

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,
CUP 2018-01)	CONCLUSIONS OF LAW,
GBI Holdings)	DECISION AND
)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on February 14, 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 property owner is GBI Holdings Inc., PO Box 598, Wenatchee WA 98807.
2. General Description: GBI Holdings Inc. has submitted a conditional use permit application for mineral extraction. The application proposes gravel extraction, crushing/processing, stockpiling. Blasting is proposed and the potential for operation of portable temporary concrete and/or asphalt batch plants. The projected operational timeframe is for 30 years.
3. The property is located at the end of Helena Rd, between SR 28 and the BNSF Railroad. The property is further described as being located within Section 9, Township 21, Range 22 East, W.M., in Douglas County, Washington. The Douglas County Assessor Numbers for the subject property are 51000000000, 51002001300, and 51002500100.
4. The Comprehensive Plan designation is Rural Resource 20 acres.
5. The zoning district is Rural Resource 20 acres (RR-20).
6. The subject property is designated as mineral resource land in the Douglas County Countywide Comprehensive Plan.
7. The nearest residence is approximately five thousand nine hundred feet to the south.
8. SR 28 bounds the subject property on the east. Access to and from the extraction site is limited to Helena Road off of the south property line.
9. Comments from reviewing agencies have been considered and addressed where appropriate.
10. The applicant submitted an engineered grading plan from Erlandsen & Associates dated received December 12, 2018.

11. The applicant submitted a Storm Drainage Report from Erlandsen & Associates dated May 30, 2018 with revised updated reports received December 12, 2018.
12. The applicant submitted a Cultural Resource Assessment dated May 30, 2018 and an Addendum to the Cultural Resource Assessment dated August 13, 2018 from Cultural Resource Consultants. The Assessment identified cultural resource sites on the subject property and provided management recommendations.
13. On February 4, 2019, the Douglas County Department of Transportation and Land Services issued a Determination of Non-significance in accordance with WAC 197-11-355.
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. Section 18.80.180 of the Douglas County Code establishes minimum conditions for mineral extraction operations.
17. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
18. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
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 February 14, 2019.
21. The entire Planning Staff file was admitted into the record at the public hearing.
22. Appearing and testifying on behalf of the applicant was Anne Hessburg. Ms. Hessburg testified that she was an agent authorized to appear and speak on behalf of the Applicant and property owner. Ms. Hessburg indicated that all of the proposed Conditions of Approval were acceptable.
23. No member of the public appeared at the hearing.
24. Hugh Thieler, Douglas County Code Enforcement Officer, requested additions to three of the proposed Conditions of Approval. Those are as follows:
 - 24.1 Proposed Condition of Approval number 4: Mr. Thieler requested additional language that in the event the Applicant wished to conduct activities outside of the time listed within this Condition, the Applicant be required to comply with DCC 18.80.060.
 - 24.2 Proposed Condition of Approval number 8: He wished there to be clarification that there be no inert waste storage without first receiving appropriate permits.
 - 24.3 Proposed Condition of Approval number 12: He requested adding at the end of that Condition "as administered by the Douglas County Sheriff's Office."
25. Ms. Hessburg spoke indicating that so long as these provisions were required by the Douglas County Code, then the Applicant would have no objection. The Hearing Examiner offered an

opportunity to keep the record open but Ms. Hessburg indicated that so long as the Conditions were following the Douglas County Code, the Applicant would have no objection.

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 2018-01 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. 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 January 29, 2018, June 21, 2018, December 12, 2018 and January 17, 2019 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, extraction or batching 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 Expanded Reclamation Permit, shall be obtained prior to commencing operations. Documentation of said permits shall be provided to Douglas County.
5. The Applicant may only extend the hours of operation after full compliance with DCC 18.80.060 for mineral extraction and batching of concrete/asphalt shall be limited to the hours of 7 AM to 5:30 PM. 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.
6. Prior to commencing excavation activities, the applicant shall provide to the county the names and phone numbers of the persons responsible for dust control on a 24 hour basis.
7. The maximum height of stockpiles shall not exceed 30 feet.
8. Any topsoil retained on-site shall adhere to the stockpile height requirements and shall be maintained free of noxious weeds.
9. The quarry shall not be used to dispose of or store, any solid waste, including inert waste and vegetative waste, without the Applicant first having obtained all required permits.
10. All mineral extraction operations and batch plants shall be set back a minimum of 100 feet from the SR 28 right-of-way.

