

**GRANT COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
P 17-0355)	DECISION AND
Tommer)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Grant County Hearing Examiner on January 10, 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. This Conditional Use Permit from Chris Tommer, is for expansion of an existing sand & gravel pit with approximately 76,250 cu. yds. mined per year and approximately 12,200,000 cu. yds. to be mined over the life of the operation.
2. The proponent is Tommer Construction (attn: Nick Tommer), PO Box 1150, Ephrata, WA 98823.
3. The project site is located at approximately 4 miles southwest of Ephrata, WA near the intersection of SR 28 and SR 283. The site is located in the west half of Section 5 and NE ¼ of Section 6, Township 20 North, Range 26 East, W.M., Grant County, WA. Parcel #20-0300-001, 16-0581-002& 16-0581-000.
4. The zoning for the property is Rural Remote.
5. The zoning for neighboring parcels is: To the north, Agriculture/Rural Residential 1; to the south, Agriculture/Rural Residential 3; to the east, Rural Remote; to the west, Agriculture.
6. The Comprehensive Plan designation for the subject property is Rural Remote.
7. SEPA Review was completed for this project and a Mitigated Determination of Non-Significance was issued by Grant County on December 7, 2017.
8. The subject parcels were reviewed for Critical Areas and parcel # 16-0581-002 was found to be within 300-ft. of a burrowing owl site. A survey of the site was conducted on October 15th and 17th by EcoSystems Northwest. There were no nesting sites found on the property and no suitable habitat for burrowing owls.
9. A Public Notice containing information on this project was published in the Columbia Basin Herald on November 2, 2017, was mailed to property owners within 300 feet of the subject property, and was posted on the subject property. Information on this project was also mailed to applicable agencies of jurisdiction for their review and comment.
10. The following agencies and County departments provided comments:
 - 10.1 Grant County Fire Marshal/Building Official responded on November 3, 2017;
 - 10.2 Grant County Public Works Department responded on November 6, 2017;
 - 10.3 Grant County Assessor's Office responded on November 13, 2017;

- 10.4 U.S. Bureau of Reclamation responded on November 17, 2017 and revised on December 4, 2017;
 - 10.5 WA State Department of Transportation responded on November 2, 2017;
 - 10.6 WA State Department of Natural Resources responded on December 11, 2017.
11. The following agencies were notified but did not respond:
- 11.1 Grant County Building Department;
 - 11.2 Grant County Health District;
 - 11.3 Grant County Emergency Management;
 - 11.4 Grant County Auditor's Office;
 - 11.5 Grant County Sheriff's Office;
 - 11.6 Grant County Treasurer's Office;
 - 11.7 Grant County PUD;
 - 11.8 Grant County Weed Control Board;
 - 11.9 WA State Department of Ecology;
 - 11.10 Grant County Conservation District;
 - 11.11 Ephrata Municipal Airport;
 - 11.12 Washington Department of Fish & Wildlife;
 - 11.13 Grant County Fire District #13.
12. **Agency Comments:** The following is a summary of comments received:
- 12.1 **Grant County Building and Fire Marshal:**
 - 1. No adverse comments or concerns.
 - 12.2 **Grant County Assessor:**
 - 1. Parcel 200330001 is a 69 acre parcel of land with a tool shed, it has TGW parcel 160584000 per BLA which is a 160 acre parcel of classified land with a shop and irrigated equipment, these two parcels are owned by Nicholas & Donna Tommer; Parcel 160581002 is a 125 acre parcel of land only owned by Tommer Construction, Co.; No issues.
 - 12.3 **Grant County Public Works:**
 - 1. No mining excavation or slope shall take place within or effect the County road or the County road Right-of-Way.
 - 2. Prior to any improvements or changes to road E-NW or it's Right-of-Way, engineered road construction plans shall be submitted for review and comment to Grant County Public Works and a Work in Right-of-Way permit obtained.
 - 12.4 **US Bureau of Reclamation:**
 - 1. See Finding of Fact 19.
 - 12.5 **WA State Dept. of Natural Resources:**
 - 1. DNR Surface Mining has no comments.
13. **Public Comments (Summary of Comments):**
- 13.1 Allen Hobson (November 3rd, 2017; Revised November 14, 2017).
 Mr. Hobson had general questions regarding the duration of the operation, reclamation efforts, and potential impacts to ground water sources. He was provided the application materials on November 3rd, 2017 asking if the application answered his questions. He

responded on November 14th with revised questions regarding the application. I responded on November 14th, 2017 to those questions/concerns.

14. The application was determined to be Technically Complete on October 26, 2017.
15. This proposal was processed as a Type III Quasi Judicial Decision, in accordance with Chapter 25.04 "Permit Application and Review Procedures" and Chapter 25.08 "Conditional Uses and Variances" of the Grant County Unified Development Code.
16. This proposal was reviewed for compliance with Chapter 24.08 "Critical Areas and Cultural Resources" of Grant County Unified Development Code. The project site was found to be located within 300 ft. of a known Burrowing Owl site, see the Critical Area Review on page 2 of this Staff Report for a full response.
17. The proposal is not within an Urban Growth Area (UGA).
18. Mineral extraction and processing in the Rural Remote Zone is allowed as a Conditional Use pursuant to GCC 23.04, Table 4.
19. The USBR submitted comments for the project on November 17, 2017 which stated that there were potential issues with mineral rights for Government Lot 5 and possible encroachments on right-of-ways and easements located on the Farm Unit maps. After further research Government Lot 5 is in the same section but is not owned by Tommer and was not included in this application. A letter (dated May 31, 2017) from the USBR was submitted by Nick Tommer on November 22, 2017 which stated the none of the easements located on the Farm Unit map were actually conveyed to Reclamation and that no facilities had been constructed. The letter also stated that because nothing had been conveyed or constructed the easements do not exist. An email was received by Jon Brooks of the USBR on December 4, 2017 which concurred with findings from the letter submitted on November 22, 2017 which rectified any concerns with the USBR's first set of comments.
20. Grant County issued a SEPA Mitigated Determination of Non-Significance for the proposed project. This MDNS was issued on December 7, 2017 (File P 17-0356).
21. The applicant has applied for an application to expand a rock crushing and mining operation on multiple parcels totaling approximately 190 acres in size. The project site is located in the Rural Remote Zoning District of Grant County. The applicant stated that crushing will occur one to two times a year for 2 to 8 weeks at a time maintaining a similar schedule to their current approval. Based on comments provided by Grant County Public Works, additional approval will be needed by GCPW when the operation reaches the county road right-of-way of Rd E NW.
22. Grant County Planning Staff has reviewed and considered the application materials and the comments received for the proposal. Based on the proposed conditions of approval specified below, and the current design of the project, staff recommended approval of subject Conditional Use Permit. The Grant County Unified Development Code was reviewed by the Hearing Examiner and he has determined that this proposal complies with the code as outlined:
 - 22.1 The proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan.
 - 22.1.1 Since 1984 Tommers has operated a Sand & Gravel operation at Naylor Junction and have operated a portable crushing plant there since 2000. It is their intent and purpose to follow all regulations of Grant County Code or the Comprehensive Plan.

- 22.1.2 This use will not be contrary to the intent of Grant County Code and the Comprehensive Plan. Mineral extraction/mining and mineral processing activities are allowed in the Rural Remote zone as a Conditional Use. This project is located in the Rural Remote zone.
- 22.2 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.
 - 22.2.1 This proposal is appropriate in design, character and appearance and has the same goals and policies for the land use designation in which the proposed use is located.
 - 22.2.2 The proposal is appropriate in design, character, and appearance with the goals and policies for the applicable land use designation. Mineral processing and extraction are a use contemplated in the Rural Remote zone and land use designation. The applicant has listed several items in the application to help ensure the use will minimize impacts to neighboring properties in keeping with the goals of the comprehensive plan, such as having water trucks on site and maintaining stock piles to minimize noise.
- 22.3 The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
 - 22.3.1 The applicant's intent to continue to operate with no impact on the adjacent lot owners, as they have been for the last 17 plus years.
 - 22.3.2 The proposed use will not cause significant adverse impacts on the human or natural environment. Conditions of Approval have been suggested below that will ensure that the project, if approved, will not negatively impact the environment. The applicant also stated that the expansion will move north first away from owners to help mitigate impacts, water trucks will be on site to limit dust and stockpiles will be maintained to limit noise.
- 22.4 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.
 - 22.4.1 The proposal will not produce significant adverse effects to the environment that cannot be controlled by following conditions of approval.
 - 22.4.2 The cumulative impact of additional requests for like actions will not produce significant adverse effects to the environment, provided those similar requests are adequately conditioned, or have appropriate mitigation measures applied to them at the time of approval. This project will be adequately conditioned and includes a reclamation plan after the operation has completed which minimizes the long term impacts on the environment.
- 22.5 The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
 - 22.5.1 The proposal will provide more than adequate facilities including access, fire protection, storm water control however, water and sewage disposal facilities are not required with this project.
 - 22.5.2 This proposal will be served by adequate facilities. The crushing operation itself requires no infrastructure. Water will be provided by a well adjacent to

this property to fill water trucks and be used to control dust. Bathrooms are located at the shop/office building immediately south of the proposed project.

- 22.6 The location, size, and height of buildings, structures, walls and fences and screening vegetation for the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties.
 - 22.6.1 There is no need for buildings, structures, walls or fences necessary for this proposal therefore the neighboring properties will not have any interference.
 - 22.6.2 This project will not unreasonably interfere with development or use of neighboring properties. This proposal does not include any buildings, structures, or fences. The project will minimize impacts of neighboring property owners by utilizing an on-site water truck to keep dust down, using stockpiles as mitigation for noise and beginning the expansion furthest away from any residential properties. Work will also be limited from 7 am to 7 pm as stated in the application and crushing will only occur 1 to 2 times per year for 2 to 8 weeks at a time.
- 22.7 The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.
 - 22.7.1 The proposal does not affect nor is it hazardous to existing or anticipated vehicular or pedestrian traffic whatsoever.
 - 22.7.2 Pedestrian and vehicular traffic resulting from this project will not be hazardous to the existing traffic in the area. This proposal will not increase vehicular traffic onto Hwy 28 and will not produce any pedestrian traffic. The application was sent to Washington State Department of Transportation who said they had no comments on the proposal.
- 22.8 Land uses, activities, and structures that are allowable as conditional uses must also comply with any required performance standards in GCC § 23.08.
 - 22.8.1 Tommers will comply with all standards specified in GCC 23.08 in regards to land uses and activities.
 - 22.8.2 Uses approved by this Conditional Use Permit would comply with applicable performance standards. Appropriate conditions of approval have been suggested that will ensure compliance.
- 22.9 The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70).
 - 22.9.1 The proposal does not include parcels adjacent to an airport or airfield (RCW 36.70)
 - 22.9.2 This proposal is not adjacent to an airport/airfield. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport of airfield.
- 22.10 The proposal conforms to the standards specified in GCC § 23.12.
 - 22.10.1 The proposal conforms to the standards specified in GCC 23.12.
 - 22.10.2 The project, as conditioned, complies with all applicable development standards found in GCC § 23.12.

23. An open record public hearing after due legal notice was held on January 10, 2018.
24. The entire Planning Staff file was admitted into the record at the public hearing.
25. The Grant County Planning Department recommended approval of the requested permit, subject to the recommended conditions of approval.
26. Appearing and testifying on behalf of the applicant was owner and President of Tommer Construction Company, Chris Tommer. Mr. Tommer testified that he agreed with all of the representations in the staff report and had no objection to any of the proposed Conditions of Approval.
27. No member of the public appeared at the hearing.
29. 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 proposed use is consistent with the intent, purposes and regulations of the Grant County Code and Comprehensive Plan.
3. As conditioned, the proposal does conform to the standards specified in Grant County Code Section 23.12.
4. As conditioned, the use will comply with all required performance standards as specified in Grant County Code 23.08.
5. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan.
6. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
7. 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, Conditional Use Permit Application P 17-0355 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 Applicant shall obtain all permits required by all federal, state and local agencies with jurisdiction.

3. The Applicant shall comply with all federal, state and local laws and regulations.
4. The applicant shall comply with all requirements as deemed necessary by the Grant County Public Works, including but not limited to:
 - a. No mining excavation or slope shall take place within or effect the County road or the County road Right-of-Way.
 - b. Prior to any improvements or changes to road E-NW or it's Right-of-Way, engineered road construction plans shall be submitted for review and comment to Grant County Public Works and a Work in Right-of-Way permit obtained.
5. A minimum 100-foot setback shall be required between on-site crushing, processing, or recycling activities and adjacent properties.
6. Applicant shall comply with the Reclamation and Revegetation Plan on Page 8 of 9 of the plan set drawings submitted with the application on September 20th, 2017.
7. Dust and emissions to the air associate with the project shall be controlled by utilizing Best Management Practices and dust control during crushing and grading operations.
8. Applicant shall comply with any/all applicable requirements found in Grant County Code Chapter 23.08, Performance and Use Standards.
9. Applicant shall comply with any/all applicable requirements found in Grant County Code Chapter 23.12, Development Standards.
10. Applicant shall comply with all requirements listed in Mitigated Determination of Non-Significance issued by Grant County on December 07, 2017.

Dated this 19th day of January, 2018.

GRANT COUNTY HEARING EXAMINER PRO TEM



Nicholas Yedinak

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Grant 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.