



# DOUGLAS COUNTY

## TRANSPORTATION & LAND SERVICES

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### STAFF REPORT

### BAILEY NONCONFORMING USE

TO: Douglas County Hearing Examiner  
FROM: Douglas County Land Services Staff  
RE: NC-2017-01  
DATE: January 8, 2018

#### I. GENERAL INFORMATION

Proposal: An application submitted by Chris Bailey to expand a legal nonconforming structure for an existing manufacturing business. The project proposes a 3,360 square-foot addition to the existing Brewster Manufacturing shop located at 13 Bailey Way, Brewster, WA. The business currently consists of approximately 8,615 square feet of shop and office space and has been located on the site since 1990.

Location: The project is located at 13 Bailey Way, Brewster, WA. The property is zoned Commercial Agriculture 10 (AC-10) and is further described as being located within the SE Quarter of Section 36, Township 30 N, Range 23E W.M. The Assessor's Parcel Number is: 30233640003.

#### II. SITE INFORMATION

Site Characteristics: The majority of the property has been disturbed and consists of areas of sagebrush along a steep slope on the southeast half of the property. Of the adjacent parcels, only a few contain residences. There are agriculture operations in the vicinity, but not directly adjacent to the subject property.

Access: The property and business are accessed by a private road, Bailey Way, which connects to other private roads and to Crane Orchard Road, a major public road.

Zoning and Development Standards: The subject property is located within the Commercial Agriculture 10 (AC-10) Zoning District. The purpose of the AC-10 district is to encourage agricultural development through the maximum cultivation and reclamation of lands by restricting incompatible uses within such areas. It is also the purpose to preserve and encourage existing and future agricultural land uses as viable, permanent land uses, and as a significant economic activity within the community. Douglas County recognizes and acknowledges the importance of agricultural lands and activities to its livelihood. Production of food and fiber, and associated support activities including transportation are the primary land uses in this district.

#### Expansion of a Nonconforming Use:

Douglas County Code Chapter 18.82 establishes review criteria for the consideration of proposals for the expansion of nonconforming uses. The review criteria is listed below:

The following procedures shall be followed to change a nonconforming use to a different nonconforming use, expand a nonconforming use throughout a building/structure, expand a nonconforming structure or use throughout a lot or onto an adjoining lot, or replace a nonconforming use and/or building/structure damaged by any means beyond seventy-five percent of its pre-damaged value as determined by using the most recent ICBO construction tables:

- A. Applications submitted under this section are classified for quasi-judicial review described in DCC Section 14.10.040.
- B. The Hearing Examiner may grant the relief requested if he/she finds all of the following:
  - 1. That the expansion, change, reconstruction or replacement requested would not be contrary to the public health, safety or welfare; and
  - 2. That the proposed expansion, change, reconstruction or replacement is compatible with the character of the neighborhood; and, in the case of an expansion or change, does not significantly jeopardize future development of the area in compliance with the provisions and the intent of the zoning district; and
  - 3. That the significance of the hardship asserted by the applicant is more compelling than, and reasonably overbalances, the public interest resulting from the denial of the relief requested; and
  - 4. That the use or building/structure was lawful at the time of its inception; and
  - 5. That the approval of the requested expansion, change, reconstruction or replacement will not significantly adversely impact nearby properties.
- C. The hearing examiner shall deny the proposed expansion, change, reconstruction or replacement if he/she finds that one or more of the provisions in DCC Section 18.82.080(B) are not met.
- D. When approving a change in or the expansion, reconstruction or replacement of a nonconforming use or building/structure, the hearing examiner may attach conditions to the proposed change, expansion, reconstruction or replacement or any other portion of the development in order to assure that the development is improved, arranged, designed and operated to be compatible with the objectives of the comprehensive plan, applicable development regulations and neighboring land uses and transportation systems.

**Permit History:**

The Douglas County Land Services Director deemed the use as legal nonconforming in 2007 (see Attachment B).

**III. COMPREHENSIVE PLAN:**

The Douglas County Countywide Comprehensive Plan designates this property as Commercial Agriculture 10 (AC-10). The following goals and policies set forth in the comprehensive plan are relevant to this development:

## AGRICULTURE LANDS

Goal 1: Agricultural uses will be preserved, enhanced and maintained to the greatest extent possible feasible outside of Urban Growth Areas (UGA).

