

**BONNER COUNTY PLANNING DEPARTMENT
BOARD OF COUNTY COMMISSIONERS
STAFF REPORT FOR JANUARY 11, 2018**



Project Name: LINSCOTT BATCH PLANT– ASPHALT/CONCRETE

File Number - Type: C1015-18, RESOURCE BASED – CONDITIONAL USE PERMIT

Request: The applicant is requesting a conditional use permit to install and operate an asphalt batch plant within an existing gravel pit.

Legal Description: Instrument No. 255375

Location: RP56N02W104202A
Section 10, Township 56 North, Range 2 West, B.M. Bonner County, Idaho

Parcel Size: ±139.3 acres

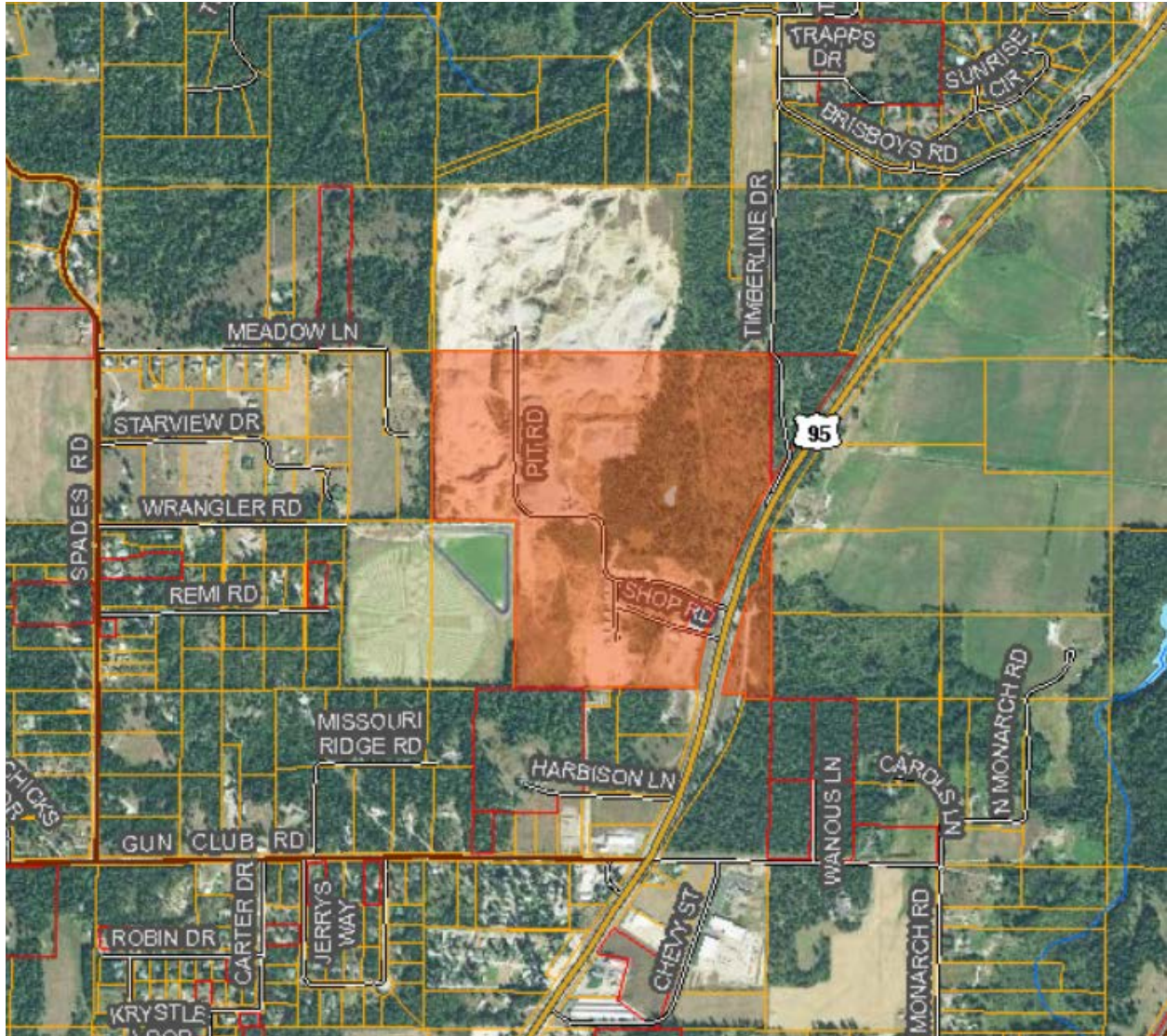
Applicant: Frank & Carol Linscott
256 Timberline Drive
Sagle, Idaho 83860-5019

Project Representative(s): Steven W. Syrcle, P.E.
Tri-State Consulting Engineers, INC
1859 N Lakewood Drive
Coeur d'Alene, Idaho 83814
Jared Wise, Tenant
Interstate Concrete & Asphalt
P.O. Box 1113
Sandpoint, Idaho 83864

Property owner: Same as applicant.

