

Land Use and Building Department

Findings of Fact, and Conclusions of Law

Application: Conditional Use Permit 2024-08

Hearing Date: July 25, 2024

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

In the matter of a Conditional Use Permit for a)	CUP-2024-08
Confined Animal Feeding Operation Siting)	
Permit on portions of three (3) parcels with a)	FINDINGS OF FACT,
site area totaling approximately 410 acres)	CONCLUSIONS OF LAW,
(Parcels RP05S04E053030, RP05S04E080010,)	AND ORDER
and RP05S04E070010))	
)	

In Re: Conditional Use Permit CAFO Siting Permit CUP-2024-08 (“Application”): This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the “**Commission**”), on June 27, 2024 and continued to July 25, 2024, for a public hearing held pursuant to public notice as required by law, regarding a request for a Conditional Use Permit for a Confined Animal Feeding Operation (the “**CAFO**”) Siting Permit for a calf ranch with 55,000 animal units on a portion of Parcel RP05S04E053030 and Parcels RP05S04E080010 and RP05S04E070010 (“**Site**”) owned by J.R. Simplot Company. The proposal consists of approximately 410 acres and is zoned Agriculture (Ag). The Commission heard from the applicant’s representatives, J.R. Simplot staff, Scott McNeley, and David Modde (the “**Applicant**”) in support of the Application. Upon conclusion of the public hearing on July 25, 2024, the Commission closed the record to additional evidence and commenced deliberations on the Application and, after making findings and conclusions in accordance with the applicable law, approved the Application with conditions, as hereafter defined.

FINDINGS OF FACT

If any of the Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the Application and analysis and recommendations of the Elmore County Land Use and Building Department (the “**Department**”) record.

1) The Commission finds that the Application is comprised of:

- a) Application form prepared and submitted by David Modde of J.R. Simplot Land and Livestock for the Conditional Use Permit CAFO Siting Permit, and
- b) Payment of Application Fees in the amount of \$500.00 as required by the Land Use and Building Department’s Fee Schedule.

2) The Commission finds that the Applicant is:

J.R. Simplot Company Land & Livestock
1301 Highway 67
Grand View, Idaho 83624

3) The Commission finds the following facts as to the procedural matters pertaining to the Application:

- I. In accordance with §7-3-2 (A) of the Elmore County Zoning and Development Ordinance (“**Zoning Ordinance**”), on November 27, 2023, the Applicant completed a pre-application conference with the Department before submitting the Application.

- II. In accordance with §7-3-3 of the Zoning Ordinance, the Applicant mailed out Neighborhood Meeting Letters on December 4, 2023, to neighboring property owners within two (2) miles of the subject properties, giving notice of the time, date, and location of the meeting.
- III. In accordance with §7-3-3 of the Zoning Ordinance, the Applicant conducted the required neighborhood meeting on December 16, 2023.
- IV. On December 22, 2023, the Department accepted a Conditional Use Permit application for a CAFO Siting Permit and the required \$500.00 fee per §7-9-3 (A) of the Zoning Ordinance.
- V. On January 1, 2024, the Department deemed the Application complete.
- VI. On May 3, 2024, the Board of County Commissioners (“**Board**”) in a meeting with Department Staff, determined a Site Advisory Team would not be requested.
- VII. The matter was set for a June 27, 2024, public hearing before the Planning and Zoning Commission.
- VIII. In accordance with §7-12-6 (C) of the Zoning Ordinance, the Public Hearing Notice was posted on the property on May 7, 2024.
- IX. In accordance with §7-3-4 (A) of the Zoning Ordinance, the Public Hearing Notice and application were mailed to agencies on June 5, 2024.
- X. In accordance with §7-3-5 (A) of the Zoning Ordinance, the Public Hearing Notice was published in Mountain Home News (newspaper) on June 12, 2024.
- XI. In accordance with §7-12-6 (C) of the Zoning Ordinance, the Public Hearing Notice was mailed to surrounding property owners within two (2) miles of the subject properties on June 1, 2024.
- XII. The Commission opened the public hearing on June 27, 2024, and received written and verbal information regarding the Application.
- XIII. The Commission commenced deliberations on the application.
- XIV. Thereafter, the Commission moved to continue the Public Hearing to July 25, 2024.
- XV. The Commission continued the public hearing on July 25, 2024, and received written and verbal information regarding the Application.
- XVI. At the conclusion of the testimony, the Chairperson closed the public hearing.
- XVII. The Commission commenced deliberations on the application.
- XVIII. Thereafter, the Commission moved to approve the CAFO Siting Permit with 25 Conditions of Approval, and the Commission’s decision on the application is as set forth below.

4) The Commission finds the proposed request as follows:

The submitted Conditional Use Permit for a CAFO Siting Permit application to allow a Confined Animal Feeding Operation (CAFO) consisting of a calf ranch with a maximum of 55,000 animal units on approximately 410 acres within an Agriculture (Ag) zone in Elmore County.

5) The Commission finds the following facts and circumstances pertaining to the Site:

A. Assessors' Parcel Numbers: RP05S04E053030, RP05S04E080010, and RP05S04E070010

B. The "Owner" of the Site is:

J.R. Simplot Company

C. Site Characteristics:

Property Size: 847 acres.

Operation Acreage: 410 acres.

Existing Structures: Solar panels and outbuilding on approximately 270 acres on parcel RP05S04E053030.

Existing Vegetation: Vegetation consists of desert species including but not limited to sagebrush and rabbitbrush.

Slope: The proposed site is not on slopes greater than 15%.

Flood Zone: The proposed site is not located within any designated flood zone but is within 1.5 miles of Flood Zone A.

Irrigation/Water: The project will be served through water rights issued by Idaho Department of Water Resources (IDWR).

