

**Curry County Community Development Department
PLANNING COMMISSION STAFF REPORT**

Application AD-1909 is a request for conditional use approval for the mining and processing of upland quarry rock to produce jetty stone, riprap, landscape stone and various crushed rock products on a portion of a 320 acre parcel in the Timber (T) zoning district.

I. Property Information

Owner: Andrew and Diane Foster
1614 37th Avenue NW
Salem, Oregon 97304

Applicant: Chuck Nylund
Kiewit Infrastructure West Co.
2200 Columbia House Blvd.
Vancouver, Washington 98661

Land Use Review: Administrative Conditional Use Review Referred to the Planning Commission by Planning Director.

Property Description: Assessor's Map 31-14-00, Tax Lot 4700;

Location Property is located approximately 4.1 miles east of Highway 101 on Sixes River Road to Edson Creek Park and then approximately 3.0 miles on an existing private logging road.

Existing Development: The subject property is a previously logged volunteer forest reproduction site covered in alder, oak, myrtle and some Douglas fir. It contains an approximately 20+ acre geological rock outcrop/deposit that meets USACE specification for jetty stone.

Proposed Development: Proposed quarry development to include site clearing, grading, road building, quarry operations and reclamation on approximately 60 acres of Tax Lot 4700. Project

includes a rock crusher but does not include installation of an asphalt or concrete batching plant.

Zone: Timber (T) 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 3.040	Timber
Section 3.042	Conditional Uses Subject to Administrative Approval by the Director
	23. Land Based Mining (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 7.050	Time Limit on a Permit for Conditional Uses

III. Background

Kiewit is proposing to construct, operate and manage a quarry site for the purpose of: 1. Suppling approximately 440,000 tons of jetty stone material beginning in the spring of 2020 for several major projects on the west coast including the emergency repair on the mouth of the Columbia River, and 2. Providing a source of quarry stone and crushed rock for local riprap and construction projects.

The proposed project includes a maximum of 40 loaded trucks per day leaving the site during full quarry operations that will primarily comprise of low boys containing 1-2 large boulders/jetty stones. The main haul route from the site is to Sixes River Road then Highway 101 to Coos Bay where the jetty stone will be loaded onto barges and transported to the placement areas.

There have been three prior conditional use permits reviewed through the Curry County Planning Department and approved with conditions by the Planning Commission for rock quarry development on this site. They include C-8422 in 1984, AD-0905 in 2009 and AD-1209 in 2012. Each of these prior approved conditional use permits expired prior to the site being developed and subsequently mined for quarry rock. The last Conditional Use Permit (AD-1209) expired in August of 2017.

IV. Findings of Conformance with the CCZO

Section 3.040 Timber (T) – *The Timber Zone is applied to resource areas of the county where the primary land use is commercial forestry.*

Finding: This section of the CCZO states the purpose of the Timber zoning district. The primary use established on the property is forestry including the reproduction of forest species which is consistent with the purpose of the Timber zoning district. It should be noted that the parcel has been historically logged of Douglas fir and subsequently marginally managed for reproduction of merchantable fir species. The exploration of aggregate and mineral resources is permitted outright in the Timber zone under CCZO Section 3.041 (9) while mining and processing or aggregate and mineral resources are permitted as Conditional Uses Subject to Administrative Approval by the Director under CCZO Section 3.042 (23). This standard of the CCZO is met in that the applicant has submitted an application for Conditional Use approval.

Section 3.052 Conditional Uses Subject to Administrative Approval by the Director

23.. 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: The mining of aggregate and mineral resources, as defined under ORS Chapter 517, is allowed in the Timber zone provided that a prospective applicant submits a land use application and the County approves the proposed use based upon relevant standards for review. ORS Chapter 517 reads as follows:

ORS 517.750(15)(a): Subsurface mining means “all or any part of the process of mining minerals by the removal of the overburden and the extraction of natural mineral deposits thereby exposed by any method by which more than 5,000 cubic yards of mineral are extracted or by which at least one acre of land is affected within a period of 12 consecutive calendar months..”

The applicant is proposing to develop a quarry including an aggregate processing site on a portion of the subject property on more than one acre of land. The proposed project meets the

definition of mining as stated above and the applicant has submitted an application for a conditional use permit addressing the criteria set forth as required in the CCZO.

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 a quarry mining and processing activity in the Timber zone is an administrative decision. However, it is being referred to the Planning Commission for a public hearing.

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 during the hearings process, the Planning Commission may impose additional conditions as appropriate to insure that the proposed use is compatible with the surrounding land uses.

