

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-15-04)	DECISION AND
Selland Construction)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on February 16, 2017, 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 Selland Construction, 1285 S Wenatchee Ave, Wenatchee WA 98801.
2. The property owner is Pangborn Resources LLC - Dan Feil, 81 N Sudden Valley Rd, East Wenatchee WA 98802.
3. The property owner signed the application.
4. General Description: This is an application for a conditional use permit for a mineral extraction operation. The quarry will mine the existing rock, crush and stockpile material on-site and export material. The proposed operation will disturb approximately 28 acres and will include storage and staging areas for gravel, topsoil and equipment associated with the operation. The operation site will include three gravel stockpiles (each approx. 1 acre), a staging and turnaround area, a scale, temporary crusher, and a topsoil staging areas (approx. 4.4 acres). The proposal includes the use of a temporary crusher that will be brought on site 2-3 times per year to crush gravel. The project anticipates the removal of approximately 500,000 cubic yards of gravel from the 12.75 acre mineral extraction area over a 10 year period.
5. The subject property is located north of Grant Road and northeast of Pangborn Airport, off of N Venture Rd. It may more particularly be described as a within the north half of the south half of Sections 10, Township 22 N, Range 21 E.W.M., Douglas County, Washington. The Douglas County Assessors number is 22211030011.
6. The Comprehensive Plan Designation is Dryland Agriculture
7. The zoning district is Dryland Agriculture (A-D).

8. The subject property is designated as mineral resource land in the Douglas County Countywide Comprehensive Plan.
9. The nearest residence is approximately 3,400 feet to the northwest.
10. The applicant has submitted documentation prepared by Budinger & Associates (Geotechnical Exploration and Analysis Report, 9-23-2015; Addendum 1, 4-18-16; and Addendum 2 7-12-16) stating that the proposed quarry will not result in the creation of a hazardous condition and that the site is considered geologically stable. WA State Department of Natural Resources has provided comment that they accept the analyses and recommendations.
11. Comments from reviewing agencies have been considered and addressed where appropriate.
12. The applicants and Douglas County signed a mitigation agreement establishing the mitigation conditions relative to the environmental impact of the project. Douglas County issued a Mitigated Determination of Nonsignificance on January 30, 2017 pursuant to WAC 197-11-340 (2). A comment period commenced on January 31, 2017 and ends on February 14, 2017. No comments were received, and no appeal was filed.
13. Surrounding property owners were given the opportunity to comment on the proposal, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
14. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
15. The Federal Aviation Administration (FAA) has established Federal Aviation Regulation Part 77 (FAR Part 77) surfaces surrounding Pangborn Memorial Airport. The project site is located in an area (natural obstruction area) where the existing topography already intrudes into the FAR Part 77 surfaces. Existing terrain between the mining site and the airport shield the placement of equipment and operations. Based on an engineering elevation analysis of the project site and the FAR Part 77 surfaces, stock piles that remain at or below the maximum height established by the zoning code (30 feet) will remain shielded by the terrain and not intrude further into the FAR Part 77 surfaces.
16. Rock/cliff/talus slope areas are mapped on the western portion of the property. A habitat management and mitigation plan for Grette Associates, date November 2015, was developed for the project. The plan identifies that there are no cliffs present on the site. The site does include an area of basalt rock that meets the definition of talus habitat. The plan proposes a 30-foot buffer from the talus habitat area.
17. The subject property is located in proximity to multiple historical and precontact archaeological sites and resources. Both the Confederated Tribes of the Colville Reservation and the WA Department of Archaeology & Historic Preservation identified a high probability for the site containing archaeological resources. Due to the location and nature of the proposed operation; a cultural resources assessment was performed by Cultural Resource Consultants, dated May 9, 2016. The assessment did not identify any cultural resources in the project area and determined

that no properties are present and recommends that no further archaeological oversight is required. The assessment did establish an Inadvertent Discovery Protocol in the event that archaeological resources or human remains are discovered during operation.

18. Section 18.80.180 of the Douglas County Code establishes minimum conditions for mineral extraction operations.
19. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
20. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
21. The entire Planning Staff file was admitted into the record at the public hearing.
22. The Douglas County Department of Land Services recommended approval of the requested permit, subject to the recommended conditions of approval.
23. An open record public hearing after due legal notice was held on February 16th, 2017.
24. Appearing and testifying on behalf of the applicant was Gary Bates. Mr. Bates testified that he was an agent authorized to appear and speak on behalf of the property owner and applicant. Mr. Bates testified that all of the proposed conditions of approval were acceptable. Mr. Bates confirmed that there would not be an asphalt plant, that there would be no storage of rock imported to the site from offsite locations and that there would be no concrete or asphalt recycling facility.
25. No member of the public appeared at the hearing.
26. 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.
27. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
28. 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.
29. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
30. 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.

31. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.
32. Land uses, activities, and structures that are allowed by this conditional use permit will comply with the required performance standards specified.
33. 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 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-15-04 is hereby **APPROVED** subject to the following Conditions of Approval:

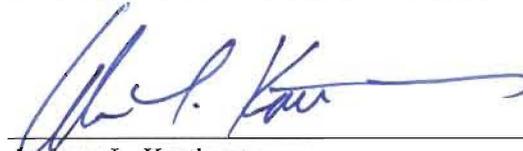
IV. CONDITIONS OF APPROVAL

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 November 24, 2015, May 25, 2016, September 13, 2016, December 6, 2016 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, or extraction 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 Reclamation Permit, shall be obtained prior to commencing operations. Documentation of said permits shall be provided to Douglas County.
5. The extraction operation shall comply with the conditions of the Mitigated Determination on Nonsignificance issued on January 30, 2017.

Dated this 24th day of February, 2017.

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.