

u A
RECEIVED

AUG 23 2007

WITHERSPOON, KELLEY, DAVENPORT & TOOLE

A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS & COUNSELORS

DEPARTMENT OF
WATER RESOURCES

STANLEY M. SCHWARTZ*
SMS@WKDTLAW.COM

1100 U.S. BANK BUILDING
422 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201-0300
Telephone: (509) 624-5265
Fax: (509) 458-2728

COEUR D'ALENE OFFICE
THE SPOKESMAN REVIEW BUILDING
608 NORTHWEST BOULEVARD, SUITE 401
COEUR D'ALENE, IDAHO 83814-2146
Telephone: (208) 667-4000
Fax: (208) 667-8470

PORTLAND OFFICE
1515 SW FIFTH AVENUE, SUITE 600
PORTLAND, OREGON 97201
Telephone: (503) 546-2391
Fax: (503) 546-3889

*Admitted in Washington and Idaho

August 21, 2007

Jeff Peppersack, Bureau Chief
Water Allocation Bureau
Idaho Department of Water Resources
322 East Front Street
PO Box 83720
Boise, ID 83720-0098

RE: Permit No. 95-09042

Dear Mr. Peppersack:

In support of the Petition for Reconsideration and/or Request for Hearing on the Preliminary Order Denying Request for Extension of Time, I am enclosing a copy of the signed Findings of Fact, Legal Standards, Conditions of Approval and Order of Decision before the Board of County Commissioners of Kootenai County, Idaho. As you will see from the Statement of Facts, this matter related to a special permit to allow a concrete batch plant in the Mining Zone of Kootenai County. The application was submitted in December 2006, with a public hearing held March 8, 2007. The decision by the Board of County Commissioners was entered into the record on April 12, 2007. The Conditions of Approval, beginning on Page 9, required that physical improvements be made to the property in order to support the business operation. Such improvements were made and the business operations are occurring.

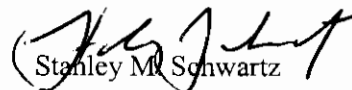
In order to facilitate the proof of beneficial use, and the priority date of the water right, we respectfully request that the date to submit proof of beneficial use be extended for a reasonable period of time but not less than six months, which is the approximate time it took to obtain the special notice permit.

Thank you for your consideration.

Very truly yours,

WITHERSPOON, KELLEY, DAVENPORT
& TOOLE, PS

By


Stanley M. Schwartz

SMS/ab
Enclosure
c: Mark Murphy
Jana McDonald

BEFORE THE BOARD OF COMMISSIONERS OF KOOTENAI COUNTY, IDAHO

IN THE MATTER OF THE APPLICATION	)	CASE NO. SN-254-06
OF CENTRAL PRE-MIX AND CORKY	)	PROPOSED FINDINGS OF FACT,
WITHERWAX, A REQUEST FOR A	)	LEGAL STANDARDS,
SPECIAL NOTICE PERMIT TO ALLOW	)	CONDITIONS OF APPROVAL,
A CONCRETE BATCH PLANT IN THE	)	AND ORDER OF DECISION
MINING ZONE		