Application filed: August 8, 2018

Notice provided: Mail: December 21, 2018
Site Posting: December 27, 2018
Published in newspaper: December 27, 2018



Project Aerial

Project summary:

The applicant is requesting a conditional use permit that would allow for the installation and operation of an asphalt batch plant. The batch plant would be relocated from the City of Sandpoint to an existing gravel mining operation. The subject site is approximately 139 acres and is located at 205 Pit Road Sagle, Idaho.

Applicable laws:

The following sections of BCRC, Title 12, apply to this project:

- BCRC 12-220, et seq, conditional use permit, application and standards
- BCRC 12-336: Resource Based Use Table, Batch plant – asphalt and/or concrete
- BCRC 12-4 et seq., Development Standards
- BCRC 12-7 et seq., Environmental Standards

Background:

A. Site data:

- Acreage: ±139.3 acres
- Zoning: R-5/Commercial
- Comprehensive Land-Use: Rural Residential/Transition

B. Access:

- Pit Road
- Private easement, 24-foot wide paved travelway

C. Environmental factors:

- Floodplain: X - 0.2 % ANNUAL CHANCE FLOOD HAZARD; FEMA
- Landscape: Little to no vegetation; currently used as gravel pit
- Wetlands: Freshwater Pond on property, ±800-feet from proposed plant location; USFWS NWI
- Slope: Site is generally flat. Areas have been mined for gravel and are lower than surrounding grade by 10-30 feet. Several slopes on property in excess of 30%, USGS

D. Services:

- Sewer: Individual System, Portable chemical toilet
- Water: N/A, the plant does not require water to operate. Potable water will be provided via water coolers. Dust control will be accomplished via water trucks.
- Fire Protection: Selkirk Fire & EMS
- Utilities: AVISTA
- School District: BONNER SCHOOL #84

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Transition/Rural Residential	Commercial/R-5	Commercial/Resource-Based, various outbuildings
North	Rural-Residential	R-5	Commercial/Resource-Based
East	Rural-Residential	R-5	Rural Residential
South	Transition	Commercial	Rural Residential
West	Rural-Residential	R-5	Rural Residential

F. Comprehensive Plan Land Use Designation(s)

The comprehensive plan designation of Rural Residential provides for residential development in areas where urban services are not available and slopes may vary up to 30%. These areas include hazard areas and critical wildlife habitats, where lower densities reduce potential impacts to resources and exposures to loss of property or lives. Small-scale agricultural uses and residential development are permitted.

Staff Analysis:

- BCRC 12-336 (Resource Based Uses) conditionally permits asphalt and/or concrete batch plants in the rural zone, subject to conditions as to be compatible with agricultural and residential development.

- Conditions of approval have been added to ensure compatibility with adjacent land uses.
- The site plan indicates that the area the proposed use will commence is zoned Rural-5.
- The rural district is established to allow low density residential uses that are compatible with rural pursuits. The purpose can be accomplished by:
 1. Limiting residential densities and permitted uses to those that are compatible with rural character and nearby resource production districts and sites and can be adequately supported by rural service levels.
 2. Allowing small scale farming and forestry activities, and tourism and recreation uses that can be supported by rural service levels and are compatible with rural character.
 3. Encouraging conservation development configurations that create permanent open space or farming areas, protect sensitive environmental features, reduce infrastructure costs and/or enhance recreational opportunities.
- The application confirms that no urban services are present and also that none are required for the proposed use.
- Geographic data, per the United States Geologic Survey (USGS), indicates that there are no slopes greater than 15% within the proposed plant location.
- The Federal Emergency Management Agency (FEMA) indicates that the proposed plant location is not located in the special flood hazard area.
- The project site is defined as a non-conforming use and is currently used as an active gravel pit. Gravel pits historically are not critical wildlife habitats.

