

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 Glenns 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 17th day of August, 2016.

COMMISSION VOTE:

CHAIRPERSON PATTI OSBORN
VICE CHAIRMAN K.C. DUERIG

VOTED AYE
VOTED AYE

SUSAN FISH
ED OPPEYK
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.