

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

**ON
THURSDAY
MAY 2, 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**

CONSENT AGENDA:
EXTENSION REQUEST

FILE NO: SP 10-10

APPLICANTS:

DAVID/CHARLOTTE
SCHLOTFELDT

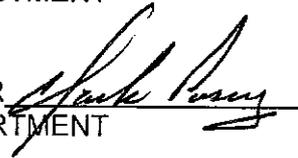
Benton County Planning Department

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

DATE: APRIL 15, 2013

HEARING DATE: MAY 2, 2013

TO: BENTON COUNTY BOARD OF ADJUSTMENT

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

RE: EXTENSION REQUEST – SP 10-10
APPLICANT'S: DAVID/CHARLOTTE SCHLOTFELDT

The Benton County Board of Adjustment conducted an open record hearing on April 7, 2011, which was continued to the next regularly scheduled Board hearing on May 5, 2011 for decision making only. Upon review and discussion of all the testimony presented the Board of Adjustment made a decision to grant SP 10-20 for the operation of a recreational vehicle (RV) park and tenting/camp cabin RV park facility. The RV Park is to have approximately 182-pad sites with approximately 170 pull-through and back in RV sites and 12 tenting sites.

The RV Park will have a main clubhouse facility that will include a general supply shop, lounge and eating area, banquet room and kitchen area. An outdoor pool is proposed in the clubhouse area.

The RV Park will have additional buildings separate from the clubhouse. These buildings will include: two (2) shower/restroom/laundry buildings, mini-storage buildings and maintenance sheds. A single-family residence will also be constructed at the southwest corner of the RV Park. The Owner/Proprietor of the RV Park will occupy the single-family residence.

In general RV pad sites will have full service hook-ups to include electrical power, domestic water, sanitary sewer, telephone and cable television. Each pad site will have an outdoor barbeque and sitting area. The special use permit was approved to allow for three gas fire campfire pits within the RV Park. The RV Park will have various on-site recreational areas to possibly include play structures, basketball court, horse shoe-pits, grass turf playfield areas and walking paths.

The parcel number of the site is: 1-1188-201-3292-001 and the 25 acre site is located on Lot 1 of Short 3292 in Section 11, Township 8 North, Range 28 East, W.M.

Condition of approval No. 2 states: If the conditions of approval have not been met and the Planning Department does not issue the special use permit within one (1) year from the time the Board of Adjustment conditionally approved the special 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.

The applicants were mailed a letter on March 27, 2013 informing them that the special use permit would be placed on the Board of Adjustment's May 2, 2013 agenda for either an extension request, null and void or withdrawal. The applicants responded to the Benton County Planning Department on April 5, 2013 with a letter and attachments requesting an extension.

The Board will need to review the April 5, 2013 letter and make a motion whether or not to grant the extension to the applicants.

Attachments:

1. Letter from the Benton County Planning Department to the applicants dated March 27, 2013
2. Letter from the applicants dated April 5, 2013 to the Benton County Planning Dept.

**NEW BUSINESS:
VARIANCE REQUEST
APPLICATION
FILE NO: VAR 13-02
APPLICANTS:
JACOB/ELIZABETH GEAR**

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: APRIL 19, 2013

HEARING DATE: MAY 2, 2013

TO: BENTON COUNTY BOARD OF ADJUSTMENT

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

RE: VARIANCE APPLICATION – VAR 13-02

**APPLICANTS/
PROPERTY OWNERS:** JACOB & ELIZABETH GEAR
3260 MT. ADAMS VIEW DR.
WEST RICHLAND, WA 99353

SPECIFIC REQUEST

The applicants are requesting a variance to BCC 11.16A.080 (4), which is a setback of twenty five (25) feet from the existing easement for any building. The variance would allow the applicants/owners approval to construct a 30'x60' shop only five (5) feet or twenty-five (25) feet from the property line bordering any public road right-of-way from the thirty three (33) foot right-of-way easement line, making this variance twenty (20) feet. The parcel is located in the Rural Lands 5 Zoning District.

BACKGROUND

Site Location: The site is located at 3260 Mt. Adams View Dr. West Richland, WA 99353 on Lot 101 of Willamette Heights in Section 8, Township 9 North, Range 28 East, W.M.

Land Use: The surrounding land uses are developed as Rural Lands 5. Residential and small agricultural acreages are the main activities within this area.