I COURSE OF PROCEEDINGS

- 1.01 The Building and Planning Department issued a notice on this application, Case No. SN-254-06, for public review. On December 20, 2006, a Notice of Application for a Special Notice Permit was published in the Coeur d'Alene Press. On December 18, 2006, notice was sent to all property owners within 300' of the project site. On December 18, 2006, the site was posted. Based on the signed affidavits, the requirements for public notification have been met.
- 1.02 The public comment period began on December 20, 2006 and ended on January 18, 2007. At the end of the public comment period and upon review of the comments received, the Building and Planning Director scheduled the case for a public hearing before the Board of County Commissioners. A public hearing is required when there is unmitigated opposition to a Special Notice Permit.
- 1.03 The Building and Planning Department issued a public notice on this application for a public hearing held March 8, 2007. On February 1, 2007, notice was sent to all property owners within 300' of the project site. On February 8, 2007, notice was published in the Coeur d'Alene Press. On February 15, 2007 the subject site was posted. It is the Applicant's responsibility to notify all property owners within three hundred feet of the project site. Based on signed affidavits, the requirements for public notification have been met.
- 1.04 A public hearing before the Board of County Commissioners was held March 8, 2007 in Kootenai County, Idaho. The hearing was opened by Chairman Currie. The public was invited to submit testimony relative to the request. Staff presented the application request. The Applicant representative, Dana Wetzel of Wetzel & Wetzel outlined the application and made a request for approval. Others attending in favor were Jana McDonald, Barb Bailey, Mark Murphy, Corky Witherwax and Kevin Holt. Don Beck spoke stating a neutral position with concerns as did David Haman. Joe Doellefeld representing Stateline Speedway spoke, not stating his position, but that the Speedway was a neighbor to the application site. Janet Robnett, on behalf of Spokane Rock Products and Don Beck, spoke in opposition. She submitted a written document (Exhibit – B-1000), citing concerns and proposed conditions. Those that spoke in opposition were concerned with the conditions of Beck Road, a protection buffer for the Aquifer, site conditions and issues relating to the general operation of the batch plant. Dana Wetzel, the Applicant's representative, spoke in rebuttal. After some discussion among the Board, a motion was made by Commissioner Tondée to continue the public hearing to March 22, 2007, to have the opportunity to review other Mining zone Development Agreements and Special Notices for Batch Plants, and to review the document submitted by Janet Robnett. The vote was unanimous in favor of the motion.
- 1.05 On March 22, 2007 the Board of County Commissioners met to continue the public hearing. The Board reviewed the information requested on March 8, 2007 prior to closing the public hearing. Upon review of all files, exhibits, and testimony of current record regarding said application, the Board moved to approve the request with conditions and makes the following Findings of Fact

and Conclusions of Law. (**Exhibit S-49, Development Agreements and Special Notice information**)

II FINDINGS OF FACT

2.01 **Applicant.** The Applicant is Corky Witherwax for Central Pre-Mix., 845 W. Kathleen Avenue, Coeur d'Alene, Idaho, 83815.

2.02 **Owner.** The County Assessor's Records list Acme Materials & Construction Co., PO Box 2503, Spokane, WA 99220 as the owner of the property.

2.03 **Proposal.** The Applicant requests a Special Notice Permit to operate a Concrete Batch Plant in the Mining zone. The site is vacant of structures. The Applicant stated in their Narrative "There have been mining operations on the site in the past". The Applicant proposes to construct a Concrete Batch Plant, will include, but may not be limited to a 30' X 30' Ad Mix Building, 3 Hoppers 12' X 12' in size, three (3) conveyors each approximately 100' long, a 14' X 60' Control building and two (2) silos. The site will also include a 25' by 75' office building with restroom facilities, a parking area approximately 50' by 150' in size, and a concrete settling pond that would allow solids to separate and reuse the water for drum washout and material delivery. The fines that are settled out would be recycled into other material. According to the Applicant, the Concrete Batch Plant will be sited on a footprint of approximately 200 feet by 200 feet. The total acreage of the property is approximately 60 acres.

According to the site plan, the distance of the plant to the nearest road right-of-way, Beck Road is approximately 1320 feet. The Concrete Batch Plant will sit in the southwest portion of the property. The distance of the plant to the closest property line is approximately 250 feet (west property line); to the south property line is approximately 350 feet, to the north property line over 1300 feet; to the east property line is approximately 800 feet. (**Exhibits A-8, Site Plan and Exhibit A-25, letter**)

2.04 **Operation of Concrete Batch Plant.** The contractor/operator of the Concrete Batch Plant will be Central Pre Mix Concrete Company, a subsidiary of CPM Development Corporation, of Coeur d'Alene, Idaho. (**Exhibit- A-25, Letter**)

The Applicant stated in the narrative "Concrete would be produced at this site from raw materials and shipped to various private, County, State and Federal jobs in the surrounding area."

