

**ELMORE COUNTY PLANNING AND ZONING COMMISSION**  
War Memorial (American Legion Hall), 515 East 2<sup>nd</sup> South Street, Mountain Home, ID  
83647

---

Wednesday, December 16, 2015 at 7:00pm

Agenda

PLEASE SILENCE CELL PHONES

CALL TO ORDER

ESTABLISH QUORUM

- |   |   |
|---|---|
| <input type="checkbox"/> Chairperson Patti Osborn           | <input type="checkbox"/> Vice-Chairperson K.C. Duerig |
| <input type="checkbox"/> Dave Holland                       | <input type="checkbox"/> Sue Fish                     |
| <input type="checkbox"/> Ed Oppedyk                         | <input type="checkbox"/> Shane Zenner                 |
| <input type="checkbox"/> Jeff Blanksma                      |   |
| <br><input type="checkbox"/> Attorney of Record Phil Miller |   |

PLEDGE OF ALLEGIANCE

PUBLIC HEARINGS

- Cat Creek Energy, LLC Appeal Hearing for the requirement of an Environmental Impact Statement for a Conditional Use Permit application for a Pump Storage Hydroelectric Electrical Generating Facility.
- Cat Creek Energy, LLC Appeal Hearing for the requirement of an Environmental Impact Statement for a Conditional Use Permit application for a Solar Electrical Generating Facility.
- Cat Creek Energy, LLC Appeal Hearing for the requirement of an Environmental Impact Statement for a Conditional Use Permit application for a Substation.
- Cat Creek Energy, LLC Appeal Hearing for the requirement of an Environmental Impact Statement for a Conditional Use Permit application for a Transmission Line.
- Cat Creek Energy, LLC Appeal Hearing for the requirement of an Environmental Impact Statement for a Conditional Use Permit application for a Wind Turbine Electrical Generating Facility.

ITEMS FROM THE PUBLIC

MINUTES

- Minutes from 12-2-2015

## **INFORMATION ITEMS**

- Upcoming P & Z Schedule

## **MEETING ADJOURNED**



# Elmore County Land Use and Building Department

520 East 2nd South Street  
Mountain Home, Id. 83647  
Phone: (208) 587-2142 ext. 254  
Fax: (208) 587-2120  
www.elmorecounty.org

Alan Christy  
Director

Tell Riley  
Building Official

Beth Bresnahan  
Planner I

Kacey Ramsauer  
Administrative  
Assistant

## Staff Report to the Planning and Zoning Commission

**Meeting/Hearing Date:** 12/16/15

**Date Report Compiled:** 12/10/15

**Report Number:** Commission-1

### Agenda Item(s):

- Cat Creek Energy, LLC Appeal Hearing for the requirement of an Environmental Impact Statement for a Conditional Use Permit application for a Pump Storage Hydroelectric Electrical Generating Facility.
- Cat Creek Energy, LLC Appeal Hearing for the requirement of an Environmental Impact Statement for a Conditional Use Permit application for a Solar Electrical Generating Facility.
- Cat Creek Energy, LLC Appeal Hearing for the requirement of an Environmental Impact Statement for a Conditional Use Permit application for a Substation.
- Cat Creek Energy, LLC Appeal Hearing for the requirement of an Environmental Impact Statement for a Conditional Use Permit application for a Transmission Line.
- Cat Creek Energy, LLC Appeal Hearing for the requirement of an Environmental Impact Statement for a Conditional Use Permit application for a Wind Turbine Electrical Generating Facility.

### Applicant/Appellant:

Cat Creek Energy, LLC  
398 S 9<sup>th</sup> Street  
Suite 240  
Boise, ID 83701

**Staff:** Alan Christy, Director

**Zoning:** Agriculture / South Fork Boise Area of Critical Concern

### BACKGROUND:

Cat Creek Energy, LLC (the "Applicant") submitted five conditional use permit applications (the "Applications") on February 26, 2015. The Applicant is proposing a project that consists of five uses that each require a conditional use permit ("CUP").

The Applications consist of the following:

- Conditional use permit application for Transmission Lines. (“CUP-2015-03”)
- Conditional use permit application for Pump Storage Hydro (“CUP-2015-04”)
- Conditional use permit application for PV Solar (“CUP-2015-05”)
- Conditional use permit application for Wind Power (“CUP-2015-06”)
- Conditional use permit application for a Substation (“CUP-2015-07”)

The Applicant’s narrative for the Applications states:

*“Above the existing Anderson Ranch Dam reservoir, approx. 800ft, a 50,000 acre ft. upper reservoir, penstocks between the two reservoirs, a concrete and steel powerhouse consisting of water turbines, approximately 39-2.85MW wind turbines, approximately 170,000 photovoltaic single axis solar panels, underground and overhead 34.5kV and 230kV transmission lines connecting to an onsite substation, a 230kV transmission line off-site which connect to the BPA Anderson Ranch-Mountain Home transmission corridor. A 10,000sq ft O&M building and facilities. All appurtenant fixtures like septic, water well, roads, pad transformers, inverters, etc. associated with the generators shall also be constructed. Up to 600MW nameplate of total electrical power generation.”*

The Elmore County Land Use and Building Director notified the Applicant at a pre-application meeting on January 15, 2015 and via email on February 2, 2015 that an Environmental Impact Statement (“EIS”) would be required. The Applicant submitted the Applications without completing an EIS. The Director sent a letter on March 27, 2015 stating that an EIS, along with other deficiencies, are required to be completed prior to the Director determining the Applications complete. An additional letter was sent to the applicants on April 10, 2015 requiring an EIS and contains additional deficiencies identified by the Elmore County Engineer. The Director sent status reports on July 16, 2015 and October 1, 2015. The Director sent a complete letter of the Application deficiencies on October 21, 2015.

Based upon the Applicant’s narrative the Director believes all the uses are interconnected and dependent on each other and dependent upon federal land. Elmore County Zoning Ordinance (the “Ordinance”) Section 6-4-2.C states:

*“Date of Application Acceptance: The date of acceptance of an application shall be the date of the letter sent by the Growth and Development Department notifying the applicant that the Director has received payment of the required fee and all of the required submittal information pursuant to this Title.”*

The Applicant has appealed the Director’s decision that an EIS is required for the Applications. Five appeal applications were filed with the Department on November 2, 2015 (the “Appeal Applications”) The Appeal Applications are attached to this report as Attachment #1.

The basis and procedure for appealing a Director decision is found in Ordinance Section 6-3-1. The Planning and Zoning Commission (the “Commission”) is required to conduct a public hearing. The Department would recommend the Commission conduct one public hearing to cover the five appeal applications. Notice of the public hearing was published in the Mountain Home News on November 25, 2015. The Notice of public hearing was mailed on November 27, 2015.

## **ATTACHMENTS**

1. Appeal Applications.
2. Hearing Notices.
3. Zoning and Property Map.

4. Director's email and letters to Applicant.
5. Letter from the Applicant dated November 8, 2015.
6. Letter from Army Corps of Engineers dated December 7, 2015.

## **DIRECTOR'S RESPONSE TO APPEAL APPLICATIONS**

The following underlined sections are points raised by the Applicant in the Appeal Applications followed by the Director's responses.

"Christy is the Director of the Growth and Development Department in Elmore County and his duties are outlined in 6-5-2(A)(6). Neither the Elmore County Ordinances nor the Idaho Statutes bestow upon a Director the power to deny a CUP application or require specific information outside the scope of statutory authority."

Director's Response: The Authority and Duties of the Director are outlined in Ordinance Chapter 5. The Director has not denied the Applications. The Director has only determined that the Applications are incomplete. The Director does have the authority to require environmental studies, specifically an EIS, pursuant to Idaho Code and the Ordinance sections listed below. In addition to the duties outlined in Ordinance Chapter 5, Ordinance Section 6-5-1.B states:

*"The Director has full authority to make and offer interpretation of how this Ordinance will be implemented and administered."*

Idaho Code § 67-6512(e) states"

*"Prior to granting a special use permit, studies may be required of the social, economic, fiscal and environmental effects...of the proposed use"*

The site falls within the Area of Critical Concern. The Ordinance defines the Area of Critical Concern as:

*"AREA OF CRITICAL CONCERN: The area designated by the Elmore County Board of County Commissioners for special protection and special land use regulations. The area is shown on the zoning map for Elmore County."*

The Description and Intent of the Area of Critical Concern is found in Ordinance Section 6-8-5.N and states:

*"Area of Critical Concern Overlay Zone: The purpose of the ACC designation is to preserve and protect natural areas that are critical to the County's water and land resources. Because the base zoning is Agriculture, traditional farming and ranching and related agricultural uses will continue. Residential and commercial uses may also be allowed; however, technical studies and an Environmental Impact Assessment may be required. Land use, lot size and density restrictions may be imposed if warranted."*

Ordinance Section 6-8-26.B.2 states:

*"B. In reviewing any proposed development requests in the Area of Critical Concern (ACC), the Director, Hearing Examiner, Commission or Board will follow these development standards....."*

*2. Technical studies, funded by the applicant, may be required at the discretion of the Director, Commission or Board to identify impacts and to determine the feasibility of the proposed use; and"*

The Ordinance defines Technical Study as:

*"Technical studies shall be completed by independent expert authorities including, but not limited to, qualified planners, engineers, architects, appropriate scientific disciplines, and technical research and government agencies and other qualified professionals as defined by this Ordinance. The Director, Commission or Board shall determine the scope of required technical studies. The applicant or developer pays for the technical studies. Any expert contributing to a technical study must have prior approval from the Director, Board or Commission."*

The above Ordinance sections, definitions and sections of Idaho Code show that technical environmental studies can be required by the Director for applications. The Director believes an EIS falls into the category of Technical Studies or Environmental Studies.

Furthermore, Ordinance Section 6-27-3.A states:

*"An application and fees, as set forth in this Title, shall be submitted to the Director on forms provided by the Growth and Development Department."*

The forms utilized by the Department for a Conditional Use Permit have had a section for the Director to determine if an EIS is required since at least 2002. The requirement for an EIS was never waived by the Director for the Applications.

The Director believes an EIS should be completed prior to deeming the Applications complete. In all likelihood an EIS will be required by federal agencies. The project narrative states they will utilize Anderson Ranch Dam reservoir and connect a 230kV transmission line to the existing Bonneville Power Administration transmission line. The Director believes an EIS will be required for these actions. The Director has received no information from federal agencies stating that an EIS will not be required for the Applications. There has since been conflicting information submitted by the Applicant for the Applications stating they do not want County approval beyond the property they own/control.

The County, through the Elmore County Local Sage Grouse Working group has recently become aware that the Applications are in or close to sage grouse habitat, which may subject the Applications to special concerns and management requirements from federal agencies. It is the Director's understanding that impacts to sage grouse on the site can create impacts or restrictions on neighboring properties. This confirms the Director's belief an EIS should be completed prior to deeming the Applications complete.

In addition, the Director believes the requirement for an EIS is consistent with Idaho Case law. In *Fischer v. City of Ketchum*, 141 Idaho 349 (2005), the Idaho Supreme Court stated:

*"Idaho Code 67-6512(e) specifically contemplated that further studies may be ordered but those must be done prior to granting the CUP."*

The Court then went on to emphasize that a parties right to meaningfully comment on the application is weakened or even "possibly nullified" if the studies are not completed prior to the public hearing. The Director believes a completed EIS is necessary for the Commission prior to making a decision.

“Conversely, the Commissioners are expressly authorized to “review and decide conditional use permit applications” and “review and approve, approve with conditions, or deny applications set forth in this ordinance.” 6-7-10(6)(8). CCE would like the Commissioners, the governing body authorized to make such decisions, to accept, review, and consider the five CUP applications.”

Director's Response: The Commission will review and decide the Applications after the Applications are deemed complete by the Director. The Director will not make a decision on the Applications. The Director will determine when the Applications are complete.

“The requirement of an EIS is beyond Christy's scope and authority. Environmental Impact Statements are governed by the National Environmental Policy Act, a federal agency, one in which Christy does not have the authority to interpret. CCE agrees that an EIS type analysis is necessary for a project of this magnitude, which is why it provided a 60 page critical issues analysis to Christy on June 30, 2015.”

Director's Response: The Applicant never consulted with the Department or Director before submitting the “60 page critical issues analysis” (the “CIA”) that was received by the Department on July 2nd. The CIA was incomplete on July 2, 2015 and contained none of the attachments it referenced. The attachments to the CIA were submitted to the Department on July 31, 2015. The CIA was reviewed by the Department and Elmore County Consultants. It was determined that the CIA would not work in place of an EIS. Please see attachment 4, a letter dated October 1, 2015. Furthermore, the Applicant agrees an EIS type analysis is necessary.

As stated previously the Director has referenced the sections of Idaho Code and the Ordinance where an EIS can be required.

“Christy has not provided sound reasoning as to his requirement of an EIS; in an email dated February 2, 2015, Christy informed CCE that an EIS would be required due to the utilization and impact on federal land. The project is not on federal land, thus, the EIS is unfounded.”

Director's Response: As stated previously the Director has referenced the sections of Idaho Code and the Ordinance where an EIS can be required. The Director believes the proposed use will impact federal land. Furthermore the Applicant's project narrative states they will utilize lands owned by the federal government. This statement from the Applicant conflicts with the project narrative.

“Despite the February 2, 2015 email requiring an EIS, Christy's October 21, 2015 deficiency letter states that now the county may be willing to accept an EIS in the form of an outline similar to the Wildlife Mitigation Plan. Christy states this outline has been used for other land use and conditional use permit applications. This sudden change in requirement is arbitrary and capricious. As the Director, Christy is supposed to “[A]id applications in the preparation and expedition of required applications” 6-5-2(A)(14). If this Wildlife Mitigation Plan outline has been used by Elmore County for other CUP applications, why was this option not proffered to CCE at the outset of the Project? To find out about this option eight months after submission of the CUP application lends to the unsystematic approach to Christy is giving to these 5 CUP applications.”

Director's Response: The option of the Wildlife Mitigation Plan is a result of meetings between the Department, County Consultants and legal counsel after a meeting with the Applicant on October 6, 2015. The Director believes this was done to aid the Applicant and explore all options available by the County. The Applicant never consulted with the County, Department or Director on options available prior to October 6, 2015.

“With regards to the unsystematic approach, requiring an EIS is unsubstantiated and arbitrary because similar projects have come before Christy that do not require an EIS. Namely, most recently, Simco Solar, LLC. Christy approved the Simco Solar, LLC CUP application without the requirement of an EIS and instead stated that one may be required at the request of an agency or commission. Christy has provided no basis, precedence, or foundation for requiring an EIS and past decision of Planning and Zoning do not support this requirement.”

Director’s Response: Simco Solar, LLC applied for a CUP for a solar facility in a Heavy Industrial Zone. The Applicant has applied for five CUP’s including a hydro facility and transmission line in the Area of Critical Concern. The uses proposed by the Applicant are in a completely different location with different uses and different zoning from those of Simco Solar, LLC. To the best of the Department’s research, Elmore County has never issued a CUP for a hydro power facility or transmission line. Furthermore, Elmore County has never issued a CUP for a substation, wind towers, or solar facility in or near the Area of Critical Concern. In addition, Elmore County has not approved nor received a CUP application the size of 39 wind turbines. 39 wind turbines is two to four times larger than any wind turbine CUP issued by Elmore County. The Director believes with the size, scope, location and zoning of the Applications, an EIS can be required.

### **STAFF COMMENT**

The Director is unsure if the Applicant wants to move forward with an environmental analysis in the form proposed by the Department. A recent letter from the Applicant dated November 8, 2015 does not provide information on how the Applicant wishes to proceed.

The Applications still have deficiencies as outlined in the letter dated October 21, 2015.

The Commission is conducting the public hearing for an appeal of a Director’s decision. The actual uses of the CUP Applications will be determined at a later date and separate public hearing.

### **STAFF RECOMMENDATION**

Staff would recommend the Commission open and conduct one public hearing to cover the Appeal Applications. Based upon the testimony and record the Commission may consider the following:

1. Continue the public hearing to a date certain if needed.
2. Continue deliberations to a date certain.
3. Uphold the Directors decision.
4. Modify the Director’s decision.
5. Accept and approve the applicant’s appeal.



**ELMORE COUNTY LAND USE & BUILDING DEPARTMENT**  
520 E 2<sup>nd</sup> South – Mountain Home, ID 83647 – (208) 587-2142  
[www.elmorecounty.org](http://www.elmorecounty.org)  
**Appeal of Elmore County Land Use & Building Department Director Decision**  
**\$800**

Please attach additional sheets of paper if necessary. Appeal shall comply with Elmore County Zoning and Development Ordinance Section 6-3-1. Do not fax! Please complete in INK.

Name: Cat Creek Energy, LLC

Address: 398 S. 9th Street, Suite 240 Boise Idaho 83701

Email / Phone: terri@pickenslawboise.com/208.954.5090

Subject of Appeal & Case #: CUP-2015-03 (Transmission Lines).

See attached.

Basis for objection: See attached.

Signature: *Terris Pickens Manweiler*

Printed Name: Terris Pickens Manweiler

**For Administrative Use Only**

File Number: CUP-2015-03A

Fee: \$800

Date Paid: 10-30-2015

Receipt Number: 20-10246

Date Accepted: 11/2/15

By: *TD*

**Cat Creek Energy, LLC Appeal Supplement**  
CUP-2015-03 – Transmission Lines

This appeal is brought forth under Title 6 of the Elmore County Zoning and Development Ordinance, Chapter 3, Section 1(A)(5).

**BACKGROUND**

Cat Creek Energy, LLC (hereinafter “CCE”) submitted five Conditional Use Permit Applications (“CUP”) on February 26, 2015 to the Elmore County Land Use and Building Department. Although CCE is constructing one Hydro, Wind, and Solar Generator Facility (the “Project”), per Alan Christy’s request, CCE submitted five individual CUP applications, each representing a separate component of the Project.

CCE took careful precautions to thoroughly review and comply with Elmore County Ordinance 6-4-1 through 6-4-9 regarding the CUP applications including; sending notice of a neighborhood meeting to surrounding neighbors, hosting the neighborhood meeting, attending a pre-application meeting with Christy to ensure CCE was in conformance with the ordinance, setting another neighborhood meeting inviting the individuals per Christy’s list of surrounding neighbors, and hosting that second neighborhood meeting. After CCE submitted the CUP applications, two separate and very substantial supplemental document productions were provided to Christy.

On October 21, 2015, CCE received a deficiency letter from Christy outlining eleven deficiencies that needed to be cured before the CUP applications could be accepted. Christy informed CCE of the right to appeal his October 21, 2015 decision, which is the course of action CCE has chosen to take. CCE is specifically appealing the second item listed by Christy; the requirement of an environmental impact statement (“EIS”) before Christy would even accept the applications.

Title 6, Chapter 3, Section 1 of the Elmore County Zoning & Development Ordinance sets forth an aggrieved person’s right to appeal a director’s decision to the Commission and provides five subject areas that an appeal may be based upon. CCE’s appeal touches on all five of the listed subject areas as explained below.

**BASIS OF APPEAL**

CCE is appealing the Director’s refusal to accept the CUP applications on the following basis: (1) The decision was in violation of constitution or statutory provisions, (2) The decision is in excess of the statutory authority of the agency, (3) the decision was made upon unlawful procedure, (4) the decision is not supported by substantial evidence on the record as a whole, and (5) the decision is arbitrary, capricious, or an abuse of discretion.

Christy is the Director of the Growth and Development Department in Elmore County and his duties are outlined in 6-5-2(A)(6). Neither the Elmore County Ordinances nor the Idaho Statutes bestow upon a Director the power to deny a CUP application or require specific information outside the scope of statutory authority.

Conversely, the Commissioners are expressly authorized to “review and decide conditional use permit applications” and “review and approve, approve with conditions, or deny applications set forth in this ordinance.” 6-7-10(6)(8). CCE would like the Commissioners, the governing body authorized to make such decisions, to accept, review, and consider the five CUP applications.

The requirement of an EIS is beyond Christy's scope and authority. Environmental Impact Statements are governed by the National Environmental Policy Act, a federal agency, one in which Christy does not have the authority to interpret. CCE agrees that an EIS type analysis is necessary for a project of this magnitude, which is why it provided a 60 page critical issues analysis to Christy on June 30, 2015.

Christy has not provided sound reasoning as to his requirement of an EIS; in an email dated February 2, 2015, Christy informed CCE that an EIS would be required due to the utilization and impact on federal land. The Project is not on federal land, thus, the EIS requirement is unfounded.

Despite the February 2, 2015 email requiring an EIS, Christy's October 21, 2015 deficiency letter states that now the county may be willing to accept an EIS in the form of an outline similar to the Wildlife Mitigation Plan. Christy states this outline has been used for other land use and conditional use permit applications. This sudden change in requirement is arbitrary and capricious. As the Director, Christy is supposed to "[A]id applications in the preparation and expedition of required applications" 6-5-2(A)(14). If this Wildlife Management Plan outline has been used by Elmore County for other CUP applications, why was this option not proffered to CCE at the outset of the Project? To find out about this option eight months after submission of the CUP applications lends to the unsystematic approach Christy is giving to these five CUP applications.

With regard to the unsystematic approach, requiring an EIS is unsubstantiated and arbitrary because similar projects have come before Christy that do not require an EIS. Namely, and most recently, Simco Solar, LLC. Christy approved the Simco Solar, LLC CUP application without the requirement of an EIS and instead stated that one may be required at the request of agency or commission. Christy has provided no basis, precedence, or foundation for requiring an EIS and past decisions of Planning & Zoning do not support his requirement.

Christy has abused his discretion by making requirements for the approval of the five CUP applications that are not within his discretion to make.

Pickens Cozakos, P.A.

received  
10-30-2015  
hand delivered

Terri Pickens Manweiler  
Attorney at Law  
[terri@pickenslawboise.com](mailto:terri@pickenslawboise.com)  
[www.pickenslawboise.com](http://www.pickenslawboise.com)

398 S. 9<sup>th</sup> Street, Ste. 240  
P.O. Box 915  
Boise, Idaho 83701  
208.954.5090 (t)  
208.954.5099 (f)

October 30, 2015

Sent via Hand Delivery

Alan Christy  
Director, Elmore County Land Use and Building Department  
510 East Second Street South,  
Mountain Home, ID 83647

RE: Cat Creek Energy, LLC

Dear Alan:

Enclosed herewith are five appeals, one for each conditional use permit application submitted by Cat Creek Energy, LLC on February 26, 2015. Also enclosed is a check in the amount of \$4,000.00 to cover the cost associated with the filing of each appeal.

Sincerely,



Terri Pickens Manweiler

Enclosures



**ELMORE COUNTY LAND USE & BUILDING DEPARTMENT**  
 520 E 2<sup>nd</sup> South – Mountain Home, ID 83647 – (208) 587-2142  
[www.elmorecounty.org](http://www.elmorecounty.org)

**Appeal of Elmore County Land Use & Building Department Director Decision  
 \$800**

Please attach additional sheets of paper if necessary. Appeal shall comply with Elmore County Zoning and Development Ordinance Section 6-3-1. Do not fax! Please complete in INK.

Name: Cat Creek Energy, LLC

Address: 398 S. 9th Street, Suite 240 Boise Idaho 83701

Email / Phone: terri@pickenslawboise.com/208.954.5090

Subject of Appeal & Case #: CUP-2015-04 (Pump Storage Hydro)

See attached.

Basis for objection: See attached.

Signature: *Terrill Pickens Hanweiler*

Printed Name: Terrill Pickens Hanweiler

For Administrative Use Only	
File Number:	<u>CUP-2015-04A</u>
Fee: \$800	Date Paid: <u>10-30-15</u>
Receipt Number:	<u>20-10246</u>
Date Accepted: <u>11/2/15</u>	By: <u>TL</u>

**Cat Creek Energy, LLC Appeal Supplement**  
CUP-2015-04 Pump Storage Hydro

This appeal is brought forth under Title 6 of the Elmore County Zoning and Development Ordinance, Chapter 3, Section 1(A)(5).

**BACKGROUND**

Cat Creek Energy, LLC (hereinafter "CCE") submitted five Conditional Use Permit Applications ("CUP") on February 26, 2015 to the Elmore County Land Use and Building Department. Although CCE is constructing one Hydro, Wind, and Solar Generator Facility (the "Project"), per Alan Christy's request, CCE submitted five individual CUP applications, each representing a separate component of the Project.

