

**PRELIMINARY FINDINGS OF FACT
CONDITIONAL USE REQUEST
Application Number CUP-S-342-20**

REQUEST: To approve a temporary concrete batch facility to produce ready-mix concrete.

APPLICANT: Blattner Energy, Inc.
392 Co Rd 50
Avon, MN 56310

PROPERTY OWNER: Mark and Shannon Miller
67775 Cutsforth Road
Heppner, Oregon 97836

PROPERTY DESCRIPTION: Tax lot 500 of Assessor's Map 1S 26E

PROPERTY LOCATION: Approximately 7 miles northeast of Lexington on Cutsforth Road.

FINDINGS OF FACT:

I. BACKGROUND INFORMATION:

The subject property is zoned Exclusive Farm Use (EFU). Subject property is the location for the Miller-Haguewood aggregate site approved under Conditional Use Permit CUP-S-335-19 and associated with Comprehensive Plan Amendment AC-129-19, however, this application is not related to that operation.

II. COMPLIANCE WITH MORROW COUNTY ZONING ORDINANCE SECTIONS

3.010(C)(14), 6.020, 6.030 and 6.050(I). The requirements for approval are listed below in **bold type**, followed by a response in standard type.

MORROW COUNTY ZONING ORDINANCE SECTION 3.010(C)(14) CONDITIONAL USES PERMITTED.

The Morrow County Zoning Ordinance allows for operations conducted for the mining, stockpiling, or processing of mineral, aggregate and other mineral resources or other subsurface resources.

SECTION 6.020 GENERAL CRITERIA.

In judging whether or not a conditional use proposal shall be approved or denied, the Commission shall weigh the proposal's appropriateness and desirability, or the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed and, to approve such use, shall find that the following criteria are either met or can be met by observance of conditions.

A. The proposal will be consistent with the Comprehensive Plan and the objectives of the Zoning Ordinance and other applicable policies and regulations of the County.

The concrete batch plant may be allowed as a Conditional Use in the Morrow County Zoning Ordinance. The use is consistent with the Comprehensive Plan

and objectives of the Zoning Ordinance and other applicable policies and regulations of the County. This criterion is met.

B. If located within the Urban Growth Boundary of a city, that said city has had an opportunity to review and comment on the subject proposal.

This criterion is not applicable as the concrete batch plant site is not within an Urban Growth Boundary.

C. The proposal will not exceed carrying capacities of natural resources or public facilities.

The proposed use is temporary in nature and no proposed aggregate operation is associated with this application; however, this batch plant will be located on a parcel where an approved aggregate operation is located (see above discussion). Aggregate will need to be sourced from a local, properly permitted site. Water will not be extracted from the site and the application states that there is a water purchase agreement in place with the City of Lone. If the licensed commercial source for the projects water supply changes from the City of Lone's municipal water supply, applicant shall notify the Oregon Water Resources Department of the new water source. Applicant would need to comply with all rules, regulations, and requirements of the Oregon Water Resources Department in regards to this project. This is recommended and listed as a Condition of Approval. Staff would find this criterion met.

SECTION 6.025. RESOURCE ZONE STANDARDS FOR APPROVAL.

A. In the Exclusive Farm Use zone, a conditional use may be approved only when the County finds that the use will not:

- 1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or**
- 2. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

The proposed use is temporary in nature, in conjunction with the construction of the Wheatridge Wind Energy Project, which has been authorized by the Oregon Department of Energy and the Energy Facility Siting Council (EFSC). According to the EFSC Site Certificate, the temporary construction laydown and staging areas would be sited to minimize disturbance to farming operations and this proposal is within a temporary construction laydown and staging area. Additionally, within the EFSC Site Certificate, it is required that Wheatridge consult with area landowners during construction and operation of the facility to determine further measures to reduce or avoid any adverse impacts to farm practices on surrounding areas and to avoid any increase in farming costs. Planning Staff would find these criteria met.

B. In the Forest Use Zone, a conditional use may be approved only when requirements that are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands are met. A conditional use may be approved only when the County finds that the use will not:

- 1. Force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;**
- 2. Significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and**

These criteria are not applicable as the Subject Parcel is zoned EFU.

SECTION 6.030 GENERAL CONDITIONS.