2.05 **Location and Legal Description.** The site is located on the west side of Beck Road at 1101 N. Beck Road, Post Falls, Idaho and approximately 1900 feet east of the Idaho and Washington state line. The parcel is described as a portion of SE ¼ of Section 36, Township 51 North, Range 06, West, Boise Meridian, Kootenai County, Idaho. The parcel number is 51N06W-36-8600. The serial number is 130676. (**Exhibits S-5, Assessors Printout; S-6, Assessor's Map**)

2.06 **Physical Characteristics.** The property is fairly level, treeless, open ground on the prairie. There are mounds of gravel or rocks and dirt on several locations, primarily on the perimeter near the operation site. According to the *Soil Survey of the Kootenai County Area* the soil in this area is primarily, Garrison gravelly silt loam, 0 to 7 percent slopes and a portion in the southwest section of the site that is described as Garrison very stony silt loam, 0 to 7 percent slopes. This Garrison soil is a very deep, somewhat excessively drained soil that formed in glacial outwash mixed with loess and volcanic ash. Permeability is moderate, runoff is slow to medium, and the hazard of erosion is slight. (**Exhibit A-4, Photos**)

- 2.07 **Aquifer.** The site is located over the Rathdrum Prairie Aquifer.
- 2.08 **Zoning.** This subject property is located in the Mining zone. The parcel adjacent to the subject property, on the east side, is zoned Light Industrial. Adjacent to the subject property to the south and west is zoned Agricultural. Adjacent to the north, property is zoned Mining. (**Exhibit S-43, Zoning Map**)
- 2.09 **Surrounding Land Use.** Adjacent land to the south and west are in agricultural production. Stateline Speedway, an automobile race track is to the east in the Light Industrial zone, and the property to the north is currently being used as mining.
- 2.10 **Comprehensive Plan.** The subject property is designated as Agricultural on the 1994 Comprehensive Plan Future Land Use Map. The purpose of this designation is to preserve existing productive agricultural lands. Agricultural lands are defined as areas where the primary use is agricultural with dwellings incidental to the primary use. Agricultural production from existing viable farmlands is a significant part of the County's economy. Continued viability requires that these areas remain in relatively large land units and that agricultural lands be buffered and protected from encroachment by incompatible uses. Services and infrastructure are not expected to be improved in these areas. Subdivision development is discouraged.
- 2.11 **City Impact.** The subject property is in the Shared Tier and falls under the guidelines of Ordinance No. 339, a County Coordinated Area of City Impact Agreement. Staff submitted comment request to the three Cities party to this agreement: Post Falls, Rathdrum and Hayden. Because of the proximity to the City of Hauser, a request for comments was sent to them. Their comments are as follows:
- Post Falls – In a letter dated December 11, 2006, Collin Coles, Senior Planner, stated, "The site is north of Stateline Speedway and is zoned for mining. There are other mining uses in the area. It is reasonable to assume that light industrial or commercial uses could continue to evolve in this area. We do not believe that the proposed use would adversely effect the provisions of wastewater collection in the future. Kootenai County should carefully review the application with respect to impacts to the Rathdrum Prairie Aquifer." (**Exhibit PA-9, Letter**)
 - Rathdrum – In a comment card dated November 14, 2006, Planner Chris Riffe stated: "We have no comments." (**Exhibit PA-3, Comments**)
 - Hayden – In a letter dated November 28, 2006, Community Development Director Lisa D. Key stated that the City of Hayden has no comments regarding the case. (**Exhibit PA-4, Letter**)
 - Hauser – In a comment card dated December 4, 2006, Tina McCoy stated that there were concerns regarding slow traffic merging onto Beck Road and recommends a merging lane onto Beck to ease congestion/hazards." (**Exhibit PA-8, Comments**)
- 2.12 **Access/Transportation.** The site is accessed by a private driveway extending from the west side of Beck Road, a Post Falls Highway District maintained road. In a letter dated December 7, 2006, Lynn Humphries, Chairman of the Post Falls Highway District, stated "The Post Falls Highway District Commissioners and Engineers have reviewed the request for the above-mentioned project. Attached is Darius Ruen's review letter giving recommendations and requirements that must be met before approval is given. The letter dated December 6, 2006 from Darius L. Ruen, P.E, states the following:

