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DOUGLAS COUNTY
DEPARTMENT OF HEARING EXAMINER
140 19th Street NW
East Wenatchee, WAS 98802-4109

DOUGLAS COUNTY TLS

BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT,
CUP 15-04A)	CONCLUSIONS OF LAW, AND
Selland Construction)	DECISION AND
)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on September 19, 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 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 expansion of an existing mineral extraction operation. The quarry will mine the existing rock, crush and stockpile material on-site and export material. The proposed operation will expand the current operations approximately 6 additional acres and will include storage and staging areas for gravel, topsoil and equipment associated with the operation. The project timeline is still estimated to be 9-10 years from the 2017 CUP approval.
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; Addendum 2 7-12-16 and

Addendum 3 4-10-2019) 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 will need an expanded reclamation permit application upon approval from Douglas County.

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 original project #CUP-15-04 (included in *Staff Production*). Douglas County issued a Mitigated Determination of Non-Significance (MDNS) on January 30, 2017 pursuant to WAC 197-11-340 (2). An addendum to the MDNS was issued on September 5, 2019.
13. 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.
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, and an addendum dated March 7, 2019 was developed for the project. The plans identify 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 original plan proposed a 30-foot buffer from the talus habitat area and remains in effect.
17. The subject property is located in proximity to multiple historical and pre-contact 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 and an addendum dated March 29, 2019. The assessments 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 assessments 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. Initial application materials reviewed by Douglas County Transportation and Stormwater include:
 - 19.1 Civil plans prepared by Pacific Engineering, received August 30, 2019.
 - 19.2 Storm Drainage Report prepared by Pacific Engineering, received August 30, 2019.
 - 19.3 SWPPP prepared by Pacific Engineering, received April 25, 2019.
 - 19.4 SEPA checklist prepared by Selland Construction, received April 24, 2019.
20. 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.
21. 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. The calculations included meet the requirements of Douglas County Code.
22. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
23. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
24. The Douglas County Department of Land Services recommended approval of the requested permit, subject to the recommended conditions of approval.
25. An open record public hearing after due legal notice was held on September 19, 2019.
26. The entire Planning Staff file was admitted into the record at the public hearing.
27. Appearing and testifying on behalf of the applicant was Charlie Underwood. Mr. Underwood testified that he is an agent authorized to appear and speak on behalf of the applicant and property owner. Mr. Underwood stated that all of the proposed conditions of approval were acceptable to the applicant. Mr. Underwood indicated that there would not be any blasting as part of this permit.
28. No member of the public appeared at the hearing.
29. 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.
30. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
31. 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.
32. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.

33. 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.
34. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.
35. Land uses, activities, and structures that are allowed by this conditional use permit will comply with the required performance standards specified.
36. 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. 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 15-04A 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 on file in the original CUP-15-04, approved February 24, 2017, and with the plans and application materials submitted for the current proposal, received April 24, 2019, 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. 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, are obtained prior to commencing operations. Documentation of said permits shall be provided to Douglas County.
4. The extraction operations shall comply with the conditions of the Mitigated Determination on Non-Significance issued on January 30, 2017.
5. Execute Haul Route Agreement per Douglas County Code Section 12.28.150 prior to commencing operations.
6. 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 shall obtain an access permit for their temporary access prior to commencing operations.
7. Grading shall comply with Douglas County Code Chapter 15.36: Grading and Excavation.
8. 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.
9. Upon the end of operations or expiration of the Conditional Use Permit, an updated grading plan shall be submitted by the Professional Engineer (PE) for Douglas County records. The engineer shall certify that the grading plan and completed grading are in conformance with Douglas County Code Chapter 15.36: Grading and Excavation.
10. 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.

Dated this 24th day of September, 2019.

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.