Zoning & Comprehensive Plan Designation: Site and surrounding areas: Rural Lands 5

APPLICABLE DEVELOPMENT REGULATIONS:

1. **The Revised Code of Washington RCW 36.70.810**, requires that the following findings be made prior to the granting of the variance and the applicant should be prepared to demonstrate before the Board of Adjustment that such findings exist.
 - a. Variances granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations on the other properties in the vicinity and the zone in which the property is situated.
 - b. That strict application of the Zoning Ordinance is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity

and under identical zoning classification because of special circumstances applicable to subject property including size, shape, topography, location or surroundings

- c. That the granting of the variance will not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and zone in which the subject property is situated.

2. **Benton County Code Section 11.52.088(b) states:**

"Variance-General Standards. The variance application process allows the Board of Adjustment in specific cases, as provided in RCW 36.70.810, to grant a variance to the provisions of this title when it can be demonstrated that such variance is in harmony with the general purpose and intent of this title and is accordance with the requirements of this section. However, the Board of Adjustment shall not grant variances to land uses or density requirements."

3. **Benton County Code Section 11.52.088(e) provides:**

"Variance—Permit Granted. (1) A variance shall be granted only if the Board of Adjustment concludes that based on its findings and the conditions imposed, if any, that:

- (i) granting of the proposed variance will not permit a use that is not classified as an allowable or conditional use in the zoning district wherein the use would be located;
- (ii) special circumstances such as lot size, slope, topography or necessary size or shape of the building prevent compliance with the applicable property development standards;
- (iii) due to special circumstances applicable to the subject property, strict application of the zoning district property development standards would deprive the subject property of rights and privileges enjoyed by other properties in the vicinity and under the same zoning district classification;
- (iv) the problem sought to be addressed by the variance is related to the physical features of the particular property or building and would exist regardless of the identity of the owner;
- (v) the problem sought to be addressed is not common for other properties in the surrounding area;
- (vi) the variance would not be materially detrimental to public welfare or injurious to the property or improvements in the vicinity under the same zoning classification;
- (vii) the variance will not adversely affect the health or safety or persons residing or working in the neighborhood in which the variance is being requested; and,
- (viii) the variance would not deny the preservation and enjoyment of substantial property rights of those owning property in the vicinity.

4 The Board of Adjustment may grant a variance subject to specified conditions designed to ensure that the purpose and intent of this title and the Comprehensive Plan will not be violated; provided, the specified conditions are needed to make the conclusions required by subsection (e)(1) above.

5 **11.16A.080 - PROPERTY DEVELOPMENT STANDARDS--SETBACK REQUIREMENTS.** All lands, structures, and uses in the Rural Lands Five Acre District (RL-5) shall meet the following setback requirements, and if applicable, the setback requirements set forth in Title 15 BCC (Protection of Critical Areas and Resources).

(a) Setback Requirements. The following minimum setbacks shall apply:

- (1) Each dwelling unit, accessory building, and accessory use on a parcel shall have a setback of fifty-five (55) feet from the centerline of any public road right-of-way or twenty-five (25) feet from the property line bordering any public road right-of-way, whichever is greater; and a setback of twenty-five (25) feet from the closest edge of any legally-established boundary line of a private access easement.
- (2) Each dwelling unit shall have a setback of twenty-five (25) feet from the rear parcel lines.
- (3) Each accessory building and accessory use shall have a setback of ten (10) feet from all alleys and the rear parcel lines.
- (4) Each dwelling unit, accessory building, and accessory use on a parcel shall have a setback of ten (10) feet from the side parcel lines.
- (5) All shelters, coops, or other structures used for the habitation of livestock shall have a setback of at least thirty (30) feet from every property line of the parcel on which it is located, unless a greater setback is otherwise required under Benton County Code.
- (6) All dwelling units and swimming pools shall have a setback of one hundred fifty (150) feet from any parcel located partially or wholly within the Growth Management Agricultural Act District (GMAAD) and from any adjacent orchard, hop field or vineyard (or combination thereof) of ten (10) acres or more on one parcel or on contiguous parcels under common ownership.
- (7) Cornices, eaves, belt courses, sills, fireplace chimneys, and open, unenclosed stairways or balconies not covered by a roof or canopy may extend or project from a building three (3) feet into any required setback area; provided, none of these architectural features may be located within any easements.
- (8) Ground floor uncovered, unenclosed porches, platforms, or landings may extend or project from a building six (6) feet into the setback area but no closer than five (5) feet to any parcel line; provided, none of these architectural features may be located within any easements.

(b) Any additional setbacks required pursuant to Chapter 3.18 BCC shall apply.

