

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

In Re: CUP-2016-04: This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the “**Commission**”), the 7th day of December, 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 an annual four (4) day country music festival event in the Agriculture Zone (the “**Application**”). Property is located in portions of Sections 13, 14, 15, 22, 23, 24, Township 1 South, Range 10 East, B.M., and Section 19, Township 1 South, Range 11 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 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 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 Country Concerts LLC (the “**Applicant**”) for the CUP; and
- B.** 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 the Application to the Commission.

II. The Commission finds that the Applicant is:

Idaho Country Concerts, LLC
P. O. Box 23638
Eugene, OR 97402

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 August 28, 2014, when applied for previous CUP-2014-11.
- B.** The Applicant conducted a neighborhood meeting on April 22, 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 22, 2016.
- D.** The Department deemed the Application complete on October 19, 2016.
- E.** The Department mailed notice of the public hearing to neighboring property owners within

one-thousand (1,000) feet of the Site on October 31, 2016 pursuant to Zoning Ordinance Section 6-4-5.

- F. The Department mailed notice of the public hearing to agencies on October 31, 2016 pursuant to Zoning Ordinance Section 6-4-4.
- G. Notice of the public hearing was published in the Mountain Home News on November 16, 2016 pursuant to Zoning Ordinance Section 6-4-5 A.
- H. Notice of public hearing was posted on Site on November 29, 2016 pursuant to Zoning Ordinance Section 6-4-5 B.
- I. The Commission opened the public hearing on December 7, 2016 and received verbal and written information regarding the Application.
- J. Commissioner Smith recused himself from the public hearing; he stated that he attended the same high school as the applicant and wanted to avoid any perception of being a potential conflict.
- K. The Commission moved to approve the Application with 24 conditions of approval. The motion to approve the Application passed on a 4-0 vote.

IV. The proposed use of the Application as follows:

- A. The Commission finds the proposed use is for an annual, 4-day country music festival, that includes a primary stage, secondary small stage, children's activity area, food and craft vendors, wine and beer vending, sponsor exhibits, tent and RV camping in the existing Agriculture zone.
- B. The Commission finds that the submitted master site plans shows the event areas.

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

A. Site Description: Portions of Sections 13, 14, 15, 22, 23, 24, Township 1 South, Range 10 East, B.M., and Section 19, Township 1 South, Range 11 East, B.M. A common method of locating the property is from Mountain Home take Hwy 20 for 33 miles, turn left on to South Pine-Featherville Road, the property is located on the right hand side of the road.

B. Parcel Numbers: RP01S10E136610, RP01S10E149010, RP01S10E159010, RP01S10E220020, RP01S10E230025, RP01S10E240020, RP01S10E242410 and RP01S10E139010,

C. The "Owner" of the Site is:

Sawtooth Grazing Association, Inc.
C/O Harry Le Moyne
1130 Lawndale Dr.
Twin Falls, Idaho 83301

D. Applicant's Property Right in the Site is: pursuant to a Commercial Lease dated August 11, 2014 by and between the Owner, as the landlord, and the Applicant, as the tenant.

E. Site Characteristics:

Property Size: The site contains approximately 2,016 acres.

Existing Structures: None

Existing Vegetation: The vegetation consists mainly of grassland and sagebrush.

Slope: Relatively flat and less than 10% slope.

Flood Zone Status: FEMA defined Zone A on the northeast corner of the site.

Irrigation: None of the property is being irrigated utilizing subsurface irrigation water rights.

VI. The Commission finds the current land use and zoning of the Concert Site as follows:

The current zoning for the Concert Site is Agriculture in the Wildfire Urban Interface Overlay District. The current land use is domestic livestock grazing.

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

The land surrounding the subject property is zoned agricultural and is also in the Wildfire Urban Interface Overlay District and is primarily used for grazing and consists of Federal, State, and privately owned lands.

VIII. The Commission finds the existing services as follows:

Access Roads: Roads providing access to the property are U.S. Highway 20 a paved highway, S Pine Featherville Road a public paved two lane arterial road, E Sheep Camp Road a public gravel road and E High Prairie Road a public gravel road. U.S. Highway 20 is maintained by the Idaho Department of Transportation. S Pine Featherville Road, E Sheep Camp Road and E High Prairie Road are maintained by the Glenns Ferry Highway District.

Fire Protection District: None

Sewage Disposal: None

Water Service: Two wells are located on the Concert Site. One is inactive and one which produces approximately 15 gpm.

