

## BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

**In Re:** CUP-2019-01: This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the "**Commission**"), the 16th day of January, 2019, for a public hearing, held pursuant to public notice as required by law, on a request for a Conditional Use Permit (the "**CUP**") for a Sand and Gravel Pit (the "**Application**"). The property is located in Section 2, Township 2 South, Range 5 East, B.M. and is zoned Agriculture (the "**Site**"). The Commission heard from the applicant in support of the Application. The Commission heard public testimony from impacted individuals against the Application. Prior to the public hearing, the Commission also received written testimony and information for and against the Application. Upon conclusion of the public hearing, the Commission closed the record to additional evidence and voted to defer the deliberations to February 20, 2019. On February 20, 2019 the Commission commenced on the Application and, after making findings and conclusions in accordance with the applicable law, approved the CUP Application with Conditions, as hereafter defined.

### FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

#### FINDINGS OF FACT

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the Application, the analysis and recommendations of the Elmore County Land Use and Building Department (the "**Department**") record for the and per Idaho Rule of Evidence 201, those facts which are in common knowledge or of which there is general public awareness and the accuracy of which can be readily determined from sources whose accuracy cannot reasonably be questioned ("**Judicially Noticed Fact**").

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

**A.** Application form prepared and submitted by Jonathan Dodge (the "**Applicant**") for the CUP; and

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

**II. The Commission finds that the Applicant is:**

Jonathan Dodge  
2708 Canyon Creek Road  
Mountain Home, ID 83647

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

- a) In accordance with Section 7-3-2 (A) of the Elmore County Zoning and Development Ordinance, the Applicant completed a pre-application conference with the director prior to the submittal of the application on October 9, 2018.
- b) In accordance with Section 7-3-3 (B) and 7-2-169 (A) (7) of the Zoning Ordinance, the Applicant mailed out Neighborhood Meeting Letters on November

5, 2019 to neighboring property owners within one thousand (1000') feet, giving notice of the time, date and location of the meeting.

- c) In accordance with Section 7-3-3 of the Zoning Ordinance, the Applicant conducted the required neighborhood meeting on November 20, 2018.
- d) On December 11, 2018 the Land Use and Building Department accepted a conditional use permit application, a master site plan, and the required four hundred (\$400) dollar fee from the Applicant to conduct business as a Sand and Gravel Pit.
- e) On December 13, 2018 the Department deemed the CUP application complete and set a Public Hearing for January 16, 2019.
- f) In accordance with Section 7-3-5 (C) of the Zoning Ordinance, the Department mailed Public Hearing Notices to landowners within the required one thousand (1,000') feet of the property on December 28, 2018.
- g) In accordance with Section 7-3-4 (A) of the Zoning Ordinance, the Department mailed Public Hearing Notices to agencies on December 28, 2018.
- h) In accordance with Section 7-3-5 (A) of the Zoning Ordinance, the Public Hearing Notice was published in the Mountain Home News on December 26, 2018.
- i) In accordance with Section 7-3-5 (B) of the Zoning Ordinance, the Public Hearing Notice was posted on the property on January 8, 2019.
- j) The Commission opened the public hearing on January 16, 2019 and received verbal and written information regarding the Application.
- k) At the conclusion of the testimony, the Chairperson closed the public hearing. The Commission tabled the deliberations until its next regular meeting on February 20, 2019, to allow time to consider the record in light of the applicable law.
- l) The Commission conducted deliberations February 20, 2019 on the Application.
- m) Thereafter, the Commission moved to approve the Application with twelve (12) conditions of approval. The motion to approve the Application passed on a 5 to 1 vote.

**IV. The Commission finds the proposed use of the Application as follows:**

- A.** The Submitted master site plan proposes a Sand and Gravel Pit on a 40-acre parcel in the Agriculture zone.
- B.** The Applicant's request for a sand and gravel pit is consistent with information submitted by the Applicant.