DISPOSITION OF THE APPLICANT'S REQUEST

A variance shall be granted only if the Board of Adjustment concludes that based on its findings and the conditions imposed, if any, that:

- (i) granting of the proposed variance will not permit a use that is not classified as an allowable or conditional use in the zoning district wherein the use would be located;
- (ii) special circumstances such as lot size, slope, topography or necessary size or shape of the building prevent compliance with the applicable property development standards;
- (iii) due to special circumstances applicable to the subject property, strict application of the zoning district property development standards would deprive the subject property of rights and privileges enjoyed by other properties in the vicinity and under the same zoning district classification;
- (iv) the problem sought to be addressed by the variance is related to the physical features of the particular property or building and would exist regardless of the identity of the owner;
- (v) the problem sought to be addressed is not common for other properties in the surrounding area;
- (vi) the variance would not be materially detrimental to public welfare or injurious to the property or improvements in the vicinity under the same zoning classification;
- (vii) the variance will not adversely affect the health or safety of persons residing or working in the neighborhood in which the variance is being requested; and,
- (viii) the variance would not deny the preservation and enjoyment of substantial property rights of those owning property in the vicinity.

FINDINGS OF FACT

The following findings of fact and comments were received as of the date of this memo being April 19, 2013. Any comments received after the completion of this staff memo or obtained during the advertised public hearing of VAR 13-02 may be addressed by the Board of Adjustment and added or deleted from this list of conditions. The Board may decide to adopt these findings as their own or amend these Findings of Fact and listed conditions after the comment period of the open public hearing.

1. The property owners/applicants are Jacob & Elizabeth Gear – 3620 Mt. Adams View Drive – West Richland, WA 99353.
2. The applicants are requesting approval for a variance to BCC 11.16A.080(4) to construct a 30'x60' storage building on the property.
3. Site Location: The site is located at 3260 Mt. Adams View Dr. West Richland, WA 99353 on Lot 101 of Willamette Heights in Section 8, Township 9 North, Range 28 East, W.M.
4. The application for VAR 13-02 was submitted to Benton County on March 20, 2013 and was determined a complete application for processing on March 26, 2013.

5. The proposed variance application did not require that a Notice of Application be published.
6. The notice for the Benton County Board of Adjustment Open Record Hearing for application VAR 13-02 was published on April 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 May 2, 2013.
7. The Benton County Building Department required that a building permit be obtained.
8. Benton County Fire Marshal commented that the exterior walls and openings must comply and meet the IBC building requirements.
9. The Benton Franklin Health District reviewed the variance request and had no objections at this time.
10. Benton REA had no comments or concerns regarding this request.
11. Benton County Public Works did not have any comments on this variance request.
12. Columbia Irrigation District comments: "CID has a 10 inch pressurized pipeline running north and south on the east side of the property that we want to protect. This pipeline is located 23 feet in from the outer border of the easement."
13. Special circumstances such as lot size, slope, topography or necessary size or shape of the building are **not a factor** in preventing compliance with the applicable property development standards in the Rural Lands 5 Zoning District.
14. The strict application of the zoning district property development standards would not deprive the subject property of rights and privileges enjoyed by other properties in the vicinity and under the same zoning district classification.
15. The problem sought to be addressed by the variance is not related to the physical features of the particular property or building and would exist regardless of the identity of the owner;
16. This placement of the residential house does not allow the shop construction to take place without violating setback regulations. It does appear alternative sites are available for the construction of a shop.
17. It must be shown that a material hardship unwarranted within the intent of this Code will exist if the variance is not granted, and that the hardship cannot be remedied by other means. The hardship demonstrated must not be self-created and must relate to the land itself and not to problems personal to the applicant. The variance permitted shall be the minimum variance which will mitigate the hardship.

CONDITIONS

The Board of Adjustment may grant a variance subject to specified conditions designed to ensure that the purpose and intent of this title and the Comprehensive Plan will not be violated; provided, the specified conditions are needed to make the conclusions required by the subsection above.