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

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

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

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*, other applicable local, state and federal laws and regulations.

X. Comprehensive Plan.

A. The Commission finds that the Concert Site is not located within any area of city impact within the County and the Comprehensive Plan is the County planning document governing the Concert Site.

B. The Commission finds that based upon the record and the testimony received in public hearings on the Application, and Staff reports, that the proposed use under the CUP is not in conflict with the Comprehensive Plan.

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 Elmore County 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 findings required by Section 6-27-7 of the Zoning Ordinance follow in bold text, followed by the Commission's findings:

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.

The Commission finds that the following uses require a conditional use permit in Table 6-8-11 (C): amusement or recreation facility; outdoor; campground public or private; club, lodge or social hall; dance, music, voice studio; public address system, outdoor; and recreation facilities, outdoor.

The Commission finds in addition to a conditional use permit, additional requirements for the proposed use under the Application are found in the following Zoning Ordinance sections: Section 6-8-38 (amusement or recreation facility; outdoor); Section 6-8-61 (campground public or private); Section 6-8-70 (club, lodge or social hall); Section 6-8-79 (dance, music, voice studio); Section 6-8-169 (public address system, outdoor); and Section 6-8-175 (recreation facilities, outdoor).

2. The proposed use shall be in harmony with and in accordance with the Elmore County Comprehensive Plan ("Plan") and this Ordinance (Title 6).

The Commission finds that the proposed use under the CUP is in harmony and accordance with the Plan in the following areas:

Land Use Objective #15: Evaluate all development proposals in terms of land use and environmental compatibility. Discourage development proposals, which negatively impact land use patterns and negatively impact human and natural environment.

Recreation Objective #3: Encourage private, federal, state, and local interest to provide and maintain adequate access and sanitary utilities for recreational sites.

The Commission finds that the proposed use under the CUP shall be in harmony with and in accordance with the Comprehensive Plan and the Zoning Ordinance.

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.

The Commission finds that base zone is Agriculture and the specific use standard set forth in Section 6-8-5.A of the Zoning Ordinance are "...[u]ses that are compatible with farming, ranching, grazing, forest products and limited mining may be considered in the district..."

The Commission finds that this proposed use under the CUP is temporary in nature (four (4) days a year for five (5) years) and with the Commission's Conditions, such use shall be compatible with the agriculture operations.

4. The proposed use shall comply with all applicable County Ordinances.

The Commission finds that with the addition of the Conditions the proposed use under the Application will comply with all applicable County ordinances.

5. The proposed use shall comply with all applicable State and Federal regulations.

The Commission finds that with the addition of the Conditions the proposed use under the Application will comply with all applicable federal and state 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.

The Commission finds that with the Conditions, the proposed use under the CUP shall be designed, constructed, operated and maintained and operated 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 the area. The propose use is for a period of time of four (4) days once a year for the next five (5) years. There are few residences in the area and no residences are visible from the Site. The land use for the surrounding area is grazing and agriculture and public lands. The once a year for five (5) years, four (4) day event will not change the character of the area with the addition of the Conditions.

The Commission finds that other than the four (4) day period of time, and the set up and take down periods, the Site will be utilized throughout the year for agricultural livestock grazing.

7. The proposed use shall not be hazardous or disturbing to existing neighboring uses or impede their normal development.

The Commission finds the following:

Trespass: Based upon the Applicant's past experience that the likelihood for trespass on neighboring lands is minimal as the attendees desire to either camp at the Concert Site or commute from neighboring hotels or their homes. Additionally, Condition Number 5 requires a written agreement between the Applicant and the County Sheriff's Office regarding a number of factors including patrol for trespass matters.

Wildfire: The Applicant has proposed certain wildfire protections in its application. Additionally, Condition Number 3 and 8 address certain additional requirements as well as the requirement for a contract with a wildland firefighting agency or private entity with the such capabilities.

Traffic: The Application contains descriptions regarding the Applicant's proposed methods of vehicular traffic control and signage on area highways and roadways. Pursuant to Condition Number 11 new roadways or road approaches and other conditions may require approval by the Glenns Ferry Highway District.

The Commission finds that with the Conditions the proposed use under the CUP shall not be hazardous or disturbing to existing neighboring uses or impede their normal development. As stated above, the proposed use under the CUP is for a period of time of four (4) days once a year for the next five (5) years. The proposed use shall not impede

normal development in the area. The land use for the surrounding area is grazing and agriculture and public lands. The Conditions mitigate any adverse use under the CUP.