CCE took careful precautions to thoroughly review and comply with Elmore County Ordinance 6-4-1 through 6-4-9 regarding the CUP applications including; sending notice of a neighborhood meeting to surrounding neighbors, hosting the neighborhood meeting, attending a pre-application meeting with Christy to ensure CCE was in conformance with the ordinance, setting another neighborhood meeting inviting the individuals per Christy's list of surrounding neighbors, and hosting that second neighborhood meeting. After CCE submitted the CUP applications, two separate and very substantial supplemental document productions were provided to Christy.

On October 21, 2015, CCE received a deficiency letter from Christy outlining eleven deficiencies that needed to be cured before the CUP applications could be accepted. Christy informed CCE of the right to appeal his October 21, 2015 decision, which is the course of action CCE has chosen to take. CCE is specifically appealing the second item listed by Christy; the requirement of an environmental impact statement ("EIS") before Christy would even accept the applications.

Title 6, Chapter 3, Section 1 of the Elmore County Zoning & Development Ordinance sets forth an aggrieved person's right to appeal a director's decision to the Commission and provides five subject areas that an appeal may be based upon. CCE's appeal touches on all five of the listed subject areas as explained below.

**BASIS OF APPEAL**

CCE is appealing the Director's refusal to accept the CUP applications on the following basis: (1) The decision was in violation of constitution or statutory provisions, (2) The decision is in excess of the statutory authority of the agency, (3) the decision was made upon unlawful procedure, (4) the decision is not supported by substantial evidence on the record as a whole, and (5) the decision is arbitrary, capricious, or an abuse of discretion.

Christy is the Director of the Growth and Development Department in Elmore County and his duties are outlined in 6-5-2(A)(6). Neither the Elmore County Ordinances nor the Idaho Statutes bestow upon a Director the power to deny a CUP application or require specific information outside the scope of statutory authority.

Conversely, the Commissioners are expressly authorized to "review and decide conditional use permit applications" and "review and approve, approve with conditions, or deny applications set forth in this ordinance." 6-7-10(6)(8). CCE would like the Commissioners, the governing body authorized to make such decisions, to accept, review, and consider the five CUP applications.

The requirement of an EIS is beyond Christy's scope and authority. Environmental Impact Statements are governed by the National Environmental Policy Act, a federal agency, one in which Christy does not have the authority to interpret. CCE agrees that an EIS type analysis is necessary for a project of this magnitude, which is why it provided a 60 page critical issues analysis to Christy on June 30, 2015.

Christy has not provided sound reasoning as to his requirement of an EIS; in an email dated February 2, 2015, Christy informed CCE that an EIS would be required due to the utilization and impact on federal land. The Project is not on federal land, thus, the EIS requirement is unfounded.

Despite the February 2, 2015 email requiring an EIS, Christy's October 21, 2015 deficiency letter states that now the county may be willing to accept an EIS in the form of an outline similar to the Wildlife Mitigation Plan. Christy states this outline has been used for other land use and conditional use permit applications. This sudden change in requirement is arbitrary and capricious. As the Director, Christy is supposed to "[A]id applications in the preparation and expedition of required applications" 6-5-2(A)(14). If this Wildlife Management Plan outline has been used by Elmore County for other CUP applications, why was this option not proffered to CCE at the outset of the Project? To find out about this option eight months after submission of the CUP applications lends to the unsystematic approach Christy is giving to these five CUP applications.

With regard to the unsystematic approach, requiring an EIS is unsubstantiated and arbitrary because similar projects have come before Christy that do not require an EIS. Namely, and most recently, Simco Solar, LLC. Christy approved the Simco Solar, LLC CUP application without the requirement of an EIS and instead stated that one may be required at the request of agency or commission. Christy has provided no basis, precedence, or foundation for requiring an EIS and past decisions of Planning & Zoning do not support his requirement.

Christy has abused his discretion by making requirements for the approval of the five CUP applications that are not within his discretion to make.



**ELMORE COUNTY LAND USE & BUILDING DEPARTMENT**  
 520 E 2<sup>nd</sup> South – Mountain Home, ID 83647 – (208) 587-2142  
[www.elmorecounty.org](http://www.elmorecounty.org)

**Appeal of Elmore County Land Use & Building Department Director Decision  
 \$800**

Please attach additional sheets of paper if necessary. **Appeal shall comply with Elmore County Zoning and Development Ordinance Section 6-3-1. Do not fax! Please complete in INK.**

Name: Cat Creek Energy, LLC

Address: 398 S. 9th Street, Suite 240 Boise Idaho 83701

Email / Phone: terri@pickenslawboise.com/208.954.5090

Subject of Appeal & Case #: CUP-2015-05 (PV Solar)

See attached.

Basis for objection: See attached.

Signature: *Terri Pickens Marwiler*

Printed Name: Terri Pickens Marwiler

<b>For Administrative Use Only</b>	
File Number:	<u>CUP-2015-05A</u>
Fee: \$800	Date Paid: <u>10 30-15</u>
Receipt Number:	<u>20-10246</u>
Date Accepted: <u>11-2-15</u>	By: <u><i>KH</i></u>

**Cat Creek Energy, LLC Appeal Supplement**  
CUP-2015-05 PV Solar

This appeal is brought forth under Title 6 of the Elmore County Zoning and Development Ordinance, Chapter 3, Section 1(A)(5).

**BACKGROUND**

Cat Creek Energy, LLC (hereinafter "CCE") submitted five Conditional Use Permit Applications ("CUP") on February 26, 2015 to the Elmore County Land Use and Building Department. Although CCE is constructing one Hydro, Wind, and Solar Generator Facility (the "Project"), per Alan Christy's request, CCE submitted five individual CUP applications, each representing a separate component of the Project.

CCE took careful precautions to thoroughly review and comply with Elmore County Ordinance 6-4-1 through 6-4-9 regarding the CUP applications including; sending notice of a neighborhood meeting to surrounding neighbors, hosting the neighborhood meeting, attending a pre-application meeting with Christy to ensure CCE was in conformance with the ordinance, setting another neighborhood meeting inviting the individuals per Christy's list of surrounding neighbors, and hosting that second neighborhood meeting. After CCE submitted the CUP applications, two separate and very substantial supplemental document productions were provided to Christy.

On October 21, 2015, CCE received a deficiency letter from Christy outlining eleven deficiencies that needed to be cured before the CUP applications could be accepted. Christy informed CCE of the right to appeal his October 21, 2015 decision, which is the course of action CCE has chosen to take. CCE is specifically appealing the second item listed by Christy; the requirement of an environmental impact statement ("EIS") before Christy would even accept the applications.

Title 6, Chapter 3, Section 1 of the Elmore County Zoning & Development Ordinance sets forth an aggrieved person's right to appeal a director's decision to the Commission and provides five subject areas that an appeal may be based upon. CCE's appeal touches on all five of the listed subject areas as explained below.

**BASIS OF APPEAL**

CCE is appealing the Director's refusal to accept the CUP applications on the following basis: (1) The decision was in violation of constitution or statutory provisions, (2) The decision is in excess of the statutory authority of the agency, (3) the decision was made upon unlawful procedure, (4) the decision is not supported by substantial evidence on the record as a whole, and (5) the decision is arbitrary, capricious, or an abuse of discretion.

Christy is the Director of the Growth and Development Department in Elmore County and his duties are outlined in 6-5-2(A)(6). Neither the Elmore County Ordinances nor the Idaho Statutes bestow upon a Director the power to deny a CUP application or require specific information outside the scope of statutory authority.

Conversely, the Commissioners are expressly authorized to "review and decide conditional use permit applications" and "review and approve, approve with conditions, or deny applications set forth in this ordinance." 6-7-10(6)(8). CCE would like the Commissioners, the governing body authorized to make such decisions, to accept, review, and consider the five CUP applications.

The requirement of an EIS is beyond Christy's scope and authority. Environmental Impact Statements are governed by the National Environmental Policy Act, a federal agency, one in which Christy does not have the authority to interpret. CCE agrees that an EIS type analysis is necessary for a project of this magnitude, which is why it provided a 60 page critical issues analysis to Christy on June 30, 2015.

Christy has not provided sound reasoning as to his requirement of an EIS; in an email dated February 2, 2015, Christy informed CCE that an EIS would be required due to the utilization and impact on federal land. The Project is not on federal land, thus, the EIS requirement is unfounded.

Despite the February 2, 2015 email requiring an EIS, Christy's October 21, 2015 deficiency letter states that now the county may be willing to accept an EIS in the form of an outline similar to the Wildlife Mitigation Plan. Christy states this outline has been used for other land use and conditional use permit applications. This sudden change in requirement is arbitrary and capricious. As the Director, Christy is supposed to "[A]id applications in the preparation and expedition of required applications" 6-5-2(A)(14). If this Wildlife Management Plan outline has been used by Elmore County for other CUP applications, why was this option not proffered to CCE at the outset of the Project? To find out about this option eight months after submission of the CUP applications lends to the unsystematic approach Christy is giving to these five CUP applications.

With regard to the unsystematic approach, requiring an EIS is unsubstantiated and arbitrary because similar projects have come before Christy that do not require an EIS. Namely, and most recently, Simco Solar, LLC. Christy approved the Simco Solar, LLC CUP application without the requirement of an EIS and instead stated that one may be required at the request of agency or commission. Christy has provided no basis, precedence, or foundation for requiring an EIS and past decisions of Planning & Zoning do not support his requirement.

Christy has abused his discretion by making requirements for the approval of the five CUP applications that are not within his discretion to make.

received  
10-30-2015 (KW)  
hand delivered

## Pickens Cozakos, P.A.

Terri Pickens Manweiler  
Attorney at Law  
[terri@pickenslawboise.com](mailto:terri@pickenslawboise.com)  
[www.pickenslawboise.com](http://www.pickenslawboise.com)

398 S. 9<sup>th</sup> Street, Ste 240  
P.O. Box 915  
Boise, Idaho 83701  
208.954.5090 (t)  
208.954.5099 (f)

October 30, 2015

**Sent via Hand Delivery**

Alan Christy  
Director, Elmore County Land Use and Building Department  
510 East Second Street South,  
Mountain Home, ID 83647

RE: Cat Creek Energy, LLC

Dear Alan:

Enclosed herewith are five appeals, one for each conditional use permit application submitted by Cat Creek Energy, LLC on February 26, 2015. Also enclosed is a check in the amount of \$4,000.00 to cover the cost associated with the filing of each appeal.

Sincerely,



Terri Pickens Manweiler

Enclosures



**ELMORE COUNTY LAND USE & BUILDING DEPARTMENT**  
 520 E 2<sup>nd</sup> South – Mountain Home, ID 83647 – (208) 587-2142  
[www.elmorecounty.org](http://www.elmorecounty.org)  
 Appeal of Elmore County Land Use & Building Department Director Decision  
 \$800

Please attach additional sheets of paper if necessary. Appeal shall comply with Elmore County Zoning and Development Ordinance Section 6-3-1. Do not fax! Please complete in INK.

Name: Cat Creek Energy, LLC

Address: 398 S. 9th Street, Suite 240 Boise Idaho 83701

Email / Phone: terri@pickenslawboise.com/208.954.5090

Subject of Appeal & Case #: CUP-2015-06 (Wind Power)

See attached

Basis for objection: See attached.

Signature: *Terris Pickens*

Printed Name: Terris Pickens, Manweiler

For Administrative Use Only	
File Number:	<u>CUP-2015-00A</u>
Fee: \$800	Date Paid <u>10-30-15</u>
Receipt Number:	<u>20-10746</u>
Date Accepted: <u>11/2/15</u>	By: <u><i>TD</i></u>

**Cat Creek Energy, LLC Appeal Supplement**  
CUP-2015-06 Wind Power

This appeal is brought forth under Title 6 of the Elmore County Zoning and Development Ordinance, Chapter 3, Section 1(A)(5).

**BACKGROUND**

Cat Creek Energy, LLC (hereinafter "CCE") submitted five Conditional Use Permit Applications ("CUP") on February 26, 2015 to the Elmore County Land Use and Building Department. Although CCE is constructing one Hydro, Wind, and Solar Generator Facility (the "Project"), per Alan Christy's request, CCE submitted five individual CUP applications, each representing a separate component of the Project.

CCE took careful precautions to thoroughly review and comply with Elmore County Ordinance 6-4-1 through 6-4-9 regarding the CUP applications including; sending notice of a neighborhood meeting to surrounding neighbors, hosting the neighborhood meeting, attending a pre-application meeting with Christy to ensure CCE was in conformance with the ordinance, setting another neighborhood meeting inviting the individuals per Christy's list of surrounding neighbors, and hosting that second neighborhood meeting. After CCE submitted the CUP applications, two separate and very substantial supplemental document productions were provided to Christy.

On October 21, 2015, CCE received a deficiency letter from Christy outlining eleven deficiencies that needed to be cured before the CUP applications could be accepted. Christy informed CCE of the right to appeal his October 21, 2015 decision, which is the course of action CCE has chosen to take. CCE is specifically appealing the second item listed by Christy; the requirement of an environmental impact statement ("EIS") before Christy would even accept the applications.

Title 6, Chapter 3, Section 1 of the Elmore County Zoning & Development Ordinance sets forth an aggrieved person's right to appeal a director's decision to the Commission and provides five subject areas that an appeal may be based upon. CCE's appeal touches on all five of the listed subject areas as explained below.

**BASIS OF APPEAL**

CCE is appealing the Director's refusal to accept the CUP applications on the following basis: (1) The decision was in violation of constitution or statutory provisions, (2) The decision is in excess of the statutory authority of the agency, (3) the decision was made upon unlawful procedure, (4) the decision is not supported by substantial evidence on the record as a whole, and (5) the decision is arbitrary, capricious, or an abuse of discretion.

Christy is the Director of the Growth and Development Department in Elmore County and his duties are outlined in 6-5-2(A)(6). Neither the Elmore County Ordinances nor the Idaho Statutes bestow upon a Director the power to deny a CUP application or require specific information outside the scope of statutory authority.

Conversely, the Commissioners are expressly authorized to "review and decide conditional use permit applications" and "review and approve, approve with conditions, or deny applications set forth in this ordinance." 6-7-10(6)(8). CCE would like the Commissioners, the governing body authorized to make such decisions, to accept, review, and consider the five CUP applications.

The requirement of an EIS is beyond Christy's scope and authority. Environmental Impact Statements are governed by the National Environmental Policy Act, a federal agency, one in which Christy does not have the authority to interpret. CCE agrees that an EIS type analysis is necessary for a project of this magnitude, which is why it provided a 60 page critical issues analysis to Christy on June 30, 2015.

Christy has not provided sound reasoning as to his requirement of an EIS; in an email dated February 2, 2015, Christy informed CCE that an EIS would be required due to the utilization and impact on federal land. The Project is not on federal land, thus, the EIS requirement is unfounded.

Despite the February 2, 2015 email requiring an EIS, Christy's October 21, 2015 deficiency letter states that now the county may be willing to accept an EIS in the form of an outline similar to the Wildlife Mitigation Plan. Christy states this outline has been used for other land use and conditional use permit applications. This sudden change in requirement is arbitrary and capricious. As the Director, Christy is supposed to "[A]id applications in the preparation and expedition of required applications" 6-5-2(A)(14). If this Wildlife Management Plan outline has been used by Elmore County for other CUP applications, why was this option not proffered to CCE at the outset of the Project? To find out about this option eight months after submission of the CUP applications lends to the unsystematic approach Christy is giving to these five CUP applications.

With regard to the unsystematic approach, requiring an EIS is unsubstantiated and arbitrary because similar projects have come before Christy that do not require an EIS. Namely, and most recently, Simco Solar, LLC. Christy approved the Simco Solar, LLC CUP application without the requirement of an EIS and instead stated that one may be required at the request of agency or commission. Christy has provided no basis, precedence, or foundation for requiring an EIS and past decisions of Planning & Zoning do not support his requirement.

Christy has abused his discretion by making requirements for the approval of the five CUP applications that are not within his discretion to make.

# Pickens Cozakov, P.A.

received  
10-30-2015 (KW)  
hand delivered

Terri Pickens Manweiler  
Attorney at Law  
[terri@pickenslawboise.com](mailto:terri@pickenslawboise.com)  
[www.pickenslawboise.com](http://www.pickenslawboise.com)

398 S. 9<sup>th</sup> Street, Ste 240  
P.O. Box 915  
Boise, Idaho 83701  
208.954.5090 (t)  
208.954.5099 (f)

October 30, 2015

Sent via Hand Delivery

Alan Christy  
Director, Elmore County Land Use and Building Department  
510 East Second Street South,  
Mountain Home, ID 83647

RE: Cat Creek Energy, LLC

Dear Alan:

Enclosed herewith are five appeals, one for each conditional use permit application submitted by Cat Creek Energy, LLC on February 26, 2015. Also enclosed is a check in the amount of \$4,000.00 to cover the cost associated with the filing of each appeal.

Sincerely,



Terri Pickens Manweiler

Enclosures



ELMORE COUNTY LAND USE & BUILDING DEPARTMENT  
520 E 2<sup>nd</sup> South – Mountain Home, ID 83647 – (208) 587-2142

[www.elmorecounty.org](http://www.elmorecounty.org)

Appeal of Elmore County Land Use & Building Department Director Decision  
\$800

Please attach additional sheets of paper if necessary. **Appeal shall comply with Elmore County Zoning and Development Ordinance Section 6-3-1. Do not fax! Please complete in INK.**

Name: Cat Creek Energy, LLC

Address: 398 S. 9th Street, Suite 240 Boise Idaho 83701

Email / Phone: terri@pickenslawboise.com/208.954.5090

Subject of Appeal & Case #: CUP-2015-07 (Substation)

See attached.

Basis for objection: See attached.

Signature: *Terri Pickens Manweiler*

Printed Name Terri Pickens Manweiler

**For Administrative Use Only**

File Number: CUP-2015-07 A

Fee: \$800 Date Paid: 10-30-15

Receipt Number: DO-10246

Date Accepted 11-2-15 By: *KA*

**Cat Creek Energy, LLC Appeal Supplement**  
CUP-2015-07 Substation

This appeal is brought forth under Title 6 of the Elmore County Zoning and Development Ordinance, Chapter 3, Section 1(A)(5).

**BACKGROUND**

Cat Creek Energy, LLC (hereinafter "CCE") submitted five Conditional Use Permit Applications ("CUP") on February 26, 2015 to the Elmore County Land Use and Building Department. Although CCE is constructing one Hydro, Wind, and Solar Generator Facility (the "Project"), per Alan Christy's request, CCE submitted five individual CUP applications, each representing a separate component of the Project.

CCE took careful precautions to thoroughly review and comply with Elmore County Ordinance 6-4-1 through 6-4-9 regarding the CUP applications including; sending notice of a neighborhood meeting to surrounding neighbors, hosting the neighborhood meeting, attending a pre-application meeting with Christy to ensure CCE was in conformance with the ordinance, setting another neighborhood meeting inviting the individuals per Christy's list of surrounding neighbors, and hosting that second neighborhood meeting. After CCE submitted the CUP applications, two separate and very substantial supplemental document productions were provided to Christy.

On October 21, 2015, CCE received a deficiency letter from Christy outlining eleven deficiencies that needed to be cured before the CUP applications could be accepted. Christy informed CCE of the right to appeal his October 21, 2015 decision, which is the course of action CCE has chosen to take. CCE is specifically appealing the second item listed by Christy; the requirement of an environmental impact statement ("EIS") before Christy would even accept the applications.

Title 6, Chapter 3, Section 1 of the Elmore County Zoning & Development Ordinance sets forth an aggrieved person's right to appeal a director's decision to the Commission and provides five subject areas that an appeal may be based upon. CCE's appeal touches on all five of the listed subject areas as explained below.

**BASIS OF APPEAL**

CCE is appealing the Director's refusal to accept the CUP applications on the following basis: (1) The decision was in violation of constitution or statutory provisions, (2) The decision is in excess of the statutory authority of the agency, (3) the decision was made upon unlawful procedure, (4) the decision is not supported by substantial evidence on the record as a whole, and (5) the decision is arbitrary, capricious, or an abuse of discretion.

Christy is the Director of the Growth and Development Department in Elmore County and his duties are outlined in 6-5-2(A)(6). Neither the Elmore County Ordinances nor the Idaho Statutes bestow upon a Director the power to deny a CUP application or require specific information outside the scope of statutory authority.

Conversely, the Commissioners are expressly authorized to "review and decide conditional use permit applications" and "review and approve, approve with conditions, or deny applications set forth in this ordinance." 6-7-10(6)(8). CCE would like the Commissioners, the governing body authorized to make such decisions, to accept, review, and consider the five CUP applications.

The requirement of an EIS is beyond Christy's scope and authority. Environmental Impact Statements are governed by the National Environmental Policy Act, a federal agency, one in which Christy does not have the authority to interpret. CCE agrees that an EIS type analysis is necessary for a project of this magnitude, which is why it provided a 60 page critical issues analysis to Christy on June 30, 2015.

Christy has not provided sound reasoning as to his requirement of an EIS; in an email dated February 2, 2015, Christy informed CCE that an EIS would be required due to the utilization and impact on federal land. The Project is not on federal land, thus, the EIS requirement is unfounded.

Despite the February 2, 2015 email requiring an EIS, Christy's October 21, 2015 deficiency letter states that now the county may be willing to accept an EIS in the form of an outline similar to the Wildlife Mitigation Plan. Christy states this outline has been used for other land use and conditional use permit applications. This sudden change in requirement is arbitrary and capricious. As the Director, Christy is supposed to "[A]id applications in the preparation and expedition of required applications" 6-5-2(A)(14). If this Wildlife Management Plan outline has been used by Elmore County for other CUP applications, why was this option not proffered to CCE at the outset of the Project? To find out about this option eight months after submission of the CUP applications lends to the unsystematic approach Christy is giving to these five CUP applications.

With regard to the unsystematic approach, requiring an EIS is unsubstantiated and arbitrary because similar projects have come before Christy that do not require an EIS. Namely, and most recently, Simco Solar, LLC. Christy approved the Simco Solar, LLC CUP application without the requirement of an EIS and instead stated that one may be required at the request of agency or commission. Christy has provided no basis, precedence, or foundation for requiring an EIS and past decisions of Planning & Zoning do not support his requirement.

Christy has abused his discretion by making requirements for the approval of the five CUP applications that are not within his discretion to make.

# Pickens Cozakov, P.A.

received  
10-30-2015  
hand deliv

Terri Pickens Manweiler  
Attorney at Law  
[terri@pickenslawboise.com](mailto:terri@pickenslawboise.com)  
[www.pickenslawboise.com](http://www.pickenslawboise.com)

398 S. 9<sup>th</sup> Street, Ste 240  
P.O. Box 915  
Boise, Idaho 83701  
208.954.5090 (t)  
208.954.5099 (f)

October 30, 2015

**Sent via Hand Delivery**

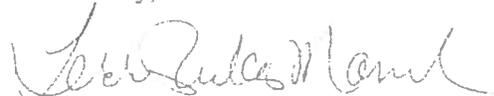
Alan Christy  
Director, Elmore County Land Use and Building Department  
510 East Second Street South,  
Mountain Home, ID 83647

RE: Cat Creek Energy, LLC

Dear Alan:

Enclosed herewith are five appeals, one for each conditional use permit application submitted by Cat Creek Energy, LLC on February 26, 2015. Also enclosed is a check in the amount of \$4,000.00 to cover the cost associated with the filing of each appeal.

Sincerely,



Terri Pickens Manweiler

Enclosures

**ELMORE COUNTY PLANNING AND ZONING COMMISSION  
NOTICE OF APPEAL HEARING FOR THE REQUIREMENT OF AN  
ENVIRONMENTAL IMPACT STATEMENT FOR A CONDITIONAL USE PERMIT  
APPLICATION FOR A PUMP STORAGE HYDROELECTRIC ELECTRICAL  
GENERATING FACILITY**

**NOTICE IS HEREBY GIVEN** that on Wednesday, December 16, 2015 at the hour of 7:00 p.m. in the War Memorial Hall (American Legion) 515 East 2nd South Street, Mountain Home, Idaho, an appeal hearing will be held on a decision by the Elmore County Land Use and Building Director in the Agriculture and Area of Critical Concern Overlay Zones.