If the Board of Adjustment decides to approve Variance Request VAR 13-02 then the following are suggested conditions recommended by the Planning Department:

1. Any conditions imposed by the Board of Adjustment shall be completed prior to the Planning Department issuing the variance. 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 variance until those conditions have been met. The variance 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 variance within one (1) year from the time the Board of Adjustment conditionally approved the variance, 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 will need to obtain a building permit from the Benton County Building Department for the construction of the garage addition.
4. The applicant for Variance VAR 13-02 must have a Washington State Licensed Surveyor mark the property line adjacent to the location of the proposed building prior to the inspection by the Building Department.
5. If the application is denied the building must be constructed to conform to **BCC 11.16A..080(a) Setback Requirements:**
(a) Setback Requirements. The following minimum setbacks shall apply:

Each dwelling unit, accessory building, and accessory use on a parcel shall have a setback of fifty-five (55) feet from the centerline of any public road right-of-way or twenty-five (25) feet from the property line bordering any public road right-of-way, whichever is greater; and a setback of twenty-five (25) feet from the closest edge of any legally-established boundary line of a private access easement.

**NEW BUSINESS:
CONDITIONAL USE
PERMIT APPLICATION
FILE NO: CUP 12-10
APPLICANT:
WALT MEGLASSON**

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: APRIL 19, 2013

MEETING DATE: MAY 2, 2013

TO: BENTON COUNTY BOARD OF ADJUSTMENT

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

RE: CONDITIONAL USE PERMIT APPLICATION – CUP 12-10

**APPLICANT/
PROPERTY OWNER:** WALT MEGLASSON
54005 NORTH DEMOSS ROAD
BENTON CITY, WA 99320

SPECIFIC REQUEST: The applicant, Walt Meglasson, is requesting a conditional use permit for the operation of a construction equipment yard and material storage business in conjunction with the crushing of gravel on site for the construction of his driveway.

BACKGROUND:

Site Location: The site is located on North Demoss Road, Benton City, WA 99320 in the Southwest Quarter of the Northwest Quarter of Section 8, Township 9 North, Range 27 East, W.M.

Land Use: The site is currently undeveloped. The surrounding properties are developed with single family residential homes, vineyards, orchards and pastures. The applicant's site is 21.47 acres.

Zoning: The site and surrounding properties are zoned Rural Lands 5; properties to the East are zoned Growth Management Act Agriculture (GMA AG) and currently in grape production.

Comprehensive Plan: The Benton County Comprehensive Plan designated the site and surrounding properties as Rural Lands 5 with the properties to the East being zoned GMA AG.

State Environmental Policy Act: Conditional Use Permit Application CUP 12-10 is not categorically exempt from the requirements of the Washington State Environmental Policy Act. A Mitigated Determination of Non-Significance (MDNS) for EA 12-22 was issued on March 22, 2013.

APPLICABLE DEVELOPMENT REGULATIONS

The Benton County Code Section 11.16A.06 (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,

1. BCC 11.16A.050 (w). Business Activities that are compatible with the principal uses and purpose of the underlying zone and the surrounding land uses may be conducted from an approved accessory building detached from all dwelling units if the following criteria as well as any other conditions required by the Board of Adjustment are satisfied BCC 11.16A.050(w).

(1). There must be a residence on site, and at least one (1) of the proprietors of the business must be the owner or lessee of the property where the business and the residence are located and must reside in said residence.

(2). No more than four (4) non-resident persons, whether they work on site or not, may be employed by or be partners in the business.

(3). The business activity, including all storage space, shall not occupy more than eighteen hundred (1800) square feet of total floor area within the detached accessory building.

(4). Only one (1) approved detached accessory building on a parcel may be used for business activities. If more than one (1) business will be conducted within an approved detached accessory building, then a separate application must be submitted for each business activity, provided that the total area used by all business activities shall not exceed that permitted by BCC 11.16A.050(w)(3).

(5). No more than two (2) non-illuminating signs, with a maximum area of four (4) square feet each, shall be permitted in connection with the business activity. The posting of such signs is limited to the parcel on which the approved detached accessory building is located. On-street (inside the road right-of-way) sign posting and sign posting which interferes with the line-of-site for road intersections are prohibited.

(6). Benton County Code states not more than three (3) vehicles marked to identify the business may be on the parcel at any one time. Applicant is requesting 5 vehicles to be approved.

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 and property owner is Walt Meglasson 54005, North Demoss Road, Benton City, WA 99320
2. The applicant has applied for a Conditional Use Permit for a Business Activity, to operate a gravel, rock and crushing business. Benton County Code does allow for a Business Activity within a maximum 1800 sq. ft. building for an office and parking of equipment etc.

In order to meet the requirements of Benton County Code BCC 11.16A.050(w)(1), There must be a residence on site, and at least one (1) of the proprietors of the business must be the owner or lessee of the property where the business and the residence are located and must reside in said residence.

In addition the applicant is requesting approval for a 3,200 sq. ft. building for a shop to be used for his business activity. Code limitation is 1800 sq. ft.

