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"Building Partnerships – Building Communities"

STAFF REPORT
Crowe Conditional Use Permit (CU-15-00001)

TO: Kittitas County Hearing Examiner
FROM: Kittitas County Community Development Services Staff
RE: Crowe Conditional Use Permit (CU-15-00001)
DATE: July 23, 2015 (Hearing Date)

I. GENERAL INFORMATION

Requested Action: Marly A Crowe, landowner has submitted a conditional use application for shale mining. The operation is located on a 20 acre parcel which is zoned Agriculture 20 and has a Land Use Designation of Rural Working.

Location: The proposal is located to the East of the City of Kittitas at 5002 Parke Creek Road in a portion of Section 08, T17N, R20E, WM, in Kittitas County, Assessor's map number 17-20-08053-0001.

II. SITE INFORMATION

Total Property Size: 20 acres, project on 1 parcel
Number of Lots: 1; no new lots are being proposed
Domestic Water: None
Sewage Disposal: None
Power/Electricity: none proposed
Fire Protection: Fire District 2– Kittitas Valley
Irrigation District: Kittitas Reclamation District (KRD)

Site Characteristics:

North: Private Properties, Parke Creek Road
South: I-90
East: Private Properties
West: Private Properties, Parke Creek Road

Access: The proposed access will be off of the John Wayne Trail onto Prater Road.

Zoning and Development Standards: The subject property is located in the Kittitas area within Kittitas County and has a zoning designation of Agriculture 20. The general purpose and intent of the agriculture (A-20) zone is an area wherein farming, ranching and rural life styles are dominant characteristics. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture. The Agriculture 20 zone allows for a vast array of permitted and conditional uses; this project is being proposed under KCC 17.15.060.1 (G) Mining and excavation.

Conditional Uses: This application is consistent with KCC 17.60A. There are a number of requirements that must be met; these are addressed under Project Analysis below.

III. ADMINISTRATIVE REVIEW

Notice of Application: A conditional use permit application was submitted to Kittitas County Community

Development Services department on February 13, 2015. This application was deemed complete on March 30, 2015. The Notice of Application for the conditional use permit was issued on May 8, 2015. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on May 26, 2015.

COMPREHENSIVE PLAN

The Kittitas County Comprehensive Plan designates the subject property as Rural Working. Kittitas County has established the following goals and policies to guide activities within the Rural lands. These goals and policies were developed in response to identified needs within the county, and support the County Wide Planning Policies:

GPO 2.2 – Protect, preserve, maintain, and enhance the County's natural resource industry base, natural environment, and rural character, including but not limited to timber, agriculture, mineral, water and energy resources. The County shall avoid land use conflicts with its resource industry by applying low residential densities to lands adjacent to resource lands.

GPO 2.7 – Kittitas County will maintain a flexible balance of land uses which will protect, preserve, and enhance the rural character, historical forest lands, agriculture industries, mineral lands, and high quality environment.

GPO 8.9 – Protecting and preserving resource lands should be given priority. Development that is permitted and adjacent resource lands shall be properly managed.

GPO 8.10 Allow for lands which offer adequate supply of rock and gravel resources located in areas compatible for such uses and conditioned so that operation does not negatively impact rural character.

GPO 8.15 Uses common in rural areas of Kittitas County enhancing rural character, such as agriculture uses in Lower Kittitas and rural residential uses and recreation uses in Upper Kittitas shall be protected from activities which encumber them.

GPO 8.18 Limit development in rural areas through density requirements that protect and maintain existing rural character, natural open space, critical areas, and recreation areas. Direct rural development to lands that have adequate public services.

V. ENVIRONMENTAL REVIEW

Based upon review of the submitted application materials including an environmental checklist, correspondence received during this 15 day comment period and other information on file with Community Development Services, a Mitigated Determination of Non-Significance (MDNS) was issued on June 29, 2015. The appeal period ended on July 14, 2015 at 5:00 p.m. No appeals were filed.

