

**BEFORE THE ELMORE COUNTY BOARD OF COUNTY COMMISSIONERS
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

In Re: CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07: Cat Creek Energy, LLC

Background:

This "Matter" is an appeal of the denial of a request for five (5) Conditional Use Permit (the "CUP") applications for transmission lines, pump storage hydro electrical generating facility and wind turbine electrical generating facility in the Agriculture, Wildland Urban Interface and the Area of Critical Concern Overlay Zones and a solar electrical generating facility and an electrical substation in the Agricultural Zone (the "Applications"), from Cat Creek Energy, LLC Development, LLC (the "Applicant"), for that real property as further described herein (the "Property"). The Matter was initially presented to the Elmore County ("County") Board of Commissioners ("Board") following receipt of a request for appeal following a denial of the Matter by the Planning and Zoning Commission of Elmore County, Idaho (the "Commission") on August 17, 2016. At that time the Board set the matter for public hearing, to be held on November 16th and 17th in 2016. Prior to the scheduled hearings, the Board received a request from the Applicant to conduct a site visit at the Property. On October 21, 2016, the Board conducted a hearing on the site visit at which time the Applicant withdrew its request for the site visit. The Board heard the Matter as on the 16th and 17th of November, 2016, pursuant to a public hearing, following public notice as required by law. The Board received written and verbal testimony from the Applicant, as hereafter defined, its representatives, those in support, neutral and in opposition, and other testimony and information for the Matter which was part of the record. At a meeting following the public hearings, the Board set deliberations for the Matter for January 13, 2017.

Subsequent to the initial hearing, one Board member inadvertently attended a presentation and discussion of water rights and the underlying project for the Matter. Following public notice of the event the Board conducted an additional hearing on December 16, 2016, to disclose the Board member's receipt of information, open the record and hear testimony in response to the disclosure. This second hearing was held as required by law. The Board received verbal testimony from the Applicant, and parties in opposition as well as other testimony and information for the Matter which is part of the record for the Matter. Deliberations for the matter were conducted on January 13, 2017, February 3, 2017 and February 10, 2017, when the Board issued these 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 are based upon the record before the Board as well as those facts which are commonly known or of which there is general public awareness.

1. Application.

The Board finds that the applications for the Matter ("Applications") are comprised of:

- A.** Application form prepared and submitted by 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 and memos submitted by the Applicant or its legal counsel, whether submitted in response to questions from employees of the Elmore County Land Use and Building Department (the "**Department**"), the Commission or the Board in connection with the proceedings before the Commission and the Board, which modify or clarify the Applications, all of which are part of the record for this Matter.

2. Applicant.

The Board finds that the Applicant is:

Cat Creek Energy, LLC
1989 South 1875 East
Gooding, ID 83330

3. Commission Process.

The Board adopts, as their own, the following Commission's findings set forth in those Findings of Fact, Conclusions of Law and Recommendation issued by the Commission on August 17, 2016, (the "Commission's Findings") as to the following procedural matters of the Commission pertaining to the Applications:

"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 [,] ... 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 Property 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 Property 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."

4. Board Process.

The Board finds the following as to the procedural matters pertaining to the appeal of the Applications to the Board:

A. The Commission denied the Applications on July 13, 2016. The Commission

signed its Findings of Fact, Conclusions of Law on August 17, 2016.

- B. "Any affected or aggrieved person having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing ... use by any final action of the Commission may appeal to the Board" pursuant to Zoning Ordinance Section 6-3-2.
- C. August 26, 2016, the Applicant filed the Appeal to the Board.
- D. The Zoning Ordinance, at Section 6-3-2 E, requires that an appeal shall be based on one of the following grounds:
 - 1. The decision was in violation of constitutional or statutory provision; or
 - 2. In excess of the statutory authority of the agency; or
 - 3. Made upon unlawful procedure; or
 - 4. Not supported by substantial evidence on the record as a whole; or
 - 5. Arbitrary, capricious, or an abuse of discretion.
- E. The Zoning Ordinance, Section 6-3-2 F, requires that an appeal must be made by appropriate application and fee paid within ten (10) calendar days of the Commission's final action.
- F. The Commission's final written decision was made on August 17, 2016.
- G. The Appellant filed the Appeal in the form provided by the Department with the required \$800.00 appeal fee on August 26, 2016.
- H. Section 6-3-2 G of the Zoning Ordinance requires that the notice of appeal shall state the date and substance of the decision and the grounds for appeal.
- I. The notice of appeal is dated August 26, 2016, and by supplement to the appeal form, states the grounds for appeal as listed above in Paragraph IV.D above. The substance of the appeal is listed in the notice of appeal and in the supplement thereto.
- J. The appeal was timely filed, the proper fee was paid concurrent with the application and the appeal contained one or more of the necessary grounds set forth in the Zoning Ordinance.
- K. Section 6-3-2 H of the Zoning Ordinance requires a hearing by the Board in accordance with Idaho law and the Zoning Ordinance. Public notice shall be published specifying the time, date and place of the public hearing for the appeal and the subject of the appeal. The notice shall be published once in the newspaper of general circulation at least fifteen (15) calendar days prior to the hearing and shall otherwise meet the same notice requirements as used by the Commission.
- L. The Department gave notice of the public hearing to all agencies and property owners, published notice in the Mountain Home News and posted notice on the Property as required by law.
- M. The Board set the hearing for 6:00 PM on November 16 and 17, 2016, at the Mountain Home Junior High School, 1600 East 6th South, Mountain Home, Idaho. Public Hearing notices were sent to property owners and all agencies on October 24, 2016. Notice of Public Hearing was published in the Mountain Home News on October

26, 2016. The Property was posted on November 7, 2016.

N. Review by the Board of the Commission's findings is a *de novo* review pursuant to Zoning Ordinance Section 6-3-2 H.

O. Prior to the public hearing on the appeal, the Applicant requested the Board to go to the site for a site visit.

P. The Board set a public hearing for October 21, 2016 at 2:00 pm in the Elmore County Commissioner's Room in the basement of the Elmore County Courthouse for a public hearing to consider the request for a site visit. Public Hearing notices were sent to property owners and all agencies on October 3, 2016. Notice of the public hearing regarding the site visit was published in the Mountain Home News on October 5, 2016. The Property was posted on October 13, 2016.

Q. The Board held the public hearing on the site visit on October 21, 2016 at the scheduled time. During the hearing, a representative of the Applicant stated that he would like to withdraw his request for a site visit. With the withdrawal of the request for a site visit the hearing was closed.

R. The Board held the public hearings on the appeal November 16 and 17, 2016.

S. At the conclusion of the public hearing on November 17, 2016, the Board closed the record and set the time of November 18, 2016, to set a time for future deliberation of the appeal.

T. At a meeting held on November 18, 2016, the Board set the matter for initial deliberations on January 13, 2017, commencing at 2:00 PM in the Commissioner's Room in the Elmore County Courthouse.

U. On November 18, 2016, following the closure of the record, one commissioner attended a water meeting regarding Boise River Feasibility Study (Arrowrock Dam Raise). While the matter was not on the agenda, Doug Jones from Cat Creek Energy made a quick 5-10 minute discussion regarding the Cat Creek Energy project. The information presented is the same as was previously presented except he stated they would be willing to increase the reservoir from 50,000-acre foot to 100,000-acre foot to store water for Boise. This is new information that had not been presented to the Board.

V. The Board set a public hearing for December 16, 2016 at 2:00 pm in the Elmore County Commissioner's Room in the basement of the Elmore County Courthouse for a public hearing to reopen the record to accept the information the commissioner received in connection with the Cat Creek Energy project information which was obtained while attending the Boise River Feasibility Study into the record and other written materials which had been delivered to the Department or County pertaining to the appeal and to permit the Applicant and the public to respond to this additional information. Public Hearing notices were sent to property owners and all agencies on November 23, 2016. Notice of the public hearing regarding the site visit was published in the Mountain Home News on November 30, 2016. The Property was posted on December 5, 2016.

W. At the deliberations on January 13, 2017, the Board reviewed the required findings under Sections 6-27-7 and 6-8-26-B.1-4 of the Zoning Ordinance, the Comprehensive Plan, as hereafter defined, and identified certain conditions that it would

like to see included in the final findings of fact and conclusions of law and order, and directed legal counsel and Department staff to draft preliminary findings of fact, conclusions of law and order to be reviewed and considered during continued deliberations which were set for February 3, 2017.

X. The Board continued its deliberations on February 3, 2017 and February 10, 2017 and made and executed these Findings of Fact, Conclusions of Law and Order and made the findings set forth herein.

5. The proposed uses under the Application are as follows:

A. The Board adopts, as its own, the following Commission's Findings pertaining to the Applications:

"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. Commission Findings, page 3.

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." Commission Findings, page 3.

6. Descriptions, Parcel Designations, Characteristics and Ownership of the Property.

A. The Board adopts, as its own, the following Commission's Findings pertaining to the Property Description, Parcel Designations, Characteristics and Ownership of the Property:

"The Commission finds the following legal descriptions pertaining to the property and is collectively referred herein as the "[Property]":

A. [Property] 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, RP01S09E039010A,	RP01N09E350010A, RP01S09E100010 A,	RP01S09E020010A, RP01S09E110040A.
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CUP-2015-04:

RP01N09E265410A, RP01N09E360010A, RP01S09E039010A, RP01S09E120040A.	RP01N09E277210A, RP01N09E010610A, RP01S09E100010A,	RP01N09E350010A, RP01S09E020010A, RP01S09E110040A,
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CUP-2015-05:

RP01S09E020010A, RP01S09E110040A	RP01S09E039010A,	RP01S09E100010A,
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CUP-2015-06:

RP01N09E250010A, RP01N09E277210A, RP01N09E191840A, RP01N10E290010A, RP01N10E310010A, RP01S09E020010A, RP01S09E110040A, RP01S09E140040A, RP01S09E230010A, RP01S10E040010A, RP01S10E070010A, RP01S10E102410A, RP01S10E180010A, RP01S10E159010A, RP01S10E280085A, RP01S10E310500A,	RP01N09E251210A, RP01N09E350010A, RP01N10E200010A, RP01N10E300010A, RP01N10E330610A, RP01S09E039010A, RP01S09E120040A, RP01S09E157810A, RP01S09E243010A, RP01S10E051210A, RP01S10E080010A, RP01S10E160040A, RP01S10E190610A, RP01S10E210040A, RP01S10E290020A, RP01S10E320020A,	RP01N09R265410A, RP01N09E360010A, RP01N10E283010A, RP01N10E320010A, RP01S09E010610A, RP01S09E100010A, RP01S09E130040A, RP01S09E220010A, RP01S10E030010A, RP01S10E060640A, RP01S10E090610A, RP01S10E170010A, RP01S10E303010A, RP01S10E220020A, RP01S10E301840A, RP01S10E332410A
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CUP-2015-07:

RP01S09E020010A,	RP01S09E110040A
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C. The "Owners" of the [Property] 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 [Property] is: Lease Agreements.

E. [Property] 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 [Property] are located in the FEMA defined Zone A flood zones.

Irrigation: Unknown and information not provided." Commission Findings, pages 3-5 (some punctuation added).

7. Current Zoning for the Property.

A. The Board finds the current zoning of the Property as follows:

The current zoning for the Property pursuant to the adopted zoning map under the Elmore County Zoning and Development Ordinance, which was adopted on March 21, 2012, as Ordinance 2012-01; amended on September 19, 2012, as Ordinance 2012-03, and July 23, 2014, as Ordinance 2014-01 (collectively, the "**Zoning Ordinance**") 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.

