

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

Wednesday, August 17, 2016 at 7:00pm

Agenda

PLEASE SILENCE CELL PHONES

CALL TO ORDER

ESTABLISH QUORUM

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

PLEDGE OF ALLEGIANCE

NEW BUSINESS

FCO's and MINUTES

- FCO for Case Number: CUP-2015-03
- FCO for Case Number: CUP-2015-04
- FCO for Case Number: CUP-2015-05
- FCO for Case Number: CUP-2015-06
- FCO for Case Number: CUP-2015-07
- FCO for Case Number: CUP-2016-03
- FCO for Case Number: REZ-2016-01
- FCO for Case Number: ADD-2016-012
- Minutes from July 13, 2016
- Minutes from July 20, 2016

ITEMS FROM THE PUBLIC

INFORMATION ITEMS

- Upcoming P & Z Schedule

MEETING ADJOURNED

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

In Re: This matters having come before the Planning and Zoning Commission of Elmore County, Idaho (the “**Commission**”), the 15th day of June, 2016, for a public hearing and the 13th day of July 2016 for deliberations, held pursuant to public notice as required by law, on a request for five (5) Conditional Use Permit (the “**CUP**”) applications in the Agriculture, Wildland Urban Interface and the Area of Critical Concern Overlay Zones (the “**Applications**”). The Commission heard from the applicant in support of the Applications. The Commission heard testimony in support, neutral and opposition of the Applications. The Commission received additional written testimony and information for the Applications. Upon conclusion of the public hearing, the Commission duly considered all that was presented to them.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the record for the Application and those facts which are in common knowledge or of which there is general public awareness.

I. The Commission finds that Applications are comprised of:

A. Application form prepared and submitted by Cat Creek Energy, LLC (the “**Applicant**”) for a Conditional Use Permit for transmission lines in the Agriculture and Area of Critical Concern Overlay Zones. Case Number: CUP-2015-03 (“**CUP 2015-03**”)

B. Application form prepared and submitted by the Applicant for a Conditional Use Permit for pump storage hydro electrical generating facility in the Agriculture and Area of Critical Concern Overlay Zones. Case Number: CUP-2015-04. (“**CUP 2015-04**”)

C. Application form prepared and submitted by the Applicant for a Conditional Use Permit for a PV solar electrical generating facility in the Agriculture Zone. Case Number: CUP-2015-05. (“**CUP 2015-05**”)

D. Application form prepared and submitted by the Applicant for a Conditional Use Permit for a wind turbine electrical generating facility in the Agriculture and Area of Critical Concern Overlay Zones. Case Number: CUP-2015-06. (“**CUP 2015-06**”)

E. Application form prepared and submitted by the Applicant for Conditional Use Permit for a substation in the Agriculture Zone. Case Number: CUP-2015-07. (“**CUP 2015-07**”)

F. Those supplemental letters, email messages, reports, documentation and memos submitted by the Applicant or its representatives, whether submitted in response to questions from employees (the “**Staff**”) from the Elmore County Land Use and Building Department (the “**Department**”) or the Commission in connection with the Applications to the Commission.

II. The Commission finds that the Applicant is:

Cat Creek Energy, LLC

1989 South 1875 East
Gooding, ID 83330

III. The Commission finds the following as to the procedural matters pertaining to the Applications:

- A.** The Applicant participated in a pre-application meeting with the Department on January 15, 2015.
- B.** The Applicant conducted a neighborhood meeting on January 27, 2015 as required by Elmore County Zoning and Development Ordinance (the “Zoning Ordinance”) Section 6-4-3.
- C.** The Applicant submitted the Applications to the Department on February 26, 2015.
- D.** The Elmore County Land Use and Building Director (the “Director”) determined the Applications were incomplete and notified the Applicant on February 2, 2015, March 27, 2015, April 10, 2015, July 16, 2015, October 1, 2015 and October 21, 2015.
- E.** The Applicant appealed the Director decision that an Environmental Impact Statement (the “EIS”) be required for the Applications on November 2, 2015.
- F.** The Applicant submitted a Wildlife Mitigation Plan (the “WMP”) in lieu of the EIS on December 11, 2015.
- G.** An appeal hearing on the Director’s Decision was tabled on December 16, 2015.
- H.** The Director accepted the WMP as part of the Applications on February 10, 2016 and determined the appeal hearing was not needed.
- I.** The Applicant desired to still have the appeal hearing on February 17, 2016.
- J.** The Commission concurred that the appeal hearing was not necessary due to the Director accepting the WMP.
- K.** The Applicant submitted applications on February 17, 2016.
- L.** The Applicant submitted additional information on March 7, 2016 and March 16, 2016.
- M.** The Department deemed the Application complete on March 21, 2016.
- N.** The Department mailed notice of the public hearing to neighboring property owners within one mile of the Site on March 24, 2016 pursuant to Zoning Ordinance Section 6-4-5.
- O.** The Department mailed notice of the public hearing to agencies on March 24, 2016 pursuant to Zoning Ordinance Section 6-4-4.
- P.** Notice of the public hearing was published in the Mountain Home News on May 25, 2016 pursuant to Zoning Ordinance Section 6-4-5 A.

Q. Notice of the public hearing was posted on the Site on June 6, 2016 pursuant to Zoning Ordinance Section 6-4-5 B.

R. The Commission opened the public hearing on June 15, 2016 and received verbal and written information regarding the Applications.

S. The Commission moved to hold deliberations on July 13, 2016.

T. The Commission moved to **deny** the Applications. The motion to **deny** the Applications passed on a 6-0 vote.

IV. The proposed use of the Application as follows:

A. The Commission finds the Applications contain the following proposed uses:

CUP-2015-03: Transmission Lines

CUP-2015-04: Pump Storage Hydro – Electrical Generating Facility

CUP-2015-05: Solar – Electrical Generating Facility

CUP-2015-06: Wind – Electrical Generating Facility

CUP-2015-07: Substation

B. The Commission finds that five (5) separate applications, each for a conditional use permit are required. **The Commission finds** that based on testimony from the Applicant, that all five (5) applications are dependent upon each other and cannot exist separately. Therefore, the commission conducted one public hearing and decision for the Applications.

V. The Commission finds the following legal descriptions pertaining to the property and is collectively referred herein as the "Site":

A. Site Description: the Applications utilize the following property:

CUP-2015-03: Portions of Sections 26 and 35, Township 1N, Range 9E, B.M., Sections 2, 3, 10, and 11, Township 1S, Range 9E, B.M.

CUP-2015-04: Portions of Sections 26, 27, 35, and 36, Township 1N, Range 9E, B.M and portions of sections 1 and 2, Township 1S, Range 9E, B.M.

CUP-2015-05: Portions of Sections 2, 3, 10, and 11, Township 1S, Range 10E, B.M.

CUP-2015-06: Portions of Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 21, 22, 28, 29, 30, 31, 32, and 33, Township 1S, Range 10E, B.M., Sections 19, 20, 28, 29, 30, 31, 32, and 33, Township 1N, Range 10E, B.M., Sections 25, 26, 27, 35, and 36, Township 1N, Range 9E, B.M., Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, and 24, Township 1S, Range 9E, B.M.

CUP-2015-07: Portions of Sections 2 and 11, Township 1S, Range 9E, B.M.

B. Parcel Numbers: the Application utilize the following parcel numbers:

CUP-2015-03: RP01N09E265410A, RP01N09E350010A, RP01S09E020010A, RP01S09E039010A, RP01S09E10010 A, RP01S09E110040A.

CUP-2015-04: RP01N09E265410A, RP01N09E277210A, RP01N09E350010A, RP01N09E360010A, RP01N09E010610A, RP01S09E020010A, RP01S09E039010A, RP01S09E100010A, RP01S09E110040A, RP01S09E120040A.

CUP-2015-05: RP01S09E020010A, RP01S09E039010A, RP01S09E100010A, RP01S09E110040A

CUP-2015-06: RP01N09E250010A, RP01N09E251210A, RP01N09R265410A, RP01N09E277210A, RP01N09E350010A, RP01N09E360010A, RP01N09E191840A, RP01N10E200010A, RP01N10E283010A, RP01N10E290010A, RP01N10E300010A, RP01N10E320010A, RP01N10E310010A, RP01N10E330610A, RP01S09E010610A, RP01S09E020010A, RP01S09E039010A, RP01S09E100010A, RP01S09E110040A, RP01S09E120040A, RP01S09E130040A, RP01S09E140040A, RP01S09E157810A, RP01S09E220010A, RP01S09E230010A, RP01S09E243010A, RP01S10E30010A, RP01S10E040010A, RP01S10E051210A, RP01S10E060640A, RP01S10E070010A, RP01S10E080010A, RP01S10E090610A, RP01S10E102410A, RP01S10E160040A, RP01S10E170010A, RP01S10E180010A, RP01S10E190610A, RP01S10E303010A, RP01S10E159010A, RP01S10E210040A, RP01S10E220020A, RP01S10E280085A, RP01S10E290020A, RP01S10E301840A, RP01S10E310500A, RP01S10E320020A, RP01S10E332410A

CUP-2015-07: RP01S09E020010A, RP01S09E110040A

C. The "Owners" of the Site are:

Sawtooth Grazing Association
1989 South 1875 East,
Gooding, ID 83330

Wood Creek Ranch
1989 South 1875 East,
Gooding, ID 83330

D. Applicant's Property Right in the Site is: Lease Agreements

E. Site Characteristics:

Property Size: Approximately 23,000 acres

Existing Structures: A few agricultural structures and ranch house/cabins.

Existing Vegetation: The vegetation varies and consists of sagebrush, grazing and timber areas.

Slope: Variable and wide ranging from relatively flat to portion in excess of 40%

Flood Zone Status: Small portions of the Site are located in the FEMA defined Zone A flood zones.

Irrigation: Unknown and information not provided.

VI. The Commission finds the current zoning of the Site as follows:

The current zoning for the Site pursuant to the adopted zoning map, Elmore County Ordinance 2013-02 is the following:

CUP-2015-03: Agriculture, Area of Critical Concern and Wildfire Urban Interface Overlay Zones.

CUP-2015-04: Agriculture, Area of Critical Concern and Wildfire Urban Interface Overlay Zones.

CUP-2015-05: Agriculture and Wildfire Urban Interface Overlay Zone.

CUP-2015-06: Agriculture, Area of Critical Concern and Wildfire Urban Interface Overlay Zones.

CUP-2015-07: Agriculture Zone and Wildfire Urban Interface Overlay Zone.

VII. The Commission finds the surrounding land uses to the Site as follows:

Land uses to the south are agriculture grazing.

Land uses to the north are agriculture grazing, Anderson Ranch Reservoir and residential subdivisions.

Land uses to the east are agriculture grazing.

Land uses to the west are agriculture grazing, irrigated farm ground, recreational vehicle park and residential subdivision.

VIII. The Commission finds the existing services as follows:

Access Roads: Publically maintained road U.S. Highway 20. Privately maintained road Wood Creek road, which is a non-paved road with no winter access.

Fire Protection District: None.

Sewage Disposal: None.

Water Service: None.

Highway District: The Site is located within the Glens Ferry Highway District (the "Highway District"). The Site may also be accessed through Mountain Home Highway District roads.

IX. The Commission finds the following as the applicable law for consideration of the Application:

- A. Comprehensive Plan. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014 (the “Comprehensive Plan”); and
- B. Zoning Ordinance, adopted March 21, 2012 as Ordinance 2012-01; which was subsequently amended on September 19, 2012, as Ordinance 2012-03 and on July 14, 2014, as Ordinance 2014-01; and
- C. The Local Land Use Planning Act, Idaho Code § 67-6501 *et seq.*;

X. Comprehensive Plan:

A. The Commission finds the following goals and objectives from the Comprehensive Plan were utilized in analyzing the Applications (Note: the following numbers are the numbers that are identified in the Comprehensive Plan):

Private Property Rights Objectives

- 1. Property owners shall not use their property in a manner that negatively impacts upon the surrounding neighbors or neighborhoods.
- 9. Property owners must recognize they are only temporary stewards of the land, and shall preserve and maintain their property for the benefit of future generations.
- 10. Property owners acknowledge and expect that Elmore County will preserve private property rights and values by enforcing regulations that will ensure against incompatible and detrimental neighboring land uses.

Economic Goal Statement 1

Diversify and improve the economy of Elmore County in ways that are compatible with community values.

Economic Objectives

- 2. Encourage broad-based economic development programs that include:
 - a. Natural resources such as mining, timber, and agriculture from both federal and private lands.
 - b. Commercial Development
 - c. Industrial Development
 - d. Tourism Expansion and Development
 - e. Military Expansion and Development
- 5. Set aside suitable sites for economic growth and expansion that is compatible with the surrounding area.
- 11. Recognize the need for electric utility facilities that are sufficient to support economic development.

Land Use Objectives

- 8. Review all commercial and industrial development proposals to determine the land use compatibility and impact to surrounding areas.

9. Review all development proposals in areas that are critical to groundwater recharge and sources to determine impacts, if any, to surface and groundwater quantity and quality.

17. Evaluate all development proposals in terms of land use and environmental compatibility. Discourage development proposals, which negatively impact land use patterns and negatively impact the human and natural environment.

Water Goal 1

To protect, develop, and maintain the quality and quantity of our water resource.

Water Objectives

1. Encourage land management and development of soil and water resources for economic growth of the County.

5. Water quality should be protected and preserved in all proposed developments.

7. Work with the Idaho Department of Water Resources and seek approval to study and construct necessary water development projects in the Boise River drainage system in order to transfer water into arid portions of Elmore County.

Fish and Wildlife Goal 2

Recognize the economic contributions that fish and wildlife-based recreation contribute to Elmore County.

Fish and Wildlife Goal 3

Sustain the fish and wildlife habitats necessary to provide quality fish and wildlife-related recreation.

Fish and Wildlife Goal 4

Recognize that fish and wildlife are public resources to be managed for the benefit of all and promote ongoing proper management of fish and wildlife resources.

Fish and Wildlife Objectives:

1. Request public agency input on proposed land and water development projects potentially impacting fish and wildlife habitat.

2. Consider ordinances and conditions of approval aimed at avoiding and mitigating adverse impacts to fish and wildlife resources as a result of development.

3. Encourage protection of water quantity and quality and multiple uses that are complementary to fish and wildlife populations.

Scenic Areas Goal 1

To promote the preservation of natural scenic areas for the use and benefit of both present and future generations.