VII. AGENCY AND PUBLIC COMMENTS

Applicable agencies, adjacent property owners, and interested parties have been given the opportunity to review this proposal. All comments have been included in the index file transmitted to the Hearing Examiner.

VIII. PROJECT ANALYSIS

In review of this proposal it is important to consider the goals and policies of the comprehensive plan, applicable county code, public and agency comments, any identified environmental concerns and state and federal

requirements. Identified below is planning staff's analysis and consistency review for the subject application.

Consistency with the Comprehensive Plan:
The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. As referenced above in Section IV of this staff report, the following Comprehensive Plan GPOs apply to this proposal: GPO 2.2, 2.7, 8.9, 8.15, 8.18 and 8.10.

Consistency with the provisions of KCC 17A, Critical Areas:
Staff has conducted an administrative critical area review in accordance with KCC 17A and found two critical areas on-site. There is a DNR stream type 2 – Fish on the northwestern portion of the subject parcel. This stream is also known as Parke Creek. There are also hazardous slopes (25-50%) on the subject parcel on the western portion of the lot. The proposed activities will take place on the south side of the parcel and will not be adjacent to Parke Creek.

Consistency with the provision of KCC 17.29, Agriculture 20 zoning:
This proposal is consistent with Kittitas County Zoning Code 17.29. The proposal is compatible with KCC 17.29.020 referring to the uses table in KCC 17.15. Specifically, this is compatible as a conditional use with KCC 17.15.060.1 (G) Mining and excavation.

Consistency with the provisions of KCC 17.60A, Conditional Uses:
This proposal is consistent with Kittitas County Zoning Code for Conditional Uses. The proposed conditional use will be adequately served by rural levels of service. As conditioned, staff finds the proposal is 1) desirable to public convenience, 2) will not be detrimental to public health, safety or welfare, 3) is not economically detrimental to the public, and 4) is adequately serviced by public facilities. The following are applicant and staff responses to KCC 17.60A.015 (1-7).

1. *The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.*

   Applicant response: This shale quarry is a valuable asset to our county. Shale is used for many projects in Kittitas County and there are not many pits with the quality and quantity of this particular quarry. There is nothing that would be detrimental or injurious to the public health or change the character of the surrounding neighborhood. At this time, you cannot see the quarry from any roads, unless you know where it is.

   Staff response: Staff agrees that the shale quarry will not be detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood. This use is one you would expect in a resource or agricultural area. The conditions set forth will protect the public health, peace, and safety of the area.

2. *The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that:*
   (A) The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or
   (B) The applicant shall provide such facilities; or
   (C)The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.

   Applicant response: The proposed use will have no impact on the public but the county will benefit with

the cost of this application, with paying Parke for the use on the John Wayne Trail and more taxes to be paid.

i. It will be adequately serviced by existing facilities such as roads. We have never needed to use any other services in the previous years.

ii. There is no cost to the addition cost public or any economic detriment the Kittitas County.

iii. No Facilities are required for this project.

Staff response: This proposal is subject to providing adequate water and septic facilities prior to gaining approval for the shale quarry. The applicant will also be required to prove that an access permit has been acquired by Washington State Parks for access from the John Wayne Trail. As required by Kittitas County Code and as conditioned, this proposal will not be detrimental to the economic welfare of the county.

3. *The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.*

Applicant response: Ellensburg Cement will comply with the relevant development standards and criteria. It is a long standing operating quarry but is under 3 acres surface mining as defined in RCW 78.44.031 states:

i. (i) More than three acres of disturbed area.

Staff response: The Kittitas County Comprehensive Plan encourages retention and preservation of existing agricultural and forestry activities. This proposal fits within this goal by allowing an existing mining operation to start operating again. The comprehensive plan also recognizes that the "most common uses in rural lands are agriculture, recreation and logging, which have been basic industries historically and remain important in terms of employment, income and tax base." The re-opening of this mine in Rural Kittitas County will not be an economic detriment.