The Elmore County Land Use and Building Director ("Director"), on October 21, 2015 issued a decision requiring an Environmental Impact Statement ("EIS") for a conditional use permit application, from Cat Creek Energy, LLC ("Applicant") for a hydroelectric electrical generating facility.

The Director required the EIS based upon the location, scope and impact of the Application. The Director has found that environmental studies can be required for conditional use permits pursuant to Elmore County Zoning and Development Ordinance ("Ordinance") sections 6-4-2A, 6-8-5N, 6-8-26B.2 and Idaho Code § 67-6512(e).

The applicant seeks to overturn the Director's decision requiring the EIS for a pump storage hydroelectric electrical generating facility. Grounds for the appeal include, but are not limited to, the following:

The Applicant believes the decision by the Director to require an EIS is in excess of the statutory authority of the agency, made upon an unlawful procedure, not supported by substantial evidence on the record as a whole and arbitrary, capricious and an abuse of discretion.

Furthermore, the Applicant believes the Director did not aid the Applicant in the preparation and expedition of required applications pursuant to Ordinance section 6-5-2A.14.

The site is located in portions of Sections 25, 26, 27, 35 and 36, Township 1 North, Range 9 East, B.M. and portions of Sections 1 & 2, Township 1 South, Range 9 East, B.M. A common way of locating the site is head north from Mountain Home on U.S. Highway 20 for 25.4 miles and turn left on Wood Creek Road. The site is approximately 3.2 miles north on Wood Creek Road.

The record for this matter may be reviewed prior to the hearing in the Elmore County Land Use and Building Department, 520 E 2<sup>nd</sup> South, during regular business hours.

Any and all interested persons shall be heard at said public hearing and the public is welcome and invited to submit testimony. Anyone who wishes to testify but is unable to attend may submit written testimony prior to the hearing by sending it to Elmore County Land Use and Building Department, 520 East 2<sup>nd</sup> South Street, Mountain Home, Idaho, 83647.

The Elmore County Clerk is responsible for ensuring compliance with the American Disabilities Act of 1993. Provisions will be made for persons with disabilities who are unable to attend this hearing. A grievance procedure is available from M. Bate, Elmore County Courthouse, in accordance with the ADA regulations.

*Alan Christy*

Alan Christy, Director  
Land Use and Building Department  
Elmore County, Idaho

1 Publication  
November 25, 2015

**ELMORE COUNTY PLANNING AND ZONING COMMISSION  
NOTICE OF APPEAL HEARING FOR THE REQUIREMENT OF AN  
ENVIRONMENTAL IMPACT STATEMENT FOR A CONDITIONAL USE PERMIT  
APPLICATION FOR A SOLAR ELECTRICAL GENERATING FACILITY**

**NOTICE IS HEREBY GIVEN** that on Wednesday, December 16, 2015 at the hour of 7:00 p.m. in the War Memorial Hall (American Legion) 515 East 2nd South Street, Mountain Home, Idaho, an appeal hearing will be held on a decision by the Elmore County Land Use and Building Director in the Agriculture Zone.

The Elmore County Land Use and Building Director ("Director"), on October 21, 2015 issued a decision requiring an Environmental Impact Statement ("EIS") for a conditional use permit application, from Cat Creek Energy, LLC ("Applicant") for solar electrical generating facility.

The Director required the EIS based upon the location, proximity to the Area of Critical Concern, scope and impact of the Application. The Director has found that environmental studies can be required for conditional use permits pursuant to Elmore County Zoning and Development Ordinance ("Ordinance") sections 6-4-2A, 6-8-5N, 6-8-26B.2 and Idaho Code § 67-6512(e).

The applicant seeks to overturn the Director's decision requiring the EIS for a solar electrical generating facility. Grounds for the appeal include, but are not limited to, the following:

The Applicant believes the decision by the Director to require an EIS is in excess of the statutory authority of the agency, made upon an unlawful procedure, not supported by substantial evidence on the record as a whole and arbitrary, capricious and an abuse of discretion.

Furthermore, the Applicant believes the Director did not aid the Applicant in the preparation and expedition of required applications pursuant to Ordinance section 6-5-2A.14.

The site is located in portions of Sections 2, 3, 10 & 11, Township 1 South, Range 9 East, B.M. A common way of locating the site is head north from Mountain Home on U.S. Highway 20 for 25.4 miles and turn left on Wood Creek Road. The site is approximately 3.2 miles north on Wood Creek Road.

The record for this matter may be reviewed prior to the hearing in the Elmore County Land Use and Building Department, 520 E 2<sup>nd</sup> South, during regular business hours.

Any and all interested persons shall be heard at said public hearing and the public is welcome and invited to submit testimony. Anyone who wishes to testify but is unable to attend may submit written testimony prior to the hearing by sending it to Elmore County Land Use and Building Department, 520 East 2<sup>nd</sup> South Street, Mountain Home, Idaho, 83647.

The Elmore County Clerk is responsible for ensuring compliance with the American Disabilities Act of 1993. Provisions will be made for persons with disabilities who are unable to attend this hearing. A grievance procedure is available from M. Bate, Elmore County Courthouse, in accordance with the ADA regulations.

**Alan Christy, Director**

**ELMORE COUNTY PLANNING AND ZONING COMMISSION  
NOTICE OF APPEAL HEARING FOR THE REQUIREMENT OF AN  
ENVIRONMENTAL IMPACT STATEMENT FOR A CONDITIONAL USE PERMIT  
APPLICATION FOR A SUBSTATION**

**NOTICE IS HEREBY GIVEN** that on Wednesday, December 16, 2015 at the hour of 7:00 p.m. in the War Memorial Hall (American Legion) 515 East 2nd South Street, Mountain Home, Idaho, an appeal hearing will be held on a decision by the Elmore County Land Use and Building Director in the Agriculture Zone.

The Elmore County Land Use and Building Director ("Director"), on October 21, 2015 issued a decision requiring an Environmental Impact Statement ("EIS") for a conditional use permit application, from Cat Creek Energy, LLC ("Applicant") for a substation.

The Director required the EIS based upon the location, proximity to the Area of Critical Concern, scope and impact of the Application. The Director has found that environmental studies can be required for conditional use permits pursuant to Elmore County Zoning and Development Ordinance ("Ordinance") sections 6-4-2A, 6-8-5N, 6-8-26B.2 and Idaho Code § 67-6512(e).

The applicant seeks to overturn the Director's decision requiring the EIS for a substation. Grounds for the appeal include, but are not limited to, the following:

The Applicant believes the decision by the Director to require an EIS is in excess of the statutory authority of the agency, made upon an unlawful procedure, not supported by substantial evidence on the record as a whole and arbitrary, capricious and an abuse of discretion.

Furthermore, the Applicant believes the Director did not aid the Applicant in the preparation and expedition of required applications pursuant to Ordinance section 6-5-2A.14.

The site is located in portions of Sections 2 & 11, Township 1 South, Range 9 East, B.M. A common way of locating the site is head north from Mountain Home on U.S. Highway 20 for 25.4 miles and turn left on Wood Creek Road. The site is approximately 3.2 miles north on Wood Creek Road.

The record for this matter may be reviewed prior to the hearing in the Elmore County Land Use and Building Department, 520 E 2<sup>nd</sup> South, during regular business hours.

Any and all interested persons shall be heard at said public hearing and the public is welcome and invited to submit testimony. Anyone who wishes to testify but is unable to attend may submit written testimony prior to the hearing by sending it to Elmore County Land Use and Building Department, 520 East 2<sup>nd</sup> South Street, Mountain Home, Idaho, 83647.

The Elmore County Clerk is responsible for ensuring compliance with the American Disabilities Act of 1993. Provisions will be made for persons with disabilities who are unable to attend this hearing. A grievance procedure is available from M. Bate, Elmore County Courthouse, in accordance with the ADA regulations.

**Alan Christy, Director**

**Land Use and Building Department  
Elmore County, Idaho**

**I Publication  
November 25, 2015**

**ELMORE COUNTY PLANNING AND ZONING COMMISSION  
NOTICE OF APPEAL HEARING FOR THE REQUIREMENT OF AN  
ENVIRONMENTAL IMPACT STATEMENT FOR A CONDITIONAL USE PERMIT  
APPLICATION FOR A TRANSMISSION LINE**

**NOTICE IS HEREBY GIVEN** that on Wednesday, December 16, 2015 at the hour of 7:00 p.m. in the War Memorial Hall (American Legion) 515 East 2nd South Street, Mountain Home, Idaho, an appeal hearing will be held on a decision by the Elmore County Land Use and Building Director in the Agriculture and Area of Critical Concern Overlay Zones.

The Elmore County Land Use and Building Director (“Director”), on October 21, 2015 issued a decision requiring an Environmental Impact Statement (“EIS”) for a conditional use permit application, from Cat Creek Energy, LLC (“Applicant”) for a transmission line.

The Director required the EIS based upon the location, scope and impact of the Application. The Director has found that environmental studies can be required for conditional use permits pursuant to Elmore County Zoning and Development Ordinance (“Ordinance”) sections 6-4-2A, 6-8-5N, 6-8-26B.2 and Idaho Code § 67-6512(e).

The applicant seeks to overturn the Director’s decision requiring the EIS for a transmission line. Grounds for the appeal include, but are not limited to, the following:

The Applicant believes the decision by the Director to require an EIS is in excess of the statutory authority of the agency, made upon an unlawful procedure, not supported by substantial evidence on the record as a whole and arbitrary, capricious and an abuse of discretion.

Furthermore, the Applicant believes the Director did not aid the Applicant in the preparation and expedition of required applications pursuant to Ordinance section 6-5-2A.14.

The site is located in portions of Sections 26 and 35, Township 1 North, Range 9 East, B.M. and portions of Sections 2, 3, 10 & 11, Township 1 South, Range 9 East, B.M. A common way of locating the site is head north from Mountain Home on U.S. Highway 20 for 25.4 miles and turn left on Wood Creek Road. The site is approximately 3.2 miles north on Wood Creek Road.

The record for this matter may be reviewed prior to the hearing in the Elmore County Land Use and Building Department, 520 E 2<sup>nd</sup> South, during regular business hours.

Any and all interested persons shall be heard at said public hearing and the public is welcome and invited to submit testimony. Anyone who wishes to testify but is unable to attend may submit written testimony prior to the hearing by sending it to Elmore County Land Use and Building Department, 520 East 2<sup>nd</sup> South Street, Mountain Home, Idaho, 83647.

The Elmore County Clerk is responsible for ensuring compliance with the American Disabilities Act of 1993. Provisions will be made for persons with disabilities who are unable to attend this hearing. A grievance procedure is available from M. Bate, Elmore County Courthouse, in accordance with the ADA regulations.

**Alan Christy, Director**

**Land Use and Building Department  
Elmore County, Idaho**

**1 Publication  
November 25, 2015**

**ELMORE COUNTY PLANNING AND ZONING COMMISSION  
NOTICE OF APPEAL HEARING FOR THE REQUIREMENT OF AN  
ENVIRONMENTAL IMPACT STATEMENT FOR A CONDITIONAL USE PERMIT  
APPLICATION FOR A WIND TURBINE ELECTRICAL GENERATING FACILITY**

**NOTICE IS HEREBY GIVEN** that on Wednesday, December 16, 2015 at the hour of 7:00 p.m. in the War Memorial Hall (American Legion) 515 East 2nd South Street, Mountain Home, Idaho, an appeal hearing will be held on a decision by the Elmore County Land Use and Building Director in the Agriculture Zone.

The Elmore County Land Use and Building Director (“Director”), on October 21, 2015 issued a decision requiring an Environmental Impact Statement (“EIS”) for a conditional use permit application, from Cat Creek Energy, LLC (“Applicant”) for a wind turbine electrical generating facility.

The Director required the EIS based upon the location, proximity to the Area of Critical Concern, scope and impact of the Application. The Director has found that environmental studies can be required for conditional use permits pursuant to Elmore County Zoning and Development Ordinance (“Ordinance”) sections 6-4-2A, 6-8-5N, 6-8-26B.2 and Idaho Code § 67-6512(e).

The applicant seeks to overturn the Director’s decision requiring the EIS for a wind turbine electrical generating facility. Grounds for the appeal include, but are not limited to, the following:

The Applicant believes the decision by the Director to require an EIS is in excess of the statutory authority of the agency, made upon an unlawful procedure, not supported by substantial evidence on the record as a whole and arbitrary, capricious and an abuse of discretion.

Furthermore, the Applicant believes the Director did not aid the application in the preparation and expedition of required applicants pursuant to Ordinance section 6-5-2A.14.

The site is located in portions of Sections 15, 21, 22, 28, 29, 30, 31, 32 & 33, Township 1 South, Range 10 East, B.M. A common way of locating the site is head north from Mountain Home on U.S. Highway 20 for 28 miles. The site is located on both sides of U.S. Highway.

The record for this matter may be reviewed prior to the hearing in the Elmore County Land Use and Building Department, 520 E 2<sup>nd</sup> South, during regular business hours.

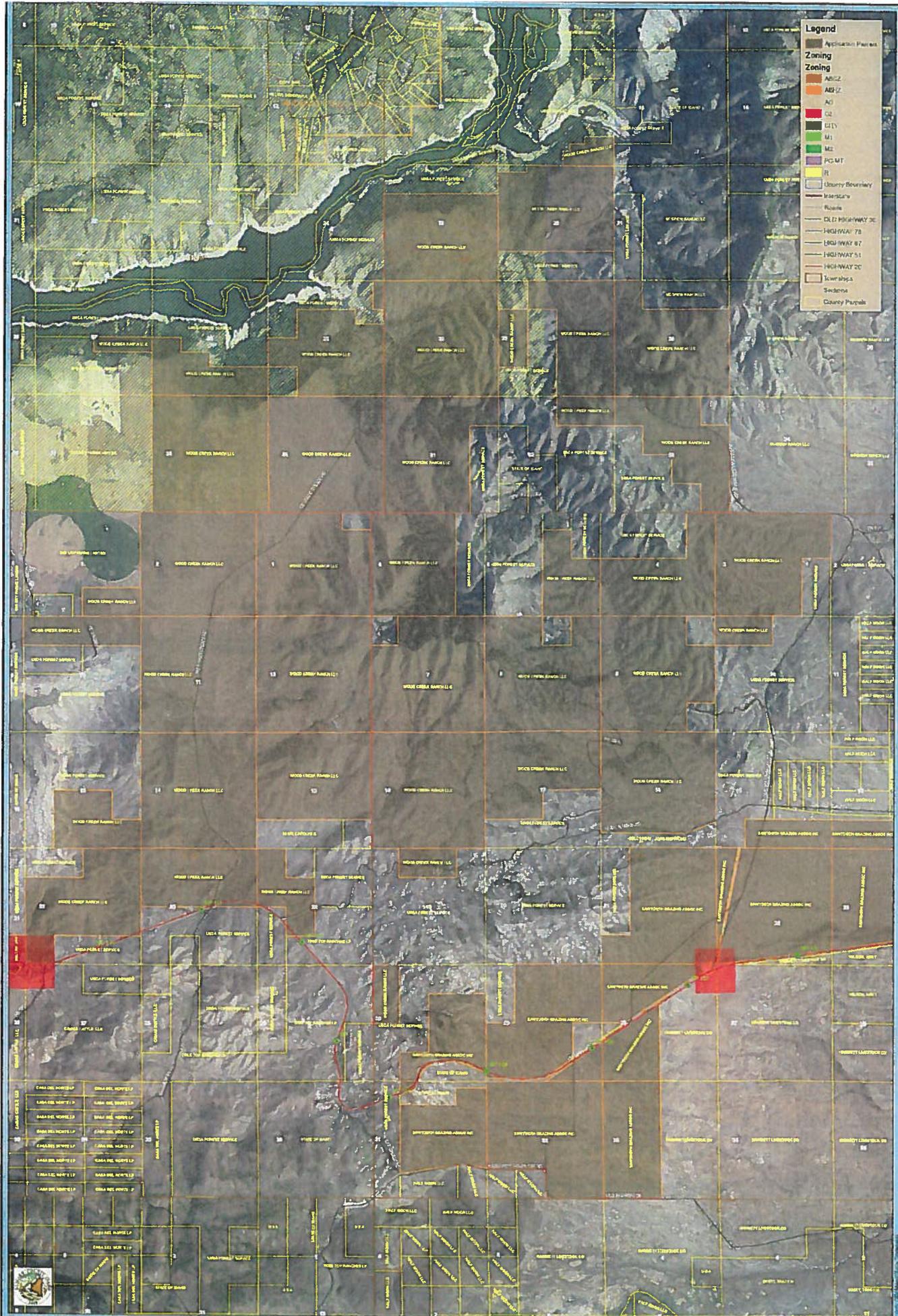
Any and all interested persons shall be heard at said public hearing and the public is welcome and invited to submit testimony. Anyone who wishes to testify but is unable to attend may submit written testimony prior to the hearing by sending it to Elmore County Land Use and Building Department, 520 East 2<sup>nd</sup> South Street, Mountain Home, Idaho, 83647.

The Elmore County Clerk is responsible for ensuring compliance with the American Disabilities Act of 1993. Provisions will be made for persons with disabilities who are unable to attend this hearing. A grievance procedure is available from M. Bate, Elmore County Courthouse, in accordance with the ADA regulations.

*Alan Christy*

Alan Christy, Director  
Land Use and Building Department  
Elmore County, Idaho

1 Publication  
November 25, 2015



**Legend**

- Application Plans
- Zoning**
  - AG-1Z
  - AG-2Z
  - A0
  - C2
  - CU-V
  - M1
  - M2
  - PG-MT
  - R
- County Boundary
- Interstate
- Roads
- OLD HIGHWAY 20
- HIGHWAY 78
- HIGHWAY 67
- HIGHWAY 51
- HIGHWAY 20
- Sewerage
- Sediment
- County Parcel

*Elmore County, Idaho*



## Alan Christy

---

**From:** Alan Christy <achristy@elmorecounty.org>  
**Sent:** Monday, February 02, 2015 1:28 PM  
**To:** 'Shannon Pearson'  
**Subject:** RE: Environmental Impact Statement

Shannon,

Yes the EIS needs to be completed prior to submitting an application to Elmore County.

If you have any additional questions please let me know.

Thanks,

### Alan Christy

Director  
Elmore County Land Use & Building Department  
520 East 2nd South, Mountain Home, ID 83647  
Ph: (208) 587-2142 ex. 269 \ Fax: (208) 587-2120  
achristy@elmorecounty.org \ www.elmorecounty.org

**From:** Shannon Pearson [mailto:Shannon@pickenslawboise.com]  
**Sent:** Monday, February 02, 2015 9:47 AM  
**To:** Alan Christy  
**Subject:** RE: Environmental Impact Statement

Does the EIS need to be completed before the CUP Application can be submitted to you?

### Shannon N. Pearson

Pickens Springer, P.A.  
The Sycamore Building  
305 South 9th, Ste. 240  
P.O. Box 915  
Boise, Idaho 83702  
[www.pickenslawboise.com](http://www.pickenslawboise.com)

Mobile: 208-954-5099  
Fax: 208-954-5006

CONFIDENTIALITY NOTICE: This e-mail message, if it is Pickenslaw, P.A., and its representatives or the named recipients. It contains information that may be confidential, privileged, a trade secret, or otherwise subject to attorney-client confidentiality. If you have received this message in error, you are notified that disclosing, copying, distributing, or taking any action in reliance on the contents of this information is strictly prohibited. If you have received this message in error, please notify the sender immediately by e-mail if you have received this message in error. If you are not the named recipient, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this message by mistake. If you are not the named recipient you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this message by mistake. If you are not the named recipient you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this message by mistake.

**From:** Alan Christy [<mailto:achristy@elmorecounty.org>]  
**Sent:** Monday, February 02, 2015 9:08 AM  
**To:** Shannon Pearson  
**Cc:** 'Beth Bresnahan'  
**Subject:** RE: Environmental Impact Statement

Shannon,

After discussing this matter with some agencies and legal counsel I have determined that a EIS will be required due to the utilization and impact on federal land.

If you have any additional questions please let me know.

Thanks,

**Alan Christy**

Director  
Elmore County Land Use & Building Department  
520 East 2nd South, Mountain Home, ID 83647  
Ph: (208) 587-2142 ex. 269 \ Fax: (208) 587-2120  
[achristv@elmorecounty.org](mailto:achristv@elmorecounty.org) \ [www.elmorecountv.org](http://www.elmorecountv.org)

**From:** Shannon Pearson [<mailto:Shannon@pickenslawboise.com>]  
**Sent:** Thursday, January 29, 2015 11:25 AM  
**To:** Alan Christy ([achristv@elmorecounty.org](mailto:achristv@elmorecounty.org))  
**Subject:** Environmental Impact Statement

Alan:

The CUP App states under item 19 that the Director will determine if an EIS is required. Is this something you determine prior to the filing of the CUP App so we can submit with the application or after you have received the CUP App? Thank.

**Shannon N. Pearson**

Pickens Springer, P.A.  
The Sycamore Building  
398 South 9th, Ste. 240  
P.O. Box 915  
Boise, Idaho 83702  
[www.pickenslawboise.com](http://www.pickenslawboise.com)

Mail: 208.954.5090  
Fax: 208.954.5099

CONFIDENTIALITY NOTICE: This email message from Pickens Law, P.A., and its contents are intended only for the named recipient(s). It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, you are not a named recipient, you are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its content is strictly prohibited.



# Elmore County Land Use and Building Department

520 East 2nd South Street  
Mountain Home, Id. 83647  
Phone: (208) 587-2142 ext. 254  
Fax: (208) 587-2120  
[www.elmorecounty.org](http://www.elmorecounty.org)

Alan Christy  
Director

Tell Riley  
Building Official

Beth Bresnahan  
Planner I

Kacey Ramsauer  
Administrative  
Assistant

March 27, 2015

Shannon N. Pearson  
Pickens Law, P.A.  
The Sycamore Building  
398 South 9th, Ste. 240  
P.O. Box 915  
Boise, Idaho 83702  
[Shannon@pickenslawboise.com](mailto:Shannon@pickenslawboise.com)  
(sent via email)

## Re: Status Report of Conditional Use Permit Applications

Ms. Person,

Thank you for taking the time to email me your concerns on March 25, 2015. I have attached the email to this letter as attachment #1. Please be assured that Elmore County ("County") is processing these applications in an appropriate manner. Allow me to give a history of what has happened to this point.

- The five applications for Conditional Use Permits ("CUP's") were submitted with the appropriate fees on February 26, 2015. At this time there was no agency signature from the Glens Ferry Highway District.
- The Land Use and Building Department ("Department") received the signature from the Glens Ferry Highway District on March 4, 2015.
- The Department started review to identify application deficiencies of the CUP's on March 16, 2015. The following file numbers have been assigned to the CUP's
  - CUP-2015-03-Transmission Lines
  - CUP-2015-04-Pump Storage Hydro
  - CUP-2015-05-PV Solar
  - CUP-2015-06-Wind Power
  - CUP-2015-07-Substation
- The Department conducted an agency meeting regarding the CUP's on March 25, 2015 to further address any deficiencies with the CUP's and to gain a better understanding of what State of Idaho ("State") and Federal approvals may be required.