11. All mineral extraction operations and batch plants shall be screened from public view from SR 28 by topography or berms. The berms will be of sufficient height to achieve the required visual screening. 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.
12. Site illumination shall be designed and located so that lighting sources are not directly visible from the highway or residential uses. Lighting shall not cast glare on adjacent properties.
13. All operations shall 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", as administered by the Douglas County Sheriff's Office.
14. The Engineer of Record shall provide periodic updates, annually at a minimum, 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.
15. Private access to conform to Douglas County Code (DCC) Section 12.52.020 (B)(9) Chapter 5/Appendix D of the International Fire Code. Coordinate design, review and acceptance with the County Fire Marshal.
16. All applications associated with this permit shall conform to Douglas County Code 15.36 Grading and Excavation Standards, including conformance with these standards are the responsibility of the applicant.
17. Execute a Haul Route Agreement per Douglas County Code 12.28.150 prior to commencing operations or within 60 days of CUP approval, whichever comes first.
18. Appropriate measures to prevent sediment from leaving the site shall be maintained until such time as all on-site soils are stabilized. Prior to any on-site grading taking place or within sixty (60) day of CUP approval (whichever comes first), a temporary erosion/sedimentation control plan (SWPPP – Stormwater Pollution Prevention Plan), 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. This plan shall be maintained on-site at all times and modified as necessary to address erosion issues as they arise. Additional erosion control measures shall be implemented as necessary to prevent sediment from leaving the site.
19. Individual/common plan of development for this proposal exceeds 1 acre of disturbed ground. This would meet the threshold by the Washington State Department of Ecology (DOE) in administering their General Permit to Discharge Stormwater associated with construction activity. The applicant is responsible for acquisition of all applicable permits including, but not limited to a DOE Construction Stormwater General Permit, and/or Industrial Stormwater General Permit prior to beginning ground breaking activities. Acquisition and compliance with DOE regulations is the responsibility of the applicant. The applicant shall provide a copy of any required DOE permits to Douglas County prior to any on-site grading taking place or within sixty (60) days of CUP approval, whichever comes first.
20. During operations and at final closure, grades shall be sloped toward a depression at the center of the site to ensure that all stormwater runoff is retained on site and does not flood or damage other properties. Stormwater collected on the site will be allowed to infiltrate into the ground.

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21. Upon expiration of the conditional use permit or end of operations, an updated grading plan shall be submitted by the professional engineer for Douglas County Records. The engineer shall certify that the grading plan and completed grading are in conformance with Douglas County Code 15.36.
22. Measures taken to control stormwater erosion shall include temporary seeding of the reclamation stockpile. Vegetation shall be maintained on the stockpile until materials is needed for final reclamation of the pit. Takifier, mulch or geotextiles shall be applied as needed to reduce erosion potential while vegetation is established. Silt fence or other best management practices (refer to Stormwater Management Manual for Eastern Washington or the Eastern Washington Erosion Prevention and Sediment Control Field Guide) shall be utilized as necessary.
23. The batch plant operations shall use recognized best management practices to reduce odor associated with operations. If Douglas County Transportation and Land Services receives written complaints regarding odors created by the operations, the owner/operator will take immediate action. Such action shall result in an improvement to the efficiency of the operation, including but not limited to installation of odor control equipment and if necessary the operation shall be shut down until environmental conditions improve or the odor has been sufficiently mitigated. IF the odor is not sufficiently mitigated then Douglas County may refer this matter to the Hearing Examiner for remedial action.
24. The Cultural Resource Assessment recommendations from Cultural Resource Consultants shall be adhered to during the course of the project. The sites and a buffer shall be identified and protected from extraction activities prior to commencing operations.
25. If ground disturbing activities reveal any cultural materials (e.g. structural remains, Euroamerican artifacts, or Native American artifacts), activity will cease and the Washington State Historic Preservation Officer shall be notified immediately. 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 15th day of February, 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.