Scenic Area Objectives

1. Encourage the preservation of scenic areas for their natural beauty.

2. Natural areas should be preserved through proper planning and /or density transfer procedures or development rights transfer procedures.

3. Encourage development in localities that will not degrade scenic areas within the County.

Hazardous Area Objectives

2. Discourage development in or near natural hazardous areas, such as airports, power line corridors, electrical substations, flood plains, unstable soil areas and steep slopes, high velocity wind and storm prone areas, except for industries, which may require these conditions.

Public Service Objectives - Water Supply and Distribution

1. Encourage and promote water conservation to protect local water resources.
3. Support water development and conservation projects on the Boise River and other watersheds within the County.
4. Guide growth to areas of the County where there is adequate water for development.

Public Service Objectives – Electrical Power

1. Work with Idaho Power Company to promote the development of energy services and public facilities to meet public needs.
2. Encourage the enhancement of the electric system capacity and reliability.
3. Encourage the enhancement of the capacity and reliability of renewable energy resources.
4. Encourage the multiple-use of utility corridors by utility providers.
5. Support siting of utility to ensure that they connect to similar facilities in adjacent jurisdictions.
6. Recognize the need for long-range planning and build out of electrical infrastructure as detailed in the Eastern Treasure Valley Electrical Plan (ETVEP), developed by a local Community Advisory Committee. See Map #11A in the map appendix for the conceptual locations of future electrical infrastructure.
7. Recognize that the ETVEP is a conceptual plan and is the first step in planning for new and upgraded transmission lines and substations. Each project will still require jurisdictional approval and will be subject to the public siting process.
8. Support longer term (10 to 15-year) conditional use permits to enable utilities to purchase sites well in advance of needing to build the facility.
9. Support siting of utility corridors within identified or designated transportation corridors and allow the appropriate placement of electric facilities on public rights-of-way.
10. Support the protection of wetlands and other critical areas and recognize that electric facilities sometimes must cross these areas, and that access is essential for repair and maintenance of the facilities.

11. Recognize other types and sources of energy beyond the existing electrical infrastructure have a role to play in the future of Elmore County (e.g. solar, wind, gas).

18. Encourage the enhancement of the capacity and reliability of renewable energy resources.

Recreation Objectives

1. Encourage developments that will maintain the aesthetic and scenic value of the area with the least possible disturbance to soil, vegetation, and water.

4. Encourage equitable draw down of water levels of Anderson Dam consistent with irrigation and multiple-use management needs.

Areas of Critical Concern Goal 1

To protect and preserve the unique features and land characteristics in these areas that has been designated for additional consideration.

Areas of Critical Concern Goal 2

To implement a special land use review and hearing procedure following the CUP process to fully evaluate any development proposals in any Area of Critical Concern.

Areas of Critical Concern Objectives

1. Discourage encroachment on lands that contain important feeding grounds for wildlife.

3. To the extent possible, preserve the historical and natural resources within Areas of Critical Concern.

5. Recognize all areas of critical concern and promote better management of the soils, water, and environment.

8. Develop and administer a special permit evaluation procedure for all development applications within any "Area of Critical Concern".

Pine, Featherville and Fall Creek Communities Community Goals

6. Natural Resources

Protect the Anderson Ranch Reservoir, the South Fork of the Boise River and all waterways in the Pine / Featherville / Fall Creek community areas from incompatible land use encroachment and development.

11. Special Areas or Sites

Protect the South Fork of the Boise River watershed to preserve water quality.

XI. Zoning Ordinance:

A. The Commission finds that Chapter 2 of the Zoning Ordinance has the following definitions that pertain to the Applications:

ELECTRICAL TRANSMISSION LINES: Those lines carrying from 138 kV, 230 kV to 500 kV of electricity from a power generation site to a substation.

PUBLIC OR QUASI-PUBLIC USE: Public or quasi-public uses shall include, but not be limited to, public buildings and/or public infrastructure facilities and other types of uses such as, churches; Sunday schools; parochial schools; hospitals; convalescent or retirement homes; colleges and other facilities of an educational, religious, charitable, philanthropic or non-profit nature.

ELECTRICAL GENERATING FACILITIES: Any facility generating electrical power through the use of natural gas, solar cells, water or wind power. The use of diesel fuel is allowed only for emergency generation of electricity for fire suppression or the winding down of turbines.

PUBLIC INFRASTRUCTURE FACILITY: Shall include, but not be limited to: a) pumping station for water, sewer, or gas; b) power substation, electric substation, grid switching site, electric transmission line, electric sub transmission line, electric distribution line, or any major structure connected to a public utility; c) municipal wastewater collection and treatment facility or interim wastewater treatment system; d) utility shop, garage, or storage facility; e) park and ride lot; f) water reservoir and water tank; and g) storm drainage facility and storm detention facility.

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.

B. The Commission finds that in order to approve the CUP applications, the following findings as set forth in Section 6-27-7 of the Zoning Ordinance shall be made.

1. The proposed use shall, in fact constitute a Conditional Use as determined in Chapter 8, Table 6-8-11 (C), Elmore County Land Use Table, as contained in this Ordinance;
2. The proposed use shall be in harmony with and in accordance with the Comprehensive Plan and this Ordinance (Title 6);
3. The proposed use complies with the purpose statement of the applicable base zone and with the specific use standards as set forth in this Chapter;
4. The proposed use shall comply with all applicable County Ordinances;
5. The proposed use shall comply with all applicable State and Federal regulations;
6. The proposed use shall be designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and that such use shall not change the essential character of said area;
7. The proposed use shall not be hazardous or disturbing to existing neighboring uses or impede their normal development;
8. The proposed use shall be served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services;

9. The proposed use shall not create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County;

10. The proposed use shall not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;

11. The proposed use shall have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways;

12. The proposed use shall not result in the destruction, loss or damage of a natural or scenic feature of major importance.

C. The Commission finds that in order to approve an application within the Area of Critical Concern (the "ACC") the Commission will follow the development Standards of Zoning Ordinance Section 6-8-26 B.1.-4.

1. Proposed land use must demonstrate a compatibility with the natural surrounding environment; and

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

3. Agriculture and ranching operations may be developed or expanded. Natural and scenic environment should be protected; and

4. Single-family dwellings and all structures must be built to fit into the natural terrain with little or no gouging of hillsides or altering of the landscape. Grading of roads that are used as access to property will be kept to a minimum to prevent erosion and the destruction of scenic value.

D. The required findings of Section 6-27-7 of the Zoning Ordinance, stated as questions, follow in bold text, followed by the Commission's findings:

1. Does the proposed use in fact constitute a Conditional Use as determined in Chapter 8, Table 6-8-11 (C), Elmore County Land Use Table, as contained in this Ordinance?

CUP-2015-03: The Commission finds that Zoning Ordinance Section 6-8-170 D.3 Public or Quasi-Public Use states: "Electrical transmission line and substations shall require conditional use approval." **The Commission further finds** that Public or Quasi-Public Use requires a conditional use permit in Zoning Ordinance Table 6-8-11 (C).

CUP-2015-04: The Commission finds that Electrical Generating Facilities require a Conditional Use Permit in the Agriculture Zone in Zoning Ordinance Table 6-8-11 (C).

CUP-2015-05: The Commission finds that Electrical Generating Facilities require a Conditional Use Permit in the Agriculture Zone in Zoning Ordinance Table 6-8-11 (C).

CUP-2015-06: The Commission finds that Electrical Generating Facilities require a Conditional Use Permit in the Agriculture Zone in Zoning Ordinance Table 6-8-11 (C).

CUP-2015-07: The Commission finds that Zoning Ordinance Section 6-8-170 D.3 Public or Quasi-Public Use states: “Electrical transmission line and substations shall require conditional use approval.” **The Commission further finds** that Public or Quasi-Public Use requires a conditional use permit in Zoning Ordinance Table 6-8-11 (C).

2. Is the proposed use in harmony with and in accordance with the Elmore County Comprehensive Plan (“Plan”) and this Ordinance (Title 6)?

The Commission finds the Applications are not in harmony and accordance with the following goals and objectives of the Comprehensive Plan (Note: the following numbers are utilized as they are found in the Comprehensive Plan):

Private Property Rights Objectives

2. Property owners shall not use their property in a manner that negatively impacts upon the surrounding neighbors or neighborhoods.

The Commission finds the Applications will be disturbing and have negative impacts on the surrounding neighbors and is not in compliance with this Comprehensive Plan Objective. The negative impacts include an economic impact to an existing recreational vehicle park to the west of Site as testified to by the owner, Steve Sellman and patron Magdalena Morris. **The Commission further finds** the lighting on wind towers would be disturbing to neighbors as testified to by Steve Sellman, Magdalena Morris, Wendi Combs, Peter Livers, Sean Knutz, Nancy Thompson, Frederick Thompson and Mike Grimmatt, collectively referred to as the “**Opposition**” in these findings.

Land Use Objectives

8. Review all commercial and industrial development proposals to determine the land use compatibility and impact to surrounding areas.

17. Evaluate all development proposals in terms of land use and environmental compatibility. Discourage development proposals, which negatively impact land use patterns and negatively impact the human and natural environment.

The Commission finds the Applications would have a negative impact on neighbors and the surrounding areas as testified to by the neighboring property owners and the Opposition. The Commission finds the negative impacts include economic impacts to existing businesses and tourism in the area due to visual impacts of the proposed transmission lines, solar panels and wind towers. Therefore, **the Commission finds** the Applications are not in harmony with these objectives of the Comprehensive Plan.

The Commission finds there is inadequate information in the WMP as testified to by Idaho Fish and Game and the Elmore County Biologist consultant to determine impacts to the natural environment.

Water Goal 1

To protect, develop, and maintain the quality and quantity of our water resource.

The Commission finds the Applications did not provide enough information to ensure the quality of the water utilized would be maintained and therefore does not meet this goal of the Comprehensive Plan.

Fish and Wildlife Goal 2

Recognize the economic contributions that fish and wildlife-based recreation contribute to Elmore County.

Fish and Wildlife Goal 3

Sustain the fish and wildlife habitats necessary to provide quality fish and wildlife-related recreation.

Fish and Wildlife Goal 4

Recognize that fish and wildlife are public resources to be managed for the benefit of all and promote ongoing proper management of fish and wildlife resources.

Fish and Wildlife Objectives:

4. Request public agency input on proposed land and water development projects potentially impacting fish and wildlife habitat.
5. Consider ordinances and conditions of approval aimed at avoiding and mitigating adverse impacts to fish and wildlife resources as a result of development.
6. Encourage protection of water quantity and quality and multiple uses that are complementary to fish and wildlife populations.

The Commission finds the proposed WMP did not provide adequate information as testified to by Idaho Fish and Game and the Elmore County Biologist Consultants. Therefore due to the lack of information the **Commission finds** that the Applications do not comply with the mentioned Fish and Wildlife Goals and Objectives of the Comprehensive Plan.

Scenic Areas Goal 1

To promote the preservation of natural scenic areas for the use and benefit of both present and future generations.

The Commission finds that the wind turbines would have a negative effect on the scenic characteristics and visual aspects of the area as testified by neighboring landowners and the Opposition. Therefore **the Commission finds** the Applications do not comply with this Comprehensive Plan Goal.

Hazardous Area Objectives

2. Discourage development in or near natural hazardous areas, such as airports, power line corridors, electrical substations, flood plains, unstable soil areas and steep slopes, high velocity wind and storm prone areas, except for industries, which may require these conditions.

The Commission finds the Applications contain information that the Site contains areas of steep slopes and that the Applications contained inadequate information on how washouts and erosion would be handled. **Commission finds** that with this lack of information the Applications do not comply with this objective of the Comprehensive Plan.

Public Service Objectives – Electrical Power

12. Work with Idaho Power Company to promote the development of energy services and public facilities to meet public needs.

The Commission finds that there is insufficient evidence that the Applicant has developed a plan to integrate with Idaho Power. **The Commission finds** that based on testimony from a representative of the Bonneville Power Administration that the Applications do not have approval to utilize an existing transmission line. Therefore, **the Commission finds** the Applications do not meet this objective of the Comprehensive Plan.

Areas of Critical Concern Objectives

1. Discourage encroachment on lands that contain important feeding grounds for wildlife.

The Commission finds the WMP provided a lack of information to determine proper mitigation as testified by Idaho Fish and Game and Elmore County Biologist Consultants. Therefore, **the Commission finds** that the Applications do not comply with this Comprehensive Plan Objective.

The Commission finds the Applications do not meet the requirements of the Zoning Ordinance as specified in these findings.

Pine, Featherville and Fall Creek Communities Community Goals

6. Natural Resources

Protect the Anderson Ranch Reservoir, the South Fork of the Boise River and all waterways in the Pine / Featherville / Fall Creek community areas from incompatible land use encroachment and development.

11. Special Areas or Sites

Protect the South Fork of the Boise River watershed to preserve water quality.

The Commission finds inadequate information was provided in the Applications to make a determination on the preservation of water quality and protection of the Anderson Ranch Reservoir.

The Commission finds that based on testimony from neighboring properties and the Opposition, the Applications propose uses that are incompatible with the existing tourism opportunities in the area and therefore do not meet these community goals of the Comprehensive Plan.

3. Does the proposed use comply with the purpose statement of the applicable base zone and with the specific use standards as set forth in this Chapter?

The Commission finds the purpose statement for the Agriculture Zone is found in Zoning Ordinance Section 6-8-5 A and states: "General Agriculture: The purpose of the Ag district is to preserve and protect the supply of agriculture and grazing land in Elmore County until development is appropriate. This district will also control the infiltration of urban development and other uses into agriculture areas, which will adversely affect agricultural operations. Uses that are compatible with farming, ranching, grazing, forest

products, and limited mining may be considered in this district. Residential land use is allowed in the Ag zone subject to site development standards and compatibility with agricultural operations. The "Ag" land use designation is the base zone throughout Elmore County. It contains areas of productive irrigated croplands, grazing lands, forestland, mining lands, public lands as well as rangeland and ground of lesser agricultural value."

The Commission finds the Applications are compatible with farming, ranching and grazing.

The Commission finds the purpose state for the Area of Critical Concern Overlay Zone is found in Zoning 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."

The Commission finds that the WMP was submitted as a technical study in lieu of an Environmental Impact Assessment. **The Commission further finds** that inadequate information was provided in the WMP as testified to by Idaho Fish and Game and the Elmore County Biologist consultants.

4. Does the proposed use comply with all applicable County Ordinances?

The Commission finds that the Applications do not meet the requirements of Elmore County Title 6 as specified in these findings. The Commission considered a condition to comply with all other applicable County Ordinances.