- a. BCC 11.16A.050(w).states "The business activity, including all storage space, shall not occupy more than eighteen hundred (1800) square feet of total floor area within the detached accessory building".
3. The application for Conditional Use Permit CUP 12-10 was submitted to Benton County on October 12, 2012 and was determined complete on October 19, 2012.

4. The notice for the Benton County Board of Adjustment Open Record Hearing for Conditional Use Permit application CUP 12-10 was published on April 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 May 2, 2013.
5. Conditional Use Permit Application CUP 12-10 was reviewed under the requirements of the Washington State Environmental Policy Act. A Mitigated Determination of Non-Significance (MDNS) was issued on March 22, 2013. The MDNS mitigated measures issued under WAC 197-11-340 are required as follows; 1) The applicant must prepare and submit a reclamation plan to the Planning Office and Washington State Department of Natural Resources, (2) The applicant needs to obtain an Operation Permit from Benton Clean Air Authority for the operation of his portable rock crusher. A copy of said permit must be submitted to the Planning Department prior to any operation of the crusher.
6. The Benton County Comprehensive Plan designated the site and surrounding areas as "Rural Lands 5".
7. A rock quarry or an on-site demolition business is not an outright allowable or permitted use for the Rural Lands 5 zoning area, although constructing a driveway is allowed.
8. There is **not** a residence currently on site. A residence on site is a requirement in the Rural Lands 5 Zone to have a business activity. The uses of the surrounding properties are used for vineyards, orchards and single family residential structures.
9. The Benton County Fire Marshals comments were received for road construction of the Meglasson driveway and his comments and requirements are attached.
10. During a site visit, numerous items of equipment and a portable rock crusher was observed on site. It was not clear if the business was operational during the weekdays or during the weekend. There are no permits on file nor has there been prior approval granted to operate the business on this site.
11. The applicant has a portable rock crusher currently on site that is being used for crushing rock for his driveway, the applicant stated that any extra material will be sold and removed from the parcel. The applicant has not made application for a rock/gravel quarry but only a business activity, a rock quarry is not allowed outright but, may be allowed by conditional use permit in this zone. Any use approved must be compatible with the principal uses of

the underlying zone and surrounding land uses. Single family Residential houses and agricultural uses are predominating in this area.

12. The surrounding area is not completely developed so the proposed use as shown in the application may hinder or discourage the development of outright 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.
13. The Benton-Franklin Health District has commented that the business must be served by an approved onsite sewage disposal system, have an approved public water supply and meet minimum land area requirements.
14. Review notices were sent to the Benton County Public Works Dept. Benton Franklin Health District, Benton County Fire District No. 1, Benton County Building Dept., Benton County Fire Marshal, Washington State Department of Health, Kennewick Irrigation District, Department of Ecology, Benton County Code Enforcement, Benton Clean Air Authority, Department of Natural Resources, City of Benton City, Department of Fish/Wildlife, Bureau of Reclamation, Bureau of Land Management, Office of Archeology/Historic Preservation, Department Agriculture, Natural Resource Conservation District and U.S. Corps of Engineers. Comments from review agencies and comments from surrounding property owners are attached to this memo.
15. The applicant has requested that the business hours of operation be Monday through Friday, 8:00 a.m. to 4:30 p.m. we recommend 8:00 a.m. to 6:00 p.m. No weekend activity is being approved for this site or will be allowed.
16. The application does not address any outside storage associated with the conditional use permit. No outside storage of equipment or product storage will be allowed outside of the building used for the business.
17. The Conditional Use Permit application does not mention the use of any outdoor lighting.
18. The type of business 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. This may impact the agriculture activities in and on the surrounding properties. Applicant has not provided any information on dust control or its effects to the area.
19. Already located on the site are piles of waste materials metal, truck trailers, piles of concrete, rebar etc. that look like have been brought on the property for demolishing. Whether approved or not approved no further material will be allowed to be brought onto the property and stockpiled or recycled. If approved, all existing imported materials must be removed.

20. Excavation on site will be limited to the creation of an access driveway and graveling of the driveway created as proposed. Per the Benton County Fire Marshal prior to excavating a Geotechnical Study must be performed on the site. All results of this study must be submitted to the Benton County Planning Department.

The Planning Department feels that the Board will find it hard to prove that the activity applied for is compatible with other uses in the surrounding area and is more incompatible than are any other outright permitted uses in the applicable zoning district; Mr. Meglasson has the right to construct a driveway and sell the extra materials, but selling the extra material should have a time limit and should stop once his driveway is finished.