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

- A. Site Description:** Section 2, Township 2 South, Range 5 East, B.M. A common way of locating the property is to head West on American Legion Blvd, turn right onto 2<sup>nd</sup> East St./Old U.S. 30 W. for 3.7 miles, turn left onto Ditto Creek Road/Old Oregon Trail for 6.9 miles, turn right onto Ditto Creek Road for approximately 2.6 miles, turn

right onto Martha Ave. the site is located on the left. Record, pgs. 3, 13-15, 79

**B. Parcel Number:** RP 02S05E026600 A and RP02S05E026000 A

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

Jonathan Dodge  
2708 Canyon Creek Road  
Mountain Home, ID 83647

**D. Applicant's Property Right in the Site is:** Applicant is the owner of the property. Record, p. 3, 15-15, 79

**E. Site Characteristics:**

*Property Size:* The site contains approximately two 20-acre parcels.

*Existing Structures:* None

*Existing Vegetation:* The vegetation consists of mainly dry grazeland.

*Slope:* Relatively flat and less than 10% slope.

*Flood Zone Status:* The parcel that will contain the gravel pit is what FEMA defined as Zone X located outside of all known flood zones. The parcel that will be utilized as the access road to the gravel pit is partially within the flood zone defined by FEMA as Zone A. Record, p. 29

*Irrigation:* None of the property is being irrigated and is not utilizing surface or subsurface irrigation water rights.

*Views:* The property is visible from all directions.

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

Based on the officially adopted Elmore County land use maps 2017-01, the Comprehensive Plan, and the Zoning Ordinance, the current zoning for the Site is Agriculture.

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

- A. Based on the officially adopted Elmore County land use maps, the Comprehensive Plan and the Zoning Ordinance, the surrounding land use and zoning are as follows:
- a) North: Agriculture
  - b) East: Agriculture
  - c) South: Agriculture
  - d) West: Agriculture
  - e) The site of the proposed sand and gravel pit is not located in a designated flood zone. Record, p. 158

**VIII. The Commission finds the existing services as follows:**

- A.** Based on the officially adopted Elmore County land use map 2017-01 and materials found in the Department's file for CUP-2019-01, the following facts concerning services and infrastructure, are not in dispute and are adopted as finding of fact in the Commission's Findings of Fact, Conclusions of Law, and Order (FCO):
- a) Access Street and Designation: Access to the proposed site will be off of Ditto Creek Road.
  - b) Fire Protection: The property is located in the Oasis Fire District.
  - c) Sewage Disposal: The property does not have access to public sewer system and will require an adequate number of portable toilets with hand washing facilities and disposal service as the Central District Health Department may require.
  - d) Water Service: None. Any water necessary to operate as a sand and gravel pit and for rock crushing the property will have water delivered by truck, unless a well is established consistent with applicable laws.
  - e) Irrigation District: The property is not located in an Irrigation District.
  - f) Drainage District: None

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

- a) Comprehensive Plan. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014 (the "**Comprehensive Plan**"); and
- b) Zoning Ordinance, adopted May 18, 2018 as Ordinance 2018-03; and
- c) The Local Land Use Planning Act, Idaho Code § 67-6501 et seq; and
- d) Other applicable local, state, and federal laws and regulations.

**X. The Commission finds the following regarding the Comprehensive Plan.**

- A.** That the Comprehensive Plan Future Land Use Map (Map 4) has the proposed property classified as Agriculture.
- B.** The Application is in conformance with the Comprehensive Plan as stated in the findings.

**XI. The Commission finds the following regarding the Zoning Ordinance.**

- A.** The Elmore County Planning and Zoning Ordinance is the document governing the Site pursuant to Zoning Ordinance Title 7 Chapter 9.
- B.** In order to approve the CUP application, the following findings as set forth in Title 7 Chapter 9 Section 7-9-7 of the Zoning Ordinance shall be made.

1. **The proposed use shall, in fact constitute a Conditional Use as determined in Title 7 Chapter 2, Table 7-2-26 (B), Elmore County Land Use Table, as contained in this Ordinance;**

**The Commission finds:** The parcel for the proposed sand and gravel pit is zoned Agriculture. In accordance with 7-2-26 (B), a Pit, Mine or Quarry requires a conditional use permit in the Agriculture zone.

