

BEFORE THE ELMORE COUNTY BOARD OF COUNTY COMMISSIONERS

Property owners in the Oasis area (Jolene and Jim Hobney, Tom Grausam, and Willa Rose) ("**Appellants**") appeal from the Elmore Planning and Zoning Commission's (the "**Commission**") Findings of Fact, Conclusions of Law, and Order approving the application of Jonathan Dodge ("**Applicant**") to conduct a sand and gravel pit operation on his property on Martha Avenue in the Agriculture zone in the Oasis area of rural Elmore County and issuing CUP 2019-01 following the Commission's public hearing on the 16th day of January, 2019, the Applicant's request for a Conditional Use Permit (the "**CUP**") for a Sand and Gravel Pit (the "**Application**").

This matter having come before the Elmore County ("**County**") Board of County Commissioners (the "**Board**") for public hearing held during the Board's special meeting on Thursday, May 16, 2019, at the hour of 6:00 p.m. in the War Memorial Hall (American Legion) 515 East 2nd South Street, Mountain Home, prior to and at which time and place the Commission received written testimony and information for and against the Application. Upon conclusion of the public hearing, the Board closed the record to additional evidence and voted to defer the deliberations to July 12, 2019, to allow time to consider the record in light of the applicable law. On July 12, 2019, the Commission commenced deliberations on the Application. After making findings of fact and conclusions of law in accordance with the applicable law, the Board approved the Applicant's application for a CUP with Conditions as set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

If any of the Findings of Fact set forth below or incorporated by reference herein are deemed to be conclusions of law, they are to be construed as conclusions of law to the extent necessary to support the Board's approval of the application. The following findings are based upon the record ("**Record**") before the Elmore County Board of Commissioners as well as those facts which are commonly known or of which there is general public awareness. Any capitalized words used herein and not defined shall have the meanings those words have in the Commission's recommended findings and conclusions.

I. The Board finds that the Record of CUP-2019-01 is comprised of:

A. the Application for the CUP prepared and submitted by the Applicant and those supplemental letters, email messages, documentation and memos submitted by the Applicant or its representatives whether submitted in response to questions from employees (the "**Staff**") from the Elmore County Land Use and Building Department (the "**Department**"), the Department Staff review of the Application, the documents establishing procedural compliance with the Elmore County Zoning and Development Ordinance (the "**Zoning Ordinance**") and notice of the time and place for the public hearing before the Commission, the public hearing sign-in sheets, hearing procedure and rules, and those supplemental letters, email messages, documentation and memos submitted by Staff, the Applicant, or members of the public opposed, neutral, or supporting the Application, whether submitted in lieu of testimony or supplementing testimony at the public hearing, including the audio recording of the public hearing, the deliberation matrix prepared by Department Staff and record of the Commission's deliberations on February 20, 2019 (pages 1-189);

B. the Commission's Findings of Fact, Conclusions of Law, and Order approving CUP 2019-01 with conditions dated March 20, 2019, including the audio recording of the Commission's deliberations (pages 190-212);

C. the Appeal document, cover letter, and fee, appeal notification, letter of acceptance of appeal, Notice of Reclamation Plan Application, public hearing notice, site posting photographs, legal notice, proof of publication, appeal public hearing procedure, Idaho Transportation Department's letter indicating no objection to CUP 2019-01, Idaho Department of Lands approval of Reclamation Plan for CUP 2019-01 (pages 213-42); and

D. the updated supplemental report of the Department Staff on the application and appeal, appeal hearing sign-in sheets, hearing procedure and rules, Department Staff report at the public hearing on the Appeal, printed email message presented to a Commissioner, the Department Staff report for the Board, the presentation of Appellants' attorney Gary Allen, letters and other documents submitted to the Department prior to the public hearing on the Appeal, letters and documents, photographs, and maps submitted as exhibits at the public hearing on the Appeal in lieu of or supplementing testimony of persons opposed, supporting, or neutral to the Application, and the testimony submitted by the Applicant, the public, and Department staff in connection with the proceedings before the Commission and the Board which modify or clarify the application (pages 243-464).

II. The Board adopts, as its own findings the Commission's factual findings contained in the Findings of Fact, Conclusions of Law, and Order dated March 20, 2019 ("Commission's Findings") as to the Application, Applicant (Jonathan Dodge, 2708 Canyon Creek Road, Mountain Home, ID 83647) and procedural matters pertaining to the application process, including the pre-application conference, neighborhood meeting and notice, receipt and review of the application and notice of the public hearing on the application, except as amended by the Board, and the Board makes the following findings:

A. The Commission opened the public hearing on January 16, 2019 and received verbal and written information regarding the Application.

B. At the conclusion of the testimony, the Chairperson closed the public hearing. The Commission deferred its deliberations until the Commission's next regular meeting on February 20, 2019, to allow time to consider the record and the law applicable to the matters before the Commission regarding the Application for the CUP.

C. The Commission conducted deliberations February 20, 2019 on the Application.

D. Thereafter, the Commission moved to approve the Application with twelve (12) conditions of approval. The motion to approve the Application passed on a 5 to 1 vote. The Commission signed its Findings of Fact, Conclusions of Law, and Order ("FCO") on March 20, 2019. Record, p.190-207.