In addition to the standards and conditions set forth in a specific zone, this article, and other applicable regulations; in permitting a new conditional use or the alteration of an existing conditional use, the Commission may impose conditions which it finds necessary to avoid a detrimental impact and to otherwise protect the best interests of the surrounding area or the County as a whole. These conditions may include the following:

- A. Limiting the manner in which the use is conducted including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.**
The application does not state hours of use or any other restriction of the concrete batch plant having to do with minimization of environmental effects such as noise, vibration, air pollution, glare and odor. Compliance with DEQ required permits would meet this requirement, therefore, it is recommended and listed as a Condition of Approval that the Applicant contact the Oregon Department of Environmental Quality to obtain all necessary permits. Planning staff would not place any additional operational limitations on this site as it is in an Exclusive Farm Use area with the nearest residential or commercial use approximately >1-mile from the proposed site.
- B. Establishing a special yard or other open space or lot area or dimension.**
No special yards or other open spaces are required. The proposed location is shown on the preliminary site design.
- C. Limiting the height, size or location of a building or other structure.**
The Exclusive Farm Use Zone does not restrict building height. There will be no local restrictions placed on height, or size of a building or structure at the subject location.
- D. Designating the size, number, location and nature of vehicle access points.**
 - 1. Where access to a county road is needed, a permit from Morrow County Public Works department is required. Where access to a state highway is needed, a permit from ODOT is required.**
Current access is from Cutsforth Road. The use as proposed will not cause a significant change in size, number, location and nature of vehicle access points. There is no proposed new access from Cutsforth Road. If a new access point is required from Cutsforth Road, an Access Permit and approval from the Morrow County Public Works Director would be required. This is recommended and listed as a Condition of Approval.
 - 2. In addition to the other standards and conditions set forth in this section, a TIA will be required for all projects generating more than 400 passenger car equivalent trips per day. A TIA will include: trips generated by the project, trip distribution for the project, identification of intersections for which the project adds 30 or more peak hour passenger car equivalent trips, and level of service assessment, impacts of the project, and mitigation of the impacts. If the corridor is a State Highway, use ODOT standards.**
According to the application, the proposal will not reach a level to trigger the need for a TIA and there will be no additional traffic associated with the batch plant relative to the larger project. This criterion is met.
- E. Increasing the amount of street dedication, roadway width or improvement within the street right-of-way.**

There are no proposed street dedications or roadway improvements proposed by the Applicant. A copy of these Preliminary Findings was provided to the Morrow County Public Works Department for their review.

1. It is the responsibility of the land owner to provide appropriate access for emergency vehicles at the time of development.

The proposal is within the Heppner Rural Fire Protection District which has been provided a copy of these Preliminary Findings for their review.

F. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or loading area.

The nature of a concrete batch plant operation creates, or uses, open space. The applicant does need to provide adequate parking and loading areas for the operation, and those locations are shown on the plot plan. Because these areas may move over the lifetime of the operation no paving or permanent installations are required, but management of fugitive dust does need to be accomplished.

G. Limiting or otherwise designating the number, size, location, height, and lighting of signs.

Should temporary signage and lighting be required they will need to comply with MCZO Article 4 Section 4.070. This is recommended and listed as a condition of approval.

H. Limiting the location and intensity of outdoor lighting and requiring its shielding.

See the discussion in (G) above.

I. Requiring diking, screening, landscaping or another facility to protect adjacent or nearby property and designating standards for its installation and maintenance.

Planning staff would not require any of these provisions due to the temporary nature of the operation and the surrounding uses.

J. Designating the size, height, location and materials for a fence.

The application does not state the need for fencing. If fencing six feet in height or higher is installed a Zoning Permit and Building Permits may be required.

K. Protecting and preserving existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.

The temporary batch plant is proposed in an area with an existing aggregate mining site. There are no existing trees, vegetation, water resources, evidence of wildlife habitat or other significant natural resources at the site. This preliminary Staff Report will be provided to Oregon Department of Fish and Wildlife (ODFW) and Oregon Water Resources Department.

The County has been established as a Weed Control District and has identified noxious weeds to be controlled by local landowners. Wheatridge Wind Energy, LLC has submitted a Weed Control Plan to the Morrow County Weed Supervisor. It is therefore recommended and listed as a Condition of Approval that the Applicant abide by the approved Weed Control Plan and the recommendations of the Morrow County Weed Supervisor.

L. Other conditions necessary to permit the development of the County in conformity with the intent and purpose of this Ordinance and the policies of the Comprehensive Plan.