5. Does the proposed use comply with all applicable State and Federal regulations?

The Commission finds that the Applications do not currently comply with all applicable State and Federal regulations particularly the lack of water rights and lack of approval for utilizing federal lands. **The Commission further finds** that the Applications have no approval to tie into existing transmission lines with the Bonneville Power Administration transmission line. The Commission considered a condition of approval to meet this requirement.

6. Is the proposed use designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and will such use not change the essential character of said area?

The Commission finds the proposed Applications are not harmonious in appearance with the existing character of the general vicinity, particularly the addition of wind towers on the scenic visual landscape of the general vicinity. **The Commission further finds** that existing wind towers in Elmore County are in entirely different landscapes with entirely different environmental circumstances.

The Commission finds the proposed wind towers and lights would not be appropriate to the general vicinity as the area is remote and utilized for its natural scenery as testified to by the Opposition.

The Commission finds the creation of a 50,000 acre foot reservoir physically changes the landscape and character of the general vicinity that is currently high desert area.

7. Will the proposed use be hazardous or disturbing to existing neighboring uses or impede their normal development?

The Commission finds the Applications will be hazardous and disturbing to existing neighboring uses particularly the existing use of a recreational vehicle park to the west of the Site and recreational tourism in the vicinity. The Commission received testimony that Applications would have a negative effect on the existing business of the recreational vehicle park because those that utilize the park do so for the open areas and scenic features as testified to by the Opposition.

The Commission finds that neighboring businesses, particularly the recreational vehicle park to the west of the Site is dependent upon repeat customers as testified to by the owner. The Commission further finds that the construction phases will be disturbing to the neighboring property due to increases in noise, traffic and dust that will drive customers away that will likely never return as testified to by the owner, Steve Sellman and patron, Magdalena Morris, of the recreational vehicle park.

8. Is the proposed use served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services?

The Commission finds the following public services shall be provided as follows:

Highways: U.S. Highway 20

Streets: Private roads

Police: Elmore County Sheriff

Fire Protection: None

Drainage Structures: No information provided

Refuse Disposal: None

Potable, Non-Potable Water, Fire Suppression Water Supplies: None

Sewer: None

9. Will the proposed use create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County?

The Commission finds the Applications as proposed will not utilize public funds for services and facilities.

The Commission finds the Applications would negatively impact the existing businesses in the area particularly a recreational vehicle park to the west of the Site and recreational tourism in the area.

10. Will the proposed use involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors?

The Commission finds that the Applicant did not provide enough information for the Commission to make this required finding and therefore the Applications do not meet this required finding.

The Commission finds that the Applications did not provide enough information to the specific type and locations of solar panels and therefore could not make a positive finding for the excessive production of glare.

The Commission finds that the Applications did not provide enough information on the amount of noise that that will be produced by the portions of the Project that are in close proximity to the recreational vehicle park to the west of the Site.

The Commission finds that the Applications did not provide enough information on the amount of noise that will be produced by pumping of water from Anderson Ranch Reservoir to the proposed reservoir.

11. Will the proposed use have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways?

The Commission finds that the Applicant did not provide enough information for the Commission to make this required finding and therefore the Applications do not meet this required finding. **The Commission further finds** that the Applications do not adequately show proposed roads or give specifics on how traffic will be handled during the construction phases.

12. Does the proposed use result in the destruction, loss or damage of a natural or scenic feature of major importance?

The Commission finds that the area is considered a natural and scenic feature of major importance as testified to by landowners and the Opposition. **The Commission further finds** that scenic features are a draw for tourism in the area as testified to by the public and citing testimony regarding recent economical development reports for the area as testified by Nancy Thompson. Therefore the **Commission finds** the Project as proposed would result in the loss and damage of natural features of major importance.

XII. Idaho Code § 67-6519(4)(c) The actions, if any, that the Applicant could have taken to obtain approval.

A. The Commission finds that utilizing different areas of the property, particularly for the wind towers, transmission lines and solar panels, to avoid negative impacts on neighboring properties and be more harmonious with the surrounding area.

B. The Commission finds that providing additional information requested for the WMP by Idaho Fish and Game and Elmore County Biologist consultants could potentially give the Commission enough information to make positive findings for the Applications.

C. The Commission finds that obtaining information, testimony and requirements from impacted agencies, including Idaho Power, Bonneville Power Administration, United States Forest Service and Idaho Department of Water Resources could potentially give the Commission information to make positive findings for the Applications.

D. The Commission finds that more information could have been supplied by the Applicant to adequately address concerns for excess traffic, noise and glare.

E. The Commission finds that accurately showing all proposed roads and improvements on the Site could provide the Commission enough information to determine if the Applications will create interference with traffic on the surrounding roadways.

CONCLUSIONS OF LAW

If any of the conclusions of law are deemed to be findings of fact, they are incorporated in the Findings of Fact section.

1. The Commission concludes that the public hearing notice requirements of Zoning Ordinance Chapter 4 have been met.
2. The Commission concludes that the notice requirements of Idaho Code Section § 67-6512 have been met.
3. The Commission concludes that the Applications do not comply with the required findings set forth in Section 6-27-7 of the Zoning Ordinance.

ORDER

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Applications, the Commission voted and hereby **denies** the Applications with this final decision.

Dated this _____ day of _____, 2016.

COMMISSION VOTE:

CHAIRPERSON PATTI OSBORN
VICE CHAIRMAN K.C. DUERIG

VOTED AYE
VOTED AYE

SUSAN FISH
ED OPPEDYK
JEFF BLANKSMA
SHANE ZENNER
DAVE HOLLAND

VOTED AYE
VOTED AYE
VOTED AYE
ABSENT
VOTED AYE

Patti Osborn, Chairperson

ATTEST:

Alan Christy, Director

NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-3-2 B

A decision made by the Elmore County Planning and Zoning Commission (the "Commission") may be reconsidered by the Commission provided the reconsideration application is complete and reconsideration fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. The reconsideration shall include new or additional relevant information that was not previously presented or available at the public hearing. Questions concerning reconsideration or deadlines should be asked of the Elmore County Land Use and Building Department.

NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-3-2 E-F

A decision made by the Elmore County Planning and Zoning Commission may be appealed to the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.

NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-4-2 F

No application that has been denied by the Director, the Commission, or the Board shall be resubmitted, in the same form for the same use, within one year from the date of denial.

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

In Re: CUP-2016-03: This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the “**Commission**”), the 20th day of July, 2016, for a public hearing, held pursuant to public notice as required by law, on a request for a Conditional Use Permit (the “**CUP**”) for a substation in the Light Industrial Zone and the Mountain Home Area of City Impact (the “**Application**”). Property is located in the SE¼SE¼, Section 22, Township 3 South, Range 6 East, B.M. (the “**Site**”). The Commission heard from the applicant in support of the Application. The Commission received additional written testimony and information for the Application. The Commission heard testimony in support, neutral and in opposition of the Application. Upon conclusion of the public hearing, the Commission duly considered all that was presented to them.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the record for the Application and those facts which are in common knowledge or of which there is general public awareness.

I. The Commission finds that Application is comprised of:

A. Application form prepared and submitted by Idaho Power (the “**Applicant**”) for the CUP; and

B. Those supplemental letters, email messages, documentation and memos submitted by the Applicant or its representatives, whether submitted in response to questions from employees (the “**Staff**”) from the Elmore County Land Use and Building Department (the “**Department**”) or the Commission in connection with Application to the Commission.

II. The Commission finds that the Applicant is:

Idaho Power
PO Box 70
Boise, ID 83707

III. The Commission finds the following as to the procedural matters pertaining to the Application:

A. The Applicant participated in a pre-application meeting with the Department on January 29, 2016.

B. The Applicant conducted a neighborhood meeting on March 7, 2016 as required by Elmore County Zoning and Development Ordinance (the “**Zoning Ordinance**”) Section 6-4-3.

C. The Applicant submitted the Application to the Department on April 12, 2016.

D. The Department deemed the Application complete on April 20, 2016.

E. The Department mailed notice of the public hearing to neighboring property owners within one-thousand (1,000) feet of the Site on June 23, 2016 pursuant to Zoning Ordinance Section 6-4-5.

F. The Department mailed notice of the public hearing to agencies on June 23, 2016 pursuant to Zoning Ordinance Section 6-4-4.

G. Notice of the public hearing was published in the Mountain Home News on June 29, 2016 pursuant to Zoning Ordinance Section 6-4-5 A.

H. Notice of the public hearing was posted on the Site on July 8, 2016 pursuant to Zoning Ordinance Section 6-4-5 B.

I. Chairperson Osborn recused herself from the public hearing due to being an employee of Idaho Power and to avoid any perception of potential conflict of interest.

J. The Commission opened the public hearing on July 20, 2016 and received verbal and written information regarding the Application.

K. The Commission moved to **approve** the Application with six (6) conditions of approval. The motion to **approve** the Application passed on a 3-0 vote.

IV. The proposed use of the Application as follows:

A. **The Commission finds** the proposed use for a substation in the Light Industrial Zone and the Mountain Home Area of City Impact.

B. **The Commission finds** that the submitted master site plan shows the substation.

V. The Commission finds the following pertaining to the Site:

A. **Site Description:** SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 22, Township 3 South, Range 6 East, B.M. A common way of locating the property is from US 30 head west on E 5th St North, road changes to W 5th St North, then north on N Haskett St, then west on NW Turner Rd, then north on NW Sawmill Rd, then west on W 10th St North and just past the intersection of N 18th West.

B. **Parcel Number:** RP 03S06E229620 A

C. **The "Owner" of the Site is:**
Weitz and Company, Inc
1900 W. Main St.
Boise, ID 83702

D. **Applicant's Property Right in the Site is:** Easement

E. **Site Characteristics:**

Property Size: The Parcel contains approximately 115 acres. The Applicant will utilize approximately .5 acres for the substation.

Existing Structures: None.

Existing Vegetation: The vegetation consists mainly of sagebrush.

Slope: Relatively flat and less than 10% slope.

Flood Zone Status: FEMA defined Zone X located outside of all know flood zones.

Irrigation: None.

VI. The Commission finds the current zoning of the Site as follows:

The current zoning for the Site is Light Industrial and within the Mountain Home Area of City Impact, pursuant to the adopted zoning map, Elmore County Ordinance 2013-02.

VII. The Commission finds the surrounding land use and zoning as follows:

Land uses to the south are grazing. Land uses to the north are grazing. Land uses to the east are shooting range and gravel pit. Land uses to the west are grazing.

VIII. The Commission finds the existing services as follows:

Access Roads: Publically maintained road W 10th North St, which is a non-paved road.

Fire Protection District: Mountain Home Rural Fire District (the "Fire District").

Sewage Disposal: None.

Water Service: None.

Highway District: Mountain Home Highway District (the "Highway District").

IX. The Commission finds the following as the applicable law for consideration of the Application:

A. Comprehensive Plan. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014 (the "Comprehensive Plan"); and

B. Zoning Ordinance, adopted March 21, 2012 as Ordinance 2012-01; which was subsequently amended on September 19, 2012, as Ordinance 2012-03 and on July 14, 2014, as Ordinance 2014-01; and

C. The Local Land Use Planning Act, Idaho Code § 67-6501 *et seq.*; and

X. Comprehensive Plan:

A. **The Commission finds** the Application is in conformance with the Comprehensive Plan as stated in the findings.

XI. Zoning Ordinance:

A. **The Commission finds** that in order to approve the CUP application, the following findings as set forth in Section 6-27-7 of the Zoning Ordinance shall be made.

1. The proposed use shall, in fact constitute a Conditional Use as determined in Chapter 8, Table 6-8-11 (C), Elmore County Land Use Table, as contained in this Ordinance;
2. The proposed use shall be in harmony with and in accordance with the Comprehensive Plan and this Ordinance (Title 6);
3. The proposed use complies with the purpose statement of the applicable base zone and with the specific use standards as set forth in this Chapter;
4. The proposed use shall comply with all applicable County Ordinances;
5. The proposed use shall comply with all applicable State and Federal regulations;
6. The proposed use shall be designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and that such use shall not change the essential character of said area;
7. The proposed use shall not be hazardous or disturbing to existing neighboring uses or impede their normal development;
8. The proposed use shall be served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services;
9. The proposed use shall not create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County;
10. The proposed use shall not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
11. The proposed use shall have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways;
12. The proposed use shall not result in the destruction, loss or damage of a natural or scenic feature of major importance.

B. The required findings of Section 6-27-7 of the Zoning Ordinance, stated as questions, follow in bold text, followed by the Commission's findings:

1. Does the proposed use in fact constitute a Conditional Use as determined in Chapter 8, Table 6-8-11 (C), Elmore County Land Use Table, as contained in this Ordinance?

The Commission finds that Section 6-8-170 E.3 states "Power Distribution Facilities:
"3. Electric transmission lines and substations shall require conditional use approval."

The Commission finds Public or Quasi Public Use requires a conditional use permit Table 6-8-11 (C) of the Elmore County Zoning and Development Ordinance.

2. Is the proposed use in harmony with and in accordance with the Elmore County Comprehensive Plan (“Plan”) and this Ordinance (Title 6)?

The Commission finds that the application is in harmony and accordance with the Elmore County Comprehensive Plan and this Ordinance.

The Commission finds the Application does comply with the Zoning Ordinance as the Application does meet all the required findings of Ordinance Section 6-27-7.

3. Does the proposed use comply with the purpose statement of the applicable base zone and with the specific use standards as set forth in this Chapter?

The Commission finds that the Application complies with the purpose statement of the Light Industrial zone in Zoning Ordinance Section 6-8-5 A in that the “M1 district is to provide for commercial and light industrial development and opportunities for employment of Elmore County citizens and area residents and reduce the need to commute to neighboring cities. The M1 district will encourage the development of manufacturing, wholesale, and distribution establishments which are clean, quiet, and free of hazardous or objectionable elements, such as noise, odor, dust, smoke, or glare and that are operated entirely or almost entirely within enclosed structures or fenced yards; to delineate areas best suited for industrial development because of location, topography, existing facilities, and relationship to other land uses. Uses within the M1 district require reasonable access to arterial roadways. Land uses in this category may require a mix of commercial or light industrial uses that consists of clean types of manufacturing, processing, warehousing, repair and general industrial uses.”

4. Does the proposed use comply with all applicable County Ordinances?

The Commission finds the Application does comply with the Zoning Ordinance as the Application does meet all the required findings of Zoning Ordinance Section 6-27-7.

