

**PLANNING DEPARTMENT
PUBLIC HEARING DECISION MINUTES
MARCH 22, 2019**

CALL TO ORDER: Chair Connolly called the Bonner County Commissioners' hearing to order at 9:00 a.m. in the 1st Floor Conference Room of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho.

PLEDGE OF ALLEGIENCE

PRESENT: Commissioners Chair Jeff Connolly; Vice Chair Dan McDonald; and Steve Bradshaw

ABSENT: None

ALSO PRESENT: Planning Director Milton Ollerton; Planner II Sam Ross; Administrative Assistant II Emily Aerni; and Administrative Manager Jeannie Welter

PUBLIC HEARING:

CONDITIONAL USE PERMIT

CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE: The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

File C1015-18 – Conditional Use Permit – Asphalt Batch Plant – Frank & Carol Linscott are requesting a Conditional Use Permit for a batch plant operation on a ±140 acre parcel of land currently used as a gravel pit. The project is located off of Pit Road in Section 10, Township 56 North, Range 2 West, Boise-Meridian. The Board of County Commissioner's approved this project at the public hearing on January 11, 2019. The Planning Department received a request that this decision be reconsidered by the Bonner County Commissioners. At the regularly scheduled business meeting on February 12, 2019, the Board of County Commissioners agreed to reconsider "Non-conforming Land Use" as mentioned in the reconsideration request. Only public comments related to the "Non-conforming Land Use" issue will be accepted.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: The Chair requested the Commissioners declare any conflicts of interest or disclosures. The Chair noted that there were no disclosures or conflicts.

STAFF PRESENTATION: Staff Planner Sam Ross presented a summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: Representative and legal counsel Elizabeth Tellessen with Winston & Cashatt stated there is only one requirement in the code

that is applicable to the pending application which is that it be an active gravel pit, which has been established. Ms. Tellessen further stated that the non-conforming use analysis is not pertinent because all previous cases cited relate to situations where an owner expanded the use to something that could not otherwise be permitted and is not applicable to the subject project.

Ms. Tellessen affirmed the plant can be permitted, has been approved, and adding an additional condition as it relates to the non-conforming status of the pit itself would be a violation of the substantial rights in relying on the code as extracted. She stated they do not have an objection to the additional condition requiring the plant only remain while the pit is active.

PUBLIC/AGENCY TESTIMONY: The following individuals spoke on the record in opposition:

Elise Tuma
Will Herrington
Jonna Plante
ReAnna Sharp
Kathleen Howard
Don Sharp
Patty Murphy
Larry Smith
Darcey Fugman-Small
Bob Staats
Don Manning
Jack Howard

At 10:04 a.m. Chair Connolly declared a 5-minute recess.

At 10:13 a.m. Chair Connolly reconvened to the hearing.

APPLICANT REBUTTAL: Representative Elizabeth Tellessen stated there isn't a code provision that requires you analyze the underlying use other than it be an active source of a resource in conjunction with the pits use. The plant is not prohibited under the code and the plant moving out of Sandpoint and to the site of an active gravel pit is precisely within the policy and the intended language of your code. Ms. Tellessen further stated the referenced 10% expansion provision of 12.341 (A) does not apply as the plant is a resource use.

In regard to the alleged violations, Ms. Tellessen stated that Interstate and Mr. Linscott have been actively engaged with Idaho Department of Lands.

Bonner County Deputy Prosecuting Attorney Bill Wilson reiterated what project legal counsel Elizabeth Tellessen stated regarding non-conforming use and separating the gravel pit use and the asphalt batch plant use.

BOARD DELIBERATION: The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions.

MOTION TO APPROVE: Commissioner McDonald moved 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. Commissioner McDonald further moved to adopt the following findings of fact and conclusions of law as written. 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. Commissioner Bradshaw seconded the motion.

VOTED upon and the Chair declared the motion carried, unanimously.

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

Compass	Comp Plan	Zoning	Current Land Use & Density
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. See condition A-9
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."

J. 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.

K. 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.

L. Reconsideration: On February 1, 2019, The Board of County Commissioners motioned to set a hearing to reconsider project file C1015-18. The request was filed on January 24, 2019 with the Bonner County Planning Department.

Following staff and legal recommendation, the Board should reconsider only alleged deficiency #1 of the reconsideration request for File C1015-18.