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: The project includes multiple accessory structures incidental to and supportive of the quarry operations. These buildings include:

- Scale control shed (8' x 20')
- Office Trailer (12' x 60')
- Maintenance Facility (54' x 40')
- Lubrication Storage Unit (8' x 20')
- Spill Response Connex (8' x 20')
- Tool Storage Facility (8' x 20')

The project as proposed includes a 68 acre vegetative buffer area surrounding the approximate 60 acres of active disturbed quarry operations. The accessory structures will be placed within the active 60 acre active quarry area. The buffer will provide a substantial area of abatement for noise, dust, reflection from structures and other potential nuisance's emanating from day to day operations. The nearest residence is 7,400 feet south of the quarry site. Because of the significant distance of the active quarry from adjacent uses and the maintenance of a proposed large buffer area there is no need for any further property line setbacks or height restrictions in order for the proposed use to be compatible with the surrounding land uses.

- 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: Access to the quarry site will be via existing logging roads that are planned to be improved under the Oregon Department of Forestry (ODF) Notification process (ODF Permit) under the Forest Practices Act of 2018 and specifically to Division 625 Forest Road Construction and Maintenance standards. This road will have a traveled way of 18', ditches, cross culverts, stream culverts, crushed rock base, and top course. It will need to be adequate to accommodate both log trucks and rock trucks (low boys) carrying large jetty stone. The private logging roads traverse multiple private properties to which the applicant has obtained right-of-way agreements. The private road accesses on to Sixes River County Road from private property owned by Jim Hall. The access site onto Sixes River County Road has over 1,000 foot clearance in both directions. Additional access and road requirements may be presented by the Oregon Department of Transportation or the County Road Department prior to the public hearing for this application and may be included as conditions to this application if approved. There is no need for off-street parking or additional lot area or buffering requirements for the proposed use.

- 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 project is outside of most utility provider areas and therefore this CCZO standard is not applicable except for the rural fire protection district (Sixes). The applicant has proposed the following temporary utility options for the operation:

- Water – potable water will be imported.
- Sewage Disposal – Portable sanitation facilities will be provided.
- Electrical Power – Power for the site will be provided by portable generators.
- Telephone Service – Intermittent cell phone service.
- Fire Department – Six Rural Fire Department – has been notified of the project.

Additional recommendations may be received from the Sixes Fire Protection District prior to the public hearing and may be included as conditions to this application if approved.

- 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 a rock quarry 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 a rock quarry 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 a rock quarry 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;

Finding: The applicant has stated that the nearest residence is located approximately 7,400 feet south from the center of the proposed quarry and that noise should not exceed allowable standards at this distance. Dust is proposed to be controlled using onsite water trucks to sprinkle the quarry haul roads and main access road. In the summer, the applicant may use an environmentally approved dust palliative as a supplemental method to control dust.

There are additional environmental factors associated with development of this quarry site that will require the applicant to obtain approvals from the Department of Environmental Quality (DEQ) primarily as a commenting agency through other federal and state agency permits that will be required. These include required mining permits from the Department of Geology and Mineral Industries (DOGAMI) and required Clean Water Act permits for the potential impacts to wetlands and waterways on site through the Corp of Engineers (COE) and the Oregon Department of State Lands (DSL).

To insure that the potential impacts associated with dust, noise or other environmental factors within the jurisdiction of DEQ are minimized from the proposed rock quarry operations, if approved, it is recommended that: 1. The road to the rock quarry be gated and locked when not in use; 2. The operator will keep a water truck on hand for dust suppression; 3. The hours of quarry operation shall be limited to daylight hours with no operations on major holidays with equipment maintenance allowed after shift hours; 4. The access and quarry roads shall be actively maintained to minimize truck noise created by pot holes, rough surfaces, etc. and 5. The applicant shall submit copies of all current permits and licenses to the Planning Department prior

to commencement of operations. All operations approved herein shall be conducted as required by these permits. This CCZO standard can be met if the applicant obtains and meets the conditions of all required federal, state and local permits pertaining to the standard above.

The impact of the proposed use on water quality, water flow, or fish habitat on affected rivers or streams;

Finding: The site contains nine Edson Creek tributaries that are all classified as non-fish bearing tributaries. However, these tributaries do eventually enter fish bearing streams. There are also multiple wetlands on site that are expected to be impacted by the proposed quarry operations. The applicant has hired Pacific Habitat Services, Inc. to conduct the required wetland and aquatic habitat surveys associated with the Edson Creek tributaries. It is expected that proposed impacts to these wetlands and streams will require a Joint Permit Application to the COE and DSL. This permit application will also require DEQ to address water quality impacts through a Clean Water Act 401 Certification and the Oregon Department of Fish and Wildlife to assess impacts to both terrestrial and aquatic wildlife habitat and resources.