In response to your email I will address the known deficiencies with the CUP's. Please be advised that the Department has not finished the review of the CUP's and additional deficiencies may be found. The Department will send additional notification when the review is complete and all deficiencies are identified. Below is a list of the identified deficiencies with the CUP's at this time:

- The CUP's do not address environmental concerns or studies. An environmental study is required with these applications. No public hearing will be scheduled until the

environmental study is submitted and reviewed by the County. You were made aware of this in an email from me on February 2, 2015. I have attached a copy of the email to this letter as attachment #2. The County will need this information in order to make an informed decision. Please be advised that this is a requirement that is listed on the CUP application. The site is located in the South Fork Boise Area of Critical Concern. In addition, Idaho Code § 67-6512(e) states the following:

*"Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects..."*

- The submitted master site plan is deficient in a number of areas. Please submit a master site plan that is constant with Chapter 18 of the Elmore County Zoning and Development Ordinance ("Ordinance").
- The application for CUP-2015-03-Transmission Lines is vague. Based on the information submitted it is difficult to tell where the transmission lines will be located. A map submitted in section 5 of the CUP's shows a proposed transmission line outside of the project boundary. In addition the project narrative states: "...a230kV transmission line off-site which connects to the BPA Anderson Ranch – Mountain Home transmission corridor." Based upon the information provided in the CUP's, CUP-2015-03-Transmission Lines will require landowner signature from all landowners where the transmission line crosses/utilizes property. Based upon the information submitted I have provided a list of the required landowner signatures and attached it to this letter as attachment #3.
- CUP-2015-03-Transmission Lines appears to be outside the project boundary originally supplied to the Department. A new neighborhood meeting is required to fully address the transmission line. I will follow up with another email with the required notice once I receive it from the Elmore County Assessor ("Assessor").
- CUP-2015-04-Pump Storage appears to be utilizing property owned by the United States Forest Service ("USFS"). The parcel number is RP01N09E260140. Prior to scheduling any hearing the USFS must sign as a property owner for the application.
- CUP-2015-04-Pump Storage appears to be utilizing property outside of the property boundary originally supplied to the Department. A new neighborhood meeting must be completed. I will follow up with another email with the required notice once I receive it from the Assessor.
- The timeframes listed on the CUP's are not consistent. Answers to question #16 of the CUP's states the project will begin within 60 months and be completed within 72 months. There is a request for the expiration to be extended from one year to four years. These timeframes do not match, please provide clarification.

As I stated earlier this a list of the deficiencies at this time. The County Engineer is currently reviewing the applications at this time and may address additional deficiencies. You will be notified of additional deficiencies when the review is complete.

Please be advised that the CUP's will have a great deal of requirements from State and Federal agencies. After some preliminary discussions with these agencies it appears their approvals will

take a great deal of time. The County may want to see State and Federal approvals prior to making any decision.

Thank you for your time in this matter. If you have any additional questions please let me know.

Sincerely,



**Alan Christy**

Director

Elmore County Land Use & Building Department

520 East 2nd South, Mountain Home, ID 83647

Ph: (208) 587-2142 ex. 269 \ Fax: (208) 587-2120

achristy@elmorecounty.org \ www.elmorecounty.org

**Attachments:**

- 1. Email from Shannon Person dated March 25, 2015.**
- 2. Email from Alan Christy to Shannon Person dated February 2, 2015.**
- 3. List of additional property owners for CUP-2015-03-Transmission Lines.**

cc. Stephany Church – USFS [schurch@fs.fed.us](mailto:schurch@fs.fed.us) (sent via email)

Dawn Alvarez – USFS [dalvarez@fs.fed.us](mailto:dalvarez@fs.fed.us) (sent via email)

Phil Miller – Counsel, Elmore County [prmlaw@qwestoffice.net](mailto:prmlaw@qwestoffice.net) (sent via email)

Beth Bresnahan – Planner, Elmore County [bbresnahan@elmorecounty.org](mailto:bbresnahan@elmorecounty.org) (sent via email)

Lance Warnick – County Engineer [lance@AspenEngineers.com](mailto:lance@AspenEngineers.com) (sent via email)



# Elmore County Land Use and Building Department

520 East 2nd South Street  
Mountain Home, Id. 83647  
Phone: (208) 587-2142 ext. 254  
Fax: (208) 587-2120  
[www.elmorecounty.org](http://www.elmorecounty.org)

Alan Christy  
Director

Tell Riley  
Building Official

Beth Bresnahan  
Planner I

Kacey Ramsauer  
Administrative  
Assistant

April 10, 2015

Cat Creek Energy, LLC  
1989 South 1875 East  
Gooding, ID 83330  
[Terri@pickenslawboise.com](mailto:Terri@pickenslawboise.com)  
(sent via email)

Re: Outstanding Issues on Conditional Use Permit Applications

To Whom It May Concern:

The purpose of this letter is to provide information on outstanding issues for five (5) conditional use permit applications (the "CUP's") that were submitted to the Land Use and Building Department (the "Department") on February 26, 2015. I provided a status report to Shannon Pearson on March 27, 2015 that listed some of the deficiencies. The March 27, 2015 letter is attached to this letter as Attachment #1.

In Attachment #1, I stated I would send new neighborhood meeting lists that are required due to an increased project area that was shown in the CUP's. The required neighborhood meeting lists are attached to this letter as Attachment #2. Please be advised that this could change due to a corrected master site plan. It is recommended that an accurate site plan be provided to ensure notification and owners are correct.

The Elmore County Engineer (the "Engineer") has conducted a review of the applications. The Engineer provided the Department comments for the CUP's on April 1, 2015. The Engineer's comments are attached to this memorandum as Attachment #3.

For the CUP's to move forward towards a public hearing with the Elmore County Planning and Zoning Commission all the requirements in Attachments #1 and #3 must be met. In addition to the deficiencies listed in Attachments #1 and #3 the following items must be addressed.

- Address of the property, if any, needs to be provided on the CUP's. The CUP's need to be revised with this information.
- The RP#(s) for each application need to be included with the CUP's. The CUP's need to be revised with this information.
- The project site is located within the South Fork Boise Area of Critical Concern (the "ACC"). The CUP's application and section 6-8-5-N of the Elmore County Zoning and Development Ordinance (the "Ordinance") states that environmental studies and technical reports may be required. The Department has previously stated that an environmental study must be completed as part of the CUP's application. This section of the Ordinance further verifies this requirement. The applicant will need to provide documentation on how the CUP's proposal complies with the ACC.
- Question 12 of the CUP's application states other agencies require permits. Please provide documentation and a copy of the permits for the Bureau of Reclamation, Federal

Aviation Administration, Idaho Department of Water Resources, Army Corp of Engineers and any other State or Federal Agency requiring a permit.

- The applicant shall revise the CUP's to show that portions of the project area are within a Floodway and 100-year Floodplain. The applicant should incorporate this information to the master site plan.
- The applicant shall revise the CUP's to specifically address each individual conditional use. This includes the project narrative and conditional use standard questions. Elmore County needs more detailed information on the proposals in order to make a well informed decision.

Due to the scope and limited information in the CUP's, the Department conducted a preliminary agency meeting on March 25, 2015. Due to the number of State of Idaho ("State") and Federal approvals that will be required the applicant may want to consider withdrawing the CUP's until State and Federal approvals have been obtained. Please be advised that State and Federal compliance is a required finding and is stated in Ordinance section 6-27-7-A.5. The following items were brought to the Departments attention during the March 25, 2015 meeting:

- The Bureau of Reclamation ("BOR") stated two different companies have applied to the Federal Energy Regulatory Commission ("FERC") for similar projects. It is my understating that Cat Creek Energy was the second application. BOR stated that only one of the applications may get approved. It is likely that Elmore County will not make a decision until FERC has granted their approvals to proceed. With this information the applicant may want to consider withdrawing the CUP's.
- Idaho Fish and Game provided some wildlife mitigation information. It is recommended that this information be incorporated into the required information that is still outstanding with the CUP's. The Department finds this information useful when addressing mitigation for wildlife concerns. This information is attached to this letter as Attachment #4.
- Agencies anticipated that a water right for the proposals in the CUP's would be heavily protested. The protests would likely take a great deal of time. Elmore County has time limits on Conditional Use Permit approvals. It is likely the water right protests would last longer than any approval from Elmore County. The applicant may want to consider withdrawing the applications until water rights have been approved.
- The Idaho Department of Lands stated some mineral rights may be impacted by the CUP's. The applicant should provide documentation regarding the impacts to mineral rights.

For the CUP's to move forward the additional information and deficiencies must be addressed. Please contact the Department if you have any questions.

Sincerely,



**Alan Christy**

Director

Elmore County Land Use & Building Department

520 East 2nd South, Mountain Home, ID 83647

Ph: (208) 587-2142 ex. 269 \ Fax: (208) 587-2120

achristy@elmorecounty.org \ www.elmorecounty.org

Attachments:

1. March 27, 2015 Letter to Shannon Pearson.
2. Neighborhood Meeting Lists

3. Comments form Elmore County Engineer
4. Wildlife Mitigation Information

cc. Stephany Church – USFS [schurch@fs.fed.us](mailto:schurch@fs.fed.us) (sent via email)  
Dawn Alvarez – USFS [dalvares@fs.fed.us](mailto:dalvares@fs.fed.us) (sent via email)  
Phil Miller – Counsel, Elmore County [prmlaw@qwestoffice.net](mailto:prmlaw@qwestoffice.net) (sent via email)  
Beth Bresnahan – Planner, Elmore County [bbresnahan@elmorecounty.org](mailto:bbresnahan@elmorecounty.org) (sent via email)  
Lance Warnick – County Engineer [lance@AspenEngineers.com](mailto:lance@AspenEngineers.com) (sent via email)  
Shannon Pearson, Pickens Law [Shannon@pickenslawboise.com](mailto:Shannon@pickenslawboise.com) (sent via email)  
Jim Gluch, GFHD [jimgluch@live.com](mailto:jimgluch@live.com) (sent via email)  
Marty Jones, CDHD [MJones@cdhd.idaho.gov](mailto:MJones@cdhd.idaho.gov) (sent via email)  
Luis Lasuen, MHHD [llasuen@earthlink.com](mailto:llasuen@earthlink.com) (sent via email)



# Elmore County Land Use and Building Department

520 East 2nd South Street  
Mountain Home, Id. 83647  
Phone: (208) 587-2142 ext. 254  
Fax: (208) 587-2120  
www.elmorecounty.org

Attachment #1  
4.10.15

Alan Christy  
Director

Tell Riley  
Building Official

Beth Bresnahan  
Planner I

Kacey Ramsauer  
Administrative  
Assistant

March 27, 2015

Shannon N. Pearson  
Pickens Law, P.A.  
The Sycamore Building  
398 South 9th, Ste. 240  
P.O. Box 915  
Boise, Idaho 83702  
[Shannon@pickenslawboise.com](mailto:Shannon@pickenslawboise.com)  
(sent via email)

## Re: Status Report of Conditional Use Permit Applications

Ms. Person,

Thank you for taking the time to email me your concerns on March 25, 2015. I have attached the email to this letter as attachment #1. Please be assured that Elmore County ("County") is processing these applications in an appropriate manner. Allow me to give a history of what has happened to this point.

- The five applications for Conditional Use Permits ("CUP's") were submitted with the appropriate fees on February 26, 2015. At this time there was no agency signature from the Glens Ferry Highway District.
- The Land Use and Building Department ("Department") received the signature from the Glens Ferry Highway District on March 4, 2015.
- The Department started review to identify application deficiencies of the CUP's on March 16, 2015. The following file numbers have been assigned to the CUP's
  - CUP-2015-03-Transmission Lines
  - CUP-2015-04-Pump Storage Hydro
  - CUP-2015-05-PV Solar
  - CUP-2015-06-Wind Power
  - CUP-2015-07-Substation
- The Department conducted an agency meeting regarding the CUP's on March 25, 2015 to further address any deficiencies with the CUP's and to gain a better understanding of what State of Idaho ("State") and Federal approvals may be required.

In response to your email I will address the known deficiencies with the CUP's. Please be advised that the Department has not finished the review of the CUP's and additional deficiencies may be found. The Department will send additional notification when the review is complete and all deficiencies are identified. Below is a list of the identified deficiencies with the CUP's at this time:

- The CUP's do not address environmental concerns or studies. An environmental study is required with these applications. No public hearing will be scheduled until the

environmental study is submitted and reviewed by the County. You were made aware of this in an email from me on February 2, 2015. I have attached a copy of the email to this letter as attachment #2. The County will need this information in order to make an informed decision. Please be advised that this is a requirement that is listed on the CUP application. The site is located in the South Fork Boise Area of Critical Concern. In addition, Idaho Code § 67-6512(e) states the following:

*"Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects..."*

- The submitted master site plan is deficient in a number of areas. Please submit a master site plan that is constant with Chapter 18 of the Elmore County Zoning and Development Ordinance ("Ordinance").
- The application for CUP-2015-03-Transmission Lines is vague. Based on the information submitted it is difficult to tell where the transmission lines will be located. A map submitted in section 5 of the CUP's shows a proposed transmission line outside of the project boundary. In addition the project narrative states: "...a230kV transmission line off-site which connects to the BPA Anderson Ranch – Mountain Home transmission corridor." Based upon the information provided in the CUP's, CUP-2015-03-Transmission Lines will require landowner signature from all landowners where the transmission line crosses/utilizes property. Based upon the information submitted I have provided a list of the required landowner signatures and attached it to this letter as attachment #3.
- CUP-2015-03-Transmission Lines appears to be outside the project boundary originally supplied to the Department. A new neighborhood meeting is required to fully address the transmission line. I will follow up with another email with the required notice once I receive it from the Elmore County Assessor ("Assessor").
- CUP-2015-04-Pump Storage appears to be utilizing property owned by the United States Forest Service ("USFS"). The parcel number is RP01N09E260140. Prior to scheduling any hearing the USFS must sign as a property owner for the application.
- CUP-2015-04-Pump Storage appears to be utilizing property outside of the property boundary originally supplied to the Department. A new neighborhood meeting must be completed. I will follow up with another email with the required notice once I receive it from the Assessor.
- The timeframes listed on the CUP's are not consistent. Answers to question #16 of the CUP's states the project will begin within 60 months and be completed within 72 months. There is a request for the expiration to be extended from one year to four years. These timeframes do not match, please provide clarification.

---

As I stated earlier this a list of the deficiencies at this time. The County Engineer is currently reviewing the applications at this time and may address additional deficiencies. You will be notified of additional deficiencies when the review is complete.

Please be advised that the CUP's will have a great deal of requirements from State and Federal agencies. After some preliminary discussions with these agencies it appears their approvals will

take a great deal of time. The County may want to see State and Federal approvals prior to making any decision.

Thank you for your time in this matter. If you have any additional questions please let me know.

Sincerely,



**Alan Christy**

Director

Elmore County Land Use & Building Department

520 East 2nd South, Mountain Home, ID 83647

Ph: (208) 587-2142 ex 269 \ Fax: (208) 587-2120

achristy@elmorecounty.org \ www.elmorecounty.org

**Attachments:**

- 1. Email from Shannon Person dated March 25, 2015.**
- 2. Email from Alan Christy to Shannon Person dated February 2, 2015.**
- 3. List of additional property owners for CUP-2015-03-Transmission Lines.**

cc. Stephany Church – USFS [schurch@fs.fed.us](mailto:schurch@fs.fed.us) (sent via email)

Dawn Alvarez – USFS [dalvarez@fs.fed.us](mailto:dalvarez@fs.fed.us) (sent via email)

Phil Miller – Counsel, Elmore County [prmlaw@qwestoffice.net](mailto:prmlaw@qwestoffice.net) (sent via email)

Beth Bresnahan – Planner, Elmore County [bbresnahan@elmorecounty.org](mailto:bbresnahan@elmorecounty.org) (sent via email)

Lance Warnick – County Engineer [lance@AspenEngineers.com](mailto:lance@AspenEngineers.com) (sent via email)



April 1, 2015

Alan Christy  
Director  
Elmore County Land Use and Building Department  
520 East 2nd South  
Mountain Home, Idaho 83647

485 W. Main St, Suite B  
PO Box 205  
Kuna, Idaho 83634  
(208) 466-8181  
[www.AspenEngineers.com](http://www.AspenEngineers.com)

**SUBJECT: Review and Comment Letter #1 for the  
CAT CREEK ENERGY, LLC  
TRANSMISSION LINES / CUP-2015-03  
Elmore County, Idaho**

Dear Mr. Christy:

As requested in the email from your office dated March 26, 2015, I have reviewed the CUP Application for the proposed Cat Creek Energy, LLC transmission lines project located south of Anderson Ranch Reservoir in Elmore County, Idaho. This appears to be for electrical lines to support the proposed pump storage hydro, PV solar generating, wind power, and substation facilities that were also submitted at the same time of this application.

Based upon my review of the application and supporting project documents provided, I have the following general comments and recommendations that apply to all five of the Cat Creek Energy, LLC applications (CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07):

1. The deficiencies in the applications that you outlined in your letter addressed to Shannon N. Pearson of Pickens Law, P.A. and dated March 27, 2015 should be addressed by the Applicant.
2. The Applicant should tailor each application and associated information to make it specific and applicable to the each of the requested Conditional Use Permits.
3. Item 6 on the application asking for the address of subject property was left blank. The Applicant should indicate the addresses of all the properties included in each specific CUP and/or acknowledge the parcels have not been addressed by the County.
4. The legal descriptions for the parcels and area covered by the CUP were not included in this application. The County should require the Applicant to provide correct legal descriptions for both the overall property containing each CUP and the specific area proposed for coverage by each CUP as outlined on Item 8 of the application.
5. The Applicant should provide documentation identifying how James T. Carkulis has been authorized as an agent to sign the lease agreements and act on behalf of Cat Creek Energy, LLC. According to the Idaho Secretary of State website, John L. Faulkner is the only listed member of the corporation.

6. The legal description included with the lease agreement with Wood Creek Ranch is not legible. The Applicant should provide a legible description.
7. The lease agreement with Sawtooth Grazing Association refers to the entity as “LLC” instead of “Inc”, which is the official name listed on the Idaho Secretary of State website. In addition, the notary stamp for confirming James T. Carkulis’ signature is also missing on the lease agreement. The Applicant should provide a corrected lease agreement or have their Attorney verify in writing why it is legally binding.
8. The environmental assessment required by in the application as Items 11a, Item 19 and reiterated your email to Shannon Pearson dated February 2, 2015 was not included. The Applicant should provide this information as required.
9. The contour map that was submitted in response to Item 11e of the application does not show the location of the facilities proposed for the CUP and does not include any notes or contour labels to identify the elevations associated with specific contours. The Applicant should provide a more detailed contour maps each clearly showing the proposed facility and the CUP area under consideration.
10. As you outlined in your letter to Shannon Person dated March 27, 2015, the timing in Item 16 of the application is confusing and not consistent. The Applicant should clarify the timing requested for the project.
11. Item 17 of the application indicates that an individual well and septic will be used to serve the facility. The Applicant should clarify if each of the five CUPs will have a separate well and septic facilities or if not, which specific CUP facility will have these utilities.
12. Part of Item 22 of the application requires the applicant to demonstrate how the proposed CUP is allowed under the ordinance and will be compatible with surrounding land uses. The Applicant should tailor this portion of the application for each requested CUPs in order to demonstrate its compliance with the requested items. The Applicant should also specifically identify how each proposed CUP complies with Elmore County Zoning and Development Ordinance 6-8-94 for Electrical Generating Facilities or other applicable sections.

The following comments apply specifically to the proposed transmission lines described in CUP-2015-03

13. As you outlined in your letter to Shannon Person dated March 27, 2015, information provided on the Master Site Plan is not adequate. The Applicant should provide a clear route for the proposed transmission lines and provide the other information required in Chapter 18 of the Elmore County Zoning and Development Ordinance.



14. The Applicant does not identify the height or style of the proposed transmission lines. The Applicant should provide this information for County review and to help determine if variances from height requirements in Table 6-8-12(C) of the Zoning Ordinance are required.
15. The Applicant did not address how fire protection for and fire danger from the transmission lines will be handled. The Applicant should describe their proposed plan as required in Section 6-8-94.A.6 of the Zoning Ordinance.
16. The general description of the project implies that a combination of existing and new roads will be used to serve the project. The County should require that these roads meet the requirement outlined in Section 6-17 of the Zoning Ordinance or at a minimum comply with some alternative standard approved by the Director or County Engineer as allowed in Section 6-17-5.F.
17. In Item 11d of the application, the Applicant states the area for the CUP is not located in a flood plain area. However it appears that route for the proposed transmission line may be near or cross a portion of Dixie Creek which is in an "A" flood zone. The Applicant should comply with all County and Federal requirements relating to construction near or in a flood zone.
18. The Applicant should ensure environmental assessment for the project address among other things, the impacts of the proposed facility on wildlife habitat and movement.

These comments compose my current thoughts on the application, but other issues may arise on future reviews.

Feel free call me at (208) 466-8181 if you have any questions or need additional information.

Respectfully,

**Aspen Engineers, Chartered**

A handwritten signature in blue ink that reads "Lance Warnick".

Lance Warnick, P.E.  
Elmore County Engineer

cc: Aspen 15016 (Cat Creek Energy – Transmission Lines / CUP-2015-03)



# Elmore County Land Use and Building Department

520 East 2nd South Street  
Mountain Home, Id. 83647  
Phone: (208) 587-2142 ext. 254  
Fax: (208) 587-2120  
[www.elmorecounty.org](http://www.elmorecounty.org)

Alan Christy  
Director

Tell Riley  
Building Official

Beth Bresnahan  
Planner I

Kacey Ramsauer  
Administrative  
Assistant

July 16, 2015

Shannon N. Pearson  
398 S. 9<sup>th</sup> Street, Ste. 240  
P.O. Box 915  
Boise, ID 83706  
(sent via U.S. Mail)

Re: Outstanding Issues on Conditional Use Permit Applications

Ms. Pearson:

Thank you for sending the Elmore County Land Use and Building Department (the "Department") supplemental information for the Cat Creek Energy, LLC projects. At this time the Department has not received all the attachment exhibits or "dropbox" invitation identified in the application supplement and letter dated June 30, 2015. Please be advised the Department cannot start a review of the application supplement until all the attachments are received. The Department requires at least one paper copy of all the exhibits listed in the application supplement. Please note it is not the Department's responsibility to download files off the internet.

Once the Department has received the remaining information, the review for completeness will continue. Any further or continued deficiencies will be identified by the Department and/or Elmore County consultants. Please feel free to contact the Department if you have any questions regarding this letter.

Sincerely,

**Alan Christy**

Director  
Elmore County Land Use & Building Department  
520 East 2nd South, Mountain Home, ID 83647  
Ph: (208) 587-2142 ex. 269 \ Fax: (208) 587-2120  
[achristy@elmorecounty.org](mailto:achristy@elmorecounty.org) \ [www.elmorecounty.org](http://www.elmorecounty.org)

cc. Stephany Church – USFS [schurch@fs.fed.us](mailto:schurch@fs.fed.us) (sent via email)  
Dawn Alvarez – USFS [dalvares@fs.fed.us](mailto:dalvares@fs.fed.us) (sent via email)  
Phil Miller – Counsel, Elmore County [prmlaw@qwestoffice.net](mailto:prmlaw@qwestoffice.net) (sent via email)  
Beth Bresnahan – Planner, Elmore County [bbresnahan@elmorecounty.org](mailto:bbresnahan@elmorecounty.org) (sent via email)  
Lance Warnick – County Engineer [lance@AspenEngineers.com](mailto:lance@AspenEngineers.com) (sent via email)  
Jim Gluch, GFHD [jimgluch@live.com](mailto:jimgluch@live.com) (sent via email)  
Marty Jones, CDHD [MJones@cdhd.idaho.gov](mailto:MJones@cdhd.idaho.gov) (sent via email)  
Luis Lasuen, MHHD [llasuen@earthlink.com](mailto:llasuen@earthlink.com) (sent via email)  
Cat Creek Energy, LLC – 1989 South 1875 East, Gooding, ID 83330 (sent via U.S. Mail)



# Elmore County Land Use and Building Department

520 East 2nd South Street  
Mountain Home, Id. 83647  
Phone: (208) 587-2142 ext. 254  
Fax: (208) 587-2120  
www.elmorecounty.org

Alan Christy  
Director

Tell Riley  
Building Official

Beth Bresnahan  
Planner I

Kacey Ramsauer  
Administrative  
Assistant

October 1, 2015

Shannon N. Pearson  
398 S. 9<sup>th</sup> Street, Ste. 240  
P.O. Box 915  
Boise, ID 83706  
(sent via email)

Re: Status report of submitted items.

Ms. Pearson:

Thank you for sending the Elmore County Land Use and Building Department (the "Department") supplemental information for the Cat Creek Energy, LLC projects. Additional information was submitted to the Department on July 2 and 31, 2015. The purpose of this letter is to provide a status report of the additional submitted information. The Department and its consultants have reviewed the material that was submitted. There are continued deficiencies with the five conditional use permit applications that have been submitted.