6) The Commission finds the current zoning of the Site is as follows:

Based on the officially adopted Elmore County Zoning Map (as amended by subsequent Zoning Map Amendments adopted by the Board of County Commissioners), and the Comprehensive Plan and the Zoning Ordinance, the surrounding zoning and land uses for the Site are as follows:

1. Site: Ag Zone/Solar operation and agriculture
2. North: Ag Zone/Agriculture and rangeland
3. South: Ag Zone/Agriculture and rangeland
4. East: Ag Zone/Rangeland
5. West: Ag Zone/Solar operation and rangeland

7) The Commission finds the existing services and access to the proposed site are as follows:

Based on the officially adopted Elmore County Zoning Map (as amended by subsequent Zoning Map Amendments adopted by the Board of County Commissioners) and materials found in the Department's file for CUP-2024-08, the following facts concerning services and infrastructure, are not in dispute, and are adopted as findings of fact in the Commission's Findings of Fact, Conclusions of Law, and Order (FCO):

1. Access Street and Designation: Access to the site is via Nicolson Road and Frederick Road. As conditioned by the Commission, access will be restricted to Frederick Road.
2. Fire Protection: The property is within the Grand View Rural Fire District.
3. Sewage Disposal: N/A
4. Water Service: N/A

- 5. Irrigation District: N/A
- 6. Drainage District: N/A
- 8) **The Commission finds the following are among the relevant and applicable statutes, ordinances, and land use regulations for consideration of the Application:**
 - A. Elmore County Zoning Ordinance, adopted as Ordinance 2018-03 on May 18, 2018, and all amendments thereof; and
 - B. The Local Land Use Planning Act, Idaho Code § 67-6501; 67-516 et seq.
 - C. Other applicable local, state, and federal laws and regulations.
- 9) **The Commission finds the following regarding the Comprehensive Plan:**
 - A. That the Comprehensive Plan Future Land Use Map classifies the site and surrounding area as Agriculture.
 - B. The Application is in conformance with the Comprehensive Plan as stated in the following findings.

§7-12-7 REQUIRED FINDINGS FOR A NEW CAFO

A. General Requirements and Findings

1. The expanding and/or New CAFO shall be within an area zoned Agriculture;

Based on the officially adopted Elmore County Zoning Map (as amended by subsequent Zoning Map Amendments adopted by the Board of County Commissioners), and the Comprehensive Plan, the Commission finds that the zoning of the subject and surrounding properties is General Agriculture (AG).

2. The expanding and/or New CAFO Facility Area shall be located a minimum of two (2) miles outside any adopted Area of City Impact and two (2) miles from the legally described perimeter of Mountain Home Air Force Base;

Based on the officially adopted Elmore County Zoning Map (as amended by subsequent Zoning Map Amendments adopted by the Board of County Commissioners), and the Comprehensive Plan, the Commission finds that the proposed CAFO facility is not within two (2) miles of the Grand View Area of City Impact or Mountain Home Air Force Base. The edge of the Mountain Home Air Force Base is approximately five (5) miles east of the site, and the edge of Grand View city limits is approximately four (4) miles west of the site.

3. New swine and poultry facility areas shall be located a minimum of three (3) miles outside any and adopted Area of City Impact and the legally described perimeter of Mountain Home Air Force Base;

Based on the Applicant's application materials, the request includes 55,000 beef/dairy calves; therefore, the Commission finds that no swine or poultry are proposed as part of this facility.

4. An expanding and/or New CAFO facility area shall not be located within any adopted aquifer recharge or Community Development Overlay;

The Commission finds that the CAFO is not within an adopted aquifer recharge or Community Development Overlay. The site is located on the southwestern perimeter of the Mountain Home Ground Water Monitoring Area but not within an adopted aquifer recharge area. The nearest Community Development Overlay is Chattin Flats, located approximately three (3) miles west of the site, and does not apply.

5. The expanding and/or New CAFO shall comply with and is not in violation of any Federal, State or local laws or Ordinances;

The Commission finds the CAFO operation as proposed would be in violation of Elmore County Code §7-12-7(C)(9) New CAFO Facility Criteria, Standards, and Findings for Approval and Development that requires the CAFO facility area to be a minimum of one and one-half (1 ½) miles of a from a floodplain. Based on Elmore County's Adopted Floodplain Maps and the Idaho Department of Water Resources (IDWR) Idaho Flood Hazard Map Website, Canyon Creek has a Flood Zone A designation and is located less than one and one-half (1 ½) miles east of the operation. The Commission has conditioned the operation to apply and receive a variance approval. Should a variance not be approved, this approval of a CAFO Siting Permit will be null and void. (Condition A.1) The proposed CAFO is a new operation, and no evidence has been provided that operations are currently found to be in violation of any Federal or State laws and Ordinances. Application and public hearing notifications were transmitted to the following State and Federal Agencies.

- USDA Forest Services, Mountain Home District – No Comments
- Bureau of Land Management – No Comments
- Central District Health Department – No Comments
- Elmore County Ambulance Service – Commented No Concerns
- Elmore County Assessor – No Comments
- Elmore County Contract Engineer Engineering with a Mission LLC – No Comments
- Elmore County Extension Office – No Comments
- Elmore County Sheriff – Comment Letter Attached
- Elmore County Treasurer Department – No Comments
- Elmore Soil & Water Conservation District – No Comments
- Environmental Protection Agency, Idaho Operations Office – No Comments
- Grandview Ambulance Service – Commented No Concerns
- Grandview Rural Fire District – No Comments
- Idaho Department of Environmental Quality Boise Region – Comment Letter Attached (Exhibit 1)
- Idaho Transportation Department District 3 – No Comments
- Idaho State Department of Agriculture – Comment Letters Attached (Exhibit 2a and 2b)
- Idaho Department of Fish and Game – Comment Letter Attached (Exhibit 3)
- Idaho Department of Lands – No Comments
- Idaho Department of Water Resources – No Comment only coorespondance
- Idaho Office of Energy and Mineral Resources – No Comments
- Idaho Power Corporate Real Estate – No Comments
- Idaho State Fire Marshall – No Comments
- Intermountain Gas Company – No Comments
- Mountain Home Highway District – No Comments
- United States Fish and Wildfire Service – No Comment

The Commission has conditioned the operation, and all facility plans shall be required to comply with all relevant Federal, State, and local laws and ordinances. Any such violation will revoke the approval of this Conditional Use Permit. (Condition 11).

6. An applicant shall not begin construction of an expanding and/or New CAFO prior to receiving final approval of the CAFO Siting Permit;

The Commission finds that no evidence has been provided to indicate that the Applicant has begun constructing the proposed CAFO.

7. An expanding and/or New CAFO shall provide a pest abatement plan if it is required by any governing agencies;

The Commission finds that no governing agencies have provided comments requiring a pest abatement plan. The Commission had conditioned the operation to provide a pest abatement plan if it is deemed to be required by any governing agencies. (Condition C.24)

8. An expanding and/or New CAFO shall comply with IDAPA rules governing dead animal movement and disposal;

The Commission finds that the proposed CAFO is required to comply with IDAPA rules governing dead animal movement and disposal. The Commission has conditioned the operation to comply with IDAPA rules governing dead animal movement and disposal. (Condition C.17)

9. An expanding and/or New CAFO, swine or poultry facility area shall provide a hold harmless agreement pertaining to noise within two (2) miles of the legally described perimeter of the Orchard Training Range;

Based on the officially adopted Elmore County Zoning Map (as amended by subsequent Zoning Map Amendments adopted by the Board of County Commissioners), the Commission finds that the proposed CAFO is within the Orchard Training Range Buffer overlay; thus, has conditioned the applicant to provide a hold harmless agreement prior to construction. (Condition A.4)

B. Animal Waste:

1. The expanding and/or New CAFO shall comply with the terms of its Nutrient Management Plan for Land Application;

The Commission finds that the Applicant has provided a Nutrient Management Plan for Land Application for the existing Grand View Feedlot located west of the site but has not provided a Nutrient Management Plan that addresses this new proposed facility. The Commission has conditioned the Applicant that it must submit and comply with the terms of an approved Nutrient Management Plan for Land Application applicable to this Site, as approved by the Idaho State Department of Agriculture (ISDA) prior to obtaining its CAFO Operation Permit. (Condition B.9 and C.21)

2. The expanding and/or New CAFO shall be in compliance with all environmental regulations, requirements and permits imposed by state or federal law or any regulatory agencies;

The Commission finds that the operation is required and conditioned to comply with all environmental regulations, requirements, and permits imposed by state and federal law and regulatory agencies. (Condition C.11)

3. Liquid animal waste shall not be applied on snow, ice or frozen soil;

The Commission finds that the Applicant has not proposed to apply liquid animal waste on snow, ice, or frozen soil as part of the operation. The Commission has conditioned the operation to require that liquid animal waste shall not be applied on snow, ice, or frozen soil. (Condition C.16)

C. CAFO Site Setbacks:

- 1. The location of animal waste management systems, corrals, wells, and septic systems shall conform to all applicable rules, regulations and specifications as required by any regulatory agencies;**

The Commission determined that the operation shall be required to comply with any regulatory agency rules, regulations, and specifications on animal waste management systems, corrals, wells, and septic systems and has conditioned the operation's location of animal waste management systems, corrals, wells, and setbacks meet all applicable rules, regulations, and specifications as required by any regulatory agencies. (Condition C.14.a)

- 2. Silage, potatoes or any feed product resulting from the ensilage process shall be located a minimum of seven hundred (700') feet from any existing residence not belonging to the owner or operator of the CAFO;**

The Commission finds that no residences not owned by J.R. Simplot Company are located within the seven hundred (700') feet of the subject properties and the CAFO site. The Commission has conditioned that operation to setback silage, potatoes or any feed product from the ensilage process be located a minimum of seven hundred (700') feet on any existing residence not belonging to the owner or operator of the operation. (Condition C.14.b)

- 3. All agricultural buildings, feed storage areas, feed bunks or feed racks shall be setback a minimum of one hundred (100') feet from property lines and public rights of way;**

The Commission finds that rows are shown to be setback less than 100' from the property line and has conditioned the operator to provide an updated site plan meeting the 100' setback prior to the commencement of construction. (Condition C.14.c)

- 4. Lights shall be placed and shielded to direct the light source down and inside the property lines of the expanding and/or New CAFO. All direct glare from the CAFO lights shall be contained within the CAFO facility area;**

Based on the Applicant's application materials and testimony, the Commission finds that no lights are proposed as part of the operation and has conditioned the operation to place and shield any lights to direct the light source down and inside the property lines of the operation. (Condition C.14.d)

- 5. No expanding and/or New CAFO facility area shall be approved and/or located within a minimum of one and one-half (1 ½) miles of a parcel of property in a residential zone or a platted, approved or developed subdivision or an unincorporated townsite that has been platted for five (5) years or more as of January 20, 1994. If however, a subdivision or an un-incorporated townsite has been platted for five (5) years or more and no public improvements have been built, the minimum one and one-half (1 ½) mile setback shall not be applied to that subdivision or unincorporated townsite. Public improvements are those required by this Ordinance;**

The Commission finds that the operation is not within one and one-half (1 ½) miles of a residential zone, platted subdivision, or unincorporated townsite and has conditioned the operation to meet this finding.

- 6. The animal waste management system shall not be located or operated closer than a minimum of one thousand three hundred twenty (1,320') feet from an existing**

residence belonging to someone other than the Applicant, or be located and/or operated closer than a minimum of three hundred (300') from property lines. However, the animal waste management system for new swine or poultry Facilities shall not be located closer than a minimum of two miles of an occupied residence not part of the new facility or owned, occupied or leased by the owner of the new facility. Such setbacks may be reduced if the owner and the occupant of the residence consent in writing;

The Commission finds and conditions that animal waste management system shall be located or operated closer than a minimum of one thousand three hundred twenty (1,320') feet from an existing residence not owned by the applicant and is not located or closer than three hundred (300') feet from property lines No swine or poultry facilities are proposed in this application. (Condition C.14.e)

- 7. No animal waste management system shall be located and/or operated closer than a minimum of five hundred (500') feet from a domestic well;**

The Commission finds that based on Idaho Department of Water Resources well maps, no domestic wells are located within five hundred (500') feet from the CAFO site. (Condition C.14.f)

- 8. No animal waste management system shall be located closer than a minimum of three hundred (300') feet from a public right of way;**

The Commission finds and conditions the operation to not be located within three hundred (300') feet from a public right of way. (Condition C.14.g)

- 9. No expanding and/or New CAFO facility area shall be approved and/or located within a minimum of one and one-half (1 ½) miles of the Snake and/or Boise Rivers or within a floodplain as set out on the most recent Federal Emergency Management Agency Flood Insurance Rate Map for Elmore County;**

The Commission finds, based on Elmore County's adopted Floodplain Maps and the Idaho Department of Water Resources Idaho Flood Hazard Map Website, that the proposed CAFO facility is within one and one-half miles of a Zone A flood zone. Zoning Ordinance §7-12-8 allows an applicant to request a variance from the setback requirements. The Commission has conditioned the operation on applying and receiving a variance approval. Should a variance not be approved, this approval of a CAFO Sitting Permit will be null and void. (Condition A.1)

- 10. Aquaculture CAFOS are exempt from the setbacks contained herein except for the storage of solid waste on the land;**

Based on the Applicant's application materials, the Commission finds that an aquaculture CAFO is not proposed.

- 11. The setbacks contained herein shall not apply to Land Application, except that Animal Waste from a swine or poultry CAFO facility area shall not be land applied within a minimum of one (1) mile of a residence not part of the New CAFO or owned, occupied or leased by the owner of the New CAFO. Such setback may be reduced if the owner and occupant of the residence consent in writing.**

The Commission finds that the operation does not propose a swine or poultry facility.

CONCLUSIONS OF LAW

Based on the aforementioned findings of fact, the Commission concludes that CUP-2024-08 has complied with the following legislative documents governing the proposal:

- A. Elmore County Zoning Ordinance, adopted as Ordinance 2018-03 on May 18, 2018, and all amendments thereof; and
- B. The Local Land Use Planning Act, Idaho Code § 67-6501; 67-516 et seq.
- C. Other applicable local, state, and federal laws and regulations.

ORDER – CONDITIONS OF APPROVAL

Based on the aforementioned findings of fact and conclusions of law, the Commission APPROVED CUP-2024-08 with the following conditions of approval.

A. Conditions to be satisfied prior to commencement of construction.

- 1. The Approval of this Application and CUP is contingent on the Applicant submitting a written request for a variance of the one and one-half mile setback from the Zone A floodplain and receiving approval of such variance. Should such variance not be applied for or approved, this CUP shall not be valid. No CAFO Operation Permit or building permit shall be approved without variance approval.
- 2. Before commencement of construction, the Applicant shall provide to the Director updated site plans meeting all setback requirements and showing the location of all private and community domestic wells, irrigation wells, monitoring wells, irrigation conveyance and drainage structures, streams, ponds, reservoirs, and wetlands within one (1) mile of the CAFO facility. The site plan shall be stamped by an Idaho-licensed engineer.
- 3. Before commencement of construction, the Applicant shall submit a site grading plan and calculations for the runoff storage pond to the County Engineer and Director.
- 4. Before commencement of construction, the Applicant shall submit a hold harmless agreement pertaining to noise from the Orchard Training Range to the Director.
- 5. The CAFO Permit holder shall notify the Director in writing when construction starts. Additionally, if the construction of an animal waste management system commences after the initial commencement of construction notice, the CAFO Permit holder shall provide the Director with separate written notice of the date of the animal waste management system construction commencement.
- 6. The Applicant must commence construction of the CAFO within one (1) year of issuance of this CUP. If construction of the CAFO does not commence within one (1) year, the Applicant shall appear before the Commission to show proof of measurable progress toward a complete project and must be presented before the Commission. The Applicant shall reappear on a yearly basis thereafter to show cause why the CAFO has not been completed. If the CAFO is not a working CAFO within five (5) years, or one (1) year if the Applicant has not sought an extension, of the permit being issued, the Commission may revoke the permit.

B. Conditions to be satisfied before the use is established through the issuance of the CAFO Operation Permit

- 7. Prior to commencement of the operations, the Applicant shall receive approval of a Private Road Application by the County Engineer, along with the proposed dust mitigation measures.

The Applicant shall not make any improvements on these roads prior to this approval by the Land Use and Building Department. Access roads shall be constructed and maintained to reduce dust at all times.

8. Prior to the issuance of the CAFO Operation Permit, the Applicant shall submit a liquid waste closure plan to the Director.
9. After completion of the construction of the new CAFO, the Applicant may apply for an Operation Permit issued by the Director. An Operation Permit will not be issued until the Applicant has provided proof that all required permits and management plans, including a Site specific Nutrient Management Plan approved by the Idaho State Department of Agriculture and any other regulatory agency, have been obtained. Operation of the Site is not allowed until an Operation Permit is obtained. The Applicant shall provide copies of all permits and management plans of the Facility to the Director.
10. Inspection of the construction progress of the CAFO facility authorized by the CAFO permit shall occur as governed by the adopted building code. For those sections for which a building code inspection is not required, inspection may be made at the Building Official's discretion. In addition, inspections may be done when requested by the CAFO Permit holder. The inspections shall be performed by the Elmore County Building Official and the Idaho State Department of Agriculture and reported to the Commission.

C. On-going Conditions

11. The CAFO and all facility plans shall comply Elmore County Amended Zoning and Development Ordinance Title 7 Chapter 12, and all relevant Federal, State, and local laws and ordinances. Any such violation will revoke the approval of this Conditional Use Permit.
12. The total number of bovine animal units shall not exceed 55,000 without further jurisdictional approval required. No other species of animal are permitted.
13. Primary access for the CAFO Operations will be through Frederick Road, down through the solar farm as the main route. This will avoid major vehicular movements on Nicolson Road, and the reduced amount of traffic is less likely to affect nesting owls.
14. The Applicant shall comply with all site setbacks. These setbacks shall not apply to land application.
 - a. The location of animal waste management systems, corrals, wells, and septic systems shall conform to all applicable rules, regulations, and specifications as required by any regulatory agencies.
 - b. Silage, potatoes, or any feed product resulting from the ensilage process shall be located a minimum of seven hundred (700') feet from any existing residence not belonging to the CAFO's owner or operator.
 - c. All agricultural buildings, feed bunks or feed racks, corrals, and feed storage areas shall be setback a minimum of one hundred (100') from property lines and public rights of way.
 - d. Lights shall be placed and shielded to direct the light source down and inside the CAFO's property lines. All direct glare from the CAFO lights shall be contained within the CAFO facility area.
 - e. Any animal waste management system shall not be located closer than one thousand three hundred twenty (1,320') feet from an existing residence belonging to someone other than the applicant or be located and/or operated closer than a

minimum of three hundred (300') feet from property lines. Such setbacks may be reduced if the owner and the occupant of the residence consent in writing.

- f. No animal waste management system shall be located and/or operated closer than five hundred feet (500') from a domestic well.
 - g. No animal waste management system shall be located and/or operated closer than three hundred (300') feet from a public right of way.
 - h. The setbacks contained herein shall not apply to land application.
15. Any new lagoons shall be constructed in accordance with state and federal regulations.
 16. Liquid animal waste shall not be applied on snow, ice, or frozen soil.
 17. The CAFO shall comply with IDAPA rules governing dead animal disposal.
 18. Any proposed changes to the CAFO operation that are not included in the original Application shall be reviewed by the Department and may require approval by the Commission.
 19. After approval of the CAFO Permit, if the permit holder desires to make changes to the proposal authorized under the CAFO Permit that may violate the terms or conditions of the permit as the application was presented to the Commission, the permit holder shall present a written change request to the Director as outlined in §7-12-11 Process for CAFO Operation Permit and Modifications.
 20. The Applicant shall submit proof of liability insurance to the County annually so long as liquid waste is managed.
 21. The CAFO shall comply with the terms of a Nutrient Management Plan approved by the Idaho State Department of Agriculture (ISDA) and any other regulatory agency.
 22. The CAFO shall comply with stock and/or commercial water rights requirements per Idaho Department of Water Resources (IDWR).
 23. The CAFO shall comply with the Odor, Waste, Dust, and Pest best management practices in compliance with an approved Nutrient Management Plan and consistent with Idaho Department of Environmental Quality (DEQ) and Idaho State Department of Agriculture (ISDA) requirements.
 24. The Applicant shall be required to provide a pest abatement plan if it is required by any governing agencies.
 25. The Applicant shall ensure all property taxes are kept current and the property is maintained in compliance with all state, federal, and local laws and regulations

Dated this 22 day of August, 2024

COMMISSION VOTE:

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

Patti Osborn, Chairperson

ATTEST:

Mitra Mehta-Cooper, Director

NOTICE PURSUANT TO IDAHO CODE § 67-6519(5)(c)

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

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

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

4863-6351-5862, v. 2

Exhibit 1
Comment Letter
Idaho Department of Environmental Quality Boise Region



July 17, 2024

Elizabeth Allen
Owner/Principal Planner
Bristlecone Land Use Consulting
208-477-1059
elizabeth@bristleconelanduseconsulting.com

Subject: CAFO in Elmore County CUP-2024-08

Dear Ms. Allen:

Thank you for the opportunity to respond to your request for comment. While DEQ does not review projects on a project-specific basis, we attempt to provide the best review of the information provided. DEQ encourages agencies to review and utilize the Idaho Environmental Guide to assist in addressing project-specific conditions that may apply. This guide can be found at: <https://www.deq.idaho.gov/public-information/assistance-and-resources/outreach-and-education/>.

The following information does not cover every aspect of this project; however, we have the following general comments to use as appropriate:

1. AIR QUALITY

- Please review IDAPA 58.01.01 for all rules on Air Quality, especially those regarding fugitive dust (58.01.01.651), trade waste burning (58.01.01.600-617), and odor control plans (58.01.01.776).

For questions, contact David Luft, Air Quality Manager, at (208) 373-0550.

- IDAPA 58.01.01.201 requires an owner or operator of a facility to obtain an air quality permit to construct prior to the commencement of construction or modification of any facility that will be a source of air pollution in quantities above established levels. DEQ asks that cities and counties require a proposed facility to contact DEQ for an applicability determination on their proposal to ensure they remain in compliance with the rules.

For questions, contact the DEQ Air Quality Permitting Hotline at 1-877-573-7648.

2. WASTEWATER AND RECYCLED WATER

- DEQ recommends verifying that there is adequate sewer to serve this project prior to approval. Please contact the sewer provider for a capacity statement, declining balance report, and willingness to serve this project.
- IDAPA 58.01.16 and IDAPA 58.01.17 are the sections of Idaho rules regarding wastewater and recycled water. Please review these rules to determine whether this or future projects will require DEQ approval. IDAPA 58.01.03 is the section of Idaho rules regarding subsurface disposal of wastewater. Please review this rule to determine whether this or future projects will require permitting by the district health department.
- All projects for construction or modification of wastewater systems require preconstruction approval. Recycled water projects and subsurface disposal projects require separate permits as well.
- DEQ recommends that projects be served by existing approved wastewater collection systems or a centralized community wastewater system whenever possible. Please contact DEQ to discuss potential for development of a community treatment system along with best management practices for communities to protect ground water.
- DEQ recommends that cities and counties develop and use a comprehensive land use management plan, which includes the impacts of present and future wastewater management in this area. Please schedule a meeting with DEQ for further discussion and recommendations for plan development and implementation.

For questions, contact Valerie Greear, Water Quality Engineering Manager at (208) 373-0550.

3. DRINKING WATER

- DEQ recommends verifying that there is adequate water to serve this project prior to approval. Please contact the water provider for a capacity statement, declining balance report, and willingness to serve this project.
- IDAPA 58.01.08 is the section of Idaho rules regarding public drinking water systems. Please review these rules to determine whether this or future projects will require DEQ approval.
- All projects for construction or modification of public drinking water systems require preconstruction approval.
- DEQ recommends verifying if the current and/or proposed drinking water system is a regulated public drinking water system (refer to the DEQ website at: <https://www.deq.idaho.gov/water-quality/drinking-water/>). For non-regulated systems, DEQ recommends annual testing for total coliform bacteria, nitrate, and nitrite.
- If any private wells will be included in this project, we recommend that they be tested for total coliform bacteria, nitrate, and nitrite prior to use and retested annually thereafter.
- DEQ recommends using an existing drinking water system whenever possible or construction of a new community drinking water system. Please contact DEQ to discuss this project and to explore options to both best serve the future residents of this development and provide for protection of ground water resources.

- DEQ recommends cities and counties develop and use a comprehensive land use management plan which addresses the present and future needs of this area for adequate, safe, and sustainable drinking water. Please schedule a meeting with DEQ for further discussion and recommendations for plan development and implementation.

For questions, contact Valerie Greear, Water Quality Engineering Manager at (208) 373-0550.

4. SURFACE WATER

- Please contact DEQ to determine whether this project will require an Idaho Pollutant Discharge Elimination System (IPDES) Permit. A Multi-Sector General Permit from DEQ may be required for facilities that have an allowable discharge of stormwater or authorized non-storm water associated with the primary industrial activity and co-located industrial activity.

For questions, contact James Craft, IPDES Compliance Supervisor, at (208) 373-0144.

- If this project is near a source of surface water, DEQ requests that projects incorporate construction best management practices (BMPs) to assist in the protection of Idaho's water resources. Additionally, please contact DEQ to identify BMP alternatives and to determine whether this project is in an area with Total Maximum Daily Load stormwater permit conditions.
- The Idaho Stream Channel Protection Act requires a permit for most stream channel alterations. Please contact the Idaho Department of Water Resources (IDWR), Western Regional Office, at 2735 Airport Way, Boise, or call (208) 334-2190 for more information. Information is also available on the IDWR website at: <https://idwr.idaho.gov/streams/stream-channel-alteration-permits.html>
- The Federal Clean Water Act requires a permit for filling or dredging in waters of the United States. Please contact the US Army Corps of Engineers, Boise Field Office, at 10095 Emerald Street, Boise, or call 208-345-2155 for more information regarding permits.

For questions, contact Lance Holloway, Surface Water Manager, at (208) 373-0550.

5. SOLID WASTE, HAZARDOUS WASTE AND GROUND WATER CONTAMINATION

- **Solid Waste.** No trash or other solid waste shall be buried, burned, or otherwise disposed of at the project site. These disposal methods are regulated by various state regulations including Idaho's Solid Waste Management Regulations and Standards (IDAPA 58.01.06), Rules and Regulations for Hazardous Waste (IDAPA 58.01.05), and Rules and Regulations for the Prevention of Air Pollution (IDAPA 58.01.01). Inert and other approved materials are also defined in the Solid Waste Management Regulations and Standards
- **Hazardous Waste.** The types and number of requirements that must be complied with under the federal Resource Conservation and Recovery Act (RCRA) and the Idaho Rules and Standards for Hazardous Waste (IDAPA 58.01.05) are based on the quantity and type of waste generated. Every business in Idaho is required to track the volume of waste generated, determine whether each type of waste is hazardous, and ensure that all wastes are properly disposed of according to federal, state, and local requirements.

- **Water Quality Standards.** Site activities must comply with the Idaho Water Quality Standards (IDAPA 58.01.02) regarding hazardous and deleterious-materials storage, disposal, or accumulation adjacent to or in the immediate vicinity of state waters (IDAPA 58.01.02.800); and the cleanup and reporting of oil-filled electrical equipment (IDAPA 58.01.02.849); hazardous materials (IDAPA 58.01.02.850); and used-oil and petroleum releases (IDAPA 58.01.02.851 and 852). Petroleum releases must be reported to DEQ in accordance with IDAPA 58.01.02.851.01 and 04. Hazardous material releases to state waters, or to land such that there is likelihood that it will enter state waters, must be reported to DEQ in accordance with IDAPA 58.01.02.850.
- **Ground Water Contamination.** DEQ requests that this project comply with Idaho's Ground Water Quality Rules (IDAPA 58.01.11), which states that "No person shall cause or allow the release, spilling, leaking, emission, discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that causes a ground water quality standard to be exceeded, injures a beneficial use of ground water, or is not in accordance with a permit, consent order or applicable best management practice, best available method or best practical method."

For questions, contact Rebecca Blankenau, Waste & Remediation Manager, at (208) 373-0550.

6. ADDITIONAL NOTES

- If an underground storage tank (UST) or an aboveground storage tank (AST) is identified at the site, the site should be evaluated to determine whether the UST is regulated by DEQ. EPA regulates ASTs. UST and AST sites should be assessed to determine whether there is potential soil and ground water contamination. Please call DEQ at (208) 373-0550, or visit the DEQ website <https://www.deq.idaho.gov/waste-management-and-remediation/storage-tanks/leaking-underground-storage-tanks-in-idaho/> for assistance.
- If applicable to this project, DEQ recommends that BMPs be implemented for any of the following conditions: wash water from cleaning vehicles, fertilizers and pesticides, animal facilities, composted waste, and ponds. Please contact DEQ for more information on any of these conditions.

We look forward to working with you in a proactive manner to address potential environmental impacts that may be within our regulatory authority. If you have any questions, please contact me, or any of our technical staff at (208) 373-0550.

Sincerely,



Aaron Scheff
Regional Administrator

c:

2021AEK

**Exhibits 2a and 2b
Comment Letter
Idaho State Department of Agriculture**



Idaho State Department of Agriculture
DAIRY BUREAU
P.O. Box 7249 • Boise, Idaho 83707
P: 208.332.8500 • F: 208.334.2170

BRAD LITTLE, GOVERNOR
CHANEL TEWALT, DIRECTOR

July 19, 2024

RE: CAFO EXPANSION

Dear Elizabeth Allen,

The Idaho State Department of Agriculture does not provide comments on CAFO's outside CAFO siting request. If you would like to request a CAFO siting, you may contact me directly.

Thanks,

Mitchell Vermeer
ISDA, Bureau Chief, (Dairy)
208-332-8551
Mitchell.Vermeer@ISDA.Idaho.gov



**Idaho State Department of Agriculture
Administration**

P.O. Box 7249 • Boise, Idaho 83707
P: 208.332.8500 • F: 208.334.2170

BRAD LITTLE, GOVERNOR
CHANEL TEWALT, DIRECTOR

July 22, 2024

Mitra Mehta-Cooper
Director, Elmore County Planning and Zoning
Via Email: mmehtacooper@elmorecounty.org
Re: Simplot CAFO Proposal

The Idaho State Department of Agriculture (ISDA) is providing this letter of compliance status as part of a requirement from your office to secure certain permits for the construction of a new CAFO facility proposed by Simplot in Elmore County.

To my knowledge, Simplot's Grand View feedlot is currently in compliance with relevant ISDA laws and rules. Simplot submitted an updated Nutrient Management Plan (NMP) for that facility to our agency in September 2019. For the 2 years prior and the 5 years since, there have been no non-compliance or violation events documented during any of the routine inspections performed at that facility.

For many years, Simplot has worked with the state to understand requirements to understand compliance requirements. When the time is appropriate to present ISDA with a new or amended NMP for the proposed new facility, we will review for approval through our normal and customary process. The question of the details included in the NMP related to the land application, in particular the locations and rates of application, will be addressed by our agency as NMPs for these facilities are presented for approval. We will continue to work with Simplot to perform those responsibilities required of our agency in statute to maintain compliance with state requirements for current and future facilities.

Sincerely,

A handwritten signature in blue ink that reads "Chanel Tewalt".

Chanel Tewalt
Director

Exhibit 3
Comment Letter
Idaho Department of Fish and Game



IDAHO DEPARTMENT OF FISH AND GAME

SOUTHWEST REGION

15950 N. Gate Blvd.

Nampa, Idaho 83687

Brad Little / Governor
Jim Fredericks / Director

June 24, 2024

David Abrahamson, Planner
Elmore County Land Use and Building Department
520 E 2nd St.
Mountain Home, ID 83647

RE: Confined Animal Feeding Operation CUP-2024-08

Dear David,

Thank you for requesting comments from the Idaho Department of Fish and Game (IDFG) regarding the Confined Animal Feeding Operation (CAFO) proposed by Simplot and referred to as the “Grand View Calf Ranch” on the application. IDFG has reviewed the information in the application provided by the Elmore County Land Use and Building Department.

J.R. Simplot Company Land & Livestock is requesting the approval of a Conditional Use Permit (CUP) for a Siting Permit to operate a CAFO consisting of a calf ranch with a maximum of 55,000 animal units on approximately 410 acres within an Agriculture zone located in Township 5S Range 3E and Range 4E; Sections 1, 6, 5, and 4. Access to the facility is proposed via Nicholson Rd. off State Hwy 167. Rainfall and snow melt runoff from the facility is proposed to be collected in engineer-designed storage ponds on the south and east sides of the site. As outlined in the Nutrient Management Plan (NMP), solid waste is proposed to be removed from the calving pens and stored at an offsite agricultural field for processing and use. Solid waste and liquid waste from the storage ponds will subsequently be used on 22 properties covered by the NMP.

The purpose of these comments is to assist Elmore County during the CUP process by providing technical information addressing potential effects on fish, wildlife, fish and wildlife habitat, and associated recreation and how any adverse effects might be mitigated. Resident species of fish and wildlife are property of all Idaho citizens, and IDFG and the Idaho Fish and Game Commission are expressly charged with statutory responsibility to preserve, protect, perpetuate, and manage all fish and wildlife in Idaho (Idaho Code § 36-103(a)). In fulfillment of our statutory charge and direction as provided by the Idaho Legislature, we offer the following Technical Memo containing our comments and suggestions.

Keeping Idaho's Wildlife Heritage

IDFG appreciates the opportunity to provide information pertinent to the proposed project. If you have any questions or need additional information, please contact Brandon Flack, the Technical Assistance Manager in the Southwest Region (208-465-8465; brandon.flack@idfg.idaho.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Josh Royse", with a long horizontal line extending to the right.

Josh Royse
Southwest Regional Supervisor

JR/BF

ecc: Josh Royse, Brandon Flack; IDFG Southwest Region
David Abrahamson; Elmore County Land Use and Building Department
Elizabeth Allen; Bristlecone Land Use Consulting (contracted by Elmore County)

e-file: S:\TECH ASSISTANCE\Counties\Elmore County\CAFO_CUP-2024-08\CAFO CUP-2024-08_IDFG Comments_FINAL_06242024

