### CLEARANCES

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<th>Originator: Matt W. Aamot</th>
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<th>Division Head: Sylvia Goodwin</th>
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<th>Dept. Head: Hal Hart</th>
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<th>Prosecutor: Karen Frakes</th>
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### SUBJECT:
- Ordinance adopting amendments to the Whatcom County Comprehensive Plan and Zoning maps to create a Mineral Resource Lands Designation near the corner of North Star and Brown Roads (James Carr application).

### ATTACHMENTS:

1. Proposed ordinance
2. Planning Commission Findings of Fact & Reasons for Action, Conclusions and Recommendations
3. Planning Commission minutes

Note: Background materials are available for review at the County Council office.

### SEPA review required?
- (x) Yes
- ( ) NO

### SEPA review completed?
- (x) Yes
- ( ) NO

### Should Clerk schedule a hearing?
- ( ) Yes
- (x) NO

### SUMMARY STATEMENT:
James Carr submitted an application to amend the Comprehensive Plan map from Rural to Mineral Resource Lands (MRL) and amend the zoning map to create an MRL overlay zone for approximately 37 acres (the underlying zoning is Rural one dwelling/five acres). The subject site is located near the intersection of North Star and Brown Roads, approximately 2 1/4 miles northwest of the Ferndale city limits, within section 10, T39N, R1E, W.M.

Note: The subject proposal is one of a number of comprehensive plan amendments initiated this year. These amendments must be considered concurrently by the County Council so that the cumulative effect of the various proposals can be evaluated (RCW 36.70A.130). Additionally, pursuant to the review schedule established in WCC 20.10.120, final Council action on these amendments should occur on or about November 30.

### COUNCIL ACTION TAKEN:
- 9/14/2004: Introduced.
- 9/28/2004: Forwarded to concurrency meeting.

### Distribution Request
Indicate those who should receive a copy after Council action. List specific names to the right.

- ADS Facilities Management
- ADS Finance
- ADS Human Resources
- ADS Info Services
- Assessor
- Keith Willnauer
- Auditor
- Cooperative Extension
- District Court
- Executive
- Health
- Hearing Examiner
- Jail
- Juvenile
- Parks
- Planning
- Hal Hart
- Prosecutor
- Public Works
- Sheriff
- Superior Court
- Treasurer
- Other

### Ordinance or Resolution Number (this item): Ord. #2005-003

### Related County Contract #:

### Related File Numbers: AB2004-082

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1 Planning Division/Comp Plan Amendments/Comp Plan 2004/CMF2004-00025 (MRL North Star-Brown Rds.) - AB.doc
ADOPTING A MINERAL RESOURCE LANDS
COMPREHENSIVE PLAN AND ZONING DESIGNATION
NEAR THE CORNER OF NORTH STAR AND BROWN ROADS

WHEREAS, an application has been submitted by James Carr to amend the
Comprehensive Plan map from Rural to Mineral Resource Lands (MRL) and amend the
zoning map to create an MRL overlay zone for approximately 37 acres (the underlying
zoning is Rural one dwelling/five acres); and

WHEREAS, the subject site is located near the intersection of North Star and Brown
Roads, approximately 2 ¼ miles northwest of the Ferndale city limits, within section 10,
T39N, R1E, W.M.; and

WHEREAS, notice of the Whatcom County Planning Commission hearing on the
proposed amendment was published in the Bellingham Herald, mailed and posted; and

WHEREAS, the Whatcom County Planning Commission held a public hearing on the
proposed amendment and considered all testimony; and

WHEREAS, the County Council has considered the Planning Commission’s Findings
of Fact & Reasons for Action, Conclusions and Recommendations.

The Council makes the following findings of fact and conclusions:

FINDINGS OF FACT

1. Notice of the Planning Commission hearing was mailed to surrounding property owners
   within 1,000’ of the proposed MRL on May 24, 2004.

2. Notice of the Planning Commission hearing was posted at the subject site on May 27,
   2004.

3. Notice of the Planning Commission hearing was published in the Bellingham Herald on

4. A determination of non-significance (DNS) was issued under the State Environmental
5. The Planning Commission held a public hearing relating to the subject amendment on June 10, 2004.

6. An existing surface mine is located on the subject site. A state Department of Natural Resources (DNR) Reclamation Permit was originally issued for this 16-acre site on November 1, 1971.


8. Mineral resource designation criterion # 1 states, “Non-metallic deposits must contain at least one million cubic yards of extractable sand, gravel, or rock material per MRL Designation.” The applicant has submitted documentation demonstrating that there are over three million cubic yards of sand and gravel in the proposed MRL.

9. Mineral resource designation criterion # 2 states, “Minimum MRL Designation size is twenty acres.” The applicant’s proposed MRL designation is approximately 37 acres.

10. Mineral resource designation criterion # 3 states, “MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations.” The subject site does not contain a surface mine permitted for agricultural or forestry operations. Therefore, this criterion does not apply.

11. Mineral resource designation criterion # 4 states, “All pre-existing legal permitted sites meeting the above criteria (criteria 1-3) will be designated.” Although there is an existing surface mine on a portion of the site, the DNR reclamation permit covers only 16 acres of the subject 37-acre site. The adjacent 20 acres to the west that the applicant is seeking to designate as an MRL has not been mined in the past. Therefore, the subject site would not qualify under this criterion and must meet criteria 5-9.

