

**DOUGLAS COUNTY**

**DEPARTMENT OF HEARING EXAMINER**

140 19<sup>th</sup> Street NW  
East Wenatchee, WAS 98802-4109

**BEFORE THE DOUGLAS COUNTY HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW, AND</b>
CUP-2017-05	)	<b>DECISION AND</b>
Tommer Construction	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on August 16, 2018, 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 Tommer Construction, P.O. Box 1150, Ephrata, WA 98823.
2. General Description: a conditional use permit for short term mineral extraction of up to 6 years for site preparation. The project proposes approximately 29 acres of disturbance and work area.
3. The subject property is located on the north end of Urban Industrial Way in the Pangborn Industrial Area. The six subject properties total 109.24 acres and are located on the west side of the northern extension of Urban Industrial Way in the Pangborn Industrial Area and are further described as being located within the NW Quarter of Section 9, Township 22N, Range 21E, W.M.
4. The Assessor's Parcel Numbers are: 22210920003, 22210920002, 22210930008, 22210920004, 22210920005 and 22210920008.
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.

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10. The applicant prepared a SEPA Checklist, received with the application materials December 28, 2017, and a revised SEPA Checklist was received February 13, 2018.
11. A cultural resource survey report, conducted by Columbia Historical Consulting, dated February 4, 2018 was received February 22, 2018 and a revised report was received April 9, 2018.
12. A geotechnical investigation report, conducted by Western Pacific Engineering and Survey, dated May 2018 was received June 12, 2018.
13. The FAA has issued a determination granting the applicant approval to use a temporary construction equipment not to exceed 20 feet in height. The determination does not appear to cover stockpiles. The FAA's determination expires 12/12/2019 unless extended, revised or terminated by the issuing office.
14. The East Wenatchee Water District has determined that water does not currently serve these parcels and that water is available for construction and mineral extraction from Urban Industrial Way on a temporary basis consistent with District policies.
15. 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.
16. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
17. DCC 18.60.040 authorizes short term mineral extraction for up to 6 years for the purpose of industrial site preparation.
18. Section 18.80.180 of the Douglas County Code establishes minimum conditions for mineral extraction operations.
19. The applicant's agent, John Torrence, PE, of Torrence Engineering, LLC submitted a storm drainage report, dated December 27, 2017.
20. John Torrence prepared a Grading & Site Plan, received December 28, 2017, with revised plans received March 7, 2018.
21. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
22. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
23. The Douglas County Department of Land Services recommended approval of the requested permit, subject to the recommended conditions of approval.
24. An open record public hearing after due legal notice was held on August 16, 2018.
25. The entire Planning Staff file was admitted into the record at the public hearing.
26. 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 Applicant. Mr. Torrence indicated that the Applicant had no objection to any of the proposed conditions of approval.

27. Also testifying on behalf of the Applicant was Nick Tommer. Mr. Tommer testified that he was the Applicant in this matter. Mr. Tommer described the rock crushing/gravel creation process that will take place on this property. He discussed dust control. He discussed compliance with all Department of Ecology regulations in the matter. He indicated that the site was being developed for future industrial use.
28. No member of the public testified at this 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 Greater East Wenatchee Area 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-17-05 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 December 28, 2017, February 13, 2018, February 22, 2018, March 7, 2018, April 9, 2018 and June 12, 2018 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 Ecology Air Quality, Ecology Sand and Gravel General Permit, Sand and Gravel Permit Portable Facilities Coverage, DNR revised Reclamation Permit, shall be obtained prior to commencing operations. Documentation of said permits shall be provided to Douglas County.
5. The hours of operation for mineral extraction shall be limited to the hours of 6 AM to 6 PM M - S. The application proposes that crushing will only occur during a 6-8 week period each year. During that crushing period, 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.
6. Blasting is not authorized.
7. The maximum height of temporary equipment and stockpiles shall not exceed 20 feet, as required by the FAA. The FAA's determination expires 12/12/2019 unless extended, revised or terminated by the issuing office.

8. The applicant must notify the Pangborn Memorial Airport manager at least 3 business days prior to the temporary structure being erected and again when the structure is removed from the site.
9. 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".
10. 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. 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.
11. 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.
12. 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 temporary basis consistent with EWWD policies.
13. The applicant must contact the Greater Wenatchee Irrigation District (GWID) prior to commencing the project to guarantee/assure no damage to GWID infrastructure.
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 / 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 Douglas County Code 20.34 and 20.36. Conformance with these standards are the responsibility of the applicant.
17. The applicant shall execute a Haul Route Agreement per Douglas County Code 12.28.150 prior to commencing operations.
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, 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, Sand and Gravel 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.

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.
21. Upon the end of the 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 material 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 the Stormwater Management Manual for Eastern Washington, or the Eastern Washington Erosion Prevention and Sediment Control Field Guide) shall be utilized as necessary.
23. 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 17<sup>th</sup> day of August, 2018.

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.