

**GRANT COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW AND,
P 19-0034)	DECISION AND
P19-0035)	CONDITIONS OF APPROVAL
Grant County Public Works)	

THIS MATTER having come on for hearing in front of the Grant County Hearing Examiner on June 12, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law and, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. This is an application for a Conditional Use Permit and SEPA checklist to allow a surface mine, gravel crushing, sand screening and stockpiling operation to mine and crush approximately 3,000,000 cubic yards of material on approximately 124.62 acres. The zoning is Rural Remote.
2. The Applicant is Grant County Public Works, Attn: Jerome Wawers, 124 Enterprise St. SE, Ephrata, WA 98823
3. The site address of the subject parcel is currently unassigned. The site is located in the South half of Section 20, Township 16 N, Range 26 E, W.M., Grant County, WA. Parcel #16-0138-000.
4. The zoning for the property is Rural Remote.
5. The zoning for neighboring parcels is: To the north, Rural Remote; to the south, Rural Remote; to the east, Rural Remote; to the west, Rural Remote.
6. The Comprehensive Plan designation for the subject property is Rural Remote.
7. Environmental Review was completed by Grant County Development Services. A SEPA Mitigated Determination of Non-Significance was issued on May 20, 2019.
8. The portion of property subject to the Conditional Use Permit review was reviewed for Critical Areas and not found to be located within 300 feet of any Critical Area as defined by Grant County Code.

9. A Public Notice containing information on this project was published in the Columbia Basin Herald on May 2, 2019, 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 responded on April 29, 2019.
 - 10.2 Grant County Assessor's Office responded on May 8, 2019.
 - 10.3 U.S. Bureau of Reclamation responded on May 8, 2019.
 - 10.4 WA State Department of Ecology responded on May 16, 2019.
11. The following agencies were notified but did not respond:
 - 11.1 Grant County Building Official
 - 11.2 Grant County Treasurer's Office
 - 11.3 Grant County Health District
 - 11.4 Grant County Public Works Department
 - 11.5 Grant County Sheriff's Office
 - 11.6 Grant County Auditor's Office
 - 11.7 Grant County Emergency Management
 - 11.8 Grant County Noxious Weed Control Board
 - 11.9 Grant County P.U.D.
 - 11.10 WA State Dept. of Fish & Wildlife
 - 11.11 WA State Dept. of Natural Resources
 - 11.12 Grant County Conservation District
 - 11.13 Quincy Columbia Basin Irrigation District
 - 11.14 Grant County Fire District #3
12. **Agency Comments:** The following is a summary of comments received:
 - 12.1 **Grant County Assessor's Office:**
 1. Parcel 16-0138-000 is a 137.93 acre parcel of land only.
 2. Owner is Grant County Public Works.
 3. No issues.
 - 12.2 **Grant County Fire Marshal:**
 1. Any blasting that takes place will be done after notifying the local fire district (GCFD #10) and the Grant County Fire Marshal's office 72 hours in advance. Details as to the storage, amount of explosives to be on site and for how long, and the credentials of the company and/or individual(s) who are overseeing the blasting will be provided to the Fire Marshal.

12.3 WA State Department of Ecology:

1. Please see Attachment B for this comment in its entirety.

12.4 US Bureau of Reclamation:

1. Please see Attachment B for this comment in its entirety.

13. No public comments were received.
14. The application was determined to be Technically Complete on April 29, 2019.
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 boundary as defined in the site plan was not found to be located within 300ft of any Critical Areas.
17. The proposal is not located within any Urban Growth Area.
18. The project site is located in the Rural Remote Zoning District.
19. Pursuant to Grant County Code 23.04, Table 4, "Mining & Mineral Extraction" is allowed as a Conditional Use in the Rural Remote Zoning District.
20. Grant County Code 25.02 defines Mineral Extraction as "the removal of naturally occurring materials from the earth for economic use. Extraction materials include nonmetallic minerals such as sand, gravel, clay, coal, and various types of stone."
21. A site visit was conducted on April 30, 2019 by GC Development Services Staff.
22. A SEPA MDNS was issued for this project on May 20, 2019. No appeal was filed.
23. Information about this application was sent to all applicable agencies of jurisdiction for their review and comments. Agency comments and/or requirements specific/applicable to this proposal have been included as Conditions of Approval. No adverse comments were expressed by any agency that would prohibit development.
24. A portion of this site was previously approved for surface mining, rock crushing and stockpiling of aggregates to be used for road maintenance and construction under Grant County Planning File #12-5679 and approved on September 13, 2012
25. Grant County Development Services 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.
26. The proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan because:
 - 26.1 The proposed use is within the regulatory oversight of the Grant County Code and the Comprehensive Plan. Providing crushed aggregates for the maintenance of the area's county transportation system is a fundamental service required of Grant County government functions.

- 26.2 The proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan. Mining and Mineral Extraction activities are allowed in the Rural Remote Zoning District as a Conditional Use. This project is located in the Rural Remote Zoning District. The project will be required to comply with all relevant development and performance standards of the Grant County Unified Development Code.
27. 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 because:
- 27.1 The proposed use of this site for aggregate production is substantially the same in design, character and appearance to existing sites in close proximity. Quarry development and operation is by its nature a long term investment which will result in the removal and depletion of surface mineral aggregates from this site. It is our belief that the proposed land use will be characteristic of other uses in the general area.
- 27.2 The proposal is appropriate in design, character and appearance with the goals and policies for the applicable land use designation. Pursuant to Chapter 4.4.3.7 of the Comprehensive Plan, the primary land uses in the Rural Remote land use designation includes resource-oriented activities such as farming and mineral extraction
28. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval because:
- 28.1 The impacts created will be no different than those caused by existing proximate pit sites whose usage began more than 30 years ago. As they have not created any adverse impact on humans or the natural environment in the general area the Hearing Examiner does not expect any in the future.
- 28.2 The proposed use will not cause significant adverse impacts on the human or natural environment. Conditions of Approval have been set that will ensure that the project will not negatively impact the environment. The applicant stated that they will utilize water trucks as needed on site to minimize fugitive dust.
29. 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 because:
- 29.1 Although the proposed use is in keeping with the regular uses (as currently defined), it is not unreasonable to assume that each proposed use must be judged independently and in aggregate to arrive at the most effective mitigated condition of approval.
- 29.2 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.
30. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities because:
- 30.1 The proposed pit site and usage will be serviced in the following manner:

- 30.1.1 The proposal is accessed off of Road E SW by 2 approaches. If needed, additional approaches will be granted by Grant County Public Works. Fire protection is provided by Grant County Fire Protection District #10.
 - 30.1.2 Water for dust abatement and sewage disposal will be provided by temporary and portable services during crushing operations. The Royal City area is in a very arid climate with 8.3 inches of annual precipitation. If stormwater control is required it will be accomplished onsite.
 - 30.1.3 This proposal will be served by adequate facilities. The crushing operation itself requires no infrastructure. All storm water will be required to be retained on-site (in compliance with the Eastern Washington Storm Water manual) and the property is served by the local Fire District (No. 10).
31. 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 because:
- 31.1 The neighboring properties include, on the north boundary, approximately ½ is a surface mine/pit site and ½ is scab land, on the east boundary is scab land and the south boundary is scab land, on the west boundary is the Royal Rail Road and Road E-SW. Access road easement issued to the Bonneville Power Administration through the site will be maintained and/or relocated as necessary to facilitate quarry development. Interior quarry walls will be sloped at a 2 to 1 pitch which is similar in nature to those evident along the west side of Road E-SW and Red Rock Lake to the north. Fencing will be erected as necessary to deter trespass from humans and animals and to improve safety conditions. No use of this site will unreasonably interfere with allowable development or use of neighboring properties.
 - 31.2 This project will not unreasonably interfere with development or use of neighboring properties. This proposal does not include any buildings or structures. The project will minimize impacts of neighboring property owners by utilizing water trucks as needed to minimize fugitive dust. Fencing will be used to deter human and animal trespass into the site in areas where steep slopes and heavy machinery are being use. Work at this site will happen intermittently in association with county road projects in the area. This site will not be continuously operated throughout the year. Any structures erected on site and all fencing will comply with Grant County Code.
32. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood because:
- 32.1 The pedestrian and vehicular traffic will be similar in nature to historical usage dating back many years. The traffic associated with proposed and current use is for short duration jobs, during routine road maintenance and crushing activities.
 - 32.2 Pedestrian and vehicular traffic resulting from this project will not be hazardous to the existing traffic in the area. This proposal area is currently being operated under an existing approval. This is a modification to the existing Conditional Use Permit already in place.
33. Land uses, activities, and structures that are allowable as conditional uses must also comply with any required performance standards in GCC § 23.08.
- 33.1 This proposal complies with GCC 23.08.230.

- 33.2 The application will be conditioned so as to comply with the applicable performance standards. Appropriate conditions of approval have been suggested that will ensure compliance.
34. 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) because:
 - 34.1 The proposal is not adjacent to an airport or airfield.
 - 34.2 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 or airfield.
35. The proposal conforms to the standards specified in GCC § 23.12 because:
 - 35.1 The proposal will comply with the standards.
 - 35.2 The project, as conditioned, complies with all applicable development standards found in GCC § 23.12.
36. An open record public hearing after due legal notice was held on June 12, 2019.
37. The entire Planning Staff file was admitted into the record at the public hearing.
38. Appearing and testifying on behalf of the applicant was Jerome Wawers. Mr. Wawers testified that he is an agent of Grant County Public Works and was authorized to testify on their behalf. Mr. Wawers testified that all of the proposed Conditions of Approval were acceptable. He indicated that blasting activities were a possibility. He stated that asphalt on the site would not be recycled but only stored until it could be removed to an appropriate disposal facility.
39. No member of the public testified at the hearing.
40. 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 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 19-0034 and SEPA Checklist P 19-0035 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 proposed development shall not inflict upon adjacent land(s) smoke, dust, glare, dirt, steam, vibration, noise, electrical interference, excessive hazards, or pollution which exceeds applicable local, state, or federal standards.
2. Existing vegetation will be removed from the site during mining operations. The site shall subsequently be replanted according to the approved Washington State Department of Natural Resources Reclamation Plan.
3. If any Native American Grave site(s) or archaeological/cultural resources (Indian Artifacts) are found all construction activity shall stop and the owner/developer shall immediately notify the Grant County Planning Department, the Colville Confederated Tribes and the Washington State Office of Archaeology and Historic Preservation.
4. Water shall be used during aggregate manufacture to reduce fugitive dust.
5. Applicant shall have water truck on-site at all times during crushing/grading operations for dust suppression.
6. Berms of topsoil and overburden shall be placed around the project in order to reduce noise levels on adjacent properties.
7. Grant County Fire District #10 and the Grant County Fire Marshal shall be notified of any planned blasting that will take place on site at least 72 hours in advance of the activity. Additionally, details on the storage, amount of explosives to be on site, length of time any explosives will be on site, the credentials of the company and/or individual(s) oversee the blasting shall be provided to the Grant County Fire Marshal. In addition, the Applicant shall obtain all required permits from all agencies prior to any blasting activities.
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 May 20, 2019.

Dated this 13th day of June, 2019.

GRANT COUNTY HEARING EXAMINER

A handwritten signature in black ink, appearing to read "A. L. Kottkamp", written over a horizontal line.

Andrew L. Kottkamp

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.