

Douglas County Hearing Examiner

Andrew L. Kottkamp, Hearing Examiner

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
CUP-08-07)	DECISION AND
Central Washington Concrete)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on January 15, 2009, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. The applicant is Central Washington Concrete. P.O. Box 190, Wenatchee, WA 98807.
2. General Description: Central Washington Concrete has submitted a conditional use permit application, amending CUP-97-06, to expand operating hours. The proposal includes permission to operate an asphalt plant for public works projects that require night paving. The operations at this site include mining, crushing, processing, asphalt production, hauling materials and other associated activities. The applicant has proposed operating 24 hours a day, including weekends, as may be needed for seasonal night paving and road construction operations. They foresee 1-2 projects per year with 15-20 days of night paving per project at a maximum. The site is currently limited to the hours of 5:00 am to 6:00 pm M-F.
3. Location: The subject property is located just east of Orondo, and is further described as being located in the West ½ of Section 33, Township 25 North, Range 21 East, W.M., Douglas County, Washington. The Douglas County Assessor Numbers for the subject property are 25213320009, 25213320000, and 2521332002 through 25213320007.
- 4, Site Information:

Total Project Size:	Approximately 300 acres
No. of lots	7
Power/Electricity:	Douglas County PUD
Fire Protection:	Douglas County Fire District #2

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5. **Site Characteristics:** The site is located adjacent to the basalt cliffs that rise several hundred feet to the plateau east of the site. Approximately 15-foot tall berms and the natural topography serve to buffer the active portion of the pit and proposed site of the batch plant. Stock piles of sand and gravel are onsite none appear to exceed the 35 foot height limitation.
6. **Surrounding Property:** To the north-Gravel Surface Mine, Mitchco Inc. (Mitchell Trucking and Paving); to the south- vacant/owned by USA; to the east- vacant/steep hillside; to the west- berms with vegetation/agriculture/single family homes
7. The subject property is located within the Douglas County Countywide Comprehensive Plan.
8. The site's original approval (CUP-97-6) was to operate a long-term sand and gravel pit and rock quarry with on-site crushing and processing and ready-mix concrete and asphalt plants between the hours of 5am to 6pm.
9. Condition number 17 in CUP-97-6 states: 'In the event the applicant/landowner elects to proceed with the installation of a batch plant and/or concrete mix plant, the applicants shall apply to amend the conditional use permit and provide detailed site plans showing location, buffering, access, heights, ingress/egress and circulation and all other pertinent information such as ambient air odor quality.'
10. In the year 2000 a Conditional Use Permit Amendment was processed and approved (ACUP#97-06) to allow for a temporary installation and operation of an asphalt batch plant. There is currently no asphalt or concrete plant on-site.
11. The Comprehensive Plan Designation is Rural Resource 20.
12. The subject property is located in the Rural Resource 20 zoning district which allows for asphalt/concrete batch plants as a conditional use if the development standards of DCC 18.60 and evaluation criteria of DCC 18.80 are met.
13. Access is off of US 2.
14. Comments from reviewing agencies have been considered and addressed where appropriate.
15. Douglas County issued a Determination of Non-significance on December 31, 2008 in accordance with WAC 197-11-355 (Optional DNS).

16. Noise levels are limited to 60 decibels (dBA) at property lines where residential uses are adjacent to property. Between the hours of ten p.m. and seven a.m. the noise limitations shall be reduced by ten dBA where the receiving property is residential. (DCC Chapter 8.04).
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. Purveyors who responded to the project have indicated that adequate utilities/services are or can serve this project.
20. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
21. This Application was found to be Technically Complete as required by law.
22. The entire Planning Staff file was admitted into the record at the public hearing.
23. The Douglas County Department of Land Services recommended approval of the requested permit, subject to the recommended conditions of approval.
24. Public hearing after due legal notice was held on January 15, 2009. Appearing and testifying on behalf of the applicant was John Madden. Mr. Madden testified that he was an agent authorized to appear and speak on behalf of the applicant. He reiterated that the current request was just for permission to make asphalt at night, that there would be no crushing or rock hauling activities. He further stated that the night asphalt projects would be for Public Works projects which required night paving activities.
25. Also testifying on behalf of the applicant was Jana McDonald. She testified that she was an agent authorized to appear and speak on behalf of the applicant. She has been employed by the applicant for 16 years and is a Professional Engineer with expertise in environmental issues. She testified that there would be a Continuous Odor Response Program and steps to be taken in the event of complaints. Exhibit No. 1 was admitted into the record which was the Continuous Odor Response Program developed by the applicant for the Orondo facility. Exhibit No. 2 is a Reclamation Plan showing the elevation differentials. Exhibits 1 and 2 were admitted into the record.

26. Finally, Mr. Madden did testify that although the 40-day limit for night asphalt batching activities is believed to be their best estimate, they would like some flexibility.
27. No member of the public testified at the hearing.
28. Supplemental materials were submitted at the hearing. This was a January 15, 2009, memorandum from Marla Olson to the Hearing Examiner.
29. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.
30. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
31. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval.
32. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
33. The location, size, and height of buildings, structures, walls and fences, and screening vegetation for the proposed use will not unreasonably interfere with allowable development or use of neighboring properties.
34. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.
35. Land uses, activities, and structures that are allowed by this conditional use permit will comply with the required performance standards specified.
36. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.

3. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Douglas County Countywide Comprehensive Plan.
4. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
5. Public use and interests will be served by approval of this proposal.
6. As conditioned, the proposal is consistent with Title 18 “Zoning” of the Douglas County Code.
7. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Douglas County Code and Comprehensive Plan.
8. As conditioned, the proposal does conform to the standards specified in Douglas County Code.
9. As conditioned, the use will comply with all required performance standards as specified in Douglas County Code.
10. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Douglas County Code or the Comprehensive Plan.
11. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
12. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, Application CUP-08-07, Central Washington Concrete, is hereby **APPROVED** subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant’s heirs, successors in interest and assigns.

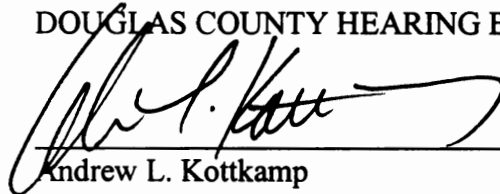
1. All conditions imposed herein shall be binding on the “Applicant,” which terms shall include the owner or owners of the property, heirs, assigns and successors.

2. The project shall proceed in substantial conformance with the plans and application materials submitted July 31, 2008, amended on December 3, 2008, and on file except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
4. The hours of operation shall remain 5 am to 6 pm M-F for all activities, and shall remain 5 am to 9 pm M-F for mineral extraction and processing of material only (no hauling), except as permitted during the 40 days maximum per year, in which operations can be 24 hours per day, 7 days a week, so long as conditions are met. The applicant may petition to Douglas County for an administrative decision to allow special extensions of the 40-day limit for 24-hour operation, provided, that in no event shall 24-hour operation exceed 60 days maximum per year without amendment of this permit. Written notice of administrative extensions shall be provided to all parties of record and subject to appeal to the Douglas County Hearing Examiner pursuant to established procedures.
5. All operations shall be conducted in a manner that complies with the applicable requirements of WAC 173-60, including the maximum permissible environmental noise levels specified in WAC 173-60-040 and the provisions of Douglas County Code, Chapter 8.04 "Noise".
6. The applicant shall submit verification after the batch plant has been installed, from a professional that they meet the provisions of Douglas County Code, Chapter 8.04 "Noise" during both night and daytime operations.
7. If the noise levels specified in WAC 173-60-040 or DCC, Chapter 8.04 cannot be met, the applicant shall cease operations and operate under the previous Conditional Use Permit #97-6, including specified hours of operation.
8. The asphalt plant operations shall use recognized best management practices to reduce odor associated with operations. If Douglas County Transportation Land Services receives written complaints regarding odors created by the Central Washington Concrete operations, the owner/operator will take immediate action. Such action shall result in an improvement to the efficiency of the operation, including but not limited to installation of odor control equipment and if necessary the operation shall be shut down until environmental conditions improve or the asphalt odor has been sufficiently mitigated. If the odor is not sufficiently mitigated then Douglas County may refer this matter to the Hearing Examiner for remedial action.

9. Prior to the placement of asphalt plant structures, applicable building permits must be obtained from Douglas County.
10. Ecology's Air Quality Program shall be contacted regarding Notice of Construction Air Quality Permit(s). Contact Jared Mathey at 509-454-7845.
11. All other conditions of the original Notice of Action for the conditional use permit (permit # CUP-97-6) remain in effect, excluding condition # 9 (in relation to hours of operation).

Dated this 20th day of January, 2009.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.