The correspondence from the neighbors' said the noise of the crusher and the sound of the pounding and hammering of the drilling equipment has an effect the neighbors' and surrounding property owners enjoyment of their properties. Comments also received mention dust created from the work on site being a problem to the vineyards and to fruit trees on surrounding properties and that this activity would could 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; The neighbors' have no objection to him putting in a driveway but it should not take over ten (10) years to do so. The Board may want to place a time limit on how long they give Mr. Meglasson to construct his driveway.

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 that 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;**

CONDITIONS OF APPROVAL

If the Board of Adjustment decides to approve Conditional Use Permit Application 12-10, 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 12-10 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. That the applicant provides written verification from the Benton Franklin Health District to the Benton County Planning Department that the applicant has complied with the Health District's requirements as outlined in their letter dated October 25, 2012. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 12-10 is in effect.
4. Prior to a Conditional Use Permit being approved, in the Rural Lands 5 zone a single family residential structure must be on site. The Benton County

Building Department must issue any building or placement permits and a site plan must be submitted and approved prior to any construction.

5. Applicant must meet the condition of the Benton County Fire Marshal in regards to the maximum allowed road grade. A Civil Engineer will need to submit road construction blue prints in relation to the construction of the road to the top of Meglasson's property and what would be required for the graveled driveway grade.
6. The applicant provides a dust control plan as required under WAC 173-400-040(8)(a) and approved by the Benton Clean Air Authority. The permit for the portable rock crusher must be permitted through the Benton Clean Air Authority and would be site specific to that location. If the crusher is moved to a different location, a new permit would be required. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 12-10 is in effect.
7. That the presence of customers/clients and non-resident employees at the business activity shall be limited to Monday through Friday between the hours of 8:00 a.m. to 6:00 p.m. as stated in the application. No weekend operation of equipment or the crusher would be allowed. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 12-10 is in effect.
8. That no more than four (4) non-resident persons, whether they work on site or not, may be employed by or be partners in the business. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 12-10 is in effect.
9. That 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 12-10 is in effect.
10. That the business activity, including all storage space, shall not occupy more than eighteen hundred (1800) square feet of total floor area within the detached accessory building. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 12-10 is in effect.
11. 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 12-10 is in effect.
12. If approved the permit will be site specific, all of the business shall be located on the applicant's parcel contained in this application and no portion of the business shall be located on adjacent parcels. Including but, not limited to

any additional storage and stockpiling of material or equipment storage. The applicant shall continue to meet all such requirements while Conditional Use Permit CUP 12-10 is in effect.

13. That the property owner/proprietor(s) of the business shall comply with all the requirements of the Benton County Building Department, the Benton County Fire Marshal, the Benton-Franklin District Health Department, and all 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 12-10 is in effect.
14. That any waste created as a result of the conditional use permit must be disposed of off-site in compliance with all local, state and/or federal regulations.
15. Benton Clean Air Authority regulates dust control under WAC 173-400-040. This may impact the agriculture activities in and on the surrounding properties. Applicant has not provided any information on dust control or its effects to the area.
16. The type of business proposed is inherently noisy and dusty. The study was conducted for the crusher that is located at the lower proposed site. The applicant should be required to submit a noise study for the portable rock crusher to be used. The noise analysis must consider noise levels generated by the proposed operation of the rock crusher plus existing noise present due to motor vehicle traffic and other permitted uses and activities in the area. This is to ensure that a new noise source such as the rock crusher is not significantly louder than the existing background noise levels.
17. Environmental noise is regulated at the property boundary of the receiving location (receptor) therefore it is necessary to determine the nature of the noise source and distance to the receiving property. Expected noise levels resulting from the proposed operation of the rock crusher should be determined for the two closest residential houses in the area.
18. The MDNS mitigated measures issued under WAC 197-11-340 are required as follows; 1) The applicant must prepare and submit a reclamation plan to the Planning Office and Washington State Department of Natural Resources, and 2) The applicant needs to obtain an Operation Permit from Benton Clean Air Authority for the operation of his portable rock crusher. A copy of both permits must be submitted to the Planning Department prior to any operation of the crusher. No work on site is to be conducted until all conditions have been met.

19. Mr. Meglasson has the right to construct a driveway and sell the extra materials, but selling the extra material should have a time limit and should stop once his driveway is finished. This activity has not been approved to become a commercial rock quarry or pit. Applicant is only to sell the excess materials created as he builds his driveway.