To insure that water quality, water flow and downstream fish habitat is protected from the potential impacts of the proposed quarry operations, if approved, it is recommended that: 1. Surface water impacted by the operation including the alteration of any streams are managed in accordance with water quality requirements set forth and reviewed by the DEQ Water Quality 401 Certification process; and 2. All operations are conducted in accordance with permit requirements set forth through the conditions and requirements pertaining to fish and aquatic habitat by DOGAMI, ODFW, COE, DEQ and DSL. This CCZO standard can be met provided the applicant is in compliance with all conditions set forth by these Federal and state agencies.

(2.)The impact of the proposed use on overall land stability, vegetation, wildlife habitat and land or soil erosion;

Finding: Some areas of the site are included on the County's inventory of sites subject to two types of potential landslide activity – rapidly moving landslides and normal landslides. A geotechnical evaluation of the quarry site has been completed including test drilling of the rock deposit. The applicant proposes to evaluate the proposed excavation of slopes for the quarry plan and the stability of the surrounding area with respect to the facility and stockpiling grading plan. The applicant has further stated that this issue will be addressed in more detail in the required DOGAMI permit application.

Through the federal and state permitting process noted above, the agencies will require that the applicant prepare a quarry extraction plan with proposed extraction quantities and locations. This will include a determination of overall land stability to decrease the potential for land and/or

soil erosion and assessing impacts to vegetation and wildlife habitat. It is recommended that this application, if approved, include a requirement to submit the detailed extraction plans for County review prior to commencing operations to insure compliance with this provision of the CCZO.

(3.) The adequacy of protection for people residing or working in the area from the proposed mining activity through fencing of the site;

Finding: The ownership of the proposed quarry site (Foster) includes 320 acres of which 60 acres is expected to be used for the operation. The remaining portions of the parcel will be undisturbed and facilitate a buffer from adjacent land uses and therefore protect people residing or working in the general area from the quarry activities. As previously mentioned, the nearest residence is located over a mile away (7,400 feet south). It would appear that no fencing is necessary since the proposed use is in a rural area and no residences are nearby. It is recommended, if approved, that the road to the extraction operation be gated and locked when not in use to insure compliance with this section of the CCZO.

(4.) 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.

Finding: The applicant has stated that full restoration of the affected areas following decommissioning of the quarry, roads and supporting mining operations is proposed. The lifespan of the quarry is expected to be 25 years or whenever the source of rock is exhausted. The DOGAMI requires a Mining Reclamation Plan consistent with surface quarry reclamation regulations. The land is planned to be restored to forestry land use following mine reclamation. It is expected that reclamation will include:

- Stabilizing unstable slopes and exposed soils using vegetation and wood mulch
- Modifying impervious surfaces to restore natural infiltration characteristics
- Restoring topsoil and vegetation to developed areas
- Restoring all disturbed areas with native vegetation

To meet this standard, it is recommended that the applicant be required, as a condition of approval, to obtain all required permits and licenses from all federal and state agencies including but not limited to COE, DOGAMI, DEQ, ODFW, DEQ and DSL that are necessary for upland quarry mining activities and equipment used in these operations prior to initiating any activity approved herein and shall be kept current with those permits and requirements as necessary. Copies of all current permits and licenses shall be submitted to the Planning Department prior to commencement of operations. All operations approved herein shall be conducted as required by these permits. This CCZO standard can be met if the applicant obtains and meets the conditions

of all required federal, state and local permits including an approved Mining Reclamation Permit through DOGAMI.

(5.) 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.

Finding: The Oregon Department of Fish and Wildlife (ODFW) was sent notification of this proposed project for an upland quarry. As noted above, the Edson Creek tributaries are all classified as non-fish bearing. However, these tributaries do eventually enter fish bearing streams. The quarry proposal includes impacting some of the tributaries including some wetland habitat associated with the tributaries. The applicant will be required to obtain permits from the COE and DSL due to impacts to the tributaries and wetlands. The required federal and state permits will include review, comment and potential conditions based on input from ODFW in regards to fish habitat. This CCZO standard can be met if the applicant obtains and meets the conditions of all federal, state and local permits.

(6.) 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.*

Finding: The ownership of the proposed quarry site (Foster) includes 320 acres of which 60 acres is expected to be used for the operation. The remaining portions of the parcel will be undisturbed and facilitate a buffer from adjacent land uses which are located more than a mile away. The undisturbed surrounding buffer areas will continue in the use of existing forestry vegetation including minimal active management. This is a very remote site and it is not expected that there will be any conflicting uses in the area of the quarry. Therefore, this provision of the CCZO is met.

(7.) *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.*

Finding: The project as proposed includes a rock crusher but does not include installation of an asphalt plant or concrete batching plant. There is one residence located over a mile from the site. Therefore no rock crusher will be located within 500 feet to any residential or commercial use and this CCZO standard has been met.

(8.) *No uses are permitted relating to offshore oil, gas or marine mineral exploration or development.*

Finding: Offshore oil, gas, or marine mineral exploration or development is not being proposed. Therefore this standard 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 use is consistent with the Curry County Comprehensive Plan and there is a long term benefit to timber lands since the intent after reclamation is to return the subject property back to timber use. Therefore the project as proposed will not in any way force a change in or increase the cost of the resource use of the property.

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

Finding: If the application request is approved, it is recommended that a condition of approval be imposed to require the applicant to follow all fire season rules, including cessation of operations during periods of extreme fire danger, unless specifically authorized by the Oregon Department of Forestry to continue operations. Therefore, this standard can be satisfied with conditions and maintaining a water truck on site for fire suppression and dust control.

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 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: 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 5 years unless there is a failure of the applicant to comply with all the conditions of approval.

V. Staff Recommended Conditions of Approval

If the Planning Commission approves the conditional use request (AD-1909) filed by Keiwit Infrastructure West Co. on property owned by Andrew and Diane Foster for the mining and processing of quarry rock at an upland site in the Timber (T) Zoning District, staff suggests the following conditions of approval:

1. The quarry site operations shall be limited to the areas identified on the applicants plan map titled “Quarry Limits and Mining Plan”.
2. The applicant shall follow all fire season rules, including cessation of operations during periods of extreme fire danger, unless specifically authorized by ODF to continue operations during those periods of extreme fire danger. A water truck shall be on site and available for fire suppression.
3. All access routes (roads) shall be maintained to reduce dust and noise caused by equipment and vehicles. A water truck shall be on site and available for dust suppression.
4. Quarry operations shall be limited to daylight hours with no operations on major holidays. Equipment maintenance, etc. can continue after quarry operation hours.
5. Any surface waters used or impacted by the operations shall be managed in accordance with stormwater requirements set forth through the Department of Environmental Quality (DEQ) and contained within Section 401 Clean Water Act and the NPDES 1200 A Permit.
6. Gravel removal shall be conducted in accordance with permit requirements set forth through the conditions and requirements pertaining to fish and aquatic habitat by the Oregon Department of Fish and Wildlife (ODFW), Corp of Engineers (COE), Oregon

Department of State Lands (DSL), the Oregon Department of Environmental Quality (DEQ) and the Department of Geology and Mineral Industries (DOGAMI).

7. The detailed quarry plans required by DOGAMI shall be submitted to the County for review to insure compliance with the CCZO.
8. The access road to the quarry operations shall be gated and locked when not in use.
9. All required federal, state and local permits and licenses for quarry operations shall be obtained and conditions complied with prior to and during operations. These include but are not limited to: COE, DOGAMI, DEQ, ODFW, ODF, DSL, and Oregon Water Resources. Copies of all current permits and licenses shall be submitted to the Planning Department prior to commencement of operations. All operations approved herein shall be conducted as required by these permits.
10. 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 Practices Act.
11. This Conditional Use Permit shall be valid for a period of five (5) years unless there is a failure of the applicant to comply with all the conditions of approval. Failure to comply with all conditions of approval, or violations concerning the use approved herein, may result in nullification of this approval by the County.
12. The applicant shall be responsible for obtaining any necessary water use authorization from the Oregon Water Resources Department.
13. The rock produced at the site shall not be used for any offshore oil, gas or marine mineral exploration or development projects.
14. The Planning Commission may institute an immediate re-hearing of this matter if a violation of the conditions of approval is found to be valid.
15. The applicant shall comply with requests made by the Oregon Department of Transportation and/or the Curry County Road Department to insure safe ingress and egress of up to 40 low boy trucks and potentially local gravel dump trucks daily onto Sixes River Road and then Highway 101.
16. The applicant shall keep the access onto Sixes River Road from the private logging road clean of rocks, dirt and dust daily if needed.