

DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

140 19th Street NW
East Wenatchee, WAS 98802-4109

BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
CUP 13-01)	DECISION AND
Palisades Gravel Pit)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on September 18, 2014, 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, PO Box 3366, Spokane WA 99220.
2. The property owner is David & Molly Linville – KV Ranch, 596 Palisades Rd, Palisades WA 98845.
3. The property owner signed the application.
4. General Description: a conditional use permit application for mineral extraction. The application proposes gravel extraction, crushing/processing, stockpiling and the operation of portable temporary concrete and/or asphalt batch plants.
5. The property is located at Columbia View Orchard Rd and Palisades Rd. The property is further described as being located within Section 22, Township 21, Range 22 East, W.M., in Douglas County, Washington. The Douglas County Assessor Number for the subject property is 21222210002.
6. The Comprehensive Plan Designation is Commercial Agriculture 10 acres
7. The zoning district is Commercial Agriculture 10 acres (AC-10).
8. The subject property is designated as mineral resource land in the Douglas County Countywide Comprehensive Plan.

9. The nearest residence is approximately one thousand feet to the northwest.
10. Palisades Road and Columbia View Orchard Road bound the subject property. The extraction site on the property is bounded by a BPA Transmission Line Corridor. Access to and from the extraction site is limited to Columbia View Orchard Road.
11. A Geologic hazard area risk assessment, from Bill Christman PE, dated September 3, 2013 was submitted by the applicant. The assessment provides conclusions and recommendations for safe excavation and mineral extraction operations on the site.
12. The Department of Natural Resources has identified that Central Washington Concrete has a current permit #70-12750 for 52 acres and 200 feet deep on the subject property. The DNR also has determined that an additional/expanded permitting from their department will be necessary.
13. Comments from reviewing agencies have been considered and addressed where appropriate.
14. On November 26, 2013, the Douglas County Department of Transportation and Land Services issued a Determination of Non-significance in accordance with WAC 197-11-340(2). A 14 day comment period was completed on December 10, 2013. No comments were received. The DNS was not appealed.
15. 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.
16. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
17. FEMA has performed a flood plain analysis of the subject property and surrounding area. Flood Insurance Rate Map (FIRM) panel 5300 36 0635B is the applicable panel for this property. This panel designates an area of 100 year flood plain (Flood Zone A14) for the portion of Douglas Creek that crosses the SE corner of the subject property. This flood plain zone extends approximately 50 -75 feet northwest of the edge of the creek bed.
18. The application proposes to keep mineral extraction related activities at least 300 feet away from the creek.
19. The Douglas County Fire Marshal has identified that the project is exempt from fire hydrant and fire flow requirements pursuant to DCC 15.08 – 15.28.
20. Section 18.80.180 of the Douglas County Code establishes minimum conditions for mineral extraction operations.
21. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.

22. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
23. On December 10, 2013 – WA Dept. of Archaeology & Historic Preservation and December 11, 2013 – The Colville Confederated Tribes submitted comment requesting that the subject property be surveyed for cultural resources. Douglas County requested that the hearing examiner continue the public hearing to a date uncertain in a memo dated December 11, 2013. The hearing examiner continued the hearing to a date uncertain in a decision dated December 16, 2013.
24. On May 30, 2014, the applicant submitted a Cultural Resources Investigation for the Palisades Gravel Mine, dated April 2014 from Archaeological and Historical Services, Eastern Washington University. This report was distributed to the WA Dept. of Archaeological & Historic Preservation, The Colville Confederated Tribes, and the Yakama Nation on May 30, 2014 requesting comments within 30 days.
25. Comment was received from the WA Dept. of Archaeology & Historic Preservation and the Yakama Nation expressing concerns with portions of the investigation report. The applicant's archaeological consultant contacted the Department and the Yakama Nation to address the concerns. As a result, the applicant submitted a revised Cultural Resources Investigation (revised July 2014). The WA Dept. of Archaeology & Historic Preservation provided final comment in a letter dated July 10, 2014. The Yakama Nation accepted the revised investigation report in an email dated August 8, 2014.
26. On September 8, 2014, the applicant submitted a revised mining plan addressing the request to protect the sites as identified in the July 10, 2014 letter from the WA Dept. of Archaeology & Historic Preservation.
27. An open record public hearing after due legal notice was held on September 18, 2014.
28. The entire Planning Staff file was admitted into the record at the public hearing.
29. The Douglas County Department of Land Services recommended approval of the requested permit, subject to the recommended conditions of approval.
30. Appearing and testifying on behalf of the applicant was Jana McDonald. Ms. McDonald testified that she was an agent authorized to appear and speak on behalf of the applicant and property owner. She testified that all of the proposed conditions of approval were acceptable. However, she did ask that the hours of operation be from 4 am to midnight, Monday through Friday and that processing be allowed on Saturdays from 7 am to 6 pm.
31. No member of the public appeared at the hearing.
32. 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.

33. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
34. 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.
35. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
36. 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.
37. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.
38. Land uses, activities, and structures that are allowed by this conditional use permit will comply with the required performance standards specified.
39. 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 meets the goals, policies and implementation recommendations as set forth in the Douglas County Countywide Comprehensive Plan.
3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
4. Public use and 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.
6. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Douglas County Code and Comprehensive Plan.
7. As conditioned, the proposal does conform to the standards specified in Douglas County Code.
8. As conditioned, the use will comply with all required performance standards as specified in Douglas County Code.

9. 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.
10. As conditioned, this proposal does comply with Comprehensive Plan, the zoning code and other land use regulations, and SEPA.
11. 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-13-01, Palisades Gravel Pit, 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 of file dated October 3, 2013 and September 8, 2014 except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations.
4. No excavation, extraction or batching activities shall begin until all necessary permits, including but not limited to DOE Air Quality, DOE Sand and Gravel General Permit, Sand and Gravel Permit Portable Facilities Coverage, DNR Expanded Reclamation Permit, shall be obtained prior to commencing operations. Documentation of said permits shall be provided to Douglas County.
5. Fuel storage shall comply with the International Fire Code Section 105 and Section 2301.
6. The hours of operation for mineral extraction and batching of concrete or asphalt are limited to the hours of 4 AM to midnight Monday through Friday. If processing of material and/or loading of trucks and removal of processed material from the site occurs during the weekend, these activities shall be limited to the hours of 7 AM and 6 PM. Processing of material shall be allowed only Mondays through Saturdays. Should complaints arise from surrounding property owners regarding the hours of operation, noise, traffic, dust or other adverse impacts from the use authorized by this permit, Douglas County Transportation and Land Services reserves the right to refer the issue back to the Hearing Examiner to review the hours of operation, and other conditions of approval.
7. Blasting is not authorized.

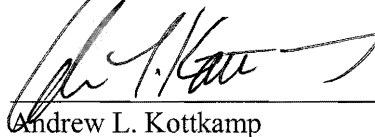
8. Sanicans and hand washing facilities shall be provided for the employees working on-site.
9. Prior to commencing excavation activities, the applicant shall provide to the county the names and phone numbers of the persons responsible for dust control on a 24 hour basis.
10. Excavation and mineral extraction operations shall adhere to the conclusions and recommendations contained in the Geologic Hazard Area Risk Assessment from Bill Christman PE, dated September 3, 2013.
11. The maximum height of stockpiles shall not exceed 30 feet.
12. All operations will 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".
13. All mineral extraction operations and batch plants shall be screened from public view from the Columbia Valley View Orchard Rd, Palisades Rd and SR 28 by topography or berms. The berms will be of sufficient height to achieve the required visual screening. As the project progresses through its phases of operation, the screening berms shall be relocated and/or resized as necessary to maintain their function. The berms will be seeded with native or drought tolerant grasses.
14. Site illumination shall be designed and located so that lighting sources are not directly visible from the highway or residential uses. Lighting shall not cast glare on adjacent properties.
15. The excavation site shall not be used to dispose of any solid waste including inert waste and vegetative waste.
16. The applicant shall be responsible for preventing mud, dirt and debris from leaving the site, including stormwater runoff from being tracked or otherwise discharged onto the public right-of-way or adjacent properties.
17. The applicant shall enter into a haul route agreement with Douglas County before any hauling occurs.
18. The batch plant operations shall use recognized best management practices to reduce odor associated with operations. If Douglas County transportation and Land Services received written complaints regarding odors created by the 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 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.
19. If ground disturbing activities reveal any cultural materials (e.g. structural remains, Euroamerican artifacts, or Native American artifacts), activity will cease and the Washington

State Historic Preservation Officer shall be notified immediately. If human remains, suspected human remains, or any items suspected to be related to a human burial are encountered during any aspect of the project, operations shall cease immediately within 200 ft of the find. The area around the discovery shall be secured and the Douglas County Sheriff and the State Historic Preservation Officer shall be contacted at once.

20. Prior to commencing excavation activities or the County providing signature approval on the DNR surface mining application, documentation shall be provided to the County that the protective fencing requested by the WA Dept. of Archaeology & Historic Preservation in their July 10, 2014 letter has been installed.

Dated this 19th day of September, 2014.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner's decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.

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.