**The Commission voted 6-0** that the Application meets this standard.

2. **The proposed use shall be in harmony with and in accordance with the Elmore County Comprehensive Plan and this Ordinance;**

**A. Comprehensive Plan:** The evidence presented to the Commission is consistent with the multiple relevant goals and objectives of the 2014 Comprehensive Plan, including, but not limited to:

a) **Private Property Rights Goal Statement 2-** *The community goal is to acknowledge the responsibilities of each property owner as steward of the land, to use their property wisely, maintain in good condition and preserve it for future generations (pg. 12).*

**The Commission finds:** Applicant is a second-generation sand and gravel pit owner/operator. Applicant has been operating gravel pits for over 20 years. Applicant's two existing sand and gravel pits abut residential areas.

**The Commission finds:** Applicant utilizes his property sensibly by mining natural material that is in high demand for building roads and residential and business construction projects throughout Elmore County.

**The Commission finds as a Judicially Noticed Fact:** There is a high demand for, and economic value of sand, gravel, rock and related materials for construction infrastructure.

b) **Economic Goal Statement 1-** *Diversify and improve the economy of Elmore County in ways that are compatible with community values (pg. 30).*

**The Commission finds:** Applicant currently owns and operates two active sand and gravel pits. Applicant uses the property he owns to generate natural materials that are in high demand throughout the county to help build and maintain roads and provide fill material for new construction in a community and region that is experiencing steady growth.

**The Commission finds as a Judicially Noticed Fact:** Outsourcing gravel will have an impact on the cost of local construction due to the cost of having to transport out of county resources from a greater distance. Producing gravel in Elmore County will diversify and improve the economy of Elmore County.

c) **Economic Objective 1-** *Support existing business industry in the County (pg. 30).*

**The Commission Finds:** Economic growth in Elmore County is on a steady incline as indicated by the general increase in the number and value of residential permits issued by the Department over the last three years as

demonstrated by the Department's Executive Permit Summary dated 2016-2019.

**The majority of the Commission finds:** Sand and gravel pits expand the gravel resource base in Elmore County; a resource base that will support anticipated growth throughout the County to include new roads, commercial construction, and industrial development. Sand and gravel pit operations could provide employment opportunities for Elmore County residents. One Commissioner believes this statement fits Economic Goal Statement 1.

**The Commission finds as a Judicially Noticed Fact:** Gravel is not a renewable resource. Gravel reserves must be replaced by way of discovery and development of new gravel reserves to offset the loss of gravel reserves from depleted gravel sources. Gravel reserves must be replaced on a continuous basis to offset the increase in gravel use resulting from increased construction and population growth. When gravel demand exceeds gravel supply, prices for gravel products increase

d) **Economic Objective 2- Encourage broad-based economic development programs that include (pg. 30):**

- *Natural resources such as mining, timber, and agriculture from both federal and private lands.*
- *Commercial development*
- *Industrial development*
- *Tourism Expansion and Development*
- *Military Expansion and Development*

**The Commission finds:** Agricultural land use is the base zone throughout Elmore County. Agricultural land use zone includes croplands, grazing lands, dairies, rangeland, residential housing, and mining; mining includes open pit, excavation of gravel, rock, sand and water.

**The Commission finds:** The land parcel for the proposed pit is 20 acres in size and is bare rangeland. There have been numerous areas throughout the state and Elmore County where sand and gravel operations have been an allowed use and adjacent to other agricultural operations.

**The Commission finds:** The County must balance its natural resources with expansion and growth in unincorporated areas. The proposed sand and gravel pit would retain the resources and jobs within the County consequently reducing the need to obtain those equivalent resources from outside of the County limits.

e) **Land Use Goal 1- Provide for the orderly growth and accompanying development of the resources within the County that is compatible with a rural lifestyle (pg. 35).**

**The Commission finds:** The Goal of the County is to encourage growth and development in an orderly fashion and to recognize that land is valuable and should be utilized in a constructive manner.

**The Commission finds:** The proposed location is rural in character; the vast majority of the area is dry grazeland with a few residences in the vicinity and State-owned land to the East and South of proposed operation site.