Policy A-3: Protect agricultural lands and activities from conflicting non-farm uses and influences.

## CRITICAL AREAS – GEOLOGICALLY HAZARDOUS AREAS

Goal 1: The County will provide appropriate measures to either avoid or mitigate significant risks that are posed by geologic hazard areas to public and private property and to public health and safety.

### **IV. ENVIRONMENTAL REVIEW**

Douglas County has determined that the project is exempt from environmental review in accordance with DCC 19.04.110(A)(3) and WAC 197-11-800(1)(b)(iv) and (c) for commercial buildings twelve thousand square feet or less and forty or fewer parking spaces.

### **VI. AGENCY AND PUBLIC COMMENTS:**

Applicable agencies have been given the opportunity to review this proposal. The following agencies have been sent copies of the proposal and have commented as indicated below:

<b>Agency Notified</b>	<b>Response Received</b>	<b>Agency Notified</b>	<b>Response Received</b>
Chelan-Douglas Health District	N/R	Douglas County PUD	N/R
Douglas County Assessor	11/01/2017	Douglas County Transportation	1/2/2018
Douglas County Fire District 2 Fire Marshal	12/12/2017	WA Department of Ecology	11/03/2017
Douglas County GIS	10/31/2017		

\* N/R = No Reply

Agency comments have been included as Attachment A

No public comments were received at the writing of this staff report.

### **VII. PROJECT ANALYSIS**

Upon review of the application materials, site plans, agency comments, the Douglas County Countywide Comprehensive Plan and other applicable codes and requirements, planning staff offers the following analysis and recommendations for the subject application:

Comprehensive Plan consistency:

While the use is located in an agriculture zoning district, the closest agriculture use is over 600 feet away. The expansion will result in an approximate 28% increase in the footprint of the business facilities and is located in an area with few agriculture operations and residences. The business was established in 1990 and was determined to have been legally permitted by the Douglas County Land Services Director in 2007 (Attachment B). The expansion will not impact agriculture uses or be detrimental to the agriculture goals and policies in the comprehensive plan.

The expansion is required by the applicant so as not to create an undue hardship and will not cause a negative impact to the future development of surrounding properties. The project does not conflict with nearby agricultural or residential uses.

The expansion is consistent with *Agriculture Lands* Goal 1. The existing business is bordered to the north by a private road (Bailey Way) owned by the applicant's family and by a steep slope immediately south and southeast of the business. Historically, the property has not been used for agriculture and there are no agriculture operations adjacent to the property.

The expansion is consistent with *Agriculture Lands* Policy A-3. Brewster Manufacturing has been operating on site since 1990. The surrounding properties do not have agriculture operations adjacent to the site. Currently, the closest agriculture operation to the business is more than 600 feet away on Hillcrest Drive (private road).

The property is located within geologically hazardous areas, which can be mitigated for. If the proposed application is approved by the Douglas County Hearing Examiner, a commercial building permit will be required for the project and a geologic risk assessment will be required at that time, as stated in the suggested conditions of approval.

Consistency with Douglas County Code Chapter 18.82, criteria for expansion of a nonconforming use:

1. That the expansion, change, reconstruction or replacement requested would not be contrary to the public health, safety or welfare:

*Analysis:* As conditioned, the proposed project does not appear to be contrary to the public health, safety or welfare.

2. That the proposed expansion, change, reconstruction or replacement is compatible with the character of the neighborhood; and, in the case of an expansion or change, does not significantly jeopardize future development of the area in compliance with the provisions and the intent of the zoning district:

*Analysis:* The business has been located in the neighborhood, on this site, for 28 years. The property is surrounded on three sides by property owned by the applicant and the applicant's family. The nearest residence is approximately 300 feet away to the east of the business. Much of the area is vacant land and is sparsely developed, with few residences or agricultural operations. Business

*operations take place within the facility. No public comments were received at the writing of this report.*

*The applicant states that the proposed expansion will likely not be noticed after initial construction due to its remote location and will not jeopardize future development, inhibit the local agricultural operations or disturb nearby residences.*