NEW BUSINESS:
APPEAL
OF
MITIGATED
DETERMINATION
OF
NON-SIGNIFICANCE
FILE NO:
EA 12-22/CUP 12-10
APPLICANT:
WALT MEGLASSON

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: APRIL 19, 2013

MEETING DATE: MAY 2, 2013

TO: BENTON COUNTY BOARD OF ADJUSTMENT

FROM: BENTON COUNTY PLANNING DEPARTMENT

RE: APPEAL OF MITIGATED DETERMINATION OF NON-SIGNIFICANCE FOR EA 12-22/CUP 12-10

**APPLICANT/
PROPERTY OWNER:** WALT MEGLASSON
54005 NORTH DEMOSS ROAD
BENTON CITY, WA 99320

SPECIFIC REQUEST

The Benton County Planning Department on April 5, 2013 received a written notice of appeal of the Mitigated Determination of Non-Significance for the Environmental Review issued by the Planning Manager for a Conditional Use Permit Application (CUP 12-10) to operate a surface mining operation/business activity.

APPEAL INFORMATION

Benton County Code Section 6.35.115(b), below, provides the criteria for processing an appeal of the threshold determination:

6.35.115(b) Appeals of mitigated determinations of non-significance must be made to the local authority that will hold an open record hearing on the related project permit applications, if such an open record hearing is required. This appeal must be made by filing a written notice of appeal with the responsible official within fourteen (14) days from the date of the threshold determination. If no open record hearing is required on the project permit application, the appeal will be filed and processed as required in BCC 6.35.115(a). If an open record hearing is required for the project permit application, the appeal of a mitigated determination of non-significance shall be processed as follows:

- (1) Upon receiving a written notice of appeal, the responsible official making the threshold determination shall transmit all documents constituting the record upon which the threshold determination was made

April 19, 2013

Appeal EA 12-22

to the local authority conducting the open record hearing on the project permit application.

(2) At the open record hearing, such local authority shall consider the appeal of the mitigated determination of non-significance. The public hearing notice for the project permit application shall include the threshold determination appeal and shall be published as required for the project permit application. Following the open record hearing, the local authority shall have the power to affirm the threshold determination, to remand the determination to the responsible official for further consideration, or to revise the threshold determination, provided its revision is in compliance with policies and provisions of RCW 43.21C and WAC 197-11.

The Benton County Planning Manager is the responsible official for making the environmental Threshold Determination for the State Environmental Policy Act. Washington Administrative Code Sections 197-11-330 and 197-11-335 provides the process for making a threshold determination. Those sections are contained below:

WAC 197-11-330 Threshold determination process

An EIS is required for proposals for legislation and other major actions significantly affecting the quality of the environment. The lead agency decides whether an EIS is required in the threshold determination process, as described below

(1) In making a threshold determination, the responsible official shall:

(a) Review the environmental checklist, if used:

(i) Independently evaluating the responses of any applicant and indicating the result of its evaluation in the DS, in the DNS, or on the checklist; and

(ii) Conducting its initial review of the environmental checklist and any supporting documents without requiring additional information from the applicant.

(b) Determine if the proposal is likely to have a probable significant adverse environmental impact, based on the proposed action, the information in the checklist (WAC 197-11-960), and any additional information furnished under WAC 197-11-335 and 197-11-350; and

(c) Consider mitigation measures which an agency or the applicant will implement as part of the proposal, including any mitigation measures required by development regulations, comprehensive plans, or other existing environmental rules or laws.

(2) In making a threshold determination, the responsible official should determine whether:

(a) All or part of the proposal, alternatives, or impacts have been analyzed in a previously prepared environmental document, which can be adopted or incorporated by reference (see Part Six).

(b) Environmental analysis would be more useful or appropriate in the future in which case, the agency shall commit to timely, subsequent environmental review, consistent with WAC 197-11-055 through 197-11-070 and Part Six.

(3) In determining an impact's significance (WAC 197-11-794), the responsible official shall take into account the following, that:

(a) The same proposal may have a significant adverse impact in one location but not in another location;

(b) The absolute quantitative effects of a proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environment;

(c) Several marginal impacts when considered together may result in a significant adverse impact;

(d) For some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted or values cannot be quantified.

(e) A proposal may to a significant degree:

(i) Adversely affect environmentally sensitive or special areas, such as loss or destruction of historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, or wilderness;

(ii) Adversely affect endangered or threatened species or their habitat;

(iii) Conflict with local, state, or federal laws or requirements for the protection of the environment; and

(iv) Establish a precedent for future actions with significant effects, involves unique and unknown risks to the environment, or may affect public health or safety.