The comprehensive plan designation of Transition is reserved for those areas of the County where a mixture of land uses can occur which may include higher density residential uses, commercial, industrial and light industrial uses. Due to the intensity of land use, these areas require primary transportation routes, urban-like water and sewer services, fire and police services.

Staff Analysis:

- BCRC 12-336 (Resource Based Uses) does not conditionally permit asphalt and/or concrete batch plants in the Commercial designation.
- The site plan indicates that the area the proposed use will commence is zoned Rural-5.
- Areas designated 'transition' allow for a wide variety zoning designations and permitted land uses. Some land-uses include high density residential, commercial, and industrial.
- The site is accessed by a private easement that connects with US-95, a principal arterial roadway.
- As stated in the application, no sewer or water services are necessary to facilitate the batch plant operation.

G. Standards review

BCRC 12-223 specifies that the Commission shall review the particular facts and circumstances of each proposal. To grant a conditional use permit, the Commission must find there is adequate evidence showing the proposal is in accord with the general and specific objectives of the comprehensive plan and Title 12 and the proposed use will neither create a hazard nor be dangerous to persons on or adjacent to the property

Code	Required	Provided
Minimum Lot/Parcel Size (BCRC 12-411)	5 acres	139.3 acres
Resource Based Use Table (BCRC 12-336) (4):	Specified conditions with respect to emissions of noise, light, glare, smoke, odor, dust, particulate matter, vibrations or hours of operation may be prescribed differently from those required in a given district, as to be compatible with other applicable State and Federal standards.	Project shall conform to general and performance standards set forth in BCRC 12-420 & BCRC 12-421. See file for narrative statement. See condition A-5.
Resource Based Use Table (BCRC 12-336) (21):	Batch plant operations shall be located outside of city impact areas. The emissions control system(s) on such batch plants shall be of "Best Available Control Technology" (BACT) as generally accepted under relevant industry standards, within 5 years prior to application.	The proposal would take place outside the ACI. Emissions control system shall be of BACT and relevant technology. See condition B-1.
Resource Based Use Table (BCRC 12-336) (22):	A batch plant is conditionally permitted only in association with an active gravel pit.	This condition is satisfied as the proposal will occur within an active, legal non-conforming gravel pit.
Parking Standards (BCRC 12-4.3)	NAICS 2012: Industrial ½ space per operator = 2 spaces.	Required: 2 spaces See condition A-6.
Sign Standards (BCRC 12-4.4)	Non-residential signs have specific standards.	See condition A-7.
Design Standards (BCRC 12-4.5)	Standards herein are not applicable per BCRC 12-451.	No action required.
Landscaping & Screening Standards (BCRC 12-4.6)	Standards herein are not applicable per BCRC 12-461.	No action required.
Grading, Stormwater Management and Erosion Control (BCRC 12-7.2)	Standards herein are not applicable per BCRC 12-720.3K.	No grading, stormwater, and erosion control plan required.
Wetlands (BCRC 12-7.3)	Standards herein are not applicable per BCRC 12-731B2	No action required.

H. Land Capability Report

A land capability report was not required per BCRC 12-222J, but a land capability was provided by the applicant as a part of the application.

I. Agency Review

The application was routed to agencies for comment on September 12, 2018. The following agencies commented:

Idaho Department of Environmental Quality – September 19, 2018

"Based upon the information provided by the hearing agenda it appears the applicant is likely aware of the potential impacts that operating a gravel pit and asphalt batch plant may have on air quality. DEQ would like to provide the following comments for consideration by the applicant and County when considering the Conditional Use Permit.

Surface mining operations are susceptible to fugitive dust generation and the transportation of dust beyond property boundaries unless adequate control measures are implemented. DEQ customarily recommends conditions be included in a County Permit that follow the Best Management Practices (BMP) listed in IDAPA 58.01.01.799.01-06 to achieve efficient control of fugitive dust from stockpiles, material transfer points, stacks or vents, unpaved haul roads, crushers, screen decks, and paved public or paved private roads that may be impacted. Incorporating the BMP control measures listed will help provide protection under most circumstances and provide documentation of adequate and timely measures employed.

Additionally, IDAPA 58.01.01.650 requires reasonable precautions be taken to prevent dust from becoming airborne. Implementing 58.01.01.799 will help to address reasonable control requirements. While DEQ rules do require dust control measures it may be more appropriate and more effective to include in the county permit a requirement of the applicant to implement and adhere to an adequate fugitive dust control plan. DEQ is available to comment on a specific dust control plan if one is required by the County.

