

DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

140 19<sup>th</sup> 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 2019-01	)	DECISION AND
CDS Aggregates	)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on August 15, 2019, 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 Pat King, CDS Aggregates, LLC, 1931 Eastmont Ave., East Wenatchee, WA 98802
2. The applicant's agent is Hank Lewis, 711 Briarwood Dr., East Wenatchee, WA 98802
3. General Description: This is a conditional use permit application for mineral extraction operations adjacent to the existing Pipkin-Farrington mineral extraction site. The proposal is for gravel mining of approximately 20 acres to include: crushing, processing, blasting and administrative activities.
4. Location: The subject property is zoned Rural Resource 5 (RR-5) and is located within designated *Mineral Resource Lands of Long-Term Commercial Significance* under Douglas County Code. The property is further described as being located within the NW Quarter of Section 36, Township 24N, Range 20E, W.M. The Assessor's Parcel Number is: 24203620005.
5. The Comprehensive Plan Designation is Rural Resource 5 (RR-5).
6. The zoning district is Rural Resource 5 (RR-5).
7. Section 18.80.180 of the Douglas County Code establishes minimum conditions for mineral extraction operations.

8. A SEPA Checklist was received with the application materials, signed and dated May 14, 2019. A Determination of Non-Significance was issued on August 1, 2019 in accordance with WAC 197-11-355 (Optional DNS).
9. A Cultural Resource Survey Report, conducted by Columbia Historical Consulting, dated May 5, 2019 was submitted in the application materials. The Report states: "This survey did not locate any archaeological sites or other cultural resources within the project footprint. A traditional cultural property – Turtle Rock – is visible from the project APE. However, effects to this site are unlikely to be considered adverse. Consequently, Columbia Historical Consulting recommends that the project proceed without an archaeological disturbance permit from the DAHP."
10. Initial application materials reviewed by Douglas County Transportation and Stormwater include:
  - 10.1 Civil plans prepared by Torrence Engineering, received July 29, 2019.
  - 10.2 Storm Drainage Report prepared by Torrence Engineering, received July 29, 2019.
  - 10.3 SEPA Checklist prepared by CDS Aggregates, received May 15, 2019.
  - 10.4 Traffic Impact Analysis prepared by TENW, received May 15, 2019.
11. Civil Plans: The civil plans adequately address impacts relating to altered topography and resulting drainage pathways. Appropriate erosion control measures are planned to accommodate the significant cuts created as a result of the mineral extraction operation. The plans include the recommendations noted within the Traffic Impact Analysis.
12. Storm Drainage Report: The Storm Drainage Report provided has adequately addressed stormwater management feasibility associated with the proposed operations and has identified types and locations of proposed stormwater management facilities and appurtenances. Calculations included meet the requirements of Douglas County Code.
13. Traffic Impact Analysis: The Traffic Impact Analysis has recommended the following:
  - 13.1 "[...] it is recommended that the project should be required to repair the existing pavement edge, stabilize the road shoulder, and widen the project frontage of Turtle Rock Road from the US 2 / SR 97 intersection to the proposed site access roadway to a minimum of 25 feet of paved roadway section and construct the width of the proposed driveway to allow for concurrent truck movements onto/off of Turtle Rock Road."
14. The Chelan PUD has a transmission line which crosses along the southerly portion of the subject property and a distribution line at the westerly boundary of the parcel. The proposed blasting may coat the transmission line insulators with dirt and debris which may require cleaning from time to time. The CCPUD indicated it will invoice the applicant for reimbursement for insulator cleaning as determined necessary by the PUD.
15. The subject property is within 300 feet of an off-site residence, which is under the same ownership of the subject property.
16. The subject property is not within 1,000 feet of a residential zoning district.

17. 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.
18. Comments from reviewing agencies have been considered and addressed where appropriate.
19. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
20. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
21. An open record public hearing after due legal notice was held on August 15, 2019.
22. The entire Planning Staff file was admitted into the record at the public hearing.
23. Appearing and testifying on behalf of the applicant was Hank Lewis. Mr. Lewis testified that he was an agent authorized to appear and speak on behalf the property owner. Mr. Lewis indicted that the Applicant had 3 requests. They requested that proposed condition of approval number 19 be expanded to add "or as otherwise approved by Douglas County" at the end of the condition. They requested that proposed Finding of Fact 14 be removed because the county should not be required to enforce any lease agreements between the property owner and the Chelan County PUD. Finally, he requested that proposed Conditions of Approval 13 and 14 also be removed from the Decision, again because the terms of the easement are between the Applicant and the Chelan County PUD and not Douglas County. Mr. Lewis stated that all other proposed Conditions of Approval were acceptable to the Applicant.
24. No member of the public testified at this hearing.
25. Staff indicated that the addition to proposed Condition of Approval number 19 is acceptable to the County. Regarding proposed Finding of Fact 14 and proposed Conditions of Approval 13 and 14, those were comments generated from an agency and it is Douglas County's policy to incorporate agency comments into proposed Findings and proposed Conditions.
26. 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 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. 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-2019-01 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 except as amended by the conditions herein.
2. The applicant and site operators are responsible for compliance with all applicable local, state and federal rules and regulations.
3. No excavation, extraction or blasting activities shall begin until all necessary permits are obtained prior to commencing operations. These include, but are not limited to: Ecology Sand and Gravel General Permit, Sand and Gravel Permit Portable Facilities Coverage, DNR revised Reclamation Permit. Documentation of said permits shall be provided to Douglas County.
4. The hours of operation for blasting, crushing and major extraction shall occur up to a few times a year in condensed time periods of up to 3-4 weeks each with operating hours of 6am to 11:30pm Monday - Saturday. Other general operations such as: screening, truck-loading and hauling, stock-piling, and administrative duties shall occur during the hours of 6am to 9pm Monday - Saturday and shall be allowed throughout a given year, not to be restricted to a typical construction season. Should complaints arise from surrounding property owners regarding the hours of operation, Douglas County Transportation and Land Services reserves the right to refer the issue back to the Hearing Examiner to review the hours of operation.
5. Excavation activities shall adhere to a minimum buffer of one-hundred feet from US 2/97 and continue at the same elevation of the road right-of-way or below so that the extraction site is not visible from the roadway utilizing the natural topography and the screening standards in subsection F of DCC 18.80.180.
6. All operations must 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".
7. Pit operations shall be performed in a manner that does not cause damage to the Chelan County PUD (CCPUD) infrastructure in any way nor hinder the District's ability to access its infrastructure for any reason.