8. Surrounding Land Uses.

A. The Board adopts, as its own, the following Commission's findings pertaining to the surrounding land uses:

"The Commission finds the surrounding land uses to the [Property] 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. Findings of Fact, Conclusions of Law and Order, issued by the Elmore County Planning and Zoning Commission on August 17, 2016, at page 5 (emphasis added).

9. Existing Services to the Property.

A. The Board adopts, as its own, the following Commission's Findings pertaining to the existing services to the Property:

"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 [Property] is located within the Glenns Ferry Highway District (the "Highway District"). The [Property] may also be accessed through Mountain Home Highway District roads." Commission Findings, page 5.

10. The Board finds the following as the applicable law for consideration of the Applications:

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

B. The Elmore County Zoning and Development Ordinance, which was adopted on March 21, 2012, as Ordinance 2012-01; amended on September 19, 2012, as Ordinance 2012-03, and July 23, 2014, as Ordinance 2014-01 (collectively, the "Zoning Ordinance").

C. The Local Land Use Planning Act, Idaho Code §§ 67-6501 through -6583 ("LLUPA").

11. Comprehensive Plan:

A. The Board finds that the following goals and objectives from the Comprehensive Plan are important in determining if the Applications will be in harmony and in accordance with the Comprehensive Plan:

"Private Property Rights Objectives

1. No person shall be deprived of private property without due process of law.
7. 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.
11. When the use of private property conflicts with the public interest, such conflicts shall be considered using a context larger than the boundaries of particular land parcel and a time frame longer than a particular property transaction." Comprehensive Plan, pages 12 & 13.

"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...
11. Recognize the need for electric utility facilities that are sufficient to support economic development." Comprehensive Plan, page 30.

"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." Comprehensive Plan, pages 36 & 37.

"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." Comprehensive Plan, pages 45 & 46.

"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." Comprehensive Plan, pages 49 & 50.

"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." Comprehensive Plan, page 51.

"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." Comprehensive Plan, page 53.

"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. ...
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." Comprehensive Plan, pages 56-58.

"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." Comprehensive Plan, page 64.

"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.'" Comprehensive Plan, page 67.

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." Comprehensive Plan, pages 82 & 83.

12. Zoning Ordinance:

A. The Board finds that the Zoning Ordinance defines the following terms which pertain to the Applications:

"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." Zoning Ordinance, Chapter 2, page 17.

"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." Zoning Ordinance, Chapter 2, page 36.

"ELECTRICAL TRANSMISSION LINES: Those lines carrying from 138 kV, 230 kV to 500 kV of electricity from a power generation site to a substation." Zoning Ordinance, Chapter 2, page 36.

"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." Zoning Ordinance, Chapter 2, page 66.

"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." Zoning Ordinance, Chapter 2, page 66.

B. The Board finds that certain standards apply to conditional use permits under Section 6-27-4 of the Zoning Ordinance and the same shall be included into the conditions set forth in Exhibit A (the "Conditions"), which exhibit is attached hereto and made a part hereof.

C. The Board finds that in order to approve a 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."

D. The Board finds that in reviewing any proposed development requests in an Area of Critical Concern, pertaining to CUPs 2015-03, 2015-04 and 2015-06, the Board will follow the following development standards:

- "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." Zoning Ordinance, Section 6-8-26 B.1-4.

E. The Board finds that in addition to a conditional use permit, additional requirements are found in the following Zoning Ordinance, Section 6-8-94, pertaining to Electrical Generating Facilities:

"Electrical Generating Facilities:

A. Additional standards or requirements for this use. Certain types of electricity generation facilities are permitted as conditional uses in zones as specified in Table 6-8-11 (c) and must adhere to the following conditions:

1. The facility shall use only natural gas, solar cells, water (hydroelectric) or wind power to produce electricity for sale. The use of diesel fuel is allowed only for emergency generation of electricity for fire suppression or winding down turbines.
2. The owner or operator of the facility shall show compliance with all applicable Idaho Public Utility, and Federal Agency rules and regulations before receiving a zoning permit and shall operate the facility in conformance with those same regulations.
3. Facility improvements shall be at least 2,500 feet away from any residence existing at the time of the application for permit. This distance shall be measured from the centerline of the power producing turbine to the closest edge of the residence. The distance may be shortened if the applicant applies for and is granted a waiver using the standards and procedures contained in this ordinance. A distance waiver shall be granted by the Commission provided, the owner(s) of affected residence(s) waive, in writing, the 2,500-foot setback requirements. If such a waiver(s) are submitted to the Administrator for each residence within the 2,500-foot setback no variance approval shall be required.
4. Operation of the facility shall not result in any noise louder than 58 decibels on the A-weighted decibel scale as measured from 750 feet from the centerline of the power producing turbine. A higher decibel reading would require a variance unless the Commission grants a noise waiver. The Commission may grant a noise waiver provided the owner(s) of affected property waive in writing the 58Db noise requirement.
5. The applicant, with its building permit application, shall submit and thereafter follow a landscaping, screening and noise control plan to comply with section 4 above. The plan's ability to comply with section 4 shall be certified by a licensed engineer employed by the applicant. All improvements on the facility shall be enclosed by an appropriate security fence.
6. The applicant shall demonstrate and maintain an adequate fire protection and fire fighting capacity, including entering into an agreement with a public firefighting agency when the applicant's project is within the jurisdiction of such an agency.
7. Before a zoning permit is granted, the applicant shall hold at least two (2) public meetings. Notice of those meetings shall be by publication in local

newspaper and by mail to property owners within one (1) mile of the proposed facility.

8. The Administrator shall cause the applicant to provide information detailing possible adverse impacts and require mitigation of same.
9. Towers and structures that seek to exceed the building height restrictions from Table 6-8-12 (C) must be compatible with the flight operations of MHAFB and the City of Mountain Home and Glenns Ferry public airport operations. The proposed plan should be coordinated and approved by local, state, federal and military aviation officials.
10. Towers and height variances shall not be granted within 5 miles of Mountain Home AFB or along depicted flight corridors.
11. Within the Mountain Home or Glenns Ferry airport influence areas overlay district, the height limits on the tower or facility structures shall be as required by the Code of Federal Regulations 14 CFR 77.
12. Notification distance shall be increased at the discretion of the Director to accommodate for visual impacts." Zoning Ordinance, Section 6-8-94.

F. The Board finds that in addition to a conditional use permit, additional requirements are found in the following Zoning Ordinance, Section 6-8-170, pertaining to Public or Quasi-Public Use - Electrical Generating Facilities:

- "1. Electric distribution lines shall be principal permitted uses. Master site plan approval is not required.
2. Electric sub transmission lines shall be principal permitted uses. Master site plan approval shall be required.
3. Electric transmission lines and substations shall require conditional use approval.
4. All electric transmission, sub transmission, and distribution line rights of way shall be exempt from the landscaping regulations of this Title.
5. Electric substations and other utility structures shall be deemed outdoor storage areas and shall meet the standards in this Chapter.
6. Towers for the purpose of communicating from the substation to remote devices shall be deemed an accessory use to an approved substation, provided that the pole and antenna are no taller than the existing towers.
7. All wire fences, metal structures, and metal objects shall be grounded as required by this Title." Zoning Ordinance, Section 6-8-170."

G. Specific Findings for Conditional Use Permits.

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 Board finds that Zoning Ordinance Section 6-8-170 E.3 provides that "Electrical transmission lines and substations shall require conditional use approval."

The Board finds that Public or Quasi-Public Use requires a conditional use permit in Zoning Ordinance Table 6-8-11 (C).

CUP-2015-04: The Board finds that pump storage hydro electrical generating facility is an Electrical Generating Facility which requires a Conditional Use Permit in the Agriculture Zone in Zoning Ordinance Table 6-8-11 (C).

CUP-2015-05: The Board finds that PV solar electrical generating facility is an Electrical Generating Facility which requires a Conditional Use Permit in the Agriculture Zone in Zoning Ordinance Table 6-8-11 (C) and the additional requirements in Zoning Ordinance Section 6-8-94.

CUP-2015-06: The Board finds that a wind turbine electrical generating facility is an Electrical Generating Facility which requires a Conditional Use Permit in the Agriculture Zone in Zoning Ordinance Table 6-8-11 (C) and the additional requirements in Zoning Ordinance Section 6-8-94.

CUP-2015-07: The Board finds that Zoning Ordinance Section 6-8-170 D.3 "Electrical transmission lines and substations shall require conditional use approval." The Board 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 Board finds that the proposed uses under the five CUPs, with the addition of the Conditions, will be in harmony with and in accordance with the Comprehensive Plan and the Zoning Ordinance. The Board considered the following from the Comprehensive Plan:

"Private Property Rights Objectives

1. No person shall be deprived of private property without due process of law." Comprehensive Plan, page 12.

The Board finds that no person has been deprived of private property without due process of law. Public Hearings were conducted on October, 21, November 16, November 17 and December 16, 2016 all in accordance with the Zoning Ordinance and the LLUPA.

"7. Property owners shall not use their property in a manner that negatively impacts upon the surrounding neighbors or neighborhoods." Comprehensive Plan, page 12.

The Board finds that all applicant-owned private lands will be preserved as open for wildlife use and locate/construct facilities to maintain the function of this land as a wildlife corridor. The solar array, substation and transmission lines would be designed using best practices for minimizing visual impact. These practices include siting considerations, use of vegetative and topographic screening, and selection of appropriate building materials. Record for the Matter, page 675.

"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." Comprehensive Plan, page 13.

The Board finds that with Conditions 25, 26, 28, 30 and 32 regarding the decommissioning of the facilities at the completion of their use, the Applicant will maintain and preserve the property for future generations.

The Board finds that the Applicant, under the Conditions, shall establish a Community and Stakeholder Board to assist in providing funding and to seek input from community stakeholders regarding management, conservation and enhancement of plants, animals, and birds that inhabit the project area, enhance community and recreational tourism opportunities, improve sage grouse habitat on balance of ranch lands, wetlands offset and expansion through mitigation, restoration of fish habitat spawning beds, expansion of grazing, feeding and forage for wildlife. Record for the Matter, pages 8007-8008.

"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." Comprehensive Plan, page 13.

The Board finds that with the Conditions, the County will preserve private property rights and values by enforcing regulations that will ensure against incompatible and detrimental neighboring land uses and the Applications are for permitted uses under the Zoning Ordinance. Chapter 8 Table 6-8-11 (C) requires a Conditional Use Permit in an "Ag" zone for the proposed uses.

"11. When the use of private property conflicts with the public interest, such conflicts shall be considered using a context larger than the boundaries of particular land parcel and a time frame longer than a particular property transaction." Comprehensive Plan, page 13.

The Board finds that while it doesn't believe the proposed private property use under the Applications conflict with the public interests, it finds that to the extent that they may, that the production of clean, renewable electrical energy for the Pacific Northwest is a viable and useful service to be provided by the Applicants and with the Conditions, it minimizes impacts to surrounding uses. The Applicant estimates the IPUC approved rate per kW for Cat Creek Energy will be 4.4 cents. Record for the Matter, page 8016.

"Economic Goal Statement 1

Diversify and improve the economy of Elmore County in ways that are compatible with community values. Comprehensive Plan, page 30.

