

**ORDINANCE NO. 2018-04**

**AN AMENDED AND RESTATED ORDINANCE OF THE BOARD OF COMMISSIONERS OF ELMORE COUNTY ADOPTING THE FIRST AMENDMENT TO 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), AMENDING AND RESTATING ORDINANCE NO. 2018-03, DATED DECEMBER 14, 2018, WHICH USED A DUPLICATE ORDINANCE NUMBER.**

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;

WHEREAS, on February 9, 2018, pursuant to a public hearing with notice, the Board approved that certain 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 “Development Agreement”);

WHEREAS, the Development Agreement contained a provision that it would be further amended to address those matters pertaining to the diversion and delivery of water to Elmore County on or before December 31, 2018;

WHEREAS, the Board held a public hearing with notice on August 24, 2018, on the proposed amendment to the Development Agreement; and

WHEREAS, following the August 24, 2018 hearing, the Board set deliberations for the proposed amendment to the Development Agreement for September 7, 2018;

WHEREAS, at the September 7, 2018 deliberations the Board did not have a sufficient number of votes to approve the proposed amendment to the Development Agreement;

WHEREAS, on September 10, 2018, the Applicant requested another hearing to consider a revised proposed amendment to the Development Agreement;

WHEREAS, on September 21, 2018, the Applicant withdrew its request for a hearing for the Board to consider a revised proposed amendment to the Development Agreement;

WHEREAS, the Board held a second public hearing with notice on October 5, 2018, on the proposed amendment to the Development Agreement and the Board took no action since the request for hearing had been withdrawn by the Applicant;

WHEREAS, on November 14, 2018, the Applicant requesting a third hearing on a proposed amendment to the Development Agreement;

WHEREAS, the Board held a third public hearing with notice on December 14, 2018, on a proposed amendment to the Development Agreement; and

WHEREAS, following the December 14, 2018 hearing, the Board deliberated the matter and took the action described below.

WHEREAS, the Board approved Ordinance, No. 2018-03 on December 14, 2018, which contained a previously used Ordinance number and the Board now desires to amend and restate in its entirety Ordinance No. 2018-03 (December 14, 2018) with this Ordinance and approve this Ordinance with the correct Ordinance number as Ordinance No. 2018-04.

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

**SECTION 1. AMENDED AND RESTATED ORDINANCE:** This Ordinance shall amend and restate in its entirety, Ordinance No. 2018-03, dated December 14, 2018, which contained a duplicate Ordinance number.

**SECTION 2. AMENDMENT TO THE DEVELOPMENT AGREEMENT:** The Board hereby adopts and approves the First Amendment to 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) in the form set forth on Exhibit A (the "Amendment"), for that real property (the "Property") described in the Development Agreement, which exhibit is attached hereto and made a part hereof.

**SECTION 3. 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, including but not limited to Ordinance No. 2018-03 dated December 14, 2018.

**SECTION 4. 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.

[Signatures on Following Page]

Dated this 21st day of December, 2018.



**ELMORE COUNTY BOARD OF COMMISSIONERS**

Approving:

By: *Wesley R. Wootan*  
Wesley R. Wootan, Chairman

By: *Franklin Corbus*  
Franklin Corbus, Commissioner

ATTEST:

*B. Steele, Clerk by M. G. G. Clerk Deputy*  
Barbara Steele, Elmore County Clerk

EXHIBIT A

" EXHIBIT A "

**FIRST AMENDMENT TO 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 First Amendment to 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 "Amendment") is entered into this \_\_\_ day of \_\_\_\_\_, 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, The Parties entered into a Development Agreement on February 9, 2018;

WHEREAS, As part of the Development Agreement, the Parties agreed to defer negotiations and agreement on certain provisions related to water diversion and delivery to a later date, not to exceed December 31, 2018,

WHEREAS, The Parties have now had an opportunity to negotiate certain provisions related to water diversion and delivery and the Parties desire to memorialize the terms as more fully set forth herein; and

WHEREAS, The Parties desire to enter into this First Amendment to Development Agreement to replace Section 2.2 of the Development Agreement which states:

**2.2. Water Storage 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.

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

**AMENDMENT**

The Parties hereby agree to replace Section 2.2 of the Development Agreement with the following:

**"2.2. Water Storage 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 June 30, 2019 or the CUP related to water (CUP 2015-04) shall lapse.”

ALL OTHER PROVISIONS OF THE DEVELOPMENT AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

[SIGNATURES TO FOLLOW]







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 \_\_\_\_\_ day of \_\_\_\_\_, 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 \_\_\_\_\_, Idaho  
My commission expires: \_\_\_\_\_

Landowners:

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.

**Sawtooth Grazing Association, Inc.**  
**An Idaho corporation**

\_\_\_\_\_

By: \_\_\_\_\_

John Faulkner  
President

**Wood Creek Ranch, LLC**  
**An Idaho limited liability company**

\_\_\_\_\_  
By: \_\_\_\_\_

John Faulkner  
Manager

STATE OF IDAHO )

) ss.

County of Elmore )

On this \_\_\_\_\_ day of \_\_\_\_\_, 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 and Manager of Sawtooth Grazing Association, Inc. and Wood Creek Ranch, LLC (the "companies") that executed the instrument or the person who executed the instrument on behalf of the companies, and acknowledged to me that such companies 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 \_\_\_\_\_, Idaho

My commission expires:\_\_\_\_\_

ORDINANCE NO. 2018-03

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF ELMORE COUNTY ADOPTING THE FIRST AMENDMENT TO 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).**

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”);

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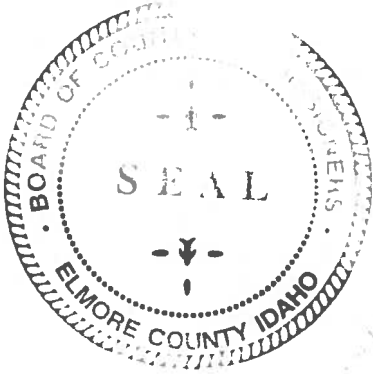
**SECTION 1. AMENDMENT TO THE DEVELOPMENT AGREEMENT:** The Board hereby adopts and approves the First Amendment to Development Agreement Relative to Cat Creek Energy, LLC Conditional Use Permits (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07) in the form set forth on Exhibit A (the "Amendment"), for that real property (the "Property") described in the Development Agreement, 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.

[Signatures on Following Page]

Dated this 14th day of December, 2018.



**ELMORE COUNTY BOARD OF COMMISSIONERS**

Approving:

By: *Wesley R. Wootan*  
Wesley R. Wootan, Chairman

By: *Franklin Corbus*  
Franklin Corbus, Commissioner

ATTEST:

*Barbara Steele*  
Barbara Steele, Elmore County Clerk

EXHIBIT A

## Exhibit A

### FIRST AMENDMENT TO 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)

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[SIGNATURES TO FOLLOW]