5. Does the proposed use comply with all applicable State and Federal regulations?

The Commission finds that with the conditions in these findings the proposed use complies with State and Federal regulations.

6. Is the proposed use designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and will such use not change the essential character of said area?

The Commission finds that the essential character of the area will not be negatively changed.

The Commission finds this is necessary for the solar project that was approved on November 18, 2015.

7. Will the proposed use be hazardous or disturbing to existing neighboring uses or impede their normal development?

The Commission finds visual impacts will be minimal. Neighbors within 1,000 feet have been notified of this application.

The Commission finds the noise is minimal and less than 60 decibels as testified by the applicant.

8. Is the proposed use served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services?

The Commission finds the following public services shall be provided as follows:

Highways: Mountain Home Highway District.

Streets: W 10th North St is a non-paved road, maintained by the Highway District. The Highway District provided no comment on the application.

Police: Police protection is provided by the Elmore County Sherriff's Department.

Fire Protection: The Fire District.

Drainage Structures: Condition of approval.

Refuse Disposal: not applicable.

Potable, Non-Potable Water, Fire Suppression Water Supplies: not applicable.

Sewer: not applicable.

9. Will the proposed use create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County?

The Commission finds that the proposed use will not create excessive additional requirements at public costs.

10. Will the proposed use involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors?

The Commission finds that no excessive traffic, noise, smoke, fumes, glare or odors are anticipated with the proposed use.

The Commission finds the noise is minimal and less than 60 decibels as testified by the applicant.

11. Will the proposed use have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways?

The Commission finds that the Application will not increase traffic patterns as the Highway District has signed the Application.

12. Does the proposed use result in the destruction, loss or damage of a natural or scenic feature of major importance?

The Commission finds that the Site is not identified as a natural or scenic feature of major importance.

CONCLUSIONS OF LAW

If any of the conclusions of law are deemed to be findings of fact, they are incorporated in the Findings of Fact section.

1. The Commission concludes that the public hearing notice requirements of Zoning Ordinance Chapter 4 have been met.
2. The Commission concludes that the notice requirements of Idaho Code Section § 67-6512 have been met.
3. The Commission concludes that the Application complies with the required findings set forth in Section 6-27-7 of the Zoning Ordinance.

ORDER

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Application, the Commission voted and hereby **approves** the Application with the following conditions:

1. The substation will have a security fence.
2. The development will comply with all the requirements of Elmore County Zoning and Ordinance section 6-8-170.
3. All outstanding fees, if any, must be paid prior to the issuance of an Elmore County building permit.
4. The proposed use will be constructed in substantial conformance with the master site plan. The application must be amended if there are any substantial changes.
5. Prior to the issuance of a building permit, an overall site plan must be approved by the County Engineer. The development will comply with all recommendations of the County Engineer.
6. Failure to comply with any of the conditions will result in revocation of the Conditional Use Permit.

Dated this _____ day of _____, 2016.

COMMISSION VOTE:

CHAIRPERSON PATTI OSBORN
VICE CHAIRMAN K.C. DUERIG
SUSAN FISH
ED OPPEDEYK
JEFF BLANKSMA
SHANE ZENNER
DAVE HOLLAND

RECUSED
VOTED AYE
VOTED AYE
ABSENT
ABSENT
ABSENT
VOTED AYE

K.C. Duerig, Vice-Chairperson

ATTEST:

Alan Christy, Director

NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-3-2 B

A decision made by the Elmore County Planning and Zoning Commission (the "Commission") may be reconsidered by the Commission provided the reconsideration application is complete and reconsideration fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. The reconsideration shall include new or additional relevant information that was not previously presented or available at the public hearing. Questions concerning reconsideration or deadlines should be asked of the Elmore County Land Use and Building Department.

NOTICE PURSUANT ZONING ORDINANCE SECTION 6-3-2 E-F

A decision made by the Elmore County Planning and Zoning Commission may be appealed to the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

In Re: REZ-2016-01: This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the “**Commission**”), the 20th day of July, 2016, for a public hearing, held pursuant to public notice as required by law, on a request for a rezone application from Agriculture (“**Ag**”) to Interstate/Arterial Commercial (“**C2**”) (the “**Rezone Application**”) and amendment to the Elmore Comprehensive Plan Future Land Use Map (“**Plan Amendment**”), collectively known as the “**Project**.” Property is located in portions of Sections 7 and 8, Township 4 South, Range 7 East, B.M. (the “**Site**”). The Commission heard from the applicant in support of the Project. The Commission heard additional testimony neutral to the Project. The Commission received additional written testimony and information for the Project. Upon conclusion of the public hearing, the Commission duly considered all that was presented to them.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

FINDINGS OF FACT

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the record for the Application and those facts which are in common knowledge or of which there is general public awareness.

I. The Commission finds that Project Application is comprised of:

- A.** Application form prepared and submitted by Mirazim Shakoori (the “**Applicant**”) for the Project; and
- B.** Letter from Bonnie Layton, dated November 25, 2015 detailing the request for the Plan Amendment.
- C.** Those supplemental letters, email messages, documentation and memos submitted by the Applicant or its representatives, whether submitted in response to questions from employees (the “**Staff**”) from the Elmore County Land Use and Building Department (the “**Department**”) or the Commission in connection with Application to the Commission.

II. The Commission finds that the Applicant is:

Elmore Development, LLC; Mirazim Shakoori
2595 Old Oregon Trail
Mountain Home, ID 83644

III. The Commission finds the following as to the procedural matters pertaining to the Application:

- A.** The Applicant participated in a pre-application meeting with the Department on April 1, 2015.
- B.** The Applicant conducted a neighborhood meeting on May 28, 2015 and May 12, 2016 as required by Elmore County Zoning and Development Ordinance (the “**Zoning**”

Ordinance") Section 6-4-3.

C. The Applicant submitted the Application to the Department on November 24, 2015.

D. Letter for the Plan Amendment was submitted on November 25, 2016.

E. Additional information for the project was submitted on June 22, 2016.

D. The Department deemed the Application complete on June 22, 2016.

F. The Department mailed notice of the public hearing to neighboring property owners within one-thousand (1,000) feet of the Site on June 23, 2016 pursuant to Zoning Ordinance Section 6-4-5.

G. The Department mailed notice of the public hearing to agencies on June 23, 2016 pursuant to Zoning Ordinance Section 6-4-4.

H. Notice of the public hearing was published in the Mountain Home News on June 29, 2016 pursuant to Zoning Ordinance Section 6-4-5 A.

I. Notice of the public hearing was posted on the Site by the Applicant on July 8, 2016 pursuant to Zoning Ordinance Section 6-4-5 B.

J. The Commission opened the public hearing on July 20, 2016 and received verbal and written information regarding the Project.

K. The Commission moved to **recommend approval** of the Project with one (1) condition. The motion to **approve** the Application passed on a 4-0 vote.

IV. The proposed use of the Project is as follows:

A. The Commission finds the Rezone Application is proposed to rezone approximately 456 acres from Agriculture to Light Industrial. **The Commission further finds** that the Applicant does not have a specific use intended for the Site and wants to market the Site for industrial development.

B. The Commission finds the Plan Amendment is proposed to change the Comprehensive Plan Future Land Use Map designation for the Site from C2 – Highway Interstate Commercial to M1 – Light Industrial in order to negate a conflict with the Comprehensive Plan.

V. The Commission finds the following pertaining to the Site:

A. Site Description: Portions of the Section 7 and 8, Township 4 South, Range 7 East, B.M. A common way of locating the property is from I-84 head east, take exit 90, turn right on Old Oregon Trail Rd. for approximately 2 miles.

B. Parcel Numbers: RP04S07E082440A, RP04S07E084210A, RP04S07E071840A, RP04S07E056500A, and RP04S07E083040A

C. The “Owner” of the Site is:

Elmore Development, LLC
2595 Old Oregon Trail
Mountain Home, ID 83647

D. Applicant’s Property Right in the Site is: Owner

E. Site Characteristics:

Property Size: 456 acres.

Existing Structures: None.

Existing Vegetation: Irrigated farm ground.

Slope: Relatively flat and less than 10% slope.

Flood Zone Status: Zone X located outside of all known flood zones

Irrigation: Surface and pivot irrigation

VI. The Commission finds the current zoning of the Site as follows:

The current zoning for the Site is Agriculture pursuant to the adopted zoning map, Elmore County Ordinance 2013-02.

VII. The Commission finds the surrounding land use and zoning as follows:

Land uses to the south are irrigated farm ground.

Land uses to the north are irrigated farm ground.

Land uses to the east are dry BLM grazing and Interstate 84.

Land uses to the west are UP railroad tracks and irrigated farm ground.

VIII. The Commission finds the existing services as follows:

Access Roads: Old Oregon Trail Road and South Main Street, both are publically maintained paved roads.

Fire Protection District: Mountain Home Rural Fire Protection District (the “Fire District”)

Sewage Disposal: None.

Water Service: None.

Irrigation Service: Mountain Home Irrigation District.

Highway District: Mountain Home Highway District (the “Highway District”).

IX. The Commission finds the following as the applicable law for consideration of the Application:

- A. Comprehensive Plan. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014 (the "Comprehensive Plan"); and
- B. Zoning Ordinance, adopted March 21, 2012 as Ordinance 2012-01; which was subsequently amended on September 19, 2012, as Ordinance 2012-03 and on July 14, 2014, as Ordinance 2014-01; and
- C. The Local Land Use Planning Act, Idaho Code § 67-6501 *et seq.*; and

X. Comprehensive Plan:

- A. **The Commission finds** that Idaho Code § 67-6509, also known as the Idaho Local Land Use Planning Act, provides requirements for adoption, amendment and repeal of comprehensive plans.
- B. **The Commission finds** in addition to the Rezone Application, the Plan Amendment is required to avoid conflict with the Comprehensive Plan.
- C. **The Commission finds** the Rezone Application in combination with the Plan Amendment as consistent with the Comprehensive Plan as stated in these findings.
- D. **The Commission finds** the Project is supported and consistent with the following objectives of the Comprehensive Plan:

Economic Objective #9. Establish appropriate industrial zones to further increase business and economic development in various communities and areas of Elmore County, particularly at appropriate locations near areas of city impact.

The Commission finds that the Site is approximately 0.5 miles south and east of the Mountain Home Area of City Impact. **The Commission further finds** that based on the Applicant's testimony and proximity to an Interstate 84 Exit this will further increase opportunities for business and economic development.

Land Use Objective # 5. Encourage and support commercial and industrial development if it complies with County ordinances and guidelines to create jobs and expand the tax base. Maintain two industrial zones; heavy and light.

The Commission finds that based on the Applicant's testimony the Site will be used and marketed as an industrial property to further create jobs and expand the tax base.

Land Use Objective #8. Review all commercial and industrial development proposals to determine the land use compatibility and impact to surrounding areas.

The Commission finds that future uses in the Light Industrial Zone will require a zoning permit, conditional use permit and/or additional requirements from the Zoning Ordinance. **The Commission further finds** that these requirements will further help determine the Site's land use compatibility with the surrounding areas.

XI. Zoning Ordinance:

A. The Commission finds that in order to approve a Zoning Map Amendment (also known as a rezone) application, the following findings as set forth in Section 6-8-9 D of the Zoning Ordinance shall be made.

1. The Zoning Ordinance Map Amendment complies with the regulations outlined for this Chapter; and
2. The Zoning Ordinance Map Amendment shall not be materially detrimental to the public health, safety and welfare; and
3. The Zoning Ordinance Map Amendment request is in compliance with the Land Use/Zoning Map Amendment Matrix; and
4. The development agreement meets the requirements of this Title; and
5. That the approval by the Board, of a Zoning Ordinance Map Amendment request would not “impede”⁽¹⁾ the normal flow of development; and

Note: ⁽¹⁾ For the purpose of this Chapter and required finding (number 5 listed above), the definition of “Impede” shall be the interference with an existing or proposed activity that would delay or cause modification to the progress of normal development and/or development trends, or the causing of delays or interference with the normal flow of progress and/or development trends.

6. The Zoning Ordinance Map Amendment is not in conflict with the Comprehensive Plan.

B. The required findings of Section 6-8-9 D of the Zoning Ordinance, stated as questions, follow in bold text, followed by the Commission’s findings:

1. Does the Zoning Ordinance Map Amendment comply with the regulations outlined for this Chapter?

The Commission finds that with the condition of approval, the Project complies with the Zoning Ordinance regulations in Chapter 8.

2. Is the Zoning Ordinance Map Amendment materially detrimental to the public health, safety and welfare?

The Commission finds that Central District Health Department, the Highway District and Fire District have signed the Application. **The Commission finds** that these agencies provided no testimony stating the Project would be detrimental to the public health, safety and welfare.

The Commission finds that future uses in the Light Industrial Zone will require a zoning permit and/or conditional use permit. **The Commission finds** that the zoning and conditional use permits have provisions to further protect the public health, safety and welfare.

3. Is the Zoning Ordinance Map Amendment request is in compliance with the Land Use/Zoning Map Amendment Matrix?

The Commission finds the Land Use/Zoning Map Amendment Matrix is identified as Zoning Ordinance Table 6-8-10. **The Commission further finds** that Zoning Ordinance Table 6-8-10 allows for a rezone from Agriculture to Light Industrial.

4. Does the development agreement meet the requirements of this Title?

The Commission finds that the requirement for a development agreement is better suited as a condition of approval for the Project. **The Commission further finds** that based on testimony by the Applicant the Site will be marketed as an industrial property and no specific use has been established at this time and therefore making the requirement of a development agreement necessary for when a change in use is proposed.

5. Does the approval by the Board, of a Zoning Ordinance Map Amendment request “impede”⁽¹⁾ the normal flow of development?

Note: ⁽¹⁾ For the purpose of this Chapter and required finding (number 5 listed above), the definition of “Impede” shall be the interference with an existing or proposed activity that would delay or cause modification to the progress of normal development and/or development trends, or the causing of delays or interference with the normal flow of progress and/or development trends.

The Commission finds that the Comprehensive Plan has the area designated as C2 – Highway/Interstate Commercial on the Future Land Use Map and therefore the surrounding area’s normal flow of development is anticipated to transform from the existing agriculture uses.

The Commission finds that the Comprehensive Plan definition of Light Industrial Manufacturing is consistent with the intent of the Highway/Interstate Commercial definition and designation on the Future Land Use Map in that the Light Industrial Manufacturing definition states: “Land uses in this category may require a mix of commercial or light industrial uses.” Therefore **the Commission further finds** the Rezone Application to be consistent with the projected growth pattern established in the Comprehensive Plan.