The Board finds that the development and operation of the Project will provide for 10,000,000 hours of construction labor and prior to construction 88 full time employees and an estimated 24 full time jobs with 11 full time support employees jobs in Elmore County. Record for the Matter, page 7931. Additionally, based upon the Applicant's estimates, Elmore County property tax revenues for the Project when fully developed would be in excess of \$13 Million. Record for the Matter, page 8009. The Applicant, in conjunction with Condition Number 2, will contribute \$330,000 annually to the Community and Stakeholder Board to be used for management, conservation and enhancement of plants, animals, and birds that inhabit the project area. Record for the Matter, page 8009.

"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." Comprehensive Plan, page 30.

The Board finds that the development and operation of the Project will provide for 10,000,000 hours of construction labor and prior to construction 88 full time employees and an estimated 24 full time jobs with 11 full time support employees jobs in Elmore County. Record for the Matter, page 7931. Additionally, based upon the Applicant's estimates, Elmore County property tax revenues for the Project when fully developed would be in excess of \$13,000,000. Record for the Matter, page 8009. The Applicant, in conjunction with Condition Number 2, will contribute \$330,000 annually to the Community and Stakeholder Board to be used for management, conservation and enhancement of] plants, animals, and birds that inhabit the project area. Record for the Matter, page 8009.

"11. Recognize the need for electric utility facilities that are sufficient to support economic development." Comprehensive Plan, page 30.

The Board finds that this project represents a dramatic step forward in the ongoing effort to integrate renewable energy into fully reliable utility grids, to preserve and protect the local environment in which renewable projects are implemented, and to provide local employment opportunities and increase the local and state tax base. Record for the Matter, page 641.

"Land Use Objectives

...

8. Review all commercial and industrial development proposals to determine the land use compatibility and impact to surrounding areas." Comprehensive Plan, page 36.

The Board finds that Applicant does not adversely impact surrounding areas and it is compatible with the current ranching operations and recreation activities, and may enhance areas by its water resource. All applicant-owned private lands on the Property shall be preserved as open space for wildlife use as functioning ranches and all locations and construction of the facilities shall maintain the function of this land as a wildlife migration corridor. Record for the Matter, page 6545.

The Board finds that the Applicant submitted a new master site plan, which is incorporated into Condition 2, which moved the pump storage hydro powerhouse to a new location in response to US Forest Service input. Record for the Matter, page 8020.

The Board finds that the Applicant submitted a new master site plan, which is incorporated into Condition 2, which has moved the PV solar site from private land near Fort Running Bear RV Park to east of Pine Road in Wind Area 2 which eliminates visibility of the PV solar plans from the RV park. Record for the Matter, page 8021.

The Board finds that the Applicant submitted a new master site plan that has eliminated wind area #1 in response to Idaho Fish and Game's wildlife studies. Record for the Matter, page 8022.

"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. Comprehensive Plan, page 37.

The Board finds that the Applications do not include any use of groundwater. Record for the Matter, page 6517.

"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." Comprehensive Plan, page 37.

The Board finds that the Applications were the only development proposals submitted for decision.

The Board finds that the Applications with the Conditions, do not negatively impact land use patterns and do not negatively impact the human and natural environment. The Applicant has proposed to establish a Community and Stakeholder Board to assist with funding and to seek input from community stakeholders regarding management, conservation and enhancement of plants, animals, and birds that inhabit the project area, enhance community and recreational tourism opportunities, improve sage grouse habitat on balance of ranch lands, wetlands offset and expansion through mitigation, restoration of fish habitat spawning beds, expansion of grazing, feeding and forage for wildlife.. Record for the Matter, pages 8007-8008.

"Water Goal 1

To protect, develop, and maintain the quality and quantity of our water resource. Comprehensive Plan, page 45.

The Board finds that the Upper Reservoir will be filled during spring run-off. It will hold approximately 50,000 acre-feet of water. Roughly 8,000 – 10,000 acre-feet of water will be cycled through the pumped-hydro system daily. Another 10,000 acre-feet will be kept in reserve for operational purposes. The remaining 30,000 acre-feet will be available, as necessary and appropriate, to downstream irrigation districts and municipal users and, of special interest to Idaho Department of Fish and Game and Trout Unlimited, to help sustain the downstream fishery. The plant will produce power throughout the year. Based upon the Record for the Matter, there are no foreseeable impacts on water quality as a result of such release either in the Upper Reservoir or on the South Fork of the Boise River below the Anderson Ranch Dam. Record for the Matter, page 6688.

"Water Objectives:

1. Encourage land management and development of soil and water resources for economic growth of the County." Comprehensive Plan, page 46.

The Board finds that without the Conditions, disturbance of reservoir shoreline and vegetated upland areas during construction of the hydroelectric intake, powerhouse and penstock has the potential to increase erosion and sedimentation, which could adversely affect water quality in Anderson Ranch Reservoir. Construction of roads and wind tower pads for the wind turbine project element has the potential to cause erosion and sedimentation into Malad River, Castle Creek, Cat Creek, or other small streams located downslope of disturbed areas. With the Conditions, the potential for erosion and sedimentation would be minimized by implementing industry standard erosion control measures for all aspects of the construction effort. Record for the Matter, page 6525.

"5. Water quality should be protected and preserved in all proposed developments." Comprehensive Plan, page 46.

The Board finds that the Upper Reservoir will be filled during spring run-off. It will hold approximately 50,000 acre-feet of water. Roughly 8,000 – 10,000 acre-feet of water will be cycled through the pumped-hydro system daily. Another 10,000 acre-feet will be kept in reserve for operational purposes. The remaining 30,000 acre-feet will be available, as necessary and appropriate, to downstream irrigation districts and municipal users and, of special interest to Idaho Department of Fish and Game and Trout Unlimited, to help sustain the downstream fishery. The plant will produce power throughout the year. Based upon the Record for the Matter, there are no foreseeable impacts on water quality as a result of such release either in the Upper Reservoir or on the South Fork of the Boise River below the Anderson Ranch Dam. Record for the Matter, page 6688.

"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." Comprehensive Plan, page 46.

The Board finds that with the Conditions the Applicant will be required to obtain the necessary water rights and to seek approval from the Idaho Department of Water Resources ("IDWR") for necessary water development projects in the Boise River drainage system in order to transfer water into arid portions of Elmore County.

The Board finds that the Applicant will not be taking water during the time when the Boise drainage is fully appropriated. Furthermore, the remainder capacity in the Upper Reservoir reserved for other uses is filled during flood control period when excess water is released downstream. The fill rate shall be conditioned by IDWR, Bureau of Reclamation and US Army Corps of Engineers as they manage the Boise River drainage and its reservoirs. Record for the Matter, page 7011.

"Fish and Wildlife Goal 2

Recognize the economic contributions that fish and wildlife-based recreation contribute to Elmore County." Comprehensive Plan, page 49.

The Board finds that the Applicant and the Applications were prepared to recognize the economic contributions that fish and wildlife based recreation contributes to Elmore County by developing reasonable mitigation strategies to minimize entrainment losses at the hydroelectric facility will be employed during the design stage for the intake and tailrace portion of the powerhouse. Any avoidable entrainment impacts to federally listed bull trout would be mitigated through support for long term projects, developed in cooperation with Idaho Department of Fish and Game ("IDFG") and United States Fish and Wildlife Service ("USFWS") to enhance bull trout habitat in the South Fork Boise River upstream of Anderson Ranch Dam. Pursuant to the Development Agreement, as set forth in the Conditions (the "Development Agreement") the Applicant would fund annual fish stocking in Anderson Ranch Reservoir to compensate for any net loss of game fish due to entrainment into the hydropower penstocks. The Applicant would work with IDFG to develop the details of this program. Record for the Matter, page 650.

"Fish and Wildlife Goal 3

Sustain the fish and wildlife habitats necessary to provide quality fish and wildlife-related recreation." Comprehensive Plan, page 49.

The Board finds that the powerhouse would be constructed with sound insulation to minimize the potential that powerhouse noise would disturb wildlife or recreation users. Record for the Matter, page 650.

The Board finds that with the Conditions, the Applicant will be required to maintain communications with IDFG and USFWS, as with the other agencies involved, to sustain fish and wildlife habitats necessary to provide quality fish and wildlife recreation. Record for the Matter, page 7004.

The Board finds that with the Conditions, the Applicant will form the Community and Stakeholder Board for management, conservation and enhancement of plants, animals, and birds that inhabit the project area and as specified in the Wildlife Mitigation Plan, among other activities it will monitor possible habitat impacts and population trends during the operational phase of the project. Record for the Matter, page 7004.

"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." Comprehensive Plan, page 49.

The Board finds that pursuant to the Conditions, the Applicant would fund annual fish stocking in Anderson Ranch Reservoir to compensate for any net loss of game fish due to entrainment into the hydropower penstocks. The Applicant would work with Idaho Fish and Game to develop the details of this program. Record for the Matter, page 650.

The Board finds that pursuant to the Conditions, the Applicant, through Wood Creek Ranch, will fund conservation efforts affecting areas of sage-grouse habitat surrounding wind turbine areas 2 and 3, in the eastern part of Wood Creek Ranch where evidence of sage-grouse usage exists and the best sage-grouse habitat is found. The conservation effort would be a cost-share with the Sage-Grouse Initiative and may include measures such as prescribed grazing, fence marking and water tank escape ramps. Record for the Matter, pages 674-675.

"Fish and Wildlife Objectives:

1. Request public agency input on proposed land and water development projects potentially impacting fish and wildlife habitat." Comprehensive Plan, page 50.

The Board finds that the County requested comment from 92 agencies concerning the Applications and reports and comments were made a part of the Record for the Matter. Record for the Matter, pages 6814-6816, 6819-6821, 6824-6826, 6829-6831 and 6835-6837.

The Board finds that the Applicant proposes necessary and reasonable mitigation strategies to minimize entrainment losses at the hydroelectric facility will be employed during design stage for the intake and tailrace portion of the powerhouse. Any unavoidable entrainment impacts to federally listed bull trout would be mitigated through support for long term projects, developed in cooperation with the Applicant, IDFG and

USFWS, to enhance bull trout habitat in the South Fork Boise River upstream of Anderson Ranch Dam. The Applicant would fund annual fish stocking in Anderson Ranch Reservoir to compensate for annual net loss game fish due to entrainment into the hydropower penstocks. The Applicant would work with Idaho Department of Fish and Game to develop the details of this program. Record for the Matter, page 675.

2. "Consider ordinances and conditions of approval aimed at avoiding and mitigating adverse impacts to fish and wildlife resources as a result of development." Comprehensive Plan, page 50.

The Board finds that many of with the Conditions proposed are designed and intend to avoid and mitigate adverse impacts to fish and wildlife resources as a result of the proposed development set forth in the Applications.

3. "Encourage protection of water quantity and quality and multiple uses that are complementary to fish and wildlife populations." Comprehensive Plan, page 50.

The Board finds that based upon the Record for the Matter, there are no foreseeable impacts on water quality as a result of such release either in the Upper Reservoir or on the South Fork of the Boise River below the Anderson Ranch Dam. Record for the Matter, page 6688.

"Scenic Areas Goal 1

To promote the preservation of natural scenic areas for the use and benefit of both present and future generations." Comprehensive Plan, page 51.

The Board finds that additionally, pursuant to Conditions 25, 26, 28, 30 and 32 regarding the decommissioning of the facilities at the completion of their use, the Applicant will preserve the future scenic beauty of the property.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which moved the pump storage hydro powerhouse to a new location in response to US Forest Service input. Record for the Matter, page 8020.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which has moved the PV solar site from private land near Fort Running Bear RV Park to east of Pine Road in Wind Area 2 which eliminates visibility of the PV solar plans from the RV park. Record for the Matter, page 8021.