12. Mineral resource designation criterion # 5 states, “Greater than 75% of the site must be classified as MRA-2 (see Comprehensive Plan Map 21) and have proven resource, or meet the following criteria:

   - Construction material must meet WSDOT Standard Specifications for road, bridge and municipal construction, or Whatcom County standards for other uses.
   - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot)."

According to GIS analysis, approximately 83% of the site is within an “MRA-2” area of mixed sand and gravel. The Whatcom County Natural Resources Report – Mineral Resources Background Document (1994) indicates that the MRA-2 classification denotes mineral resource areas where significant mineral deposits are present or there is a high likelihood of their presence (p. 10).

In an e-mail memo of June 1, 2004, the County’s geologist stated:

I have reviewed the report by GeoTest dated May 28, 2004, attempting to prove the quantity and quality of the sand and gravel resource for the subject MRL Comp Plan amendment application as required in the Section 8 of the Whatcom County Comprehensive Plan. In my opinion, the Applicant, through their consultant, GeoTest, has successfully accomplished that goal.

It is important to note that the consultant identifies the subject deposit as part of the Deming Sand formation, per Easterbrook. Not surprising, approximately 2/3 or 66% of the deposit is comprised of sand. Sand is common throughout Whatcom County, predominately west of Lynden, and remains an abundant by-product of aggregate processing in most of the established gravel pits and MRLs.

13. Mineral resource designation criterion # 6 states, “MRL Designations must not be within or adjacent to developed residential zones or subdivisions platted at urban densities.” The subject site is zoned Rural one dwelling/five acres (R5A). Adjacent properties are also zoned R5A. There are no adjacent properties zoned residential. Additionally, although there are several small lots immediately to the north, there are no urban density subdivisions adjacent to the site.

14. Mineral resource designation criterion # 7 states:

MRL Designations must not occur within the 5 year zone of contribution for designated wellhead protection areas, as approved by Whatcom County, provided that designations within the 10 year zone of contribution shall not subsequently allow mining within 10 vertical feet of the seasonal high water table. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL.

According to GIS mapping, the Lake Terrell Water Association well is located to the southeast of the proposed MRL. However, the proposed MRL is not within a designated wellhead protection area of this or any other public water system’s wellhead protection area.

15. Mineral resource designation criterion # 8 states, “MRL Designation should not enclose by more than 50% non-designated parcels.” The proposed MRL designation does not enclose more than 50% of the boundary of any parcel.

16. Mineral resource designation criterion # 9 states, “Abutting parcel size density must not exceed one unit per nominal five acres for more than 25% of the perimeter of the site.” There are four small parcels, each one acre or less in size, immediately north of the existing mine. These parcels abut approximately 16% of the perimeter of the site. There are six other parcels abutting the site or immediately across the road from the site that,
according to the Assessor’s map, range in size from 4.72 to 4.92 acres. A surveyor from the Whatcom County Public Works Department rendered an opinion relating to whether these parcels constitute “nominal five acre” parcels in a memo of April 27, 2004:

My opinion of Nominal fives is based in the concept of gross density. Regardless of minor discrepancies in actual acreage of various sections the gross density of a section of five acre zoning is 128 lots per section. The abutting short platted and exempt parcels are the result of a nominal 20-acre parcel divided into 4 pieces. Based on this concept I would declare all of the subject parcels to meet the definition of Nominal fives.

17. In addition to the nine criteria for designating MRLs, the Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.

18. Whatcom County Comprehensive Plan Policy 8P-1 to “Designate a 50 year supply of commercially significant construction aggregate supply.”

19. The state DNR completed a study entitled Reconnaissance Investigation of Sand, Gravel, and Quarried Bedrock Resources in the Bellingham 1:100,000 Quadrangle, Washington (Jan. 2001). This study indicates that the working lifetime of most of the significant pits in the County is 10 to 20 years (p. 5).

20. Whatcom County Comprehensive Plan Policy 8K-1 is to “Avoid significant mineral extraction impacts on adjacent or nearby land uses, public health and safety, or natural resources.”

21. GIS analysis indicates that there are 23 parcels within a ¼ mile radius of the subject site and that the average size of these parcels is 7.0 acres.

22. WCC 20.73.130(3) requires buffering to address noise and dust through the administrative approval process for mining in MRLs.

23. In compliance with the provisions of The State of Washington Water Pollution Control Law (RCW 90.48) and provisions of The Federal Water Pollution Control Act (Clean Water Act), the State Department of Ecology approves mining operations under “The Sand and Gravel General Permit.”

CONCLUSIONS

1. The subject amendments are consistent with Growth Management Act, County Wide Planning Policies, and Whatcom County Comprehensive Plan.

2. The subject amendments comply with the approval criteria for comprehensive plan amendments of WCC 20.10.080.
NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. The Whatcom County Comprehensive Plan map is hereby amended from Rural to designated Mineral Resource Lands (MRL) for the subject site depicted on Exhibit A.

Section 2. The Official Whatcom County Zoning map is hereby amended to create a Mineral Resource Lands (MRL) Overlay Zone for the subject site depicted on Exhibit A.

Section 3. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this 25th day of January, 2005

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Laurie Caskey-Schreiber, Council Chair

APPROVED as to form:

Kara D. Fink
Civil Deputy Prosecutor

() Approved  () Denied

Pete Kremen, Executive

Date: 1-28-05