

Curry County Community Development Department PLANNING COMMISSION STAFF REPORT

Application AD-1926 is a request for conditional use approval for an aggregate stockpile, loading and storage site and a portable asphalt plant in the Forestry Grazing (FG) Zoning District.

1. Background Information

Owner:	Madelyn D. Jackson, ETAL 94912 Highway 42 South Coquille, Oregon 97423
Applicant:	Bandon Concrete, LLC 94912 Highway 42 South Coquille, Oregon 97423
Agent:	Shoji Planning Crystal Shoji P.O. Box 462 Coos Bay, Oregon 97420
Land Use Review:	Administrative Conditional Use Review Referred to the Planning Commission by the Planning Director.
Property Description:	Assessor's Map 31-15-22; Tax Lot 800
Location	Located on the east side of Highway 101, adjacent to the highway, south of Langlois, and in the vicinity of the Bandon/Port Orford KOA Campground.
Existing Development:	None. Property is in an area partially cleared adjacent to Highway 101 and with existing dirt stockpiles and some reforestation from previous logging activity.
Proposed Development:	Stockpiling, loading, storage of rock and a temporary asphalt plant.
Zone:	Forestry Grazing (FG) Zoning District

II. Applicable Review Criteria

To approve this application, the Planning Commission must determine that it is in conformance with the following sections of the Curry County Zoning Ordinance (CCZO):

Curry County Zoning Ordinance (CCZO)

Section 3.050	Forestry Grazing
Section 3.052	Conditional Uses Subject to Administrative Approval by the Director
	24. Land Based Mining (1, 10, 17)
	25. Portable asphalt and concrete batch plants (1, 10, 17)
Section 2.090	Procedure for Conditional and Permitted Uses
Section 7.010	Authorization to Grant or Deny Conditional Uses
Section 7.040	Standards Governing Conditional Uses
	1. Conditional Uses Generally
	10. Mining, quarrying, or other extractive activity
	17. Uses on Resource Land
Section 3.281	Riparian Corridor Buffer Overlay Zone
Section 3.300	Erosion Prevention and Sediment Control
Section 7.045	Conditional and Permitted Uses - Director Periodic Review
Section 7.050	Time Limit on a Permit for Conditional Uses

III. Background Information

As stated in the application, “The subject property lies in rural northern Curry County on the east side of and adjacent to Highway 101 south of Langlois. The location is in the vicinity of the Bandon/Port Orford KOA Campground and on the other side of the highway. The applicant envisions utilizing approximately nine (9) acres of Tax Lot 800 for the proposed stockpile site and portable temporary asphalt plant.”

The area of the proposed use currently includes stockpiled rocks and dirt, brush, stumps, wood debris and minor amounts of asphalt/concrete. The site is mostly growing scotch broom and grasses with a few small fir trees that may have been planted.

Access is directly off of Highway 101 with good visual clearance on and off the highway. According to the applicant, “access to the site will be through an existing easement on adjacent property identified as Tax Lot 801. On November 2, 2017, ODOT provided approval (Application No. 16834) for the easement access in conjunction with a mining operation on

another property within the vicinity, and further approved use of the access for this application in 2019; it is the applicant's intent to utilize the approved access."



Proposed Stockpile and Temporary Asphalt Plant Site off Hwy 101

III. Findings

Section 3.050 Forestry Grazing (FG) – *The Forestry Grazing Zone is applied to resource areas of the county where the primary land use is commercial forestry with some intermixed agricultural uses for livestock uses.*

Finding: This section of the CCZO states the purpose of the Forestry Grazing zoning district. The primary uses established on the property are a mix of forestry and stockpiling of soils for future projects which are uses consistent with the purpose of the FG zoning district. Stockpiling, loading and storage of aggregate and mineral resources are allowed in the Forestry Grazing Zone. Further, the proposed temporary portable asphalt plant is allowed in the FG zone subject to an approved conditional use permit. These types of uses have historically been established as compatible and consistent with forestry activities on this as well as similar properties in Curry County. This standard of the CCZO is met.