Listed below is a status report from the Elmore County Engineer. The Elmore County Engineer has provided the following comments:

1. *Although the applicant provided a table that shows use in specific areas, I recommend that a separate meets and bounds legal description for each of the CUP areas be provided.*
2. *I recommend that County or their Consultant determine if the use of the "Critical Issues Analysis" can be used in lieu of the required Environmental Impact Study.*
3. *Although the applicant provided maps for each CUP in Exhibit B, it is my opinion that these still do not include all the information required for a master site plan for each use. I recommend that the Applicant should provide a much more detailed plan for each of the areas, rather than just the general vicinity type map.*
4. *Although the applicant provided a better contour map in Exhibit K, I recommend that a map for each site be zoomed in to be able to better evaluate the impact of topography on each CUP.*

Please provide the information listed in items 1, 3 & 4. Attached to this letter as attachment #1 is the Elmore County Zoning and Development Ordinance (the "Ordinance") requirements for a master site plan that is required for all the conditional use permit applications. Please provide a master site plan that is specific to each conditional use permit application.

As the Department has previously stated, Idaho Code Section 67-6512(e) states: "Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects ... of the proposed use." In addition, Ordinance section 6-4-2(A) states, "[n]o application shall be considered as accepted by the Director unless it is complete *with all required information*. (Emphasis added)." Therefore, Elmore County has determined that an environmental impact statement is required. Under the Ordinance and Idaho Code it must be

provided with the applications. Please note that this is also consistent with Idaho case law. In *Fischer v. City of Ketchum*, 141 Idaho 349 (2005), the Idaho Supreme Court stated: "Idaho Code 67-6512(e) specifically contemplated that further studies may be ordered but those must be done prior to granting the CUP. The Court then went on to emphasize that a parties right to meaningfully comment on the application is weakened or even "possibly nullified" if the studies are not completed prior to the public hearing."

Attached to this letter as attachment #2 are comments and requirements from Elmore County's Biologist Consultant. The Department has stated in previous letters that an environmental impact study must be completed and approved for this project. This is due to the substantial impacts facing neighboring properties, including private, state and federal lands. The County cannot approve conditions for an environmental impact study to be completed in the future. The County must review and analyze information contained in an environmental impact study to determine if the proposed uses comply with Elmore County Ordinances. Furthermore, it is highly recommended that qualified individuals prepare environmental data that is submitted to the County.

Following the meeting scheduled for October 6, 2015 the Department will provide you a detailed list of outstanding items for the five conditional use permit applications. Once the Department has received all required information, the review for completeness will continue. Any further or continued deficiencies will be identified by the Department and/or Elmore County consultants. Please feel free to contact the Department if you have any questions regarding this letter.

Sincerely,

## **Alan Christy**

Director

Elmore County Land Use & Building Department  
520 East 2nd South, Mountain Home, ID 83647  
Ph: (208) 587-2142 ex. 269 \ Fax: (208) 587-2120  
achristy@elmorecounty.org \ www.elmorecounty.org

cc. Stephany Church – USFS [schurch@fs.fed.us](mailto:schurch@fs.fed.us) (sent via email)  
Dawn Alvarez – USFS [dalvares@fs.fed.us](mailto:dalvares@fs.fed.us) (sent via email)  
Phil Miller – Counsel, Elmore County [prmlaw@qwestoffice.net](mailto:prmlaw@qwestoffice.net) (sent via email)  
Beth Bresnahan – Planner, Elmore County [bbresnahan@elmorecounty.org](mailto:bbresnahan@elmorecounty.org) (sent via email)  
Lance Warnick – County Engineer [lance@AspenEngineers.com](mailto:lance@AspenEngineers.com) (sent via email)  
Jim Gluch, GFHD [jimgluch@live.com](mailto:jimgluch@live.com) (sent via email)  
Marty Jones, CDHD [MJones@cdhd.idaho.gov](mailto:MJones@cdhd.idaho.gov) (sent via email)  
Luis Lasuen, MHHD [llasuen@earthlink.com](mailto:llasuen@earthlink.com) (sent via email)  
Cat Creek Energy, LLC – 1989 South 1875 East, Gooding, ID 83330 (sent via U.S. Mail)  
Bill Doering – County Biologist [bill.doering@powereng.com](mailto:bill.doering@powereng.com) (sent via email)  
Buzz Grant – Counsel, Elmore County [grantlaw@cableone.net](mailto:grantlaw@cableone.net) (sent via email)

### Attachments

1. Ordinance Chapter 18
2. Letter from County Biologist dated October 2, 2015



## MEMORANDUM

**DATE:** October 02, 2015

**TO:** Alan Christy, Elmore County

**C:** Dave Dean (POWER)

**FROM:** Bill Doering  
Environmental Specialist

**SUBJECT:** 123934 Cat Creek Energy Project Biological Resources Review for Five (5) CUP Applications

ENERGY

FACILITIES

COMMUNICATIONS

ENVIRONMENTAL

### MESSAGE

Dear Mr. Christy,

POWER Engineers, Inc. (POWER) is pleased to submit this summary memorandum review of biological resources analysis for the Cat Creek Energy Generation Project. We reviewed the biological information provided by Cat Creek Energy, LLC (hereafter Project Proponent) and supplied by the County via compact disk on August 19<sup>th</sup>, 2015.

Based upon our review of the materials provided, we have the following comments applicable to the Project Proponent's CUP Applications. The first section discusses the adequacy of provided information with regards to describing existing conditions and potential impacts to biological resources. The second section discusses potential studies needed to properly characterize the biological resources existing environment and evaluate potential impacts.

#### 1. Adequacy of biological information provided

Biological information specifically prepared in support of the five CUP Applications includes:

- Responses to Elmore County Planning and Zoning's Inquiry on Conditional Use Permit Applications prepared by CCE (two versions provided, dated June 30, 2015 and July 31, 2015); and
- Critical Issues Analysis for Cat Creek Energy Generation Facility prepared for CCE by Sorenson Engineering and GeoSense (dated June 2015).

As identified in Director Alan Christy's e-mail to Shannon Pearson of CCE on February 2, 2015, an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) must be completed before any CUP Applications are submitted. Once the lead federal agency is identified, the NEPA process typically includes a public/agency involvement process, biological and other environmental issues identifications, and preparation of sections on affected environment and analyses of consequences of the

Proposed Project and alternatives. Specific studies may be required to supplement information gaps or substantiate analysis. The EIS sections are prepared by environmental resource specialists that have degrees and experience demonstrating that each individual is capable of preparing EIS sections for their resource specialty (e.g. a wildlife biologist should prepare sections related to wildlife biology). Analysis would address direct, indirect and cumulative effects of the Proposed Project and alternatives on all identified resources. This would allow the lead agency and regulatory decision makers sufficient information to evaluate the Proposed Project and compare its impacts to those of alternatives.

The Project Proponent has stated that an EIS can be done at a later date or be a condition of approval. An EIS is mandated for major projects undertaken by federal agencies or undertaken by non-federal proponents but with a federal nexus. Only through the NEPA process will an adequate identification and analysis of environmental impacts (including biological resources) be conducted. An appropriately completed NEPA process will ensure that all decision makers are basing their decisions on the same information and the same analysis. The Project Proponent's Critical Issues Analysis and extensive exhibits are a not substitute for this process and the resulting EIS. A critical issues analysis is an early stage development planning document meant to (among other things) identify critical issues affecting project's viability and inform a developer's initial engagement of agencies. It is not intended to serve as, nor is it recognized as, a regulatory impact analysis document. The County's determination is that the NEPA process be completed prior to consideration of any CUP applications.

The responsible individuals for the Critical Issues Analysis are documented as Ted Sorenson (Sorenson Engineering) and Nicholas E. Josten (GeoSense). These firms appear to be small engineering companies which do not have trained biologists on staff. Unless they have trained wildlife and fisheries biologists (ideally experienced with bull trout and greater sage-grouse issues) working for them as a subcontractor, the biological resource sections of the Critical Issues Analysis would likely be considered insufficient by state and federal resource management agency resource specialists.

The Project Proponent states that Critical Issues Analysis deals with viewshed, sage grouse, and bull trout; that mitigation plans have been prepared to preserve and protect area in which the Project will be located; and that fire damage will be precluded (per 6/30/15 letter from Pickens Law to the County). Project Proponent states that the Critical Issues Analysis will serve as a scoping document as the applicant works with the federally led EIS contractors as prescribed (CUP Applications Supplement, #11). Scoping for an EIS typically involves meetings with affected agencies and public meetings. Its purpose is to identify and define project-specific environmental concerns to be addressed in the EIS. It literally frames out the scope for the subsequent analysis. The Critical Issues Analysis document may provide useful information but is not a substitute for the scoping process (i.e. environmental scoping report).

Our initial review of the Critical Issues Analysis reveals that at least some of the citations are incorrect or that information in referenced documents is presented as specific analysis for the Proposed Project. For example, USFWS 2015b is cited for the description of bull trout even though it's a citation for Bliss Rapids snail according to the References Cited section. Entire sentences were copied and pasted directly from references. For example, most of an entire paragraph in the Wildlife Inventory section of the Critical Issues Analysis was pulled word for word from the Boise National Forest Land and Resource Management Plan 2003-2010 Integration (USFS 2010). Terrestrial wildlife habitat and vegetation information is presented at the ecological section level using information from the 2005 IDFG Comprehensive Wildlife Conservation Strategy. This document is being supplanted by the State Wildlife Action Plan. The Project Proponent inappropriately includes

information about Bliss Rapids snail in the Fish Populations section. A more thorough critique of the Critical Issues Analysis would presumably find more concerns. The reference documents provide useful information; however, analysis may be irrelevant, too general, not applicable to the Proposed Project area, or out of date and cannot replace analysis specific to the proposed project and each of its components and biological resource within the affected area. Without this analysis, potential impacts from the Proposed Project on biological resources cannot be properly evaluated.

On pages 40-45 of the Critical Issues Analysis, they include information on the preliminary evaluation of project impacts to fishery resources, which includes bull trout, a federally listed threatened species. On page 42, they say "Fish populations in Anderson Ranch Reservoir would be subject to entrainment into the hydropower intakes during pumping operations that move water from Anderson Ranch Reservoir to the Upper Reservoir. Most fish entrained into the penstock would be permanently lost to the reservoir population." This admission would certainly suggest that USFWS section 7 Formal Consultation will be required, likely through the same federal lead agency as the EIS. The section 7 process would result in the preparation of a Biological Assessment and a Biological Opinion in which the USFWS would determine if the Proposed Project would place listed species in jeopardy or adversely affect designated critical habitat. The ultimate outcome would be an incidental take statement setting tolerable limits on impacts to listed species and their habitats. The results of the section 7 process would be used to inform federally listed species analysis in the EIS.

In addition, deficiencies identified in the Critical Issues Analysis include the following:

- Documenting presence/absence of plant and wildlife species from IDFG's IFWIS species database
- USFS Sensitive species (since the Proposed Projects cross USFS-managed land):
- Letters from each applicable federal and state agencies that document contact, and what permits are needed and what environmental laws/concerns are required to be addressed, particularly for USFWS and IDFG
- Documentation of correspondence and/or meetings with federal and state landowners/managers BOR, USFS, and IDL
- Inclusion of an official species list from USFWS
- Impacts of security fencing to wildlife movement and habitat for any of the five projects, if security fencing is required
- Any discussion of bats, including assessment and/or analyses of potential impacts:
- Effects to plants and wildlife from siting the Proposed Projects in an area where soils have a moderate to high surface erosion potential (according to p. 15 of Critical Issues Analysis)
- Accurate descriptions of plant communities, wildlife habitat, and specific common plant species in the project areas. Descriptions must be more specific than shrub/scrub, herbaceous grassland, and "evergreen" forest, particularly when a USFWS Candidate species whitebark pine is known to the Project county (and not mentioned anywhere in document). Ecological section level description using information from the 2005 IDFG Comprehensive Wildlife Conservation Strategy is not adequate.
- Description of fire history and management in Project areas
- Including the migratory bird species that would occur in the Project areas, based on the USFWS 2015a citation provided (although some of the them are listed under the Idaho Species of Greatest Conservation Need)
- Overview of relevant laws, regulations, authorities, and agency direction, including a discussion of ESA, BGEPA, and MBTA

- Discussion of bull trout critical habitat proximity to the project areas, since it is intersected by existing transmission lines that would be used for the Proposed Project
  - Discussion and analysis of fish and game species that would be potentially affected, which are managed by IDFG. Project areas include winter range habitat for elk and mule deer, premier wild trout fishery (rainbow trout)
  - Addressing South Fork Boise River as an eligible Wild and Scenic River
  - Proposed mitigation measures are non-Project specific and vague. No mechanism for enforcement is provided.
2. Additional biological studies needed to describe the existing condition and identify and assess potential impacts from the Proposed Project.

The Project Proponent has provided extensive information, but admits that baseline information used for issues identification and analysis comes from open sources many of which are out of date, to general or not specific to the Project area. According to the Critical Issues Analysis, the Project Proponent states that the following resources have been identified as requiring additional study and analysis (p. 54):

- Water quality – monitoring of temperature and dissolved oxygen in the vicinity of the proposed powerhouse intakes;
- Water quality – analysis to quantify potential water temperature effects due to water exchange between the Upper Reservoir and Anderson Ranch Reservoir;
- Vegetation and wildlife – imagery based land cover mapping with field verification to identify and quantify available wildlife habitat that could be affected by the Project;
- Wildlife – perform assessment of avian population subject to collision/rotor strike due to wind towers;
- Fisheries – literature study of the potential for fish entrainment and mortality through the hydropower facility; and

The Project Proponent does add that this preliminary list will be refined and expanded as needed based on consultation with government and resource agency stakeholders. Additional studies recommended by government and resource agency stakeholders may require multi-year studies. Review with IDFG and USFWS within the framework of the most recent USFWS land-based wind energy guidelines will certainly identify a suite of preconstruction studies for the wind generation portion of the Proposed Project. Although these guidelines are voluntary, often for wind energy projects with a NEPA trigger, these studies are required for characterizing the existing environment and are generally integrated into the biological technical report substantiating the NEPA analysis. Based on our experience with resource agencies in the region, the following additional biological resource studies will likely be required:

- Avian – Project-specific studies on bald and golden eagles, peregrine falcons, breeding birds, migrating birds, sage-grouse and waterfowl species
- Big game- winter use and migration; effects of increased human access on big game species
- Bats- pre-construction acoustic studies for the wind generation portion of the Proposed Project (possibly for the solar field as well)
- Forest service special use permits may require studies of forest sensitive species and management indicator species
- Fisheries – studies on premier wild trout fishery, including bull trout and rainbow trout

Please note that our review was for general biological resources and how they were addressed in the Project Proponent's CUP applications and supplemental materials. Although POWER's biologists have expertise in terrestrial flora and fauna, this Proposed Project has clear aquatic and fisheries resource issues; it should be similarly reviewed by a qualified aquatic and fisheries biologists. It should be noted that the Project Proponent's responses to CUP application questions relevant to biological resources (e.g. under section 22 #5 regarding project compliance with state and federal regulation and #12 regarding effects of the project on natural features of major importance) were not addressed and identical regardless of application. Completion of an EIS would allow the Project Proponent to address these questions and submit adequately complete applications for the County's review.

Thank you for this opportunity to provide you with continuing support as Elmore County reviews the Cat Creek Energy CUP Applications. Please do not hesitate to contact me if you have any questions.

Sincerely



Bill Doering  
Environmental Specialist  
POWER Engineers, Inc



# Elmore County Land Use and Building Department

520 East 2nd South Street  
Mountain Home, Id. 83647  
Phone: (208) 587-2142 ext. 254  
Fax: (208) 587-2120  
www.elmorecounty.org

Alan Christy  
Director

Tell Riley  
Building Official

Beth Bresnahan  
Planner I

Kacey Ramsauer  
Administrative  
Assistant

October 21, 2015

Cat Creek Energy  
398 S. 9<sup>th</sup> Street, Ste. 240  
P.O. Box 915  
Boise, ID 83706  
(sent via email)

Re: Deficiency List.

Cat Creek Energy:

Thank you for taking the time to meet with myself and other Elmore County staff on October 6, 2015 regarding the status of five conditional use permit applications (the "Applications") that have been submitted to the Elmore County Land Use and Building Department (the "Department"). As was discussed during the meeting the purpose of this letter is to provide Cat Creek Energy, LLC a list of outstanding items needed to complete the applications. The Applications are comprised of the following:

- Conditional use permit application for Transmission Lines. ("CUP-2015-03")
- Conditional use permit application for Pump Storage Hydro ("CUP-2015-04")
- Conditional use permit application for PV Solar ("CUP-2015-05")
- Conditional use permit application for Wind Power ("CUP-2015-06")
- Conditional use permit application for a Substation ("CUP-2015-07")

As a reminder each use requires a separate conditional use permit under the Elmore County Zoning and Development Ordinance (the "Ordinance"). As stated in the Applications each of the uses are dependent and function with each other. Therefore, some of the outstanding issues may only need to be submitted once. If you do not agree with any of the outstanding determinations you may appeal this decision to the Elmore County Planning and Zoning Commission pursuant to Ordinance section 6-3-1. The appeal must be made within ten days of the date on this letter. An appeal application is attached to this letter as Attachment #1.

For this deficiency review the County has received the Applications submitted on February 26, 2015 and supplemental information submitted on July 2, 2015 and July 31, 2015 (the "Supplemental"). Many of the deficiencies have been addressed with the Supplemental. However, based upon the review of the Department and Elmore County consultants there are still outstanding deficiencies. The following deficiencies apply to all five of the conditional use permits.

- Legal descriptions and Parcel #'s have been provided. Please provide a breakdown of which parcel numbers belong to each project. In addition, it would help the Department if a metes and bounds description for each project can be provided.
- The Critical Issues Analysis (the "CIA") is not sufficient for the environmental studies required by Elmore County. The Department has repeatedly required an Environmental Impact Statement ("EIS") be approved and completed prior to deeming an application complete. An EIS can be required by the County. The requirement for an EIS is found on the CUP applications, the Ordinance and Idaho Code. The County is willing to consider an

environmental study completed in the form of the attached outline that is attached as Attachment #2. If you are willing to complete a study in this form please contact the Department to discuss. Please note that at a minimum, an environmental study with this information shall be submitted to the Department and be prepared by a qualified wildlife biologist as defined by the Ordinance. The County has utilized the plan format in Attachment #2 on other land use and conditional use permit applications.

- Exhibit E of the Supplemental is an attachment that was previously given to you by the Department. The Department is confused to why this was submitted back to the County to show your relationship with Idaho Fish and Game. Please provide additional clarification for Exhibit E.
- As stated in previous letters please provide documentation identifying how James T. Carkulis has been authorized as an agent to sign the lease agreements and act on behalf of Cat Creek Energy, LLC. According to the Idaho Secretary of State website, John L. Faulkner is the only listed member of the corporation.
- As requested earlier please clarify the timeframes necessary for completion. The timeframes on the Applications do not match. The information provided in the Supplemental is ambiguous and does not provide the Department a clear answer to the timing.
- Exhibit F in the Supplemental does not accurately portray or describe the Area of Critical Concern Zoning designation in Elmore County. Please accurately show the Area of Critical Concern on the Master Site Plan. Please provide documentation on how the Applications comply with Ordinance section 6-8-26.
- The General Site Plan submitted as Exhibit G is not legible and does not meet the requirements of Chapter 18 of the Ordinance for a Master Site Plan.
- Please provide 5' contours on the Master Site Plan as required by Ordinance section 6-18-5A.3
- Please provide existing and proposed roads, with descriptions on the Master Site Plan as required by Ordinance section 6-18-4C.
- Provide location of structures as required by Ordinance section 6-18-4A. Specifically locations of wind tower and solar panel structures. The generalized area of thousands of acres is vague and does not give the County enough information to determine the impacts.
- Provide utility locations as required by Ordinance section 6-18-6F.

Additional questions have been raised by the applicants. The questions by the applicants and response from the Department is listed below:

- County approvals needed for geo-bores on site over the proposed reservoir?

Response: With the information provided by the applicants on October 7, 2015 there are no county approvals needed to conduct the geo-bores. Please note burn permits are likely needed from the Idaho Department of Lands. If there is any change in use described by the applicants please contact the Department.

The Department has the following concerns with the timing and scope of the Applications. It is anticipated these items will likely be discussed during a public hearing. I recommend that additional information be provided on the following concerns.

- Approving the Applications in the proposed scope may be detrimental to existing surrounding property owners. It is the Department's understanding that approvals from federal and state agencies can take time and may be heavily protested. CUP-2015-03 and CUP-2015-04 appear to rely heavily on surrounding properties and will require approvals on neighboring land. The Department is concerned a county approval would be premature without surrounding land approvals.
- No input from downstream water users has been provided with the Applications. The Department recommends meeting and getting approvals from Idaho Department of Water Resources before proceeding with the Applications.
- Conditional Use Permits are required to comply with State and Federal regulations pursuant to Ordinance section 6-27-7. The Applications appear to be premature and are not currently in compliance with State and Federal regulations. Additional information should be provided to show how the Applications are currently in compliance with State and Federal regulations.

Please feel free to contact the Department if you have any questions regarding this letter.

Sincerely,



**Alan Christy**

Director

Elmore County Land Use & Building Department

520 East 2nd South Mountain Home, ID 83647

Ph: (208) 587-2142 ex. 269 \ Fax: (208) 587-2120

achristy@elmorecounty.org \ www.elmorecounty.org

#### Attachments

1. Appeal application
2. Wildlife Mitigation Plan Outline



**ELMORE COUNTY LAND USE & BUILDING DEPARTMENT**  
520 E 2<sup>nd</sup> South – Mountain Home, ID 83647 – (208) 587-2142  
[www.elmorecounty.org](http://www.elmorecounty.org)

**Appeal of Elmore County Land Use & Building Department Director Decision  
\$800**

Please attach additional sheets of paper if necessary. **Appeal shall comply with Elmore County Zoning and Development Ordinance Section 6-3-1. Do not fax! Please complete in INK.**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email / Phone: \_\_\_\_\_

Subject of Appeal & Case #: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Basis for objection: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**For Administrative Use Only**

File Number: \_\_\_\_\_

Fee: \$800 \_\_\_\_\_ Date Paid: \_\_\_\_\_

Receipt Number: \_\_\_\_\_

Date Accepted: \_\_\_\_\_ By: \_\_\_\_\_



## **WILDLIFE MITIGATION PLAN**

In addition to any information that may be required by law Elmore County can request a written Wildlife Mitigation Plan. (WMP). The WMP shall be prepared by a Qualified Wildlife Biologist as defined in the Elmore County Zoning and Development Ordinance. The County also has the right to require additional environmental studies based on the scope of the project. The following outline and plan requirements shall be followed and incorporated into the WMP.

### **Elmore County Wildlife Assessment and Mitigation Plan**

#### **Chapter 1 Introduction**

- 1.0 General Project Description and Overview
- 1.1 Mitigation Goals and Objectives
- 1.2 Elmore County Regulatory Framework and Requirements
- 1.3 Qualifications of WMP authors

#### **Chapter 2 Methods**

- 2.0 Narrative of Methods Used

#### **Chapter 3 General Site Description**

- 3.0 Geographical Setting
- 3.1 Historic Land Use
- 3.2 Neighboring Land Use

#### **Chapter 4 Site Resources**

- 4.0 Vegetation/Habitat Types (as referenced by the Elmore County Soil Survey and USDA, Soil Conservation Service)
  - 4.0.1 Wetlands as defined by U.S. Corps of Engineers
  - 4.0.2 All the others (native grassland, introduced grassland, riparian, bitterbrush/sage, etc.)
  - 4.0.3 Noxious Weeds
- 4.1 Wildlife
  - 4.1.1 Game and Travel Corridors
  - 4.1.2 Raptors
  - 4.1.3 Migratory Birds
  - 4.1.4 Other Terrestrial Wildlife

- 4.1.5 Aquatic Wildlife
- 4.1.6 Threatened, Endangered, and Candidate Species (plant and animal)
- 4.1.7 Special Status Species

## **Chapter 5 Impacts**

- 5.0 Direct
- 5.1 Indirect
- 5.2 Cumulative Effects

## **Chapter 6 Activities to Avoid and Minimize Project Impacts and Open Space**

- 6.0 Activities Narrative
  - 6.0.1 Avoided
  - 6.0.2 Minimized
- 6.1 Open Space Management
  - 6.1.1 How Open Space Plan Correlates to WMP
  - 6.1.2 How Wildlife Might Benefit From Proposed Open Space
  - 6.1.3 Funding Source for Management of Open Space
  - 6.1.4 Connectivity Opportunities with Abutting Property, Trails, Etc.

