

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-2018-06	)	DECISION AND
Vickery	)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on April 18, 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 Ryan Vickery, Western Sunset, LLC, 1300 S. Webb Place, East Wenatchee, WA 98802
2. General Description: a conditional use permit for short term mineral extraction of up to 6 years for site preparation. The project proposes approximately 40 acres to be mined and approximately two acres for stockpiling, crushing and equipment staging.
3. The subject property is approximately 71 acres in size and is located on the north end of Urban Industrial Way in the Pangborn Industrial Area. The property is further described as being located within the NE Quarter of Section 9, Township 22N, Range 21E, W.M.
4. The Assessor's Parcel Number is: 22210920006.
5. The Comprehensive Plan Designation is General Industrial.
6. The zoning district is General Industrial (I-G).
7. Comments from reviewing agencies have been considered and addressed where appropriate.
8. Douglas County Ordinance TLS-12-07-08D established an Environmental Planned Action in accordance with RCW 43.21.031 for future development actions within the Pangborn Industrial Area.
9. This project qualifies as a development action under the Pangborn Planned Action adopted by Douglas County under Ordinance TLS-12-07-08D and WAC 197-11-172. This project is not subject to further procedural review under SEPA.

10. A SEPA Checklist was received with the application materials and dated October 9, 2018
11. A cultural resource survey report, conducted by Cultural Resource Consultants, dated May 17, 2017 was received October 9, 2018.
12. The FAA has issued a determination granting the applicant approval to use a temporary construction equipment not to exceed 20 feet in height. The FAA's determination expires 5/28/2020 unless extended, revised or terminated by the issuing office.
13. The East Wenatchee Water District has determined that water does not currently serve this parcel and that water is available for construction and mineral extraction from Urban Industrial Way on a permanent or temporary basis consistent with District policies.
14. A Grading Plan, prepared by Torrence Engineering, was received February 21, 2019.
15. A Storm Drainage Report, prepared by Torrence Engineering, was received February 21, 2019.
16. A SWPPP, prepared by Torrence Engineering, was received February 21, 2019.
17. The Grading Plan has adequately addressed 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. Plans have been prepared with consideration of the Urban Industrial Way extension in mind and appear to prevent an encumbrance that would prevent extension of said road. Adequate stormwater management facilities have been included to accommodate runoff resulting from the post mineral extraction condition.
18. 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.
19. In the SEPA Checklist provided in the application materials, Environmental Elements Section B(3)(b) Ground Water, the applicant's response to question 1: "No." This response is incorrect. The project proposes to mitigate stormwater runoff via stormwater infiltration (i.e. discharged to groundwater).
20. The SWPPP provided appears to be sufficient and conform to the requirements and recommendations of the Stormwater Management Manual for Eastern Washington (SWMMEW).
21. 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.
22. Proper legal requirements were met, and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
23. DCC 18.60.040 authorizes short term mineral extraction for up to 6 years for the purpose of industrial site preparation.
24. Section 18.80.180 of the Douglas County Code establishes minimum conditions for mineral extraction operations.

25. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
26. DCC 18.60.040 authorizes short term mineral extraction for up to 6 years for the purpose of industrial site preparation.
27. Section 18.80.180 of the Douglas County Code establishes minimum conditions for mineral extraction operations.
28. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
26. On November 1, 2018, the Letter of Completeness was issued.
27. On November 5, 2018, the Notice of Application was issued.
28. Agency comments have been received from the following departments/agencies.
  - 28.1 Douglas County Transportation
  - 28.2 Pangborn Memorial Airport; Federal Aviation Administration (FAA)
  - 28.3 Washington State Department of Ecology
  - 28.4 East Wenatchee Water District (EWWD)
  - 28.5 Douglas County Sewer District
  - 28.6 Chelan-Douglas Health District
  - 28.7 WA State Dept. of Natural Resources
29. These agencies have identified mitigation or project design requirements for the project and have been included as conditions of approval where appropriate.
30. No public comments were received.
31. An open record public hearing after due legal notice was held on April 18, 2019.
32. The entire Planning Staff file was admitted into the record at the public hearing.
33. Appearing and testifying on behalf of the applicant was John Torrence. Mr. Torrence testified that he was an agent authorized to appear and speak on behalf of the property owner and applicant. Mr. Torrence indicated that the applicant agreed with all of the proposed conditions of approval. Mr. Torrence understood and agreed that crushing activities could only occur during the set hours of operation.
34. No member of the public testified at the hearing.
35. 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-2018-06 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 October 9, 2018 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, extraction or batching activities shall begin until all necessary permits are obtained prior to commencing operations. These include, but are not limited to: Ecology Air Quality, 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 mineral extraction shall be limited to the hours of 6 AM to 6 PM Monday - Saturday. The applicant proposes that crushing will occur multiple times each year, based on market demand. During crushing periods, the application proposes that hours be extended to 12AM. 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. Blasting shall not be authorized.
6. The maximum height of temporary equipment and stockpiles shall not exceed 20 feet, as required by the FAA. The FAA's determination expires 5/28/2020 unless extended, revised or terminated by the issuing office.

7. The applicant must notify the Pangborn Memorial Airport manager at least 3 business days prior to temporary structures being erected and again when structures are removed from the site.
8. 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".
9. 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 and comply with FAA 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.
10. Site illumination shall 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.
11. The applicant must meet the East Wenatchee Water District requirements for water usage and must contact the district prior to commencing the project. EWWD water is available for construction and mineral extraction from Urban Industrial Way on a permanent or temporary basis consistent with EWWD policies.
12. The applicant must contact the Greater Wenatchee Irrigation District (GWID) prior to commencing the project to guarantee/assure no damage to GWID infrastructure.
13. 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.
14. 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 within sixty (60) days of CUP approval.
15. Grading shall comply with Douglas County Code Chapter 15.36: Grading and Excavation.
16. Private access to the project site shall conform to Douglas County Code Section 12.52.020B.9 (i.e. Chapter 5 / Appendix D of the International Fire Code). Coordinate design, review / acceptance with the Douglas County Fire Marshal.
17. 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 SWPPP and 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.
18. 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.
19. 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.

20. The applicant shall contact Ecology regarding air quality regulations. The applicant shall provide to the County the names and phone numbers of the persons responsible for dust control on the 24 hour basis in order to assist the County in providing notification to the site operator regarding dust inquiries.
21. If ground disturbing activities reveal any cultural materials (e.g. structural remains, Euro-American artifacts, or Native American artifacts), all activity will cease within 200 feet of the find and the Washington State Historic Preservation Officer shall be notified immediately. The project proponent shall 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 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.

Dated this 22<sup>nd</sup> day of April, 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.

CUP-2018-06

Vickery

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