Staff does not have recommendations for other conditions.

SECTION 6.050(I). MINING, OR OTHER EXTRACTION ACTIVITY.

The following uses shall be permitted subject to the review standards of this Ordinance: mining more than 1000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre on land zoned for Farm Use (EFU and RRI) and 5000 cubic yards in other zones (i.e. PI, MG, SAI and FU) of material, stockpiling and processing of mineral and aggregate materials. Temporary use of offices, shops or other accessory structures used for the management and maintenance of mining and processing equipment; sale of mining products extracted and processed on-site; storage of transportation equipment or storage of machinery or equipment used in conjunction with on-site mining or processing; other activities including buildings and structures necessary and accessory to development or reclamation of a mineral or aggregate resource should be part of the overall conditional permit application. (MC OR-1-2013)

GENERAL PERMITTING PROVISIONS.

1. **New Permit:** For an application for mining to be complete an applicant must provide a map and other documentation to show the permit area boundary, property lines and other pertinent information that will address the requirements of the Approval Criteria.
2. **Continuation:** When a mine has been lawfully permitted in the County and the owner or operator was issued and continuously renewed a State permit, the permit will remain valid as long as the operation still conforms to the Conditions of the local and State permits. After a period of inactivity of 12 years, and the owner or operator wishes to renew mine activity, a Zoning Permit re-validation letter (along with the usual Zoning Permit fee) must be submitted to the Planning Department in order to review the Conditions of Approval. Approval of this type of request is not a land use decision and shall be an administrative action by the Planning Director without a public hearing but shall be subject to an at least 14-day notice to affected landowners.
3. **Alteration:** Requests for permit alteration shall be made when the operator or owner proposes changes to the mining activity that no longer conform to the requirements of the original permit. For alterations if the decision does not involve an amendment to the Comprehensive Plan, it shall be an administrative decision by the Planning Director without a public hearing but shall be subject to an at least 14-day public notice period to provide an opportunity for any person adversely affected, or who is entitled to notice, to file an appeal.
4. **Emergency Permits.** In concurrence with a DOGAMI emergency operating permit, the Planning Director may issue an emergency aggregate mining approval in response to a natural disaster with the intent to abate the imminent threat. The permit will be valid for the duration of the concurrent DOGAMI permit. If after termination of the emergency operating permit the operator wishes to continue the mining operation, the operator shall follow the procedures for an aggregate mine approval as required in the use zone the mining operation is located in. (MC OR-1-2013)

These criteria are not applicable as the application is for a temporary concrete batch plant.

LOCAL PERMIT APPROVAL CRITERIA.

An application for mineral or aggregate mining must address provisions found in Article 6 Conditional Uses Section 6.020 General Criteria, Section 6.025 Resource Zone Standards for Approval when in a Farm or Forest Zone, and the following:

1. Proposed hours and/or days of operation. The conditions as to when the mining and processing would be restricted to specific hours of operation or days when mining operations would be limited. For operations conducted after dark, limiting the location and intensity of outdoor lighting and requiring its shielding.

See above discussion under Criteria 6.030(A) and 6.030(G)

2. Limiting or otherwise designating the number, size, location, height, and lighting of signs. Signs other than safety signs must comply with the sign requirements in Section 4 of the Zoning Ordinance.

See above discussion under Criterion 6.030(G).

3. A rock crusher, washer or sorter shall not be located within 500 feet from a residential or commercial use unless it can be established that the use will meet DEQ performance standards for noise and not be expected to cause a noise nuisance at nearby residential or commercial uses. In farm or forest use zones the processing of rock, aggregate or minerals shall not be within one-half mile of a noise sensitive area if the operation operates more than nine hours per day or for more than five days per week. (ORS 467.120(2)).

This criterion is not applicable as the proposed operation is located more than 500' from any established residential or commercial use.

4. All water necessary for the proposed operation shall be appropriated and legally available to the site.

Please see above discussion under criterion 6.020(C).

5. The discharge of airborne contaminants and dust created by mining shall comply with applicable DEQ ambient air quality and emissions standards, or approval shall be conditioned to ensure that such standards will not be violated.

Please see above discussion under criterion 6.030(A).