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.

Through the Application and the Conditions **the Commission finds** the following public services shall be adequately provided as follows:

Highways: Under the Application the Applicant provided a traffic plan for ingress and egress to the event and other vehicular traffic flow and Condition Number 11, requires approval of the same by the Glens Ferry Highway District and the Idaho Department of Transportation for U.S. Highway 20.

Streets: Under the Application the Applicant provided a traffic plan for ingress and egress to the event and other vehicular traffic flow and Condition Number 11, requires approval of the same by the Glens Ferry Highway District.

Police and Fire Protection: Under the Application the Applicant provided its plan for police and fire protection has supplemented such plan with Conditions 5, 6, & 8.

Drainage Structures: On site drainage shall remain unchanged as a result of the Application and continue to use existing drainage routes under the existing topography.

Refuse Disposal: Under the Application the Applicant provided a plan for the management and removal of solid waste and Condition Number 7 addresses certain key components of such plan.

Potable, Non-Potable Water, Fire Suppression Water Supplies: Under the Application the Applicant provided a plan providing various water sources for the Concert Site during the event ("**Water Plan**"). Condition Number 20 adds certain conditions to the Water Plan.

Sewer: Under the Application the Applicant provided a plan for the management and removal of sewage and Condition Number 7 addresses certain key components of such plan.

The Commission finds that based upon the Application and the Conditions that the proposed use shall be served adequately by available, or the Applicant shall be able to provide, public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water sewer, consistent with the proposed use under the CUP for a four (4) day event once a year for five (5) years.

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.

The Commission finds that the proposed use will not create any excessive additional requirements at public cost for public facilities and services, which are not going to be reimbursed or paid for in advance by the Applicant.

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.

The Commission finds that the proposed use does 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, except for the anticipated traffic associated with the proposed use, which impact is minimized to the extent possible by the Conditions for proposed use under the CUP.

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.

The Commission finds that with the Conditions the proposed use shall minimize interference with traffic on surrounding public or private road ways to the extent reasonably possible with the proposed use under the CUP. Additionally, since the proposed use under the CUP is very limited in duration, the proposed use will not create any lasting impact or 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.

The Commission finds that the Site is not designated as having a natural or scenic feature of major importance and as a result will not result in the destruction, loss or damage of 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 §67-5612 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 site and event will be utilized in substantial conformance with the Application. Any changes must be approved by the Commission in the form of an amended Conditional Use Permit ninety (90) days prior to the event.

2. The CUP approval is for an annual four (4) day event for five (5) years. The approval is personal to the applicant, shall not be assigned and is limited to the property. Any change in Applicant or location must be approved by the Commission in the form of an amended Conditional Use Permit.

3. Applicant shall provide a communication command center capable of notifying other first responders to emergency situations, including a wildfire originating on the property subject to the CUP, during the festival, which command center shall be capable of communicating with the United States Bureau of Land Management, the United States Forest Service, surrounding counties and agencies, law enforcement and medical personnel.

4. The stage and spectator area shall have a 300' setback from the west and north property boundary.

5. The Applicant shall enter into a written agreement with the County Sheriff's Office ("**Sheriff**"), in such form as reasonably approved by Sheriff and provide evidence of the same to the Department no less than sixty (60) days prior to the event. The agreement shall include the following:

- A. Name and number of private security firm and personnel to be utilized.
- B. Reimbursement for Sheriff's Personnel.
- C. Road closures and blockages.
- D. Traffic control and signage for US Highway 20 and County Roads.
- E. Utilization of the Mobile Incident Command Center.
- F. Evacuation Procedures.
- G. Detention of event attendees that violate rules and/or laws.
- H. Off-site patrols and trespassing
- I. On-site animal control

6. The Applicant shall enter into a written agreement with the Elmore Ambulance Service ("**EAS**"), in such form as reasonably approved by EAS and the Department and provide evidence of the same to the Department no less than sixty (60) days prior to the event. The agreement shall include the following:

- A. Reimbursement for Ambulance Personnel.
- B. Life flight landing zones.

- C. Evacuation Procedures.
- D. Number of contract emergency service personnel.
- E. Dates and times for contract emergency service personnel.

The Applicant shall advise the county medical director and EAS of its medical plan and set up open lines of communication with such groups one hundred twenty (120) days prior to the event.

