

**THE FOLLOWING MEMO HAS BEEN
SCANNED WITHOUT EXHIBITS FOR
THE HEARING TO BE CONDUCTED BY
THE BOARD OF ADJUSTMENT.**

**ON
THURSDAY
JUNE 6, 2013 AT 7 P.M.**

**NOTE THE ADDRESS:
BENTON COUNTY PLANNING
DEPARTMENT – PLANNING ANNEX
1002 DUDLEY AVENUE – PROSSER
IF YOU WISH TO OBTAIN A COMPLETE
PACKET INCLUDING THE EXHIBITS
PLEASE CONTACT THE
BENTON COUNTY PLANNING
DEPARTMENT - 736-3086/TRI-CITIES
OR
786-5612/PROSSER
OR EMAIL AT
PLANNING.DEPARTMENT@CO.BENTON.WA.US**

Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

MEMO DATE: MAY 22, 2013

MEETING DATE: JUNE 6, 2013

TO: BENTON COUNTY BOARD OF ADJUSTMENT

FROM: CLARK A. POSEY, SENIOR PLANNER 
BENTON COUNTY PLANNING DEPARTMENT

RE: CONDITIONAL USE PERMIT APPLICATION – CUP 13-04

APPLICANT: CONRAD RUSSELL
100513 W. OIE HIGHWAY
PROSSER, WA 99350-7675

PROPERTY OWNERS: CONRAD/DESIREE RUSSELL
100513 W OIE HIGHWAY
PROSSER, WA 99350

SPECIFIC REQUEST

The applicant Conrad Russell is requesting a conditional use permit for the operation of construction equipment to remove gravel and base rock from the old railroad right-of-way, crush, load and remove gravel for sale off-site.

BACKGROUND

Site Location: The site is located on the old railroad right-of-way in the Southwest Quarter of the Northwest Quarter of Section 23, Township 9 North, Range 25 East, W.M. The parcel is 11.3 acres in size.

Land Use: The site is currently undeveloped. The surrounding properties are developed with single family residential homes and pastures.

Zoning: The site and surrounding properties are zoned Rural Lands 5.

Comp Plan: The Benton County Comprehensive Plan designated the site Rural Lands 5.

State Environmental Policy Act: Conditional Use Permit Application CUP 13-04 is not categorically exempt from the requirements of the Washington State Environmental Policy Act. A Determination of Non-Significance (DNS) for EA 13-05 (DNS) was issued on April 26, 2013.

APPLICABLE DEVELOPMENT REGULATIONS

The Benton County Code Section 11.16A.06 (In the Rural Lands 5 District) states that: "Any use not authorized or approved pursuant to BCC 11.16A.030, .040, and .050 is prohibited by laws of Benton County or the State of Washington,

11.16A.050 USES REQUIRING A CONDITIONAL USE PERMIT

The following uses may be permitted on a single parcel of record within the Rural Lands Five Acre District (RL-5) if a conditional use permit is issued by the Board of Adjustment after notice and public hearing as provided by BCC 11.52.090 (d).

(d) A sand or gravel pit, stone quarry and similar use for the development of natural resources extracted on-site.

2. Benton County Code Section 11.52.090(a) states:

"Conditional Use/Special Permit General Standards. The conditional use/special permit application process allows the Board of Adjustment to review the location and design of certain proposed uses, the configuration of improvements, and the potential impacts on the surrounding area. The application process also allows the Board of Adjustment to ensure development in each zoning district protects the integrity of that district. The notice, hearing, decision and enforcement procedures are as set forth herein and in BCC 11.52.089.

Certain uses are classified as conditional uses/special uses because of their unusual nature, infrequent occurrence, special requirements, or potentially significant impacts to the environment, public infrastructure or adjacent properties, and/or possible safety hazards and other similar reasons.

Once granted a conditional use/special permit may be transferred by a holder thereof after written notice to the Board of Adjustment; provided the use and location must remain the same and the transferee must continue to comply with the conditions of the permit and, if applicable, the requirements set forth in BCC 11.52.070."