6. Is the Zoning Ordinance Map Amendment in conflict with the Comprehensive Plan?

The Commission finds that the Comprehensive Plan Future Land Use Map has the Site designated as C2 – Highway/Interstate Commercial.

The Commission finds the Rezone Application is in conflict with the Comprehensive Plan Future Land Use Map. **The Commission further finds** that the Applicant submitted the Plan Amendment to resolve the conflict.

The Commission finds that the Comprehensive Plan definition of Light Industrial Manufacturing is consistent with the intent of the Highway/Interstate Commercial definition and designation on the Future Land Use Map in that the Light Industrial

Manufacturing definition states: "Land uses in this category may require a mix of commercial or light industrial uses."

CONCLUSIONS OF LAW

If any of the conclusions of law are deemed to be findings of fact, they are incorporated in the Findings of Fact section.

1. The Commission concludes that the public hearing notice requirements of Zoning Ordinance Chapter 4 have been met.
2. The Commission concludes that the notice requirements of Idaho Code Section § 67-6512 have been met.
3. The Commission concludes that the Plan Amendment meets the requirements established in Idaho Code Section § 67-6509.
4. The Commission concludes that the Rezone Application, with the approval of the Plan Amendment and condition of approval, meets the findings of the Zoning Ordinance Section 6-8-9 D.

RECOMMENDATION

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Project, the Commission voted and hereby recommends **approval** of the Project with the following condition:

1. Recommend all future development projects submit a Development Agreement with Elmore County.

Dated this _____ day of _____, 2016.

COMMISSION VOTE:

CHAIRPERSON PATTI OSBORN	VOTED AYE
VICE CHAIRMAN K.C. DUERIG	VOTED AYE
SUSAN FISH	VOTED AYE
ED OPPEDEYK	ABSENT
JEFF BLANKSMA	ABSENT
SHANE ZENNER	ABSENT
DAVE HOLLAND	VOTED AYE

Patti Osborn, Chairperson

ATTEST:

Alan Christy, Director

NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-3-2 B

A decision made by the Elmore County Planning and Zoning Commission (the "Commission") may be reconsidered by the Commission provided the reconsideration application is complete and reconsideration fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. The reconsideration shall include new or additional relevant information that was not previously presented or available at the public hearing. Questions concerning reconsideration or deadlines should be asked of the Elmore County Land Use and Building Department.

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

In Re: ADD-2016-012: This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the "**Commission**"), the 20th day of July, 2016, for a public hearing, held pursuant to public notice as required by law, on a request for an appeal of Elmore County Land Use and Building Department Director (the "**Director**") for the requirement of an accessory dwelling unit application in the Agriculture Zone (the "**Application**"). Property is located in Lot 5, Riverside Acreage Subdivision (the "**Site**"). The Commission heard from the applicant in support of the Application. The Commission received additional written testimony and information for the Application. Upon conclusion of the public hearing, the Commission duly considered all that was presented to them.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the record for the Application and those facts which are in common knowledge or of which there is general public awareness.

I. The Commission finds that Application is comprised of:

A. Appeal application form prepared and submitted by Frederick Watkins (the "**Applicant**"); and

B. Those supplemental letters, email messages, plans, reports, documentation and memos submitted by the Applicant or its representatives, whether submitted in response to questions from employees (the "**Staff**") from the Elmore County Land Use and Building Department (the "**Department**") or the Commission in connection with Application to the Commission.

II. The Commission finds that the Applicant is:

Frederick Watkins
3042 Monterey Street
Oxnard, CA 93033

III. The Commission finds the following as to the procedural matters pertaining to the Application:

A. The Applicant submitted building plans to the Department on May 23, 2016.

B. The Applicant engaged in emails with the Staff regarding the property and building criteria starting on February 3, 2016. Staff explained the requirement for an accessory dwelling permit on June 2, 7, and 10, 2016. The Applicant questioned the requirement for an accessory dwelling on June 2, 4, 5, 7, and 11, 2016 followed by a request from the Applicant on June 14, 2016 for an Appeal Application.

C. The Elmore County Land Use and Building Director (the "**Director**") issued a final decision on June 10, 2016.

D. The Applicant submitted the Application to appeal the decision of the requirement for an accessory dwelling to the Department on June 20, 2016.

E. The Department deemed the Application complete on June 21, 2016.

F. The Department mailed notice of the public hearing to agencies on June 23, 2016 pursuant to Zoning Ordinance Section 6-4-4.

G. Notice of the public hearing was published in the Mountain Home News on June 29, 2016 pursuant to Zoning Ordinance Section 6-4-5 A.

H. Notice of the public hearing was posted on the Site on July 8, 2016 pursuant to Zoning Ordinance Section 6-4-5 B.

I. The Commission opened the public hearing on July 20, 2016 and received verbal and written information regarding the Application.

J. The Commission moved to **deny** the Appeal Application and uphold the Director decision. The motion to **deny** the Appeal Application passed on a 3-1 vote.

IV. The Commission finds the Director's Decision as follows:

A. There are two "dwellings" identified on the set of plans that were submitted. Pursuant to the Ordinance the Director and Building Official have the authority and determined that there are two separate dwellings only attached by a carport.

B. The Director determined that the submitted building plans may be approved if an Accessory Dwelling Unit Application is applied for and approved by the Director.

V. The Commission finds the Appeal Application as follows:

A. **The Commission finds** the appeal of the Director's decision for the requirement of an accessory dwelling unit application in the Agriculture Zone.

B. **The Commission finds** that the submitted building plans show the mother-in-law quarters on the plans.

VI. The Commission finds the following pertaining to the Site:

A. **Site Description:** Lot 5 Riverside Acreage Subdivision, B.M. A common way of locating the property is from Interstate 84 take exit 112 and head south on Highway 78 to Old Highway 30. Head east on Old Highway 30 to intersection of S Humpherys Road and turn right. Head south on S Humpherys Road to the intersection of W. Osprey St. and turn left. Head east on W. Osprey St. and the site is on the right side of the road.

B. **Parcel Number:** RP001510000050A

C. **The "Owner" of the Site is:**

Frederick Watkins

3042 Monterey St
Oxnard, CA 93033

D. Applicant's Property Right in the Site is: Owner

E. Site Characteristics:

Property Size: The Site contains approximately 2.560 acres.

Existing Structures: None.

Existing Vegetation: The vegetation consists mainly of tall weeds.

Slope: Relatively flat and less than 10% slope.

Flood Zone Status: FEMA defined Zone A.

Irrigation: None.

VII. The Commission finds the current zoning of the Site as follows:

The current zoning for the Site is Agriculture pursuant to the adopted zoning map, Elmore County Ordinance 2013-02.

VIII. The Commission finds the surrounding land use and zoning as follows:

Land uses to the south are the Snake River. Land uses to the north are agriculture and grazing. Land uses to the east are platted residential subdivision. Land uses to the west are platted residential subdivision.

IX. The Commission finds the existing services as follows:

Access Roads: Publically maintained road W Osprey St.

Fire Protection District: Glenns Ferry Fire Department.

Sewage Disposal: None.

Water Service: None.

Highway District: Glenns Ferry Highway District (the "Highway District").

X. The Commission finds the following as the applicable law for consideration of the Application:

A. Comprehensive Plan. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014 (the "Comprehensive Plan"); and

B. Zoning Ordinance, adopted March 21, 2012 as Ordinance 2012-01; which was subsequently amended on September 19, 2012, as Ordinance 2012-03 and on July 14, 2014, as Ordinance 2014-01; and

C. The Local Land Use Planning Act, Idaho Code § 67-6501 *et seq.*; and

D. The Building Code, as resolution number 561-14 with the current building codes recognized by Elmore County as:

- The 2012 Version of the International Building Code.
- The 2012 Version of the International Residential Code, Appendices A,B,C and D, Mechanical Parts V and VI.
- The 2012 Version of the International Energy Conservation Code.

Collectively referred to as the “**Building Code**” in these findings.

XI. Comprehensive Plan:

A. **The Commission finds** no conflict with the building of a residence and mother-in-law quarters in the Comprehensive Plan.

XII. Zoning Ordinance:

The Commission finds the Director has authority to interpret and enforce the Zoning Ordinance pursuant to Zoning Ordinance Sections 6-3-3 A, 6-3-5 A and 6-5-1 B-C.

The Commission finds the Zoning Ordinance has the following definitions in Chapter 2:

MOTHER-IN-LAW QUARTERS: Refers to separate living quarters for family members. See the definitions of Dwelling, Secondary Attached and Detached.

DWELLING, SECONDARY ATTACHED: A dwelling unit that shares a common wall or walls with the principal dwelling, has a separate outside entrance from the principal dwelling, and is subordinate to the principal dwelling.

DWELLING, SECONDARY DETACHED: A dwelling unit that is located in a completely separate structure from the principal dwelling and is subordinate to the principal dwelling.

DWELLING OR DWELLING UNIT: Any structure, or portion thereof, providing independent living facilities for one "family" as herein defined, including provisions for living, sleeping, eating, cooking, and sanitation.

The Commission finds that Zoning Ordinance Section 6-8-86 A states the following:

This Section provides standards for an accessory dwelling unit (ADU) to be added to a single-family dwelling, or as a detached ADU. The purpose of accessory dwelling units is to provide more affordable housing; provide additional density with minimal costs and disruption to existing neighborhoods. A house with an accessory dwelling unit is similar to that of a duplex, but can be distinguished from a duplex because of its less intense use, smaller size and that the principle dwelling with an [sic] attached ADU must retain the appearance of a single-family dwelling.

The Commission finds the submitted building plans from the Applicant state there is a "Mother-In-Law Quarters" that is attached and has a separate outside entrance from the principle dwelling. **The Commission further finds** the identified "Mother-In-Law Quarters" is subordinate in size to the principle dwellings. Therefore **the Commission upholds** the Director's decision.

The Commission finds the submitted building plans from the Applicant contain two separate independent living facilities that include provisions for living, sleeping, eating, cooking and sanitation. **The Commission further finds** living facilities in the "Mother-In-Law Quarters" include separate provisions for living, sleeping, eating, cooking and sanitation, therefore the identified "Mother-in-law quarters" on the submitted plans fit the Zoning Ordinance definitions of DWELLING UNIT and DWELLING, SECONDARY ATTACHED. Therefore, **the Commission upholds** the Director's decision.

The Commission finds the "Mother-In-Law Quarters" identified on the submitted building plans is less intensive and smaller in size than the principle dwelling. **The Commission further finds** that based on the elevations of the submitted plans that the "Mother-In-Law Quarters" are attached and retain the same appearance of the principle dwelling. Therefore, **the Commission finds** the submitted plans meet the Zoning Ordinance purpose and description of an Accessory Dwelling Unit and **the Commission upholds** the Director's decision.

The Commission finds the submitted building plans may be approved once the Director approves an Accessory Dwelling Unit Application.

The Commission finds an Accessory Dwelling Unit Application may be approved by the Director pursuant to Zoning Ordinance Table 6-8-11 (C), Zoning Ordinance Section 6-8-86 and 6-4-6.

XIII. The Building Code:

The Commission finds the Building Official has authority to interpret and enforce the Building Code pursuant to Building Code section R104.1.

The Commission finds the Building Code has the following definitions in Section R202:

DWELLING. Any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

The Commission finds that based on the testimony from the Building Official that the Building Code states the following:

Kitchen shall meet an area used or designated to be used for the preparation of food.

Each dwelling unit shall be provided a kitchen area and every kitchen area shall be provided with a sink.

The Commission finds the Building Code does not define “permanent” or “permanent provisions”.

The Commission finds the building plans submitted by the Applicant contain two separate kitchen areas for the preparation of food and each contain a sink.

The Commission finds the submitted building plans from the Applicant contain two separate independent living facilities that include provisions for living, sleeping, eating, cooking and sanitation. **The Commission further finds** living facilities in the “Mother-In-Law Quarters” include separate provisions for living, sleeping, eating, cooking and sanitation, therefore the identified “Mother-in-law quarters” on the submitted plans fit the Building Code definition of DWELLING UNIT. Therefore **the Commission upholds** the Director’s decision.

XIV. Additional Findings

The Commission finds that the lot is within the platted subdivision of Riverside Acres and based on the Applicant’s testimony the subdivision has covenants and restrictions. The Applicant testified that duplexes or mother-in-law quarters are not allowed in the subdivision pursuant to the covenants and restrictions. **The Commission further finds** that the Department does not enforce subdivision covenants and restrictions.

The Commission finds that based on the Building Official’s testimony the identified “Mother-In-Law Quarters” could be a separately rented dwelling unit by a current or future land owner.

XV. Idaho Code § 67-6519(4)(c) The actions, if any, that the Applicant could have taken to obtain approval.

The Commission finds the submitted building plans can be approved once the Director approves an Accessory Dwelling Unit Application pursuant to the procedures in the Zoning Ordinance.

The Commission finds the Applicant can revise the building plans to show only one Zoning Ordinance defined dwelling unit.

CONCLUSIONS OF LAW

If any of the conclusions of law are deemed to be findings of fact, they are incorporated in the Findings of Fact section.

1. The Commission concludes that the public hearing notice requirements of Zoning Ordinance Chapter 4 have been met.
2. The Commission concludes that the notice requirements of Idaho Code Section § 67-6512 have been met.
3. The Commission concludes that the requirements of Zoning Ordinance Section 6-3-1 have been met.

ORDER

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Appeal Application, the Commission voted 3-1 and hereby **denies** the Appeal Application and upholds and affirms the Director's decision. The dissenting vote believed the "mother-in-law quarters" to be a suite instead of a dwelling.

Dated this _____ day of _____, 2016.

COMMISSION VOTE:

CHAIRPERSON PATTI OSBORN	VOTED AYE
VICE CHAIRMAN K.C. DUERIG	VOTED AYE
SUSAN FISH	VOTED NAY
ED OPPEDYK	ABSENT
JEFF BLANKSMA	ABSENT
SHANE ZENNER	ABSENT
DAVE HOLLAND	VOTED AYE

Patti Osborn, Chairperson

ATTEST:

Alan Christy, Director

NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-3-2 B

A decision made by the Elmore County Planning and Zoning Commission (the "Commission") may be reconsidered by the Commission provided the reconsideration application is complete and reconsideration fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. The reconsideration shall include new or additional relevant information that was not previously presented or available at the public hearing. Questions concerning reconsideration or deadlines should be asked of the Elmore County Land Use and Building Department.