- “At your request, we have reviewed the above referenced Special Notice Permit to allow a Concrete Batch Plant on approximately 60 acres in The Mining Zone. The Concrete Batch Plant would access Beck Road from an existing approach located at the Southeast corner of the Stateline property. The existing approach has appropriate width and adequate site distance.
- We recommend that the Applicant pave the approach a distance of 100 feet west of Beck Road to minimize the potential for tracking of dust and gravel onto Beck Road.
- Beck Road is not constructed to an all weather standard and as such is subject to load limits. We recommend that the Applicant enter into a development agreement with the Post Falls Highway District to participate in the costs of improving Beck Road to an all weather road section. **(Exhibit PA-5 and PA-6, Letters)**

The Applicant's representative Kevin Holt, Attorney with Wetzel & Wetzel, stated in a letter dated December 18, 2006, “The paving of 100' of the driveway is optional (although we will be doing the paving anyway because our client wants to do it). If we want to operate during all weather and seasons, then we need to enter a development agreement with the Highway District. However, we would prefer at this time to only operate during good weather and not enter a development agreement.” **(Exhibit A-13, Letter)**

The Applicant's representative Kevin Holt submitted a letter addressed to the Commissioners dated March 21, 2007, a rebuttal to Janet Robnett's document that was submitted at the March 8, 2007 public hearing. In said letter, Mr. Holt states:

- The Applicant has already agreed to pave the 100 feet of the driveway leading to Beck Road.
- The Post Falls Highway District's recommended development agreement was discussed at the hearing. Accompanying this rebuttal letter is a letter from the Post Falls Highway District agreeing that it will not require, or even recommend a development agreement provided the Applicant not operate at times when the road is subject to load limit restrictions. As stated in the hearing, the Applicant has promised the Highway District to not use the road during these times. At the hearing Mr. Murphy explained that the company has other operations that could provide product during these times.
- The accompanying letter should fully satisfy that the Post Falls Highway District has approved the operation as proposed by the Applicant. **(Exhibit A-27, Letter with attachments)**

The attached letters Mr. Holt was referring to are as follows, (1) from the Post Falls Highway District and (2) from Central Pre-Mix.

(1) Robert B. Wilber, Vice-Chairman of the Post Falls Highway District, stated in a letter dated March 22, 2007 the following regarding Beck Road.

- This letter is notification from the Post Falls Highway District that an agreement has been reached between the Highway District and Central Pre-mix concerning Beck Road. Beck Road is not an all-weather road and is subject to weight limits during spring breakup. When Central Premix needs to operate through breakup, they will participate with the Highway District in bringing Beck Road to all-weather standards from their approach south to the north end of the Highway District's railroad crossing project. **(Exhibit PA-15, Letter)**

(2) Barb M. Baily, Assistant Manager for Central Pre-Mix, stated in a letter dated March 19, 2007, the following:

- "Re: Beck Road Operations, To Whom It May Concern: Our company would like to assure you that we understand Beck Road is subject to seasonal load restrictions. We regularly review load limit postings and comply with the appropriate regulations. We will adhere to the load limit restrictions as posted on Beck Road."
- "If at any time in the future our company decides to haul on Beck Road during the time when Beck Road would be subject to load restrictions, we will work with the Post Falls Highway District to develop a road agreement to cost share on overlaying approximately 1200 feet of Beck Road from the Central Pre-Mix access road south to the boat storage entrance." (Exhibit PA-16, Letter)

Kelly Brownsberger, Road Supervisor for Post Falls Highway District, provided staff with a copy of the letter from Barb M. Bailey. Mr. Brownsberger verbally said although this is not a formal agreement, the Post Falls Highway District accepts this letter from Central Pre-Mix, dated March 19, 2007 by Barb M. Bailey, Assistant Manager, as an agreement between Central Pre-Mix and the Post Falls Highway District.

2.13 **Sewage Disposal.** The Applicant stated domestic wastewater will be served by a septic and drainfield. Justin Rader, Environmental Health Specialist of Panhandle Health District, stated in letter dated November 14, 2006 the following comments:

- Please keep in mind during your request for Special Notice Permit on parcel 3 51N06W-36-8600, that only one equivalent residence is allowed per 5 acres for on-site sewage loading over the aquifer, (IDAPA41.1.110, Sewage Disposal on the Rathdrum-Prairie Aquifer, limits one equivalent residency per five acres, which is equal to 250 gallons/day or 20 persons using a non-residential facility on a 40 hr/week basis, with no wastewater generation except from restrooms.) The On-Site Sewage System Application will need to be filled out for review. Any non-domestic wastewater will need to be addressed by our Critical Materials Program by filling out the Commercial/Industrial Application for review. (Exhibit A-13, Letter and PA-2, letter)

In an e-mail dated January 22, 2007, Mr. Rader stated that he "issued a septic permit 07-28-102216 for only one equivalent residence in accordance with their business description. (Exhibit PA-11, E-mail Letter)

2.14 **Fire Protection.** The subject property is within the Kootenai County Fire & Rescue. In a letter dated November 13, 2006, Fire Marshall Larry Boatwright had the following comments: "In regards to case number SN-254-06, this office has no objections to the requested modifications provided the following requirements are met."

- The fire district will require one set of building plans prior to approval and construction. In order to gain approval, the building plans must show that all applicable fire codes will be complied with.
- It is the burden of the Applicant and/or builder to prove that there are or will be constructed, an adequate water source for fire suppression. This may include one or more of the following: fire hydrants, water storage for fire department use, and/or an automatic fire sprinkler system installed throughout the building.
- Roads and driveways must meet the 20-foot clear driving width requirement for emergency vehicles. (Exhibit PA-1, Letter)

Larry Boatwright, Fire Marshall for Kootenai County Fire & Rescue, sent a letter dated February 7, 2007 stating their requirements remain the same as stated in their letter dated November 13, 2006. (**Exhibit PA-12, Letter**)

2.15 **Hours of Operation.** The Applicant indicated verbally that they plan to operate 5 days per week during daylight hours.

2.16 **Lighting.** The Applicant did not address this issue.

2.17 **Parking.** The Applicant stated there will be two plant operators and 10 to 15 drivers. The Applicant did not address the Design Standards addressing this issue. (**Exhibit A-25, Letter**)

2.18 **Air Quality.** The Idaho Department of Environmental Quality (DEQ) is responsible for enforcement of the State Air Quality and Water Quality Standards. The Department of Environmental Quality (DEQ) issues a permit titled "Permit to Construct an Air Pollution Emitting Source."

Cheryl A. Robinson, P.E., Air Quality Permitting Engineer for Idaho Department of Environmental Quality (DEQ), stated in an e-mail dated December 13, 2006 to Wayne Kalbfleisch,

- "DEQ's Air Division is instituting new practices intended to streamline the permitting process and communications with permittees. The attached file constitutes the official transmittal of the pre-permit construction approval letter. As noted in the letter, the application has also been determined to be complete. A hard copy of the letter will follow in certified mail." In an e-mail dated December 26, 2006, Dan Redline, Air Quality Manager of the Idaho Department of Environmental Quality (DEQ), stated the status of the air quality permit to construct for the CPM Concrete Batch Plant could be issued by the end of January. (**Exhibit PA-10, Permit Information**)

2.19 **Water Quality.** In an e-mail dated December 20, 2006 from Corky Witherwax to Gary Gaffney of the Department of Environmental Quality (DEQ), Mr. Witherwax briefly described the operation of the Concrete Batch Plant. "Gary, you are correct in the fact that we would construct a concrete settling pond that would allow solids to separate and reuse the water for washout and material delivery. The fines that are settled out are used in the delivery of pea gravel." In an e-mail to Corky Witherwax from Gary Gaffney, of the Department of Environmental Quality (DEQ), dated December 20, 2006, Mr. Gaffney had the following comments:

- Plans and specifications for construction of this wastewater system handling discharges from cleaning out the concrete trucks will need to be approved by DEQ per Section 39-118 of Idaho Code before the facility is built with record drawings provided after completion showing the final system. The important parts of this recycling system will be to have a sealed settling pond and system that does not allow any wastewater loss into the subsurface and means to monitor the quantities involved as a check of the system's integrity.
- This system was not clearly identified in the county application so it is good that it was brought up now so everyone is aware of the DEQ involvement." (**Exhibit S-28, E-mail**)

In a letter dated March 1, 2007, George H. Ricard of Panhandle Health District stated the following:

- “Re: Critical Materials Preliminary Review, CMR Facility ID #395. We received your commercial industrial application of February 9, 2007 which lists all critical materials and a simplified site plan. As part of their commercial/industrial application approval process we will need detailed construction plans indicating secondary containment for our review and approval process prior to any construction. According to our administrative rules, the Critical Materials Rule will govern and regulate the storage and handling of critical materials, to include biennial inspections of their facility and processes. Secondary containment for all critical materials that are used, stored, and handled must be in place and maintained so as not to pose a threat to groundwater.
- A post opening inspection will be performed to determine conformance with approved submitted plans, specifications, and issuance of a Critical Materials Compliance Certificate. In addition, Panhandle Health District will require relevant applications for on-site sewage disposal, as well as shallow injection wells that may be related to storm-water management on this site.” (Exhibits, PA-13, Letter)

2.20 **Buffer.** The Applicant did not address this issue.

2.21 **Noise/Odors.** The Applicant did not address this issue.

2.22 **Dust Control.** According to Dan Redline with the Air Quality section of DEQ, the Applicant has applied to DEQ for a permit to construct the concrete batch plant as required by the Idaho air quality rules. A final DEQ determination on this permit application is pending. (Exhibit PA-7, comments)

2.22 **Public Comment.** Two public comments have been received; one comment neutral and one comment with questions with a request for a public hearing. (Exhibits P-1 and PA-2)

III APPLICABLE LEGAL STANDARDS

3.01 Kootenai County Zoning Ordinance No. 375, as amended.
Section 30.04, Special Notices; Special Notice Permit Standards, Section 33.34 Concrete Batch Plant

Section 30.04 outlines the application requirements and procedures, as well as the review standards for Special Notice Permits.

Section 33.34 contains specific requirements of Special Notice Permits for Concrete Batch Plants:

- A. Minimum lot area –five acres.
- B. The plant must be located within an existing mining zone or at a site with an approved and valid Conditional Use Permit for a Restricted Surface Mine. Non-conforming sites must be brought into compliance prior to issuance of any permit for an asphalt or concrete batch plant.
- C. The operation shall not constitute a nuisance or hazard.
- D. The plant must be located at least 500 feet from the closest residence, other than the residence of the owner.
- E. The plant must be set back at least 75 feet from any road right-of-way and 50 feet from any other property line.
- F. The County may require the posting of a performance bond to guarantee performance of Conditions of Approval.

- 3.05 Kootenai County Ordinance No. 355, Hearing Procedures.
- 3.06 Ordinance No. 339 – This Ordinance outlines the County Coordinated Area of City Impact Agreement.

IV CONCLUSIONS OF LAW

- 4.01 All criteria set forth in Section 12.05, 12.07, 30.04 and 33.34 of Kootenai County Zoning Ordinance No. 375, as amended, have been met, or will be met, as a result of the conditions imposed.

- Open space and setback requirements of the underlying zone are met.
- The application included a site plan, narrative, and photographs of the site.
- Public agency review and letters of comment were received.
- The Concrete Batch Plant facility shall meet all Building Code requirements for this type of use.
- Conditions of Approval shall include compliance with all applicable County ordinances.

V ORDER OF DECISION

Based on the Findings of Fact and Conclusions of Law set forth in these documents, the Kootenai County Board of Commissioners orders that **Case No. SN-254-06, a request by Corky Witherwax on the behalf of Central Pre-Mix**, for a Special Notice Permit to construct and operate a Concrete Batch Plant in the Mining Zone is hereby **APPROVED with the following conditions:**

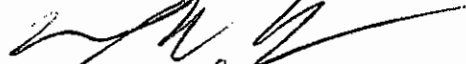
VI. CONDITIONS OF APPROVAL:

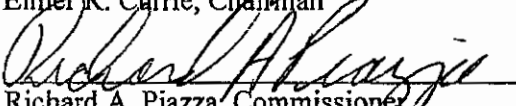
- 6.01 The terms and conditions placed on this Special Notice Permit shall run with the land and remain valid upon a change of ownership, or until such a time the Permit expires, is revoked, is relinquished by the owner, or is replaced with another approved use. The Permit is not transferable from the approved site to another site. The Applicant, or future assigns having an interest in the subject property, shall fully comply with all conditions placed upon this Permit and the site shall be in accordance with the Special Notice Permit Standards listed under Section 33.34 of Kootenai County Zoning Ordinance No. 309. This approval is based on the information presented in the project application, plans and testimony provided as part of the request, and the approval is limited to that request.
- 6.02 The project shall conform to the plans that were submitted, and which are labeled **Exhibits A-3, A-8, A-10, A-13, A-14, A-25 and A-27.**
- 6.03 Changes in the conditions and terms of this Order of Decision shall not be undertaken by the Applicant, or future assigns having an interest in the subject property, until the Building and Planning Director has reviewed the proposed changes and approval has been granted by the appropriate official(s).
- 6.04 The Applicant must meet the requirements of the Idaho Department of Environmental Quality and Panhandle Health District. Prior to issuance of building permits, containment plans must be approved by both DEQ and PHD.
- 6.05 Existing vegetation must be maintained around the perimeter of the property and around the plant to help buffer visual impacts and reduce dust and stormwater runoff.

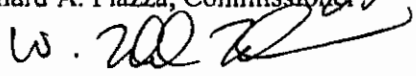
- 6.06 Lighting shall be downward directed and shielded to prevent illumination at property lines greater than 0.2 foot-candles.
- 6.07 Dust control measures shall be undertaken at all times.
- 6.08 Hours of operation shall be 6:00 a.m. to 7:00 p.m., Monday through Saturday. Extended hours of 6:00 a.m. to 10:00 p.m. may be necessary for up to 60 days per calendar year. Extended hours shall only run during Monday through Friday. The Applicant will notify the Kootenai County Building and Planning Department in writing one week in advance of the start of the extended hours, and within one week after completion. Notice of the start of extended hours will be published in the local newspaper(s) of record. The Applicant will make available a record of the actual days operating at extended hours, with a total for the year to date.
- 6.09 The Applicant, and future assigns having an interest in the subject property, shall have an excavation depth restriction that there be fifty (50) feet of undisturbed material be left between the lowest point of any excavation and the highest point of the Aquifer.
- 6.10 The Applicant shall comply with the requirements of the Post Falls Highway District.
- 6.11 Unless otherwise approved, if the proposed construction or use authorized by this Conditional Use Permit has not been established within two (2) years from the date of the signing of the Order of Decision, this approval shall expire.

Dated this 12th day of April 2007

BY ORDER OF THE KOOTENAI COUNTY
BOARD OF COMMISSIONERS


Elmer R. Currie, Chairman


Richard A. Piazza, Commissioner


W. Todd Tondee, Commissioner

ATTEST:

DANIEL ENGLISH

BY DEPUTY CLERK



Notice: In accordance with Idaho Code §67-8003, Applicants for site specific land use requests may ask for a regulatory taking analysis.