4. *The proposed use will mitigate material impacts of the development, whether environmental or otherwise.*

Applicant response: According to GPO 8.9 protecting and preserving resource land will be given priority. The land will be reclaimed and the adjacent resource land will be properly managed.

Staff response: This proposal is subject to the conditions outlined within this staff report and that of the SEPA MDNS. As conditioned this application will mitigate all material impacts.

5. *The proposed use will ensure compatibility with existing neighboring land uses.*

Applicant Response: There would be no material impacts to the area besides hauling shale from the pit. The area will be reclaimed and the surrounding areas would not be impacted.

Staff Response: Staff finds that this use is compatible with the neighboring land uses as rural working. Within the resource lands the County's GPOs are in place to allow property owners to preserve and utilize their resource lands: "*GPO 8.9 Protecting and preserving resource lands shall be given priority. Proposed development allowed and adjacent to resource lands shall be conditioned to protect resource lands from negative impacts from that development."*

6. *The proposed use is consistent with the intent and character of the zoning district in which it is located.*

Applicant Response: The proposed use is compatible with the surrounding areas. There are at least 4 shale quarries within sight of this shale quarry and a large hard rock basalt crushing operation south of I-90, straight across the freeway from mine.

Staff Response: The proposed use is a mining operation which lies within the Agriculture 20 zone and is consistent with the Agriculture 20 zone character. The intent of the Agriculture 20 zoning is "*an area wherein farming, ranching and rural life styles are dominant characteristics. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture" Per KCC 17.29.010.* The proposed use parcel is an unfertile plot of land; per the geotechnical report (Index #4) this proposal meets this intent by proposing an alternative use to farming in a shale dominant area.

7. *For conditional uses outside of Urban Growth Areas, the proposed use must show that it:*

   a. *Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands.*

      Applicant Response: Is consistent with the growth management act goals. There is a predominant surrounding of acreage size, and long settlement patterns that are compatibility with mineral lands of long-term significance. We want to preserve and maintain the rural character of Kittitas County.

      Staff Response: Staff agrees with the applicant's response. The Comprehensive plan indicates that in rural working land the intent is to support the continuation, whenever possible, of agriculture, timber and mineral uses on lands not designated for long-term commercial significance. This application is meeting that intent by re-opening this shale mine.

   b. *Preserves "rural character" as defined in the Growth Management Act (RCW 36.70A.030(15)).*

      Applicant Response: We will preserve the "rural character" to the best of our ability. To date, you cannot view the quarry from any roads in Kittitas, unless you know where to look. The land will be reclaimed as the shaping of the quarry and terrain permits.

      Staff Response: The rural character of the subject property and surrounding area is that of a farming and mining community. The applicant has indicated that the proposed use of their property is mining. At the proposed location the applicant is utilizing or maintaining the existing structures on the parcel.

   c. *Requires only rural government services.*

      Applicant Response: I believe this only requires rural government services.

      Staff Response: The proposed use does not require any services other than those that Kittitas County currently provides. The applicant is within a fire district, is not using irrigation water, is meeting all public health requirements, and is within nine and a half (9.5) miles of the Kittitas County Sheriff's office.

d. Does not compromise the long term viability of designated resource lands.

Applicant Response: This conditional Use Permit would not compromise the long term viability of designated resource lands. This project would help to ensure future supply of aggregate and mineral resource material will be available for at least 10 years.

Staff Response: The proposed use does not compromise the long term viability of designated resource lands and will maintain and diversify the long term viability of resource lands by remaining an active mine for many years.

Consistency with the provisions of the KCC Title 14.04, Building Code:
This proposal is consistent with the Kittitas County Building Code as conditioned.

Consistency with the provisions of KCC Title 12, Roads and Bridges:
As conditioned, the proposal is consistent with the provisions of KCC Title 12.