Access to a clean consistent and adequate supply of water is critical to control dust during crushing and hauling efforts. If the applicant must haul water to the site, measures that will help ensure continued adherence to dust management BMPs should be considered when developing conditions of the County permit. Using a water truck to provide all necessary water for dust abatement and control can create delays and lapses in fugitive dust management unless scheduling and maintenance of any equipment supplying water is carefully considered and implemented.

A State of Idaho Air Quality Permit or "Permit by Rule" is required for any rock crusher prior to installation and operation. DEQ customarily recommends the county include conditions that exclude any non-permitted rock crushers from locating and operating on the premises. Prior to locating a rock crusher on site a DEQ Portable Relocation Form must be submitted to DEQ. The applicant should be aware of additional air quality concerns for pollutant emissions from the operation of the diesel generator that will likely be needed for crusher operations. Emissions from these sources are addressed in DEQ permitting requirements.

The applicant identifies an asphalt batch plant will locate on site. DEQ customarily recommends the county include conditions that exclude any non- Air Quality permitted asphalt batch plants from locating and operating on the premises. Collocation of crushers, cement batch plants and other asphalt batch plants often have operational limitations that will need to be considered by the applicant. The applicant is encouraged to contact DEQ prior to locating this equipment on this property. The applicant will need to consider set-back distances from property boundaries and residences when locating a crusher and asphalt batch plant. In determining what are reasonable precautions required for dust control, consideration will be given to factors such as the proximity of dust emitting operations to human habitations and/or activities."

Panhandle Health District – September 13, 2018

"...permits are required for wastewater disposal and additional sanitation controls..."

Bonner County Public Works – September 13, 2018

"No comments. Pit Road is privately maintained and intersects US-95."

Bonner County Floodplain – September 20, 2018

"Project is not within a special flood hazard area. Flood Development Permit not required."

K. Public Notice & Comments

Up until this report was produced, there were several public comments submitted. See project file for all public comments, documents, and associated information submitted to the record.

L. Appeal of P&Z Decision to the BOCC

The notice of appeal, dated December 11, 2018, makes several points that will be addressed below:

First, the appeal letter outlines four (4) general grounds for appeal, which are quoted below:

The grounds for appeal include, and the issues on appeal include, but are not limited to, that the decision of the Commission was at a minimum one of the following:

1. The decision to grant the conditional use permit is not supported by substantial evidence in the record;
2. The decision to grant the conditional use permit is, in fact, illegal because it is contrary to local ordinance, state statute or case law, or federal law;
3. The decision to grant the conditional use permit is contrary to public policy and the stated purposes of the Bonner County Revised Code and land use comprehensive plans; and
4. The decision to grant the conditional use permit was based upon evidence which was incomplete and/or inaccurate.

Staff Response:

1. The decision to grant the conditional use permit is in fact supported by substantial evidence in the record; see 'Staff Analysis' below (top of page 8).
2. The decision to grant the conditional use permit is, in fact, legal as the project is in conformance with Bonner County Revised Code (see Section 'F' of "Background").
3. The decision to grant the conditional use permit is not contrary to public policy and the stated purpose of the Bonner County Revised Code and the land use comprehensive plans (See Section 'F' and Section 'G' of "Background").
4. The decision to grant the conditional use permit was based upon information made available to both staff and the Planning & Zoning Commission at the time of the hearing.
 - a. A follow up letter from the Idaho Department of Environmental Quality, dated December 3, 2018, stated that IDEQ misread the original application.

- b. The recommendation found in their original letter (shown in Section 'I') advised that the County consider further compliance from the applicant in regard to IDAPA 58: Administrative Rules.
 - i. To address the recommendation, Condition A-8 (shown below) was added as a condition of approval by Staff.
- c. The follow up comment received on December 3, 2018 states that additional permits would be required by IDEQ.
 - i. To address the requirements, Condition B-2 (shown below) has been added as a condition of issuance by Staff.

Staff Analysis:

Staff concluded this project is consistent with Bonner County Revised Code based upon the information found in the 'Background' portion of this staff report, and as demonstrated by the findings of fact, conclusions of law, and conditions of approval below.