NOTICE PURSUANT ZONING ORDINANCE SECTION 6-3-2 E-F

A decision made by the Elmore County Planning and Zoning Commission may be appealed to the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.

NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-4-2 F

No application that has been denied by the Director, the Commission, or the Board shall be resubmitted, in the same form for the same use, within one year from the date of denial.

**ELMORE COUNTY
PLANNING AND ZONING COMMISSION**

MINUTES

Wednesday, July 13, 2016 at 7:00 pm

Chairperson Patti Osborn called the meeting to order. Members of the Elmore County Planning and Zoning Commission present were Vice Chairman K.C. Duerig, Jeff Blanksma, Ed Oppedyk, Sue Fish and Dave Holland. Also present were Attorney of record Phil Miller, Director Alan Christy and staff members Beth Bresnahan and Kacey Ramsauer.

PLEDGE OF ALLEGIANCE

DELIBERATIONS

Cat Creek Energy, LLC for a Conditional Use Permit for transmission lines in the Agriculture and Area of Critical Concern Overlay Zones. Case Number: CUP-2015-03. The site is located in portions of Sections 26 and 35, Township 1N, Range 9E, B.M., Sections 2, 3, 10, and 11, Township 1S, Range 9E, B.M. A common way of locating the property is from Mountain Home travel US 20 north for 25.4 miles to Wood Creek Road. Center of projects is approximately 3.2 miles north on Wood Creek Road.

Cat Creek Energy, LLC for a Conditional Use Permit for pump storage hydro electrical generating facility in the Agriculture and Area of Critical Concern Overlay Zones. Case Number: CUP-2015-04. The site is located in portions of Sections 26, 27, 35, and 36, Township 1N, Range 9E, B.M., and portions of Sections of 1 and 2, Township 1S, Range 9E, B.M. A common way of locating the property is Mountain Home travel US 20 north for 25.4 miles to Wood Creek Road. Center of projects is approximately 3.2 miles north on Wood Creek Road.

Cat Creek Energy, LLC for a Conditional Use Permit for a PV solar electrical generating facility in the Agriculture Zone. Case Number: CUP-2015-05. The site is located in portions of Sections 2, 3, 10, and 11, Township 1S, Range 10E, B.M. A common way of locating the property is Mountain Home travel US 20 north for 25.4 miles to Wood Creek Road. Center of projects is approximately 3.2 miles north on Wood Creek Road.

Cat Creek Energy, LLC for a Conditional Use Permit for a wind turbine electrical generating facility in the Agriculture and Area of Critical Concern Overlay Zones. Case Number: CUP-2015-06. The site is located in portions of Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 21, 22, 28, 29, 30, 31, 32, and 33, Township 1S, Range 10E, B.M., Sections 19, 20, 28, 29, 30, 31, 32, and 33, Township 1N, Range 10E, B.M., Sections 25, 26, 27, 35, and 36, Township 1N, Range 9E, B.M., Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, and 24, Township 1S, Range 9E, B.M. A common way of locating the property is Mountain Home travel

US 20 north for 25.4 miles to Wood Creek Road. Center of projects is approximately 3.2 miles north on Wood Creek Road.

Cat Creek Energy, LLC for a Conditional Use Permit for a substation in the Agriculture Zone. Case Number: CUP-2015-07. The site is located in portions of Sections 2 and 11, Township 1S, Range 9E, B.M. A common way of locating the property is Mountain Home travel US 20 north for 25.4 miles to Wood Creek Road. Center of projects is approximately 3.2 miles north on Wood Creek Road.

Osborn stated that these hearings were heard together as one project with the consent of the applicant with the applicant stating that none of the projects were stand-alone projects. She stated that all of the deliberations are going to be specific to all five conditional use permits.

Osborn read the procedures for these deliberations.

The required findings for a conditional use permit are listed in the county ordinance in section 6-27-7 and each of those will need to be reviewed individually. She stated that it would be good for each commission member to deliberate on the standard and state if it meets those standards and if there are pros or cons and why.

1. Does the proposed usage shall in fact constitute a conditional use as determined in chapter 8 table 6-8-11 C Elmore County land use table as contained in the ordinance?

Commission consensus is that it does meet this standard.

2. Is the proposed use in harmony and in accordance with the Elmore County comprehensive plan and this ordinance Title 6?

Osborn stated specifically was it in harmony, neutral? Private property rights? Does this application, one or all of them, infringe on the rights of others? She stated to keep in mind the comprehensive plan stating that property owners shall not use their property in such a way that negatively impacts the surrounding neighbors or neighborhoods. She stated that there was some testimony that may contradict that this does cause negative impacts as it was testified to that they would be impacted.

Duerig stated that he wanted to comment on the solar aspect regarding the neighbors to the south of the project. He stated that they stated that it would impact them both economically and physically as far as their view is concerned. He stated that he does have a suggestion that may mitigate that. He stated that the applicants could put in a hedge type windbreak along the southern border of the solar project and that would give the landowners to the south something besides the solar panels to look at and would not obstruct the view of the mountains that is part of their attraction to their business. He stated that it would have to be a certain height but not that tall.

Fish asked how high the solar panels would be since it was not testified to in the public hearing.

Duerig stated that a tall hedge that is 10 feet will help from seeing anything really on the other side of that hedge so even if the panels are a little bit higher you'd have to be at the top of the hedge to look over it.

Holland asked what the height of the panels are?

Fish stated that she did not find it in any of the information provided by the applicant.

Duerig stated that the economic impact to the neighbors to the south is that customers come in to the RV Park is scenery and with solar panels that close to it would negatively impact and reflect on the desirability for people to come in.

Blanksma stated that when it comes to considering comprehensive plan in the scenic area objectives it encourages the preservation of scenic areas for their natural beauty. He stated it's obvious a project of this scale is going to permanently alter the scenic features of this area permanently and that must go into consideration.

Holland stated that he would agree and he does not believe a hedge is tall enough to hide a windmill.

Duerig stated that he did not hear any testimony about the windmills impacting economically.

Osborn stated that there was. She stated that there was testimony regarding the recent economic report from the city of Mountain Home that one of the major draws to the this area is the scenic corridor of Hwy 20 and it was advised as something that should be advertised and the windmills would certainly change that scenic value.

Osborn asked if the proposed use was in harmony with and in accordance with the Elmore County Comprehensive Plan based on what has been deliberated thus far.

Miller stated that he does not know if the commission has finished its discussion on all the comp plan goals and whether they want to discuss anything else or not.

Osborn stated there are the land use objectives stating to determine land use compatibility and impact on the surrounding areas.

Miller stated that water objectives are something to consider as well.

Osborn stated that it was testified to by the applicant that their goal was to protect water quality. She stated there are currently studies being done by the Bureau of Reclamation but those have yet to be completed.

Fish stated that water temperature affecting the fish is a huge concern and reading through the Wildlife Mitigation Plan it seemed it was played down.

Duerig stated that there was testimony that they would be pumping water from the bottom of the reservoir which would be the most consistent temperature and when discharged it would also be

down at the bottom so their thought seemed to be that this would minimize any temperature variation. He stated that the water on top would be much warmer but they would be putting it back in at the coldest point.

Osborn stated that we are all presuming that the water is there to be had in the first place and they talk about the spillage and attempting to adjudicate that spillage but they are probably in a long line of a lot of folks in the Treasure Valley and perhaps farmers in this area awaiting water rights so that would be something that they would try to do.

Miller stated that obtaining a water right is something they would absolutely have to do.

Oppedyk stated that he has spoken to many farmers that have said the spill water goes out and it is taken out of their water right so the spill water is really spoken for by them and can be contained so there will be a long line.

Miller stated that this is something that they should be thinking about in this proceeding.

Osborn stated that it does go to the viability of the whole thing.

Miller stated that this commission does not decide on the viability of a project just whether it complies with the land use ordinance and the local land use planning act.

Osborn read through the comprehensive plan goals and objectives.

Economic contributions of fish and wildlife based recreation.

Fish stated that there are dozens of boats on the lake in the morning fishing and as the day heats up you have the recreational users. She stated that it is heavily used.

Osborn stated it would be the belief of the commission that the project would sustain the existing fish and wildlife habitats necessary to provide quality fish and wildlife recreation.

Oppedyk stated that he believes it would.

Fish stated that she has her doubts.

Holland stated that the bull trout are endangered and very susceptible to temperature change and that it will be watched very closely but otherwise he believes it to be sustainable.

Blanksma stated that he believes that while the construction of this will change the landscape, migration patterns and water temperature, the creation of a 50,000 acre foot reservoir could possibly create a habitat.

Public agency input on proposed land and water development projects potentially impacting the wildlife habitat.

Osborn stated that they did receive some information from fish and wildlife and they did state that the information provided to them was inadequate and somewhat backwards as typically the federal and state permits are already in place prior to the local permits.

Duerig stated that the applicants did state that they wanted to start at this level prior to state and federal. He stated that he does not believe that there is any requirement that federal permits be in place first as it can be conditioned. He stated that this will change migration patterns but he does not see that this will cause the deer and elk to go extinct but it may be a little more difficult for the hunter to figure out where they are in the fall.

Miller stated that the commission can consider conditions of approval aimed at avoiding mitigation and adverse impacts.

Duerig stated that they could require that all reforestation be to maximize benefit to wildlife.

Scenic Area Goals

Promote the preservation of natural scenic areas for the use and benefit of both present and future generations.

Fish stated that she believes the turbines in particular are a negative to the scenic area.

Duerig asked if there were any way to require that they pick sites that have a minimal impact on the corridor for the wind turbines.

Osborn stated that proposed locations are on both sides of the highway.

Hazardous Area Objectives

Discourage development in or near natural hazardous areas such as airports, powerline corridors, electrical substations, floodplains, unstable soil areas, steep slope, high velocity winds and storm prone areas except for industries which may require these conditions.

Fish stated that when she was reading through where they were going to put their wind turbines the applicants were saying that some of the areas will be at more than a 50% incline and the soils will wash down if there is a downpour once it is disturbed.

Public service objectives

Water supply and conservation to protect local water resources.

Osborn stated that if this plan comes to fruition and the water storage is there, there is potential that residents below will benefit.

Duerig stated that they've mentioned downstream irrigation so local people may be able to access water at a price which could potentially be a positive economic impact to the county.

Support water development and conservation projects on the Boise River and other watersheds within the county.

Commission consensus is that this is what the applicant is proposing.

Guide growth to the areas of the county where there is adequate water for development.

Commission consensus is that this is what the applicant is proposing.

Public Service Objectives: Electrical Power

Work with the Idaho Power Company to promote the development of energy services and public facilities to meet public needs.

Osborn stated that there is no contract in place with any electrical company at this time. She stated that one gentleman from Bonneville Power said there has been very preliminary conversations but nothing firm or otherwise at this point.

Support siting of utility to ensure that they connect to similar facilities in adjacent jurisdictions.

Commission consensus is that this is what the applicant is proposing.

Recognize a need for long range planning and buildout of electrical infrastructure as detailed in the Eastern Treasure Valley Electrical Plan as developed by the Local Community Advisory Committee.

Commission consensus is that this is what the applicant is proposing.

Recognize that the Eastern Treasure Valley Electrical Plan is the first step in planning for new and upgraded transmission lines and substations.

Commission consensus is that this is what the applicant is proposing.

Longer term conditional use permits to enable utilities to purchase sites well in advance in needing of the facility.

Osborn clarified that this was a four year permit.

Support siting of utility corridors within defined or designated transportation corridors and allow for the appropriate placement of a facility on public rights of way.

Osborn stated that there was no specific information provided regarding that.

Support the protection of the wetlands and other critical areas and recognize that electrical facilities sometimes must cross these areas and that access is essential for the repair and maintenance of facilities.

Duerig stated this is a given if they are putting in transmission lines as they must access it.

Recognize other types of sources of energy beyond existing electrical structure have a role to play in the future of Elmore County such as solar, wind and gas.

Commission consensus is that this is what the applicant is proposing.

Encourage the enhancement and reliability of renewable energy resources.

Commission consensus is that this is what the applicant is proposing.

Encourage developments that will maintain the esthetic and scenic value of the area with the least possible disturbance to soil, vegetation and water.

Osborn stated that this is recreation objectives.

Miller stated the comp plan standard says encourage not require.

Recreation Objectives

Encourage equitable draw down of water levels in Anderson Dam consistent with irrigation and Multi use management needs.

Osborn stated that there are going to be some additional drawdowns.

Duerig stated that the impact for a drawdown on this he believes is minimal. He stated that the cycling is definitely there on a daily basis but they are only going to be pulling out of the reservoir when there is excess water being spilled.

Areas of Critical Concern

To protect and preserve the unique features and land characteristics in these areas that have been designated for additional consideration.

Commission members are to refer to map to determine what parts of this project are in the area of concern.

Areas of Critical Concern Objectives

Discourage encroachment on lands that contain important feeding grounds for wildlife.

Osborn stated that they would like more information that wasn't provided in the wildlife mitigation plan regarding migration for big game animals, sage grouse and fish.

To the extent possible preserve the historical and natural resources within areas of critical concern.

Recognize all areas of critical concern and promote better management of the soils, water and environment.

Develop and administer a special permit evaluation procedure for all of the development applications within any area of critical concern.

Osborn stated that the legend on the map shows the main part of the hydro is located in the area of critical concern.

Pine, Featherville, Fall Creek Community Goals

Protect Anderson Reservoir, the South Fork of the Boise River and all waterways from the Pine, Featherville and Fall Creek community areas from incompatible land use encroachment and development.

Osborn stated that there was some testimony with concerns from residents in that area whether this project would be in the best interest of their communities.

Protect the South Fork of the Boise River watershed to preserve water quality.

Osborn stated that the Bureau of Reclamation is currently studying that.

Duerig stated that he was given the impression that the applicants were going to follow the recommendations of that study.

Fish stated that there wasn't much testimony as to the noise from pumping that water. She stated that noise could be a very objectionable thing for people recreating on the reservoir.

Oppedyk stated that they had these in California where he grew up and you could not hear anything.

Fish stated that the noise level must be under the allowable decibel level.

Oppedyk stated that this pump would be in the reservoir.

Duerig stated that if it is down underwater you are not going to hear anything but if you stand next to the penstock you may hear the water going through it.

Holland asked how long the permit is active before it expires.

Miller stated that all conditional use permits have a time period put on them regarding when it needs to be completed. He stated that if it does lap they must reapply.