Section 3.052 Conditional Uses Subject to Administrative Approval by the Director (24). *Land-based mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520 and not otherwise permitted in 3.041 (10), and the mining and processing of aggregate and mineral resources as defined under ORS Chapter 517 but not including support or processing facilities for offshore oil, gas or marine mineral activities (1,10,17).*

Finding: This application for stockpiling, storing and loading rock does not include mining or processing of oil, gas, or other subsurface resources as defined in ORS Chapter 520 and Section 3.052 (10). Further, the proposed project does not include support or processing facilities for offshore oil, gas or marine mineral activities. Therefore, this Section of the CCZO is not applicable.

Section 3.052 Conditional Uses Subject to Administrative Approval by the Director (25) *Portable asphalt and concrete batch plants as a temporary use for a specific highway/road construction or maintenance project (1, 10, 17).*

Finding: The applicant is proposing a portable asphalt plant as a temporary use for a specific highway/road construction or maintenance project subject to Section 7.040 (1, 11, 17). The portable asphalt plant use is not a permanent structure. It can be removed from the site when construction and maintenance projects are no longer utilizing the product. The applicant envisions that the portable asphalt plant will be owned and operated by any company who would like to utilize the site while they are doing paving jobs. The portable asphalt plant would be removed when the specific paving job is completed. The applicant has submitted a complete application for a conditional use permit addressing the relevant criteria set forth as required in the CCZO. This finding is met.

Section 2.090 – Procedure for Conditional and Permitted Use Permits – *After accepting a completed application for Administrative Action pursuant to Section 2.060, the Director shall act on or cause a hearing to be held on the application pursuant to Section 2.062*

Finding: The proposed request for stockpiling, loading and storing rock and for a temporary portable asphalt plant in the FG zone is an administrative decision. However, it is being referred to the Planning Commission for a public hearing. The reason for this referral to the Planning Commission is due to the numerous concerns brought forth by property owners adjacent to other properties with land use applications involved in aggregate work. To date, there have been no concerns brought forth regarding this specific application. This finding is met.

Section 7.010 Authorization to Grant or Deny Conditional Uses – *In permitting a conditional or permitted use the County may impose conditions in addition to the provisions set for uses within each zone in order to protect the best interests of the surrounding property, the neighborhood, or the County as a whole.*

Finding: After review of this application, information provided by the applicant and interested parties, the Planning Commission may impose additional conditions as appropriate to insure that the proposed use fits the interests of the County.

Section 7.040 Standards Governing Conditional Uses – *In addition to the standards of the zone in which the conditional use is located and the other standards in this ordinance, conditional uses must meet the following standards:*

Conditional Uses Generally

- a. *The County may require property line set-backs or building height restrictions other than those specified in Article IV in order to render the proposed conditional use compatible with surrounding land use.*

Finding: Since there are no buildings proposed, there is no need for any additional property line setbacks or height restrictions in order for the proposed use to be compatible with the surrounding land uses. The applicant has further stated “Due to the rural setting with the 9-acre site being part of a 36+ acre site with forested lands, the site contains some natural buffers. It is the applicant’s intent to provide a 30-foot wide, 10-foot high berm adjacent Highway 101 to the west to provide security for the site and buffer the operations from the traveling public.” The site has been used for stockpiling rocks, dirt and other debris in the past. The existing natural buffers have proven to be satisfactory in that it is difficult to see the current stockpiles unless and until a traveling person slows below the 55 mph speed limit and purposely focuses on this site between

the otherwise tree and brush lined highway. This finding is met with the condition that a 30-foot buffer be established between the proposed use and highway 101.

- b. The County may require access to the property, off-street parking, additional lot area, or buffering requirements other than those specified in Article IV in order to render the proposed conditional use compatible with surrounding land uses.*

Finding: The applicant has stated the following:

“Access: Subject Property lies to the east of, and adjacent to State of Oregon Highway 101. Highway 101 is under the jurisdiction of the Oregon Department of Transportation (ODOT), which has approval authority for permits to operate, maintain and use an approach. Subject Property is currently accessed through an easement on adjacent property identified as Tax Lot 801. On November 02, 2017, ODOT approved (Application No. 16834) for easement access in conjunction with a mining operation on another property within the vicinity. Shoji Planning, LLC has been in communication with ODOT District 7 Permit Specialist, Jeff Waddington, regarding the proposed stockpile and portable asphalt plant on Subject Property. Because haul loads to and from Subject Property are not expected to deviate from the 2017 approval, no further ODOT permitting is required at this time.

In the 2017 permit, ODOT has specified that dirt and debris are to be removed from the highway at the end of each work shift “or more frequently if a hazard to the traveling public exists, or as directed by the district Manager.” The berm that is to be installed along the property line with trees adjacent to Highway 101 is expected to minimize dust debris from the stockpile site straying onto Highway 101. The applicant will comply with all ODOT requirements and specifications of the “Permit to Operate, Maintain and Use a State Highway Approach.

Off-street Parking: The Preliminary Site Plan provided by the applicant demonstrates how off-street parking can be organized to support the proposed development. There will be no full-time employees at the site, although there may be several vehicles at the site when pickups or activities with use of the portable asphalt plant are taking place. The applicant intends to provide space for parking for vehicles directly off the concreted access entrance to the south, as shown on the Preliminary Site Plan.

Additional Lot Area: Subject Property is a 9-acre portion of a 36.70-acre site. Subject Property is of an adequate size and orientation to support the proposed stockpile and portable asphalt plant. This is shown on the site plan.

Buffering: Due to Subject Property’s rural setting and because surrounding lands are densely forested, the site contains some natural buffer to surrounding land uses. While no berm is required at this time, the applicant will install a 30-foot wide berm, approximately 10-feet high. The berm will soften the view between operations and Highway 101, and provide security for the stockpile site.”

This finding is met with conditions identified below which include development and maintenance of the proposed buffer, parking area and access conditions set forth by ODOT.

- c. *The County may require that the development be constructed to standards more restrictive than the Uniform Building Code or the general codes in order to comply with the specific standards established and conditions imposed in granting the conditional use permit for the proposed use.*

Finding: No permanent buildings are being proposed for construction. Therefore, this standard does not apply.

- d. *If the proposed conditional use involves development that will use utility services; the applicant shall provide statements from the affected utilities that they have reviewed the applicant's proposed plans. These statements shall explicitly set forth the utilities' requirements, terms and conditions providing or expanding service to the proposed development and shall be adopted by the Commission or Director as part of the conditional use permit.*

Finding: The proposed use will require electrical service from Coos Curry Electric Coop and the fire protection from the Langlois Rural Fire Protection District. The applicant has submitted service provider letters from both of these entities indicating that these services will be provided. This finding is met.

- e. *If the proposed conditional use involves the development or expansion of a community or non-community public water system, the applicant shall submit a water right permit(s) or documentation that a permit is not required from the Oregon Water Resources Department which indicates that the applicant has the right to divert a sufficient quantity of water from the proposed source to meet the projected need for the proposed use for the next twenty year planning period.*

Finding: The proposed development of the subject property for stockpiling, loading and storing rock and a temporary asphalt plant does not involve the development or expansion of a community or non-community public water system. Therefore, this standard is not applicable.

- f. *If the proposed conditional use involves the development or expansion of a community or non-community public water system, the applicant shall install a raw water supply flow monitoring device (flow meter) on the water system and shall record the quantity of water used in the system on a monthly basis. The monthly record of water usage shall be reported to the Curry County Department of Public Services-Planning Division and Health Department Sanitarian on an annual basis.*

Finding: The proposed development of the subject property for stockpiling, loading and storing rock and a temporary asphalt plant does not involve the development or expansion of a community or non-community public water system. Therefore, this standard is not applicable.

- g. If the proposed conditional use included the development or expansion of a community or non-community public water system and the use is located within the service area of a city or special district water system the applicant shall utilize the city or special district water system rather than developing an independent public water system. An independent community or non-community public water system can be developed for the use if the applicant can prove that it would be physically or economically not feasible to connect to the city or special district water system. The city or special district must concur in the conclusion that connection of the proposed use is not feasible.*

Finding: The proposed development of the subject property for stockpiling, loading and storing rock and a temporary asphalt plant does not involve the development or expansion of a community or non-community public water system. Therefore, this standard is not applicable.

Section 7.040 (10.) Mining, quarrying, or other extractive activity –Plans and specifications submitted to the Commission for approval must contain sufficient information to allow the Commission to review and set siting standards related to the following standards:

- (1.) Impact of the proposed use on surrounding land uses in terms of Department of Environmental Quality standards for noise, dust, or other environmental factors;*
- (2.) The impact of the proposed use on water quality, water flow, or fish habitat on affected rivers or streams;*
- (3.) The impact of the proposed use on overall land stability, vegetation, wildlife habitat and land or soil erosion;*
- (4.) The adequacy of protection for people residing or working in the area from the proposed mining activity through fencing of the site;*
- (5.) The rehabilitation of the land upon termination of the mining activity. The proposed rehabilitation must at least meet the requirements of state surface mining or gravel removal permits.*
- (6.) If the proposed extractive activity involves the removal of rock, gravel, or sediment from a river or stream, the proposal shall be reviewed by the Oregon Department of Fish and Wildlife and it may provide a written statement to the county regarding the possible impact on fish habitat associated with the affected river or stream.*
- (7.) The County will define an area around the specific removal site which includes all lands within 250 feet of the site, based on the site map for a state mining or gravel permit. The applicant shall provide findings which identify the existing uses on those lands included within this area. The Commission shall evaluate the applicant's*

findings with regard to the potentially conflicting uses identified in the area based on the factors below:

- i.) If the mining activity can be sited on an alternative site; and*
 - ii.) Where conflicting uses are identified the economic, social, environmental and energy consequences of the conflicting uses shall be determined and methods developed to resolve the conflict.*
- (8.) A rock crusher, washer or sorter shall not be located closer than 500 feet to any residential or commercial use. Surface mining equipment and necessary access roads shall be constructed, maintained, and operated in such a manner as to eliminate as far as is practicable, noise, vibration, or dust which are injurious or substantially annoying to persons living in the vicinity.*
- (9.) No uses are permitted relating to offshore oil, gas or marine mineral exploration or development.*

Finding: This application for stockpiling, storing and loading rock and a temporary portable asphalt plant does not include mining or processing of oil, gas, or other subsurface resources as defined in ORS Chapter 520 and Section 3.052 (10). Further, the proposed project does not include support or processing facilities for offshore oil, gas or marine mineral activities. Therefore, this Section of the CCZO is not applicable.

Section 7.040 (17) Uses on Resource Lands

- a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agricultural or forest land.*

Finding: The proposed rock stockpiling and portable asphalt plant use will not change or increase the cost of accepted farming or forest practices on adjacent agricultural or forest lands. The site historically has been used for forestry and stockpiling of dirt and rock. The nine (9) acres proposed to be used will be required to obtain a “Change of Use” from the Oregon Department of Forestry (ODF). However, it has been used for a similar purpose (stockpiling) for several years and has not resulted in an increase in the cost of forest practices on adjacent properties. This finding is met.

- b) The proposed use will not significantly increase fire suppression costs or significantly increase the risks to fire suppression personnel.*

Finding: The applicant has stated “The proposed use is not expected to increase fire suppression costs or increase risks to fire suppression personnel. The Langlois Rural Fire Protection District has provided comment and signed off on a Service Provider form with a notation that their concern would be that the access is sufficient for emergency response

vehicles. The Oregon Department of Transportation (ODOT) authorized the access for truck traffic related to mining activities on another site, and has stated that the access is adequate for the proposed use within the application.” This finding is met.

- c) *A written statement be recorded with the deed or written contract with the County or its equivalent shall be obtained from the land owner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act and related Oregon Administrative Rules.*

Finding: To comply with this provision of the CCZO, the applicant will be required to record a statement that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act.

Section 3.281 – Riparian Corridor Buffer Overlay Zone – *The riparian area is the area adjacent to a river, lake or stream, consisting of the area of transition from aquatic ecosystems to a terrestrial ecosystem. The riparian corridor to be protected by the provisions of this section is defined as the area: 2. Along lakes, and streams within a river drainage basin in which the principal river or creek has an average stream flow less than 1,000 cubic feet per second (CFS), the riparian corridor shall be fifty (50) feet from the top of each bank.*

Finding: The property proposed for stockpiling rock and a temporary asphalt plant includes a creek that traverses the property from the northwest to the southeast. A setback of fifty (50) feet from the top of the banks of this stream will be required. This finding is met with this condition.

Section 3.320 – Erosion Prevention and Sediment Control Plan – *All development activity shall comply with the requirements for erosion prevention and sediment control. The intent of these provisions is to minimize the amount of sediment and pollutants that exit the site of development activity and, thereby, minimize the amount of such material that reaches waterways, wetlands, public improvements and the property of others. These provisions are intended to require that temporary and permanent measures be taken for all development activity that require or result in the disturbance of the surface of soil and/or vegetation. And*

Finding: The applicant will be required to have an up to date erosion and sediment control plan for the site operations. The Department of Environmental Quality (DEQ) will also require a National Pollutant Discharge Elimination Permit (NPDES) 1200-C. This 1200-C DEQ permit can satisfy the County requirements. This finding is met with the condition that the applicant provides the County with the required erosion and sediment control plan prior to commencing operations on the site.

Section 7.045 – Conditional and Permitted Uses – Director Periodic Review – *The Director may issue Conditional or Permitted Use Permits that must be periodically reviewed to ascertain that the conditions of the permit are being complied with on a continuing basis.*

Finding: The Director is proposing a condition for this proposed use, if approved, to review the conditions with the owner at least every three (3) years to ascertain that the conditions of the permit are being complied with. This finding is met with this condition.

Section 7.050 (1) Time Limit on a Permit for Conditional Uses - *authorization of a conditional use, in general, shall become null and void after one year unless substantial construction has taken place or an extension has been granted.*

Finding: There are several gravel mining permits authorized within Curry County consistent with the CCZO provisions outlined above. Most of these permits have been issued and then renewed for periods of 1-5 years provided that they are in continued compliance with all federal, state and county permits. It is recommended that, if this permit is issued, that it be valid for a period of 3 years unless there is a failure of the applicant to comply with all the conditions of approval. After three (3) years it must be reviewed pursuant to Section 7.045 above and then renewed based on the review. This review and subsequent renewal is the responsibility of the applicant.

IV. Staff Recommendation

Application AD-1926 a request for conditional use approval for a an aggregate stockpile, loading and storage site and a portable asphalt plant in the forestry Grazing (FG) Zoning District is recommended for approval with the following conditions:

1. The applicant shall construct and maintain a 30-foot wide, 10-foot high berm adjacent to highway 101 to the west to provide security for the site and buffer the operations from the traveling public.
2. The applicant is required to request and obtain a “Change in Use” form from the Oregon Department of Forestry (ODF) prior to commencing operations.
3. All activities shall set back a minimum of fifty (50) feet from the stream that runs through the proposed operation area. No untreated discharge shall enter the creek.
4. An approved Erosion and Sediment control Plan must be approved by DEQ and the County prior to commencing operations.
5. Operations shall be limited to daylight hours with no operations on holidays or weekends.

6. A written statement shall be recorded with the County which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act.
7. The applicant shall comply with all conditions set forth in the ODOT Access Permit including maintaining Highway 101 free of rocks, dirt and debris.
8. This permit is valid for a period of three (3) year from the date of approval. The applicant may apply for review and renewal of this permit every three years after the initial approval date upon filing a request under CCZO Section 7.050.