The Board finds that the Applicant submitted a new master site plan that has eliminated wind area #1 in response to Idaho Fish and Game's wildlife studies. Record for the Matter, page 8022.

"Scenic Area Objectives

1. Encourage the preservation of scenic areas for their natural beauty." Comprehensive Plan, page 51.

The Board finds that few man-made structures and unpaved roads will be visible from most viewpoints. Due to the openness of the landscape and lack of tall vegetation the hilly areas and ridgelines proposed for wind turbine development will be visible from adjacent lowland areas. Record for the Matter, page 6523.

The Board finds that the Applicant submitted a new master site plan, which is incorporated into Condition 2, which moved the pump storage hydro powerhouse to a new location in response to US Forest Service input. Record for the Matter, page 8020.

The Board finds that the Applicant submitted a new master site plan, which is incorporated into Condition 2, which has moved the PV solar site from private land near Fort Running Bear RV Park to east of Pine Road in Wind Area 2 which eliminates visibility of the PV solar plans from the RV park. Record for the Matter, page 8021.

The Board finds that the Applicant submitted a new master site plan that has eliminated wind area #1 in response to Idaho Fish and Game's wildlife studies. Record for the Matter, page 8022.

The Board further finds that landscaping opportunities that do not interfere with the function of the facilities will be incorporated where appropriate, such as to screening views from Running Bear RV Resort near Little Camas Reservoir which already has vegetation for screening in place. Record for Matter, page 6541.

The Board further finds that additionally, pursuant to Conditions 25, 26, 28, 30 and 32 regarding the decommissioning of the facilities at the completion of their use, the Applicant will preserve the future scenic beauty of the property.

2. Natural areas should be preserved through proper planning and/or density transfer procedures or development rights transfer procedures. Comprehensive Plan, page 46.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which moved the pump storage hydro powerhouse to a new location in response to US Forest Service input. Record for the Matter, page 8020.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which has moved the PV solar site from private land near Fort Running Bear RV Park to east of Pine Road in Wind Area 2 which eliminates visibility of the PV solar plans from the RV park. Record for the Matter, page 8021.

The Board finds that the Applicant submitted a new master site plan that has eliminated wind area #1 in response to Idaho Fish and Game's wildlife studies. Record for the Matter, page 8022.

3. Encourage development in localities that will not degrade scenic areas within the County." Comprehensive Plan, page 51.

The Board finds that few man-made structures and unpaved roads will be visible from most viewpoints. Due to the openness of the landscape and lack of tall vegetation the hilly areas and ridgelines proposed for wind turbine development will be visible from adjacent lowland areas. Record for the Matter, page 6523.

The Board further finds that additionally, pursuant to Conditions 25, 26, 28, 30 and 32 regarding the decommissioning of the facilities at the completion of their use, the Applicant will preserve the future scenic beauty of the property.

"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." Comprehensive Plan, page 53.

The Board finds that with Conditions, the Applicant will implement soil erosion control measures, which would include minimizing ground disturbance areas during construction, stabilizing soils and installing barriers to prevent runoff, and contouring and revegetating all disturbed areas when construction is complete. Erosion control measures and revegetation activities would meet all industry standards and would prevent water quality impacts due to erosion/sedimentation, prevent the proliferation of noxious weeds and promote re-development of quality wildlife habitat. Record for the Matter, page 6492.

The Board finds that short segments of the hydropower pipeline, powerhouse access road and transmission line lie within 100 feet of the shore of Anderson Ranch Reservoir. Approximately 2,500 feet of penstocks and a small area of the Upper Reservoir would be constructed on slopes exceeding 15%. Approximately 3 miles of the transmission line would traverse areas with hillsides exceeding the 15% slope limit. Record for the Matter, pages 6495-6496. Any improvements on steep slopes will be constructed according to the Zoning Ordinance.

"Public Service Objectives - Water Supply and Distribution

1. Encourage and promote water conservation to protect local water resources." Comprehensive Plan, page 56.

The Board finds that the initial filling of the 50,000 acre-feet Upper Reservoir would be performed during the high-water period from April-June when excess water is often available above the requirements for irrigation storage and in-stream flow. Filling would occur after Arrowrock Reservoir was adequately filled and all other water storage requirements were met. The filling of the Upper Reservoir may cause a short-term decrease in the releases from Anderson Ranch Dam and may thus affect flows in the South Fork Boise River. The fill rate would be adjusted to maintain adequate flows in the South Fork to support fish, wildlife and recreational use. Depending on the water available fill rate would likely be in the range of 100 - 1,000 cfs. Record for the Matter, page 6524.

The Board finds that the initial filling of the Upper Reservoir, during spring run-off in normal water years, could result in reduced flows in the South Fork Boise River. The timing of this reduced flow could be managed by temporarily absorbing the water withdrawal required to fill the Upper Reservoir by allowing the Anderson Ranch Reservoir level to drop or in very low water years, by adjusting the operation on the pumped storage hydro system. By taking this approach, reduced flows in the South Fork Boise River (to recover any lost storage in the reservoir) could be timed to occur during

high flow conditions when the river basin contains excess water. Therefore, it is anticipated that the initial fill of the Upper Reservoir shall occur in a high spring run-off year. There by conserving the water that would have been released downstream. Record for the Matter, page 6532.

"3. Support water development and conservation projects on the Boise River and other watersheds within the County." Comprehensive Plan, page 56.

The Board finds that the Applicant will not be taking water during the time when the Boise drainage is fully appropriated. Furthermore, the remainder capacity in the Upper Reservoir reserved for other uses is filled during flood control period when excess water is released downstream. The fill rate shall be conditioned by IDWR, Bureau of Reclamation and US Army Corps of Engineers as they manage the Boise River drainage and its reservoirs. Record for the Matter, page 7011.

"4. Guide growth to areas of the County where there is adequate water for development." Comprehensive Plan, page 56.

The Board finds that the Applicant will not be taking water during the time when the Boise drainage is fully appropriated. Furthermore, the remainder capacity in the Upper Reservoir reserved for other uses is filled during flood control period when excess water is released downstream. The fill rate shall be conditioned by Idaho Department of Water Resources, Bureau of Reclamation and US Army Corps of Engineers as they manage the Boise River drainage and its reservoirs. Record for the Matter, page 7011.

"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." Comprehensive Plan, page 57.

The Board finds that testimony provided of evidence of an Interconnection Application filed with Bonneville Power Administration ("BPA") on September 24, 2014. The testimony also indicates the Applicant is working with BPA on the use of their existing transmission corridor to radically reduce any environmental impacts of a new separate transmission corridor. Those options include: installing new transmission line in the existing corridor or widening the existing corridor. Evidence provided in testimony shows that Applicant has been working with Idaho Power Company since May 4, 2015 on up to 890 MW of power supply for the facility. Record for the Matter, page 7720.

"2. Encourage the enhancement of the electric system capacity and reliability." Comprehensive Plan, Page 57.

The Board finds that the Applicant will offset 2,980,000,000 pounds of CO2 emissions annually from natural gas plants. Record for the Matter, page 8015.

The Board finds that the Project features: new powerhouse/pump house located in Anderson Ranch Reservoir, new 50,000 acre feet Upper Reservoir, four new 16 foot diameter penstocks between Anderson Ranch Reservoir and Upper Reservoir, new substation and dual circuit 230 kV transmission line, new access road to powerhouse/pump house, a 40.0 MW AC photo-voltaic solar energy array, a 39 tower 110.0 MW wind energy generation facility and an administration and maintenance site

with office and storage buildings, parking and an equipment yard. Record for the Matter, page 6483.

3. Encourage the enhancement of the capacity and reliability of renewable energy resources." Comprehensive Plan, page 57.

The Board finds that the Applicant will offset 2,980,000,000 pounds of CO2 emissions annually from natural gas plants. Record for the Matter, page 8015.

The Board finds that the Project features: new powerhouse/pump house located in Anderson Ranch Reservoir, new 50,000 acre Upper Reservoir, four new 16 foot diameter penstocks between Anderson Ranch Reservoir and Upper Reservoir, new substation and dual circuit 230 kV transmission line, new access road to powerhouse/pump house, a 40.0 MW AC photo-voltaic solar energy array, a 39 tower 110.0 MW wind energy generation facility and an administration and maintenance site with office and storage buildings, parking and an equipment yard. Record for the Matter, page 6483.

"4. Encourage the multiple-use of utility corridors by utility providers." Comprehensive Plan, page 57.

The Board finds that the powerline is anticipated to parallel existing Idaho Power powerline to the south of Running Bear RV Park. Record for the Matter, page 7944.

"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." Comprehensive Plan, page 57.

The Board finds that the Master Site Plan does not show any electrical infrastructure in the Eastern Treasure Valley Electrical Plan. Record for the Matter, page 8019.

"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." Comprehensive Plan, page 57.

The Board finds that the Master Site Plan does not show any electrical infrastructure in the Eastern Treasure Valley Electrical Plan. Record for the Matter, page 8019.

"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. Comprehensive Plan, page 57.

The Board finds that the Applicant requested a period of four (4) years, pursuant to Section 6-27-5A of the Zoning and Development Ordinance. Record for the Matter, page 6627.

"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. Comprehensive Plan, page 57.

The Board finds that powerlines are anticipated to parallel existing Idaho Power Powerline to the South of Running Bear RV Park. Record for the Matter, page 7944.

"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. Comprehensive Plan, page 57.

The Board finds that within the main habitat categories, up to 31 acres of wetland/riparian habitat could potentially be disturbed or lost. This habitat type is highly utilized by many wildlife species and is relatively uncommon in the high desert environment of the Property. The wetlands/riparian loss would be minimized by adjustment of project facility locations; however, the loss of wetland habitat within the Upper Reservoir footprint is unavoidable. Record for the Matter, page 6556.

The Board finds that with the Conditions, wetlands offset and expansion through mitigation, restoration of fish habitat spawning beds and reduction of streamside erosion mitigation will be paid for by the Stakeholders funds under the Development Agreement. Record for the Matter, page 8008.

"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). Comprehensive Plan, page 57.

The Board finds that well over 100 wind turbines are within a few hundred feet of the Oregon Trail in Idaho including in Elmore County. Record for the Matter, page 7970.

The Board finds that 40% of Idaho Power's generation for ratepayers is from out of state, primarily from coal-fired generation plants. Applicant will offset 2,980,000,000 pounds of CO2 emissions annually from natural gas plants. Hydro power is the main source of in-state generation and long-accepted as a feature of Idaho's landscape. Record for the Matter, page 8015.

"18. Encourage the enhancement of the capacity and reliability of renewable energy resources." Comprehensive Plan, page 58.

The Board finds that the project under the Applications can store up to 36,000 megawatt hours of electricity and can pump and generate simultaneously if needed, that is enough stored energy to run Idaho Power's entire system for over 24 hours, all from renewable electrical generation resources. Record for the Matter, page 7921.

"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." Comprehensive Plan, page 64.

The Board finds that with the Conditions, the project would implement erosion control measures, which would include minimizing ground disturbance areas during construction, stabilizing soils and installing barriers to prevent runoff, and contouring and revegetating all disturbed areas when construction is complete. Erosion control measures and revegetation activities would meet all industry standards and would

prevent water quality impacts due to erosion/sedimentation, prevent the proliferation of noxious weeds and promote re-development of quality wildlife habitat. The solar array, substation and transmission line would be designed using best practices for minimizing visual impact. These practices include siting considerations, use of vegetative and topographic screening, and selection of appropriate building materials. Record for the Matter, page 6492.

"4. Encourage equitable draw down of water levels of Anderson Dam consistent with irrigation and multiple-use management needs." Comprehensive Plan, page 64.

The Board finds that the initial filling of the 50,000 acre-feet Upper Reservoir would be performed during the high-water period from April-June when excess water is often available above the requirements for irrigation storage and in-stream flow. Filling would occur after Arrowrock Reservoir was adequately filled and all other water storage requirements were met. The filling of the Upper Reservoir may cause a short-term decrease in the releases from Anderson Ranch Dam and may thus affect flows in the South Fork Boise River. The fill rate would be adjusted to maintain adequate flows in the South Fork to support fish, wildlife and recreational use. Depending on the water available fill rate would likely be in the range of 100 - 1,000 cfs. Record for the Matter, page 6524.

"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." Comprehensive Plan, page 67.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which moved the pump storage hydro powerhouse to a new location in response to US Forest Service input. Record for the Matter, page 8020.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which has moved the PV solar site from private land near Fort Running Bear RV Park to east of Pine Road in Wind Area 2 which eliminates visibility of the PV solar plans from the RV park. Record for the Matter, page 8021.

The Board finds that the Applicant submitted a new master site plan that has eliminated wind area #1 in response to Idaho Fish and Game's wildlife studies. Record for the Matter, page 8022.

"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." Comprehensive Plan, page 46.

The Board finds that the Applicant will present the Development Agreement to the Board, in a public hearing meeting the requirements of the Zoning Ordinance and the LLUPA.

"Areas of Critical Concern Objectives:

1. Discourage encroachment on lands that contain important feeding grounds for wildlife." Comprehensive Plan, page 67.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings and under Condition Number 2, and the site plan change relocated the wind turbines from an area of elk and deer migration winter to spring/summer habitat following studies by the Idaho Department of Fish and Game. Record for the Matter, page 8022.

"3. To the extent possible, preserve the historical and natural resources within Areas of Critical Concern." Comprehensive Plan, page 46.

The Board finds that although the Goodall's Cutoff is a historic alternative route of the Oregon Trail and is in the general area, well over 100 wind turbines are within a few hundred feet of the Oregon Trail in the County. Furthermore, the largest impact on the Goodall's Cutoff is US Highway 20. Record for the Matter, page 7970.

The Board finds that based upon the foregoing finding, the Applications, with the Conditions, 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." Comprehensive Plan, page 67.

The Board finds that the Area of Critical Concern are comprised of lands within 100 feet for the banks of the South Fork of the Boise River or lands situated on hillsides greater than 15% slope. The project area includes lands within 100 feet of the Anderson Ranch Reservoir shoreline.

The Board finds that any facilities constructed within these areas of critical concern would be subject to Zoning Ordinance Supplemental Title 6 construction standards. Short segments of the hydropower pipeline, powerhouse access road and transmission line would lie within 100 feet of the shore of Anderson Ranch Reservoir. Approximately 2,500 feet of penstocks and a small area of the Upper Reservoir would be constructed on slopes exceeding 15%. Approximately 3 miles of the transmission line would traverse areas with hillsides exceeding the 15% slope limit. Record for the Matter, pages 6495-6496.

The Board finds that with the Conditions, any improvements on steep slopes will be constructed according to the Zoning Ordinance.

The Board finds that no more than 40% of CUP-2015-04 pump storage hydro falls within the Area of Critical Concern and CUP-2015-03 only falls with the ACC since its appurtenance include a transmission conveyance system. Record for the Matter, page 6496.

"8. Develop and administer a special permit evaluation procedure for all development applications within any 'Area of Critical Concern.'" Comprehensive Plan, page 67.

The Board finds that in reviewing any proposed development requests in an Area of Critical Concern, pertaining to CUPs 2015-03, 2015-04 and 2015-06, the Board will follow the following development standards under Zoning Ordinance Section 6-8-26 B.1-4:

1. Does the proposed land use demonstrate compatibility with the natural surrounding environment?

The Board finds that wind site was selected based on its wind resource, low human population, the ability to secure the required land, current land use, a large area for micro siting and placement of each wind turbine, and other considerations necessary to allow wind power to be generated from the site. The site boundary encompasses three distinct areas of approximately 3,160 acres. However, the land occupied and disturbed by the wind park would be less than 1% of this area and its traditional agricultural uses would be unaffected. It is anticipated that the area of direct land use for the turbines and associated facilities would be approximately 40 acres including all roads. Record for the Matter, pages 648-649.

2. Were technical studies required by the Director, Commission or Board to identify impacts and to determine the feasibility of the proposed use?

The Board finds that the County considered a Wildlife Mitigation Plan as the environmental study. Record for the Matter, page 6108.

The Board finds the Applicant submitted a Wildlife Mitigation Plan on December 11, 2015 as a technical study in lieu of an Environmental Impact Assessment. Record for the Matter, page 6476.

The Board finds the Applicant submitted a Critical Issues Analysis with the Application on July 2, 2015, outlining possible impact and potential mitigation. Record for the Matter, page 637.

- 3a. Do the Applications develop or expand ranching operations?

The Board finds that all applicant-owned private lands shall be preserved as open space for wildlife use as functioning ranches and all locations and construction of the facilities shall maintain the function of this land as a wildlife migration corridor. Record for the Matter, page 6545.

The Board finds that nearly all project lands are privately owned by the Applicant and project areas would simply be shifted from agriculture and ranching into use for power generation. The project would not have any significant effect on the balance of the ranches normal activities. Record for the Matter, page 6537.

- 3b. Do the Applications protect the natural and scenic environment?

The Board finds that the Applicant as part of the Application and the Conditions, will establish a Community and Ecological Stakeholder Board to ensure the project area improves sage grouse habitat on balance of ranchland, wetlands offset and expansion through mitigation, restoration of fish habitats spawning beds and reduction of streamside erosion mitigation, expansion of grazing feeding and forage opportunities for the public wildlife on ranchlands. Record for the Matter, page 8008.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which moved the pump storage hydro powerhouse to a new location in response to US Forest Service input. Record for the Matter, page 8020.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which has moved the PV solar site from private land near Fort Running Bear RV Park to east of Pine Road in Wind Area 2 which eliminates visibility of the PV solar plans from the RV park. Record for the Matter, page 8021.

The Board finds that the Applicant submitted a new master site plan that has eliminated wind area #1 in response to Idaho Fish and Game's wildlife studies. Record for the Matter, page 8022.

The Board finds that few man-made structures and unpaved roads will be visible from most viewpoints. Due to the openness of the landscape and lack of tall vegetation the hilly areas and ridgelines proposed for wind turbine development will be visible from adjacent lowland areas. Record for the Matter, page 6523.

The Board further finds that additionally, pursuant to Conditions 25, 26, 28, 30 and 32 regarding the decommissioning of the facilities at the completion of their use, the Applicant will preserve the future scenic beauty of the property.

4a. Are single-family dwellings and all structures built to fit into the natural terrain with little or no gouging of hillsides or altering of the landscape?

The Board finds that there are no single-family dwellings proposed in the Master Site Plan.

The Board also finds the Applications must be in compliance with Chapter 27 of the Zoning Ordinance. Section 6-27-5A 4.

The Board finds that construction permits are required prior to the commencement of the placement of permanent footings and structures on or in the ground, which shall include sewer lines, water lines, streets, or building foundations. Record for the Matter, page 1.

4b. Will the grading of roads that are used as access to property be kept to a minimum to prevent erosion and the destruction of scenic value?

The Board finds that with the Conditions all grading of roads will be required to comply with the Zoning Ordinance.

The Board finds that access to the solar array would be via a new private all weather road. The road and solar array would be located entirely on private land owned by the Applicant. The land area for the PV solar facility would be graded for the solar farm and then be reclaimed to the extent feasible. Record for the Matter, page 647.

"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.” Comprehensive Plan, page 82.

The Board finds that the project would have no impact on fish populations in tributaries to the South Fork Boise River or Anderson Ranch Reservoir because none of the tributaries within the project footprint (hydro and solar) support permanent water flows that would sustain a fishery. Erosion control measures would assure that wind tower development has no adverse effects on water quality in Wood Creek or the Malad River that could adversely affect any resident fish in these streams. Record for the Matter, page 679.

“11. Special Areas or Sites

Protect the South Fork of the Boise River watershed to preserve water quality.” Comprehensive Plan, page 83.

The Board finds that the Applications with the Conditions will protect the South Fork of the Boise River water quality as set forth below.

The Board finds that the Applicant provides multiple solutions for flood control, additional water for fisheries and recreation for the Boise River, while mitigating any potential temperature or quality concerns. The Applicant has identified the following resources which may require additional study analysis: monitoring of temperature and dissolved oxygen in the vicinity of the proposed powerhouse intake/outlet; analysis to quantify if there are any significant potential water temperature effects due to water exchange between the Upper Reservoir and Anderson Ranch Reservoir; analysis of the impact of water levels on the ability of fish to move out of Anderson Ranch Reservoir into the Upper South Fork Boise River. Record for the Matter, pages 6556-6557.

The Board finds that under the Conditions, the Applicant will establish a Community and Ecological Stakeholder Board to ensure the project area improves sage grouse habitat on balance of ranchland, wetlands offset and expansion through mitigation, restoration of fish habitats spawning beds and reductions of streamside erosion mitigation, expansion of grazing feeding and forage opportunities for the public wildlife on ranchlands. Record for the Matter, page 8008.

The Board finds that, pursuant to the Conditions, the project would implement erosion control measures, which would include minimizing ground disturbance areas during construction, stabilizing soils and installing barriers to prevent runoff, and contouring and revegetating all disturbed areas when construction is complete. Erosion control measures and revegetation activities would meet all industry standards and would prevent water quality impacts due to erosion/sedimentation, prevent the proliferation of noxious weeds and promote re-development of quality wildlife habitat. Record for the Matter, page 6492.

The Board finds that, pursuant to the Conditions, disturbance of reservoir shoreline and vegetated upland areas during construction of the hydroelectric intake, powerhouse and penstock has the potential to increase erosion and sedimentation, which could adversely affect water quality in Anderson Ranch Reservoir. Construction of roads and wind tower

pads for the wind turbine project element has the potential to cause erosion and sedimentation into Malad River, Castle Creek, Cat Creek, or other small streams located downslope of disturbed areas. The potential for erosion and sedimentation would be minimized by implementing industry standard erosion control measures for all aspects of the construction effort. Record for the Matter, page 6525.

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 Board finds that 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." Record for the Matter, page 7067.

The Board finds that the Applications are compatible with farming, ranching and grazing. More recent human history includes mostly grazing by domestic livestock in the general area. 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. Project facilities are located predominately on private land owned by the Applicant. These lands are zoned "Ag" and are used currently for livestock grazing. Record for the Matter, page 6502.

The Board 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." Record for the Matter, page 7068.

The Board finds that the County was willing to consider an environmental study completed in the form of a Wildlife Mitigation Plan. Record for the Matter, page 6108.

The Board finds the Applicant submitted a Wildlife Mitigation Plan on December 11, 2015 as a technical study in lieu of an Environmental Impact Assessment. Record for the Matter, page 6476.

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

The Board finds that with the addition of the Conditions the proposed use under the Application will be required to comply with all applicable County Ordinances.

The Board finds the Applicant's representative testified at the November 17, 2016 public hearing and stated "I'd like to read the proposed conditions from the staff, and specifically condition number 6, Failure to comply with any of these conditions may result in revocation of the conditional use permit. If we can't comply with what they tell us, our permits are gone. That's how we can assure the community and leave their concerns that we can't just do whatever we want once we get a conditional use permit. The whole point is it's conditioned on doing what we say we're going to do. Record for the Matter, pages 8173-8174.

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

The Board finds that with the additions of the Conditions the proposed use under the Application will comply with all applicable State and Federal regulations.

The Board finds that federal permitting process may involve the following: Federal Regulatory Commission, US Bureau of Reclamation, US Fish and Wildlife Service, US Army Corps of Engineers, Environmental Protection Agency, US Forest Service, US Bureau of Indian Affairs, US Natural Resources Conservation Service, US Bureau of Land Management, Bonneville Power Administration, Federal Aeronautics Administration, US Bureau of Homeland Security, Department of Energy, North American Electric Reliability Corporation and Federal Communications Commission and that under the Conditions, the Applicant must obtain all necessary and required approvals from such federal agencies. Record for the Matter, pages 6555-6556.

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 Board finds that with the Conditions, the proposed use under the Applications 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 the area. The use of land in the project area has traditionally been and remains primarily agriculture. Other than the dam and reservoir complex, there has been little development. The project itself occupies a relatively small part of a 23,000-acre ranch, and is surrounded for the most part by other large ranches and USFS land. Record for the Matter, page 6503.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which moved the pump storage hydro powerhouse to a new location in response to US Forest Service input. Record for the Matter, page 8020.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which has moved the PV solar site from private land near Fort Running Bear RV Park to east of Pine Road in Wind Area 2 which eliminates visibility of the PV solar plans from the RV park. Record for the Matter, page 8021.

The Board finds that the Applicant submitted a new master site plan that has eliminated wind area #1 in response to Idaho Fish and Game's wildlife studies. Record for the Matter, page 8022.

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

The Board finds that the proposed use under the Application, with the Conditions, will not be hazardous or disturbing to existing neighboring uses or impede their development.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which moved the pump storage hydro powerhouse to a new location in response to US Forest Service input. Record for the Matter, page 8020.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which has moved the PV solar site from private land near Fort Running Bear RV Park to east of Pine Road in Wind Area 2 which eliminates visibility of the PV solar plans from the RV park. Record for the Matter, page 8021.

The Board finds that the Applicant submitted a new master site plan that has eliminated wind area #1 in response to Idaho Fish and Game's wildlife studies. Record for the Matter, page 8022.

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 Board finds the proposed use is adequately served by the following public services shall be provided as follows:

Highways: U.S. Highway 20

Streets: Publicly maintained S. Pine Featherville Road, N Bennett Mountain Road, NE Castle Road, Little Camas Reservoir Road. Privately maintained road Wood Creek Road, which is a non-paved road with no winter access.

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

Record for the Matter, page 7927.

The Board finds that the project is out of any fire district, therefore the Elmore County Sheriff has jurisdiction over fire in this area. An existing water well would supply potable water for the facility and a new septic system would be designed and approved by Elmore County. Central District Health Department has signed the applications, a condition has been placed to ensure compliance. Record for the Matter, page 6491.

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 Board 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.

The Board finds that the Applicant is not requesting any funding for public facilities or services to serve the project which is the subject of the Applications. Record for the Matter, page 6553.

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 Board finds that the proposed use does not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any person's 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 for the CUPs.

The Board finds that another design of the powerhouse similar to the powerhouse silo design at Arrowrock Dam, noise levels as little as 250 feet away are little more than a whisper. At ½ mile away across still water, the noise level would continue to be approximately 27 dBI or less than a whisper decibel level 30 bBI. Record for Matter, page 7954.

The Board finds over 90 percent of the light received by the PV modules will be absorbed so there is little glare. Record for Matter, page 7950.

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 Board finds that the Idaho Department of Transportation gave the Applications a "no issues" finding. Mountain Home and Glenns Ferry Highway District's support the Project. Egress off of US 20 already exists to Project sites through: Wood Creek Road, Old Bennett Mountain Road, Pine/Featherville Road. Record for the Matter, page 7968.

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

The Board finds that the site areas are 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.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which moved the pump storage hydro powerhouse to a new location in response to US Forest Service input. Record for the Matter, page 8020.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which has moved the PV solar site from private land near Fort Running Bear RV Park to east of Pine Road in Wind Area 2 which eliminates visibility of the PV solar plans from the RV park. Record for the Matter, page 8021.

The Board finds that the Applicant submitted a new master site plan that has eliminated wind area #1 in response to Idaho Fish and Game's wildlife studies. Record for the Matter, page 8022.

H. Specific Findings for Areas of Critical Concern under Zoning Ordinance, Section 6-8-26 B.1-4, pertaining to CUPs 2015-03, 2015-04 and 2015-06.

1. Does the proposed land use demonstrate compatibility with the natural surrounding environment?

The Board finds that wind site was selected based on its wind resource, low human population, the ability to secure the required land, current land use, a large area for micro siting and placement of each wind turbine, and other considerations necessary to allow wind power to be generated from the site. The site boundary encompasses three distinct areas of approximately 3,160 acres. However, the land occupied and disturbed by the wind park would be less than 1% of this area and its traditional agricultural uses would be unaffected. It is anticipated that the area of direct land use for the turbines and associated facilities would be approximately 40 acres including all roads. Record for the Matter, pages 648-649.

2. Were technical studies required by the Director, Commission or Board to identify impacts and to determine the feasibility of the proposed use?

The Board finds that the County was willing to consider an environmental study completed in the form of a Wildlife Mitigation Plan. Record for the Matter, page 6108.

The Board finds the Applicant submitted a Wildlife Mitigation Plan on December 11, 2015 as a technical study in lieu of an Environmental Impact Assessment. Record for the Matter, page 6476.

The Board finds the Applicant submitted a Critical Issues Analysis with the Application on July 2, 2015, outlining possible impact and potential mitigation. Record for the Matter, page 637.

3a. Do the Applications develop or expand ranching operations?

The Board finds that all Applicant-owned private lands shall be preserved as open space for wildlife use as functioning ranches and all locations and construction of the facilities shall maintain the function of this land as a wildlife migration corridor. Record for the Matter, page 6545.

The Board finds that nearly all project lands are privately owned by the Applicant and project areas would simply be shifted from agriculture and ranching into use for power generation. The project would not have any significant effect on the balance of the ranches normal activities. Record for the Matter, page 6537.

3b. Do the Applications protect the natural and scenic environment?

The Board finds that the Applicant as part of the Application and Condition number 2, will establish a Community and Ecological Stakeholder Board to ensure the project area improves sage grouse habitat on balance of ranchland, wetlands offset and expansion through mitigation, restoration of fish habitats spawning beds and reduction of streamside erosion mitigation, expansion of grazing feeding and forage opportunities for the public wildlife on ranchlands. Record for the Matter, page 8008.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which moved the pump storage hydro powerhouse to a new location in response to US Forest Service input. Record for the Matter, page 8020.

The Board finds that the Applicant submitted a new master site plan at the November 16 and 17, 2016 hearings, which is incorporated into Condition 2, which has moved the PV solar site from private land near Fort Running Bear RV Park to east of Pine Road in Wind Area 2 which eliminates visibility of the PV solar plans from the RV park. Record for the Matter, page 8021.

The Board finds that the Applicant submitted a new master site plan that has eliminated wind area #1 in response to Idaho Fish and Game's wildlife studies. Record for the Matter, page 8022.

The Board finds that few man-made structures and unpaved roads will be visible from most viewpoints. Due to the openness of the landscape and lack of tall vegetation the hilly areas and ridgelines proposed for wind turbine development will be visible from adjacent lowland areas. Record for the Matter, page 6523.

The Board further finds that additionally, pursuant to Conditions 25, 26, 28, 30 and 32 regarding the decommissioning of the facilities at the completion of their use, the Applicant will preserve the future scenic beauty of the property.

4a. Are single-family dwellings and all structures built to fit into the natural terrain with little or no gouging of hillsides or altering of the landscape?

The Board finds there are no single-family dwellings proposed in the Master Site Plan.

The Board also finds the Conditional Use Permit Applications must be in compliance with Chapter 27 of the Zoning Ordinance. Section 6-27-5 A 4.

The Board finds that construction permits are required prior to the commencement of the placement of permanent footings and structures on or in the ground, which shall include sewer lines, water lines, streets, or building foundations. Record for the Matter, page 1.

4b. Will the grading of roads that are used as access to property be kept to a minimum to prevent erosion and the destruction of scenic value?

The Board finds that with the Conditions all grading of roads will be required to comply with the Zoning Ordinance.

The Board finds that access to the solar array would be via a new private all weather road. The road and solar array would be located entirely on private land owned by the Applicant. The land area for the PV solar facility would be graded for the solar farm and then be reclaimed to the extent feasible. Record for the Matter, page 6487.

I. Additional Requirements Pertaining to Electrical Generating Facilities under the Zoning Ordinance, Section 6-8-94.

The Board previously found that in addition to a conditional use permit, additional requirements are found in the following Zoning Ordinance, Section 6-8-94, pertaining to Electrical Generating Facilities:

"1. The facility shall use only natural gas, solar cells, water (hydroelectric) or wind power to produce electricity for sale. The use of diesel fuel is allowed only for emergency generation of electricity for fire suppression or winding down turbines." Zoning Ordinance, Section 6-8-94.

The Board finds that the project' overall electrical generation profile is designed for 400 MW of pump storage hydro, 110 MW of wind, 40 MW of PV solar ad 370 MW of ancillary services available 24/7/365. Record for the Matter, page 7920.

"2 The owner or operator of the facility shall show compliance with all applicable Idaho Public Utility, and Federal Agency rules and regulations before receiving a zoning permit and shall operate the facility in conformance with those same regulations. Zoning Ordinance, Section 6-8-94.

The Board finds that with the Conditions, the Applicant shall be required to show compliance with all applicable Idaho Public Utility, and federal regulatory agencies' rules and regulations, prior to the construction or operation of the project described in the Applications as amended by the Conditions.

"3. Facility improvements shall be at least 2,500 feet away from any residence existing at the time of the application for permit. This distance shall be measured from the centerline of the power producing turbine to the closest edge of the residence. The distance may be shortened if the applicant applies for and is granted a waiver using the standards and procedures contained in this ordinance. A distance waiver shall be granted by the Commission provided, the owner(s) of affected residence(s) waive, in writing, the 2,500-foot setback requirements. If such a waiver(s) are submitted to the Administrator for each residence within the 2,500-foot setback no variance approval shall be required. Zoning Ordinance, Section 6-8-94.

The Board finds that there are no wind turbines within 2 miles of any residence. Record for the Matter, page 7954.

"4. Operation of the facility shall not result in any noise louder than 58 decibels on the A-weighted decibel scale as measured from 750 feet from the centerline of the power producing turbine. A higher decibel reading would require a variance unless the Commission grants a noise waiver. The Commission may grant a noise waiver provided the owner(s) of affected property waive in writing the 58Db noise requirement." Zoning Ordinance, Section 6-8-94.

The Board finds that another design of the powerhouse similar to the powerhouse silo design at Arrowrock Dam, noise levels as little as 250 feet away are little more than a whisper. At ½ mile away across still water, the noise level would continue to be approximately 27 dBI or less than a whisper decibel level 30 dBI. Record for Matter, page 7954.

