

ORDINANCE NO. 2018-01

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF ELMORE COUNTY ADOPTING A DEVELOPMENT AGREEMENT IN CONECTION WITH THE CAT CREEK ENERGY, LLC CONDITIONAL USE PERMITS (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07).

WHEREAS, Title 67, Chapter 65 of the Idaho Code (“Local Land Use Planning Act”) and Article 12, Section 2 of the Idaho Constitution provide authority for Elmore County to adopt land use and regulation ordinances to protect the health, safety, and welfare of their citizens;

WHEREAS, the Board of Commissioners of Elmore County (the “Board”) on February 10, 2017, conditionally approved CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07 for Cat Creek Energy, LLC (the “Applicant”) pursuant to the Findings of Fact, Conclusions of Law and Order dated February 10, 2017 (the “Approval”);

WHEREAS, the Approval contained certain conditions, one, Condition No. 2, of which was for the Applicant and Elmore County to enter into a recorded development agreement by November 15, 2017;

WHEREAS, on or about October 20, 2017, the Applicant requested the Board, pursuant to a public hearing with notice, to extend the amount of time it had to complete the development agreement from November 15, 2017 until May 15, 2018, as such extension was permitted in Condition No. 2 of the Approval;

WHEREAS, on December 1, 2017, , the Applicant came before the Board in a public meeting to request a future hearing for approval of the development agreement, which the Board granted;

WHEREAS, on December 22, 2017, the Board, pursuant to a public hearing with notice, conducted a hearing on the development agreement, which hearing was continued until January 26, 2018; and

WHEREAS, on January 26, 2018, pursuant to a public hearing with notice, the Board continued the hearing on the development agreement and following the hearing held deliberations and takes the action described below.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE ELMORE COUNTY BOARD OF COMMISSIONERS BY A 2-0 VOTE (HOFER RECUSAL), THE FOLLOWING:

SECTION 1. DEVELOPMENT AGREEMENT: The Board hereby adopts and approves the Development Agreement in the form set forth on Exhibit A (the “Development Agreement”), for that real property (the “Property”) described therein, which exhibit is attached hereto and made a part hereof.

SECTION 2. REPEAL OF CONFLICTING ORDINANCES. Any ordinance of Elmore County, Idaho in conflict with the terms of this Ordinance is hereby repealed to the extent of such conflict.

SECTION 3. EFFECTIVE DATE. This Ordinance shall take effect and be in force after its passage, approval and publication as required by law. In lieu of publication of the entire Ordinance, a summary thereof in compliance with Idaho Code § 31-715A may be published.

Dated this 9th day of February, 2018.



ELMORE COUNTY BOARD OF COMMISSIONERS

Approving:

By:

Wesley R. Wootan
Wesley Wootan, Commissioner

Approving:

By:

Franklin Corbus
Franklin Corbus, Commissioner

ATTEST:

Barbara Steele

Barbara Steele, Elmore County Clerk

Date(s) of publication:

EXHIBIT A

**DEVELOPMENT AGREEMENT RELATIVE TO CAT CREEK ENERGY, LLC
CONDITIONAL USE PERMITS (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07)**

This Development Agreement Relative to Cat Creek Energy, LLC Conditional Use Permits (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07) (the "Agreement") is entered into this 9th day of FEBRUARY, 2018, ("Effective Date"), by and between Elmore County (the "County"), a political subdivision of the State of Idaho, and Cat Creek Energy, LLC, an Idaho limited liability company (the "Developer") (collectively, the "Parties").

WITNESSETH:

WHEREAS, Developer, pursuant to a Memorandum of Agreement with Sawtooth Grazing Association, Inc. and Wood Creek Ranch, LLC (the "Landowners") has the authority and responsibility to develop, construct, install, and operate an electrical generating facility, known as the Cat Creek Energy & Water Storage Renewable Power Station (the "Project"), on a certain tract of land in the County of Elmore, State of Idaho, which land is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, (the "Property"); and

WHEREAS, the Project will be comprised of: 1) a wind turbine electrical generating facility; 2) a pumped storage hydro electrical generating facility; 3) a photovoltaic solar electrical generating facility; 4) electrical substations; 5) overhead and underground transmission lines; and (6) operations, maintenance, and other buildings and appropriate structures necessary for all accompanying uses related to the successful operations of the Project to generate and store both electricity and water therein; and

WHEREAS, the Project also serves as a water storage facility; and

WHEREAS, the Landowners are the fee simple owners of the Property; and

WHEREAS, Developer submitted an application ("Application") for the Project to the County for the approval of five (5) Conditional Use Permits ("CUPs") for the Project that was deemed complete on or about March 21, 2016 under the Elmore County Zoning and Development Ordinance, as amended (the "Zoning Ordinance"); and

WHEREAS, the CUPs were for electrical transmission lines, pumped storage hydro electrical generating facility in the Agricultural Zone, Wildland Urban Interface and the Area of Critical Concern Overlay Zones, solar electrical generating facility, wind turbines as an electrical generating facility, and an electrical substation in the Agricultural Zone, which were all approved by the Board of Elmore County Commissioners (the "Board") with those conditions ("Conditions") set forth in and pursuant to the Findings of Fact, Conclusions of Law and Order dated February 10, 2017 (the "Approval"); and

WHEREAS, this Agreement shall serve as the Development Agreement as set forth in condition No. 2 of the Conditions; and

WHEREAS, the Application, including, but not limited to, all testimony made at the November 16, 2016 and November 17, 2016 public hearings ("Public Hearings"), for File Nos. CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07, established the Project may be a benefit to the County and was an essential inducement to the Board for its approval of the Project; and

WHEREAS, Developer is subject to rules governing development of the Project, as set forth under this Agreement, the Approval, the Zoning Ordinance, and other state and federal laws and regulations ("Rules"); and

WHEREAS, Developer desires to be assured that it may proceed with development of the Project in accordance with those Rules; and

WHEREAS, Developer, through its Project's investment and infrastructure, has a unique ability to assist the County in water delivery; and

WHEREAS, the County, following the notice provisions under Idaho Code § 67-6509, conducted a public hearing regarding this Agreement; and

WHEREAS, both the County and Developer, in order to derive mutual benefits, have determined it is advantageous to enter into this Agreement to ensure Developer may design, develop, procure, construct, and operate the Project under a defined set of predictable conditions in order to advance the Project's development in an orderly sequence and concurrently, to assure the County the Project will be designed, developed, constructed, and operated in compliance with this Agreement, the Approval, Zoning Ordinance, and state and federal laws and regulations.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the Parties agree as follows:

AGREEMENT

SECTION 1. DEVELOPMENT OF THE PROJECT.

1.1. Effective Date. This Agreement will be effective upon the Effective Date and, except as otherwise provided herein, shall run so long as the Project is being operated and one or more of the CUPs remain in full force and effect. Notwithstanding, certain dates set forth in the Approval and/or Conditions, may be changed as set forth in this Agreement.

Condition No. 1 from the Approval is hereby deleted in its entirety and replaced with the following:

"1. The Conditional Use Permits shall be valid for a period of time for five (5) years from February 10, 2017 and may be extended for one 2-year period upon

application to the Elmore County Land Use and Building Department ("Department"). The approval of an application for extension shall not be unreasonably withheld and is 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 commence regular operations within the two-year extension period. Provided all improvements are completed and the use commences within this timeframe, the CUPs, subject to compliance with the Conditions and this Agreement, shall continue in effect for such time as the Project is in regular operation. In the event that improvements are completed, and use commences within the timeframes provided for some but not all of the CUPs, the Approval for those CUPs that are not built out and operated within the foregoing time frames may be terminated as to those CUPs."

1.2. Development of Permitted Uses. This Agreement describes the right to develop the Project in conjunction with, and subject to, the Conditions set forth in and pursuant to the Board Findings; and Developer shall comply with applicable rules, regulations and review processes required by the Zoning Ordinance in effect as of the Effective Date and as modified by this Agreement. Developer will pay all applicable fees required by the Zoning Ordinance as such fees may be established from time to time, by resolution approved by the Board, in relation to this Agreement.

Subject to the foregoing, and pursuant to the Zoning Ordinance, if the County adopts new ordinances, resolutions, rules or regulations that conflict with, alter, or amend the ordinances, resolutions, rules or regulations in effect at the time the CUPs were approved on February 10, 2017, such actions by the Board shall not prevent Developer from its right to develop and complete the Project as set forth in this Agreement. The County and Developer may amend this Agreement to include such changes to the ordinances, resolutions, rules and regulations as they apply to the Project, if beneficial to the Project and the County. Furthermore, the County may enact ordinances and amendments to existing ordinances that are applicable to the Project in so far as those ordinances do not materially and negatively impact the Developer's rights to develop the Project in conformance with this Agreement, the Approval, and the Site Plan presented in the Application, as modified at the Public Hearings, and which Site Plan will be amended as set forth in this Agreement.

1.3. Compliance with the Approval. Approval of the CUPs through the Board Findings established that the Project is in compliance with the Zoning Ordinance and the County Comprehensive Plan. The development of the Project shall be in compliance with the Board Findings and Conditions, unless modified by and subject to the terms in this Agreement. The Conditions may be further amended, defined, expanded and/or refined by the Board and Developer, at a later date following notice and public hearing. To the extent there are any terms and conditions set forth herein that contradict terms or conditions of the CUP, this Agreement shall control.

1.4. Compliance with Project Schedule. Developer shall diligently proceed with the development of the Project in conformance with the provisions of the Approval and Conditions as

modified in this Agreement. The Project schedule may be modified by Developer and the County following notice and public hearing. Otherwise, Developer's failure to meet the time frame set in this Agreement shall constitute a default under the Conditions as modified herein and the Agreement, subject to the default provisions of this Agreement.

1.5. Changes in State and Federal Law. This Agreement shall not preclude the application of any law that is specifically mandated and required by changes in state or federal laws or regulations applicable to the Project. In the event such law prevents or precludes compliance with one or more provisions of the Conditions or this Agreement, excluding the Condition that the Project must be substantially complete and operational by that date set forth in the Conditions or this Agreement, the County and Developer shall, following notice and pursuant to a public hearing, meet and confer to determine how the provisions of this Agreement and/or Conditions would need to be modified, extended, or suspended in order to comply with the law and shall prepare and process the necessary amendment or amendments to this Agreement. If no agreement is reached, and federal or state law do not otherwise control, the Board may elect to pursue remedies under the default provisions of this Agreement. In the event federal and state laws in force on the Effective Date are in conflict with the Conditions or this Agreement, the federal and state laws shall control.

1.6. Police Power. Nothing in this Agreement shall be construed to be in derogation of the County's police power to protect the public health and safety in the case of an emergency. In the event of an emergency, Developer agrees to provide and maintain ongoing and daily contact with applicable County emergency response officials.

1.7. Effect of Landowners' Consent. In the event the Landowners desire to develop the Project, prior to doing so, the Landowners shall assume and undertake all obligations of Developer under this Agreement, pursuant to a written assignment of this Agreement, as stated in Section 11 herein.

1.8. Incorporation of Recitals. The foregoing recitals shall be deemed true and correct in all respects to this Agreement and shall serve as the basis for the interpretation of this Agreement.

SECTION 2. REQUIRED ENCLOSURES FROM CONDITION NUMBER TWO.

2.1 Site Plan.

2.1.1. Legal Description. The legal description of the Property is set forth in Exhibit A attached hereto. The County Tax Parcel for each of the areas for the CUPs are shown on Exhibit B, attached hereto.

2.1.2. Master Site Plan. The Master Site Plan presented at the Public Hearings in connection with the Board's Approval of the Project, subject to the Conditions, is the approved site plan for the Project, a copy of which is attached hereto as Exhibit C and made a part hereof. The Developer desires to further amend the Master Site Plan as set forth in Exhibit D attached hereto and made a part hereof by the terms

and conditions of this Agreement. This Agreement hereby amends the Master Site Plan on Exhibit C, with Master Site Plan as Exhibit D. The Master Site Plan attached hereto as Exhibit D contains certain modifications as provided for in this Agreement and shall serve as the Master Site Plan for all purposes related to the Project. Should further material modifications need to be made to the Master Site Plan, as a result of any federal permitting, state legislation, or amendment request by Developer, Developer and Board may, subject to notice and public hearing, process the necessary amendment or amendments to the Master Site Plan within this Agreement.

- 2.1.3. Further Site Plan Changes.** All requests for changes to the Master Site Plan shall be submitted to the County's Director of the Land Planning and Use Department (the "Director"), for further review by the County for a determination of whether any requested change is material, which will determine if the Master Site Plan should need modification as set forth herein. All minor, non-material site plan changes, may be made by Developer, with the written approval of the Director so long as best available technology and practices are used for minimizing visual and audio impact.
- 2.1.4. Change of Use.** No change in use from the Approval shall be permitted without an application to the County in accordance with the Zoning Ordinance. As set forth hereinabove, the approved use is as set forth in the Approval.
- 2.1.5. Modification.** Material modifications of the Master Site Plan, as determined by the Director in Section 2.1.3. herein regarding, among other items, the locations for wind turbines, solar panels, transmission lines, substation, collector stations, the operations and maintenance building, reservoir boundaries, and the pumped storage hydro equipment may be modified, with consent of Parties and following public hearing. Specifically, the following changes to the Master Site Plan shown on Exhibit D, and the terms, conditions, and descriptions provided in this Agreement, are incorporated into and shall become part of the Applications.

2.2. Water Diversion and Delivery. Given the complexities of water diversion and delivery related to the Project, and in an effort to move the Project forward without further delay, the County and Developer have agreed to defer the negotiation and execution of all Water Diversion and Delivery Agreements to a later date, to be heard after notice and public hearing, but which shall be done prior to December 31, 2018 or the CUP related to water shall lapse.

2.3 Stakeholder Advisory Board. Prior to the issuance of the first building permit for the Project, Developer and the Board shall create the Cat Creek Energy Stakeholder Advisory Board ("Stakeholder Advisory Board"). Stakeholder Advisory Board's purpose is to oversee the expenditure of funds (the "Contribution") by the Developer, in the amount to be based upon a formula set forth herein in Section 2.3.3 for (a) environmental mitigation as determined by federal and state permitting for the management, conservation and enhancement of plants, animals, fish and birds that inhabit the Project area, (b) review of the development of wetlands mitigation due to the Project; (c) review and recommendation to the Board of the visual and 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.

2.3.1. Members. The Stakeholder Advisory Board shall consist of and shall be appointed jointly by the Board and the Developer:

- a. Two environmental members (i.e. Idaho Department of Fish and Game, Sage-Grouse Conservation Group, or other environmental organization inside or outside of a government entity impacted by the Project),
- b. One Member from Mountain Home Irrigation District,
- c. One Member from Glenns Ferry Highway District,
- d. One County representative,
- e. One County resident from the Pine-Featherville area,
- f. One Developer operations manager,
- g. One Developer designee, and
- h. One Landowner.

2.3.2. Funding. The initial funding for the Stakeholder Advisory Board mitigation efforts during construction is anticipated not to exceed \$1,345,000 and would fund those mandated mitigation requirements and offsets necessary as part of the federal permitting processes. Subsequent annual contributions to the funding would first be used for environmental remediation as required by federal permitting and ancillary agreements, and then for the purposes the Stakeholder Advisory Board advises and recommends how to distribute funds to serve the purpose set forth herein.

2.3.3. Formula. The formula for the annual funding of the Stakeholder Advisory Board shall be as follows:

- a. 2.5 mils on revenues of the Project as defined as gross electrical power generation revenues less any associated pumping costs of the pump storage hydro portion of the facility. For example, if the gross revenues are \$1,000,000.00 and the pumping costs are \$300,000.00, the Stakeholder Advisory Board receives as follows: $700,000 \times 0.0025 = \$1,750.00$.
- b. The minimum amount of Contribution per year shall be \$100,000.
- c. The maximum amount of Contribution per year after the project is operational shall not exceed \$300,000. In the event the federal or state environmental mandate is greater than \$300,000, the Developer shall pay all costs in excess of \$300,000 to comply with those federal or state environmental mandates outside of the Stakeholder Advisory Board.
- d. If the Stakeholder Advisory Board does not designate any portion of the annual Contribution, that amount shall carry over to the next year and reduce the Contribution by that amount.

2.3.4. Designation of Funds. The Stakeholder Advisory Board shall first apply funds to all mandatory federal mitigation requirements. State mitigation requirements shall then be applied. Anticipated environmental mitigation procedures on an annual basis that may be conditioned for funding under federal and state permitting provisions are:

- a. Fish entrainment re-stocking.
- b. Upstream of Anderson Ranch Reservoir aquatic improvements.
- c. Monitoring of conditions in Anderson Ranch Reservoir.
- d. Wetlands improvements.
- e. Wildlife habitat improvements.

2.3.5. Meetings. Meetings of the Stakeholder Advisory Board shall be called by Developer with a two-week notice prior to the date of any funds distribution. A quorum is necessary for any resolution of the Stakeholder Advisory Board. A majority of the members constitutes a quorum. All resolutions for distribution of funds shall be by unanimous consent of all Stakeholder Advisory Board Members present at the meeting, including through teleconferencing, assuming a quorum is present. If there is any dissenting vote that stalls distribution of funds, Developer will fulfill its federal contractual and regulatory mitigation funding obligations first. Any remaining issues shall be determined by the Board after recommendation by the Stakeholder Advisory Board.

2.4. Fish Stocking. As part of the Stakeholder Advisory Board fund, Developer shall fund annual fish stocking in Anderson Ranch Reservoir to compensate for any net loss of game fish due to entrainment into the hydropower penstocks. Developer shall comply with all federal and state recommendations and directives agreed to during the federal permitting process on potential mitigation efforts that may be required for fish habitat, maintaining fish populations, and mitigating loss due to potential entrainment. As part of this Agreement, Developer shall also work closely with the Idaho Department of Fish and Game in conjunction with federal agencies on the fisheries of Anderson Ranch Reservoir for any mitigation that may be required in the federal permitting process.

2.5. Sage Grouse Mitigation. During the construction of the Project, and as part of the Stakeholder Advisory Board fund, Developer shall fund conservation efforts affecting areas of sage-grouse habitat on the Property where evidence of sage-grouse usage exists. Developer shall work with Idaho Department of Fish and Game to comply with the Sage-Grouse Initiative and may include measures such as prescribed grazing, fence marking, and water tank escape ramps. After any mitigation recommendation that may be required by federal permitting is completed, the Stakeholder Advisory Board may decide that if any monies are left over after the annual funding protocol in Section 2.3.4, a portion of those remaining funds may be dedicated to sage-grouse habitat enhancement on the Property, and then on other lands in the general geographic area of the Project.

2.6. Erosion Control Measures. Developer shall comply with all US Army Corps of Engineers and the Environmental Protection Agency regulations that are administrated through the

Idaho Department of Environmental Quality, submit applications for, and receive the permits from, those relevant agencies responsible for erosion control measures during construction and operations of the Project. Developer shall utilize best industry practices 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 that shall meet all industry standards and would prevent water quality impacts due to erosion/sedimentation, prevent the proliferation of noxious weeds and promote quality wildlife and grazing habitat.

2.6.1. Developer shall utilize best industry practices to implement erosion control measures, which would include minimizing disturbance of reservoir shorelines and vegetated upland areas during construction of the pump storage hydro intake, powerhouse and penstock, to minimize water quality impacts due to erosion/sedimentation, and to further minimize the potential to increase erosion and sedimentation, which could adversely affect water quality in Anderson Ranch Reservoir.

2.6.2. Developer shall utilize best industry practices to implement erosion control measures, which would include minimizing ground disturbance areas during the construction of roads and wind tower pads for the wind turbine project locations, including erosion control measures and revegetation activities which will meet all industry standards and would minimize erosion and sedimentation into any stream located in the construction area.

2.7. Communications with Wildlife Agencies. Developer shall maintain communications with Idaho Department of Fish and Game, the United States Federal Wildlife Service, and other agencies, in order to sustain fish and wildlife habitats on and surrounding the Project.

2.8. Noise Standard. Noise Standards shall comply with the Zoning Ordinance. No Noise Standard shall be more restrictive than the standards set forth in the Zoning Ordinance. The Noise Standards do not apply to any component constructed exclusively on federal lands or any component, facility, or technology that require approvals by the federal agencies overseeing the federal process for the Project.

2.9. Water Transmission Lines. Prior to the issuance of any building permit for the hydro electrical generation portion of the Project, Developer will submit to the Board for review the proposed water transmission lines from the Anderson Ranch Reservoir to the Reservoir, which submission shall include any proposed visual and audio screening.

2.10. Scholarship Fund. Upon commencement of the operation of the Project, or any part thereunder as set forth in the Application, the Developer shall make an annual contribution on October 1 of each year thereafter, in the amount of Ten Thousand Dollars (\$10,000.00) per year to the County ("**Scholarship Fund**") to fund 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 along with other County scholarship programs.

2.11. Senior Contribution. Upon commencement of the operation of the Project, or any part thereof, the Developer shall make an annual contribution on October 1 of each year thereafter, in the amount of Ten Thousand Dollars (\$10,000.00) per year ("**Senior Contribution**") to the County to be distributed to Elmore County senior citizens by the Board.

2.12. Incorporation and Modification of Conditions. The Conditions as modified herein, are hereby incorporated into this Agreement.

2.12.1. Conditions 2m, 25, 30, and 31 are hereby deleted.

2.12.2. Condition 24 shall read: Approval of the Interconnection Application.

2.12.3. Condition 15 shall read: Prior to any single CUP construction, an updated Wildlife Mitigation Plan/Environmental Impact Statement ("WMP/EIS") shall be submitted to Elmore County. The WMP/EIS shall be reviewed by and subject to the approval by the Board for compliance with the Zoning Ordinance, including but not limited to standards for conditional use permits and environmental studies.

SECTION 3. ADDITIONAL VISUAL MITIGATION MEASURES.

Developer shall utilize best industry practices to implement visual mitigation surrounding the water pumping stations, pipelines, penstocks, solar array, substation, and transmission lines as prescribed by federal permitting rules set forth by the Bureau of Reclamation and FERC. Wind turbines do not qualify for visual mitigation. Developer shall provide visual elevations of the water pumping and diversion lines, solar array, substation and transmission lines to the Board, for the County's review, demonstrating visual mitigation efforts and options prior to construction of these portions of the Project. The Board acknowledges and agrees that there shall be no further oversight by the Board on any additional visual mitigation measures beyond what is established, conditioned, or required under any federal or state procedures or permits.

SECTION 4. CONSTRUCTION.

The Project shall be developed in substantial compliance with the Master Site Plan and such other plans and specifications as approved by the County in this Agreement and subsequent amendments to this Agreement per Section 1.2. All development of the Project shall be constructed, processed, and approved in accordance with the Zoning Ordinance and federal and state laws as described in this Agreement. If a building permit is needed for any structure in the Project, then a building permit application shall be submitted to the Elmore County Building Department for review and approval. For purposes of the construction and permitting provisions under this Agreement, each CUP is separate. Prior to issuance of a building permit under each CUP, Developer shall be in substantial compliance with this Agreement pertaining to that CUP, defining the location of project structures for which such a permit is necessary. The County Engineer shall review the submission for drainage, storm water management, and any structural

element in the design to ensure compliance with all regulations. The submission of engineered drawings by Developer shall bear the appropriate professional stamp of an Idaho licensed engineer or architect. Original Equipment Manufactured components are an exemption to this provision as long as documented compliance is submitted under any IEEE and ISO designation. A state electrical permit as required for any electrical associated construction shall be submitted as an additional requirement for a building permit.

SECTION 5. DEFAULT.

5.1. General Provisions. A party shall be deemed to be in default of this Agreement only upon the expiration of ninety (90) days (ten [10] days in the event of failure to pay money) from receipt of written Notice from the other party specifying the particulars in which such party has failed to perform the obligations of this Agreement unless such party, prior to the expiration of said ninety (90) days (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said Notice of default. However, such party shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said ninety (90) day period and such party is using good faith and its best efforts to rectify the particulars specified in the Notice of default and such party in default shall have an additional ninety (90) days (180 days in total) to cure such default.

5.2. Hearings on Violations. Upon a determination by the Director that Developer has violated this Agreement and has failed to cure the violation as described in Section 5.1 above, the Director shall schedule a hearing before the Board with notice prior to a hearing. At the conclusion of the hearing, the Board may determine Developer to be in default, in partial default, may modify its decision, or take other action that the Board deems just, reasonable and in accordance with law, including termination of this Agreement and the revocation of the Approvals.

5.3. County Remedies. Should the Board determine Developer to be in default or partial default, the County, at its option, may institute all remedies available at law or equity; modify, in whole or in part, the permit, specific plan, or amend the Conditions; and/or terminate the Agreement and the Approvals, all as the Board may determine in the exercise of its discretion and subject to Idaho law.

5.4. Developer's Remedies. If the County is in default under this Agreement, after the expiration of the right to cure, Developer may pursue all remedies available at law or equity.

5.5. Restrictions to Cure. The Board shall not restrict the ability for any mortgagee, lender, insurer, Landowners, or equity member of Developer (the "Curing Party") from assuming all liabilities in the event of a default by Developer, which Developer is either unable or unwilling to cure, so long as such cure of the default(s) occurs within the time frames set forth in Section 5.1 or as otherwise established by the Board.

5.6. Landowners and Curing Party Remedies. During the time in which Developer is in default as provided in Section 5, the Landowners or any Curing Party who has an interest in the Project, may cure the default of Developer by giving Notice to the County of its desire to cure

such default and such cure shall be made within the time frame provided to Developer under Section 5.1.

- 5.6.1. The County agrees to give a copy of any Notice of default of Developer to the Landowners and any Curing Party so long as it provides advance written Notice to the County of their desire to receive any Notice of default and their Notice address(es).
- 5.6.2. The Landowners or Curing Party may cure the default of Developer within the time frame set forth in Section 5.1 or as otherwise established by the Board.

5.7. Termination.

- 5.7.1. This Agreement may be terminated upon the request of Developer, upon approval of the Board, following notice and public hearing, or upon a finding of default by the Board that Developer, a subsequent owner or any other person acquiring an interest in the Project site, is in default of any requirement in this Agreement.
- 5.7.2. Unless cured by the Landowners or a Curing Party, the Landowners and/or the Curing Party shall be subject to any default remedies of the County, including but not limited to termination of this Agreement.
- 5.7.3. Following notice and hearing procedures required above, the Board, may in its discretion, amend this Agreement in lieu of terminating the Agreement if the amendment otherwise complies with the Zoning Ordinance.
- 5.7.4. Should a default and termination occur after portions of building permits have been issued for a portion of the Project and such work under the issued building permit has commenced, beyond grading, the Developer or Landowners shall be permitted to complete such work, so long as they otherwise comply with this Agreement, the Zoning Ordinance, federal and state law, and the Board may not terminate this Agreement as to those developed sections that comply with this Agreement. The Board, after notice and public hearing may amend this Agreement to include only those sections, and the termination of this Agreement shall apply only to the undeveloped sections where no infrastructure has been provided.

SECTION 6. INTENTIONALLY OMITTED.

SECTION 7. PERMITTING.

Prior to issuance of any building permit for each CUP, Developer shall obtain: (i) any federal and state licenses and approval to operate that portion of the Project under the appropriate CUP; (ii) a demonstrated ability to connect to the appropriate electrical control area operator transmission or distribution lines or the construction of alternate transmission lines specifically for

this Project; and (iii) a strategy for the generating facility falling under the relevant CUP for the sale and delivery of electrical power as part of the Project.

SECTION 8. DECOMMISSIONING.

8.1. Decommission of Project. Prior to the issuance of any building permit for each CUP, Developer, Landowners, and the County shall enter into a decommissioning agreement and Developer shall place a bond or other acceptable financial instrument as approved by the County with the County based upon a decommissioning plan presented to the Director and approved by the Board, estimating the net cost of restoring the site pursuant to the decommissioning agreement. All improvements, facilities and buildings containing power generating or transmitting equipment with the Project shall be removed within 180 days of the discontinuance of operation of the Project on the Property and the Property restored to its natural state. For purposes of this Section, improvements, facilities, and buildings shall not include: (i) transmissions lines and the Reservoir, provided they are in use, and (ii) any storage or housing buildings. All footings and foundations shall be removed to a depth of three feet below the surface. The amount and terms of the bond shall be approved by the Board. Developer shall submit an updated decommissioning plan every five years and shall increase or decrease the amount of the bond if the net cost of restoration changes from the prior study.

SECTION 9. ANNUAL REVIEW.

Commencing on the first-year anniversary of the Effective Date, and every year thereafter, so long as the Project is in operation, Developer shall submit a status report, and meet in person with the Board, detailing the status of the development and operations of the Project ("Annual Review"). Upon request by Developer, the Board, in its sole and absolute discretion, may modify, waive or terminate the Annual Review requirement after 5 years of Project operation.

The Annual Review during construction activities shall include a review of Developer's plan (i) to implement erosion control measures, (ii) for the timing of construction activities, (iii) on federal and state permitting efforts, and (iv) for any other activities associated with construction and permitting activities. The Annual Review once the Project is operational shall include a review of (i) fish stocking and other wildlife management, (ii) general operations and any problems associated with those operations, (iii) Developer concerns, and (iv) any other matters pertaining to the Project.

SECTION 10. NOTICES.

10.1. Notices. Any notice, demand, or other communication (a "Notice") given under this Agreement shall be in writing and given personally or by certified mail (return receipt requested). If given by certified mail, a Notice shall be deemed to have been given and received on actual receipt of the certified mail or therein, its rejection as required by the U.S. Mail. If to a specific person, a Notice shall be deemed to have been given when delivered to the party to whom it is addressed, and notice of delivery has been registered. A courtesy copy of the Notice may be sent by facsimile transmission and/or electronic communication. Any party may designate any other address in substitution of the address contained herein by like written Notice.

10.2. Addresses. Notices shall be given to the Parties at their addresses set forth below:
If to County, to:

Elmore County Board of County Commissioners
150 South 4th East
Mountain Home, Idaho 83647
Telephone: 208-587-2130 ext. 212
Facsimile: 208-587-2159

With copy to:

Elmore County Courthouse Annex
Attn: Elmore County Prosecuting Attorney
190 South 4th East
Mountain Home Idaho 83647
Telephone: 208-587-2130

If to Developer, to:

Cat Creek Energy, LLC
Attn: John Faulkner
1989 South 1875 East
Gooding, Idaho 83330

With a copy to:

Terri Pickens Manweiler
Pickens Cozakos, P.A.
398 S. 9th Street, Ste. 240
Boise, ID 83702
Telephone: (208) 954-5090
Facsimile: (208) 954-5099
Email: terri@pickenslawboise.com

SECTION 11. ASSIGNMENT OR TRANSFER.

11.1. Assignment. Developer may assign or transfer all or any portion of the Project to any person or entity ("Transferee"), subject to the provisions of this Section.

11.2. Effect of Assignment; Public Records. It is the intent of the Parties that as the Project is developed, all requirements of the Approval, Conditions, as modified herein, and this Agreement shall be met. To that end, if Developer transfers any portion of the Property to a Transferee, Developer shall continue to be responsible for performing the obligations under this Agreement until such time as is there is delivered to the County a legally binding instrument in a form approved by the County (an "Assignment and Assumption Agreement") where a Transferee agrees to perform all obligations and be responsible for all provisions of the Approval, Conditions as modified herein, and this Agreement as to the transferred property. The County shall review the

submittals for approval, approval by the County is required and such approval shall not be unreasonably withheld, that the transfer is in accordance with the provisions of this section. The County shall retain all records in compliance with the Idaho Public Records Law, including maintaining such confidential information, when marked as such by Developer or the Transferee, as permitted under the Idaho Public Records Law. No additional conditions may be placed on the Transferee outside this Agreement, other than the curing of any defaults.

11.3. Procedures. No fewer than sixty (60) days prior to entering into an Assignment and Assumption Agreement, Developer shall submit to the County a draft of the proposed Assignment and Assumption Agreement referring to the obligation of the Transferee to assume the obligation of the Conditions as modified herein and this Agreement and the conditions pertaining to the transferred property along with any other applicable conditions of approvals and any other obligations to be assumed by Transferee pursuant to the Assignment and Assumption Agreement.

Developer shall cooperate with the County by providing documents and information the County may deem necessary in the exercise of its reasonable discretion. All assignment information record keeping shall be administered by the County pursuant to the Idaho Public Record Law. The County may schedule a public hearing to discuss the transfer and make a decision, on the request for Assignment and Assumption. Such approval cannot be unreasonably withheld.

11.4. Default. Failure of Developer to provide an Assignment and Assumption Agreement as approved by the County, shall be a default under this Agreement.

11.5. The Entirety of this Agreement. This Agreement, the Approval, and the Conditions as modified herein, shall run with the land and shall be binding upon the Landowners, the Developer, and their successors, assigns, and heirs, and all obligations assumed by Developer are binding upon the Curing Parties, successors, heirs, assigns and transferees of the Curing Parties whether such is by contract, operation of law or any other mechanism.

SECTION 12. REPRESENTATIONS AND WARRANTIES OF DEVELOPER AND LANDOWNERS.

Developer represents it has full authority under existing agreements between Developer and Landowners to pursue development, construction, and operation of the facilities in the Project. Landowners represent they have given consent for the development, construction, and operation of said facilities contained in the Project and further represent that any agreements between Developer and Landowners are in full force and effect and are not currently in default and will not be in default prior to the Effective Date. Developer and Landowners represent and warrant to the County that the Landowners own the Property in fee simple title free and clear of all encumbrances unless set forth in the Title Commitment from Guaranty Title dated January 25, 2018. Developer represents and warrants to the County that no consent from any other person or entity is required for either Landowners or Developer to enter into this Agreement and that all corporate, company or other entity requirements have been fully satisfied.

SECTION 13. GENERAL PROVISIONS.

13.1. Recordation. This Agreement shall be recorded in the public land records of the County.

13.2. CUPs Run with the Land. The CUPs for the Project run with the land as long as the County, Developer, and Landowners are in compliance with the Approval, the Conditions as modified herein, and this Agreement. This Agreement is not a Development Agreement pursuant to I.C. § 67-6511A, but rather an agreement as a condition of the CUPs.

13.3. Existing Mortgages. In the event of the entry of decree of foreclosure of the Property by either of the two existing lenders, Northwest Farm Credit Services and Metlife Agricultural Investments, including all successors, assigns or purchasers of such loan(s), or a deed in lieu of foreclosure of each Property, the County shall have the absolute right to terminate the CUPs including the Agreement.

13.4. Mortgages and Other Security Provisions and Obligations ("Mortgage"). Subject to the entering into a subordination or non-disturbance and attornment agreement in such form as approved by the County, by those parties with a security interest in the Property, the Developer, and the Landowners, this Agreement and any easements granted by the Developer or Landowners for water distribution points and transmission lines, shall not be disturbed and shall be subordinate to those secured parties (along with the County, the Developer and the Landowners) that enter in to the agreement and record the same upon the Property. No default hereof shall invalidate or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Project, or any portion thereof, by a mortgagee (herein defined to include a beneficiary under a deed of trust), whether under or pursuant to a mortgage foreclosure, trustee's sale or deed in lieu of foreclosure or trustee's sale, or otherwise, shall be subject to all of the terms and conditions contained in this Agreement, but any such mortgage shall not prevent termination of this Agreement or other remedies by the County. No mortgagee shall have an obligation or duty under this Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that to the extent that any covenant to be performed by Developer is a condition to the performance of a covenant by County, the performance thereof shall continue to be a condition precedent to County's performance hereunder.

13.5. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. It is the Parties express intention that the terms and conditions be construed and applied as provided herein, to the fullest extent possible. It is the Parties further intention that, to the extent any such term or condition is found to constitute an impermissible restriction of the police power of County, such term or condition shall be construed and applied in such lesser fashion as may be necessary to not restrict the police power of the County.

13.6. Good Standing; Authority. Developer hereby represents to that Developer is an Idaho limited liability company; (b) County represents that it is a governmental entity in the State of Idaho; and (c) the individual(s) executing this Agreement on behalf of the Parties represent that

they are authorized and empowered to bind the party, respectively, on whose behalf each such individual is signing.

13.7. Amendment. Subject to notice and hearing, all amendments shall be in writing and shall be approved and signed by the County, Developer and Landowners. Any amendment to this Agreement may be evidenced by recordation in the County land records. Developer agrees to pay all recording fees necessary to record any such amendment requested by Developer.

13.8. No Agency, Joint Venture or Partnership. County and Developer hereby renounce the existence of any form of joint venture or partnership between County and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making County and Developer joint ventures or partners.

13.9. Construction. This Agreement has been reviewed by legal counsel for both County and Developer, and this Agreement, no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

13.10. Choice of Law. This Agreement and its performance shall be construed in accordance with and governed by the laws of the State of Idaho, with venue for any action brought pursuant to this Agreement to be in the Fourth Judicial District, State of Idaho.

13.11. Merger and Integration. The Application, Approval, Conditions as modified herein, and this Agreement embody the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those referenced to in the Recitals, contained in this Agreement or in the Application, Approval, and Conditions as modified herein. All previous and contemporaneous communications, representations, permits, or agreements, either verbal or written, between the Parties are modified or superseded by this Agreement.

13.12. Third Party Beneficiaries. Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

13.13. Waivers. No provision or condition of this Agreement shall be considered waived unless duly amended. The failure of County or Developer to require strict performance of any term or condition of this Agreement or to exercise any option here in conferred in any one or all instances shall not be construed to be a waiver or relinquishment of any such term or condition, but the same shall be and remain in full force and effect, unless such waiver is evidenced by the prior written consent of either County or Developer, as the case may be.

13.14. Duty to Act Reasonably. Unless otherwise expressly provided, each party shall act reasonably in giving any consent, approval, or taking any other action under this Agreement.

13.15. Excused Delay; Extension of Time of Performance.

13.15.1. "Excused Delay" means, with respect to Developer, any event or circumstance which is beyond the reasonable control of Developer and having a direct effect on Developer's performance of this Agreement, and which (a) could not be

avoided, prevented or removed by Developer's commercially reasonable efforts, and (b) is not caused by or does not result from the negligence of Developer or breach or failure of Developer to perform its obligations under the Agreement; provided that Developer has taken all reasonable precautions, care and alternate measures to avoid or mitigate the effects thereof.

13.15.2. Excused Delay events shall include, but not be limited to: natural disasters, fire, hurricanes, tornadoes, dust or sand storms, mudslides, subsidence, lightning, flood, earthquake, explosions, acts of God, terrorism or similar actions by the public enemy, strikes or lockouts affecting the industry in general (national or regional in scope) where such strike or lockout has a direct effect on the performance of the Agreement, public disorder or civil disturbance, blockages, insurrections, riots, war, hostilities, sabotage, expropriation or confiscation, epidemic or quarantine, or environmental terrorism.

13.15.3. Upon delivery of written Notice of Excused Delay by Developer to the County an extension of time for cause will be considered, and may be granted in writing by the County for the period of the Excused Delay.

13.16. Covenants Appurtenant to the Project. All covenants and conditions set forth herein shall be appurtenant to and run with the Project and shall be binding upon the Parties hereto, their heirs, successors, and assigns.

13.17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument shall form a single document.

13.18. Further Acts. Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

13.19. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or effect the meaning or construction of any of the provisions hereof.

13.20. Names and Plans. Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs, technology, processes, and work products of every nature at any time developed, formulated or prepared by or at the request of Developer in connection with the Project.

13.21. Attorney Fees. In the event that either party to this Agreement shall file suit or action at law or equity to interpret or enforce this Agreement, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred by the prevailing party. Similarly, all fees and costs associated with an

appeal to any appellate court thereafter, including, without limitation, the prevailing party's attorneys' fees, shall be paid by the non-prevailing party.

13.22. Termination. This Agreement may be terminated upon the mutual written consent of the Parties.

13.23. Recitals. The Recitals to the Agreement are incorporated into the Agreement.

[Signatures on following pages]

Exhibits:

Exhibit A – Legal Description of the Property

Exhibit B – County Tax Parcels for Each of the Land Areas Comprising the CUPs

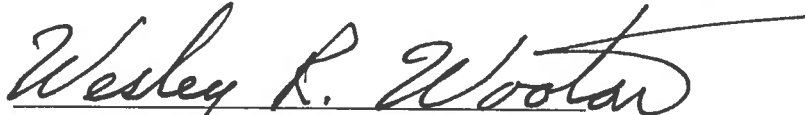
Exhibit C – Master Site Plan – from the November 2016 hearings

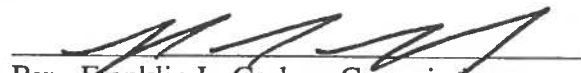
Exhibit D – Master Site Plan as modified under this Agreement

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto on the day and year first above written.

ELMORE COUNTY:

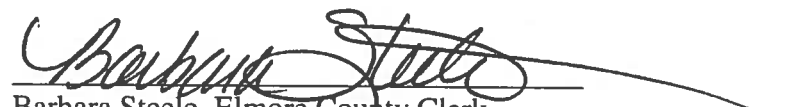
Board of Elmore County Commissioners


By: Wesley R. Wootan, Commissioner


By: Franklin L. Corbus, Commissioner



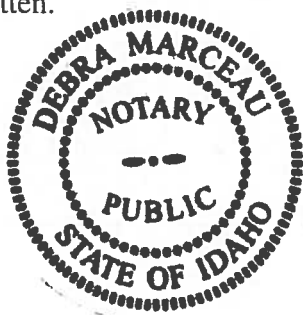
ATTEST:


Barbara Steele, Elmore County Clerk

STATE OF IDAHO)
) ss.
County of Elmore)

On the 9 day of February, 2018, before me, Debra Marceau a Notary Public in and for said state, personally appeared WESLEY R. WOOTAN, Commissioner of **Elmore County**, a political subdivision of the State of Idaho, the county that executed the foregoing instrument, who duly acknowledged to me that such county executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

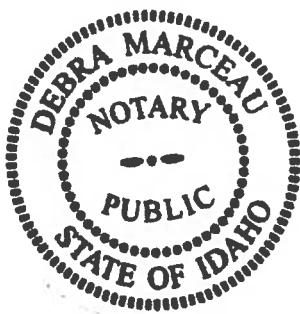


Debra Marceau
NOTARY PUBLIC for Idaho
Residing at Hammett, Idaho
My commission expires: 10-18-23

STATE OF IDAHO)
) ss.
County of Elmore)

On the 9 day of February, 2018, before me, Debra Marceau Notary Public in and for said state, personally appeared FRANKLIN L. CORBUS, Commissioner of **Elmore County**, a political subdivision of the State of Idaho, the county that executed the foregoing instrument, who duly acknowledged to me that such county executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

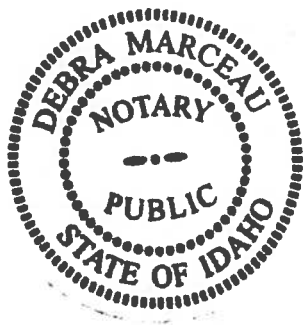


Debra Marceau
NOTARY PUBLIC for Idaho
Residing at Hammett Idaho
My commission expires: 10-18-2023

STATE OF IDAHO)
) ss.
County of Elmore)

On the 9 day of February, 2018, before me, Debra Marceau, a Notary Public in and for said state, personally appeared BARBARA STEELE, the Clerk of **Elmore County**, a political subdivision of the State of Idaho, the county that executed the foregoing instrument, who duly acknowledged to me that such county executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Debra Marceau
NOTARY PUBLIC for Idaho
Residing at Hammett, Idaho
My commission expires: 10-18-2023

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto on the day and year first above written.

CAT CREEK ENERGY, LLC
an Idaho limited liability company



By: John Faulkner
Its: Manager

STATE OF IDAHO)
) ss.
County of Elmore)

On this 9 day of February, in the year 2018, before me, a Notary Public in and for the State of Idaho, personally appeared John Faulkner, known or identified to me to be the Manager of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



NOTARY PUBLIC for Idaho

Residing at Hammett, Idaho

My commission expires: 10-18-2023

The undersigned, each as an owner of the Land, hereby acknowledges and agrees to the terms of this Agreement and in order to receive the benefits of this Agreement, agrees to assume all obligations of Developer under this Agreement on any Transfer and Assignment.

By: JOHN FAULKNER
Name: _____
Title: PRESIDENT

By: John Faulkner
Name: JOHN FAULKNER
Title: MANAGER

On this 9 day of February, in the year 2018, before me, a Notary Public in and for the State of Idaho, personally appeared John Faulkner, known or identified to me to be the President of the Corporation that executed the instrument or the person who executed the instrument on behalf of said Corporation, and acknowledged to me that such Corporation executed the same.



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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Tract I:

Township 1 South, Range 10 East, Boise Meridian, Elmore County, Idaho

Section 13: S1/2SW1/4

Section 14: S1/2S1/2

Section 15: S1/2SE1/4, SE1/4SW1/4

Section 21: SW1/4SW1/4, E1/2NE1/4, NE1/4SE1/4 and SE1/4SE1/4

SAVE AND EXCEPT

Commencing at the SE Corner of Section 21 and running West 400 feet more or less to the Point of Beginning; running

thence N65°43'10" E 190 feet more or less, running

thence S 15°50'38" W 80 feet more or less, running

thence West 150 feet more or less to the Point of Beginning.

Section 22: All lying North of Highway 68

SAVE AND EXCEPT

Louse Creek Road running through Section 22

Section 23: N1/2, S1/2 lying North of Highway 68

Section 24: NW1/4, N1/2SW1/4

Section 28: NW1/4 lying North of Highway 68,
SW1/4 lying South of Highway 68,
SE1/4NW1/4 lying South of Highway 68, and
NE1/4 lying North of Highway 68

SAVE AND EXCEPT

A parcel of land being a portion of the Northeast 1/4 of the Northeast 1/4 of Section 28, Township 1 South, Range 10 East, B.M., Elmore County, Idaho:

Commencing at a found brass cap marked G.L.O. 1938, monumenting the East 1/4 corner of said Section 28;

thence along the Easterly boundary of said Section 28, North 00°36'26" West 2,433.62 feet to a point on the centerline of State Highway 20, said point being the beginning of a non-tangent curve, concave to the Southeast

and

having a radius of 5,729.58 feet, to which point a radial line bears North 21°04'18" West;

thence leaving said Easterly boundary, Southwesterly along said Centerline and arc of said curve 620.60 feet, through a central angle of 06°12' 22", having a chord bearing and distance of South 65°49'31" West 620.29 feet; thence leaving said center line, North 27°16'40" West 75.00 feet to a point on the Northerly right-of-way of said Highway 20, the REAL POINT OF BEGINNING;

thence leaving said Northerly right of way North 27°16'40" West 271.01 feet;

thence North 65°43'10" East 421.93 feet more or less to a point on a existing fence line;

thence East 150 feet more or less,

thence S 15°50'38" W 264.15 feet more or less;

thence leaving said fence line, Southwesterly along said right of way and the arc of said curve 376.11 feet through a central angle of 03°42'45", having a chord bearing and a distance of South 64°34'43" West 376.05 feet to the REAL POINT OF BEGINNING.

Subject To: All existing road right of way and easements of record or appearing on the above-described parcel of land.

Section 29: E1/2NW1/4, NE1/4, SW1/4 lying North of Highway 68,
W1/2SE1/4 lying North and South of Highway 68, and the
E1/2SE1/4 lying South of Highway 68

Section 30: S1/2NE1/4, N1/2SE1/4, and SE1/4SW1/4, S1/2SE1/4

SAVE AND EXCEPT

A parcel of land located in the North half of Section 31 and the South half of Section 30, Township 1 South, Range 10 East, Boise Meridian, Elmore County, Idaho, and more particularly described as follows:

Beginning at the Northeast corner of said Section 31, from which the North Quarter corner of said Section 31 bears

South 89°31'09" West 2,632.14 feet;

thence South 00°25'47" East along the East boundary of said Section 31 for a distance of 281.74 feet;

thence South 89°31'09" West parallel with the North boundary of said Section 31 for a distance of 1,383.62 feet;

thence South 00°19'47" East parallel with the West boundary of the NE1/4 of said Section 31 for a distance of 750.00 feet;

thence South 89°31'09" West parallel with the North boundary of the NE1/4 of said Section 31 for a distance of 1,249 .01 feet to a point on the West boundary of the NE 1/4 of said Section 31;

thence South 89°55'49" West parallel with the North boundary of the NW1/4 of said Section 31 for a distance of 1,308.70 feet to a point on the West boundary of the NE1/4NW1/4 of said Section 31;

thence North 00°05'27" West along the West boundary of the NE1/4NW1/4 of said Section 31 for a distance of 427.50 feet to a point on the southerly Right of Way of US-20, Highway project Number FHP-47A;

thence the following courses and distances along the southerly right of way of US Highway Number 20, Highway project number FHP-47A;

North 68°30'16" East for a distance of 86.29 feet to a point of spiral, Station 593+43.59, 75.00 feet right of said Highway project;

Northeasterly along a spiral curve left parallel to and 75.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 65°16'55" East for a distance of 367.86 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 597+00.00;

South 86°57'58" East for a distance of 141.25 feet to a point of curvature and being 160.00 feet perpendicular to the centerline of US-20, Station 598+00.00;

Northeasterly 233.31 feet along a non-tangent curve left having a radius of 1,114.93 feet, delta angle of 11°59'22", and a long chord bearing North 47°06'10" East for a distance of 232.88 feet to a point being 160.00 feet perpendicular to the centerline of US-20, Station 600+00.00;

North 01°00'56" East for a distance of 140.75 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 601+00.00;

Northeasterly 215.62 feet along a non-tangent curve left having a radius of 1,029.93 feet, delta angle of 11°59'43",

and a long chord bearing North 29°06'35" East for a distance of 215.23 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 603+00.26;

Northeasterly along a spiral curve left parallel to and 75.00 feet distant South easterly from the centerline of US-20

having a long chord bearing North 19°08'41" East for a distance of 208.28 feet to a point being 75.00 feet

perpendicular to the centerline of US-20, Station 605+00.26;

North 17°13'45" East for a distance of 31.99 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 605+32.26;

Northeasterly along a spiral curve right parallel to an 75.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 18°55'19" East for a distance of 156.23 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 607+00.00;

North 52°48'40" East for a distance of 100.76 feet to a point being 120.00 feet perpendicular to the centerline of US-

20, Station 608+00.00;

Northeasterly 391.23 feet along a non-tangent curve right having a radius of 596.20 feet delta angle of 37°35'53", and a long chord bearing North 49°17'46" East for a distance of 384.25 feet to a point being 120.00 feet perpendicular to the center line of US-20, Station 612+69.70;

Northeasterly along a spiral curve right parallel to and 120.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 77°51'29" East for a distance of 296.18 feet to a point being 120.00 feet perpendicular to the centerline of US-20, Station 616+00.00;

North 72°51'47" East for a distance of 232.06 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 619+00.00;

North 84°05'42" East for a distance of 261.31 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 621+61.37;

Northeasterly along a spiral curve right parallel to and 75.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 85°34'48" East for a distance of 294.03 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 624+61.37;

Southeasterly 767.52 feet along a curve right having a radius of 1,834.86 feet, delta angle of 23°58'00", and a long chord bearing South 79°25'18" East for a distance of 761.93 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 632+57.97;

Southeasterly along a spiral curve right parallel to and 75.00 feet distant Southwesterly from the centerline of US-20

having a long chord bearing South 64°25'24" East for a distance of 294.03 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 635+57.97 Ahead-Station 635+60.26 Back;

South 62°56'18" East for a distance of 124.25 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 636+83.07;

Southeasterly along a spiral curve left parallel to and 75.00 feet distant Southwesterly from the centerline of US-20

having a long chord bearing South 62°56'34" East for a distance of 18.13 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 637+00.00;

South 71°32'51" East for a distance of 101.40 feet to a point being 60.00 feet perpendicular to the centerline of US-20, Station 638+00.00;

Southeasterly along a spiral curve left parallel to and 60.00 feet distant Southwesterly from the centerline of US-20

having a long chord bearing South 64°19'24" East for a distance of 284.73 feet to a point being 60.00 feet perpendicular to the centerline of US-20, Station 640+83.07;

Southeasterly 44.64 feet along a curve left having a radius of 3,879.72 feet, delta angle of 00°39'33", and a long chord bearing South 66°16'05" East for a distance of 44.64 feet to a point on the East boundary of the SE1/4 of Section 30 and being 60.00 feet perpendicular to the centerline of US-20;

thence South 00°27'03" East along the East boundary of said Section 30 for a distance of 399.14 feet to the Southeast corner of said Section 30 and being the POINT OF BEGINNING.

Section 31: E1/2NW1/4 and NE1/4, N1/2SE1/4 and
E1/2SW 1/4 lying North of County Road

SAVE AND EXCEPT

A parcel of land located in the North half of Section 31 and the South half of Section 30, Township 1 South, Range 10 East, Boise Meridian, Elmore County, Idaho, and more particularly described as follows:

Beginning at the Northeast corner of said Section 31, from which the North Quarter corner of said Section 31 bears South 89°31'09" West 2,632.14 feet;

thence South 00°25'47" East along the East boundary of said Section 31 for a distance of 281.74 feet;

thence South 89°31'09" West parallel with the North boundary of said Section 31 for a distance of 1,383.62 feet;

thence South 00°19'47" East parallel with the West boundary of the NE1/4 of said Section 31 for a distance of 75 0.00 feet;

thence South 89°31'09" West parallel with the North boundary of the NE1/4 of said Section 31 for a distance of 1,249.01 feet to a point on the West boundary of the NE1/4 of said Section 31;

thence South 89°55'49" West parallel with the North boundary of the NW1/4 of said Section 31 for a distance of 1,308.70 feet to a point on the West boundary of the NE1/4NW1/4 of said Section 31;

thence North 00°05'27" West along the West boundary of the NE1/4NW1/4 of said Section 31 for a distance of 427.50 feet to a point on the southerly Right of Way of US-20, Highway project Number FHP-47A;

thence the following courses and distances along the southerly right of way of US Highway Number 20, Highway project number FHP-47A;

North 68°30'16" East for a distance of 86.29 feet to a point of spiral, Station 593+43.59, 75.00 feet right of said Highway project;

Northeasterly along a spiral curve left parallel to and 75.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 65°16'55" East for a distance of 367.86 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 597+00.00;

South 86°57'58" East for a distance of 141.25 feet to a point of curvature and being 160.00 feet perpendicular to the centerline of US-20, Station 598+00.00;

Northeasterly 233.31 feet along a non-tangent curve left having a radius of 1,114.93 feet, delta angle of 11°59'22", and a long chord bearing North 47°06'10" East for a distance of 232.88 feet to a point being 160.00 feet perpendicular to the centerline of US-20, Station 600+00.00;

North 01°00'56" East for a distance of 140.75 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 601+00.00;

Northeasterly 215.62 feet along a non-tangent curve left having a radius of 1,029.93 feet, delta angle of 11°59'43", and a long chord bearing North 29°06'35" East for a distance of 215.23 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 603+00.26;

Northeasterly along a spiral curve left parallel to and 75.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 19°08'41" East for a distance of 208.28 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 605+00.26;

North 17°13'45" East for a distance of 31.99 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 605+32.26;

Northeasterly along a spiral curve right parallel to a 75.00 feet distant Southeasterly from the centerline of US- 20

having a long chord bearing North 18°55'19" East for a distance of 156.23 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 607+00.00;

North 52°48'40" East for a distance of 100.76 feet to a point being 120.00 feet perpendicular to the centerline of US-20, Station 608+00.00;

Northeasterly 391.23 feet along a non-tangent curve right having a radius of 596.20 feet delta angle of 37°35'53", and a long chord bearing North 49°17'46" East for a distance of 384.25 feet to a point being 120.00 feet perpendicular to the centerline of US-20, Station 612+69.70;

Northeasterly along a spiral curve right parallel to and 120.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 77°51'29" East for a distance of 296.18 feet to a point being 120.00 feet perpendicular to the centerline of US-20, Station 616+00.00;

North 72°51'47" East for a distance of 232.06 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 619+00.00;

North 84°05'42" East for a distance of 261.31 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 621+61.37;

Northeasterly along a spiral curve right parallel to and 75.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 85°34'48" East for a distance of 294.03 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 624+61.37;

Southeasterly 767.52 feet along a curve right having a radius of 1,834.86 feet, delta angle of 23°58'00", and a long chord bearing South 79°25'18" East for a distance of 761.93 feet to a point being 75.00 feet perpendicular to the centerline of US-20. Station 632+57.97:

Southeasterly along a spiral curve right parallel to and 75.00 feet distant Southwesterly from the centerline of US-20

having a long chord bearing South 64°25'24" East for a distance of 294.03 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 635+57.97 Ahead-Station 635+60.26 Back;

South 62°56'18" East for a distance of 124.25 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 636+83.07;

Southeasterly along a spiral curve left parallel to and 75.00 feet distant Southwesterly from the centerline of US-20

having a long chord bearing South 62°56'34" East for a distance of 18.13 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 637+00.00;

South 71°32'51" East for a distance of 101.40 feet to a point being 60.00 feet perpendicular to the centerline of US-20, Station 638+00.00;

Southeasterly along a spiral curve left parallel to and 60.00 feet distant Southwesterly from the centerline of US-20

having a long chord bearing South 64°19'24" East for a distance of 284.73 feet to a point being 60.00 feet perpendicular to the centerline of US-20, Station 640+83.07;

Southeasterly 44.64 feet along a curve left having a radius of 3,879.72 feet, delta angle of 00°39'33", and a long chord bearing South 66°16'05" East for a distance of 44.64 feet to a point on the East boundary of the SE1/4 of Section 30 and being 60.00 feet perpendicular to the centerline of US-20;

thence South 00°27'03" East along the East boundary of said Section 30 for a distance of 399.14 feet to the Southeast corner of said Section 30 and being the POINT OF BEGINNING.

Section 32: E1/2, NW1/4, NE1/2SW1/4

Section 33: W1/2

Tract II: Wood Creek Ranch, LLC

Township 1 South, Range 9 East, Boise Meridian, Elmore County, Idaho

Section 1: U.S. Government Lots 2, 3 and 4,
South 1/2 North 1/2,
South 1/2

Together with vacated road which attached to said land by operation of law, as disclosed in Resolution No. 01(14)

Recorded: July 14, 2014, as Instrument No. 442877, or Official Records.

Section 2: U.S. Government Lots 1, 2, 3 and 4,
South 1/2 North 1/2,
South 1/2

Section 3: South 1/2 Southeast 1/4

Section 10: North 1/2 North 1/2

Section 11: ALL

Township 1 North, Range 9 East, Boise Meridian, Elmore County, Idaho

Section 25: East 1/2 East 1/2 Northeast 1/4 Northeast 1/4
South 1/2 Southeast 1/4 Northeast 1/4
Southwest 1/4 Northeast 1/4
Southeast 1/4 Northwest 1/4
South 1/2, SAVE AND EXCEPT Southwest 1/4 Southwest 1/4

Section 26: Northwest 1/4 Southwest 1/4
South 1/2 Northeast 1/4 Southwest 1/4
South 1/2 South 1/2

Section 27: North 1/2 North 1/2 Southeast 1/4

Section 35: ALL

Section 36: ALL

EXHIBIT B
TAX PARCEL NUMBERS BY CUP

Solar	Parcel Number	Acreage	Notes
	RP01S10E230025	509.24	
	RP01S10E220020	587.61	
	RP01S10E149010	160.00	
	RP01S10E159010	120.00	
	RP01S10E136610	80.00	
	RP01S10E242410	240.00	

Wind

RP01S10E210040	519.83	
RP01S10E220020	587.61	Only that portion to the west of Elmore County Right of Way
RP01S10E280085	347.09	
RP01S10E290020	504.14	
RP01S10E301840	231.02	
RP01S10E310500	284.62	
RP01S10E320020	560.00	
RP01S10E332410	320.00	

Transmission

RP01S09E100010	160.00
RP01S09E039010	80.00
RP01S09E020010	577.00
RP01N09E350010	640.00
RP01N09E265410	220.00
RP01N09E277210	40.00

Hydro

RP01N09E277210	40.00	
RP01N09E265410	220.00	
RP01N09E251210	380.00	
RP01N09E360010	640.00	
RP01N09E350010	640.00	
RP01S09E020010	577.00	
RP01S09E010610	551.58	Official Site Address: 10888 NE WOOD CREEK RD, 83647
RP01S09E110040	640.00	

Substation

RP01S09E020010	577.00	
RP01S09E110040	640.00	
RP01N09E265410	220.00	Alt.

EXHIBIT C
MASTER SITE PLAN – REVISED 11-16-16

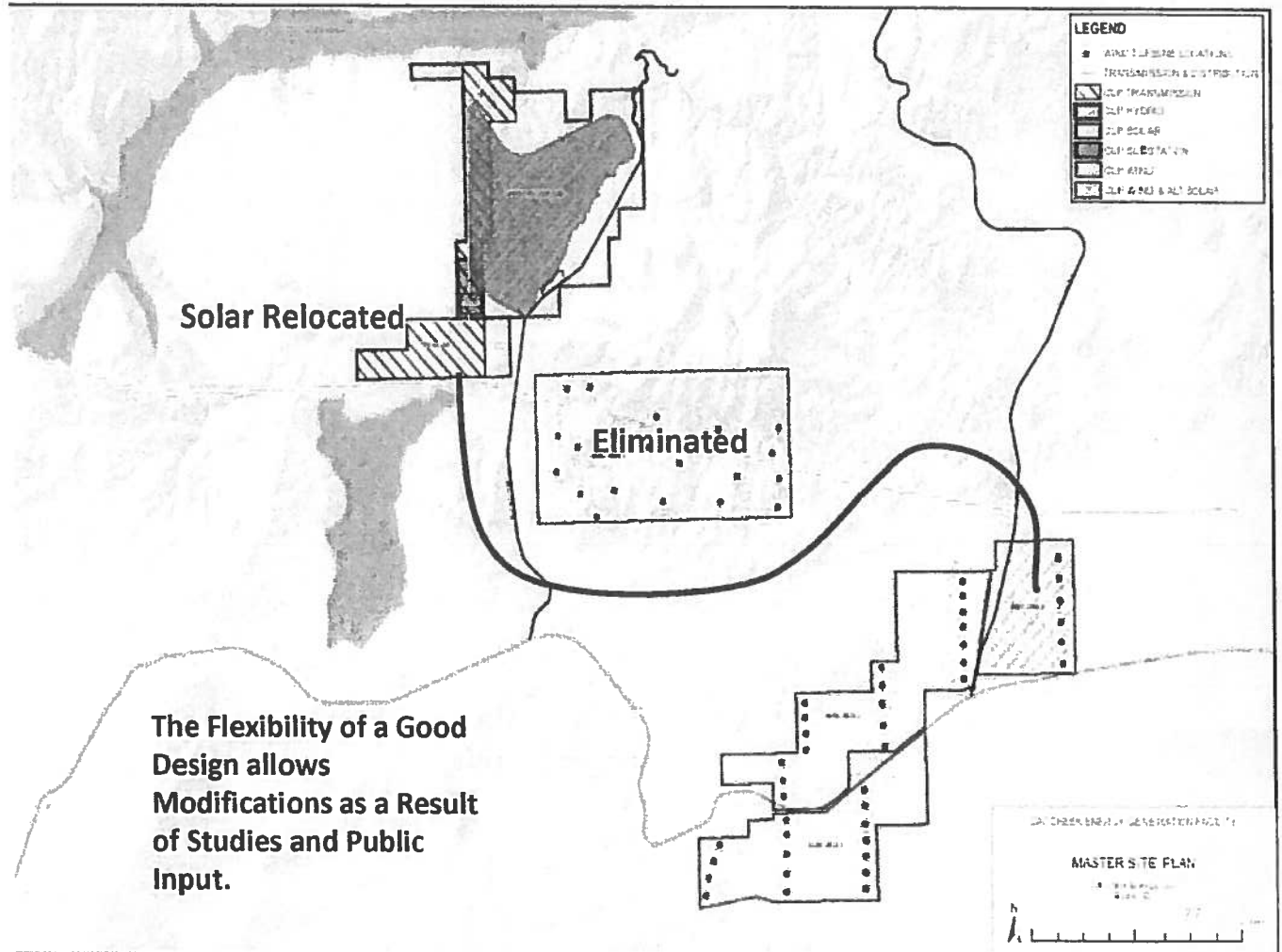


EXHIBIT C **ORIGINAL MASTER SITE PLAN WITH APPLICATION**

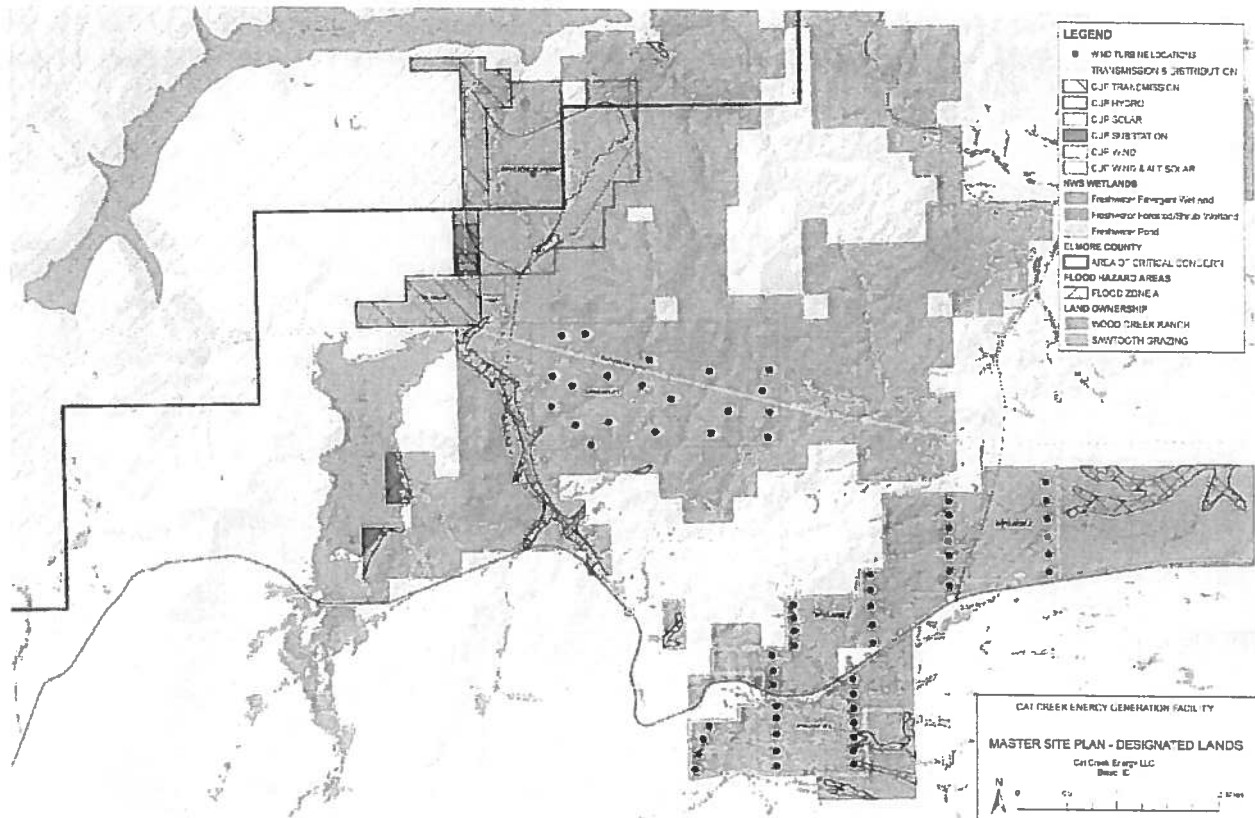
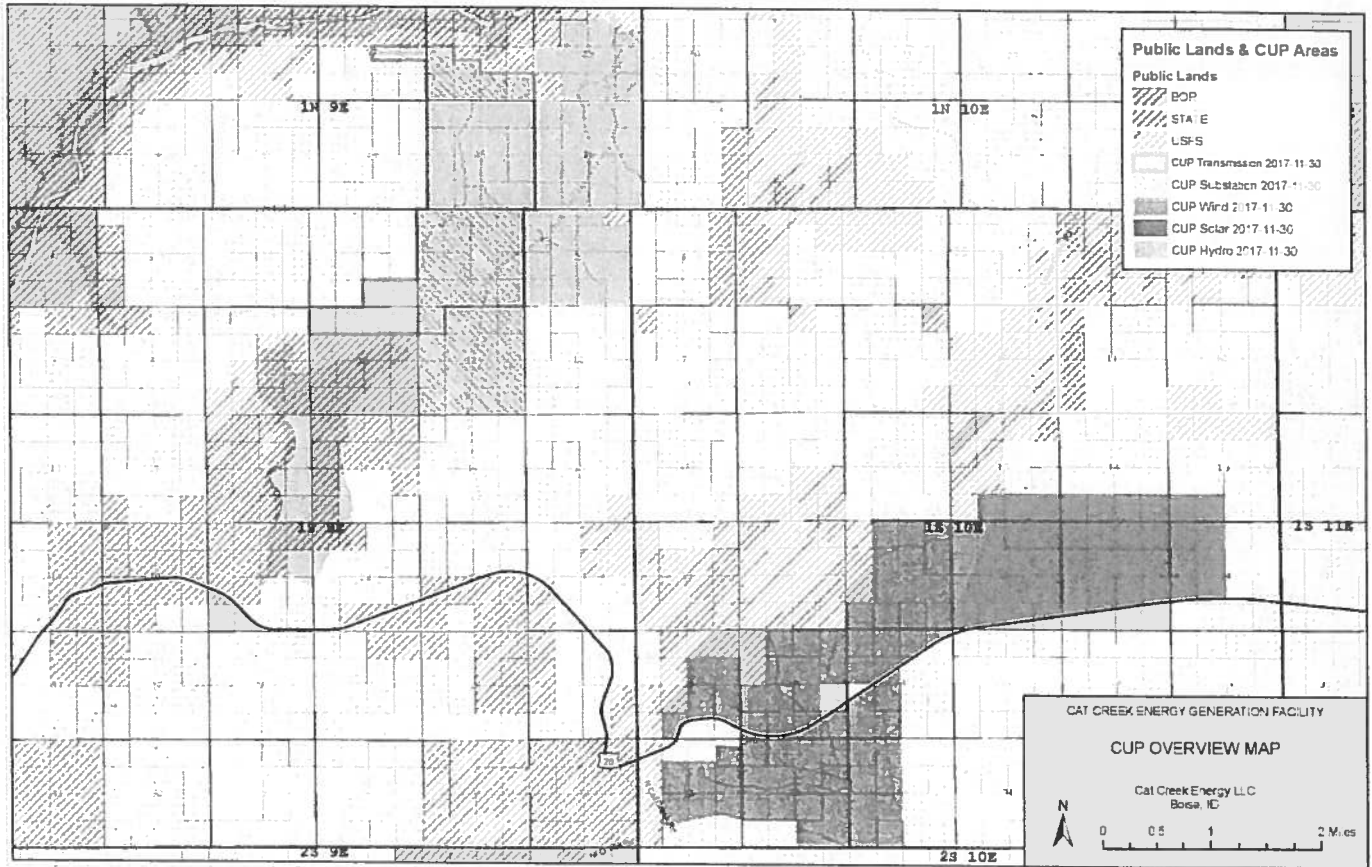


Exhibit D **Master Site Plan as of the Effective Date**



The following modifications are incorporated into the Master Site Plan according to the Approval, Conditions, and this Agreement.

- 1) The Upper Reservoir commonly known as the Cat Creek Reservoir ("CCR") can be increased to a maximum size of 1,700 surface acres and 100,000 acre feet volume.
- 2) CCR can increase its depth up to ninety (90) feet maximum depth. The depth is a combination of excavation and the height of the embankment created.
- 3) The Pumped Storage Hydro ("PSH") facility may contain up to six (6) penstocks, each with a maximum diameter of sixteen (16) feet.
- 4) The PSH facility may have underground tunnels with a maximum of thirty-four (34) feet in diameter on and under the CUP site.
- 5) The PSH facility may have an underground powerhouse cavern with dimensions of one hundred (100) feet in height, one hundred twenty ("120") feet in width, and two hundred forty (240) feet in length under the CUP site.
- 6) A main electrical substation and switch station may be located anywhere in the Substation CUP as long as it is no less than 2,500 feet from any current residence.
- 7) The electrical switch station may be located alongside the electrical substation or may stand alone.
- 8) If auxiliary cooling is determined to be necessary for the PSH pump/generating units by the water quality studies, a water tower is permitted by the County as part of the equipment necessary for the successful operation of the PSH facility under any federal permitting as provided in the Zoning Ordinance.
- 9) A new wind/solar substation replaces the collector station for the wind/solar CUP site.
- 10) A transmission line replaces the distribution lines from the new wind/solar substation to the main substation or switch station.
- 11) Wind turbine towers may be located anywhere on the Wind CUP site. The maximum number of towers is thirty-nine (39). The maximum height is five hundred (500) feet. The minimum setback from any public road is 1.25 times the overall height of the wind turbine from the centerline of the wind turbine tower. The minimum setback from any existing residential dwelling shall be at least 2,500 feet.
- 12) A permanent meteorological tower can be built as necessary of any wind turbine configuration up to a height of three hundred twenty (320) feet and can be placed on any of the Land on or adjacent to the Wind CUP site.
- 13) A Doppler radar facility can be built on any of the Land as to accommodate its performance parameters.
- 14) The O&M complex site can incorporate a maximum of twenty (20) acres and can be placed on any CUP site.
- 15) One main O&M building can be built up to a maximum fifteen thousand (15,000) square feet with an approved building permit.
- 16) One equipment storage building up to five thousand (5,000) square feet can be built within the footprint of the overall O&M complex site with a maximum height of thirty-five (35) feet.
- 17) For each CUP site, a storage building or shipping containers with a total footprint of no greater than twenty-four hundred (2,400) square feet are permitted for housing spare parts, consumables, and vehicles with an approved building permit.

- 18) A cellular and/or microwave communication tower up to two hundred (200) feet in height may be placed on any of the Property on the CUP sites subject to any federal requirements and state permitting.
- 19) Transmission level electrical towers are engineered to accommodate the topography and electrical conductor size on any CUP site.
- 20) Temporary housing can be built on the PSH CUP Site to accommodate the construction cycle as provided in 6-8-206 with an approved Administrative Decision and an approved building permit.
- 21) One permanent Caretaker/Security dwelling unit can be constructed within the PSH or Substation CUP boundaries as provided in 6-8-89 with an approved building permit.
- 22) One duplex dwelling unit can be constructed within the PSH or Substation CUP boundaries as provided in 6-8-93 with a Conditional Use Permit and an approved building permit.
- 23) Temporary housing to accommodate construction personnel is allowed during the construction activity period under 6-8-206 and must be removed within thirty (30) days after commercial operations of the final power generator facility commences.
- 24) Rock crushing is allowed during the construction period as provided in 6-8-164 and an approved Administrative Decision for a temporary use.
- 25) Concrete batch plants are allowed during the construction period as provided in 6-8-164 and an approved Administrative Decision for a temporary use.
- 26) For fire safety, on site equipment shall include a tender, a pumper, and all necessary equipment for fire suppression.

The Developer will comply with the requirements for Building Permits in the Ordinance, including the Building Code, under the Agricultural Zoning designation, and FAA Regulations.