatory standards are maintained. Site asphalt and concrete batch plants as a conditional use, addressing potential impacts for the site.

Mineral Resource Lands Special District (MRL); WCC 20.73.152, Conditional Uses:

Mineral processing facilities including rock crushing, asphalt and concrete batch plants.

3.2 Whatcom County Regulations:

3.2.1 WCC 20.84.220 Criteria:

All conditional use permits are required to satisfy the criteria established in WCC 20.84.220 (1 through 8), and demonstrate that the project will be consistent with the following.

- (1) *Will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations.*

The Whatcom County Comprehensive Plan established a Mineral Resource Land Overlay District (MRL) to recognize those areas designated for mineral resource uses under the Washington State Growth Management Act in accordance with RCW 36.70A.170.

In the discussion pertaining to Goal 8J the Whatcom County Comprehensive Plan recognized that accessory uses are a necessary part of most mineral extraction operations and to carry them out on site is cost-effective. Goal 8J addresses not only the extraction of minerals but also sustaining and enhancing Whatcom County's mineral resource industries.

Policy 8L-3 of the Comprehensive plan specifically mentions that concrete batch plants are established as a conditional use. This Policy also addresses accessory uses by indicating they should be allowed to locate near, or on, the site of the mineral extraction source.

The Whatcom County Code Chapter 20.73 implements the MRL designation of the Comprehensive Plan. The purpose of this chapter as contained in Section 20.73.010 states in part: The primary purpose of this district is to implement the mineral resource lands designation of the Comprehensive Plan, established pursuant to RCW 36.70A.170, by allowing the type of activity that encourages and supports the opportunity for the extraction of minerals in areas of Whatcom County designated as containing resources viable for long-term commercial extraction.

Section 20.73.152 specifically states that mineral processing facilities, including concrete batch plants are a conditional use within the MRL.

In this situation, the applicant is requesting a conditional use permit to locate a concrete batch plant within an MRL area that is over 684 acres in size. The batch plant and casting facility will provide an end use for the extracted gravel without the need of transport to a separate location. The facility will be located on a parcel that is already developed with buildings and that is near the roadway so the use is not incompatible with the removal of mineral resources. The batch plant will be able to take advantage of the adjacent mineral resources for the operation of the plant and the casting of the concrete on site is part of the mineral processing activity.

The use requested meets the general and specific objections of the Whatcom County Comprehensive Plan and zoning regulations.

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

The intended character of the general vicinity is surface mining. The proposed portable concrete batch plant and pre-cast manufacturing are consistent with this character. The site plan shows the batch plant location in a manner that shields the view of the rural zoned property to the north of the site.

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

The proposal can potentially impact groundwater resources however the portable machinery is designed and engineered to be fully self-contained. Noise impacts shall be mitigated by Whatcom County standards for hours and days of operation of WCC 20.73.701; the standards of the Washington Department of Ecology, General Permit; and the standards of the Northwest Clean Air Agency.

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

Staff believes adequate essential public facilities and services exist.

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

Staff believes there are no public costs and no detrimental economic affects other than the potential degradation of ground water resources which is addressed in designed containment mitigation. The on-site location of the proposed facility should have a positive influence on road traffic by bringing the supply closer to the use thereby reducing hauling miles.

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

Noise and aquifer impacts are regulated by the operations standards of the Whatcom County Code, WCC 20.73.701 and WCC 20.73.702. Processing water is self-contained within the portable equipment and will not be discharged to the environment. Truck traffic shall use an existing paved access onto E. Pole Road, a state highway #544. Road impacts have been adequately reviewed and addressed by the Washington Department of Transportation and the Whatcom County Public Works. Road safety shall be regulated by appropriate traffic control enforcement personnel.

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

The proposal shall access by an existing paved apron onto E. Pole Road managed by the Whatcom County Public Works, Division of Engineering.

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

There are not any known natural, scenic or historic features of major importance on the subject location.

3.3 SEPA

The Whatcom County SEPA official issued a Determination of Non-Significance on May 13, 2009, case file #SEP2009-00018.

3.4 Notification

A Public Notice of Application, dated March 2, 2009, was mailed to 27 recipients, as confirmed by the Whatcom County mail clerk's Certificate of Mailing. The Legal Notice was published in the Bellingham Herald, May 13, 2009.

3.5 Public Comments

No public comments were received. One letter from Ferndale Ready Mix asked for clarification of the application proposal.

3.6 Agency Comments

An application packet was sent to a select agency list for review and comment.

The Whatcom County Planning and Development Services, Critical Areas Planner, Lyn Morgan-Hill, on April 28, 2009, stated that there would be no wetland or habitat conservation area impacts as a result of this proposal.

The Whatcom County Health Department, dated April 14, 2009, stated that; "If employees or the public have access to water, then public water is required. At the time of a building permit application, written justification from a licensed on-site sewage designer that the existing on-site sewage system will be sufficient for the proposed uses is required prior to building permit application."

The Whatcom County Public Works, Engineering Division, issued final requirements on April 10, 2009, as follows:

- a) An Engineered Stormwater Design Report with TESC Plan shall be submitted to and approved by the PW Engineering Services prior to any land disturbance or the issuance of any building permits.
- B) As-built drawings for the new drainage facility shall be provided and approved by the PW Engineering Services prior to any Certificate of Occupancy.
- C) As per Chapter 2, Sec. 218, (B), the applicant shall post a maintenance security with the PW Engineering Services for drainage facilities. The security shall be for an amount of 10% of the engineer's construction cost estimate or \$5,000.00 (whichever is greater). The security shall be in effect for 2 years from the date of provisional acceptance of new drainage facilities.
- D) The applicant shall contact Washington State Department of Transportation for any requirements that WSDOT may have regarding this development. The contact -person is John Tellesbo at (360) 757-5964 or tellesj@wsdot.wa.gov.
- E) WSDOT has indicated that they would like the applicant to submit an access connection permit before the County issues any permit.
- F) The applicant shall submit a copy of any Traffic Study that may be required by WSDOT of the Engineering Services with the building permit application.

- G) The proposed development is exempt of Concurrency Evaluation (WCC 20.78.030) because it will generate 9 or less new p.m. peak hour trips in one direction, based on the submitted Preliminary Traffic & Concurrency information.

IV. RECOMMENDATION

In conclusion, the proposal satisfies the Whatcom County Comprehensive Plan and the Whatcom County Code. The staff recommends APPROVAL of the Zoning Conditional Use Permit application.

V. CONDITIONS OF APPROVAL

The Planning and Development Services Department recommends the following conditions of approval:

1. The proposal shall comply with any applicable requirements of the Whatcom County zoning code, particularly WCC 20.73.650 and 20.73.700.
2. The proposal shall comply with any requirements of the Department of Ecology unless modified by that Department or as appealed by that Department. Unless already in affect, a General Permit shall be obtained if required before beginning work authorized by this permit.
3. The proposal shall comply with any requirements of the Northwest Clean Air Agency, unless modified by them or as appealed by them.
4. If necessary, and if not already in affect, the applicant shall obtain an access permit from the Washington Department of Transportation before beginning work authorized by this permit.
5. Ground water protection from potential contaminants shall be implemented as prescribed by the Whatcom County Public Works, Engineering Services Division.
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 - c) As per Chapter 2, Sec. 218, (B), the applicant shall post a maintenance security with the PW Engineering Services for drainage facilities. The security shall be for an amount of 10% of the engineer's construction cost estimate or \$5,000.00 (whichever is greater). The security shall be in effect for 2 years from the date of provisional acceptance of new drainage facilities.

Other protective ground water measures may be required by Whatcom County on an as needed basis and shall be reviewed separately.

6. The proposal shall comply with any requirements of Chapter 2 of the Whatcom County Development Standards administered by the Whatcom County Public Works Department, Engineering Division, unless modified by that Department or as appealed by that Department.
7. The applicant shall submit a copy of any Traffic Study that may be required by WSDOT to the Whatcom County Public Works Department, Engineering Services Division with the building permit application.
8. The operations shall comply with the noise standards of WAC 173-60. The portable concrete batch plant shall be located as far as possible and out of view from surrounding residences and E. Pole Road. It is recommended that berms of adequate height to deflect sound upward away from residences be constructed around the equipment. The applicant may be required to implement additional noise reduction practices or structures to mitigate for noise impacts.
9. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner.

NOTICE

Complaints regarding a violation of the conditions of a permit should be filed with Whatcom County Planning and Development Services. Whatcom County Planning and Development Services may not act to revoke, revise, or modify any approval without further review by the Whatcom County Hearing Examiner.

Report prepared by:

Douglas Goldthorp; LG, LEG, LHG
Senior Natural Resource Specialist
May 28, 2009