III. The Board finds the following as to the procedural matters pertaining to the appeal of the Application to the Board:

A. As provided in Section 7-3-10 D of the Zoning Ordinance:
Any person aggrieved by a decision of the Commission may appeal such decision to the Board by filing a written notice of appeal. Appeals shall be based on one of the following:

1. The decision was in violation of constitutional or statutory provisions; or

2. In excess of the statutory authority of the agency; or
3. Made upon unlawful procedure; or
4. Not supported by substantial evidence on the record as a whole;
- or
5. Arbitrary, capricious, or an abuse of discretion.

B. The Zoning Ordinance, at Section 7-3-10 E, requires that an appeal must be made by appropriate application and fee within fourteen (14) days of the Commission's final action.

C. On April 3, 2019, the Appellants filed an Appeal on the form provided by the Department with the required \$800.00 appeal fee, which was timely filed from the Commission's final written decision of March 20, 2019, the proper fee was paid concurrent with the appeal application. Record, pp. 212-16, 219.

D. The appeal document alleges the Commission's decision:

- a. Is in violation of constitutional and statutory provisions;
- b. Is not supported by substantial evidence in the record as a whole, including, without limitation, the following findings[;]
 - i. The use shall be harmonious and appropriate in appearance with existing uses and will not change the essential character of the area;
 - ii. The use shall not be hazardous or disturbing to existing neighboring uses or impede normal development of the area;
 - iii. The use is in harmony and accordance with the Comprehensive Plan;
 - iv. The use will not create excessive additional requirements for public services;
 - v. The use will not result in excessive production of traffic, noise, smoke, fumes, glare or odors; [and]
- c. Is arbitrary, capricious and an abuse of discretion[; and ...] violates these provisions because it did not adequately address the following negative impacts, without limitation[h]ealth[, p]roperty values[, t]he stability of the Oasis Fire District[, r]oads[, w]ells[, f]lood plain and flood issues for downstream properties[, w]etlands and wildlife[, and v]isual and view impacts.

Record, p. 215.

E. One or more of the necessary grounds set forth in the Zoning Ordinance. Record, pp. 212-16, 219.

F. Section 7-3-10 G of the Zoning Ordinance requires a hearing by the Board in accordance with Idaho law and the Zoning Ordinance. Public notice shall be published specifying the time, date and place of the public hearing for the appeal and the subject of the appeal. The notice shall be published once in the newspaper of general circulation at least fifteen (15) calendar days prior to the hearing and shall otherwise meet the same notice requirements as used by the Commission.

G. Review by the Board of the Commission's findings is a de novo review pursuant to Zoning Ordinance, Section 7-3-10 G.

H. The Board set the hearing for 6:00 PM on May 16, 2019, in the War Memorial Hall (American Legion) 515 East 2nd South Street, Mountain Home, Elmore County, Idaho.

I. Public hearing notices were sent to property owners and all agencies on May 7, 2019. Record, pp. 217-18, 220, 223, 230. Notice of the public hearing was published in the Mountain Home News on May 1 and 8, 2019. Record, p. 222. The Property was posted on May 7, 2019. Record, pp. 244-26, 287-88. The Department gave notice of the public hearing to all agencies and property owners, published notice in the Mountain Home News and posted notice on the Property as required by law. Record, p. 288.

J. The Board held the public hearing on the CUP on May 16, 2019. See Record, p. 232-34, 244-464.

K. At the conclusion of the public hearing the Board took the matter under advisement until a to-be-determined future date at which those in attendance and who advise the Director of the Department (the "Director") of their desire to be made aware of such deliberations and further requested legal counsel to review and prepare draft findings for review by the Board.

L. At its regular meeting on July 12, 2109, the Board reviewed the required findings for a CUP under Section 7-9-7 of the Zoning Ordinance and the preliminary findings of fact and conclusions of law, proposed order with conditions.

M. Following its deliberation, the Board approved the preliminary findings of fact and conclusions of law, the proposed order with conditions and adopted the same as final, and executed these Findings of Fact, Conclusions of Law, and Order and made the findings set forth herein.

IV. The Board adopts, as its own findings, the following Commission's Findings pertaining to the proposed use of the Property as follows:

The Submitted master site plan proposes a Sand and Gravel Pit on a 40-acre parcel in the Agriculture zone and a sand and gravel pit is consistent with information provided in the Application from the Applicant. Record, pp.1-41.

V. The Board adopts, as its own findings, the following Commission's Findings pertaining to the Property, as amended by the Board, and the Board makes the following findings:

- A. Section 2, Township 2 South, Range 5 East, B.M. A common way of locating the property is to head West on American Legion Blvd, turn right onto 2nd East St./Old U.S. 30 W. for 3.7 miles, turn left onto Ditto Creek Road/Old Oregon Trail for 6.9 miles, turn right onto Ditto Creek Road for approximately 2.6 miles, turn right onto Martha Ave. the site is located on the left. Record, pp. 3, 13-15, 79.
- B. Parcel Number: RP02805E026000 A accessed from Ditto Creek Road through RP 02805E026600 A.
- C. The "Owner" of the [Properties identified by the Parcel Numbers above] is Jonathan Dodge, 2708 Canyon Creek Road, Mountain Home, ID 83647

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

E. [Property] Characteristics:

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

Existing Structures: None

Existing Vegetation: The vegetation consists of mainly dry grazeland.

Slope: Relatively flat and less than 10% slope.

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

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

Views: The property is visible from all directions.

VI. The Board adopts the following Commission's Findings pertaining to the current zoning for the Property:

Based on the officially adopted Elmore County land use maps 2017-01, the Comprehensive Plan, and the Zoning Ordinance, the current zoning for the Site is Agriculture. Record, p.192.

VII. The Board adopts the following Commission's Findings pertaining to land use and zoning of the surrounding properties:

A. Based on the officially adopted Elmore County land use maps, the Comprehensive Plan and the Zoning Ordinance, the surrounding land use and zoning are as follows:

1. Land uses to the north, east, south, and west are all agricultural consistent with the Ag zoning designation.

2. The site of the proposed sand and gravel pit is not located in a designated flood zone, as set forth in the flood hazard map (Commission P.H. Exhibit G) and site maps.

Record, pp. 21-22, 29, 32, 77, 80, 158.

VIII. The Board adopts the following Commission's Findings pertaining to existing services affecting the Property:

Based on the officially adopted Elmore County land use map 2017-01 and materials found in the Department's file for CUP-2019-01, the following facts concerning services and infrastructure, are not in dispute[]:

Access Street and Designation: Access to the proposed site will be off of Ditto Creek Road. the Property is located within the Mountain Home Highway District. Record, p. 12.

Fire Protection: The property is located in the Oasis Fire District.

Sewage Disposal: The property does not have access to public sewer system and will require an adequate number of portable toilets with hand washing facilities and disposal service as the Central District Health Department may require.

Water Service: None. Any water necessary to operate as a sand and gravel pit and for rock crushing the property will have water delivered by truck, unless a well is established consistent with applicable laws.

Irrigation District: The property is not located in an Irrigation District.

Drainage District: None

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

- A. Comprehensive Plan. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014 (the "Comprehensive Plan");
- B. Zoning Ordinance, adopted May 18, 2018, as Ordinance 2018-03;
- C. The Local Land Use Planning Act, Idaho Code § 67-6501 *et seq.* and Idaho Code § 67-6521(1)(a) defined an affected person as "one having a bona fide interest in real property which may be adversely affected by the approval, denial or failure to act upon an application for a [conditional use permit];" and
- D. Other applicable local, state, and federal laws and regulations.

X. The Board finds the following as to the standing of the appellants:

- A. Appellants Jolene and Jim Hobney have an interest in real property located at 10844 West Hobney Lane, Oasis, Idaho 83647; Appellant Tom Grausam has an interest in real property located at 10507 W. Martha Ave., Mountain Home, Idaho 83647; and Appellant Willa Rose has an interest in real property located at 8894 W. Martha Ave., Oasis, Idaho 83647. Record, pp. 214-15.
- B. Appellants Jolene and Jim Hobney and Tom Grausam have interests in real property within 1000 feet of the perimeter of the Property for which the conditional use is sought. Record, p. 218.
- C. The Appellants and their supporters content there are many homes and subdivisions (Red Baron Estates and Soles Rest Creek) outside of the unincorporated areas of Tipanuk and Oasis, which are near the Property for which the conditional use is sought; the proposed gravel pit "will flood;" a gravel pit will be noisy and an eyesore; the proposed use violates nine of the fourteen Oasis Community Design Concepts; it will adversely impact property values; it will be harmful to the tourism business at Dream River Ranch (8894 W. Martha

Ave.); and the operation will create unsafe levels of dust. Record, pp. 46-47, 48-49, 50-51, 53, 54, 55-56, 57, 58-64, 67-68, 70-73, 86, 87, 90-92, 93-99, 100-01, 103-08, 109-14, 117-128, 129, 289-92, 294-302, 303-05, 306-07, 308-310, 310, 311-12, 325, 326-28, 336-45, 348-52, 355-412.

XI. The Board's findings regarding the scope and application of the Comprehensive Plan:

A. As specified in Idaho Code § 67-6508, the Comprehensive Plan is the planning document applicable to all property in Elmore County pursuant to Zoning Ordinance Section 7, Chapter 9.

B. The Comprehensive Plan Future Land Use Map has the Property classified as Agriculture.

C. The Community Design Concept for the Oasis Community in the Comprehensive Plan does not define the area of the Oasis Community. Comp. Plan, pp. 96-97. The comprehensive plan maps indicate the Oasis Community is an unincorporated area consisting of the Red Baron Airpark and a subdivision off Desert Wind Road at the intersections of W. Soles Rest Creek, N. Cairns Place, and W. Bobo Streets approximately three miles from the proposed use property. Comp. Plan map index. The general statement of community goals for the Community Design Concept for the Oasis Community in the Comprehensive Plan address fourteen of the general categories specified in Idaho Code § 67-6508, which are similarly addressed for each of the other ten unincorporated communities in the Comprehensive Plan as identified in the comprehensive plan maps. Comp. Plan, pp. 70-97, map index. The Oasis Community Design Concept for the Oasis Community does not apply to the proposed use property, which lies between the map points indicating the communities of Oasis and Tipanuk.

D. The following goals and objectives from the Comprehensive Plan are important in determining if the Application will be in harmony and in accordance with the Comprehensive Plan:

1. *Private Property Rights Goal Statement 2* - The Community goal is to acknowledge the responsibilities of each property owner as steward of the land, to use their property wisely, maintain in good condition and preserve it for future generations. Comprehensive Plan, p. 12.

2. *Economic Goal Statement 1* - Diversify and improve the economy of Elmore County in ways that are compatible with community values. Comprehensive Plan, p. 30.

3. *Economic Objective 1* - Support existing business and industry in the County. Comprehensive Plan, p. 30.

4. *Economic Objective 2* - Encourage broad-based economic development programs that include: Natural resources such as mining, timber, and agriculture from both federal and private lands; Commercial development; Industrial development; Tourism Expansion and Development; and Military Expansion and Development. Comprehensive Plan, p. 30.

5. *Land use Goal 1* - Provide for the orderly growth and accompanying development of the resources within the County that is compatible with a rural lifestyle. Comprehensive Plan, p. 35.
6. *Land Use Goal 2* - Achieve a land use balance, which recognizes that existing agricultural uses and new residential development may occur in the same community. Comprehensive Plan, p. 35.
7. *Land Use Objective* - Continue to coordinate planning and development with applicable highway district(s), fire district(s) and health officials." Comprehensive Plan, page 36.
8. *Soils Objective 1* - Prevent undue erosion of land through reclamation. Re-vegetation that is compatible to the area should be encouraged. Comprehensive Plan, p. 44.
9. *Soils Objective 2* - Encourage commercial, industrial, and residential growth into areas where soils are least of value for agriculture. Comprehensive Plan, p. 44.
10. *Soils Objective 4* - Support proper fuel management practices on land to both reduce the risk of wildfires and undue erosion. Comprehensive Plan, p. 44.
11. *Mineral Resources Goal 1* - To develop the County's mineral resources with minimal adverse impact to the environment or area land uses. Comprehensive Plan, p. 50.
12. *Mineral Resource Objective 1* - Promote erosion control measures that will keep detrimental silts out of streams. Comprehensive Plan, p. 50.
13. *Mineral Resources Objective 2* - Promote procedures that minimize the unfavorable visual impact of mining operations and that protect the natural terrain and special sites/areas being destroyed. Comprehensive Plan, p. 50.
14. *Mineral Resources Objective 3* - Take actions to ensure proper land reclamation practices following mining or milling operations. Comprehensive Plan, p. 50.

XII. The Board's findings regarding the scope and application of the Zoning Ordinance.

- A. The Zoning Ordinance is the appropriate ordinance governing the Application, the CUP and the Appeal.
- B. Certain standards apply to conditional use permits under Section 7-9-4 of the Zoning Ordinance and those standards which apply to the Property and the CUP shall be included into the conditions set forth in Exhibit A (the "Conditions"), which exhibit is attached hereto and made a part hereof.
- C. In order to approve a conditional use permit application, the following findings as set forth in Section 7-9-7 of the Zoning Ordinance shall be made:

1. The proposed use shall, in fact constitute a Conditional Use as determined in Ordinance Table 7-2-26 (B), Elmore County Land Use Table, ...;
2. The proposed use shall be in harmony with and in accordance with the Elmore County Comprehensive Plan and [the Zoning Ordinance];
3. The proposed use complies with the purpose statement of the applicable base zone of [Zoning] Ordinance Section 7-2-5 A and with the specific use standards as set forth in [Chapter 9 – Conditional Use Permit (CUP) Standards and Requirements of the Zoning Ordinance];
4. The proposed use shall comply with all applicable County Ordinances;
5. The proposed use shall comply with all applicable State and Federal regulations;
6. The proposed use shall be designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and that such use shall not change the essential character of said area;
7. The proposed use shall not be hazardous or disturbing to existing neighboring uses or impede their normal development;
8. The proposed use shall be served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services;
9. The proposed use shall not create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County;
10. The proposed use shall not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
11. The proposed use shall not result in the destruction, loss or damage of a natural or scenic feature of major importance.

D. The Board's findings regarding each of above listed multiple relevant goals and objectives of the 2014 Comprehensive Plan (adopted 1-20-2015 in Resolution No. 526-15) determine whether the Application is in harmony and in accordance with the Comprehensive Plan. The Board finds that the evidence, as presented at the public hearing before the Commission and as presented at the public hearing before the Board is consistent with the above listed goals and objectives and the Board's findings as to each, as specifically enumerated below:

1. Regarding Comprehensive Plan Private Property Rights Goal Statement 2 - *The community goal is to acknowledge the responsibilities of each property owner as*

steward of the land, to use their property wisely, maintain in good condition and preserve it for future generations. Comprehensive Plan, p. 12.

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

The Applicant utilizes his property sensibly by mining natural material that is in high demand for building roads and residential and business construction projects throughout Elmore County. Record, p. 283.

The Department Staff Report to the Commission noted the "[u]se as a gravel pit will provide economically valuable construction material and aggregates consistent with economic development goals and community values," and the Commission acknowledged "[t]here is a high demand for, and economic value of sand, gravel, rock and related materials for construction infrastructure." Record, pp. 82, 194.

2. Regarding Comprehensive Plan Economic Goal Statement 1 - *Diversify and improve the economy of Elmore County in ways that are compatible with community values.* Comprehensive Plan, p. 30.

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

The Commission reasonably inferred from the record that "outsourcing gravel will have an impact on the cost of local construction due to the cost of having to transport out of county resources from a greater distance. Producing gravel in Elmore County will diversify and improve the economy of Elmore County." Although stated as a Judicially Noticed Fact, the Commission reasonably inferred that "[s]and and gravel pits expand the gravel resource base in Elmore County; a resource base that will support anticipated growth throughout the County to include new roads, commercial construction, and industrial development. Sand and gravel pit operations could provide employment opportunities for Elmore County residents." Record, pp. 194-95.

3. Regarding Comprehensive Plan Economic Objective 1 - *Support existing business and industry in the County.* Comp. Plan, p. 30.

The economic growth in Elmore County is on a steady incline as indicated by the general increase in the number and value of residential permits issued by the Department over the last three years as demonstrated by the Department's Executive Permit Summary dated 2016-2019. Record, pp.188-89.

4. Regarding Comprehensive Plan Economic Objective 2 - *Encourage broad-based economic development programs that include: Natural resources such as mining, timber, and agriculture from both federal and private lands; Commercial development; Industrial development; Tourism Expansion and Development; and Military Expansion and Development.* Comprehensive Plan, p. 30.

Agricultural land use is the base zone throughout Elmore County. Agricultural land use zone includes croplands, grazing lands, dairies, rangeland, residential housing, and mining; mining includes open pit, excavation of gravel, rock, sand and water. Record, p. 82.

The parcel for the proposed pit is twenty acres in size and is bare rangeland. The property appears to be among the least valuable for crops and livestock. There have been numerous areas throughout the state and Elmore County where sand and gravel operations have been an allowed use and adjacent to other agricultural operations. Record, pp. 82-83.

The County must balance its natural resources with expansion and growth in unincorporated areas. The proposed sand and gravel pit would retain the resources and jobs within the County consequently reducing the need to obtain those equivalent resources from outside of the County limits. Record, pp. 81-82.

5. Regarding Comprehensive Plan *Land Use Goal 1* - Provide for the orderly growth and accompanying development of the resources within the County that is compatible with a rural lifestyle. Comprehensive Plan, p. 35.

The Goal of the County is to encourage growth and development in an orderly fashion and to recognize that land is valuable and should be utilized in a constructive manner. Record, pp. 81-82.

6. Regarding Comprehensive Plan *Land Use Goal 2* - Achieve a land use balance, which recognizes that existing agricultural uses and new residential development may occur in the same community. Comprehensive Plan, p. 35.

The Comprehensive Plan designates Agriculture "AG" as the base zone throughout Elmore County which contains areas of productive irrigated croplands, grazing lands, forestland, mining lands, public lands as well as rangeland. Record, pp. 81-82.

Agricultural lands and the uses permitted in the Ag zoning designation, as broadly defined in the Comprehensive Plan, pp. 33, 103-04, need to be preserved in Elmore County while supporting residential and commercial development. Record, pp. 81-82.

The Property is two undeveloped twenty-acre parcels of range land that does not appear to be suitable for irrigated farmland or grazing. The proposed pit site is in an area that does not have the soil or water resources for growing crops. This area is recognized as dry grazing land due to lack of water resources. Aside from a few residential homes in the vicinity, the surrounding area consists of bare land with state owned land to the East of the proposed site. Record, pp. 81-83.

It is appropriate to permit a small mining operation on the Property. Allowing a sand and gravel pit in an area where there are less accessible water sources for farming would have less of an impact on the agriculture industry while providing a necessary mineral resource to a County that is experiencing steady growth and development. Therefore, the use on the Property reduces the potential infringement on prime farming land. The proposed site for the sand and gravel pit is not adjacent to irrigated croplands on or near the property. Record, pp. 81-83.

7. Regarding Comprehensive Plan *Land Use Objective* - Continue to coordinate planning and development with applicable highway district(s), fire district(s) and health officials." Comprehensive Plan, page 36.

Applicant has obtained appropriate approval from the Mountain Home highway district which maintains the roads that Applicant will be utilizing when hauling material from the proposed pit site. The director of the Mountain Home Highway District approved the application without comment. Record, p. 12.

The Fire Chief of Oasis Fire District approved the application, with one comment about the storage of potentially hazardous waste and related materials. As noted under Objective J below, storage of potentially hazardous waste is regulated and monitored by the Idaho Department of Environmental Quality ("DEQ"), the Environmental Protection Agency ("EPA"), Occupational Health and Safety Administration ("OSHA"), and the Mine Safety and Health Administration ("MSHA"). Record, pp. 12, 152-54.

7. Regarding Comprehensive Plan *Soils Objective 1* - Prevent undue erosion of land through reclamation. Re-vegetation that is compatible to the area should be encouraged. Comprehensive Plan, p. 44.

Applicant has actively worked with Idaho Department of Lands ("IDoL") in developing a reclamation plan; which is a condition of use following the approval of the conditional Use Permit. Reclamation plans are a State requirement and are created to alleviate expected and unexpected impacts that sand and gravel pits could have on the proposed property site and surrounding properties. Reclamation plans provide the Applicant with guidelines and rules that are mandated by the State to maintain the property during mining operations and to recover the land near to its natural state prior to the commencement of mining operations. Record, pp. 24-25, 33-34, 220, 235-42

8. Regarding Comprehensive Plan *Soils Objective 2* - Encourage commercial, industrial, and residential growth into areas where soils are least of value for agriculture. Comprehensive Plan, p. 44.

The proposed pit site is in an area that does not have the soil or water resources for growing crops. This area is recognized as dry grazing land due to lack of water resources. Aside from a few residential homes in the vicinity, the surrounding area consists of bare land with state owned land to the East of the proposed site. Record, pp. 81-83, 197.

9. Regarding Comprehensive Plan *Soils Objective 4* - Support proper fuel management practices on land to both reduce the risk of wildfires and undue erosion. Comprehensive Plan, p. 44.

Proper fuel management can be done a variety of ways to reduce the potential spread of wildfires. Gravel pits create berms during the construction of the pit and, if maintained properly, may be utilized as a fire barrier in an area that is prone to rangeland wildfires. The proposed pit site is located within an established fire protection district. Record, p.197.

The Fire Chief of Oasis Rural Fire District signed off the application, with one noted concern about the storage of potentially hazardous waste. Storage of potentially hazardous waste is regulated and monitored by the following state and federal agencies: DEQ, EPA/OSHA, and MSHA. Record, pp. 12, 152-54.

10. Regarding Comprehensive Plan *Mineral Resources Goal 1* - To develop the County's mineral resources with minimal adverse impact to the environment or area land uses. Comprehensive Plan, p. 50.

Applicant proposes to bring in water trucks to the pit sight for dust abatement during rock crushing actions; the amount of water on site will meet DEQ dust abatement standards. Comm. Hrg. Test. The proposed sand and gravel pit does not require a natural water resource on the site in order to operate. Record, p. 286.

The pit will be created within the center area of the second parcel, which will reduce the impact the pit will have on area land uses. Comm. Hrg. Test.

The reclamation plan is mandated by IDoL. MSHA and DEQ have jurisdiction over dust, noise, water runoff and any other impacts the pit operation will have on the environment. Record, pp. 283-85.

11. Regarding Comprehensive Plan *Mineral Resource Objective 1* - Promote erosion control measures that will keep detrimental silts out of streams. Comprehensive Plan, p. 50.

The proposed pit is located outside the Idaho FEMA Flood Hazard Zone. The FEMA Flood Zone Map presented at the public hearing as Exhibit G. Record, p. 77.

Applicant is working with the IDoL in identifying an appropriate entrance to the pit in order to avoid interfering with a natural seasonal seeping spring area located near the proposed truck entrance. And, as discussed at the public hearing, Applicant will place a culvert under the private road to allow for drainage from the natural seasonal seeping and runoff that periodically saturates the area located near the proposed truck entrance in the spring time and periods of high precipitation/run-off. Applicant will be working with state agencies for erosion control on and near the proposed pit area and to prevent silt from entering seasonal streams. Comm. Hrg. Test.

12. Regarding Comprehensive Plan *Mineral Resources Objective 2* - Promote procedures that minimize the unfavorable visual impact of mining operations and that protect the natural terrain and special sites/areas being destroyed. Comp. Plan, p. 50.

Existing terrain of the proposed Property is appropriate for obtaining gravel as there is a natural elevation in terrain thus allowing the gravel pit to be less obvious sight to property owners in the vicinity. The elevation where the proposed pit site varies between 3300 and 3290 feet. The elevation and contour map displayed as Exhibit I at the public hearing before the Commission. Record, p.185.

Applicant proposes a buffer and berm to be put up around the gravel pit. The pit is proposed to be up to 50 feet below the surface. Aesthetically, with the buffer and berm the proposed use will be less visible from the west, east, north, or south when seated in a vehicle or standing on surrounding properties. From the testimony presented at the public hearings before the Commission and the Board, there is currently an open gravel pit to the south east of the proposed pit site from which gravel may have been mined within the last two years. As the Commission found, gravel pits can be existing for years, but may only be periodically used to obtain sand, gravel, and rock, depending on local demand and production cost. Record, pp.183-85.

13. Regarding Comprehensive Plan *Mineral Resources Objective 3* - Take actions to ensure proper land reclamation practices following mining or milling operations. Comprehensive Plan, p. 50.

IDoL, DEQ and MSHA have jurisdiction over monitoring, and inspections before, during, and at the termination of the proposed sand and gravel pit operation and reclamation of the Property. IDoL requires a reclamation plan be drafted before a permit is approved and requires that the Applicant place a bond on the property project site until the land is reclaimed to near its natural functional state. Record, pp.33-34, 235-42.

From the above factual findings, the Board concludes that this Application is in accordance with the applicable planning goals and objectives set forth in the Elmore County Comprehensive Plan.

E. In addition to the specific use standards set forth in the Zoning Ordinance (below), the following Conditional Use Standards of section 7-9-4 of the Zoning Ordinance, shall apply:

- A. The applicant shall agree to comply with the approved plans and specifications.
- B. The applicant shall have a continuous obligation to maintain adequate housekeeping practices so as not to create a nuisance.
- ...
- F. The owner and/or operator shall maintain sanitary practices so as not to create a public nuisance and to reduce noise and odor.
- ...
- I. If abutting or within an Agricultural district, the proposed use shall not cause detrimental impacts to agriculture.
- J. The [Board] may require additional conditions to mitigate impacts. The conditions may include, but shall not be limited to, any or all of the following:
 - 1. Standards related to the emission of noise, vibration, and other potentially objectionable impacts; and
 - 2. Limits on time of day for the conduct of the specified use; and
 - 3. The period within which the permit shall be exercised or otherwise lapse; and
 - 4. Other standards necessary to protect the public health, safety, and welfare and mitigate adverse effects on surrounding property.

The specific use standards set forth in section 7-9-7 of the Zoning Ordinance (below) and Board's findings regarding the goals and objectives of the Comprehensive Plan also address the Conditional Use Standards of section 7-9-4 of the Zoning Ordinance set forth above.

F. The required findings of section 7-9-7 of the Zoning Ordinance are stated as questions, are set forth in bold text, followed by the Board's findings addressing each:

1. Does the proposed use in fact constitute a Conditional Use as determined in Ordinance Table 7-2-26 (B), Elmore County Land Use Table, as contained in the Zoning Ordinance?

Ordinance Table 7-2-26 (B) requires a conditional use permit to operate a Pit, Mine or Quarry in an Agriculture zone.

2. Is the proposed use in harmony with and in accordance with the Comprehensive Plan and the Zoning Ordinance?

The proposed sand and gravel pit is in accordance with the Zoning Ordinance in the following areas:

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

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

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

Per the Agriculture definition in the Ordinance, limited mining may be considered in the Agriculture district, along with residential land, farming, ranching, grazing and forest products. Historically, the allowed uses in the Agricultural Zone have included mining as cited in current and previous Ordinances. Therefore, the Application is in accordance with the Zoning Ordinance.

3. Does the proposed use comply with the purpose statement of the applicable base zone of Section 7-2-5 of the Zoning Ordinance and with the specific use standards as set forth in this Chapter?

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

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

A sand and gravel pit operation is mining, and such limited mining is a permitted use in the Agriculture zone with a Conditional Use Permit.

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

Staff has proposed conditions upon approval of the CUP, which as further amended by the Board, ensure that this application will meet all applicable County Ordinances, including a Reclamation Plan that is being tailored to Applicant's gravel pit operation.

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

Applicant has actively worked with IDoL to create a Reclamation Plan that is tailored to Applicant's gravel pit operational needs. IDoL will monitor the gravel pit operation throughout the duration the pit is open for operation, even if inactive, and will oversee the Reclamation Plan carried out when the operation terminates.

Staff has proposed conditions upon approval of the CUP to ensure that Applicant will adhere to all County, State, and Federal Agency requirements; those County, State, and Federal agencies include DEQ, MSHA, and IDoL.

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

The proposed sand and gravel pit is in the Agriculture Zone. The evidence does not present significant impacts or substantial changes to the essential character of the general vicinity of the site. There is an existing sand and gravel pit located approximately one-half (1/2) mile to the East of the proposed site from which gravel has been reportedly removed within the last two years. Record, p. 284; Comm. Hrg. Test.

Applicant's site plan shows that the access to the pit and the location of the pit are both located on Applicant's personal property. Applicant proposes that the pit will commence on the western center of the second parcel. see Exhibits C and K. Record, pp. 36, 187.

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

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

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

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

Having considered the issues raised at the public hearing concerning the impact that the proposed operation may have on neighboring properties, including water contamination, road wear, dust, and the impact upon property values, the Board finds the Applicant intends to keep all mining operations to no more than fifty feet below grade, which is well above ground water levels. This proposed pit is considered a dry pit and will not utilize water to operate, with the exception of water trucks utilized for dust abatement. The Applicant is working with IDoL to construct a pit that will reduce the impact the operation could have on storm water runoff. IDoL works with DEQ and Army Corp of Engineers to ensure that all water assessments and concerns are addressed prior to commencement of the pit operation.

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

Applicant has obtained appropriate approval from the Mountain Home Highway District ("MHHD") which maintains the roads that Applicant will be utilizing when hauling material from the proposed pit site. Record, p. 12. The MHHD did not require a traffic impact study. The Board infers from the lack of a traffic impact study that the MHHD does not anticipate significant traffic volume from the proposed use.

Applicant is working with the above-mentioned Agencies to ensure that steps are taken to monitor dust levels and guidelines are specified to prevent fugitive dust. The concerns of dust and noise are taken seriously by the Board. The Applicant will not be operating the gravel crusher full time, but has proposed a maximum operation time of six (6) hours aggregate a day and up to a six (6) day work week.

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

Properties in the nearby Oasis (Comp. Plan., pp.96-97), Tipanuk (Comp. Plan., pp.85-86), and Mayfield (Comp. Plan., pp.90-91) areas continue to be split, inquired about, and sold; parcels in the vicinity of the proposed site average twenty (20) plus acres in size reducing the probability that Applicant's proposed gravel pit operation will be located in or near a potential buyer's back yard.

It is in the best interest of the public and surround property owners that certain Conditions are imposed upon the Property.

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

The following public services shall be provided as follows:

- Highways/Roads – Ditto Creek Road is maintained by the Mountain Home Highway District. The road through the Applicant's property that leads to the gravel pit will be maintained by and at the expense of the Applicant.
- Fire Protection – The Applicant's property is located in the Oasis Fire District and the conditions ensure that the Applicant is required to minimize the risk of fire.
- Drainage Structures – Applicant will place a culvert under the private road to allow for drainage from the natural seasonal seeping and runoff that periodically saturates the area located near the proposed truck entrance in the spring time and periods of high precipitation/run-off.
- Refuse Disposal – Applicant will be responsible for obtaining and maintaining appropriate refuse disposal and appropriate disposal of all hazardous and non-hazardous materials associated with vehicular repair and maintenance.
- Water/Sewer – Water and sewer services are not planned or required for the proposed use at this time. In the event of added structures such as an office building, Applicant is required to obtain appropriate permits from CDHD and IDWR for septic and well permits.

The Application, and its proposed use, will be adequately served by available public facilities and services such as highways, streets, law enforcement, and fire protection. The Applicant's use of private refuse and sewage disposal services for the conditional use shall adequately provide such services.

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

All on-site improvements will be funded by the Applicant.

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

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

10. Will the proposed use involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors?

The proposed use consists of earth moving equipment, a gravel crusher, and transportation of gravel from the pit location to areas within Elmore County and other areas where the use is needed. The Application, with the Conditions, will not create any excessive production of noise, smoke, fumes, glare or odors or excessive production of traffic.

Staff has proposed conditions for Gravel Pit operation times and rock crushing time limitations.

The Board adopts the report (Exhibit E) presented by Staff during the January 16, 2019, public hearing before the Commission. MSHA and/or its State agency-delegate conducts inspections on all mining operations to ensure that Applicant is abiding to the rules and regulations for dust, noise, and safety. State and federal agencies have the authority to hold Applicant accountable for safety violations or negligence on the work site. Such violations could result in a monetary fine or other regulatory action.

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

The Property is not identified as a natural or scenic feature of major importance.

The mandated Reclamation Plan will include vegetation and groundwork restoration that will return the land back to a condition that is compatible with the natural state in the vicinity, except as excavated.

CONCLUSIONS OF LAW

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

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

2. The Board concludes that the notice requirements of Idaho Code § 67-6512 have been met.
3. The Board concludes that the Application complies with the required findings set forth in section 7-9-7 of the Zoning Ordinance.
4. The Board concludes the appeal application meets the requirements of Zoning Ordinance Section 7-3-10.
5. The Board concludes that the appeal was properly filed within the required fourteen-day period following the Commission's issuance of its FCO and such complied with the requirements of Zoning Ordinance Section 7-3-10 E.
6. The Board concludes that the Application for the CUP, with the Conditions, complies with the required findings set forth in Title 7, Chapter 9 of the Zoning Ordinance.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the information contained in the Staff reports and the Record for the Application, the Board hereby approves the Application for the CUP with the Conditions set forth in Exhibit A, which exhibit is attached hereto and made a part hereof.

Dated this 19th day of July, 2019.

ELMORE COUNTY BOARD OF COMMISSIONERS:

By: [Signature]
Franklin L. Corbus, Chairman

By: [Signature]
Wesley R. Wootan, Commissioner

By: [Signature]
Albert Hofer, Commissioner

Attest:
By: [Signature]
Shelley Essl, Clerk



Exhibit A
Conditions of Approval of the Application
"Conditions"

1. Failure to comply with any condition may result in the revocation of the conditional use permit.
2. Proposed use shall comply with all requirements of Title 7 Chapter 2 ("Zoning") and Chapter 9 ("Conditional Use Permit") of the Elmore County Zoning and Development Ordinance 2018-03.
3. The Applicant shall provide facilities required by the Central District Health Department for the purpose of disposing of human generated waste water.
4. Applicant shall comply with the reclamation plan approved by the Idaho Department of Lands. The Applicant shall complete the reclamation plan as approved by the Idaho Department of Lands; if Applicant fails to obtain the reclamation permit the Conditional Use Permit will automatically terminate.
5. The Applicant shall store and dispose of fuel products, lubricants, and any chemicals in accordance with all applicable State, Federal, and County Laws, Ordinances, rules and regulations.
6. The Applicant will obtain permits for any structures, roads, or other permissible projects on site.
7. Applicant will place a culvert under the private road accessing the Property for drainage of runoff that periodically saturates the area in the spring time and periods of high precipitation/run-off.
8. The Applicant shall comply with all applicable fire codes, fire restrictions and fire management plan requirements to include weed abatement in and around the pit location.
9. The Applicant shall ensure that dust be controlled on the site and on all access roads in accordance with the required standards for environmental quality as enforced by the Idaho Department of Lands, MSHA, DEQ, and other state and federal agencies with jurisdiction over such matters. Applicant shall comply with the Rules for the Control of Air Pollution in Idaho, including the Rules for control of Fugitive Dust (IDAPA 58.01.01.650 - 651), which require that all "reasonable precautions," including using water or chemical, applying dust suppressants, using control equipment, covering trucks, paving, and removing materials to prevent particulate matter from becoming airborne. The Land Use and Building Department staff shall be available to receive and respond to complaints about any failure to reasonably control fugitive emissions and shall provide any evidence of a violation to DEQ for enforcement action.
10. Hours of gravel pit operation and transportation of materials to and from the site shall be limited to 7:00 a.m. through 7:00 p.m. Mountain Standard Time, with hours of operation during daylight savings time limited to between 7:00 a.m. and 9:00 p.m.
11. Rock Crushing operations shall be limited to an aggregate period of six hours per day during authorized gravel pit operating hours.
12. Failure to comply with any of the following Conditions may result in the revocation of the conditional use permit.
13. The approval of the CUP and Application is personal to the Applicant, the Approval and CUP does not run with the land and is non-transferrable.
14. No additional improvements may be added to the Property without amending the CUP.
15. Any outstanding taxes and fees on the Property must be paid.
16. Property uses shall at all times comply with all State and Federal laws and regulations.
17. The Applicant shall have a continuous obligation to maintain adequate housekeeping practices so as not to create a nuisance.

18. The owner and/or operator shall maintain sanitary practices so as not to create a public nuisance and to reduce noise and odor.
19. The Applicant shall conduct its business such as not to create a nuisance or be detrimental to the public health, safety, or welfare.
20. The proposed use will comply with Zoning Ordinance.
21. All vehicular approaches shall be so designed as not to create an interference with traffic on surrounding public or private roadways.