3. That the significance of the hardship asserted by the applicant is more compelling than, and reasonably overbalances, the public interest resulting from the denial of the relief requested:

*Analysis: The applicant states the proposal provides them with the ability to expand, potentially create more jobs and help grow the local economy. Brewster Manufacturing is locally owned and operated and currently employs about 15 people. The precision-machining company is world-renowned and helps provide employment for the Brewster-Bridgeport area. As demand for their products and services grows, their need for expansion is essential for continued success. There would be a potential hardship to the business owner, employees and local economy if their company was not allowed to grow to meet market demands.*

4. That the use or building/structure was lawful at the time of its inception:

*Analysis: In 2007, the Douglas County Land Services Director stated in a letter to the applicant, that the machining business is legal nonconforming. This letter is included with the staff report as Attachment B.*

5. That the approval of the requested expansion, change, reconstruction or replacement will not significantly adversely impact nearby properties:

*Analysis: The business has been located in the neighborhood, on this site, for 28 years. The property is surrounded on three sides by property owned by the applicant and the applicant's family. The nearest residence is approximately 300 feet away to the east of the business. Much of the area is vacant land and is sparsely developed, with few residences or agriculture operations. Business operations take place within the facility. No public comments were received at the writing of this report.*

## **VIII. RECOMMENDATION**

As conditioned below, this application does not appear to be detrimental to the general public health, safety or welfare and meets the basic intent and criteria associated with Title 18 and 19 of the Douglas County Code and the Douglas County Countywide Comprehensive Plan. Staff recommends approval of NC-2017-01, subject to the following suggested findings of fact and conditions of approval:

Suggested Findings of Fact:

1. The applicant is Chris Bailey, 62 Bailey Way, Brewster, WA 98812
2. The applicant's agent is: Kris Erlandsen, Erlandsen & Associates, P.O Box 739, Brewster, WA 98812

3. General Description: An application for expansion of a legal nonconforming use for an existing precision-machining business.
4. The project is located at 13 Bailey Way, Brewster, WA. The property is described as being located within the SE Quarter of Section 36, Township 30 N, Range 23E W.M. The Assessor's Parcel Number is: 30233640003.
5. The Comprehensive Plan Designation is Commercial Agriculture 10 (AC-10).
6. The subject property is located in the Commercial Agriculture 10 (AC-10) zoning district.
7. The subject property is located within a critical area for geologically hazardous areas.
8. Douglas County Code Chapter 18.82 "Nonconforming Uses" establishes minimum review criteria for the consideration of proposals for the expansion of nonconforming uses.
9. DCC Section 18.82.080 allows for the expansion of nonconforming uses, provided the expansion is approved by the Douglas County Hearing Examiner through a public hearing.
10. The machining business was established in 1990 and conformed to the applicable development regulations in effect at that time.
11. The business was established as legal nonconforming in 2007. Verification is included as Attachment B.
12. The project is exempt from an environmental threshold determination pursuant to DCC 19.04.110(A)(3) and WAC 197-11-800(1)(b)(iv) and (c).
13. Agency comments have been received and are included with the staff report as Attachment A.
14. The Douglas County Fire Marshal has determined that inadequate fire flow exists in the area.
15. Douglas County Code sections 20.34 & 20.36 address County stormwater requirements.
16. No public comments have been received at the writing of the staff report.
17. Surrounding property owners were given the opportunity to comment on the proposals, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
18. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
19. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.

Suggested Conclusions:

1. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Douglas County Countywide Comprehensive Plan.
2. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
3. As proposed, revised, and conditioned, potential impacts of the project can be mitigated.
4. Public interests will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Title 18 "Zoning" and Title 19 "Environment" of the Douglas County Code.

Suggested Conditions of Approval:

1. The project shall proceed in substantial conformance with the plans and application materials on file submitted on September 26, 2017 except as amended by the conditions herein.
2. The applicant shall comply with all applicable local, state and federal regulations.
3. A commercial building permit for the expansion is required, to include, but is not limited to review of: landscaping, parking, geologic risk assessment, fire flow/fire walls and stormwater facilities.
4. All stormwater runoff shall be retained and disposed of on-site or disposed of in a system designed for such runoff and which does not flood or damage other properties.

Respectfully Submitted,



Suzanne Austin  
Associate Planner