## **Chapter 7 Mitigation Activities and Implementation (written format)**

- 7.0 Wildlife
  - 7.0.1 Actions and Methods to Meet Goals
  - 7.0.2 Timeline & Cost
  - 7.0.3 Management and Monitoring Plans (duties and responsibilities)
  - 7.0.4 Financing Plan with Funding Source
  - 7.0.5 Alt. Mitigation Strategy
- 7.1 Wetlands
  - 7.1.1 Actions and Methods to Meet Goals
  - 7.1.2 Timeline & Cost
  - 7.1.3 Management and Monitoring Plans (duties and responsibilities)
  - 7.1.4 Financing Plan with Funding Source
  - 7.1.5 Alt. Mitigation Strategy
- 7.2 Noxious Weeds

- 7.2.1 Actions and Methods to Meet Goals
- 7.2.2 Timeline & Cost
- 7.2.3 Management and Monitoring Plans (duties and responsibilities)
- 7.2.4 Financing Plan with Funding Source
- 7.2.5 Alt. Mitigation Strategy

## **Chapter 8 Federal Permitting**

- 8.0 Summary of Federal applications or permits that may be required.

## **Chapter 9 Overall Actions and Methods to Meet Goals**

- 9.0 Timeline & Cost
- 9.1 Management and Monitoring Plans (duties and responsibilities)
- 9.2 Financing Plan with Funding Source
- 9.3 Alt. Mitigation Strategy

## **Chapter 10 Adaptive Management Strategies**

**References**

**Tables**

**Figures**

**Appendix**

received  
11-4-15 BSB  
Via email

November 8, 2015

Alan Christy  
Director, Elmore County Land Use and Building Department  
[achristy@elmorecounty.org](mailto:achristy@elmorecounty.org)

Alan:

Thank you and Phil Miller for Wednesday's productive call. It laid a good foundation to see how we can best make sure this process becomes a collaborative effort. Elmore County should have all of the information it needs to advance the CUPs for the various components before Elmore County Planning and Zoning for the Cat Creek Energy project.

The objective according to the Elmore County Wildlife Mitigation Plan (WMP) is to identify potential environmental impacts of the project and provide guidance to plausible ways that they can be mitigated. As we said Wednesday, the WMP provides enough flexibility so that further investigation, which may be necessary, can continue but not completed before our applications are considered for conditional approval. To repeat my point, CCE shall be working with a host other state and federal agencies throughout the entire process to the commencement of substantial construction. We shall abide by whatever measures are subscribed to complete any state and federal protocols, including procedures under any NEPA designation by a federal agency. The kinds of scientific data-gathering the WMP requires are a regular part of our project development routine in any case. We continue to coordinate with the various local, state, and federal agencies and actively work in partnership with such agencies as the Idaho Department of Fish & Game.

We are finalizing a comparative analysis of the WMP template with the CCE Critical Issues Analysis. We will deliver it to you this week. This is an easy step as the Critical Issues Analysis and some of the Exhibits submitted with our CUP applications contain most of the information required. It is mainly a matter of re-formatting them to fit the MWP template and expanding them where necessary. Two points need to be made in this connection.

First, Corky made what I think is a useful distinction between substantive issues, i.e., those having to do with social and environmental impact and mitigation, and with administrative issues, i.e., those having to do with time-lines, costs, other-agency approvals, and so on. The latter is important, but as we said on Wednesday, several of the substantive issues cannot be

determined until after various administrative issues are completed. This applies specifically to determining the final location of the technologies and as an extension the submission of a Master Site Plan.

Second, the CUPs are specific to particular technologies within the scope of the overall project. The WMP for the most part is general. We shall of course include in the WMP (as we have in the CIA) isolation and mitigation of impacts connected to the individual CUPs of pumped hydro, wind, solar, transmission, and substation components and connect each to their distinct locations, building envelopes, and footprints. But, as in the case of the Master Site Plan, defined and final plats are premature and should come later as part of the approved conditions that allow for studies and public input assisting in final design.

Incidentally, Hillside Standards work well for lots and small plats; however, in connection with the Master Site Plan, we need to discuss in more detail the 5' contours requirement over such large land areas. I am sure there is a better way. This would be an expensive under-taking, even if only as the result of an aerial survey. We shall of course include the topographical gradients of the project components and make sure that each conforms to the Hillside Standards in the Ordinance.

There needs to be some further clarification in all of the submittals and the associated thinking behind them:

1. Only a small portion of CUP 04 is within the designated Area of Critical Concern overlay. The overlay would also intersect a very small portion of the on-site transmission line, CUP 03. But that is all and for some reason there is a supposition that (a) the Upper Reservoir as part of CUP 04 is partially or totally on federal lands and (b) that most of the five CUPs submitted fall under the ACC overlay. This is simply not the case.
2. No one knows what NEPA process may be necessary. CCE has anticipated a federal nexus shall exist for specific portions of the overall project; and there may be some overlap with one or more of the five CUPs.
3. We have asked for approval of specific footprints or areas, either in their entirety or in each CUP, to give the proper latitude for optimum placement of components, which address environmental, social, cultural, and economic concerns.
4. The goal of the pump storage hydro project is important to keep in focus.
  - a. It takes its water from spring runoff. Therefore, it not only does it not burden existing water rights, but also it may actually enhance certain water rights given the ongoing Court cases now on 2<sup>nd</sup> call.
  - b. It provides the necessary water resource for needed electrical storage and generation.

- c. It provides 30,000 additional acre feet of water storage for downstream uses in the South Boise drainage. This is an extremely important county and state issue and CCE has the ability to assist due to the property attributes for the Upper Reservoir location.
  - d. It provides a firm pumping resource for other irrigation districts and municipal needs if they so choose to take advantage of the benefit, which can be provided by CCE.
5. The CCE project will have a minuscule impact on the ranches and traditional agricultural use and the county in general, while increasing economic and environmental benefits to the County

This is a complex process, involving multiple agencies. None shall be overlooked or dismissed. Fortunately, we all have a common goal. It will be reached to the extent that there is mutual trust and complete cooperation. As I said at the outset of Wednesday's call, those of us working with and for CCE developing this project have devoted ourselves to renewable energy development primarily because we are committed to the protection and preservation of the natural (and human) environment, while at the same time fueling jobs, opportunity, and enhancing the tax base. We engage the very best biologists, engineers, and planners along with the best equipment manufacturers and appropriate technologies to ensure completion of a stellar facility compatible with its surrounding environment and not detracting from the uses of the lands it sits on. The resumes of those scientists and engineers who are consulting on this particular project, our long track record of environmental responsibility, and, indeed, the individual awards we've won, all underline this fact.

Thanks again for the conference call. The back and forth discussion led to Elmore County's acknowledgement of CCE's key development issues described herein giving us renewed confidence in the County's planning process.

Regards,

James T. Carkulis  
Agent for Cat Creek Energy



DEPARTMENT OF THE ARMY  
WALLA WALLA DISTRICT, CORPS OF ENGINEERS  
BOISE REGULATORY OFFICE  
720 PARK BOULEVARD, SUITE #245  
BOISE, IDAHO 83712-7757

received  
12-10-15 JCU

December 7, 2015

Regulatory Division

SUBJECT: NWW-2015-00562, Cat Creek Energy LLC, *Cat Creek Project(s)*

Mr. Alan Christy, Director  
Elmore County Land Use and Building Department  
520 East 2<sup>nd</sup> South Street  
Mountain Home, Idaho 83647

Dear Mr. Christy:

This is in response to your December 3, 2015 letters notifying us about the Elmore County Appeals Hearing, to be held on December 16, 2015, regarding Cat Creek Energy, LLC's proposed *Cat Creek Project(s)*. According to information provided to us, the proposed project(s) is the construction of: a hydroelectric generating facility; a transmission line; a solar electrical generating facility; a wind turbine electrical generating facility; and a substation. This proposed project has been assigned Department of Army (DA) File # NWW-2015-00562, which should be referred to in all future correspondence.

The information provided is limited and does not contain site specific details and/or a full description of the impacts to waters of the U.S., including wetlands. Therefore, our comments at this time are also limited and require additional detail and specific information for us to better determine impacts as well as the appropriate permit pathway. Based on our review of the information the County furnished and available to our office, we have preliminarily determined that the work activities (permanent and temporary) associated with the proposed construction activities listed above appear to discharge fill material into Anderson Ranch (SF Boise River) and/or other unknown waters of the United States (U.S.), including wetlands, and may require a DA authorization/permit.

#### LOCATIONS

The proposed sites are located in Elmore County, near Mountain Home, Idaho, and include the following location descriptions:

*Hydroelectric Electrical Generating Facility* –

Sections 25, 26, 27, 35, 36: Township 1 North; Range 9 East, Boise Meridian; and  
Sections 1, 2: Township 1 South; Range 9 East, Boise Meridian

*Transmission Line –*

Sections 26, 35; Township 1 North; Range 9 East; and  
Sections 2, 3, 10, 11; Township 1 South; Range 9 East, Boise Meridian

*Solar Electrical Generating Facility –*

Sections 2, 3, 10, 11; Township 1 South; Range 9 East, Boise Meridian

*Wind Turbine Electrical Generating Facility –*

Sections 15, 21, 22, 28, 29, 30, 31, 32, 33; Township 1 South; Range 10 East

*Substation, Access Road, Appurtenant Facilities –*

Sections 2, 11; Township 1 South; Range 9 East, Boise Meridian

NOTE: A DA application requires a latitude and longitude for each impact area(s) to waters of the U.S., including wetlands to fully process/evaluate for final permit decision (33 CFR 325).

## AUTHORITY

The DA exerts regulatory jurisdiction over waters of the United States (U.S.), including wetlands, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). Section 404 of the Clean Water Act requires a DA permit be obtained prior to discharging dredged or fill material into waters of the U.S., which includes most perennial and intermittent rivers and streams, natural and man-made lakes and ponds, irrigation and drainage canals and ditches that are tributaries to other waters, and wetlands. Section 10 requires that a DA permit be obtained prior to building structures or conducting work in or affecting navigable waters of the U.S.

## PRE-APP MEETING

DA authorizations are required to comply with the Environmental Protection Agency's 404 (b)(1) Guidelines. Meaning, the applicant must show that all appropriate and practicable steps to minimize potential impacts of the discharge on the aquatic ecosystem have been considered, and that the current proposal represents the least environmentally damaging practicable alternative (LEDPA).

Also, the applicant must summarize the steps that they have taken to avoid, minimize and/or mitigate the unavoidable impacts of their proposed project, as outlined in the 2008 Final Mitigation Rule (33 CFR 325; 332). The burden of proof to demonstrate compliance with these guidelines rests with the applicant.

We encourage Cat Creek Energy, LLC to meet and work with our Boise Regulatory office to ensure that their proposed project and final plans are of acceptable quality for a Public Notice or Pre-Construction Notification; that the 404(b)(1) alternative analysis is complete; and the mitigation criteria of avoidance, minimization and mitigation sequencing, if needed, can be incorporated into the proposed project(s), particularly if mitigation is indicated at the scoping level.

Please contact me by telephone at (208) 433-4469, by mail at the address in the letterhead, or via email at [jamie.n.howard@usace.army.mil](mailto:jamie.n.howard@usace.army.mil) if you have any questions or need additional information. For informational purposes, a copy of this letter is being sent to Mr. Nicholas Josten, Cat Creek Energy LLC, 1989 South 1875 East, Gooding, ID 83330 and Mr. Aaron Golart, IDWR at [aaron.golart@idwr.idaho.gov](mailto:aaron.golart@idwr.idaho.gov).

Sincerely,



Jamie Howard  
Project Manager  
Regulatory Division

Enclosures

Jt. Application for Permits  
Instruction Guide  
Sample Drawings

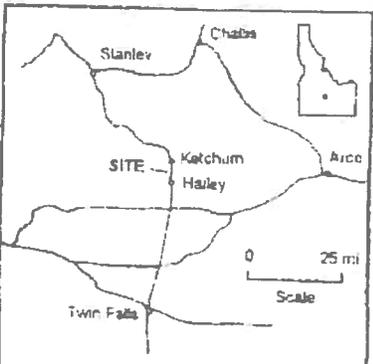
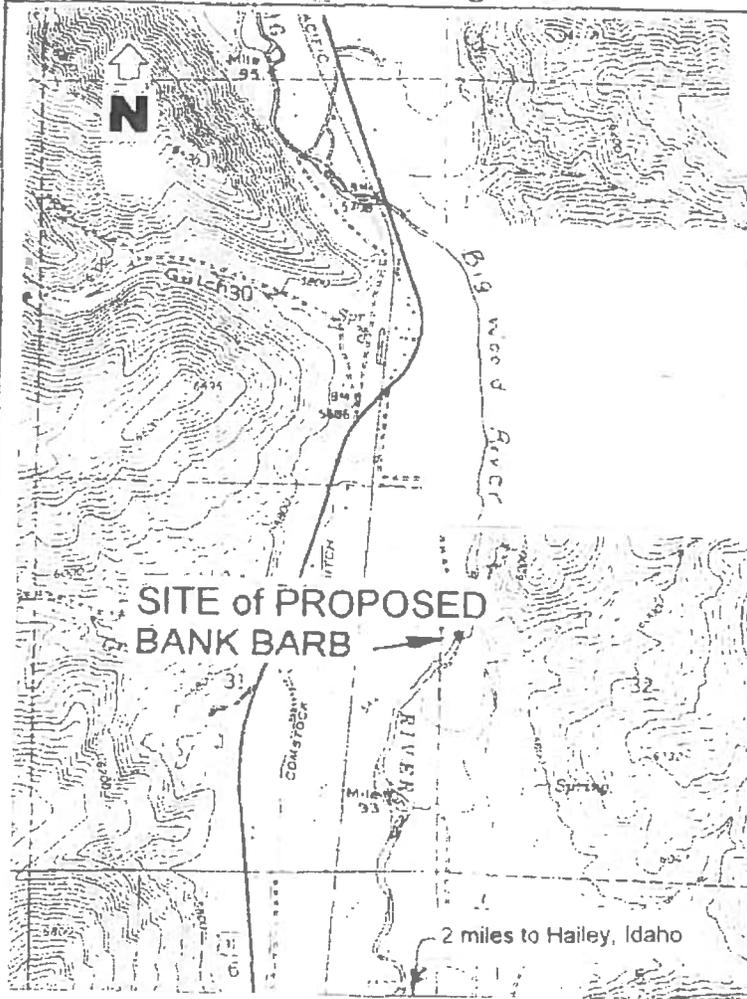
# Sample Drawing

## Location Map

BIG WOOD RIVER BANK BARB

Range 8 East

Township 4 North



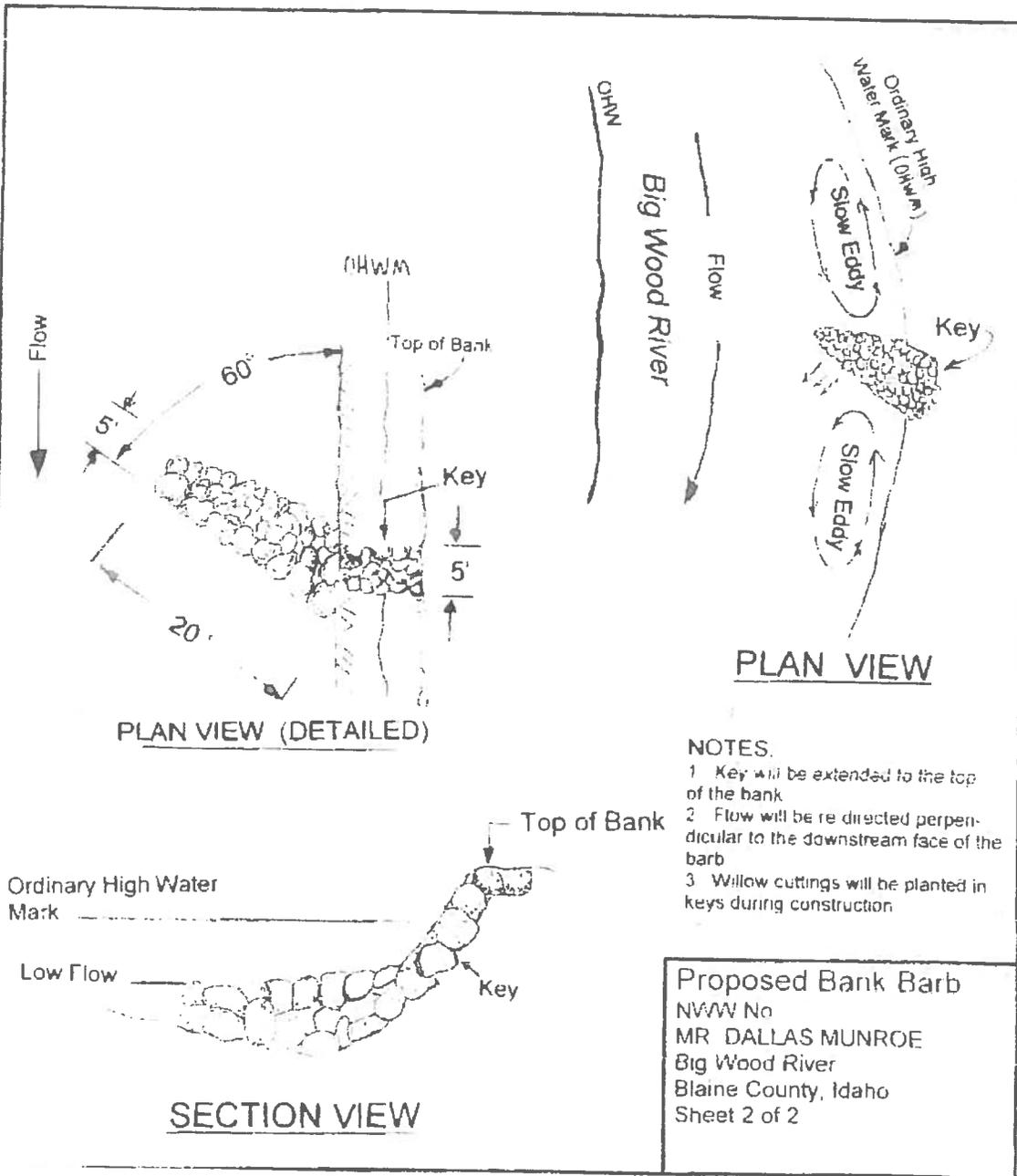
## Vicinity Map

From U.S. Geological Survey map  
quadrangle titled *Sun Valley*

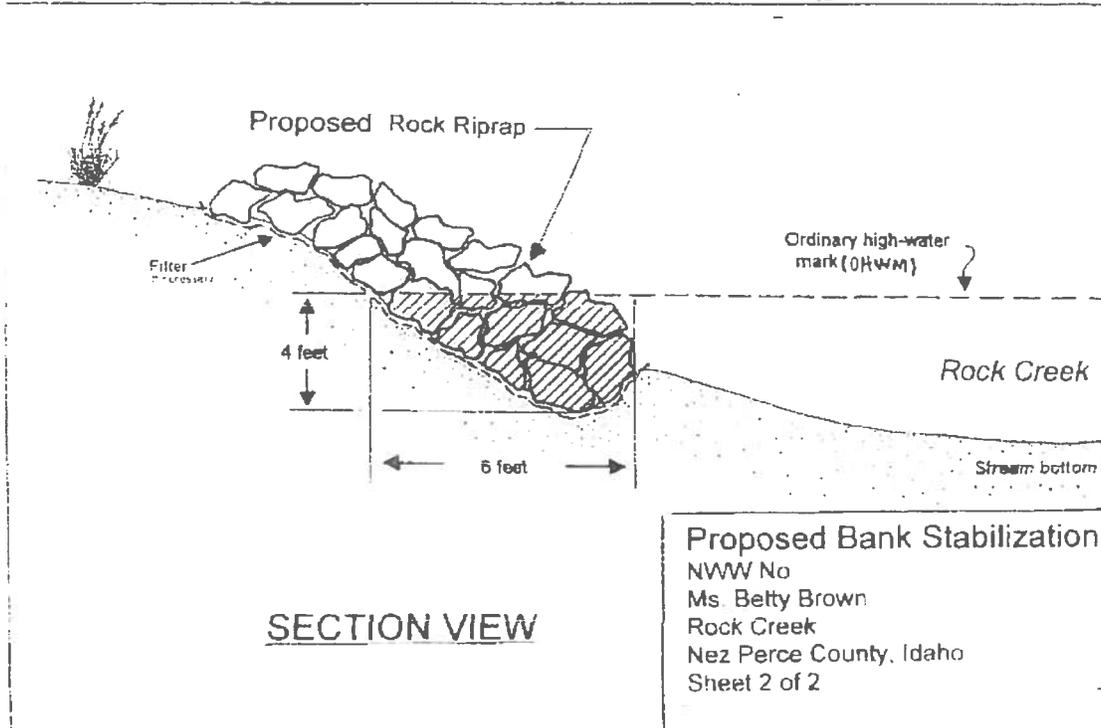
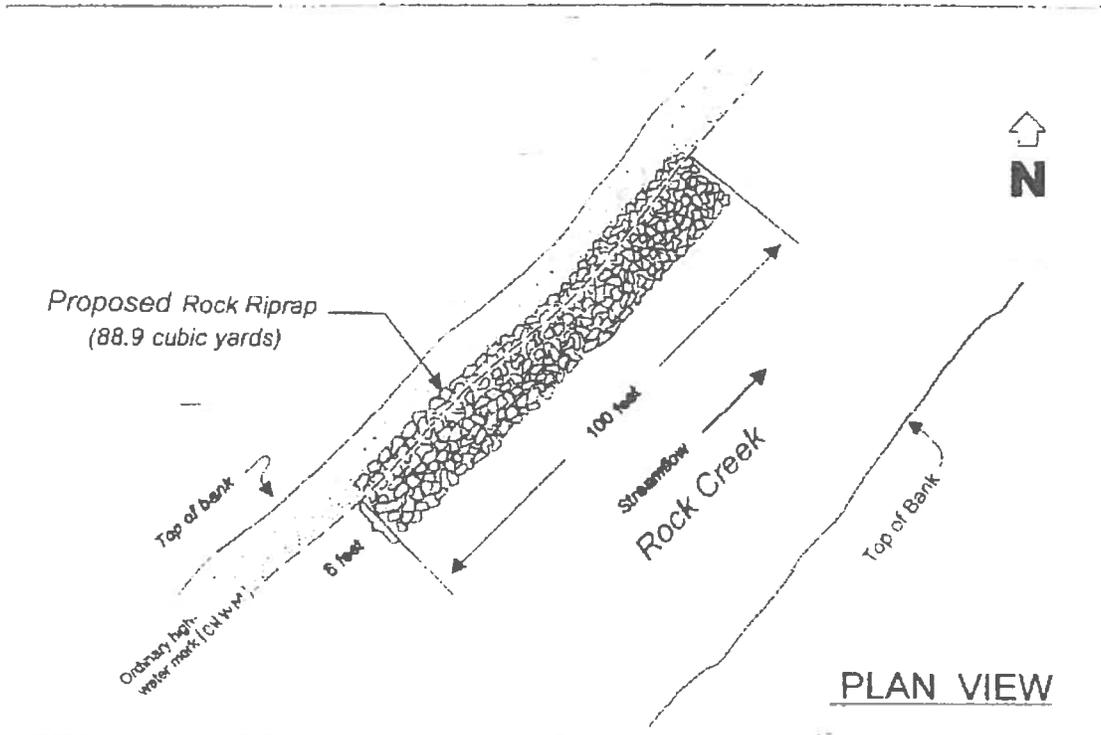
## Proposed Bank Barb

NWW No.  
MR. DALLAS MUNROE  
Big Wood River  
Blaine County, Idaho  
Sheet 1 of 2  
June 18, 1998

# Sample Drawing

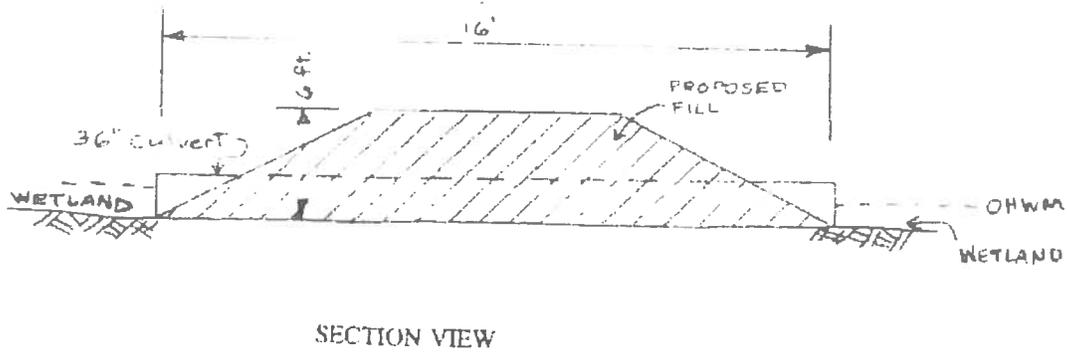
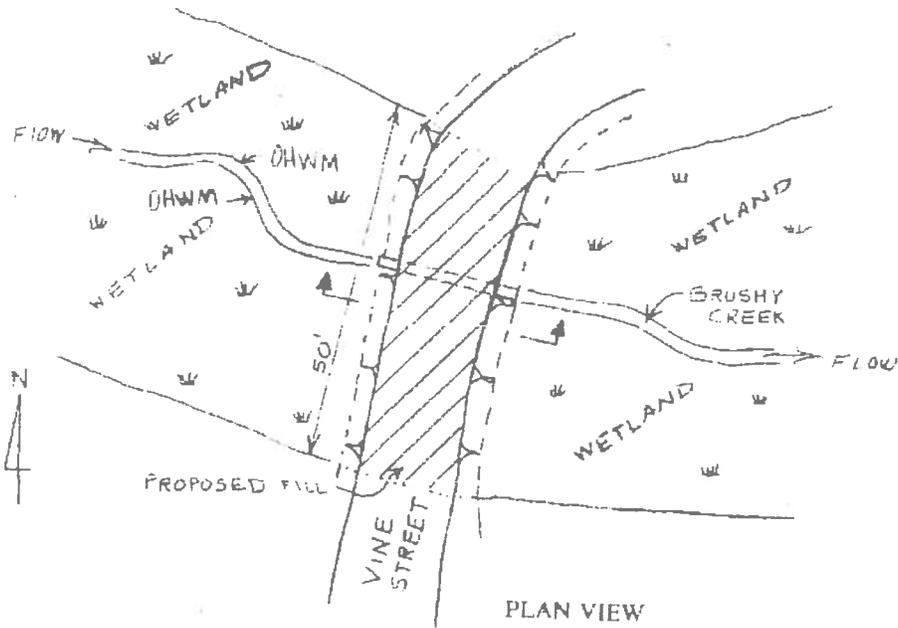


# Sample Drawing





Sample Drawing



PROPOSED ROAD CROSSING  
NW No.  
Mr. John Doe  
Brushy Creek  
Kootenai County, Idaho  
Sheet 1 of 2



# STATE OF IDAHO

## INSTRUCTION GUIDE: JOINT APPLICATION FOR PERMIT

U.S. ARMY CORPS OF ENGINEERS    IDAHO DEPARTMENT OF WATER RESOURCES    IDAHO DEPARTMENT OF LANDS

This guide is intended to assist the applicant/agent in completing the Joint Application for Permit (NWW Form 1145-2/IDWR 3804-B). The application provides the information needed for evaluation and issuance/denial of a Department of Army Corps of Engineers permit, Stream Alteration Permit from the Idaho Department of Water Resources, Lake Encroachment permit from the Idaho Department of Lands and an individual water quality certification or waiver for impacts to waters within the State of Idaho.

**Applicant will need to send a completed application and one set of drawings (and supplemental information, if needed) to both the Corps of Engineers and the State of Idaho. Do not start work until you receive ALL permits from the Corps and State of Idaho agencies.**

Content information can be found on the following pages:

Permit Fees	2
Water Quality Certification	2
Submitting a Joint Application for Permit	2
Block 1 – Block 12	3
Block 13 – Block 16	4
Block 16 – Block 20	5
Block 21 – Block 26	6
Block 26(b)	7
Block 27 – Block 28	8
Block 29 – Block 30	9
Drawings & Supplemental Information	9-10
Contact Information:	
Water Quality Certification	7
Corps of Engineers	10
State of Idaho	11

The Corps and State of Idaho strongly encourages the completion of all blocks on the application to ensure a proper evaluation can be done in a timely manner. All drawings and illustrations should be thoughtfully prepared with information and dimensions accurately depicted.

Minimal information required to begin the Corps permit process include: applicant's name, address, telephone number; project location, including latitude/longitude; project purpose and need; a mitigation plan OR statement of why no mitigation is needed; all previously issued permit authorizations; the required drawings (location map, plan, cross-section); and the applicant and agent signature(s) are required to be completed (see 33 CFR 325). Additional information requested within this document is needed for it to be considered a complete application for the State of Idaho and may be utilized by the Corps in its permit evaluation process.

The disclosure of information for this application is **voluntary**. Incomplete applications will not be processed, nor can permits be issued. If you need additional guidance to prepare this document please contact the appropriate Corps and/or State office to schedule a pre-application meeting so we may assist you.

By signing the application, the applicant is granting the State agencies to which this application is made the right to access/come upon the described location(s) to inspect the proposed and completed work activities.

---

## INSTRUCTION GUIDE JOINT APPLICATION FOR PERMIT

U.S. Army Corps of Engineers

Idaho Department of Water Resource

Idaho Department of Lands

### PERMIT FEES

The **Corps of Engineers** does not require a fee for nationwide or other permit actions. However, the Corps does require a fee for a Department of Army Individual Permit, at the time a permit is issued. Do not send a fee to the Corps when you send in the application. When the permit is ready to be issued, you will be asked for the fee before the permit is issued. A \$10 fee is charged for non-commercial activities and a \$100 fee is charged for commercial or industrial activities.

The State of Idaho requires a \$20 filing fee for State Stream Alteration Permits administered by the **Idaho Department of Water Resources** and MUST BE SUBMITTED WITH THE APPLICATION.

The **Idaho Department of Lands** charges fees based on the type of activity being conducted. ALL STATE FEES MUST BE SUBMITTED WITH THE APPLICATION. For specific fees charged, please visit their website at [http://www.idl.idaho.gov/bureau/smr/navwaters/nw\\_procedures.html](http://www.idl.idaho.gov/bureau/smr/navwaters/nw_procedures.html).

There is no charge for a 401 water quality certification.

### WATER QUALITY CERTIFICATION

If applying to the Corps of Engineers for a project that involves discharging dredged or fill material into waters of the United States, including wetlands, you will need to obtain a Section 401 water quality certification (WQC) for the work activities **before** the Corps can issue a permit. The State of Idaho Department of Environmental Quality (IDEQ) is the water quality certifying agency for most areas within the State of Idaho.

The United States Environmental Protection Agency, Region 10, is the certifying agency for activities located within established tribal boundaries, with the exception of lands located within the exterior boundaries of the Fort Hall Indian Reservation AND approximately the southern 1/3 of Coeur d'Alene Lake and the St. Joe River within the Coeur d'Alene Reservation (see page 7 for agency contact on WQC information).

As part of the permit review process, the Corps will notify the appropriate agency of your project and request an individual 401 water quality certification be issued.

### SUBMITTING A JOINT APPLICATION FOR PERMIT

The Joint Application for Permit and all required drawings (vicinity map, plan view drawing and cross sectional drawing) should be sent to all appropriate agencies. Send your application to the office address that corresponds with your project/activity location, see page 10-11 for contact information.

The Joint Application for Permit is used by the Corps of Engineers, Walla Walla District (Corps), State of Idaho Department of Water Resources (IDWR) and State of Idaho Department of Lands (IDL) to issue a permit for activities that impact waters of the United States.

**It is the applicant's responsibility to verify with local, county, city and/or Tribal governments that additional regulation, requirement, application, permit, etc. are or are not required.**

## INSTRUCTION GUIDE JOINT APPLICATION FOR PERMIT

U.S. Army Corps of Engineers

Idaho Department of Water Resource

Idaho Department of Lands

### APPLICATION INSTRUCTIONS

**BLOCK 1 – Contact Information, Applicant:** Provide all contact information of the responsible party or parties. Include name, company, mailing address, city, state, zip code, day-time telephone number, and e-mail address. If the responsible party is a company, corporation, agency, other organization, etc. indicate the responsible officer/title. If more than one party is associated with the application, attach an additional 8-½" x 11" sheet with the necessary information. The applicant's signature is required in Block 30 *Signature of Applicant*.

**BLOCK 2 – Contact Information, Agent:** Provide all contact information of the agent representing the primary party or parties provided in Block 2. Include name, company, mailing address, city, state, zip code, day-time telephone number, and e-mail address. An agent can be an attorney, builder, contractor, engineer, consultant, or any other person or organization. An agent is not required unless the applicant wishes to designate someone to represent him/her during the permit process. The agent's signature is required in Block 31 *Certification of Agent*.

**BLOCK 3 – Project Name/Title:** Provide the name or title identifying the proposed project; this should **NOT** be the applicant's name (e.g., Two Mile Crossing; Phyllis Drain Culvert; Snake River @ river mile #248.5).

**BLOCK 4 – Project Street Address:** Provide the *physical* address - not a box number - where proposed activities will be conducted. If no physical address is available, provide the nearest crossroads.

**BLOCK 5 – Project County:** Provide the county in which proposed activity/project is located.

**BLOCK 6 – Project City:** Provide the city where proposed activity/project is located.

**BLOCK 7 – Project Zip Code:** Provide the zip code in which proposed activity/project is located.

**BLOCK 8 – Nearest Waterway/Waterbody:** Provide the name of the stream, river, lake, pond, reservoir, irrigation facility, shoreline, etc. to be directly impacted by the activity/project. If a minor (unnamed) water, identify the waterbody the minor stream flows into.

**BLOCK 9 – Tax Parcel ID#:** This is an Idaho Department of Lands requirement. Provide the Tax Assessor's parcel number or description, which may be obtained by calling the local Tax Assessor's Office of the county in which the project is located in.

**BLOCK 10 – Latitude/Longitude:** Provide an accurate Latitude and Longitude coordinate of where the proposed project is located. If project covers a large area, please provide multiple coordinates that best define the project boundaries for an accurate and timely assessment of your application. Attach this on an 8-1/2" x 11" sheet, labeled Block 10. The required vicinity map should also contain the latitude & longitude coordinates. Contact a local government agency in the area for assistance. You may also try using Bing, Google Earth, Google Maps, Yahoo Maps or other similar websites for assistance in obtaining the latitude/longitude for the project site.

**BLOCK 11(a-e) – Quarter, Quarter, Section, Township, Range:** Provide the ¼, ¼, section, township, and range where proposed activity/project will be conducted. This information may be obtained by contacting the local tax assessor's office where the proposed project site is located.

**BLOCK 12(a/b) – Estimated Start/End Date:** Provide the anticipated or best estimated dates of when activity/project will begin and end.

***Do not start work until receiving all permits from the Corps and the State of Idaho.***

## INSTRUCTION GUIDE JOINT APPLICATION FOR PERMIT

U.S. Army Corps of Engineers

Idaho Department of Water Resource

Idaho Department of Lands

**BLOCK 13(a)** – Project within Tribal Reservation Boundaries: If the proposed project is located within an established tribal reservation boundary, check the YES box. As required by the Clean Water Act, proper tribal coordination may need to be initiated by the Corps as part of the decision making process. Coordination may also be necessary to obtain Section 401 water quality certification from either the tribe and/or the U.S. Environmental Protection Agency. See page 7 for contact information.

**BLOCK 13(b)** – Is project located in listed ESA area? If the proposed project is located within a specific geographical area or watershed that has or ever has had an **ESA listed species** present, check the YES box. This question will help identify if your project requires further analysis regarding effects on species listed as “threatened” or “endangered” and/or its “critical habitat”, as defined under Section 7 of the **Endangered Species Act** (ESA).

**BLOCK 13(c)** – Is project located on/near Historical site? If the proposed project is located on or near an **Idaho historical or cultural site**, check the YES box. All federal agencies are required to take into account the effects of their actions (permit) on Historic Properties, as outlined in the **National Historic Preservation Act**, Section 106.

**BLOCK 14** – Directions to Site: Provide directions to the site from a known location or landmark. Include highway, roads, major crossroads, street numbers, and names. Also, provide distances from known locations and any other information that would assist in locating the site.

**EXAMPLE:** *From intersection of Park Ave. & 10<sup>th</sup> Street, drive 1.5 miles, turn right onto River Street, drive approx. one mile; project is on right descending bank (or east side) of Two Pines Creek, 1 mile downstream of US-14 Bridge, RM 32.*

**BLOCK 15** – Purpose and Need: Check the appropriate box - commercial, industrial, public, private, or check other (e.g.: social, economic, environmental). Describe the purpose and need for the structure or fill material to be placed in the waterway or waterbody, including wetlands. If the activities involve the discharge of dredge and/or fill material into a wetland or waterbody, include the temporary placement of material and explain the specific purpose of the materials being placed, i.e.: erosion control.

**EXAMPLE Purpose and Need:** *The purpose of this project is to construct an access road for Sundown Subdivision which requires the placement of a 48" arch culvert on Two Pines Creek.*

**BLOCK 16** – Detailed Description of Each Activity: Provide a detailed breakdown of EACH specific activity involved in the overall project. Provide dimensions – length, width, height, depth, area, acres, linear feet, etc. – of all proposed structures (e.g.: dikes, culvert, road, cofferdam, etc.). Written descriptions and illustrations are a crucial part of this application. Please identify the following:

- All quantities and types of materials to be used
- Indicate whether discharge of dredge or fill material is involved or not; provide correct dimensions
- Identify any structure to be constructed on a fill, piles, or float supported platform

**EXAMPLE Overall project description:** *Construct a road crossing of Two Pines Creek, using a 40" long x 48" diameter arch culvert pipe and the discharge of approximately 20 yds<sup>3</sup> of three quarter minus gravel, to facilitate the construction of a three acre housing development, located 250 feet from the high water mark of Two Pines Creek.*

Each activity should include a complete narrative of the proposed project work and activities. Include a description of current site conditions and how the site will be modified by the proposed project, all structures and fill materials to be installed, area of excavation or dredging, volumes of material to be removed, uses and disposal location of dredged material, work methods and type of equipment to be used and pollution control method (erosion, sediment, turbidity, etc). If applicable, include phasing or construction sequencing of activities.

**EXAMPLE: Breakdown of project activities, phases, sequencing:** *Install a 48-inch diameter X 40-foot arch culvert pipe into Two Pines Creek, associated with a road crossing. The base footprint dimensions of the road crossing will be 38-foot wide x 30-foot long.* (Continued on page 5)

## INSTRUCTION GUIDE JOINT APPLICATION FOR PERMIT

U.S. Army Corps of Engineers

Idaho Department of Water Resource

Idaho Department of Lands

*The driving surface of the roadway will consist of two, 12-foot driving lanes with 3-foot shoulders.*

*All work will be performed using a backhoe and front end loader, working from the top-of-bank of Two Pines Creek and/or the top-of-fill. No equipment will operate in the open channel, minimizing impacts to the extent possible within the project area.*

*Impacts associated with the road crossing include 900 square foot of open channel and 60 square foot of emergent wetlands.*

*Install a temporary 5-foot wide X 40-foot Jersey barrier/visqueen cofferdam to minimize sediment transport during the installation of the 48-inch diameter X 30-foot arch culvert pipe into Two Pines Creek.*

**BLOCK 17** – Alternatives Analysis to Avoid, Minimize, Compensate for Impacts: The Corps of Engineers is responsible to ensure that any environmental impact to the aquatic resources from your proposed project is avoided, minimized, and if needed compensated for, as much as possible. In some cases, the Corps may require compensatory mitigation to offset the losses of aquatic resources (33 CFR 325, 332: Final Mitigation Rule, April 2008).

Compensatory Mitigation is the restoration, establishment, enhancement or preservation of aquatic resources for the purpose of offsetting losses of aquatic resources resulting from activities authorized by a Corps of Engineers' permit. Compensatory mitigation requires a mitigation plan and must be reviewed and concurrence received from the Corps, prior to an issuance of a DA permit.

Minimal Impacts - If your project involves a *minimal impact to aquatic resources*, provide a brief summary and explanation describing how on-site measures are being or will be taken to avoid and minimize activity impacts to the waterway/waterbody. **Examples** of avoiding and minimizing on-site activity impacts may include revising work activities or sequencing, conducting work from atop the bank, work done during low water, use of rubber tired equipment, silt curtains, silt fences, straw waddles, etc.

More Than Minimal Impacts - If your project involves *more than minimal impacts to aquatic resources*, provide a detailed description and explanation describing which/where off-site alternatives were considered for your project. These alternatives must be a realistic alternative to site location, design(s), construction methods, etc. Each alternative discussed must have an explanation of why it was or was not chosen. A vicinity map of each alternative site must also be included and labeled accordingly (on 8-1/2" x 11" white paper).

**BLOCK 18** – Proposed Mitigation Statement or Plan: A mitigation plan for your proposed project may be required if impacts to the aquatic resource are more than minimal (see Block 17 for further details). If you believe your project does not require a compensatory mitigation plan, provide a statement of how measures are being taken to avoid and minimize activity impacts to the waterway or waterbody, including wetlands. Also include your reasoning of why a mitigation plan is not required.

If your proposed project does require a mitigation plan, attach a copy of the plan labeled Block 18. The plan must be on white paper no larger than standard 8-1/2" x 11", white paper and of good reproducible quality. While a detailed mitigation plan may be required as part of the permit process, it is NOT required for a complete application.

**BLOCK 19** – Type & Quantity of Materials: Identify and list each type and quantity of material that your project proposes to discharge. Any material discharged into waters of the U.S. below the Ordinary High Water Mark and/or in wetlands must be identified.

*Calculation for Cubic Yards (yd<sup>3</sup>):* LENGTH (ft) multiplied by WIDTH (ft) multiplied by DEPTH (ft); divide by 27

**BLOCK 20** – Type & Amount of Impacts to Waters of the U.S., including Wetlands: Identify and list quantity amounts of each type of impact to waters of the U.S., including wetlands. Include quantity amounts in acres, square feet, and cubic yards. To help determine quantity amounts, see calculations below.

*Calculation for Square Feet (ft<sup>2</sup>):* LENGTH (ft) multiplied by WIDTH (ft)

*Calculation for Acres:* LENGTH (ft) multiplied by WIDTH (ft); divided by 43,560

*Calculation for Cubic Yards (yd<sup>3</sup>):* LENGTH (ft) multiplied by WIDTH (ft) multiplied by DEPTH (ft); divide by 27

INSTRUCTION GUIDE JOINT APPLICATION FOR PERMIT

U.S. Army Corps of Engineers

Idaho Department of Water Resource

Idaho Department of Lands

**BLOCK 21** – List and/or describe all work activities that has occurred on the project and within the project site. If none, check “no”. If “yes”, provide all dates, work activities, type of work, the quantity – in linear feet, square feet, and/or acre area – for each type of work activity (impact) completed on either the project and/or the project site. Include work in waters of the United States; include all wetland areas.

*Calculation for Square Feet (ft<sup>2</sup>):* LENGTH (ft) multiplied by WIDTH (ft)

*Calculation for Acres:* LENGTH (ft) multiplied by WIDTH (ft); divided by 43,560

**BLOCK 22** – Previously Issues Permits/Authorizations: Provide permit number, date, authorization, agency and status of all approvals, permits, authorizations from other Federal, state, local, county or other permitting/licensing agency that may be needed for your proposed project. Provide status as issued, approved, pending, denied.

**BLOCK 23** – Alterations on Public Trust Land(s): Check the box if activity/project is located on Idaho Public Trust Land. The State of Idaho was granted title to the beds of navigable waters in 1890. For further information on State of Idaho Public Trust Lands, contact Department of Lands directly; see page 11 for contact information.

**BLOCK 24** – Size & Flow Capacity of Bridge/Culvert & Drainage Area: This is an Idaho Department of Water Resource (IDWR) requirement. For further information on Block 24, contact IDWR directly, see page 11.

IDWR requires all applications for bridges or culverts to include the drainage area above the crossing AND design flow capacity of the structure, with required allowances for debris and ice passage. Minimum clearance shall be at least one foot at all bridges; this may need to be increased substantially in the areas where ice passage or debris may be a problem.

Design flows shall be based on the following minimum criteria:

<u>DRAINAGE AREA</u>	<u>DESIGN FLOW FREQUENCY</u>
50 square miles or less.....	25 years
Over 50 square miles.....	50 years or greatest flow of record, whichever is greater

IDWR and the Corps strongly encourage the use of bottomless arch culverts and free-span bridge structures for stream and river crossings. Installation of bottomless arch culverts and free span bridge structures:

- Reduces the risk of not passing flows during a high water event
- Lowers the long-term maintenance costs of the crossing
- Decreases the possibility of down-cutting of the streambed or riverbed (upstream or downstream of the crossing)
- Minimizes the possibility of bank erosion upstream and/or downstream of the crossing
- Promotes fish passage

Although the use of bottomless arch culverts and free-span bridge structures in lieu of round metal culverts is strongly recommended, but not required. Contact IDWR for minimum culvert sizes for stream and river crossings.

**BLOCK 25** – Project in a Mapped Floodway: Contact your local city or county government for assistance to determine if the work activities/project is located in a Federal Emergency Management Agency (FEMA) mapped floodway.

**BLOCK 26(a/b)** – Section 401, Water Quality Certification: This information is requested by Idaho Department of Environmental Quality (IDEQ), U.S. Environmental Protection Agency (USEPA), the Coeur d’Alene Tribe (CDA) or the Shoshone-Bannock, Fort Hall Tribes (ShoBan). The agency/tribe that will issue the water quality certification or waiver depends upon the location of your project.

(a) Water Quality & Anti-Degradation: Check YES or NO to the three questions listed regarding proposed impacts of your project and anti-degradation (*a policy implemented to prevent deterioration of existing water quality*) to the waterway or waterbody where your project is located.

INSTRUCTION GUIDE JOINT APPLICATION FOR PERMIT

U.S. Army Corps of Engineers

Idaho Department of Water Resource

Idaho Department of Lands

(b) **Best Management Practices (BMPs):** Describe the Best Management Practices that you will use to minimize impacts on water quality to support the anti-degradation of the water. Provide a description of these practices; include timeframe, dimensions, amounts, etc. which will be implemented to minimize the effects on the water quality. Also include information on how your project will/will not affect hydrologic characteristics, surface water flows, etc.

All feasible alternatives should be considered: treatment or otherwise. Select an alternative which will minimize degrading the water quality. Through the 401 Water Quality Certification process, IDEQ, USEPA, CDA Tribe or ShoBan Tribes will stipulate minimum management practices to help prevent degradation of the water.

Idaho One Plan, BMPs: <http://www.oneplan.org/BMPs.asp>

USEPA, Protecting Natural Wetlands (pg 111): <http://www.epa.gov/owow/wetlands/pdf/protecti.pdf>

Contact Information

Agency	Boundaries	Telephone #
Idaho Department of Water Quality	State of Idaho	(208) 373-0574
Coeur d'Alene Tribe	Southern 1/3 of Coeur d'Alene Lake; Lower St. Joe River, within Coeur d'Alene Reservation	(208) 686-0252
Shoshone-Bannock, Fort Hall Tribes	Within the exterior boundaries of Fort Hall Indian Reservation	(208) 239-4582
U.S. Environmental Protection Agency	All other locations within established tribal boundaries of a tribe within State of Idaho and that has not yet assumed 401 responsibility	(208) 378-5755

Water Quality Certification, Agency Information:

The **Idaho Department of Environmental Quality** (IDEQ) is responsible for issuing 401 Water Quality Certification for projects located within the boundaries of the State of Idaho.

Website: <http://www.deq.idaho.gov/water-quality/surface-water/standards/401-certification.aspx>

IDEQ, 401 Guidance: <http://www.deq.idaho.gov/media/516305-401-certification-guidance-0811.pdf>

Anti-Degradation Guidance: <http://www.deq.idaho.gov/water-quality/surface-water/antidegradation.aspx>

The **Coeur d'Alene Tribe** has assumed responsibility for issuing 401 Water Quality Certification for projects located within the southern 1/3 of Coeur d'Alene Lake and the lower St. Joe River within the Coeur d'Alene Reservation. USEPA, Region 10 issues 401 water quality certifications for all other waters located within the Coeur d'Alene Reservation.

Website: <http://www.cdatribe-nsn.gov/>

The **Shoshone-Bannock, Fort Hall Tribes** have assumed responsibility for issuing 401 Water Quality Certification for projects located within the exterior boundaries of the Fort Hall Indian Reservation.

Website: <http://www.shoshonebannocktribes.com/>

The **U.S. Environmental Protection Agency** (USEPA) Region 10 is responsible for issuing all other water quality certification for projects located within the established tribal boundaries of a tribe within Idaho and that has not assumed responsibility for issuing water quality certifications.

Website: <http://water.epa.gov/>

USEPA, 401 Guidance: [http://water.epa.gov/lawsregs/guidance/cwa/waterquality\\_index.cfm](http://water.epa.gov/lawsregs/guidance/cwa/waterquality_index.cfm)

Anti-Degradation Guidance: <http://water.epa.gov/scitech/swguidance/standards/adeq.cfm>

**INSTRUCTION GUIDE JOINT APPLICATION FOR PERMIT**

U.S. Army Corps of Engineers

Idaho Department of Water Resource

Idaho Department of Lands

**Block 27 – Impacts to Water:** Detail each individual activity that will cause impact to the waterbody (e.g., stream, shoreline, tributary) by providing:

- The name of the waterbody
- If the waterbody is a seasonal or perennial waterbody
- Provide the length of impact to the riverbank, stream bank, lake, shoreline, etc. of the individual activity
- Describe the type of activity being proposed that will have an impact on the waterbody
- Provide the length of impact to the riverbank, stream bank, lake, shoreline, etc. of the individual activity

**NOTE:** *Perennial is defined as flowing year-round; Intermittent (seasonal) is defined as flowing less than 12 months*

Each type of impact to the stream, shoreline, and/or water body must be individually listed. Provide the **TOTAL OF ALL IMPACTS**, in linear feet. **Impacts may include fill, backfill/bedding, land clearing, dredge (excavate/drain), coffer dams, riprap, dock/pier, etc.**

**Calculation for Square Feet (ft<sup>2</sup>):** LENGTH in feet, multiplied by WIDTH in feet

**Calculation for Acres:** LENGTH in feet, multiplied by WIDTH in feet; divided by 43,560

**EXAMPLE:**

Activity	Name of Waterbody	Season or Perennial	Description of Impact	Impact Length
Construct Road	Two Pines Creek	Perennial	Road base 30' x 38'	70 feet
Construct Shoulder	Two Pines Creek	Perennial	3' shoulders, each side	6 feet
Temporary Cofferdam	Two Pines Creek	Perennial	Install 40' x 5' temporary visqueen cofferdam	40 feet
<b>TOTAL STREAM IMPACTS (Linear Feet):</b>				<b>116 feet</b>

**Block 28 – Impacts to Wetlands:** Detail each individual activity that will cause impact to the wetland(s) by using the following examples:

- Wetland Type -
  - Emergent wetlands:* may contain horsetail, reed grass (Reed Canary Grass), wire grass (Baltic Rush), bulrush (Bulrush), poison hemlock, etc.
  - Scrub/Shrub wetlands:* may contain coyote/sandbar willow (Narrow Leaf Willow), dogwood (Red Twig Dogwood), Alder, etc.
  - Forested wetlands:* may contain cottonwood, silver maple, river birch, red alder (red maple, green ash)
- Distance to nearest waterbody, in linear feet
- Purpose of each individual impact
- Area that proposed activity or project will impact, in acres or square feet
- Provide the total impacts, in acres or square feet

**Calculation for Square Feet (ft<sup>2</sup>):** LENGTH in feet, multiplied by WIDTH in feet

Each type of impact to the wetland must be individually listed, including mechanized fixed blade and clearing, fill and dredge material discharged, flood, drainage, etc. Spacing for four separate impacts has been provided. Additional impacts must be listed on an attached 8-½" x 11" sheet(s) with the necessary information labeled Block 28.

**EXAMPLE:**

Activity	Wetland Type	Distance to Waterbody	Description of Activity and Dimensions	Impact Length (L x W)
Construct Crossing	Emergent	2 feet	Road Crossing 30' x 38'	60 ft <sup>2</sup>
<b>TOTAL WELAND IMPACT(S) in Square Feet:</b>				<b>60 ft<sup>2</sup></b>

## INSTRUCTION GUIDE JOINT APPLICATION FOR PERMIT

U.S. Army Corps of Engineers

Idaho Department of Water Resource

Idaho Department of Lands

**BLOCK 29** – Adjacent Property Owners Notification: Include full name, complete physical address, and telephone number of ALL public and private, adjacent property owners, lessees, etc. whose property adjoins the waterbody or aquatic site where work is being proposed. Information regarding adjacent landowners is usually available through the office of the tax assessor in the county or counties where the project is to be located.

Adjacent property owners includes adjoining property owners with ownership located on both sides of the near bank AND/OR all other ownership on the waterway/body that may be affected by the proposed activity/project. Also, include homeowner or community associations within the proposed project area.

**BLOCK 30** – Signature of Applicant, Agent: Each application must have an original signature of the applicant and date signed. If applicant has authorized an agent, he/she must also sign an original signature and date. Certification ensures the applicant/agent is authorized to undertake the work described or is duly authorized to act in behalf of the applicant, and that all work and uses described in this application/supporting documentation is complete and accurate. These signatures shall be an affirmation that the party applying for the permit possesses the requisite property rights to undertake the activity applied for (including compliance with general, regional and/or special conditions, mitigation, etc.).

## DRAWING & SUPPLEMENTAL INFORMATION

Three types of drawings are required to accurately depict work activities: (1) *vicinity map*, (2) *plan view drawing*, and (3) *cross sectional drawing*. All drawings or illustrations must be included in order for the application to be considered complete. Drawings should be reviewed for clarity and all unnecessary data/layers should be omitted.

1. Illustrations do not need to be professionally prepared, however, they must be clear, accurate, and contain all necessary information so a proper and timely evaluation can be done. Photographs of proposed work site are not required, although they are helpful and may be submitted as part of the application packet. Sample Drawings: <http://www.nww.usace.army.mil/Portals/28/docs/regulatory/JtApplication/SampleDrawings.pdf>
2. **VICINITY MAP:** This map should be of sufficient scale & detail to allow someone who is unfamiliar with the area to access the site from the nearest city/town or major highway intersection/exit. The vicinity map should show the nearest main road and intersection and should also show the **entire project boundaries** – not just the impact site. Location maps for off-site mitigation areas must also be included. **Latitude and Longitude coordinates should be included on vicinity map.** MapQuest or Google Maps may provide enough detail for a vicinity map. USGS Quad Maps generally show topography and a landscape perspective and do not show the name and/or location of the roads; and therefore may not be an appropriate vicinity map.
3. **PLAN VIEW DRAWING:** The plan view drawing must be clear enough so that a person can understand where the waterway and wetland resources are and how they will be impacted by the proposed activities. The plan view drawing should include, as appropriate:
  - Entire project - including boundaries, roads, buildings, utilities, etc.
  - Existing and proposed contours, as applicable
  - Jurisdictional boundaries by resource type, for example, wetland boundary by Cowardin and HGM class, location of Ordinary High Water Mark, etc.
  - Stormwater outfalls, if applicable
  - Clear identification of the areas proposed for all activities and impacts, both temporary and permanent; Cross-hatching may be used to distinguish various types of impacts. If there is more than one impact site, identifiers should be assigned - wetland A, B, etc. - and referenced in Blocks 16 & 22 of the application
  - Staging area(s) and equipment or construction access points
  - Location of the cross sections
  - Compensatory mitigation areas

## INSTRUCTION GUIDE JOINT APPLICATION FOR PERMIT

U.S. Army Corps of Engineers

Idaho Department of Water Resource

Idaho Department of Lands

4. **CROSS SECTIONAL DRAWING:** The cross section drawing is required to illustrate the vertical extent of impacts (removal, dredge and fill activities) to existing elevations. To be effective, the location of the cross section on the plan view should be in the area of greatest extent of impact activities. The cross section drawing should be of a scale sufficient to evaluate proposed impacts/activities and should include:
- A vertical and horizontal scale
  - Existing and proposed ground elevations
  - Jurisdictional boundaries – wetland boundary, ordinary high water mark, etc.
  - Proposed water elevation, if applicable
  - All structures or construction limits

Submit **one original, good, quality drawing on white paper no larger than 8-½ inches X 11 inches**. Drawings must be prepared using the general format of samples provided and use block lettering. Leave a 1-inch margin at the top of each sheet for reproduction and binding purposes. Drawings must be reproduced and therefore color shading cannot be used. Heavy dark lines, dot shading, hatching, or similar graphic symbols must be used instead of color shading to clarify drawings.

**A legal property description is required** and must include the number, name of subdivision, block, and lot number from plot, deed, or tax assessment information. A title block is also required on all three drawings. *Title block must contain the project name/title, applicant name, name of waterbody, river mile (if applicable), name of county and state, date prepared, and # of sheet & total # of sheets in set (1:3, 2:3, 3:3)*. Also include a **north arrow and scale** on all drawings.

## CONTACT INFORMATION

### U.S. Army Corps of Engineers

U.S. Army Corps of Engineers  
Walla Walla District, **Regulatory Division**  
201 North 3rd Avenue  
Walla Walla, Washington 99362-1876  
General Line: (509) 527-7150

U.S. Army Corps of Engineers  
Walla Walla District, **Boise Field Office**  
10095 W Emerald Street  
Boise, Idaho 83704  
General Line: (208) 345-2155

U.S. Army Corps of Engineers  
Walla Walla District, **Idaho Falls Field Office**  
900 N Skyline Drive, Suite A  
Idaho Falls, Idaho 83402-1718  
General Line: (208) 522-1676

U.S. Army Corps of Engineers  
Walla Walla District, **Coeur d'Alene Field Office**  
2065 W Riverstone Drive, Suite #201  
Coeur d'Alene, Idaho 83814  
General Line: (208) 765-8961

<http://www.nww.usace.army.mil/BusinessWithUs/RegulatoryDivision/ContactUs.aspx>

## CONTACT INFORMATION

### State of Idaho Department of Water Resources

State of Idaho  
 Department of Water Resources  
**Northern Regional Office**  
 7600 Mineral Drive, Suite 100  
 Coeur d'Alene, ID 83815-7763  
 Phone (208) 762-2800

State of Idaho  
 Department of Water Resources  
**Southern Regional Office**  
 650 Addison Ave W, Ste 500  
 Twin Falls, ID 83301-5851  
 Phone (208) 736-3033

State of Idaho  
 Department of Water Resources  
**Western Regional Office**  
 2735 Airport Way  
 Boise, ID 83705-5082  
 Phone (208) 334-2190

State of Idaho  
 Department of Water Resources  
**Eastern Regional Office**  
 900 N Skyline Drive, Suite A  
 Idaho Falls, ID 83402-1718  
 Phone (208) 525-7161

<http://www.idwr.idaho.gov/contact/contact.htm>

## CONTACT INFORMATION

### State of Idaho Department of Lands

Coeur d'Alene Area	3258 West Industrial Loop	Coeur d'Alene, ID 83815	(208) 769-1577
Eastern Idaho Area	3563 Ririe Highway	Idaho Falls, ID 83401	(208) 525-7167
Kootenai Valley Area	6327 Main Street	Bonnars Ferry, ID 83805	(208) 267-5577
Payette Lakes Area	555 Deinhard Lane	McCall, ID 83638	(208) 634-7125
Pend Oreille Area	2550 Highway 2 West	Sandpoint, ID 83864	(208) 263-5104
Priest Lake Area	4053 Cavanaugh Bay Road	Coolin, ID 83821	(208) 443-2516
South Central Area	324 S 417 E - US Hwy 93 Business Park	Jerome, ID 83338	(208) 324-2561
South West Area	8355 West State Street	Boise, ID 83338	(208) 334-3488
St. Maries Area	1806 Main Avenue	St. Maries, ID 83861	(208) 245-4551

<http://www.idl.idaho.gov/areas.htm>



## JOINT APPLICATION FOR PERMITS

### U.S. ARMY CORPS OF ENGINEERS - IDAHO DEPARTMENT OF WATER RESOURCES - IDAHO DEPARTMENT OF LANDS

**Authorities:** The Department of Army Corps of Engineers (Corps), Idaho Department of Water Resources (IDWR), and Idaho Department of Lands (IDL) established a joint process for activities impacting jurisdictional waterways that require review and/or approval of both the Corps and State of Idaho. Department of Army permits are required by Section 10 of the Rivers & Harbors Act of 1899 for any structure(s) or work in or affecting navigable waters of the United States and by Section 404 of the Clean Water Act for the discharge of dredged or fill materials into waters of the United States, including adjacent wetlands. State permits are required under the State of Idaho, Stream Protection Act (Title 42, Chapter 38, Idaho Code and Lake Protection Act (Section 58, Chapter 13 et seq., Idaho Code). In addition the information will be used to determine compliance with Section 401 of the Clean Water Act by the appropriate State, Tribal or Federal entity.

**Joint Application:** Information provided on this application will be used in evaluating the proposed activities. Disclosure of requested information is voluntary. Failure to supply the requested information may delay processing and issuance of the appropriate permit or authorization. **Applicant will need to send a completed application, along with one (1) set of legible, black and white (8½"x11")**, reproducible drawings that illustrate the location and character of the proposed project / activities to **both the Corps and the State of Idaho**.

**See Instruction Guide** for assistance with Application. Accurate submission of requested information can prevent delays in reviewing and permitting your application. Drawings including vicinity maps, plan-view and section-view drawings must be submitted on 8-1/2 x 11 papers.

**Do not start work until you have received all required permits from both the Corps and the State of Idaho**

#### FOR AGENCY USE ONLY

USACE NWW-	Date Received:	<input type="checkbox"/> Incomplete Application Returned	Date Returned:
Idaho Department of Water Resources No.	Date Received:	<input type="checkbox"/> Fee Received DATE:	Receipt No.:
Idaho Department of Lands No	Date Received	<input type="checkbox"/> Fee Received DATE:	Receipt No.:

#### INCOMPLETE APPLICATIONS MAY NOT BE PROCESSED

1. CONTACT INFORMATION - APPLICANT Required:				2. CONTACT INFORMATION - AGENT:				
Name:				Name:				
Company:				Company:				
Mailing Address:				Mailing Address:				
City:		State:	Zip Code:	City:		State:	Zip Code:	
Phone Number (include area code):		E-mail:		Phone Number (include area code):		E-mail:		
3. PROJECT NAME or TITLE				4. PROJECT STREET ADDRESS:				
5. PROJECT COUNTY:		6. PROJECT CITY:		7. PROJECT ZIP CODE:		8. NEAREST WATERWAY/WATERBODY:		
9. TAX PARCEL ID#:		10. LATITUDE: LONGITUDE:		11a 1/4:	11b 1/4:	11c. SECTION:	11d TOWNSHIP:	11e RANGE:
12a ESTIMATED START DATE		12b ESTIMATED END DATE		13a. IS PROJECT LOCATED WITHIN ESTABLISHED TRIBAL RESERVATION BOUNDARIES? <input type="checkbox"/> NO <input type="checkbox"/> YES    Tribe				
13b IS PROJECT LOCATED IN LISTED ESA AREA? <input type="checkbox"/> NO <input type="checkbox"/> YES				13c. IS PROJECT LOCATED ON/NEAR HISTORICAL SITE? <input type="checkbox"/> NO <input type="checkbox"/> YES				
14. DIRECTIONS TO PROJECT SITE    Include vicinity map with legible crossroads, street numbers, names, landmarks.								
15. PURPOSE and NEED: <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Public <input type="checkbox"/> Private <input type="checkbox"/> Other Describe the reason or purpose of your project. include a brief description of the overall project    Continue to Block 16 to detail each work activity and overall project.								

16 DETAILED DESCRIPTION OF EACH ACTIVITY WITHIN OVERALL PROJECT. Specifically indicate portions that take place within waters of the United States, including wetlands: Include dimensions; equipment, construction, methods; erosion, sediment and turbidity controls; hydrological changes: general stream/surface water flows, estimated winter/summer flows; borrow sources, disposal locations etc.

17 DESCRIBE ALTERNATIVES CONSIDERED to AVOID or MEASURES TAKEN to MINIMIZE and/ or COMPENSATE for IMPACTS to WATERS of the UNITED STATES, INCLUDING WETLANDS. See Instruction Guide for specific details.

18 PROPOSED MITIGATION STATEMENT or PLAN: If you believe a mitigation plan is not needed, provide a statement and your reasoning why a mitigation plan is NOT required. Or, attach a copy of your proposed mitigation plan.

19 TYPE and QUANTITY of MATERIAL(S) to be discharged below the ordinary high water mark and/or wetlands

Dirt or Topsoil \_\_\_\_\_ cubic yards  
 Dredged Material \_\_\_\_\_ cubic yards  
 Clean Sand \_\_\_\_\_ cubic yards  
 Clay \_\_\_\_\_ cubic yards  
 Gravel, Rock, or Stone \_\_\_\_\_ cubic yards  
 Concrete \_\_\_\_\_ cubic yards  
 Other (describe): \_\_\_\_\_ : \_\_\_\_\_ cubic yards  
 Other (describe): \_\_\_\_\_ : \_\_\_\_\_ cubic yards  
 TOTAL: \_\_\_\_\_ cubic yards

20 TYPE and QUANTITY of impacts to waters of the United States, including wetlands:

Filling: \_\_\_\_\_ acres \_\_\_\_\_ sq ft. \_\_\_\_\_ cubic yards  
 Backfill & Bedding \_\_\_\_\_ acres \_\_\_\_\_ sq ft. \_\_\_\_\_ cubic yards  
 Land Clearing \_\_\_\_\_ acres \_\_\_\_\_ sq ft. \_\_\_\_\_ cubic yards  
 Dredging: \_\_\_\_\_ acres \_\_\_\_\_ sq ft. \_\_\_\_\_ cubic yards  
 Flooding: \_\_\_\_\_ acres \_\_\_\_\_ sq ft. \_\_\_\_\_ cubic yards  
 Excavation: \_\_\_\_\_ acres \_\_\_\_\_ sq ft. \_\_\_\_\_ cubic yards  
 Draining: \_\_\_\_\_ acres \_\_\_\_\_ sq ft. \_\_\_\_\_ cubic yards  
 Other \_\_\_\_\_ : \_\_\_\_\_ acres \_\_\_\_\_ sq ft. \_\_\_\_\_ cubic yards  
 TOTALS: \_\_\_\_\_ acres \_\_\_\_\_ sq ft. \_\_\_\_\_ cubic yards

21. HAVE ANY WORK ACTIVITIES STARTED ON THIS PROJECT?  NO  YES If yes, describe ALL work that has occurred including dates

22. LIST ALL PREVIOUSLY ISSUED PERMIT AUTHORIZATIONS

23.  YES, Alteration(s) are located on Public Trust Lands, Administered by Idaho Department of Lands

24. SIZE AND FLOW CAPACITY OF BRIDGE/CULVERT and DRAINAGE AREA SERVED: \_\_\_\_\_ Square Miles

25. IS PROJECT LOCATED IN A MAPPED FLOODWAY?  NO  YES If yes, contact the floodplain administrator in the local government jurisdiction in which the project is located. A Floodplain Development permit and a No-rise Certification may be required.

26a. WATER QUALITY CERTIFICATION: Pursuant to the Clean Water Act, anyone who wishes to discharge dredge or fill material into the waters of the United States, either on private or public property must obtain a Section 401 Water Quality Certification (WQC) from the appropriate water quality certifying government entity. See Instruction Guide for further clarification and all contact information.

The following information is requested by IDEQ and/or EPA concerning the proposed impacts to water quality and anti-degradation:

- NO  YES Is applicant willing to assume that the affected waterbody is high quality?
- NO  YES Does applicant have water quality data relevant to determining whether the affected waterbody is high quality or not?
- NO  YES Is the applicant willing to collect the data needed to determine whether the affected waterbody is high quality or not?

26b. BEST MANAGEMENT PRACTICES (BMP's): List the Best Management Practices and describe these practices that you will use to minimize impacts on water quality and anti-degradation of water quality. All feasible alternatives should be considered - treatment or otherwise. Select an alternative which will minimize degrading water quality

Through the 401 Certification process, water quality certification will stipulate minimum management practices needed to prevent degradation.

27. LIST EACH IMPACT to stream, river, lake, reservoir, including shoreline: Attach site map with each impact location.

Activity	Name of Water Body	Intermittent Perennial	Description of Impact and Dimensions	Impact Length Linear Feet
TOTAL STREAM IMPACTS (Linear Feet):				

28. LIST EACH WETLAND IMPACT include mechanized clearing, fill excavation, flood, drainage, etc. Attach site map with each impact location

Activity	Wetland Type Emergent Forested, Scrub/Shrub	Distance to Water Body (linear ft)	Description of Impact Purpose road crossing, compound culvert, etc	Impact Length (acres, square ft linear ft)
TOTAL WETLAND IMPACTS (Square Feet):				



**ELMORE COUNTY  
PLANNING AND ZONING COMMISSION**

---

**MINUTES**

**Wednesday, December 2, 2015 at 7:00 pm**

Chairperson Osborn called the meeting to order. Members of the Elmore County Planning and Zoning Commission present were Vice Chairman K.C. Duerig, Sue Fish, Jeff Blanksma, Shane Zenner and Dave Holland. Also present were Attorney of Record Philip Miller, Director Alan Christy and staff member Kacey Ramsauer.

**PLEDGE OF ALLEGIANCE**

**PUBLIC MEETING**

**Ordinance Work Session**

Christy stated that he wanted to give some background on the county road ordinance. He stated that it was originally passed in 2006 and was done after a great deal of meetings and testimony from the 3 highways districts in the county as well as the fire districts to get uniformity and standards with public and private roads. He stated that in the summary of changes that has been proposed by staff has been moving definitions to chapter 2, being consistent with terms, identifying that roads are designed by an Idaho licensed civil engineer, clarifying road lots and easements and dedications. He stated that those definitions will get added to chapter 2.

**ITEMS FROM THE PUBLIC**

Eva Schmid stated that she is still concerned with the proposed solar development and she did some research on what she testified to at the previous meeting. She wanted to know the status of the conditional use permit.

Miller stated that the decision was already made at the previous public hearing to approve. He stated what will happen tonight as the written decision will be reviewed and signed. He stated this commission cannot accept any more information.

Schmid stated that at the last meeting they considered a sound study.

Christy stated that the noise study was added as a condition of approval.

Schmid stated that how can that be if they already approved it.

Christy stated that the study must be conducted prior to the issuance of any building permit. He stated that they must comply with the noise ordinance for the county.

Schmid stated that she has information that she would like to present and she would urge the commission to take a look at it.

Miller stated that they cannot accept information at this time.

Schmid asked why the noise study would be accepted but her information would not.

Christy stated that the study would be reviewed by himself and the county engineer to ensure that it meets all of the applicable county ordinances.

Miller stated that if she is unhappy with the decision she can file a reconsideration or she can appeal to the county commissioners and that would reopen the public hearing.

### **FCO's and MINUTES**

#### **FCO for Case Number: CUP-2016-01 Maricarmen Martinez**

Holland moved to approve.

Duerig seconded.

Motion carried unanimously.

#### **FCO for Case Number: CUP-2015-14 Mountain Home Solar 1, LLC**

Duerig moved to approve.

Blanksma seconded.

Motion carried unanimously.

#### **Minutes from 11-18-2015**

Holland moved to approve.

Duerig moved to approve.

Motion carried unanimously.

### **INFORMATION ITEMS**

#### **Upcoming P&Z Schedule**

Christy stated that there would be appeal hearings on December 16, 2015.

**MEETING ADJOURNED at 7:25 pm.**

---

Patti Osborn, Chairperson

Date:

Attest: \_\_\_\_\_  
Alan Christy, Director

Date: