

**STAFF REPORT
PIPKIN MINERAL EXTRACTION**

TO: Douglas County Hearing Examiner
FROM: Douglas County Land Services Staff
RE: Pipkin Mineral Extraction, CUP-08-04
DATE: June 4, 2009

I. GENERAL INFORMATION

Requested Action: Arnie & Michelle Pipkin have submitted an application for a Conditional Use Permit for Mineral Extraction at Pipkin Construction's Baker Flats site. The proposal includes a conversion of permit approvals from site plan development, granted in 1998, and Expansion of Non-Conforming Use Determination in 2003, to mineral extraction and excavate the site down approximately 40 feet from the current elevation.

Location: The subject property is located at the south end of Contractors Drive in the Baker Flats Industrial Area. The property is further described as being located within Section 14, Township 23 North, Range 20 East, W.M., in Douglas County, Washington. The Douglas County Assessor Numbers for the subject property are 23201420012 and 23201420013.

Procedural Background:

An application for a site plan development permit (SPD-97-02) was submitted on December 5, 1997. A notice of action was issued by DCTLs for SPD-97-02 on February 19, 1998.

An application for a nonconforming use expansion (NC-03-01) was submitted on January 2, 2003. A notice of action was issued by the Douglas County Hearing Examiner for NC-03-01 on March 18, 2003.

An application to amend the notice of action for a nonconforming use expansion (NC-03-01A) was submitted on May 15, 2003. A notice of action was issued by the Douglas County Hearing Examiner for NC-03-01A on November 6, 2003.

A hearing to determine phase 1 progress of NC-03-01A was held by the Douglas County Hearing Examiner on September 23, 2004. A decision was issued by the hearing examiner on September 24, 2004.

A hearing to determine phase 2 progress of NC-03-01A was held by the Douglas County Hearing Examiner on October 20, 2005. A decision was issued by the hearing examiner on October 31, 2005.

II. SITE INFORMATION

Site Characteristics:

Access: The subject property accesses Contractors Drive.

Zoning: The zoning of the property is General Industrial and Rural Resource 20. The zoning changes at the centerline of the Douglas PUD power line. West of the power line is zoned industrial. The application is proposed for the portion of the property that is zoned Rural Resource 20. See Attachment A

Applicable provisions and requirements of D.C.C., Chapter 14.98, Definition – Mineral extraction

“Mineral extraction” means the removal of topsoil, gravel, rock, clay, sand or other earth material, including accessory activities such as washing, sorting, screening, crushing and stockpiling. The following are not included in this definition:

- a. The leveling, grading, filling or removal of materials during the course of normal site preparation for an approved use (e.g. residential subdivision, commercial development, etc.) subject to governing standards of the DCC; or
- b. Excavation and removal activities that do not require a surface mining permit from the Washington State Department of Natural Resources.

Applicable provisions of D.C.C., Chapter 18.60 General Industrial

Mineral extraction operations are prohibited pursuant to DCC 18.60.050(D).

Applicable provisions of D.C.C., Chapter 18.80 “Evaluation Criteria”

- A. The proposed use will be harmonious and in accordance with the general and specific objectives of the comprehensive plan and all subarea plans.
- B. The proposed use will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity of the area.
- C. The traffic generated by the proposed use shall be mitigated so as not to burden the traffic circulation system in the vicinity.
- D. The proposed use will be served adequately by facilities and services such as highways, roads, law enforcement, fire protection, drainage, refuse disposal, domestic water and sanitary sewers, and schools; or that persons or agencies responsible for the establishment of the proposed use will provide adequate services.
- E. The proposed use will not create excessive additional requirements at public cost for public facilities and services.
- F. The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or general welfare by reasons of excessive production of traffic, noise, smoke, fumes, vibration, glare, or odors.
- G. Proposed ingress and egress, driveway widths, parking, and road improvements shall be approved pursuant to DCC Title 20 and to the satisfaction of the county engineer.
- H. Adequate buffering devices such as fencing, landscaping, or topographic characteristics shall be in place in order to mitigate, and project adjacent properties from potential adverse impacts of the proposed use, including visual or auditory effects.
- I. Conditional use permits shall comply with the DCC and all applicable local, state, or federal regulations.
- J. The hearing examiner is the review authority and may approve, conditionally approve or deny a request for changing the minimum lot size of a conditional use. Any waiver

of minimum lot size shall not be construed as an exemption from the requirements of DCC Title 17 and RCW Chapter 58.17.