8. CCPUD staff must be invited to be present during any blasting operations. The applicant shall provide a 48 hour notice prior to any blasting to the General Foreman of Line Operations or if unavailable the Line Operations Office. Notice of Blasting shall also be provided to the Transmission Systems Engineer in the transmission Department.
9. At no time shall stock piles exceed a height of thirty feet. Appropriate measures identified in the dust abatement and water management narratives shall be implemented. The applicant must provide to the County the names and phone numbers of the persons responsible for dust control on the 24 hour basis prior to site operations.
10. Any topsoil retained on site must adhere to the stockpile height requirements and shall be maintained free of noxious weeds;
11. The project must proceed in conformance with the Blasting Protocol Plan, produced by Elite Explosive Services, LLC, dated June 18, 2019.
12. The applicant must contact the CCPUD prior to any blasting activities.
13. Blasting operations must be suspended during any circumstances which make it critical that the CCPUD transmission line remain in service for system reliability, including but not limited to: times of forest fires and during outages of Chelan Dam hydro generators.
14. Access by the CCPUD to both the distribution and transmission lines must be maintained at all times.
15. Site operations must not undermine the stability of the distribution and transmission lines. The applicant is responsible for any expense the CCPUD must undertake to restore damage or structural integrity due to the applicant's activities.
16. Mitigation measures required of the applicant and indicated in the application materials must include any unforeseen impacts to the Lincoln Rock State Park or the adjacent recreation land owned by the CCPUD and operated by Washington State Parks.
17. A geologic hazard risk assessment must be completed at time of building permit application.
18. All mineral extraction operations shall be screened from public view by topography or berms. The berms will be of sufficient height to achieve the required visual screening standards. 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, or as otherwise may be agreed upon between the Applicant and Douglas County.
19. Site illumination must 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.
20. Concurrent with the submittal of the County Approval for Surface Mining (Form SM-6) to Douglas County, the applicant must provide a copy of the reclamation plan submitted to the Department of Natural Resources. Prior to signing the SM-6 form, Douglas County shall verify consistency of the reclamation plan with the comprehensive plan.
21. The applicant must construct the recommended mitigation identified within the Traffic Impact Analysis and as depicted on the civil plans prior to commencing operations. A Right of Way permit is required for this work and shall be obtained prior to commencement.

22. Execute Haul Route Agreement per Douglas County Code Section 12.28.150 prior to commencing operations or within sixty (60) days of CUP approval, whichever comes first.
23. Per Douglas County Code Chapter 12.24: Approaches to County Roads, all new or revised driveways and accesses onto a Douglas County road (including temporary) require an approved access permit. The applicant must obtain an access permit for their temporary access within sixty (60) days of CUP approval.
24. Grading shall comply with Douglas County Code Chapter 15.36: Grading and Excavation.
25. Appropriate measures to prevent sediment from leaving the site shall be maintained until such time as all on-site soils are stabilized. The applicant's TESC Plan shall be kept on-site at all times and updated as necessary to address and prevent sediment and sediment laden water from leaving the project site.
26. Upon the end of operations or expiration of the Conditional Use Permit, an updated grading plan must be submitted by the Professional Engineer (PE) for Douglas County records. The engineer must certify that the grading plan and completed grading are in conformance with Douglas County Code Chapter 15.36: Grading and Excavation.
27. Individual/common plan development for this proposal exceeds 1-acre of disturbed ground. This would meet the threshold by the Washington State Department of Ecology (WSDOE) in administering their general permit to discharge stormwater associated with construction activity. The applicant is responsible for acquisition of all applicable permits prior to beginning ground breaking activities, including but not limited to: Construction Stormwater General Permit, Sand & Gravel Stormwater General Permit, and/or Industrial Stormwater General Permit. Compliance with the Washington State Department of Ecology's regulations is the responsibility of the applicant.
28. If ground disturbing activities reveal any cultural materials (e.g. structural remains, Euro-American artifacts, or Native American artifacts), all activity must cease within 200 feet of the find and the Washington State Historic Preservation Officer shall be notified immediately. The project proponent must then work with the WA State Historic Preservation Officer to develop a management plan for the site prior to recommencing work. 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 must cease immediately within 200 ft of the find. The area around the discovery must be secured and the Douglas County Sheriff and the State Historic Preservation Officer shall be contacted by the applicant/operator at once.

Dated this 20<sup>th</sup> day of August, 2019.

DOUGLAS COUNTY HEARING EXAMINER



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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.