7. Central District Health Department shall approve food vendors, sanitation facilities, community water systems, sewage disposal and solid waste disposal a minimum of thirty (30) days prior to the event.

8. The Applicant shall enter into a written agreement with a wildland firefighting agency and/or entity ("**Firefighting**"), in such form as reasonably approved by the Board and provide evidence of the same evidence to the Department no less than sixty (60) days prior to the event. The agreement shall require the Firefighting Company to provide, at a minimum, include the following:

- A. Three full time firefighting trucks and crews on site at all hours of the day for the four (4) day event, consisting of two brush trucks, which shall meet any requirements of the Idaho Department of Lands for wild land firefighting, and one structure truck.

- B. The two brush trucks, each, shall be staffed by crews of three trained firefighters with the qualifications for wild land firefighting, and shall be located on the Concert Site, unless fighting an off-site fire pursuant to these Conditions.

- C. The one structure truck shall be staffed by a crew of four trained firefighters with the qualifications to fight structure fires, and shall be located on the Concert Site, unless fighting an off-site fire pursuant to these Conditions.

- D. The firefighting coverage area ("**Coverage Area**") shall include the Site and the immediate vicinity of the Site.

- E. Qualifications of the Firefighting Company, shall include, but not be limited to, the ability to fight wildfires on state and federal lands and structure fires, the ability to communicate with the United States Bureau of Land Management, the United States Forest Service, surrounding counties and agencies, law enforcement and medical personnel.

- F. Provide for an incident commander with references showing prior experiences as an incident commander of a wild land fire event or a structural firefighting event.

- G. The Firefighting Company shall notify the United States Bureau of Land Management, the United States Forest Service and adjacent land owners that there will be fire-fighting equipment stationed at the Concert Site in the event mutual aid services are needed.

9. The event and all uses associated therewith shall comply with all local, State of Idaho and Federal statutes, laws and regulations, including but not limited to sale and consumption of alcohol.
10. Any improvement for structures must be applied for and obtain building permits as required by the Zoning Ordinance and shall be completed no less than five (5) days prior to any event.
11. All new roads and road approaches, if any, must be approved by Elmore County, Idaho Department of Transportation for U.S. Highway 20 and Glens Ferry Highway District for those roads within its jurisdiction.
12. All outstanding fees and taxes, if any, shall be paid prior to an event.
13. Camping shall be limited to 4,500 camping sites on the Concert Site and the maximum number of attendees at one time shall not exceed 25,000 people.
14. Provide notice to ticket holders with information including Idaho Open Range laws, rules, conditions, potential wildfire hazards, off-site trespassing and sage grouse conservation.
15. Implement wildfire preventative treatments, including fuel breaks around roads and the site will be implemented prior to the event. Grazing or mowing of perimeter vegetation to less than 12" in height if needed.
16. Smoking will only be allowed in designated areas to prevent wildfire.
17. The event will comply with all burn bans in place at the time of the event.
18. Conduct public service announcements during the event to inform people of the rules and the potential for wildfire hazards.
19. Concert hours will be restricted commencing no earlier than 9:00 A.M. and headliner starting performance at 11:00 P.M.
20. The Applicant shall maintain two water tender trucks, meeting the Idaho Department of Lands specifications for a wild fire water tender truck, on the Site the four-day event with a minimum capacity of 2,500 gallons per truck to provide water for fires. In the event, any water is used from these trucks, they shall be re-filled as soon as reasonably possible.
21. The Applicant will provide, at its cost and expense, temporary no trespassing signage to neighboring property owners for their use to minimize trespass on private property.
22. Failure to comply with any of these Conditions may result in revocation of the Conditional Use Permit or such other remedies as set forth by the Commission.
23. The Site shall provide access drives (30 foot) and defensible space (10 foot) around RV camping sites as set forth in Chapters 8 and 12 of the Zoning Ordinance.
24. All alcohol will be sold and consumed within the fenced venue area only.

Dated this 18th day of January, 2017.

COMMISSION VOTE:

CHAIRPERSON PATTI OSBORN
VICE CHAIRMAN K.C. DUERIG
SUSAN FISH
ED OPPEDYK
JEFF BLANKSMA
DAVE HOLLAND
MITCH SMITH

ABSENT
VOTED AYE
VOTED AYE
VOTED AYE
ABSENT
VOTED AYE
RECUSED


K.C. Duerig, Vice-Chairperson

ATTEST:


Beth Bresnahan, Planner I

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.