Staff recommendation:

APPROVE (Subject to conditions)

Planner's Initials: SR Date: 1/02/2019

Note: This is only a recommendation. The final decision rests with the governing body after the completion of the public hearing and consideration of all relevant oral and written testimony and evidence.

Motion by the governing body:

Board of County Commissioners

MOTION TO APPROVE: I move to approve this project FILE C1015-18, a conditional use permit for an asphalt batch plant, finding that it is in accord with the general and specific objectives of the Bonner County Comprehensive Plan and Bonner County Revised Code as enumerated in the following conclusions of law, and based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. I further move to adopt the following findings of fact and conclusions of law as written (or as amended). The action that could be taken to obtain the conditional use permit is to complete the Conditions of Approval as adopted. This action does not result in a taking of private property.

Findings of Fact

1. The use shall occur within an existing gravel pit.
2. Wetlands on site are in excess of 800-feet from the proposed plant location.
3. No additional impervious surface shall be created via installation and operation of the proposed batch plant.

4. Pit Road is a private, 24-foot wide, paved travelway.
5. The subject property features zoning classifications. R-5 and Commercial. The use shall occur in an area designated 'R-5' on the official Bonner County Zoning Map.

Conclusions of Law:

Based upon the findings of fact and conditions of approval, the following conclusions of law are adopted:

Conclusion 1

The proposed conditional use permit **is** in accord with the Bonner County comprehensive plan.

- | | | |
|-----------------------|-------------------------|------------------------------------|
| ▪Property Rights | ▪Population | ▪School Facilities, Transportation |
| ▪Economic Development | ▪Land Use | ▪Natural Resources |
| ▪Hazardous Areas | ▪Public Services | ▪Transportation |
| ▪Recreation | ▪Special Areas or Sites | ▪Housing |
| ▪Community Design | ▪Implementation | |

Conclusion 2

This proposal **was** reviewed for compliance with the criteria and standards set forth in Title 12, Bonner County Revised Code.

Conclusion 3

The proposed use **will not** create a hazard or will not be dangerous to persons on or adjacent to the property.

MOTION TO DENY: I move to deny this project FILE C1015-18, a conditional use permit for an asphalt batch plant, based upon the following conclusions: [REFER TO CONCLUSIONS OF LAW AND SPECIFY WHICH CONCLUSIONS THE PROJECT MEETS AND FAILS TO MEET]. The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. I further move to adopt the following findings of fact and conclusions of law as amended. This action does not result in a taking of private property. The action that could be taken, if any, to obtain the conditional use permit is to:

- 1) File a new application with the Planning Department and meet the standards required by Bonner County Revised Code; or
- 2) Appeal the Planning and Zoning Commission's decision to the County Commissioners.

Conditions of approval - Standard permit conditions:

- A-1** The use shall be developed and shall be operated in accordance with the approved site plan.
- A-2** The Conditional Use Permit shall not supersede deed restrictions.
- A-3** All county setbacks shall be met.

- A-4** The Conditional Use Permit shall expire if not issued within two (2) calendar years from the date of approval, or once issued, if the use has not commenced within two (2) calendar years from the date of issuance. At any time prior to the expiration date of the Conditional Use Permit, the applicant may make a written request to the Planning Director for an extension of the Conditional Use Permit for a period up to two (2) years. The Planning and Zoning Commission may consider such request for extension at any public hearing. The extension request must be approved or denied prior to the expiration date of the Conditional Use Permit.
- A-5** Project shall conform to general and performance standards set forth in BCRC 12-420 & BCRC 12-421.
- A-6** A minimum of 2 off-street parking spaces shall be provided on site.
- A-7** Signage shall conform to the standards set forth in BCRC 12-4.4.
- A-8** The use shall conform to all applicable State and Federal standards in regards to the control of air pollution. See IDEQ comments dated September 19, 2018.

Conditions to be met prior to issuance of the permit:

- B-1** Prior to issuance, applicant shall provide to the Planning Department, documentation confirming that the proposed batch plant emissions control system is of Best Available Control Technology and generally accepted under relevant industry standards, within the last 5 years.
- B-2** Prior to issuance, applicant shall provide to the Planning Department, documentation from IDEQ, confirming that the project complies with all IDEQ rules and regulations.

The complete file is available for review in the Planning Department, 1500 Highway 2, Suite #208, Sandpoint, ID. Staff reports are available online one week before the hearing at www.bonnercountyid.gov Bonner County Revised Code (BCRC) is available at the Planning Department or online.