Osborn stated that now that the commission has gone over all of the information on the comprehensive plan, the area of critical concern and the general standards they will now move on to the conditional use permit information.

Does the proposed use comply with the purposed statement of the applicable base zone and with the specific use standards as set forth in this chapter?

General Agriculture

The purpose of the Ag district is to preserve and protect the supply of agriculture and grazing land in Elmore County until development is appropriate. This district will also control the infiltration of urban development and uses into agricultural areas which will adversely affect agriculture operations. Uses that are compatible farming, ranching, grazing, forest products and limited mining may be considered in this district. Residential land use is allowed in the Ag zone subject to site development standards and compatibility with agriculture operations. The Ag land use designation is the base zone throughout Elmore County. It contains areas of productive irrigated crop lands, grazing lands, forest land, mining lands, public lands as well as rangeland and ground of lesser agricultural value.

Miller stated is this project appropriate in an Ag zone and will it have a negative impact on agricultural uses.

Duerig stated that it complies.

Oppedyk stated that it complies.

Blanksma stated that it complies.

Fish stated that she is neutral.

Area of Critical Concern Overlay Zone

The purpose of the ACC designation is to preserve and protect natural area 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 as warranted.

Osborn stated does the portion of this project in the area of critical concern comply.

Osborn stated that she is not sure that it doesn't comply with that.

Duerig stated that commercial is allowed and that's what we are talking here.

Miller stated that the commission can attach conditions so the applicants can comply with the overlay zone.

Commission consensus is that they are neutral on this.

- Does the proposed use(s) comply with all applicable county ordinances?

Commission consensus was that it could be conditioned as such in the event that it does not.

- Does the proposed use(s) comply with all applicable state and federal regulations?

Commission consensus that it does not comply but it could be conditioned to comply.

- Is the proposed use(s) shall be designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and that such use shall not change the essential character of said area?

Osborn polled the commission:

Blanksma stated that it does not meet this standard. He stated that the hydro portion does meet this standard but when you start adding substations and solar and wind turbines then we are talking about something that is drastically different than anything that is out there so in no way is that harmonious. He stated that the applicant testified that this area was in close proximity of existing solar and wind turbines but we are talking about an entirely different landscape and environmental circumstances.

Holland stated that it does not meet this standard. He stated that the towers and the lights on the windmills look like an alien landing strip at night and the applicant stated that there really is nothing they can do to mitigate that. He stated that it would definitely change the area. He stated that the hydro and maybe the solar with the suggestion of camouflaging it could keep seeing them to a minimum but the windmills are hard to get around.

Oppedyk stated that it does not meet this standard. He stated that he goes back to the reservoir more than anything else because it is desert on top of a hill. He stated that he does not believe the other things change what is there besides the scenery but adding a reservoir actually changes what is there.

Fish stated that it does not meet this standard. She stated that she thinks the wind turbines would change it. She stated we have this beautiful scenery and wind turbines would disturb it. She stated that solar might be ok but she has concerns about the water and the reservoir with the pumping as she isn't sure that is harmonious.

Duerig stated that it does not meet this standard. He stated that he believes the reservoir will change the essential nature of that area. He stated that the wind towers and the solar will have an impact on the scenic value whereas the reservoir is a physical change.

Osborn stated that it does not meet this standard. She stated that she concurs with all of her fellow commission members but specifically to the character of the general vicinity where you are in a high desert environment and now all of a sudden you have a manmade reservoir and that changes what that essence is. She stated that the wind towers are not harmonious and would not be appropriate in appearance of the area.

Miller stated that commission must state what could be done to mitigate.

Blanksma stated that there is not much that can be done to mitigate. He stated that the lights on the towers could be timed to minimize distractions but there is only so far that this board can go. He stated that his opinion is that there is really nothing that can be done that would make the facts of this project that can make is appropriate and harmonious.

Holland did not have a response.

Oppedyk stated that he does not think that there is anything that can be done to make it harmonious but he also does not think that change is necessarily a bad thing. He says you can't camouflage a wind tower.

Fish stated that you could require them to move the towers but not sure they would work in a different location. She stated that when the other reservoirs were made none of these issues were in place such as preservation as the water was needed at that time.

Duerig stated that water is still needed and so is power, it's kind of a necessary evil. He stated that you cannot disguise a wind tower but it can be suggested that the applicant priorities siting to minimize impact. He stated that camouflaging solar can be required. He stated they can require reforestation on all construction sites to return to the natural state to maximize benefit to wildlife.

Osborn stated that she does not believe the location is in harmony with the aesthetics and the essence of that area and she does not think that there is anything at this point that can be done to undo that.

- Will the proposed use(s) be hazardous or disturbing to existing neighboring uses or impede their normal development?

Duerig stated that he does not believe it will be hazardous, possibly disturbing but it is not going to impede their development because they can continue to develop on their own ground. He stated that is disturbing but the recommended mitigation to erect a camouflage fence would change the view from solar panels to vegetation.

Fish stated that this is disturbing to the RV Park south of the solar panels and she is not sure that vegetation would be adequate for mitigation.

Holland stated that he would argue that it wouldn't be necessarily disturbing as that is hearsay and is not known if members will close their memberships. He stated that it is unsubstantiated and unfortunately could only be substantiated after the fact.

Oppedyk stated that as it is presented here he has to call it disturbing as it was testified to.

Blanksma stated he does know that it is hazardous but it will be disturbing to the RV Park the construction will cause disturbance as well.

Duerig stated that the construction phase may benefit the park as the workers will need a place to stay close to the site.

Blanksma stated that his contention is that his business is based on repeat customers and after the construction is over its unlikely they will come back.

Osborn stated that it will be disturbing and during the construction it's actually hazardous unless there is significant dust abatement and all of the best construction processes in place there will be significant issues. She stated the traffic will be an issue and all the things that come along with construction. She stated on the long term she stated that the solar panels themselves would be disturbing and would impede on the potential long term viability of an existing use in the area.

Osborn took a roll call vote:

Duerig-yes it will be disturbing.

Fish- yes it will be disturbing.

Oppedyk- yes it will be disturbing.

Holland-no it will not be disturbing

Blanksma-yes it will be disturbing.

Osborn-yes it will be disturbing.

Osborn asked if there were anything that could be done to mitigate the issues.

Duerig stated dust abatement during the construction phase.

Osborn stated the potential screening of the solar.

Commission consensus was the applicant pick a different area for the wind and solar panels to mitigate.

- Is the proposed use(s) served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services?

Osborn stated that State Hwy 20 is there and it is adequate. She stated fire protection is nonexistent. She stated that the county sheriff's department is in that area. She stated that it would be all natural drainage.

Fish stated that water and sewer is not required to build.

Osborn took a roll call vote:

Blanksma-yes it does meet this standard.

Holland- yes it does meet this standard.

Oppedyk- yes it does meet this standard.

Fish- yes it does meet this standard.

Duerig- yes it does meet this standard.

Osborn- yes it does meet this standard.

- Will the proposed use(s) create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County?

Blanksma-yes it does meet this standard.

Holland- yes it does meet this standard.

Oppedyk- yes it does meet this standard.

Fish- yes it does meet this standard.

Duerig- yes it does meet this standard.

Osborn- yes it does meet this standard

- Will the proposed use(s) involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors?

Osborn stated traffic would increase during construction but it's a state highway and they have their own standards and rules and this body has no jurisdiction over that.

Osborn stated that there may be potential glare from the solar panels.

Duerig stated that there are anti-glare solar panels available and it could be conditioned as such.

Miller suggested that the commission state that there is not enough information to conclude that it meets this standard but if they did have the information available it could possibly meet the standard.

Blanksma stated that he does not believe that he need more information to say that it does not meet it because common sense says the sun comes up in the east so the solar panels will be facing that way and particularly in the late fall and winter months they will be shining right off the highway. He stated that he believes the general welfare of the public is compromised based on that reason.

Fish stated that she is concerned with the noise the project will make.

Duerig stated that they would have to meet the county noise standard.

Blanksma-no it does not meet this standard with the information provided.

Holland- no it does not meet this standard with the information provided.

Oppedyk- no it does not meet this standard with the information provided.

Fish- no it does not meet this standard with the information provided.

Duerig- no it does not meet this standard with the information provided.

Osborn- no it does not meet this standard with the information provided.

- Will the proposed use(s) have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways?

Blanksma-no it does not meet this standard with the information provided.

Holland- no it does not meet this standard with the information provided.

Oppedyk- no it does not meet this standard with the information provided.

Fish- no it does not meet this standard with the information provided.

Duerig- no it does not meet this standard with the information provided.

Osborn- no it does not meet this standard with the information provided.

- Does the proposed use(s) result in the destruction, loss or damage of a natural or scenic feature of major importance?

Osborn stated that yes it does based on the testimony given at the public hearing that it would obstruct the scenic byway.

Duerig concurred.

Fish concurred.

Oppedyk stated he does not believe it results in the destruction of a feature of major importance as he does not know the specific feature.

Holland stated that it does disturb the natural scenic features as was testified to at the public hearing although some might find windmills attractive.

Blanksma stated that he does not believe anything is being destroyed.

Osborn stated that she is basing her opinion on the testimony of the report gathered from an expert and suggested that this area is a major draw for tourism as testified to in the public hearing.

Osborn asked for a roll call vote:

Blanksma-yes it does meet the standard.

Holland-no it does not meet this standard.

Oppedyk-yes it does meet the standard.

Fish-no it does not meet this standard.

Duerig-no it does not meet this standard

Osborn-no it does not meet this standard.

Osborn asked if there were any way to mitigate.

Osborn stated again from the report from economic development office as testified with the general location of this project they cannot meet the standard.

Fish stated that if they do away with the wind towers or relocate them.

Holland had no comment.

Oppedyk stated that he stated it meets the standard.

Duerig stated relocating the towers to a better physical location.

Osborn called a 5 minute recess.

Osborn called the meeting back to order.

Is the proposed use in harmony and in accordance with the Elmore County comprehensive plan and this ordinance Title 6?

Oppedyk- no it is not in accordance. He stated that it fits in there but harmoniously the problem goes back to the scenic value of the area and disturbing the neighbors land use.

Holland-no it is not in accordance. He stated that it does meet some objectives but not all of them.

Blanksma- no it is not in accordance. He stated through testimony it was stated that it would be disturbing to neighboring property owners and will negatively impact them. He stated that it would be more suitable if certain portions of this project were moved to a different location.

Duerig-no it is not in accordance. He stated that he likes the concept but the location and disturbance to neighbors will not allow it to meet the standard.

Fish-no it is not in accordance. She stated it will degrade the scenic area. She stated that it will potentially create a negative impact to the fish and wildlife in the area.

Osborn-no it is not in accordance. She stated that the water objectives are not in line. She stated that the lack of information within the application make it hard to say the water objectives would be met and the preservation of the water quality. She stated that there is not enough information in the Wildlife Mitigation Plan.

Osborn took a roll call vote:

Blanksma-no it is not in accordance with the comprehensive plan.

Holland-no it is not in accordance with the comprehensive plan.

Oppedyk-no it is not in accordance with the comprehensive plan.

Fish-no it is not in accordance with the comprehensive plan.

Duerig-no it is not in accordance with the comprehensive plan.

Osborn-no it is not in accordance with the comprehensive plan.

Roll call vote was unanimous.

Area of Critical Concern

The purpose of the ACC zoning is to preserve and protect the natural areas that are critical to county 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.

Osborn-Does the application proposed meet this standard?

Fish-no it does not meet the standard. She stated that the natural area should be protected.

Oppedyk-yes it does meet the standard.

Holland-stated that he does not have enough information to determine if it meets this standard.

Blanksma-stated that he believes it does meet the standard.

Duerig-yes it does meet this standard. He stated that he does not believe we are losing any critical grounds or water resources. He stated that commercial is allowed.

Osborn-yes it does meet the standard for the same reasons mentioned by Blanksma and

Duerig.

Duerig moved to deny the conditional use permit applications based on the votes for the comprehensive plan, the area of critical concern and the 12 standards of which not all of the have been met.

Fish seconded.

Osborn asked for a roll call vote:

Blanksma-AYE

Holland-AYE

Oppedyk-AYE

Fish-AYE

Duerig-AYE

Osborn-AYE

Motion carried unanimously.

MINUTES

Minutes from 06-15-2016

Duerig moved to approve.

Oppedyk seconded.

Motion carried unanimously.

INFORMATION ITEMS

Upcoming P & Z Schedule

Christy stated that the next meeting will be held on July 20, 2016. He stated there is a regularly scheduled meeting on August 3, 2016.

Osborn suggested cancelling the August 3, 2016 meeting as there are no agenda items.

Holland moved to cancel the August 3, 2016 meeting.

Fish seconded.

Motion carried unanimously.

MEETING ADJOURNED at 9:21 pm.

Patti Osborn, Chairperson

Date:

Attest: _____
Alan Christy, Director

Date:

**ELMORE COUNTY
PLANNING AND ZONING COMMISSION**

MINUTES

Wednesday, July 20, 2016 at 7:00 pm

Chairperson Patti Osborn called the meeting to order. Members of the Elmore County Planning and Zoning Commission present were Vice Chairman K.C. Duerig, Sue Fish and Dave Holland. Also present were Attorney of record Phil Miller, Director Alan Christy and staff members Beth Bresnahan and Tell Riley.

PLEDGE OF ALLEGIANCE

PUBLIC HEARINGS

Osborn stated that that she would like to stand for a motion to change the order of the public hearings for **Case Number: CUP-2016-03** be the first item heard.

Duerig moved to approve

Holland seconded.

Motion carried unanimously.

Osborn stated that she would be recusing herself from this hearing as she has stated on the record at a previous meeting that she is an employee of Idaho Power and to avoid any potential conflict of interest Duerig will step in.

Idaho Power for a Conditional Use Permit for a substation in the Light Industrial Zone and Mountain Home Area of City Impact. Case Number: CUP-2016-03. The site is located in a portion of the W1/2, Section 22, Township 3 South, Range 6 East, B.M. A common way of locating the property is from US 30 head west on E 5th St North, road changes to W 5th St North, then north on N Haskett St, then west on NW Turner Rd, then north on NW Sawmill Rd, then west on W 10th St North and just past the intersection of N 18th West.

Bresnahan gave staff report and background.

Jeff Maffuccio is with Idaho Power. He presented two large diagrams for the record.

Christy entered these into the record as Applicant Exhibits #s 1 and 2.