The Board finds that sound levels along a fence boundary of the PV arrays were generally at background levels, though a faint inverter hum could be heard at some locations. Any sound from the PV array and equipment was inaudible at set back distance of 50 to 150 feet from the boundary. Average sound levels at a distance of 10 feet from the inverter face varied over the range of 48 dBA to 61 dBA for Site 2 and Site 3 Inverters, and were higher in the range of 59 to 72 dBA for Site 1 Inverters. Along the axis perpendicular to the plane of the inverter face and at a distance of 10 to 30 feet, sound levels were 4 to 13 dBA higher compared to at the same distance along the axis parallel to the inverter face. At 150 feet from the inverter pad, sound levels approached background levels. Sound levels measurements generally followed the hemispherical wave spreading law (6 dB per doubling of distance). Record for the Matter, page 987.

"5. The applicant, with its building permit application, shall submit and thereafter follow a landscaping, screening and noise control plan to comply with section 4 above. The plan's ability to comply with section 4 shall be certified by a licensed engineer employed by the applicant. All improvements on the facility shall be enclosed by an appropriate security fence." Zoning Ordinance, Section 6-8-94.

The Board finds that with the Conditions, an appropriate security fence will be installed.

"6. The applicant shall demonstrate and maintain an adequate fire protection and fire fighting capacity, including entering into an agreement with a public firefighting agency when the applicant's project is within the jurisdiction of such an agency." Zoning Ordinance, Section 6-8-94.

The Board finds that this project is outside of any fire jurisdiction and the Elmore County Sheriff Department has jurisdiction for fire.

"7. Before a zoning permit is granted, the applicant shall hold at least two (2) public meetings. Notice of those meetings shall be by publication in local newspaper and by mail to property owners within one (1) mile of the proposed facility." Zoning Ordinance, Section 6-8-94.

The Board finds that with Conditions, the Applications will comply with the requirement.

"8. The Administrator shall cause the applicant to provide information detailing possible adverse impacts and require mitigation of same." Zoning Ordinance, Section 6-8-94.

The Board finds the Applicant submitted a Critical Issues Analysis with the Application on July 2, 2015, outlining possible impact and potential mitigation. Record for the Matter, page 637.

The Board finds the Applicant submitted a Wildlife Mitigation Plan on December 11, 2015 as a technical study in lieu of an Environmental Impact Assessment. Record for the Matter, page 6476.

"9. Towers and structures that seek to exceed the building height restrictions from Table 6-8-12 (C) must be compatible with the flight operations of MHAFB and the City of Mountain Home and Glenns Ferry public airport operations. The proposed plan should be coordinated and approved by local, state, federal and military aviation officials." Zoning Ordinance, Section 6-8-94.

The Board finds that the Property is more than 5 miles from Mountain Home AFB as described in the Applications. Record for the Matter, page 105.

"10. Towers and height variances shall not be granted within 5 miles of Mountain Home AFB or along depicted flight corridors." Zoning Ordinance, Section 6-8-94.

The Board finds that the Property is more than five miles from Mountain Home AFB. Record for the Matter, page 105.

11. Within the Mountain Home or Glenns Ferry airport influence areas overlay district, the height limits on the tower or facility structures shall be as required by the Code of Federal Regulations 14 CFR 77. Zoning Ordinance, Section 6-8-94.

The Board finds that this Property is not within the Mountain Home or Glenns Ferry airport influence areas overlay district as described in the Applications. Record for the Matter, page 105.

"12. Notification distance shall be increased at the discretion of the Director to accommodate for visual impacts." Zoning Ordinance, Section 6-8-94.

The Board finds that the Director extended the radius of notification to 5,280 feet. Record for Matter, page 107.

J. Additional Requirements Pertaining to Public or Quasi-Public Use - Electrical Generating Facilities under the Zoning Ordinance, Section 6-8-170.

The Board finds that in addition to a conditional use permit, additional requirements are found in the following Zoning Ordinance, Section 6-8-170, pertaining to Public or Quasi-Public Use - Electrical Generating Facilities.

"1. Electric distribution lines shall be principal permitted uses. Master site plan approval is not required." Zoning Ordinance, Section 6-8-170.

The Board finds the Applicant submitted a Transmission Map on July 31, 2015. Record for the Matter, page 744.

2. Electric sub transmission lines shall be principal permitted uses. Master site plan approval shall be required." Zoning Ordinance, Section 6-8-170.

The Board finds the Applicant submitted a new Master Site Plan on November 16, 2016, which shall be incorporated herein under Condition Number 2. Record for Matter, page 8022.

3. Electric transmission lines and substations shall require conditional use approval." Zoning Ordinance, Section 6-8-170.

The Board finds the Applicant submitted Conditional Use Permits for transmission lines CUP-2015-03 and substation CUP-2015-07 on February 17, 2015. Record for the Matter, pages 1-104 and 420-524.

4. All electric transmission, sub transmission, and distribution line rights of way shall be exempt from the landscaping regulations of this Title." Zoning Ordinance, Section 6-8-170.

The Board finds that the transmission lines would be built to current avian protection standards. The transmission line would be constructed to avian protection standards pursuant to Suggested Practices for Raptor Protection on Powerlines: The State of the Art of 2006 or other current standard recommended by wildlife agencies. The project would implement erosion control measures, which include minimizing ground disturbance areas during construction, stabilizing soils, and installing barriers to prevent runoff, and recontouring and revegetating all disturbed area when construction is complete. Erosion control measures and revegetation activities would meet all industry standards and would prevent water quality impacts due to erosion/sedimentation, prevent the proliferation of noxious weeds, and promote re-development of quality wildlife habitat. Record for the Matter, page 675.

5. Electric substations and other utility structures shall be deemed outdoor storage areas and shall meet the standards in this Chapter." Zoning Ordinance, Section 6-8-170.

The Board also finds the Conditional Use Permits Applications must be in compliance with Chapter 27 of the Zoning Ordinance. Section 6-27-5A 4. Record for the Matter, page 1.

6 Towers for the purpose of communicating from the substation to remote devices shall be deemed an accessory use to an approved substation, provided that the pole and antenna are no taller than the existing towers." Zoning Ordinance, Section 6-8-170.

The Board also finds the Conditional Use Permits Applications must be in compliance with Chapter 27 the Zoning Ordinance. Section 6-27-5A 4. Record for the Matter, page 1.

7. All wire fences, metal structures, and metal objects shall be grounded as required by this Title." Zoning Ordinance, Section 6-8-170.

The Board finds the Conditional Use Permits Applications must be in compliance with Chapter 27 of the Zoning Ordinance. Section 6-27-5A 4. Record for the Matter, page 1.

13. No Approval to Develop or Use Public Lands.

The Board finds that nothing contained herein shall grant the Applicant consent or approval to develop, construct improvements on, use or operate any of the uses set forth in the Applications on any federal or state grounds without such permits, licenses and approvals as may be required by the United States of America or the State of Idaho, as applicable.

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

With the addition of the Conditions the Applications are approved as further set forth herein.

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 Board concludes that the appeal application meets the requirements of Zoning Ordinance.
2. The Board concludes that the notice requirements of the Zoning Ordinance have been met.
3. The Board concludes that the public hearing notice requirements of LLUPA have been met.
4. The Board concludes that the Applications with the Conditions comply with the required findings set forth in [Sections 6-27-4, 6-27-7 and 6-8-26 B.1-4 of] the Zoning Ordinance.

ORDER

Based upon the foregoing Findings of Fact and Conclusion of Law and the record for the Applications, the Board hereby **reverses** the decision of the Commission denying the Applications and **approves** the Applications subject to the Conditions.

Dated this 10th day of February 2017.

ELMORE COUNTY BOARD OF COMMISSIONERS:

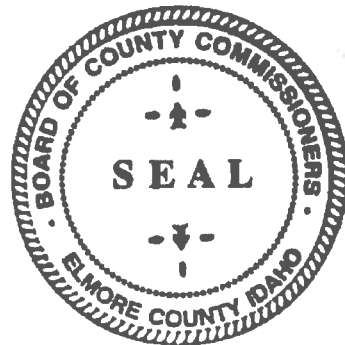
By: 
Albert Hofer, Chairman

By: Absent from hearings and deliberation
Wesley R. Wootan, Commissioner

By: 
Franklin L. Corbus, Commissioner

Attest:

By: 
Barbara Steele, Clerk



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

A decision made by the Elmore County Board of Commissioners (the "Board") may be reconsidered by the Board provided the reconsideration application is complete and reconsideration fee is submitted to the Land Use and Building Department within ten (10) calendar days of Board's action. The reconsideration may be granted upon a determination of a "good cause." Questions concerning reconsideration or deadlines should be asked of the Elmore County Land Use and Building Department.

NOTICE PURSUANT TO IDAHO CODE § 67-6519(4)(C)

The Applicant shall have the right to request a regulatory taking analysis pursuant to Idaho Code § 67-8003. An applicant denied an application or aggrieved by a final decision concerning matters identified in section 67-6521(1)(a), may within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by Idaho Code title 67, ch. 52.

Exhibit A
Conditions of Approval of the Applications

"Conditions"

General Conditions:

1. The Conditional Use Permit is valid for four (4) years and may be extended for one 2-year period ("**Expiration Date**") upon application to the Department, which extension may be granted in the discretion of the Commission or Board, if appealed thereto, provided the Applicant has demonstrated significant progress in obtaining federal permits and it is likely that the Applicant will be in a position to start construction of the proposed improvements within the two-year extension period. All improvements shall be completed and the use shall commence within this timeframe.
2. A "**Development Agreement**" between the Applicant, the landowner of the Property and Elmore County which shall be recorded against the Property on or before November 15, 2017, which date may be extended by the Board for one additional six month period, and shall following ongoing discussions and draft reviews with county staff, be presented to the Board in a public hearing subject to the Zoning Ordinance and the LLUPA, and shall include, among other things, the following terms and conditions:
 - (a) clear definition of the project based upon the site plan presented to the Board at the November 16 and 17, 2016 hearings and such site plan and project description shall be added to and included into the Application;
 - (b) develop methods of furthering water delivery in the county for the transfer of county water to Little Camas Reservoir or other county water diversion or storage areas based upon county needs and the county's water rights, which may include the storage of water for the county until such time as the county water may be needed;
 - (c) in conjunction with IDWR approval, construct necessary water development projects in the Boise River drainage system in order to transfer water into arid portions of Elmore County;
 - (d) obligation and time frame to develop a Community and Stakeholder Board ("**Stakeholder Board**"), to: (a) oversee the expenditure of the required the annual contribution of \$330,000 by the Applicant to the Stakeholder Board for management, conservation and enhancement of plants, animals, fish and birds that inhabit the project area, (b) oversee development of wetlands mitigation due to the project which is the subject of the Applications; (c) provide oversight and approval of the visual audio screening and minimization of impact to the surrounding areas of the solar array, substation and transmission lines which shall be designed using best practices to minimizing visual and audio impact; The number, backgrounds, stakeholder groups for members of the Stakeholder Board will be established by the Applicant and the Board as a part of the Development Agreement and shall consist of members from different agencies such as Mountain Home Irrigation District, Idaho Department of Fish and Game, Glenns Ferry Highway District, a member or the chairman of the sage grouse conservation group for Elmore County, a Pine-Featherville resident, one or more representatives of Elmore County

- government, as well as other interested parties as determined by the Applicant and the Board.
- (e) the Applicant's obligation to fund annual fish stocking in Anderson Ranch Reservoir to compensate for any net loss of game fish due to entrainment into the hydropower penstocks and working with Idaho Fish and Game to develop the details of this program;
 - (f) the Applicant's obligation to fund conservation efforts affecting areas of sage-grouse habitat surrounding wind turbine areas 2 and 3, in the eastern part of Wood Creek Ranch, where evidence of sage-grouse usage exists and the best sage-grouse habitat is found. The conservation effort would be a cost-share with the Sage-Grouse Initiative and may include measures such as prescribed grazing, fence marking and water tank escape ramps;
 - (g) the Applicant's obligation to fund annual fish stocking in Anderson Ranch Reservoir to compensate for annual net loss game fish due to entrainment into the hydropower penstocks and that the Applicant would work with Idaho Department of Fish and Game to develop the details of this program on or before commencement of the operation of the project with is the subject of the Applications;
 - (h) the Applicant's plan to implement erosion control measures, which would include minimizing ground disturbance areas during construction, stabilizing soils and installing barriers to prevent runoff, and contouring and revegetating all disturbed areas when construction is complete, including erosion control measures and revegetation activities which will meet all industry standards and would prevent water quality impacts due to erosion/sedimentation, prevent the proliferation of noxious weeds and promote re-development of quality wildlife habitat;
 - (i) the Applicant's erosion control plan for all aspects of the construction effort to minimize disturbance of reservoir shoreline and vegetated upland areas during construction of the hydroelectric intake, powerhouse and penstock has the potential to increase erosion and sedimentation, which could adversely affect water quality in Anderson Ranch Reservoir. Construction of roads and wind tower pads for the wind turbine project element has the potential to cause erosion and sedimentation into Castle Creek, Cat Creek, or other streams located downslope of disturbed areas;
 - (j) the solar array, substation and transmission lines shall be designed using best practices for minimizing visual impact and shall be subject to oversight and approval by the Stakeholder Board;
 - (k) maintain communications with IDFG and USFWS, as with the other agencies involved, to sustain fish and wildlife habitats necessary to provide quality fish and wildlife recreation;
 - (l) establishment of permissible noise limitations for each aspect of the project under the Applications;
 - (m) the Scholarship Fund;
 - (n) review of the proposed or anticipated coverage of the water transmission lines from the Anderson Ranch Reservoir to the Property storage reservoir; and
 - (o) Incorporation of the Conditions as may be expanded and refined by the Board and the Applicant.

The failure to complete this Condition on or before the date set forth herein shall result in the termination of the approval to which this Condition is attached.

3. The Applicant shall comply with any highway district requests for a formal road analysis done in advance and approved by the applicable highway district commissioners and any public roadway improvements required by the highway district shall be paid for by the Applicant.
4. All restroom facilities shall be installed to meet Idaho State Sewage Regulations.
5. The proposed use shall comply with all the requirements of section 6-8-97 of the Elmore County Zoning and Development Ordinance.
6. All outstanding taxes and fees, including county consultant fees, must be paid prior to the issuance of an Elmore County building permit.
7. Failure to comply with any of these Conditions on or before the dates set forth on any individual Condition may result in revocation of the Conditional Use Permit(s).
8. The proposed use will be constructed in substantial conformance with the master site plan submitted on November 16, 2016, which shall be defined in the Development Agreement.
9. Prior to issuance of building permit, Applicant must hold two (2) public meetings. Notice of those meetings shall be by publication in local newspaper and by mail to property owners within one (1) mile of the proposed facility, an overall site plan, stamped and signed by Applicant's engineer, must be approved by the County Engineer to ensure drainage and storm water management is adequate.
10. Grading or development on slopes greater than 15% shall meet Zoning Ordinance requirements.
11. All proposed new roads shall meet Zoning Ordinance requirements.
12. The use shall comply with all applicable requirements of Zoning Ordinance. All new structures shall comply with Elmore County Sheriff and/or Idaho State Fire Marshal requirements for fire suppression.
11. All solid waste, refuse and trash removal shall be the responsibility of the property owner to have removed by private hauler. The site shall remain clear of any public nuisance or accumulation of construction debris, trash and/or rubbish.
12. The use shall comply with all Idaho Department of Transportation regulations.
13. All improvements shall be funded and completed by the Applicant.
14. All facilities and buildings shall be removed within 180 days of the expiration of the use. All footings and foundations shall be removed to a depth of three feet below the surface.
15. Prior to any construction an updated Wildlife Mitigation Plan/Environmental Impact Statement shall be submitted to Elmore County once the NEPA process is near completion. The Wildlife Mitigation Plan/Environmental Impact Statement shall be reviewed and will be subject to approval by the Commission for compliance with

Elmore County Ordinances, including but not limited to standards for conditional use permits and environmental studies.

16. Applicant/owner shall be required to obtain all necessary permits, as maybe required under Federal, State or local statutes and regulations including but not limited to building permits. The applicant/owner shall provide verification with the regulations and requirements of the agencies.
17. The Applicant shall obtain all necessary approvals from all necessary Federal and State agencies prior to making any change to any wetland or riparian area in existence as the date of this approval.
18. All structures to be built shall comply with the Zoning Ordinance.
19. All roads shall be constructed and maintained in full compliance with the Zoning Ordinance.
20. All permits necessary to construct, build and operate any improvements on land belonging to the United States of America or the State of Idaho, including all permits necessary to operate power generating facilities, shall be obtained on or before the Expiration Date.
21. Zoning Ordinance Section 6-27-4 Conditional Use Standards:
 - A. The applicant shall agree to comply with the approved plans and specifications.
 - B. The applicant shall have a continuous obligation to maintain adequate housekeeping practices so as not to create a nuisance.
 - C. Prior to review of the proposed conditional use, the applicant or owner shall obtain the written approval of the appropriate fire authority with regard to the location specifications of any proposed structure, facility, or use.
 - D. No structure or facility (excluding signs) shall be located within twenty (20') feet of a residential district unless a sound wall or screen as approved by the Director is provided.
 - E. A sound wall shall be included in the landscape plan for any parking areas abutting a residential district.
 - F. The owner and/or operator shall maintain sanitary practices so as not to create a public nuisance and to reduce noise and odor.
 - G. The owner and/or operator shall furnish evidence that any dangerous characteristics of the proposed use have been or shall be eliminated or minimized so as not to create a nuisance or be detrimental to the public health, safety, or welfare.
 - H. If abutting a residential district or within a residential district, the facility hours may be limited by the decision-making body.
 - I. If abutting or within an Agricultural district, the proposed use shall not cause detrimental impacts to agriculture.
 - J. The decision-making body may require additional conditions to mitigate impacts. The conditions may include, but shall not be limited to, any or all of the following:
 - K. Standards related to the emission of noise, vibration, and other potentially objectionable impacts; and
 - L. Limits on time of day for the conduct of the specified use; and
 - M. The period within which the permit shall be exercised or otherwise lapse; and

- N. Other standards necessary to protect the public health, safety, and welfare and mitigate adverse effects on surrounding property.
22. Obtain approval for water rights from Idaho Department of Water Recourses as may be necessary and required to operate the facilities under the Applications on or before the expiration of the CUPs.
23. Obtain all necessary federal and state permits as may be necessary and required to operate the facilities under the Applications on for before the expiration of these CUPs.
24. Approval of the Interconnection Application by the Bonneville Power Administration.
25. Completion of a power sale agreement by and between the Applicant and Idaho Power or another established utility for the sale and deliver of electrical power developed as part of the project under the Applications.
26. Compliance with all Central District Health Department requirements concerning wells or potable water systems, septic or sewer systems and refuse disposal.
27. Compliance with all Idaho Public Utility, and federal regulatory agencies' rules and regulations prior to the construction or operation of the project described in the Applications as amended by the Conditions.
28. Compliance with all federal, state and local laws, rules and regulations.
29. The Applicant and operator of the project under the Applications, shall provide an annual report to the Board and public meeting with the Board, no less than once each year commencing in the spring of 2018, to provide a status report to the Board regarding compliance with these Conditions, construction and development status of the project under the Applications, status of the Stakeholder Board, compliance with the Development Agreement, public complaints, and such other matters pertaining to the project under the Applications as the Board may desire to discuss.
30. Upon commencement of the operation of the project under the Applications, the operator and/or Applicant shall make an annual contribution in the amount of Ten Thousand Dollars (\$10,000.00) per year ("**Scholarship Fund**") to fund a post high school education opportunities for students who are residents of Elmore County, which scholarship fund shall be administered by the Board or such other committees and administer and distribute other Elmore County scholarship programs, as further set forth in the Development Agreement.
31. Upon commencement of the operation of the project under the Applications, the operator and/or Applicant shall make an annual contribution in the amount of Ten Thousand Dollars (\$10,000.00) per year ("**Senior Fund**") to be divided between the three senior citizens centers located in Elmore County.
32. For all purposes under the Development Agreement or these Conditions, the Applicant shall also mean any assignees of the rights under the Matter described in the Findings of Fact, Conclusions of Law and Order and the operator of the project as described in the Development Agreement or the Applications.

Conditions for transmission lines (CUP-2015-03):

33. Prior to any construction of any power line towers, the developer will submit a decommissioning plan to the Department estimating the cost of restoring the site to its original conditions. Developer will enter a bond with Elmore County for the net cost of the restoration. The amount and terms of the bond shall be approved by the Board. Developer shall submit an updated decommissioning plan every five years and will increase the amount of the bond if the net cost of restoration increases from the prior study.

Conditions for pump storage hydro electrical generating facility (CUP-2015-04):

34. Prior to any construction, the developer will submit a decommissioning plan to the Land Use and Building Department estimating the cost of restoring the site to its original conditions. Developer will enter a bond with Elmore County for the net cost of the restoration. The amount and terms of the bond shall be approved by the Elmore County Board of County Commissioners. Developer shall submit an updated decommissioning plan every five years and will increase the amount of the bond if the net cost of restoration increases from the prior study.
35. A security fence shall be installed around the electrical generating portion of the project.

Conditions for PV solar electrical generating facility (CUP-2015-05):

36. Prior to any construction, the developer will submit a decommissioning plan to the Land Use and Building Department estimating the cost of restoring the site to its original conditions. Developer will enter a bond with Elmore County for the net cost of the restoration. The amount and terms of the bond shall be approved by the Elmore County Board of County Commissioners. Developer shall submit an updated decommissioning plan every five years and will increase the amount of the bond if the net cost of restoration increases from the prior study.
37. A security fence shall be installed around the electrical generating facility.

Conditions for wind turbine electrical generating facility (CUP-2015-06):

38. Prior to any construction, the developer will submit a decommissioning plan to the Land Use and Building Department estimating the cost of restoring the site to its original conditions. Developer will enter a bond with Elmore County for the net cost of the restoration. The amount and terms of the bond shall be approved by the Elmore County Board of County Commissioners. Developer shall submit an updated decommissioning plan every five years and will increase the amount of the bond if the net cost of restoration increases from the prior study.
39. All facilities and buildings shall be removed within 180 days of the expiration of the use. All footings and foundations shall be removed to a depth of three feet below the surface.

Conditions substation (CUP-2015-07):

40. Prior to any construction, the developer will submit a decommissioning plan to the Land Use and Building Department estimating the cost of restoring the site to its original conditions. Developer will enter a bond with Elmore County for the net cost of the restoration. The amount and terms of the bond shall be approved by the Elmore County Board of County Commissioners. Developer shall submit an updated decommissioning plan every five years and will increase the amount of the bond if the net cost of restoration increases from the prior study.
41. A security fence shall be installed around the facility.
42. The governing body or administrator for these conditions and the development agreement shall be the Board.