6. A Reclamation Plan approved by DOGAMI will be required for mining operations. When reviewing an applicant's submittal regarding a proposed reclamation plan, Morrow County will review the plan against the following criteria:

- a. **A description of the present land use and planned beneficial use of the site following the mining activity. The applicant must demonstrate that the planned beneficial use is compatible with the Comprehensive Plan and Zoning Ordinance.**
- b. **Provisions for the backfilling, recontouring, topsoil replacement, seedbed preparation, mulching, fertilizing, selection of plant species, seeding or planting rates, and schedules;**
- c. **Provisions for adequate setbacks and slopes to protect adjacent property and public safety;**
- d. **A proposed time schedule for surface mining and reclamation procedures for the removal or disposal of all equipment, refuse, structures, and foundations from the permit area except permanent structures that are part of an approved Reclamation Plan.**

These criteria are not applicable as the application is for a temporary concrete batch plant.

7. In accordance with the Transportation System Plan, the requirements of the Public Works Department or the Oregon Department of Transportation shall be complied with regarding the minimization of potential conflicts to local roads used for access and egress to the mining site.

The Wheatridge Wind Project is operating under an Approved Road Use Agreement with the Morrow County Public Works Department. Planning Staff would find this criterion met.

- 8. Designating the size, number, location and nature of vehicle access points.**
- a. Where access to a county road is needed, a permit from Morrow County Public Works department is required. Where access to a state highway is needed, a permit from ODOT is required.
 - b. In addition to the other standards and conditions set forth in this section, a Traffic Impact Analysis (TIA) will be required for all projects generating more than 400 passenger car equivalent trips per day. A TIA will include: trips generated by the project, trip distribution for the project, identification of intersections for which the project adds 30 or more peak hour passenger car equivalent trips, and level of service assessment, impacts of the project, and mitigation of the impacts. If the corridor is a State Highway, use ODOT standards. (MC-C-8-98)

Please see the above discussion under criterion 6.030(D)(1).

- 9. Increasing the amount of street dedication, roadway width or improvements within the street right-of-way. It is the responsibility of the land owner to provide appropriate access for emergency vehicles at the time of development. (MC-C-8-98)**

Please see the above discussion under criterion 6.030(E).

- 10. An application for a mining operation contiguous to an existing operation approved under this section shall be evaluated in conjunction with the existing site when it appears the sites will be managed and operated as one.**

This criterion is not applicable as the application is for a temporary concrete batch plant.

- 11. Ensuring adequate space for parking and loading.**

Please see the above discussion under criterion 6.030(B).

- 12. Approvals for or that include operations that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. (one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed).**

Using the best data available, planning staff could not identify any vineyards within 2-miles of the proposed use. Planning Staff would find this criterion met.

- 13. A plan for the control of noxious weeds. (MC OR-1-2013)**

Please see the above discussion in criterion 6.303(K)

- III. LEGAL NOTICE PUBLISHED:** March 11, 2020
Heppner Gazette-Times
East-Oregonian
- IV. AGENCIES NOTIFIED:** Linda Hayes-Gorman, Oregon Department of Environmental Quality; Matt Scrivner, Public Works Director; Mike Gorman, Morrow County Assessor; Greg Silbernagle, Watermaster; Dave Pranger, Morrow County Weed Coordinator; Steve Rhea, Heppner Rural Fire Protection District.
- V. PROPERTY OWNERS NOTIFIED:** March 11, 2020
- VI. HEARING DATES:** March 31, 2020
Bartholomew Building
Heppner, Oregon

VII. DECISION OF PLANNING COMMISSION:

Recommendation of staff is to approve the application subject to the following
CONDITIONS OF APPROVAL:

1. The Applicant shall contact the Oregon Department of Environmental Quality to obtain all necessary permits.
2. If a new access point is required from Cutsforth Road, an Access Permit and approval from the Morrow County Public Works Director would be required.
3. Any temporary signage and lighting required will need to comply with MCZO Article 4 Section 4.070.
4. The Applicant shall abide by the Wheatridge Wind Energy Facility Weed Control Plan and the recommendations of the Morrow County Weed Supervisor.
5. Applicant is required to comply with all rules, regulations, and requirements of the Oregon Water Resources Department in regards to this project. This includes, but is not limited to the following:
 - a. Contacting Oregon Water Resources Department to discuss source water and provide water purchase agreements as needed.
6. Comply with the Morrow County Solid Waste Ordinance.

Jeff Wenholz, Chair

Date

ATTACHMENTS:

Vicinity Map
Application