

November 6, 2019



**Curry County
Board of Commissioners**

Christopher Paasch, *Chair*
Court Boice, *Vice Chair*
Sue Gold, *Commissioner*

94235 Moore Street/Suite #122
Gold Beach, OR 97444
541-247-3296, 541-247-2718 Fax
800-243-1996 www.co.curry.or.us

**Curry County Board of Commissioners
STAFF REPORT**

TO: Curry County Board of Commissioners

FROM: Becky Crockett
Planning Director

DATE: November 6, 2019

SUBJECT: Appeal (A-1901) of the Curry County Planning Commission's September 19, 2019 decision to Deny the Request for Approval of a Conditional Use Permit (AD-1907) for the mining and processing of Aggregate along the Pistol River in the Forestry Grazing (FG) Zoning District.

1. Application Information

Owner/Applicant: Ronald Adams
26000 Myers Creek Road
Gold Beach, OR 97444

Property Description: Assessor's Map 38-14-00, Tax Lot 4900;
Assessor's Map 38-14-19D TL 200

Location Located above the Pistol River Bridge on Pistol River Loop Road, approximately .20 miles east from its intersection with US Hwy 101 and outside the Gold Beach Urban Growth Boundary (UGB).

Zone: Forestry Grazing (FG) Zoning District

II. Summary of Request

Ronald Adams (“Applicant”) requests that the Curry County Board of Commissioners (the “Board) approve his application (AD-1907) to mine and process aggregate from property zoned Forestry Grazing (FG) adjacent to and within the banks of the Pistol River. Gravel mining and processing is allowed as a conditional use within this zone. Application AD-1907 is a request for conditional use approval for the mining and processing of approximately 10,000 cubic yards of aggregate. The method of aggregate removal proposed is by a process called “scalping”. Typically this involves scrapping aggregate from the exposed gravel bar during low flow water conditions. The area for the proposed gravel operation is a County adopted Goal 5 Resource and has a long history of aggregate removal. Further, the site is within an area of estuarine influence and includes fish species protected under the Endangered Species Act (ESA).

III. Background

This matter came before the Curry County Planning Commission for a decision on August 15, 2019. The application (AD-1907) sought approval for land-based mining and processing of aggregate along the Pistol River on property identified as Curry County Assessor’s Map Number: 38-14-00, tax lot 4900 and 38-14-19D, tax lot 200 within the Forestry Grazing (FG) zone. A public hearing was held before the Planning Commission as a matter duly set upon the agenda of a regular meeting on June 20, 2019, after giving public notice to affected property owners and publication in the local newspapers as set forth in Section 2.070 of the CCZO.

At the public hearing on said application evidence and testimony was presented by the Planning Director in the form of Findings of Fact, Conclusions, and Exhibits. The hearing was conducted according to the rules of procedure and conduct of hearings on land use matters as set forth in Section 2.140 of the CCZO. The Planning Commission received oral and written evidence concerning this application. A decision was made by the Planning Commission to close the public hearing at that time and leave the record open for 14 days, until July 5, 2019.

Additional written evidence was submitted into the record during the 14 days in which the record was left open after the close of the public hearing. The applicant submitted new evidence into the record. The Planning Commission convened on July 25, 2019 to deliberate on the new evidence. At that time, the Planning Commission made a decision to re-open the record for an additional 7 days to provide an opportunity for interested persons to respond to the new evidence submitted by the applicant.

The Planning Commission convened again on August 15, 2019 to deliberate on the evidence submitted into the record. At the conclusion of review and consideration of the evidence in the record and upon a motion duly made and seconded, the Planning Commission voted to **DENY** Conditional Use Application AD-1907 based on findings of fact and conclusions of law.

IV. ANALYSIS

Section 2.170 of the Curry County Zoning Ordinance (CCZO) Appeal of a Land Use

Decision sets forth the process and criteria for review of an appeal of a land use decision. Specifically, **Section 2.170 (7)** identifies the information required to be presented by the applicant as the basis of the appeal. Staff analysis of the required information presented by the applicant as the basis of the appeal is as follows:

Section 2.170 (7) Every Notice of Appeal shall be on a form supplied by the Planning Director and contain the following information:

a) *Identification of the decision being appealed, including the date of the decision.*

Staff Response: The applicant included the Planning Commission decision date of August 15, 2019 on his appeal application. This is the date that the Planning Commission voted unanimously to deny the conditional use application (AD-1907) and then subsequently confirmed this decision on September 19, 2019 with adoption of the Final Order and Findings of Fact.

b) *A statement demonstrating the person filing the notice of appeal has standing to appeal.*

Staff Response: The applicant, Ronald Adams, identified himself as the applicant on his appeal application and further identified that he participated in the decision orally at the hearing and with written testimony. This information does establish that Ronald Adams has standing to appeal the Planning Commission's decision.

c) *A statement explaining the specific issues being raised on appeal.*

Staff Response: The applicant has raised two issues as the basis of the appeal.

1.) "I am appealing this denial for the following reason or reasons, The Permit was denied for the following reason, The county counsel told the Planning Director, the Planning Director told the Planning commission that this would be appealed to LUBA and LUBA would over turn the approval of the Permit, so the Planning commission had no choice except to denie the permit. So without allowing any discussion or input from the Applicant it was denied outright."

Staff Response: The basis for the decision by the Planning Commission to deny AD-1907, the proposal for gravel mining and processing along the Pistol River, is set forth in the September 19, 2019 Final Order, the August 8, 2019 Staff Report and the August 8, 2019 Memorandum from County Counsel (attached). In summary, the decision focused on whether or not the applicant had presented enough site specific information about the proposed gravel extraction operation to adequately address the required criteria set forth in the CCZO (Section 3.052 (24.) Land Based Mining). The Planning Commission determined that the applicant had not presented enough information for the CCZO criteria to be adequately addressed. Specifically, the

November 6, 2019

applicant could not adequately address the CCZO criteria related to the environmental impacts of noise, dust, fish, water quality, water flow, fish habitat, vegetation, land and soil erosion, wildlife habitat and land stability.

In order for the Planning Commission to approve the request, they needed to determine if the proposed project is in compliance with the provisions of the Curry County Comprehensive Plan and the CCZO with a level of confidence that the potentially significant environmental issues associated with the project could be mitigated. This would require the reliance of technical staff from multiple federal and state agencies in coordination with County staff to address the issues. The fundamental concern with the application is that it lacked detail on what the operation entailed. Further, there was little or no coordination and discussion regarding the multiple federal and state agencies that needed to be involved in gaining permit compliance with the undefined operation. The situation would have required staff and the Planning Commission to make an assumption that the multiple federal and state agencies involved would work with the applicant and do their due diligence in addressing the environmental issues to the satisfaction of meeting the County requirements and thus satisfy the CCZO criteria. Direction from County Counsel in the deliberations was that “the decisions should be based on evidence in the record not assumptions”.

- 2.) “Most of my information for this application was never even given to the planning board because of the county counsels concern over LUBA over turning Planning Boards decision. Any input that I was able to inject was limit to my reminding the planning commission that I was asking for a preliminary permit.”

Staff Response: All the information provided by the applicant in his application and then submitted during the time in which the record was held open for additional comments was provided to the Planning Commission and posted online on the Planning Commission’s web site (co.curry.or.us/government/planning-commission). Further, the applicant was provided the opportunity to present his application at the Public Hearing held on June 20, 2019 and then provided the opportunity to rebut any comments presented at that hearing opposing his application. Mr. Adams did speak about his application and took the opportunity to rebut some of the comments made at the public hearing. After the Planning Commission closed the public hearing on June 20, 2019, they left the record open for anyone to present additional information or rebuttals for a period of 14 days. Mr. Adams did present additional information during this time that the record was held open. Then on July 25, 2019 the Planning Commission allowed another 7 days for anyone to submit additional information into the record. Mr. Adams did not submit any additional information into the record during this time.

V. RECOMMENDATION

The Curry County Board of Commissioners may adopt a motion to:

1. **Reverse** the Planning Commission's decision and **APPROVE** the request filed by Ronald Adams for a Conditional Use Permit for land based mining and processing of aggregate along the Pistol River in the Forestry Grazing (FG) zoning district identified on Assessor's Map Numbers: 38-14-00, tax lot 4900 and 38-14-19D, tax lot 200 in Curry County, Oregon; or
2. **AFFIRM** the Planning Commission's decision and **DENY** the request filed by Ronald Adams for a Conditional Use Permit for land based mining and processing of aggregate along the Pistol River in the Forestry Grazing (FG) zoning district identified on Assessor's Map Numbers: 38-14-00, tax lot 4900 and 38-14-19D, tax lot 200 in Curry County, Oregon.

VI. COMMENTS RECEIVED

Notification of the Board of Commissioners hearing on the Appeal application (A-1901) submitted by Ronald Adams was submitted to the three newspapers of County record including the Curry County Reporter, The Pilot and The Port Orford News. Further, notification was sent to all interested parties of record for this application, all property owners within 500 feet of the project property, and the Planning Commission. It was also posted on the Curry County Board of Commissioners web site. At this time, staff has not received any public comments on this pending appeal.

ATTACHMENTS (to be posted by Tuesday, November 12th)

- A.** Project Site Map
- B.** Ron Adams Notice of Appeal, October 8, 2019
- C.** Ron Adams Letter of Time Extension, October 21, 2019
- D.** Board of Commissioners, Notification of Appeal Hearing
- E.** Ron Adams Conditional Use Application (AD-1907)
- F.** Staff Report to Planning Commission (AD-1907), May 28, 2019
- G.** Staff Report to Planning Commission (AD-1907), July 22, 2019
- H.** Staff Report to Planning Commission (AD-1907), August 8, 2019
- I.** Memorandum from Shala Kudlac, Asst. County Counsel to Planning Commission, August 6, 2019
- J.** Notice of Decision and Final Order (AD-1907), September 23, 2019
- K.** AD-1907, Public Comments Received 7-16-2019
- L.** AD-1907- Adams, Comments During 14-Day Open Period Closed 7-5-2019
- M.** AD-1907-Adams, Public Comments up to and Including 6-20-2019 Meeting
- N.** AD-1907-Adams, Comments During Planning Commission Re-Opened 7 Day Period. Closed 8-1-2019
- O.** Curry County Planning Commission Meeting Summary – June 20, 2019
- P.** Curry County Planning Commission Meeting Summary – July 25, 2019
- Q.** Curry County Planning Commission Meeting Summary – August 15, 2019
- R.** Curry County Planning Commission Meeting Summary – September 19, 2019
- S.** Transcript of Planning Commission Meetings; June 20, July 25, August 15 and September 19, 2019