TECHNICAL MEMORANDUM



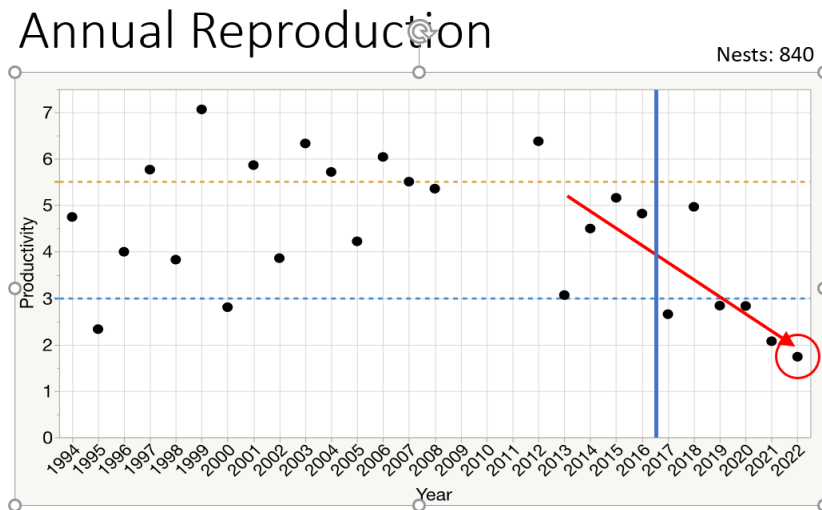
Subject: CAFO CUP-2024-08

IDFG Contact: Brandon Flack

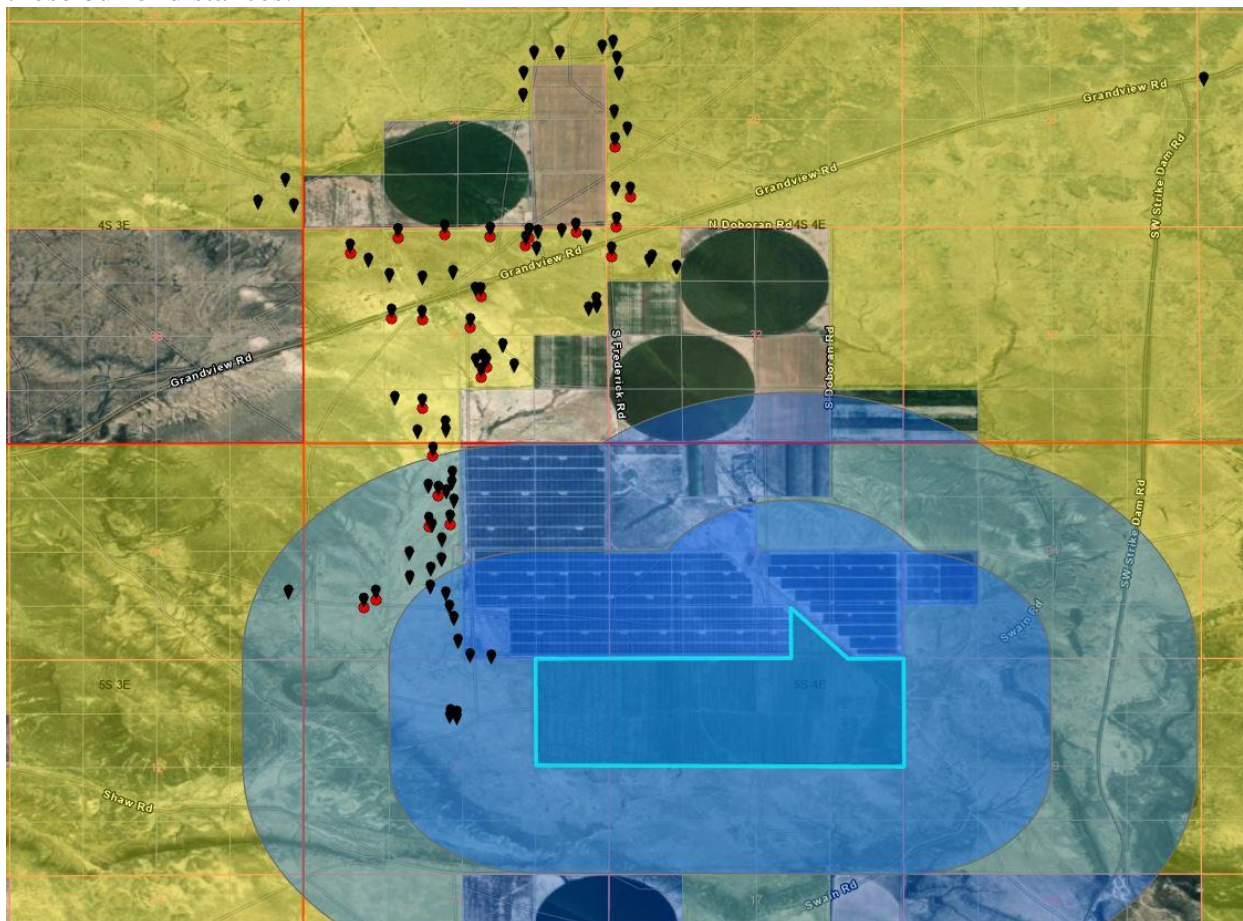
Prepared for Elmore County Land Use and Building Department

June 24, 2024

The goal of our comments and recommendations is to help the county and applicant avoid and/or minimize effects to nesting burrowing owls. Burrowing owls use natural and artificial burrows on the BLM managed lands that border the Simplot property to the north and the west. There are 11 borrows/nests within 0.5 miles and 29 burrows/nests within 1 mile of the project boundary. BSU researcher, Dr. Jim Belthoff, has been studying burrowing owls in the NCA since at least 1994. He indicated via email communication that this congregation of burrowing owls is the most important in the NCA. Although burrowing owls are widespread throughout Southwest Idaho and adult abundance is stable, productivity (# of nestlings making it to adulthood) has declined precipitously in the last 10 years (see graph below). This could signal some future decline in abundance or could indicate a sink habitat. The reasons for the decline are unclear currently but it is important to avoid obvious disturbance that could result in negative effects on this burrowing owl population.



This figure shows the location of burrowing owl nest sites (black pins), active nests in 2024 (red dots), the Calf Ranch (outlined in light blue), and 0.5-mile and 1-mile buffers around the Calf Ranch. This is a visual representation of the number of burrowing owl nests occurring within those buffer distances.



CONCERNS & RECOMMENDATIONS:

1) Effects from construction activities:

Increased heavy truck traffic along Hwy 167 and Nicholson Rd during the breeding season could affect burrowing owl nestlings. Burrowing owl fledging typically occurs throughout mid to late summer. Most burrowing owls would be unaffected by construction activities that occur after fledging.

To avoid negative effects, IDFG recommends construction activities and feed lot implementation begin after August 31, 2024.

2) Access to the CAFO:

The application materials indicate that access will be via Nicholson Rd. The proposed property for the Calf Ranch is currently disturbed and is being used for manure storage. It is unclear from the application if traffic from the existing land

use will increase, and by how much, to operate the CAFO. In addition, the staff report indicates that the CAFO will be accessed via Frederick Rd. Site drawings provided by Simplot also indicate the access road will come in via Frederick Rd to a weigh station located in between the solar fields. Increased vehicle traffic on Nicholson Rd along the western edge of the solar field could affect nesting burrowing owls.

IDFG's preferred access route is via Frederick Rd down through the solar field as the route and the amount of traffic is less likely to affect nesting owls.

3) Pest control at the Calf Ranch:

Burrowing owls eat small rodents and some pesticides used to control rodents can injure or kill predators or scavengers of the rodents leading to even lower reproductive rates in owls. These pesticides are known as second-generation anticoagulant rodenticides (SGARs). Their poisons do not break down in the target animals and can be ingested into the system of the scavenger or predator and have the same effect. First-generation anticoagulant rodenticides (FGARs) like warfarin, coumatetralyl, and diphacinone are less dangerous to raptors and other members of the local food web. The best option would be a non-coagulant like sodium chloride that specifically targets the pest (NPIC Fact Sheet 2016).

IDFG recommends using FGARs or non-coagulant rodenticides to control pests in the CAFO to reduce the risk of secondary poisoning of burrowing owls.

4) Ravens:

Ravens are the most common predator of owl nests and have been found to be a leading cause of nestling mortality (Belthoff et. al. 2017). IDFG is concerned that this feed lot may attract more ravens to the area that would then key in on nearby burrowing owl nests. This could exacerbate declines in burrowing owl production.

IDFG recommends avoiding the installation of tall structures that could be used by ravens for perching or nesting. Simplot should utilize deterrent techniques to keep ravens away from the Calf Ranch.

REFERENCES:

Belthoff, J., S. Pourzamani, L. Belthoff, D. Schmidt, and K. Weckwerth. 2017. Results of Point-count Surveys and Nest Monitoring for Burrowing Owls in the Morley Nelson Snake River Birds of Prey National Conservation Area, 2017. Annual Summary Report prepared for USDI Bureau of Land Management. Department of Biological Sciences and Raptor Research Center, Boise State University, Boise, ID.

Rodenticides Topic Fact Sheet. 2016. National Pesticide Information Center. Revised in 2016. <http://npic.orst.edu/factsheets/rodenticides.html>