3. Benton County Code Section 11.52.090(d) states:

"Conditional Use/Special Permit—Permit Granted or Denied. A conditional use/special permit shall be granted only if the Board of Adjustment can make findings of fact based on the evidence presented sufficient to allow the Board of Adjustment to conclude that, as conditioned, the proposed use:

- (1) is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;
- (2) will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (3) would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (4) will be supported by adequate service facilities and would not adversely affect public services to the surrounding area;
- (5) would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district; and

If reasonable conditions cannot be imposed so as to allow the Board of Adjustment to make the conclusions required above, the conditional use/special permit application shall be denied."

FINDINGS OF FACT

Based on the application and information received the planning staff makes the following findings.

1. The applicant is Conrad Russell, 100513 W. OIE Highway, Prosser, WA 99350-7675.
Property owners are Conrad/Desiree Russell 100513 W OIE Highway, Prosser, WA 99350-7675.
2. The applicant is requesting a conditional use permit to operate construction equipment to remove gravel and base rock from the old railroad right-of-way, sort, crush, load and remove gravel for sale off-site. Based on the information provided, this project is a reuse of existing material that was placed on the former railroad. No new native material is proposed to be extracted. Therefore, this project is not mining as defined in RCW 78.44.031(7)(8)&(13). 13 "Recycling" means the reuse of minerals or rock products. This parcel contains 11.3 acres and is not a buildable lot.

3. The application for Conditional Use Permit CUP 13-04 was submitted to Benton County on March 7, 2013 and was determined complete on March 8, 2013 with a complete letter being mailed on March 11, 2013.
4. The notice for the Benton County Board of Adjustment Open Record Hearing for Conditional Use Permit application CUP 13-04 was published on May 16, 2013 in the Tri-City Herald and mailed to property owners of record within 300 feet of the outer boundaries of the parcel. The Open Record Hearing is scheduled for June 6, 2013.
5. Conditional Use Permit Application CUP 13-04 was reviewed under the requirements of the Washington State Environmental Policy Act. A Determination of Non-Significance (DNS) was issued on April 26, 2013.
6. The Benton County Comprehensive Plan designated the site and surrounding areas as "Rural Lands 5".
7. The applicant would have a portable rock crusher on site used for crushing rock for the excess spoils material, to be removed from the parcel. The applicant has not made application for a rock quarry but only to remove the rock used from the old railroad right-of-way. A rock quarry is an allowed use in this zone by a conditional use permit approved by the Board of Adjustment. Any use approved must be compatible with the principal uses of the underlying zone and surrounding land uses.
8. The surrounding area is not completely developed therefore the proposed use as shown in the application would not hinder or discourage the development of permitted uses on neighboring properties in the Rural Lands 5 Zoning District as a result of the location, size, noise and dust of the proposed use.
9. Based on the information provided, this project is a reuse of existing material that was placed and used as the base for the railroad tracks. However, in the future, if extraction of native material occurs and exceeds the thresholds defined below, a surface mine reclamation permit will be required from the Department of Natural Resources. RCW 78.44.031(17)(a) "Surface mine" means any area or areas in close proximity to each other, as determined by the department, where extraction of minerals results in: (i) More than three acres of disturbed area;(ii) Surface mined slopes greater than thirty feet high and steeper than 1.0 foot horizontal to 1.0 foot vertical; or (iii) More than one acre of disturbed area within an eight acre area, when the disturbed area results from mineral prospecting or exploration activities.
10. Comments were received from the Washington State Department of Ecology, Benton County Public Works Department, Benton PUD, Sunnyside Valley

Irrigation District Benton County Building Department Benton Franklin Health Department, Benton County Fire Marshal, Kennewick Irrigation District and Washington State Department of Ecology.

11. The applicant will need to satisfy the requirements from Sunnyside Valley Irrigation District, Benton County Public Works, Washington State Department of Ecology, Department of Natural Resources, Benton County Fire Marshal, Kennewick Irrigation District, Benton PUD, Benton County Building Department, Benton Franklin Health District and Benton Clean Air Authority as additional permits from those agencies may be required.
12. The type of activity proposed is inherently noisy and dusty and the applicant does not address how noise and dust would be kept to a minimum. Noise must meet the criteria of BCC 6A.15.040 and the Benton Clean Air Authority regulates dust control under WAC 173-400-040. Applicant has not provided any information on dust control or its effects to the area.

DISPOSITION OF THE APPLICANT'S REQUEST

A conditional use/special permit shall be granted only if the Board of Adjustment can make findings of fact based on the evidence presented sufficient to allow the Board of Adjustment to conclude that, as conditioned, the proposed use:

- (1) is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;
- (2) will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (3) would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (4) will be supported by adequate service facilities and would not adversely affect public services to the surrounding area;
- (5) would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district; and

CONDITIONS OF APPROVAL

If the Board of Adjustment decides to approve Conditional Use Permit Application

CUP 13-04, based on the information presented at the public hearing and after making such findings that support that decision, the Planning Department recommends that the following conditions be included:

1. Applicant shall not conduct any of the activities within the scope of Conditional Use Permit 13-04 until the applicant is in compliance with all conditions set forth herein. The applicant shall notify the Benton County Planning Department in writing when the conditions set forth herein have been completed. The Planning Department shall not issue the conditional use permit until those conditions have been met. The conditional use permit shall not become effective until issued by the Planning Department.
2. If the conditions of approval have not been met and the Planning Department does not issue the conditional use permit within one (1) year from the time the Board of Adjustment conditionally approved the conditional use permit, the Board of Adjustment may declare its approval null and void at a regular Board of Adjustment meeting. Prior to doing so, the applicant shall be notified in writing at the applicant's last known address at least twelve (12) days in advance of the upcoming Board of Adjustment meeting.
3. The applicant provides for dust control as required under WAC 173-400-040(8)(a) by creating a dust control program approved by the Benton Clean Air Authority. The applicant shall continue to meet all such requirements while Conditional Use Permit - CUP 13-04 is in effect and that the proper permits have been issued by Benton Clean Air for the operation of a portable rock crusher, if used.
4. The applicant must have an approved Commercial Access Permit approved and issued by the Benton County Public Works Department per County Standard Plan 96-05.
5. Applicant must obtain approval for any work that may affect the Sunnyside Valley Irrigation District (SVID) easements or their right-of-way. A copy of such approval must be submitted to the Planning Department prior to work or extraction of materials in these identified areas.
6. The presence of customers/clients shall be limited to Monday through Friday between the hours of 8:00 a.m. to 6:00 p.m. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-04 is in effect.
7. Not more than three (3) vehicles marked to identify the business may be on the parcel at any one time. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-04 is in effect.
8. That any outdoor lighting associated with the proposed conditional use permit is deflected downward to avoid unnecessary glare on neighboring parcels. The

applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-04 is in effect.

9. If approved the permit will be site specific, all of the activity shall be located on the applicant's parcel contained in this application and no portion of the storage and stockpiling of material or equipment storage is to take place on any adjacent parcel. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-04 is in effect.
10. That the property owner/proprietor(s) of the business shall comply with all the requirements of the Benton County Building Department, Benton County Fire Marshal, Benton-Franklin Health Department, Benton County Public Works Department, Washington Department of Natural Resources, Washington State Department of Ecology, Benton Clean Air Authority and any other local, state and federal regulations pertinent to the conditional use permit pursued. The requirements of or permission granted by the Board of Adjustment shall not be construed as an exemption from such regulations. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 13-04 is in effect.
11. Copies of any and all additional permits required by Benton County Public Works, Washington State Department of Ecology, Washington State Department of Natural Resources and Benton Clean Air Authority must be submitted to the Planning Department prior to operating any equipment and conducting any extraction of onsite materials.