Maffuccio stated that the purpose of this station is to transfer the power from the solar farm project approved in December 2015 on to the Idaho Power grid. He stated that Idaho Power is required to take the electricity produced from these projects through federal regulations. He stated that part of this will be to propose a control building with computers to monitor the power

quality and voltage levels appropriate to provide the power load required to go on to the system. He stated the substation will be 150x150 and fenced. He stated there will be security gates along the outside for Idaho Power vehicles to access as well as one gate between both substations. He stated that the station will be placed within a short proximity to the transmission lines so it will be a short connection. He stated that they are working with the landowner and solar company to finalize an easement for the station. He stated that they will utilize that same access as the solar developer. He stated that they will meet all permitting requirements set forth by all local and federal agencies.

Holland asked about any noise the substation may create.

Maffuccio stated that this substation is a little unique. He stated that with any substation they are required to abide by county, state and federal standards. He stated that with this substation there are no transmission level transformers. He stated this is about 120 volts which is similar to what you see in a residential area so any noise would be minimal. He stated that he has done some research and he stated the noise level is approximately 40-45 decibels. He stated that it would be very minimal from the fence boundary.

Jackie Payne signed up in support. She stated that she has two properties across from this area and she was curious about how far this is from the railroad tracks and Hwy 30.

George Mansfield signed in as neutral. He stated that he has property to the north of this project. He wanted to know where this was going to be located. He stated that he wanted to know if it was high voltage. He stated that he wanted to know about fencing around the area.

Ursula Schmidt signed in as opposed. She presented information to the Director.

Christy entered this into the record as Opposed Exhibit #1.

Schmidt stated that the noise levels mentioned range somewhere between an air conditioner and a highway. She stated that she has driven to the area and it is very flat so there is nothing to stop the sound from carrying. She stated that there are ways to make a transformer quieter. She stated that she wanted to know where the transformers are going to be located. She suggested barrier be put in to mitigate the noise that faces the area where there are homes. She stated that she is concerned about water usage and how the facility will be cleaned and if chemicals will be used in the process.

Eva Schmidt signed in as opposed. She stated that it is very important to have an engineer look at the project. She stated that it is ridiculous that one project was approved without the other being present. She stated that the noise is a huge issue. She stated that she wants the transformers to be less than 40 decibels. She stated that she and her neighbors would appreciate a demonstration of the noise that the facility will make.

There was not further testimony.

Maffuccio gave his rebuttal to the public testimony. He stated this transformer will be on the south end of the solar site adjacent to the solar farm substation. He stated this project will have

8 foot fencing with the top being security wire and he believes the solar farm has fencing similar to this. He stated that the purpose of this station is for the solar farm to bring the voltage up through their transformers to a level that is appropriate for the transmission line to carry the power load. He stated the transmission lines are rated at 69 kV. He stated that he believes that he is probably a quarter mile from the railroad. He stated that this site is set back 67 feet from the south boundary of the solar farm property. He stated that the transformer that they are going to use is 120 volt and it is a residential type transformer. He stated that the older ones can make some noise but new transformers whether in a box or on a pole are pretty much silent. He stated that these facilities aren't cleaned and that they are an open air type facility. He stated that everything is coated and protected from rust and corrosion.

There was no further testimony.

Duerig closed this public hearing.

Commission action;

Duerig read all 12 standards and staff comments from staff report aloud.

Holland moved to approve as it meets all the required standards as set forth in the staff report.

Fish seconded.

Motion carried unanimously.

Osborn returned to the meeting.

Osborn called a 5 minute recess.

Elmore Development, LLC (Mirazim Shakoori) for a Zoning Change from Agriculture to Light Industrial and an Amendment to the Comprehensive Plan. Case Number: REZ-2016-01. The site is located in portions of Section 7 and 8, Township 4 South, Range 7 East, B.M. A common way of locating the property is from I-84 head east, take exit 90, turn right on Old Oregon Trail Rd. for approximately 2 miles.

Osborn stated for the record that she owns property that is within ½ mile of this project. She stated that this will not affect her decision on this.

Miller stated for the record that his law firm has done business with the applicant so he recused himself from advising the commission in this matter.

Christy gave staff report and background.

Bonnie Layton is representing the applicant. She stated that they are requesting a comprehensive plan amendment to the future land use map. She stated that this area is currently designated C2 which is heavy commercial and they are requesting a change in the future land use map to M1 which is light industrial. She stated that subsequent to that they would be requesting and zone change from agricultural to light industrial. She stated that currently in Elmore County there are only a few locations that are zoned light industrial and she

stated this property would be a good area for light industry opportunities because of the good access and solid built roads, power and water. She stated this property has potential in the future to possibly provide a spur from the mainline. She stated that there is no specific business in mind for this particular property but she believes that there are some opportunities to develop this in a way that would bring jobs to the community.

Holland asked if having this designation change would open this area up to more desirable projects.

Layton stated that she believes that it would. She stated that the light industrial zone allows for a light industrial subdivision which could be appealing to a light industrial developer. She stated in speaking with site selectors that have visited the area they have stated that our area is a great spot for a distribution center or some sort of trucking facility or even manufacturing would be good.

Duerig asked what the one homeowner that lives in this area thinks about this project.

Layton stated that they have met with the homeowner in the neighborhood meetings that they had. She stated that she does not know their specific opinion. She stated that they have discussed what the potentials are for the property when it's rezoned.

Jackie Payne signed up in support but did not wish to testify.

Ursula Schmidt signed up in support. She stated that she didn't find this on the map and she wanted to know how far south it was and if the industrial zoning starts running into the Snake River Basin.

Dallas Schneider signed up as neutral. He stated that he owns a home in this area. He stated that his home is the one designated on the map. He stated that he has some questions and he raised them at the two neighborhood meetings and he is still confused and is not really sure of the answers to these questions. He asked if there were a date when this rezone to C2 in the future charts could possibly happen.

Christy stated that the county has adopted a comprehensive plan and with that there are a series of maps and map number 4 is the future land use map. That map has designations for what property can be in the future. He stated this area currently has a commercial or C2 designation to so someone could come in with a rezone application to commercial at any time.

Schneider stated that he would like to know exactly what jobs would be brought to area as a result of this rezone. He stated as a neighbor he would have to ask the commission to put themselves in his position and ask if they would really want a trucking facility beside their home. He stated that conditional use permits were mentioned. He asked if a CUP could be used for this as opposed to a total rezone. He stated that if this is approved he is concerned that road would not hold up in the event something like a trucking facility were approved. He asked what the probability of that entire area being annexed into the city if it becomes an industrial zone.

Christy stated there was no one signed up as opposed to this application.

Layton gave her rebuttal to the public testimony. She stated that they would comply with all state and federal regulations as they work with all of the agencies. She stated that those standards are set and we would anticipate that they would have to comply with all of those especially at the time of obtaining building permits.

Layton stated that she met with Luis Lasuen from the Mountain Home Highway District regarding this project she said he told her that this was a great location for this as this road is better than the other areas in the county where light industry is allowed. She stated that Old Oregon Trail Road has a very good base and it is a much better option.

Layton stated that the property is a few miles from the Mountain Home city limits so the potential for annexation is years away. She stated this property is not in the area of city impact.

Layton stated that regarding the use of the property it's hard to give an example. She stated that it was explained to the neighbor's at both meetings to take a look at the future land use map and it was also discussed that this was part of a process of the comprehensive plan and there have been opportunities in this area long before this application was submitted. She stated that there were hearings held in various areas of the county for citizen to provide input on what they would like to see in their area and how the county should develop. She stated that she believes that this is in compliance with the comprehensive plan and the future land use amendment complies as well.

Christy asked if the owner would be opposed to a landscaping or set back requirement to that property that is kind of donut holed there as part of any development.

Layton stated that she does not think the developer have an issue with that.

Osborn asked if the development agreement would be something that the owner would be opposed to.

Layton stated that he would not be opposed to that.

Osborn wanted to clarify that the water rights for this property were agriculturally based at this point in time.

Layton stated that was correct.

Osborn closed this public hearing.

Osborn stated the commission is to make a recommendation to the Board of County Commissioners for or against this application.

Duerig asked who a development agreement would be between.

Christy stated that it would be the developer and the county.

Duerig asked if the property owner would be the developer or if someone else would come in and develop this property.

Osborn asked the commission to reopen this public hearing to have Duerig's question answered.

Commission consensus was to reopen the public hearing.

Osborn reopened this public hearing.

Layton stated that when she worked for the city of Mountain Home they had an application to annex and rezone a piece of property. She stated that at that time they did an annexation agreement, basically a development agreement that was recorded with a title. She stated that does protect the owner of the property as well as future developers so that when a title search is done they are able to see what restrictions and requirements are in place. She stated any development agreement could be worked out with the property owner and the county and it could be recorded on the title.

Osborn closed this public hearing.

Commission action

Duerig moved to recommend approval to the Board of County Commissioners for the project with the condition to recommend all future development projects submit a Development Agreement with Elmore County.

Holland seconded.

Motion carried unanimously.

Frederick Watkins for an Appeal of administrative decision for the requirement of an accessory dwelling unit application in the Agriculture Zone. Case Number: ADD-2016-012. The site is located in Lot 5, Riverside Acreage Subdivision. A common way of locating the property is from Interstate 84 take exit 112 and head south on Highway 78 to Old Highway 30. Head east on Old Highway 30 to intersection of S Humphreys Road and turn right. Head south on S Humphreys Road to the intersection of W. Osprey St. and turn left. Head east on W. Osprey St. and the site is on the right side of the road.

Miller rejoined the public hearing.

Christy gave staff report and background.

Tell Riley provided the commission members with a more clear set of building plans. He showed the commission how it was determined this structure was considered an accessory dwelling.

Frederick Watkins is the applicant. He stated that the water heater is part of the mechanical system and is not designed for that little unit by itself. He stated that there is radiant floor heating throughout the house. He stated that the heat pumps are there for the air conditioning and that's is basically it. He stated that no place on his plan calculations is there a stove in that unit. He

stated that there is a hot plate that is plugged in and the code says clearly that all kitchens would have to have permanent appliances and those are not permanent appliances. He stated that there is not a 220 volt outlet for a stove which is required. He stated that per the definition of the code this is not a dwelling unit. He stated that the CCR's for the lot he bought states only a single family dwelling is allowed. He stated that that any dwelling unit must have permanent cooking, sanitation and sleeping facilities and this does not. He stated that he has two ladies that live with him that are in their 80's and 90's that have a difficult time making it to the restroom so he will have a commercial washer to clean the linen. He stated that the restrooms are to be handicap approved and listed. He stated that he does not have two dwelling units. He stated that the carport is part of the dwelling.

Duerig wanted to state the commission has no comment on CCR's.

F. Watkins stated that CCR's state that this subdivision is zoned that way.

Osborn stated that it is not zoned that way and those requirements are based on the platting of the subdivision. She stated that it has nothing to do with this commission.

F. Watkins stated that he is trying to comply so that he is not sued by anyone living in the subdivision.

Teanjai Watkins is the applicant's wife. She stated that this is one dwelling. She stated that if it is two dwellings it must be hardwired for that and this not.

There were no further questions.

Osborn closed this public hearing.

Holland had a question for the Director.

Osborn reopened the public hearing.

Holland asked Christy about the validity of the statements as they pertain to the code.

Christy stated that his determination and what he has provided is unchanged. He stated that he can ask the building official any questions about this as well.

Miller asked if Riley could give a specific reason why this is two separate dwellings.

Riley stated that it matches the definition that is in the county ordinance and has been implemented on several other applications similar to this.

Miller asked if that were any structure or portion thereof providing independent living facilities for one family including provisions for living, sleeping, eating, cooking and sanitation.

Riley stated that was correct. He stated that is the direct definition of a dwelling unit.

Miller stated that your conclusion is what is in the plans although it doesn't include everything it has enough to meet that definition.

Riley stated that the dwelling unit could feasibly be rented out.

Christy stated that this is very common to have facilities like this in the Pine Featherville area that are recreational with renting opportunities.

Miller asked if it would change if the carport in the middle were eliminated and replaced with a common wall.

Christy stated that he would not speculate on any future plans as it is not the job of staff to draw building plans for applicants. He stated applicants submit drawing and staff reviews them to code.

Fish stated that the applicant said that there is no kitchen or stove other than what can be plugged in.

Riley stated that the definition in the residential building code is *"kitchen shall meet an area used or designated to be used for the preparation of food"*.

Fish stated that she can do that in her garage.

Riley stated that under the sanitation section of the residential code it states *"each dwelling unit shall be provided a kitchen area and every kitchen area shall be provided with a sink"*.

Riley stated that he is reading from the International Residential Code, 2012 Edition which was adopted by Elmore County on December 8, 2014 under Resolution No. 561-14.

F. Watkins asked Riley to read the definitions for a dwelling unit.

"Dwelling Unit. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation."

Watkins stated that there is not permanent facility. He stated that a 110 volt plug and it is not a permanent facility as it can be picked up and moved. He stated that there is only one dwelling unit.

Osborn closed the public hearing.

T. Watkins asked to speak.

Osborn reopened the public hearing.

T. Watkins stated that she does not agree with Riley stating they have a kitchen because it is a hot plate and can be moved. She read from the email she stated she received from Christy with some definitions for dwelling units. She presented the email for the record.

Christy entered this into the record as Applicant Exhibit # 1.

Osborn closed this public hearing.

Commission action

Duerig stated that there is a discrepancy on the description of a dwelling unit. He stated that one is referenced in the email as permanent provisions and the one in the packet says including provisions it does not say permanent. He asked which one was the correct definition.

Miller stated that the ordinance itself doesn't include the word permanent but the IRC (International Residential Code) does include the word permanent.

Miller read the definition from the IRC again for a dwelling.

"DWELLING OR DWELLING UNIT: Any structure, or portion thereof, providing independent living facilities for one "family" as herein defined, including provisions for living, sleeping, eating, cooking, and sanitation."

Duerig moved to uphold the decision of the Director and advise the applicant to revise the building plans to include one dwelling only or complete and submit an assessor's dwelling unit application.

Holland seconded.

Motion carried 3-1 with Fish opposing.

Fish stated that she does not see this as an assessor's dwelling she sees it as a suite for in-laws.

INFORMATION ITEMS

Upcoming P & Z Schedule

Christy stated the next regularly scheduled meeting is on August 17, 2016. He stated that there is a recess for Labor Day and then another regularly scheduled meeting on September 21, 2016.

MEETING ADJOURN at 9:06 p.m.

Patti Osborn, Chairperson

Date:

Attest:
Alan Christy, Director

Date: