

**GRANT COUNTY  
LAND USE HEARING EXAMINER**

|                         |   |                                |
|-------------------------|---|--------------------------------|
| <b>IN THE MATTER OF</b> | ) | <b>FINDINGS OF FACT,</b>       |
|                         | ) | <b>CONCLUSIONS OF LAW AND,</b> |
| P16-0086                | ) | <b>DECISION AND</b>            |
| LBT Enterprises, LLC    | ) | <b>CONDITIONS OF APPROVAL</b>  |

THIS MATTER having come on for hearing in front of the Grant County Hearing Examiner on May 11, 2016, 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 application is from LBT Enterprises, LLC, PO Box 1150, Ephrata, WA 98823, and is for grading of approximately 25,000 cubic yards and temporary placement of a rock crusher to crush graded aggregate materials. Crushed rock will be used to build roads to serve future on site subdivision (approximately 6,500 linear feet).
2. The agent is Nick Tommer, PO Box 1150, Ephrata, WA 98823.
3. The project site is located approximately one mile north of where Rd. M NW ends at Rd. 13 NW. The parcel is located in the W ½ of Section 24, Township 21N, Range 24E, W.M., Grant County, WA. Parcel #15-1217-000.
4. The zoning for the subject property is Rural Remote.
5. The zoning for neighboring parcels is: To the north, Agriculture; to the south, Agriculture; to the east, Agriculture; and 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 April 11, 2016.
8. The subject parcel was reviewed for Critical Areas and it was found that a few of the parcels were in a possible priority habitat area. Eric Pentico with the Washington State Department of Fish and Wildlife was solicited for comment. Based on his comments it was determined that no Critical Areas were located within 300 feet of the project site.
9. A Public Notice containing information on this project was published in the Columbia Basin Herald on March 17, 2016, 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. The following agencies provided comments:

- 9.1 Grant County Fire Marshal/Building Official responded on March 18, 2016
  - 9.2 Grant County Health District responded September 2, 2014
  - 9.3 Grant County Public Works Department responded on March 22, 2016
  - 9.4 Grant County Assessor's Office responded on March 21, 2016
  - 9.5 Grant County Noxious Weed Control Board responded on March 23, 2016
  - 9.6 Grant County Sheriff's Office responded on August 28, 2014
  - 9.7 WA State Department of Natural Resources responded on March 28, 2016
  - 9.8 WA State Department of Fish and Wildlife responded on March 24, 2016
  - 9.9 WA State Department of Ecology responded on March 31, 2016
10. The following agencies were notified but did not respond:
- 10.1 Grant County Fire District #3
  - 10.2 Grant County P.U.D.
  - 10.3 Grant County Emergency Management
  - 10.4 Grant County Treasurer's Office
  - 10.5 U.S. Bureau of Reclamation
  - 10.6 Grant County Auditor
11. **Agency Comments:** The following agencies provided comments:
- 11.1 **Grant County Building and Fire Marshal:**
    - 1. All real development shall comply with all applicable local, state, and federal laws.
    - 2. If project is subject to a DNR mining permit no excavation grading permit required.
  - 11.2 **Grant County Assessor:**
    - 1. Parcel 151217000 is a 160.00 acre of classified land only; owners are LBT Enterprises LLC.
  - 11.3 **Grant County Public Works:**
    - 1. All work shall be done in accordance with comments and requirements set forth on approved Work in Right of Way permit 13-86-C.
    - 2. Changes in scope of work by proponent may require additional comments and requirements from Grant County Public Works Department for the existing permit.
    - 3. It is Grant County Public Works understanding that the rock crushed at the proposed location and per this CUP application is to be used to build an extension of Adams Road and M.5-NW (after additional Right of Way is acquired for M.5) in County Right of Way and per the approved Work in Right of Way permit #13-86-C. No commercial off-site from the proposed crushing location within undeveloped County Right of Way is permitted.
    - 4. If would appear that the crushing location will take place within the existing County Road Right of Way that comes down off of the ridge-line from the NW. If needed, additional County Road Right of Way along the section line (west property line) shall be dedicated to Grant County when the parcel is subdivided to allow for a realignment and connection to the Rights of Way that may be affected by the crushing and grading. This will be determined by the County Engineer at the time of subdivision.

- 11.4 **WA State Department of Fish and Wildlife:**
1. There are ground squirrel colonies in the vicinity (greater than 300 feet away from project), WDFW would request study for project site.
  2. Staff Response:  
Grant County Code Chapter 24.08 only requires a site assessment when known critical areas are located within 300 feet. In this case the known ground squirrel colonies referenced by Mr. Pentico are located in excess of a ¼ mile away.
- 11.5 **Grant County Noxious Weed Board:**
1. No noxious weeds present at this time.
- 11.6 **WA State Dept. of Ecology:**
1. Ground water withdrawal exceeding 5,000 gallons per day will require a permit from Ecology.
  2. Applicant will need approval under Ecology Air Quality Program.
- 11.7 **WA State Dept. of Natural Resources:**
1. DNR has determined no reclamation permit is necessary. Additionally, DNR Surface Mining has no comments.
12. The application was determined to be Technically Complete on March 14, 2016.
13. 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.
14. 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 not found to be located within 300ft of any Critical Areas.
15. The proposal is not within an Urban Growth Area (UGA).
16. Mineral extraction and processing in the Rural Remote Zone is allowed as a Conditional Use pursuant to GCC 23.04, Table 4.
17. Graded materials will be crushed on-site and utilized for building roads to serve future subdivision.
18. The applicant has stated in the application materials that the rock crusher is only intended to operated during a 120 day window. A condition of approval has been added to reflect this.
19. No off-site materials will be brought to the site to be crushed.
20. Grant County issued a SEPA Mitigated Determination of Non-Significance for the proposed tower. This MDNS was issued on April 11, 2016 (File P 16-0087).
21. The applicant has applied for an application to establish a temporary rock crushing operation on a 160 acre parcel. The project site is located in the Rural Remote Zoning District of Grant County. The applicant only plans to operate the rock crusher during a 120 day window. The

crushed aggregate materials will be utilized to extend County Roads in order to facilitate a future subdivision of the property. Approximately 6500 linear feet of new roadway will be constructed. The applicant has also stated they intend to transport excess crushed materials to a nearby substation project for the Grant County PUD. Based on comments provided by Grant County Public Works, additional approval will be needed by GCPW if materials are to be transported via County Right of Way.

22. Grant County Planning Staff 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. This proposal complies with the following findings:
  - 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 because:
    - 22.1.1 The purpose of this project is to create Rural Residential lots, 20 acre minimum. Side project consisting of grading – construction of County spec roadway, crushing rock for the roadways, all construction will be completed in the first year in accordance with Grant County Codes.
    - 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 because:
    - 22.2.1 This project will create much needed rural 20 acre plus lots and county access in accordance with Grant County Codes.
    - 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. Additionally the proposal is only temporary in nature, the applicant has stated that they only plan to operate during a 120 day window.
  - 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 because:
    - 22.3.1 The creation of 20 acre parcels will add to surrounding rural condition – added to the Beasley hills backdrop.
    - 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.

- 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 because:
- 22.4.1 The creation of 20 acre parcels served by county access will only enhance the rural area.
  - 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.
- 22.5 The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities because:
- 22.5.1 The project will have access from County Rd. 13 NW, M.5 NW, 14 NW and Adams Rd. Grant County Public Works will approve the county road and storm water will be addressed through the public works process and approval. Water service will be Washington State approved class B system, septic tank and drain field will be designed and approved through the building permit process and Grant County Health Department.
  - 22.5.2 This proposal will be served by adequate facilities. The crushing operation itself requires no infrastructure. Water will be provided by an onsite well to fill water trucks and be used to control dust. This project will allow the applicant to create the infrastructure (roads) to facilitate a future subdivision.
- 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 because:
- 22.6.1 The natural slope of the property will again enhance the 20 acre parcels and there will be no adverse effects to adjoining property. The overall slope is 1%.
  - 22.6.2 This project will not unreasonable interfere with development or use of neighboring properties. This proposal does not include any buildings, structures, or fences and is temporary in nature. The crusher will only operate during a 120 day window in order to produce enough aggregate to construct new County Roads to serve the property. Additionally the proposal will also help facilitate greater access to the area, and neighboring properties.
- 22.7 The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood because:
- 22.7.1 The size of parcels, 20 acres, as well as, the remote location, our total number of home sites, 10, will have no affects.
  - 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 produce no

pedestrian traffic and will produce limited amounts of construction related traffic. Additionally any haul traffic leaving the site would require additional approval by Grant County Public Works.

- 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 Rural residential lots, 20 acre minimum will comply with all requirements of GCC.
  - 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 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 Proposal conforms to 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 May 11, 2016.
- 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 Nick Tommer. Mr. Tommer testified that he was the applicant and the property owner. He testified that they are crushing rock on this site in order to create building sites for a future subdivision. The crushed rock will be used in the development of this subdivision site. They will build an appropriate access road and they will be crushing rock in a 120 day window. Finally, the applicant had no objection to any of the proposed Conditions of Approval.
- 27. Testifying in front of the public was Deborah See. Ms. See testified in favor of the project. She and her husband will be buying one of the new residential lot sites for the construction of their home.
- 28. 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 P16-0086 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. Construction shall proceed substantially as shown on the application materials on file with Grant County, except as modified by conditions below.
5. Applicant shall obtain approval from Washington State Department of Ecology under their Air Quality Program for operation of Rock Crusher.
6. Approval to operate rock crusher shall last for a period not to exceed 120 days. Applicant shall notify the Grant County Planning Department in writing when crushing window is intended to begin.

7. Applicant shall comply with all conditions or requirements found in Work in Right of Way Permit 13-86-C. Any changes in scope of work will require additional review by Grant County Public Works.
8. Prior to transporting any excess crushed materials off-site, applicant shall obtain written permission from Grant County Public Works to utilize County Road Right of Way for this purpose. Additionally the Applicant shall provide the Grant County Planning Department with a copy of such approval document.
9. 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.
10. The Applicant shall install facilities in such a manner so as to prevent run-off from the site from entering adjoining properties. All development shall ensure that the soil erosion and sedimentation of drainage ways will be controlled to prevent damage to adjoining properties. Surface water run-off shall be contained and absorbed on-site.
11. Applicant shall comply with any/all applicable requirements found in Grant County Code Chapter 23.08, Performance and Use Standards.
12. Applicant shall comply with any/all applicable requirements found in Grant County Code Chapter 23.12, Development Standards.

Dated this 19<sup>th</sup> day of May, 2016.

GRANT COUNTY HEARING EXAMINER



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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.**