- Alleged Deficiency #1:

- o Main Points (summarized – see full file for alleged deficiency)
 1. C0565-95 (Application for CUP: Gravel Pit) was not issued and had conditions attached to it which were never satisfied.
 2. The use of the subject parcel as a gravel pit is non-conforming.
 3. The permitting of a batch plant would effectively extend the non-conformity of the gravel pit pursuant to BCRC 12-3.4.
 4. County staff failed to address the non-conforming status of the quarry, along with the applicable Code provisions, and to provide that information to the Planning and Zoning Commission.
 5. The proposed CUP is not compatible with the long range plans for the Sagle Sub-Area.
 6. The operation of the quarry and the placement of the batch plant are not separate and non-conforming use regulations apply.
 7. The non-conforming use and the county's zoning code does not permit the extension of a non-conforming use, hence a finding cannot be made that it is in compliance with the County's Comprehensive plan.
- o Summary:
 - Non-Conforming Land Use
 - "Land of Linscott Quarry is non-conforming land. No CUP was issued in 1995. Per Bonner County Code and Idaho State law, this land cannot be expanded, added upon, or built upon, nor can any change of the land occur in which the neighborhood would be affected differently than the current nonconforming use."

- Staff response to alleged deficiency:

- o Main Points
 1. FILE #C0565-95 (Gravel Pit) indicates that the conditional use permit was approved but not issued. The staff report for said file indicates that property was an existing mining operation.
 2. The status of the gravel pit is not in question nor does it determine the eligibility of a batch plant to be located within a gravel pit.
 - BCRC 12-336:
 - o "(22) A batch plant is conditionally permitted only in association with an active gravel pit."
 - Aerial images confirm that the gravel pit is active.
 3. The permitting of a batch plant would not effectively extend the non-conformity of the gravel pit pursuant to BCRC 12-3.4.
 - BCRC 12-340: INTENT:
 - o "Characteristics of uses which were lawful before this title was passed or amended, but which would be prohibited, regulated or restricted under the terms of this title or future amendment. It is the intent of this title to permit these nonconformities to continue as required by law. It is further the intent of this title that nonconformities shall not be enlarged upon, expanded or extended, nor be used

as grounds for adding other structures or uses prohibited elsewhere in the same district or zone. (Ord. 501, 11-18-2008)"

- BCRC 12-821: USE, PROHIBITED:
 - o "Those uses not specifically classified as permitted or conditionally permitted uses in any zone district and as set forth in subchapter 3.3 of this title. (Ord. 558, 12-14-2016)"
- Pursuant to the definition of "prohibited uses", conditional uses are not subject to the regulations applicable to non-conforming uses.
- 4. County staff did not fail to address the non-conforming status of the quarry, along with the applicable Code provisions, and to provide that information to the Planning and Zoning Commission.
 - The non-conforming statuses of the quarry, along with the non-conforming code provisions, are not relevant to this project (File# C1015-18). This is demonstrated in the previous staff response (2 & 3).
- 5. The Sagle Sub-Area plan has not produced a document that has been adopted by the Planning and Zoning Commission or the Board of County Commissioners. Any plan, preliminary or otherwise, produced by the Sagle Sub Committee was not taken into consideration during the review by staff, Planning and Zoning, or the Board of County Commissioners.
- 6. The operation of the quarry and the placement of the batch plant are separate and non-conforming use regulations do not apply.
 - A batch plant facility placed within a gravel pit is a physical relationship.
 - For the purposes of the administration, the uses are separate and are defined as separate uses (BCRC 12-336).
 - Non-conforming standards do not apply as referenced in staff response (2 & 3).
- 7. The request does not extend a non-conforming use as documented in staff response (2 & 3). The request is in compliance with the zoning code and the Bonner County Comprehensive Plan.
- o Summary:
 - Non-Conforming Land Use
 - The use of the subject parcel as a gravel pit, non-conforming or otherwise, has no bearing on the request on the batch plant facility except that the use shall occur in an active gravel pit (BCRC 12-336).
 - The permitting of a batch plant would not effectively extend the non-conformity of the gravel pit pursuant to BCRC 12-3.4, finding that batch plants are conditionally permitted uses and are not prohibited as defined in BCRC 12-821.

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.

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.
- A-9** The use shall occur only within an active gravel pit. If the use of the gravel pit ever becomes inactive, the operation of the batch plant facility shall be discontinued, dismantled, and returned to its original state.

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. This action does not result in a taking of private property.

The Chair declared the hearing adjourned at 10:38 a.m.

Respectfully submitted, this 11th day of April, 2019.



Milton Ollerton, Planning Director