(4) If after following WAC 197-11-080 and 197-11-335 the lead agency reasonably believes that a proposal may have a significant adverse impact, an EIS is required.

(5) A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules stated in this section. For example, proposals designed to improve the environment, such as sewage treatment plants or pollution control requirements, may also have significant adverse environmental impacts.

WAC 197-11-335 Additional information

The lead agency shall make its threshold determination based upon information reasonably sufficient to evaluate the environmental impact of a proposal (WAC 197-11-055(2) and 197-11-060(3)). The lead agency may take one or more of the following actions if, after reviewing the checklist, the agency concludes that there is insufficient information to make its threshold determination:

- (1) Require an applicant to submit more information on subjects in the checklist;
- (2) Make its own further study, including physical investigations on a proposed site;
- (3) Consult with other agencies, requesting information on the proposal's potential impacts which lie within the other agencies' jurisdiction or expertise (agencies shall respond in accordance with WAC 197-11-550); or
- (4) Decide that all or part of the action or its impacts are not sufficiently definite to allow environmental analysis and commit to timely, subsequent environmental analysis, consistent with WAC 197-11-055 through 197-11-070."

Washington Administrative Code sections 197-11-752 and 197-11-794 provide definitions for "Impacts" and "Significant." Those definitions are:

Impacts

"Impacts" are the effects or consequences of actions. Environmental impacts are effects upon the elements of the environment listed in WAC 197-11-444."

Significant

(1) "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.

(2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact.

The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.

(3) WAC 197-11-330 specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact.

BACKGROUND

Benton County Planning Department received a conditional use permit application and environmental checklist from Walt Meglasson to sell rock off the site as he was building an access road to a couple of building sites. The site is zoned Rural Lands 5. In the Rural Lands Zoning District a Business Activity is allowed by conditional use permit. Also allowed by conditional use are a sand or gravel pit, stone quarry and similar use for the development of natural resources extracted on-site. Originally, Mr. Meglasson applied for a business activity to operate his business from the site, however, during discussion with Mr. Meglasson he also stated he wanted to sell rock and other products from the site.

After receiving the conditional use application and environmental checklist from the applicant, a notice of application was published and sent to reviewing agencies and surrounding property owners. Based on the notice of application, the Planning Department received a number of comments from surrounding property owners, agencies and others. Those that commented provided comments on dust control and noise.

The appeal request asked that the environmental analysis investigate noise, property values and land use impacts.

The Benton Clean Air Authority specially deals with dust control plan that was made a mitigation measure on the Mitigated Determination of Non-Significance (MDNS)

Dealing with noise created by the project, in the past when noise studies were completed for other similar projects it was found that the noise level drops below the 55 to 57 dBA levels before the noise leaves the applicant's property. The state and Benton County regulation exempt blasting and noise created by construction equipment, provided it occurs between the hours of 7:00 a.m. and 10:00 p.m. The application for this proposal stated that the hours of operation will be Monday thru Friday, 8:00 a.m. to 4:30 p.m. I understand from the appeal letter that the applicant has operated in the past outside of the hours he stated on his application. If the conditional use permit application is approved and the applicant operates his facility outside of the hours stated in his application, he would be violating his approval and subject to having the permit revoked.

Just because we do not consider the noise under SEPA does not prohibit the Board of Adjustment from considering noise as it relates to their findings outlined in BCC 11.52.090(d).

The other issue raised by the appellants is the impact on property values. This issue was discussed with the Benton County Assessor's Office and they had a similar issue South of Kennewick, where a large subdivision was located next to a gravel pit. The Assessor's Office, in that case did not find any documented cases where the value of the houses in the subdivision were impacted negatively by the presence of the gravel pit.

SUMMARY

The Benton County Planning Manager has made an Environmental Determination of Mitigated Determination of Non-Significance for a proposed gravel pit, stone quarry and similar use for the development of natural resources extracted on-site. Surrounding property owners have submitted an appeal of that decision. The appeal of the decision will be heard by the Board of Adjustment at the same open record hearing as the conditional use permit.

After the Board considers all the testimony and the record presented by the Planning Department, the Board of Adjustment shall have the power to affirm the Mitigated Determination of Non-Significance - MDNS, remand the determination to the Responsible Official for further consideration, or to revise the threshold determination, provided its revision is in compliance with policies and provisions of Chapter 43.21C RCW and Chapter 197-11 WAC.