

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, AND
CUP-16-01)	DECISION AND
Bremmer)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on November 17, 2016, 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 Bremmer Construction Inc., 2493 S Methow St., Wenatchee WA 98801.
2. General Description: A conditional use permit application submitted by Bremmer Construction for a permanent inert waste landfill. The project proposes to fill an existing depression of approximately 9 acres in size with inert material (concrete, asphalt, rock and dirt) to an average depth of 15-20 feet.
3. The subject property is located south of 12th St. SE and North of Rock Island Rd. The property is further described as being located within Section 22, Township 22 North, Range 21 E.W.M., Douglas County WA. The Douglas County Assessor Number is 22212230014.
4. The Comprehensive Plan Designation is Rural Resource 5.
5. The zoning district is Rural Resource 5 (RR-5).
6. There is an ongoing code enforcement action (CE-15-078) on the subject property. The code enforcement action was commenced because of accumulation of junk materials and the storage of vehicles in an amount and conditions not allowed by the Douglas County Code. A Notice of Violation and on January 7, 2016, the property is in violation of DCC Section 8.32.030 (Public Nuisance) and DCC Section 18.30.050A (prohibited junk accumulations in RR-5 zoning district). As of November 1, 2016 these violations have not been abated.
7. Located on the subject property is an unlicensed dump (Hartl Dump). The property owner has worked with the Department of Ecology to remediate the dump site. This work resulted in a No Further Action Determination by the Department of Ecology on January 22, 2007.

8. A Restrictive Environmental Covenant has been recorded for the property governing future use of the site.
9. The applicant has submitted Geotechnical Engineering Report dated 10-17-2007, an Engineering Geologic Hazard Review Letter dated 1-7-16 and an Engineering Geologic/Geotechnical Consultation Letter dated 4-12-16 all from Nelson Geotechnical Associates for this project.
10. The applicant has submitted a Storm Drainage Report dated December 31, 2015, revised March 26, 2016 from Martin Davy, PE.
11. Comments from reviewing agencies have been considered and addressed where appropriate.
12. Douglas County issued a Determination of Nonsignificance on November 7, 2016 pursuant to WAC 197-11-355 (Optional DNS). No appeal was filed.
13. Douglas County Transportation Services has issued an access permit (ACC-16-15) on 4-12-16 for this project. This access permit includes documentation of legal access to the site over SE Vantage Dr. and a haul route agreement covering potential damage to county road infrastructure.
14. 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.
15. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
16. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
17. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
18. The entire Planning Staff file was admitted into the record at the public hearing.
19. The Douglas County Department of Land Services recommended approval of the requested permit, subject to the recommended conditions of approval.
20. An open record public hearing after due legal notice was held on November 17, 2016.
21. Appearing and testifying on behalf of the applicant were the following individuals:
 - 21.1 David Bremmer. Mr. Bremmer testified that he is the owner of Bremmer Construction Inc., and that Bremmer Construction, Inc., was the owner of the subject property. Mr. Bremmer requested modifications to proposed conditions of approval 3(a) and 3(b). Proposed condition of approval 3(c) was acceptable.

Regarding proposed condition 3(a), Mr. Bremmer testified that some of the pipe and trusses on the subject property were new or used but could be used for future projects. He requested that those could be stored in a separate location on the property.

Regarding proposed condition 3(b), he asked that he be allowed additional time to complete this removal of the tires that are on the site. He testified all of the tires are stacked in one location. He testified that he missed the Douglas County free tire drop off and requested that he be allowed to store them on the property until the next tire drop off date.

He testified that all of the other proposed conditions were acceptable.

- 21.2 Martin Davy. Mr. Davy testified that he was an agent authorized to appear and testify on behalf of the property owner. Mr. Davy requested review of proposed condition of approval 5 and 6. He indicated that they had to first obtain a Solid Waste Handling Permit and requested that the requirement of obtaining the stormwater and maintenance agreement occur within 30 days after they received the Solid Waste Handling Permit.

Regarding proposed conditions 12 and 13, he indicated that it was likely that the landfill would be closed within the next 10 years and then developed. He did not think that a permanent easement was necessary and instead an easement “for the period of time used as an inert waste facility” would be more appropriate. He agreed that all of the access would be from Vantage Drive and not from 12th Street S.E.

- 21.3 Jennifer Lang, County Engineer, indicated that the county would not be pursuing a haul route agreement because of the short distance on the county roadway. Ms. Lang also indicated that she had no objection to modify conditions 5 and 6 to indicate that the stormwater and maintenance agreement would be obtained within 30 days of receipt of the Solid Waste Handling Permit. She also indicated that regarding proposed conditions of approval 12 and 13, she had no objection to taking out the language of “perpetual” and to replace with language related to the operation of the facility, subject to further county agreement.

- 21.4 Hugh Tyler, Douglas County Code Enforcement Officer, testified that Mr. Bremmer was given notice of the free tire event in 2016. He indicated that there may not be another event in 2017 because of funding issues and suggested a sunset day of June 30, 2017 for removal of the tires. He further testified that regarding the metal pipe and trusses, storage would be okay so long as not near the landfill area and in a location approved by the county.

22. No member of the public appeared at this hearing.

23. 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.

24. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
25. 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.
26. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
27. 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.
28. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.
39. Land uses, activities, and structures that are allowed by this conditional use permit will comply with the required performance standards specified.
30. 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" and Title 20 "Development Standards" 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 Shoreline Master Program, 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-16-01, 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. The project shall proceed in substantial conformance with the plans and application materials of file dated January 8, 2016, March 28, 2016, April 13, 2016 except as amended by the conditions herein.
2. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations.
3. In order to address the Notice of Code Violations and Order to Comply, the following abatement schedule shall be met by the applicant. Any failure to achieve compliance by the state dates shall require a compliance review hearing with the Hearing Examiner. Such compliance review will result in the cessation of all operations until the hearing is complete and may result in the revocation, suspension or modification of the CUP as stated in DCC 14.92.060.
 - a) Within 30 days of the date of issuance of this decision, all solid waste, non-inert construction demolition waste, scrap metal, used appliances, used lumber, used pipe and any other junk materials shall be removed from the property and legally disposed of in conformance with all local, state and federal regulations. No material shall be relocated to other property in Douglas County unless legally permitted to accept accumulation of junk materials. No material shall be buried or burned. The applicant may continue to store usable trusses and pipe on the site at a location approved by Douglas County.
 - b) On or before June 30, 2017, **all used tires** shall be removed from the property and legally disposed of in conformance with all local, state and federal regulations. No material shall be relocated to other property in Douglas County unless legally permitted to accept accumulation of junk materials. No material shall be buried or burned.
 - c) Within 90 days of the date of issuance of this decision, **all junk vehicles** shall be removed from the property and legally disposed of in conformance with all local, state and federal regulations. No materials shall be relocated to other property in Douglas County unless legally permitted to accept accumulation of junk material. No material shall be buried or burned.

The applicant shall contact the Douglas County Code Compliance Officer after removal of the junk materials and vehicles stated herein for the purpose of inspection by Douglas County to confirm compliance.

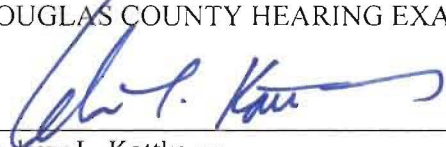
4. A Solid Waste Handling Permit from the Chelan Douglas Health District must be obtained prior to commencing operations at the site. A copy of the permit must be submitted to Douglas County.
5. Within 30 days of issuance of the Solid Waste Handling Permit, the applicant shall execute a private stormwater and maintenance agreement on forms provided by Douglas County. Agreement shall include temporary exhibits including the approved stormwater construction plans and stormwater pollution prevention plan.
6. Within 30 days of issuance of the Solid Waste Handling Permit, the applicant shall provide a recorded easement for the permit stormwater facilities that are located on the adjacent parcel number 22212230015.
7. Within 30 days of completion of the construction of the stormwater facility, the Engineer of Record shall provide as-builts and written certification that the stormwater facility has been constructed in accordance with the plans submitted, Conditions of Approval, Douglas County Code and Stormwater Management Manual for Eastern Washington.
8. Within 45 days of completion of the stormwater facility construction, the Engineer of Record shall execute an updated stormwater and maintenance agreement for the stormwater facilities on forms provided by Douglas County. The agreement shall be updated to include as-builts and engineer's certification. Updated agreement shall be signed and recorded.
9. All applications associated with this permit shall conform to Douglas County Code 15.36 Grading and Excavation Standards, including conformance with Douglas County Code 20.34 and 20.36. Conformance with these standards is the responsibility of the property owners.
10. Appropriate measures to prevent sediment from leaving the site shall be maintained until such time as all onsite soils are stabilized. Prior to any on-site grading taking place, a Stormwater Pollution Prevention Plan (SWPPP) showing the location and control measures intended to minimize the effects of erosion and siltation due to construction operations shall be submitted and accepted by the County prior to commencing construction activities. This plan shall be maintained at all times and modified as necessary to address erosion issues as they arise. Additional erosion controls shall be implemented as necessary to prevent sediment from leaving the site.
11. Individual/common plan of development for this proposal exceeds 1 acre of disturbed ground. This meets the threshold used by the Washington State Department of Ecology in administering their General Permit to Discharge Stormwater Associated with Construction Activity. If required the permit shall be obtained prior to beginning ground-breaking activities. Acquisition of permits is the responsibility of the applicant.
12. The stormwater facilities shall be owned and maintained by the property owner. A maintenance and operation agreement shall be established for the stormwater drainage system.

The agreement shall specify the property owner as having the responsibility for the long-term maintenance of the stormwater drainage system. Douglas County shall have the right to periodically inspect these facilities to verify design capacity and operation. An access easement for the time period during the active operation of the inert waste facility and thereafter ending only upon application for a new use on the property, shall be granted to the County and/or other governmental agencies having jurisdiction regarding stormwater facilities. The agreement shall also state that the property owner shall be responsible for the long-term operation, maintenance, repair and replacement of the stormwater facility. Restriction on future use and grading allowed within these areas must be clearly noted within the operation and maintenance agreement for stormwater facilities.

13. The Engineer of Record shall provide periodic updated with regard to operations associated with the Conditional Use Permit stormwater facilities being maintained as the engineer has directed and that the stormwater facilities are functioning as designed.

Dated this 23rd day of November, 2016.

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.