Applicable provisions of DCC 18.80.180 Mineral Extraction

The following minimum conditions shall apply:

- A. The operation(s) will not result in excavation, or location of structures, buildings or nonmobile machinery within one thousand feet of any residential zoning district. Excavation activities shall be a minimum of five hundred feet from any county or state road right-of-way;
- B. The applicant shall submit documentation prepared by an engineer, and/or geologist as appropriate, that the operation(s) will not create hazardous conditions, adversely impact lands and transportation systems in the vicinity, impair the slope stability or cause lateral movements such as slump, creep or landslide, or cause soil erosion or sedimentation;
- C. A water supply and management plan shall be submitted for approval in conjunction with the application that discloses the source and volume of water necessary and available for dust control and associated mineral extraction, and how waste water from operations and stormwater retention will be accomplished. The plans shall be implemented through all phases of the operation(s).
- D. A dust abatement plan shall be submitted for approval that specifies dust control measures to be employed throughout the life of the operation to assure that fugitive dust from all sources does not escape on-site containment. The dust abatement plan shall identify the names and telephone numbers of persons responsible for dust control on a twenty-four-hour basis.
- E. Adequate buffering measures shall be taken to screen the project from public view. Such devices may include landscaping, or topographic characteristics or a combination thereof as approved by the review authority.
- F. Site illumination shall be designed and located so that lighting sources are not directly visible from residential uses or public roads. Lighting shall not cast glare on adjacent properties;
- G. Hours of operation and duration of the project shall be established by the review authority;
- H. Drainage and stormwater runoff control shall be designed and implemented as approved by the county engineer in accordance with DCC Chapter 20.34;
- I. Haul route agreements for internal access and external ingress and egress to, and travel on, public roads shall be required between the operator and the department prior to commencing any operations;
- J. The review authority may establish minimum setbacks and other requirements for the excavation area, structures, buildings or non-mobile machinery associated with extraction, washing, sorting or crushing that will be adequate to minimize potential adverse impacts to adjoining properties or public road rights-of-way;
- K. The maximum height of stock piles shall be determined by the review authority and at no time shall exceed a height of thirty feet. Appropriate measures identified in the dust abatement and water management plans shall be implemented;
- L. All top soil shall be retained on-site for the reclamation of the mineral extraction operation and shall not be sold or otherwise disposed of unless it can be demonstrated that there is sufficient top soil to cover the area disturbed by the mineral operation to a minimum depth of three feet and as approved by the review authority at the time of application review;
- M. A reclamation plan shall be submitted that provides for:

1. Top soil retained and set aside from the operation for subsequent use during reclamation. The stock piles shall be revegetated during the time period it is reserved to prevent erosion,
 2. Reclamation in two to ten acre increments, as appropriately responsive to the size and intensity of the particular excavation activities. Revegetation of the reclaimed areas excavated shall be accomplished annually by September 30th,
 3. Reclaimed side slopes that at not time shall be greater than one and one-half feet horizontal to one foot vertical,
 4. The final topography of the site to be consistent with the surrounding area and graded to a maximum of a four foot horizontal to one foot vertical slope, and
- N. The review authority may require financial assurance in accordance with DCC Chapter 14.90 to guarantee/warranty compliance with permit conditions, completion of the reclamation, protection of public facilities and conformance with other applicable requirements of the DCC.

III. COMPREHENSIVE PLAN:

The Greater East Wenatchee Area Comprehensive Plan designates the property within the urban growth area as General Industrial and the Douglas County Countywide Comprehensive Plan designates the property outside the urban growth area as Rural Resource 20. The following goals and policies set forth in the comprehensive plan are relevant to this development:

GENERAL LAND USE GOALS AND POLICIES

GOAL: Maintain and improve the quality of life, attitude, and character of Douglas County by encouraging the long-term public commitment to the stewardship of historical/cultural resources, natural resources, critical areas and the full range of land uses desired by the public.

POLICY G-12: Establish siting and design criteria to provide buffering or other mechanisms that will protect adjacent land uses from potential conflicts between incompatible uses.

RURAL LANDS GOALS AND POLICIES

GOAL: Provide a balance between maintaining the existing, traditional pattern of uses in the rural areas of Douglas County, including agricultural activities, while still providing opportunities for future, compatible development.

POLICY R-1: Rural areas are those areas not designated for urban growth, agriculture, forest, or mineral resources. However, agricultural activities, farming/ranching, forestry, mineral and other similar activities are inherent within this designation.

POLICY R-3: Establish land use designations that represent rural character and that protect the integrity of rural areas by establishing permitted and prohibited uses.

RESOURCE LANDS – AGRICULTURE

GOAL: Agricultural uses will be preserved, enhanced and maintained to be 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.

RESOURCE LANDS – MINERAL

GOAL: Douglas County will conserve mineral resource lands for productive economic use to help maintain a stable, cost effective source of needed construction materials.

POLICY M-2: Mining and extraction operations will be sited and designed to minimize conflicts with adjacent land uses, and to have a minimal impact on critical habitats, natural vistas, cultural resources and the environment.

POLICY M-5: Allow incidental extraction and processing of mineral resources prior to construction or development of permitted residential, commercial, or industrial land uses or in conjunction with a demonstrated need such as to address environmental water quality issues, e.g. Rock Island area or imminent danger from a natural hazard. Incidental extraction of mineral resources should be counted towards the mineral resource inventory.

Mineral Resource Implementation and Classification:

The “Mineral Resource Map” depicts the location of lands designated as mineral lands of long-term commercial significance. These lands should be classified as an overlay mineral resource lands designation to the underlying land use designation. Lands so designated are subject to a conditional use permit review and evaluation process to assess comprehensive plan criteria, land use compatibility, economic issues, reclamation and environmental impacts. Upon completion of mining operations and following the reclamation of the site, it will be removed from the Mineral Resource Map.

Incidental extraction of mineral within commercial/industrial locations should be addressed through County site grading and excavation processes and not the mineral extraction process.

Mineral Resource Map included as Attachment B.

IV. ENVIRONMENTAL REVIEW

On April 9, 2009, the Douglas County Department of Transportation and Land Services issued a Determination of Non-significance in accordance with WAC 197-11-340(2). This Determination of Non-significance was issued as a result of the project analysis and recommendation of denial contained in this staff report.

A 14 day comment period, required by the threshold determination, was completed on April 23, 2009. The following comments were received during this period:

WA Dept. of Natural Resources:

The Department has identified that a revision to DNR permits will be required. Additionally, the Department indicates that additional studies may be required concerning slope stability. Due to the analysis and recommendation in this staff report, the County has not required additional information regarding this issue. Comment letter included as Attachment C.

V. AGENCY AND PUBLIC COMMENTS:

Applicable agencies have been given the opportunity to review this proposal. Agency comments have been included as Attachment D.

The following public comments were submitted on this proposal at the time of staff review and are included as Attachment E.

Jack Feil 13073 State Route 2

Mr. Feil provides comment regarding the operation of the site and concern over the inability to reclaim the slopes back to a natural condition.

VI. PROJECT ANALYSIS

In review of this proposal it is important to consider the goals and policies of the comprehensive plan, applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements. Identified below is planning staff's analysis and consistency review for the subject application.

Background

The applicant applied for a site plan development (SPD) application on Dec 5, 1997 given file number SPD-97-2. The details of the proposal are identified in the "Proposal" section of the Notice of Action Taken. A summary of the proposal is: to include earthwork that will consist of removing approximately 386,000 cubic yards of material and grading the land area for future industrial use. This application was determined complete on December 8, 1997.

At time of determination of completeness the property was zoned General Industrial. On December 16, 1997, Douglas County adopted TLS 97-10-71B which, among a series of area wide changes, established the urban growth boundary along the centerline of the Douglas PUD power line and adopted General Industrial Zoning west of the power line and Dryland Agriculture east of the power line. These zoning changes were consistent with the Greater East Wenatchee Comprehensive Plan adopted on April 17, 1996.

The notice of action for SPD-97-02 was approved on February 19, 1998. This approval was granted consistent with the industrial zoning regulations which allowed for mineral extraction as a component of short term grading and excavation for the purpose of site preparation. The 5 year term of grading and excavation authorized by the notice of action was a longer period of time than the general standards listed in the industrial zoning district regulations.

On January 2, 2003 the applicant applied for Nonconforming Use Determination, assigned file number ND#03-01. This application requested a 3 year time extension for the completion of the site preparation and to adjust project boundaries and change finished grades. The application was made as an expansion of a legally existing nonconforming use due to the change in zoning of the site preparation area. At that time, the site was outside of the urban growth area and zoned Dryland Agriculture. The Douglas County Hearing Examiner issued a notice of action on March 18, 2003. This notice of action required, among other conditions, "site grading and all activities

associated with the proposal shall be completed within one year of the date of this notice of action.”

The applicant filed a Land Use Petition challenging the conditions of approval of ND#03-01. The petition detailed that the conditions of approval were not sufficient and that hours of operation of up to 16 hours per day and three years were necessary to complete the project. The applicant then applied for an amendment to the Nonconforming Use Determination, file number ND#03-01A, requesting a change in the original conditions of approval to allow for 16 hour a day operation and three years to complete the project. The applicant subsequently withdrew the LUPA petition. The hearing examiner issued a notice of action on November 6, 2003. Condition #6 of the notice of action requires that a three year phasing plan be established and that each year the hearing examiner must review the progress to date, review any proposed changes, review the details of the future phase and take comment on the project progress.

Hearings to determine phase 1 progress of NC-03-01A was held on September 23, 2004 and phase 2 progress on October 20, 2005. Each time, the applicant submitted documentation that site preparation progress appeared slightly ahead of the original phasing plan or on schedule. Decisions that the project can proceed were issued by the hearing examiner on September 24, 2004 and October 31, 2005 respectively. Currently, the project has been operating without valid land use permits since March 18, 2006, the date that ND#03-01A required site preparation to be complete and all equipment and stockpiles to be removed.

This operation started out as a site development permit. The initial application and permit approvals gave the County, and the surrounding area, assurance that the use and it's impacts would be only for a short duration. The extraction use has continued far longer than what was originally permitted and now the applicant is requesting a change in permitting in order to obtain permission to operate long term. Application materials indicate that the operation has not extracted the amount of rock or excavated down to the level that it originally envisioned. While the completion of the proposed amount of excavation is one end scenario, the SPD and Nonconforming Use permits also envisioned another ending scenario. This other scenario is the expiration of the time limits imposed in the permit. The time limits are in place to give the community assurance that the extraction/site prep operation will be finished quickly.

Comprehensive plan consistency:

The applicant has submitted an analysis as to how the proposal meets the comprehensive plan. In this analysis, the applicant contends that the proposal is consistent with the comprehensive plan. However, staff review of the comprehensive plan as it relates to the project application has identified a number of areas of inconsistency.

The subject property is located in an area in proximity to agricultural uses and is located at the gateway to the East Wenatchee Area. The location of this site, adjacent to the cliffs, create a condition such that dust and noise have no alternative but to be concentrated towards the agricultural and residential uses to the west. The nature of the

extraction operation negatively impacts the vistas in this area as a gateway to the community. This is not conducive to long term compatibility between uses. Therefore, the application is inconsistent with policies M-2 and M-3.

The implementation and classification section within the Resource Lands – Mineral chapter of the comprehensive plan establishes only two types of mineral extraction; long term extraction evaluated through a CUP and incidental extraction as part of short term site preparation for commercial or industrial lands. This application is for mineral extraction approved through a CUP. The mineral chapter identifies that CUPs for mineral extraction are to take place on lands designated as long term commercial significance.

The designation of mineral resource lands through the comprehensive plan amendment process is important because the county performs an extensive analysis of potential long term mineral sites which takes into account; location of resource, impacts on surrounding land uses, visual and aesthetic impacts, etc. Additionally, significant public input is solicited regarding the appropriateness of each designation site. The appropriateness of the site for mineral extraction is determined during the designation process. This leaves only the specifics of the operation to be reviewed during the CUP process.

The County performed an extensive mineral resource lands review in 2004 for the Greater East Wenatchee Area. This process involved a committee comprising of mineral industry representatives, government entities utilizing mineral resources, environmental interests, and general citizens. This issue was of such importance that the Board of County Commissioners issued Resolution TLS 03-22 which established a moratorium on the filing of any application for a license, permit or approval of a mineral extraction operation within the unincorporated area of the Greater East Wenatchee Planning Area while this issue was studied. That moratorium was extended twice more for 6 months each to allow further time to study the issue. The committee reviewed the supply and demand of mineral resources in the area as well as the adequacy and appropriateness of each designation site. The appropriateness of this site was reviewed and the County specifically determined that long term mineral extraction on the west facing slope of the bluff was not appropriate. As a result, the mineral designation area is specifically established behind the face of the bluffs when the County adopted the mineral resource areas designation maps in the comprehensive plan that specifically placed the designation area to the east behind the face of the bluffs.

The proposed application is inconsistent with the implementation and classification criteria and the goals and policies for mineral resource lands in the Douglas County Countywide Comprehensive Plan.

Consistency with Chapter 18.31 “Rural Resource 20”

The RR-20 zone does authorize mineral extraction operations of the project is consistent with the comprehensive plan, CUP evaluation criteria and specific use criteria.

Consistency with Chapter 18.60 “General Industrial”

Portions of the operation (stockpiling of material) are currently taking place within the I-G zone and are proposed to continue. Mineral extraction operations are specifically

prohibited pursuant to DCC 18.60.050. The proposed application is not consistent with this chapter.

Consistency with Chapter 18.80.030 “Conditional Uses – Evaluation Criteria”

As identified in the above comprehensive plan analysis; the proposed use is not harmonious or in accordance with the general or specific objectives of the comprehensive plan that is required by criteria A.

The applicant has stated in the application materials that the mineral extraction operation is desirable to develop more useable property. The purpose of long term mineral extraction is not to develop useable land.

DCC 14.98.540 Mineral Extraction

“Mineral extraction” means the removal of topsoil, gravel, rock, clay, sand or other earth material, including accessory activities such as washing, sorting, screening, crushing and stockpiling. The following are not included in this definition:

- a) The leveling, grading, filling, or removal of materials during the course of normal site preparation for an approved use (e.g. residential subdivision, commercial development, etc.)

As shown in the above definition, site preparation or the development of useable land, is specifically excluded from the definition of mineral extraction. This is why the comprehensive plan envisions; and, specific zoning districts within Title 18 ‘Zoning’ authorize incidental, short term extraction concurrent with site preparation.

Long term mineral extraction is not consistent with the industrial character of the immediately adjacent General Industrial district as suggested in the application materials. This inconsistency is evident in DCC 18.60.050 (D) Prohibited Uses by the statement that mineral extraction is prohibited except as authorized by approval for short term extraction associated with building site preparation (DCC 18.60.060(J)).

A long term mineral extraction operation proposed by the application is not harmonious or appropriate in appearance to the existing or intended character of the agricultural areas in the vicinity or industrial areas that are immediately adjacent to the site. The topography concentrates the impacts towards the agricultural, residential and industrial uses in the vicinity. The community expected to experience these impacts on their use for a short period of time during a site preparation permit. The community is now being asked to accept these impacts through a long term extraction operation.

The location of the site is such that it is at an aesthetic cross road. The site is at the gateway to the community and the gateway to the Cascade Loop Scenic Byway. In this location an extraction operation has more of a visual or aesthetic impact than on another site. The nature of the site does not shield the operation and its impacts from the surrounding uses or visual corridors. Conversely, the effects of the operation on the bluffs are magnified and are impossible to reclaim or naturally blend in. WA DNR in both its referral comments and SEPA comments has expressed concern about the stability of the slope. The instability of the slope has not been sufficiently analyzed to ensure no

further impact to the bluff. If any impact to the bluff occurs (sluffing, landslide etc.) these effects (dust, etc.) will be directed out towards the agricultural area. The multiple incompatibilities analyzed above clearly document that proposed operation is inconsistent with criteria B and H.

The proposal is not consistent with the requirements of this section.

Consistency with Chapter 18.80.180, "Conditional Uses – Mineral Extraction" D.C.C.:
The applicant has submitted an analysis of the consistency of the project with this section.

Due to the inconsistency of the project with the comprehensive plan and the CUP Evaluation Criteria; an analysis was not performed nor conditions proposed regarding the specific criteria in this section.

Agency comments:

Agency comments from the Washington State Department of Ecology, Douglas County Transportation, WA Dept of Natural Resources, and Douglas County PUD have identified mitigation or project design required for the project.

VII. RECOMMENDATION

This application does not meet the basic intent and criteria associated with Title 18 of the Douglas County Code and the Douglas County Countywide Comprehensive Plan. Staff recommends DENIAL of CUP#06-01, subject to the findings of fact and conclusions below.

Additionally, staff recommends that the hearing examiner direct the property owner to clean up and reclaim the site at the existing elevation and remove all equipment and stockpiles required by the conditions of approval established in NC#03-01A and in accordance with the conditions suggested below.

Suggested Findings of Fact

1. The applicant is Arnie and Michelle Pipkin, PO Box 3181, Wenatchee WA.
2. General Description: An application for a Conditional Use Permit for Mineral Extraction at Pipkin Construction's Baker Flats site. The proposal includes a conversion of permit approvals from site plan development, granted in 1998, and Expansion of Non-Conforming Use Determination in 2003, to mineral extraction and excavate the site down approximately 40 feet from the current elevation.
3. The subject property is located at the south end of Contractors Drive in the Baker Flats Industrial Area. The property is further described as being located within Section 14, Township 23 North, Range 20 East, W.M., in Douglas County, Washington. The Douglas County Assessor Numbers for the subject property are 23201420012 and 23201420013.
4. DCC Chapter 18.80.020 authorizes the hearing examiner to approve, approve with conditions or deny permits for conditional uses.

5. The East Wenatchee Urban Growth Area splits the property. The East Wenatchee Urban Growth Area on the subject property is located along the centerline of the Douglas PUD power line.
6. The Greater East Wenatchee Comprehensive Plan designation is General Industrial for the property in the urban growth area and the Douglas County Countywide Comprehensive Plan designation is Rural Resource 20 for the property out of the urban growth area.
7. The subject property is located in the General Industrial and Rural Resource 20 zoning districts.
8. An application for a site plan development permit (SPD-97-02) was submitted on December 5, 1997. A notice of action was issued by DCTLS for SPD-97-02 on February 19, 1998. The notice of action conditioned the project the "site grading and all activities associated with each phase shall be completed within 6 months unless a request for an extension in time is approved by the Director of Land Services. All equipment, stock piles and materials shall be removed from the site after the completion of each phase and not relocated on the site until commencement of the ensuing phase. The final phase shall be completed within 5 years of the issuance of this permit." The project was not completed within the 5 year time limit.
9. An application for a nonconforming use expansion (NC-03-01) was submitted on January 2, 2003. A notice of action was issued by the Douglas County Hearing Examiner for NC-03-01 on March 18, 2003. The notice of action conditioned the project that "site grading and all activities associated with the proposal shall be completed within one year of the date of this notice of action. All equipment, stock piles and materials shall also be removed from the site within this one year timeframe."
10. On April 8, 2003, the applicant filed a Land Use Petition challenging the conditions of approval of the proposed expansion of existing nonconforming use with the Douglas County Superior Court. The petition requested the court modify the decision of the hearing examiner to revise condition number 15 and 18 of the notice of action to allow hours of operation up to 16 hours per day, six days per week, with completion within three years of the revised decision.
11. An application to amend the notice of action for a nonconforming use expansion (NC-03-01A) was submitted on May 15, 2003. A notice of action was issued by the Douglas County Hearing Examiner for NC-03-01A on November 6, 2003. The notice of action conditioned the project that "....the applicant must submit a phasing plan to Douglas County Land Services which details within each year of the three year time period, the 6 month phase of site preparation activities.... The site preparation must be completed by March 18, 2006. Should the applicant not substantively meet the phasing plan, the applicant shall not be allowed to proceed with the next phase, and site reclamation shall be required."
12. A hearing to determine phase 1 progress of NC-03-01A was held by the Douglas County Hearing Examiner on September 23, 2004. The applicant submitted documentation that site preparation progress appears slightly ahead of the original phasing plan. A decision that the project can proceed was issued by the hearing examiner on September 24, 2004.
13. A hearing to determine phase 2 progress of NC-03-01A was held by the Douglas County Hearing Examiner on October 20, 2005. The applicant submitted documentation that the grading work was proceeding on schedule. A decision

- that the project can proceed was issued by the hearing examiner on October 31, 2004.
14. The project proceeded through 2 of the 3 phased reviews where the applicant and hearing examiner determined that the project was on schedule with the proposed schedule. The application states in this application that the project is not finished despite two previous assertions, during hearing examiner review, that the project was on schedule with the proposed and approved timeline.
 15. The project site has been operating since March 18, 2006 without a valid land use permit.
 16. The Douglas County Countywide Comprehensive Plan designates lands that are appropriate for mineral extraction as commercial mineral lands. An extensive review process was performed by the County during 2004 and 2005 which resulted in the designation of mineral resource lands. This process specifically determined that mineral extraction operations were not appropriate on the western face of the bluffs at Baker Flats adjacent to the Baker Flats Industrial Area and resulted in the adoption of Resolution TLS-06-11B.
 17. The subject property is not on lands designated for long term commercial significance for mineral extraction by the Douglas County Countywide Comprehensive Plan.
 18. The application is inconsistent with policies M-2, M-3 and the Mineral Lands Implementation and Classification section of the Douglas County Countywide Comprehensive Plan.
 19. Comments from reviewing agencies have been considered and addressed where appropriate.
 20. On April 9, 2009, the Douglas County Department of Transportation and Land Services issued a Determination of Non-significance in accordance with WAC 197-11-340(2). This Determination of Non-significance was issued as a result of the project analysis and recommendation of denial contained in the staff report.
 21. A 14 day comment period for the SEPA threshold determination comment period ended on April 23, 2009. Comments received during the comment period include WA Department of Natural Resources.
 22. 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.
 23. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
 24. Long term mineral extraction uses are inconsistent with the character of the General Industrial zoning district in that mineral extraction is prohibited in this district.
 25. The topography of the site is such that any impacts from a extraction operation would be concentrated towards the agricultural and residential uses to the west of the site.
 26. The application is inconsistent with the CUP Evaluation Criteria found in DCC 18.80.030.
 27. The proposed development will adversely affect the general public, health, safety and general welfare.

Suggested Conclusions:

1. The proposed development does not meet the goals, policies and implementation recommendations as set forth in the Douglas County Countywide Comprehensive Plan.
2. Public use and interests will be served by denial of this proposal.
3. As conditioned, the proposal is not consistent with Title 18 "Zoning" of the Douglas County Code.

Suggested Conditions

1. The site shall be reclaimed at its current elevation.
2. Reclamation work shall be completed and all stockpiles and equipment associated with the extraction operation shall be removed by December 31, 2009.
3. Prior to finalization of the reclamation, written verification from the Douglas PUD must be submitted that the reclamation has ensured the stability of the PUD transmission structures and that access to the structures has been maintained.
4. Reclamation shall proceed in accordance with conditions 1-2, 7 and 9 of AND#03-01.
5. Reclamation shall proceed in accordance with conditions 1-7, 10-14 and 16-17 of ND#03-01 shall remain in effect.
6. Reclamation shall proceed in accordance with conditions 4, 7, 10 and 13-15 of SPD#97-02.

Respectfully Submitted,

Curtis Lillquist, A.I.C.P.
Senior Planner

Attachments