**The Commission adopted:** the map of property owners within one-thousand (1,000') feet of proposed site as Exhibit J as displayed at the Public Hearing. Record, p. 158.

**The Commission finds:** The proposed pit site must be designed and operated to meet or exceed all applicable federal, state, and county regulations, laws, guidelines, and standards in order to prevent the pit from becoming a nuisance to the residence who reside near the proposed site.

- f) **Land Use Goal 2-** *Achieve a land use balance, which recognizes that existing agricultural uses and new residential development may occur in the same community (pg. 35).*

**The Commission finds:** Agricultural lands need to be preserved in Elmore County while supporting residential and commercial development. It may be more appropriate to permit a mining operation in an area that is not suitable for irrigated farmland thus reducing the potential infringement on prime farming land. The proposed site for the sand and gravel pit is not adjacent to irrigated croplands on or near the property.

**The Commission finds:** That allowing a sand and gravel pit in an area where there are less accessible water sources for farming would have less of an impact on the agriculture industry while providing a necessary mineral resource to a County that is experiencing steady growth and development.

- g) **Soils Objective 1-** *Prevent undue erosion of land through reclamation. Re-vegetation that is compatible to the area should be encouraged (pg.44).*

**The Commission finds:** Applicant is actively working with Idaho Department of Lands in developing a reclamation plan; which is a condition of use following the approval of the Conditional Use Permit.

**The Commission finds:** Reclamation plans are a State requirement and are created to alleviate expected and unexpected impacts that sand and gravel pits could have on the proposed property site and surrounding properties.

**The Commission finds:** Reclamation plans provide the Applicant with guidelines and rules that are mandated by the State to maintain the property during mining operations and to recover the land near to its natural state prior to the commencement of mining operations.

- h) **Soils Objective 2-** *Encourage commercial, industrial, and residential growth into areas where soils are least of value for agriculture (pg. 44).*

**The Commission finds:** Idaho's main source of generated revenue of agricultural income derives from agricultural and dairy products, cattle and calves, potatoes, wheat and hay. Sand and gravel are among six of the most important mineral products mined in Idaho. Sand and gravel are essential products for the development of commercial, industrial, and residential growth.

**The Commission finds as a Judicially Noticed Fact:** Elmore County has a variety of agricultural land types that serve a variety of purposes. Some areas

are less value for some agricultural purposes due to lack of water resources and would be consistent with the residential, forest product, and mining uses allowed in the Agriculture zone.

**The Commission finds:** The proposed pit site is in an area that does not have the soil or water resources for growing crops. This area is recognized as dry grazing land due to lack of water resources. Aside from a few residential homes in the vicinity, the surrounding area consists of bare land with state owned land to the East of the proposed site.

- i) **Soils Objective 4-** *Support proper fuel management practices on land to both reduce the risk of wildfires and undue erosion (pg. 44).*

**The Commission finds:** Proper fuel management can be done a variety of ways to reduce the potential spread of wildfires. Gravel pits create berms during the construction of the pit and, if maintained properly, may be utilized as a fire barrier in an area that is prone to rangeland wildfires. The proposed pit site is located within an established fire protection district.

**The Commission finds:** The fire chief of Oasis Rural Fire District signed off the application, with one noted concern about the storage of potentially hazardous waste. Storage of potentially hazardous waste is regulated and monitored by the following State, local, and Federal agencies: DEQ, EPA/OSHA, and MSHA.

- j) **Mineral Resources Goal 1-** *To develop the County's mineral resources with minimal adverse impact to the environment or area land uses (pg. 50).*

**The Commission finds:** The proposed sand and gravel pit does not require a natural water resource on the site in order to operate.

**The Commission finds:** The applicant proposes to bring in water trucks to the pit sight for dust abatement during rock crushing actions; the amount of water on site will meet DEQ dust abatement standards.

**The Commission finds:** The Applicant owns two 20-acre parcels and proposes the operation of the sand and gravel pit on the second parcel using the first parcel for access.

**The Commission finds:** The pit's sloping will be created within the center area of the second parcel which will reduce the impact the pit will have on area land uses, while retaining subjacent support of adjacent parcels.

**The commission finds:** The reclamation plan is mandated by Idaho Department of Lands. MSHA and DEQ have jurisdiction over dust, noise, and water runoff and any other impacts the pit operation will have on the environment.

- k) **Mineral Resources Objective 1-** *Promote erosion control measures that will keep detrimental silts out of streams (pg. 50).*

**The Commission finds:** The proposed pit is located outside the Idaho FEMA Flood Hazard Zone.

**The Commission finds:** Applicant is working with the Idaho Department of Lands in identifying an appropriate entrance to the pit in order to avoid



interfering with a natural seasonal seeping spring area located near the proposed truck entrance.

**The Commission finds:** That a culvert will be put into place to allow for natural waterflow from the natural seasonal seeping spring area located near the proposed truck entrance in the spring time and periods of high precipitation/run-off.

**The Commission finds:** Applicant will be working with State Agencies for erosion control on and near the proposed pit area and to prevent any detrimental silts out of the streams.

**The Commission adopted:** The FEMA Flood Zone Map presented at the public hearing as Exhibit G. Record, p. 77.

- l) **Mineral Resources Objective 2-** *Promote procedures that minimize the unfavorable visual impact of mining operations and that protect the natural terrain and special sites/areas being destroyed (pg. 50).*

**The Commission finds:** The natural existing terrain of the proposed site is optimal for obtaining gravel as there is a natural elevated terrain thus allowing the gravel pit to be out of obvious sight to property owners in the vicinity. The elevation where the proposed pit site varies between 3300 and 3290 feet.

**The Commission adopted:** The elevation and contour map on display at the public hearing by staff, see Exhibit I. Record, p.185.

**The Commission finds:** Applicant proposes a buffer and berm to be put up around the gravel pit. The pit is proposed to be up to 50 feet below the surface.

**The Commission finds:** Aesthetically, with the buffer and berm the proposed use will be less visible from the west, east, north, or south when seated in a vehicle or standing on surrounding properties.

**The Commission finds:** There is currently a gravel pit to the south east of the proposed pit site. Some residents asserted that the existing gravel pit is not functional, whereas others suggest gravel has been taken from the site within the last two years.

**The Commission finds:** Gravel pits can be existing for years, but may only be periodically used to obtain sand, gravel, and rock as local economies demand and material costs-may dictate.

**The Commission finds:** Idaho Department of Lands requires a reclamation plan be drafted and a bond be placed on the project until the land is restored to near its natural functional state.

- m) **Mineral Resources Objective 3-** *take actions to ensure proper land reclamation practices following mining or milling operations (pg. 50).*

**The Commission finds:** Idaho Department of Lands requires a reclamation plan to be drafted before a permit is approved.

**The Commission finds:** Idaho Department of Lands requires that the Applicant place a bond on the property project site until the land is reclaimed to a natural condition.

**The Commission finds:** The Elmore County Land Use and Building Department has proposed a condition that a reclamation plan be in place upon issuance of a CUP for the proposed sand and gravel pit.

**The Commission finds:** The Department does not oversee the reclamation planning, the oversight during operation or the final inspection once the project site is being reclaimed.

**The Commission finds:** Idaho Department of Lands, DEQ and MSHA have jurisdiction over reclamation, monitoring, and inspections before, during, and at the termination of the proposed sand and gravel pit operation.

**The Commission finds:** All mining inspections performed by or on behalf of MSHA are mandated by the 1977 Mining Safety Act (United States Department of Labor Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164).

**The Commission finds** that this Application is in accordance with the Elmore County Comprehensive Plan.

**B. Zoning and Development Ordinance:** The evidence presented to the Commission is in accordance with the zoning Ordinance in the following areas:

- a) *Elmore County Land Use Table 7-2-26 (B)-Pit, Mine, or Quarry require a Conditional Use Permit in an Agriculture zone (pg. 108).*

**The Commission finds:** The proposed sand and gravel pit is an allowed use in the Agriculture Zone with a Conditional Use Permit. All zoning requirements for the proposed use can be found in 7-2-169 and 7-9 of the Zoning and Development Ordinance.

- b) *Per 7-2-5 (A): The "AG" land use designation is the base zone throughout the county and contains a variety of areas to include mining lands.*

**The Commission finds:** Per the Agriculture definition in the Ordinance, limited mining may be considered in the Agriculture district, along with residential land, farming, ranching, grazing and forest products.

**The Commission finds:** Historically, the allowed uses in the Agricultural Zone have included mining as cited in current and previous Ordinances.

**The Commission finds** the Application is in accordance with the Zoning Ordinance.

**3. The proposed use complies with the purpose statement of the applicable base zone of Ordinance Section 7-2-5 and with the specific use standards as set forth in this Chapter;**

The purpose statement for the Agriculture base zone is found in Ordinance 2018-03, section 7-2-5 (A), providing:

*"General Agriculture: The purpose of the Ag district is to preserve and protect the supply of agriculture and grazing land in Elmore County until development is*

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

**The Commission finds:** that a sand and gravel pit operation is mining, and such limited mining is a permitted use in the Agriculture zone with a Conditional Use Permit.

**The Commission voted 6-0** that the Application meets this standard.

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

**The Commission finds:** Staff has proposed conditions upon approval of the CUP to ensure that this application will meet all applicable County Ordinances, including a Reclamation Plan that is being tailored to Applicant's gravel pit operation.

**The Commission voted 6-0** that the Application meets this standard.

**5. The proposed use shall comply with all applicable State and Federal laws, rules and/or regulations;**

**The Commission finds:** The Applicant is actively working with the Department of Lands to create a Reclamation Plan that is tailored to Applicant's gravel pit operational needs.

**The Commission finds:** The Department of Lands will monitor the gravel pit operation throughout the duration the pit is in operation and will oversee the Reclamation Plan carried out when the operation terminates.

**The Commission finds:** Staff has proposed conditions upon approval of the CUP to ensure that Applicant will adhere to all County, State, and Federal Agency requirements; those County, State, and Federal agencies include DEQ, MSHA, and Department of Lands.

**The Commission voted 6-0** that this Application has met this standard.

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

**The Commission finds:** The site of the proposed sand and gravel pit is in the Agriculture Zone. The evidence does not present significant impacts or

substantial changes to the essential character of the general vicinity of the site.

**The Commission finds:** There is an existing sand and gravel pit located approximately one-half (1/2) mile to the East of the proposed site that continues to have gravel removed from it intermittently.

**The Commission finds:** The Applicant's site plan shows that the access to the pit and the location of the pit are both located on Applicant's personal property. Applicant proposes that the pit will commence on the western center of the second parcel see Exhibit C. Record, p. 36.

**The Commission adopted:** site map of proposed access and location of pit as displayed at the public hearing, see Exhibit K. Record, p. 187.

**The Commission finds:** The proposed location of the pit is approximately 1,700 feet north east from the nearest residence.

**The Commission finds:** The Applicant proposes the pit will be constructed up to fifty (50') feet deep with berms surrounding the pit to reduce the potential noise and visual nuisance.

**The Commission finds:** The Conditions proposed by Staff upon approval of the CUP for a sand and gravel pit will support the design, construction, operation, and maintenance of the pit in such a way that it will be harmonious and appropriate in appearance with the existing and intended character of the general vicinity and will not change the essential character of the area.

**The Commission finds:** The area of the proposed pit site is dry bare land and is not prime agriculture land due to lack of water resources.

**The Commission voted 6-0** that the Application meets this standard.

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

**The Commission having considered** the issues raised at the public hearing concerning the impact that the proposed operation may have on neighboring properties, including water contamination, dust, and the impact upon property values finds:

The Applicant intends to keep all mining operations to no more than fifty (50') feet which is well above ground water levels. This proposed pit is considered a dry pit and will not utilize water to operate, with the exception of water trucks utilized for dust abatement during rock crushing.

The Applicant is working with Idaho Department of Lands to construct a pit that will reduce the impact the operation could have on storm water runoff. Department of Lands works with DEQ and Army Corp of Engineers to ensure

that all water assessments and concerns are addressed prior to commencement of the pit operation.

Hazardous waste is monitored and controlled by MSHA; Applicant is held to strict rules and regulations that could result in a monetary fine if found to be in violation of any of those rules and regulations.

The concerns of dust and noise are taken serious and Applicant is working with the above-mentioned Agencies to ensure that steps are taken to monitor dust levels and guidelines are specified to prevent fugitive dust.

The Applicant will not be operating the gravel crusher full time but has proposed a maximum operation time of six (6) hours aggregate a day during and up to a six (6) day work week.

**Two of the Six Commissioners find:** The Applicant has been working with appropriate agencies to ensure that the proposed gravel pit operation will not be hazardous or disturbing to existing neighboring uses or impede continued development consistent with the Agriculture Zoning designation. One Commissioner believes this operation will be disturbing and one commissioner is unsure as to whether or not this use will be disturbing to existing neighboring uses.

**The Commission finds:** The Applicant has obtained appropriate approval from the Mountain Home highway district which maintains the roads that Applicant will be utilizing when hauling material from the proposed pit site. Record, p. 12.

**The Commission finds:** Although testimony in opposition to the application suggested that a gravel pit operation will decrease property values, no evidence has been presented that the existing gravel pit near the proposed pit location has decreased property values.

**The Commission finds:** Properties in the Oasis, Tipanuk, and Mayfield area continue to be split, inquired about, and sold; parcels in the vicinity of the proposed site average twenty (20) plus acres in size reducing the probability that applicant's proposed gravel pit operation will be located in or near a potential buyer's back yard.

**The Commission voted 6-0** that the Application meets this standard.

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

**The Commission finds:** The Proposed use will be served by the following facilities:

Highways/Roads – Ditto Creek Road is maintained by the Mountain Home Highway District.

The road through the Applicant's property that leads to the gravel pit will be maintained by and at the expense of the Applicant.

Fire Protection – The Applicant's property is located in the Oasis Rural Fire District (the "Fire District"). If approved, Staff has proposed conditions to ensure that the Applicant has an adequate fire prevention plan.

Drainage Structures – No drainage structures for the proposed use are planned or required at this time. Applicant proposed that excavation will not reach the level of any subsurface water during excavation.

Refuse Disposal – Applicant will be responsible for obtaining and maintaining appropriate refuse and sewage disposal and appropriate disposal of all hazardous and non-hazardous materials associated with the proposed use.

Water/Sewer – Water and sewer services are not planned or required for the proposed use at this time. Applicant stated that in the event of added structures such as an office building, Applicant will obtain appropriate permits from Central District Health Department ("CDHD") and Idaho Department of Water Resources ("IDWR") for septic and well permits.

The Application, and its proposed use, will be adequately served by available public facilities and services such as highways, streets, law enforcement, and fire protection.

The Applicant's use of private refuse and sewage disposal services for the conditional use shall adequately provide such services.

**The Commission voted 6-0** that the Application meets this standard.

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

**The Commission finds:** All on-site improvements will be funded by the applicant.

**The Commission finds:** The Applicant proposes that the gravel pit operation will be an economic benefit to Elmore County Residents.

**The Commission finds:** Agencies that could be potentially impacted by this Conditional Use have been notified and the department did not receive any negative responses or concerns.

**The Commission voted 6-0** that the Application meets this standard.

**10. The proposed use shall not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons,**

**property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;**

**The Commission finds:** The proposed use consists of earth moving equipment, a gravel crusher, and transportation of gravel from the pit location to areas within Elmore County and other areas where the use is needed.

**The Commission finds:** Staff has proposed conditions for Gravel Pit operation times and rock crushing time limitations.

**The Commission finds:** MSHA and/or its State agency-delegate conducts biannual inspections on all mining operations to ensure that Applicant is abiding to the rules and regulations for dust, noise, and safety.

**The Commission finds:** Staff has communicated with Idaho Department of Lands, Department of Environmental Quality, and MSHA about the following topics: reclamation, dust, inspections, impact studies on water, land and environment, and consequences when a gravel pit operator is found to be in violation of any of the rules and regulations set by those said Agencies. Record, pgs. 152-156.

**The Commission adopts:** The report presented by Staff during the January 16, 2019 public hearing as Exhibit E.

**The Commission finds:** State and Federal agencies have the authority to hold Applicant accountable for safety violations or negligence on the work site. Such violations could result in a monetary fine or other regulatory action.

**The Commission voted 6-0** that the Application meets this standard.

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

**The Commission finds:** The proposed property site has not been identified as having a natural scenic feature of major importance.

**The Commission finds:** The mandated Reclamation Plan will include vegetation and groundwork restoration that will return the land back to a condition that is compatible with the natural state in the vicinity.

**The Commission voted 6-0** that the Application meets this standard.

## **CONCLUSIONS OF LAW**

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

1. The Commission concludes that the public hearing notice requirements of Zoning Ordinance Title 7 Chapter 3 have been met.

2. The Commission concludes that the notice requirements of Idaho Code Section § 67-6512 have been met.
3. The Commission concludes that the Application complies with the required findings set forth in Title 7 Chapter 9 Section 7-9-7 of the Zoning Ordinance.

### **ORDER**

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Application, the Commission voted 5-1 and hereby **approves** the Application with the following conditions:

1. **Conditional Use Permit be granted to develop and operate a Sand and Gravel Pit in the Agriculture Zone with parcel numbers RP02S05E026600A and RP02S05E026000A.**
2. **Failure to comply with any condition may result in the revocation of the conditional use permit.**
3. **Proposed use shall comply with all requirements of Title 7 Chapter 2 (“Zoning”) and Chapter 9 (“Conditional Use Permit”) of the Elmore County Zoning and Development Ordinance 2018-03.**
4. **The Applicant shall provide facilities required by the Central District Health for the purpose of disposing of human generated waste water.**
5. **Applicant shall comply with the reclamation plan approved by the Idaho Department of Lands. The Applicant shall complete the reclamation plan as approved by the Idaho Department of Lands; if Applicant fails to obtain the reclamation permit the Conditional Use Permit will automatically terminate.**
6. **The Applicant shall store and dispose of fuel products, lubricants, and any chemicals in accordance with all applicable State, Federal, and County Laws, Ordinances, rules and regulations.**
7. **The Applicant will obtain permits for any structures, roads, or other permissible projects on site.**
8. **The Applicant shall comply with all applicable fire codes, fire restrictions and fire management plan requirements to include weed abatement in and around the pit location.**
9. **The Applicant shall ensure that dust be controlled on the site and on all access roads in accordance with the required standards for environmental quality as enforced by the Idaho Department of Lands, MSHA, DEQ, and other state and federal agencies with jurisdiction over such matters.**
10. **Hours of gravel pit operation and transportation of materials to and from the site shall be limited to 7:00 a.m. through 7:00 p.m. Mountain Standard Time, with hours of operation during daylight savings time limited to between 7:00 a.m. and 9:00 p.m. Mountain Daylight Savings Time. Rock Crushing operations shall be limited to an aggregate period of six hours per day during authorized gravel pit operating hours.**



- 11. The Applicant shall ensure that all property taxes are paid when due and will not be delinquent.
- 12. The Applicant shall comply with all requirements of state, federal, and local laws.

Dated this 20<sup>th</sup> day of March, 2019.

**COMMISSION VOTE:**

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

VOTED AYE  
 VOTED AYE  
 VOTED NAY  
 VOTED AYE  
 VOTED AYE  
 VOTED AYE

  
 \_\_\_\_\_  
 Patti Osborn, Chairperson

**ATTEST:**

  
 \_\_\_\_\_  
 Beth Bresnahan, Director

**NOTICE PURSUANT TO IDAHO CODE § 67-6519(5)(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 Idaho Code § 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 Title 67, Chapter 52, Idaho Code.

**NOTICE PURSUANT ZONING ORDINANCE SECTION 7-3-10 E-F**

A decision made by the Elmore County Planning and Zoning Commission may be appealed to the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within fourteen (14) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.