Agency Comments:
The following agencies provided comments during the comment period: Kittitas County Department of Public Works, Kittitas County Fire Marshal, Kittitas Valley Fire and Rescue, WA Department of Transportation, and WA Department of Ecology. Late comments were provided by Kittitas County Environmental Health Department. These comments have been included in the index file record and were considered when preparing the recommended conditions for this proposal.

Public Comments:
Public comments were submitted for this proposal at the time of staff review and were considered. They are attached to this staff report as part of the Crowe Conditional Use Permit Index File.

IX. RECOMMENDATION

Staff finds that the application meets the basic intent and criteria associated with Title 12, Title 14, Title 17.29 & Title 17A of the Kittitas County Code and the Kittitas County Comprehensive Plan. Staff recommends approval of the Crowe Conditional use Permit, subject to the following findings of fact and conclusions:

Staff Findings of Fact

1. Marly A Crowe, landowner has submitted a conditional use application for shale mining. The operation is located on a 20 acre parcel which is zoned Agriculture 20 and has a Land Use Designation of Rural Working.

2. The proposal is located to the East of the City of Kittitas at 5002 Parke Creek Road in a portion of Section 08, T17N, R20E, WM, in Kittitas County, Assessor's map number 17-20-08053-0001.

3. Site Information:

Total Property Size:	20 acres, project on 1 parcel
Number of Lots:	1; no new lots are being proposed
Domestic Water:	None
Sewage Disposal:	None
Power/Electricity:	none proposed
Fire Protection:	Fire District 2– Kittitas Valley
Irrigation District:	Kittitas Reclamation District (KRD)

4. Site Characteristics:
   North: Private Properties, Parke Creek Road
   South: I-90
   East: Private Properties
   West: Private Properties , Parke Creek Road

5. The Comprehensive Plan designation is "Rural Working."

6. The subject property is zoned "agriculture 20," which is a 20 acre minimum zoning.

7. A conditional use permit application was submitted to Kittitas County Community Development Services department on February 13, 2015. This application was deemed complete on March 30, 2015. The Notice of Application for the conditional use permit was issued on May 8, 2015. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on May 26, 2015.

8. As Conditioned, the proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan.

9. As Conditioned, this proposal is consistent with the provisions of KCC Title 12, Roads and Bridges as conditioned.

10. As Conditioned, this proposal is consistent with the provisions of KCC Title 14, Buildings and Construction as conditioned.

11. As Conditioned, this proposal is consistent with the provisions of KCC Title 17.29, agriculture 20.

12. As Conditioned, this proposal is consistent with KCC 17.60A Conditional Uses.

13. Staff has conducted an administrative critical area review in accordance with KCC 17A and found two critical areas on-site. There is a DNR stream type 2 – Fish on the northwestern portion of the subject parcel. This stream is also known as Parke Creek. There are also hazardous slopes on the subject parcel on the western portion of the lot. The proposed activities will take place on the south side of the parcel and will not be adjacent to Parke Creek.

14. The following agencies provided comments during the comment period: Kittitas County Department of Public Works, Kittitas County Fire Marshal, Kittitas Valley Fire and Rescue, WA Department of Transportation, and WA Department of Ecology. Late comments were provided by Kittitas County Environmental Health Department. These comments have been included in the index file record and were considered when preparing the recommended conditions for this proposal. All comments received are included in the Index file.

15. Public comments were submitted for this proposal at the time of staff review and were considered. They are attached to this staff report as part of the Crowe Conditional Use Permit Index File.

Staff Conclusions:

1. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.

2. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.

3. Public use and interest will be served by approval of this proposal.

4. As conditioned, the proposal is consistent with Kittitas County Code Title 17 Zoning, Title 17A Critical Areas, Title 14.04 Building Code, and Title 12 Roads and Bridges.

Recommended Conditions of Approval:

1. The project shall proceed in substantial conformance with the plans and application materials on file dated February 13, 2015 except as amended by the conditions herein.

2. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.

3. All current and future landowners must comply with the International Fire Code.

4. All development, design and construction shall comply with all Kittitas County Codes and the International Fire and Building Codes.

5. Based on comments received during the public comment period and other information submitted with this project permit application, A SEPA Mitigation Determination of Non-Significance (MDNS) was issued by Community Development Services on June 29, 2015. The following are the mitigation contained within the MDNS and shall be conditions of approval:

I. Water/ Air

A. Chapter 173-150 WAC provides for the protection of existing rights against impairment, i.e. interruption or interference in the availability of water. If water eventually becomes available on site and the supply in the area becomes limited, use could be curtailed by those with senior water rights.

B. All water proposed to be used must be obtained from a water budget neutral source.

C. The applicant shall follow WAC 173-400-040 enforced by Washington State Department of Ecology.

II. Septic & Storm Water

A. Adequate septic and waste water facility must be provided on site and approved by Kittitas County Health Department.

B. Activities such as road widening, stump pulling and clearing, grading and fill work and utility placements may require a NPDES Construction Stormwater Permit issued by the Department of Ecology prior to start of construction. This permit requires the preparation of a Stormwater Pollution Prevention Plan. It is the applicant's responsibility to contact the Department of Ecology regarding the requirement of such action.

C. Withdrawals of groundwater on the subject property are subject to the rules and regulations adopted and administrated by the Washington State Department of Ecology; this includes the use of water for irrigation. Legally obtained water must be used on-site.

III. Fire & Life Safety

A. A turn-around shall be provided for fire department access as determined by Kittitas County Fire Marshal.

B. If a gate is to be installed, it must be a minimum of 16' in width. The gate shall be provided with a Knox Box with Kittitas Valley Fire and Rescue approval. A permit is required from the Fire Marshal's office to install any gate.

C. Any structures at the quarry site in the future that require a building permit may be subject to an annual fire and life safety inspection.

D. All structures must comply with the international Fire Code and are subject to annual fire and life safety inspections.

IV. Light and Aesthetics

A. All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties.

V. Noise

A. The hours of operation shall be limited to 7:00am to 5:00pm, Monday thru Friday. It shall be the applicant's responsibility to insure that the project does not pose any threat to public safety and shall take measures to reduce conflict with scheduled school bus stops, mail delivery, ect.

VI. Building/ Grading

A. All new construction must meet the International Building Code requirements existing at the date of building permit submittal.

B. A grading permit it required per KCC 14.05.

C. A sand and gravel permit from the Department of Ecology must be obtained prior to the final of the conditional use permit.

D. All new construction must meet the International Building Code requirements existing at the date of building permit submittal.

VII. Roads and Transportation

A. The driveway must be constructed to commercial standards, as shown in the WSDOT Design Manual Exhibit 1340-2. A Kittitas County Access permit is required prior to driveway construction.

B. An Approved Access permit shall be obtained from Washington State Parks for the use of the John Wayne Trail prior to issuance of the Kittitas County Access Permit and Final Approval of the Conditional use Permit.

VIII. Historic and Cultural Preservation

A. Should ground disturbing or other activities related to the proposed conditional use permit result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the immediate area and contact be made with the Washington State Department of Archaeology and Historic Preservation (DAHP). Work shall remain suspended until the find is assessed and appropriate consultation is conducted. Should human remains be inadvertently discovered, as dictated by Washington State RCW 27.44.055, work shall be immediately halted in the area and contact made with the coroner and local law enforcement in the most expeditious manner possible.

In response to the BOCC's requirement at the September 1, 2015 closed record hearing to strike SEPA Condition IV(B) and for staff to submit clarifying language the following finding has been submitted per the Kittitas County Prosecuting Attorney's office:

1. "SEPA Condition IV(B) states A grading permit it required per KCC 14.05. Public Works is requiring the grading permit to ensure the integrity of sloes and cuts. The application is not subject to a DNR mining permit because it is under 3 acres and the DOE sand and gravel permit is a clean water act permit unrelated to the structural integrity. Hence, the application is not subject to another permit that would regulate the issue apart from SEPA and so it is not exempt."