

**BEFORE THE ELMORE COUNTY BOARD OF COMMISSIONERS
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

SECOND REQUEST FOR RECONSIDERATION – S BAR RANCH: 3-26-18

In Re: CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06 and CUP-2015-07: **Cat Creek Energy, LLC**

Background:

On February 10, 2017, the Elmore County (“**County**”) Board of Commissioners (“**Board**”) approved (“**Approval**”) five conditional use permit applications (“**Applications**”) from **Cat Creek Energy, LLC**, an Idaho limited liability company (“**Applicant**”), with conditions (“**Conditions**”), all as further set forth in those Findings of Fact, Conclusions of Law and Order dated February 10, 2017 by the Board (“**Initial Findings**”). The conditional use permits approved in the Initial Findings shall be referred to herein individually as a “**CUP**” and collectively as the “**CUPs**.” One of those Conditions was the execution and recordation of a “**Development Agreement**” by and between the County, the Applicant and the “**Landowners:**” **Sawtooth Grazing Association, Inc.** and **Wood Creek Ranch, LLC**. The Development Agreement was executed by the parties thereto and recorded on February 9, 2018. The Development Agreement was approved by the Board through Resolution No. 652-18 and Ordinance No. 2018-01 both dated February 9, 2018, both the resolution and the ordinance were amended and restated on March 2, 2018, as Ordinance No. 2018-02 and Resolution No. 653-18. On February 16, 2018, **S Bar Ranch, LLC** (“**S Bar Ranch**”), filed a Request for Reconsideration (“**First Request for Reconsideration**”) of the Approval and the Development Agreement (“**First Reconsideration Matter**”) with the Elmore County Land Use and Building Department (“**Department**”). The Board conducted a public hearing, following notice of the hearing, on March 23, 2018, and accepted written and verbal testimony pertaining to the First Reconsideration Matter. The Board conducted deliberations on April 6, 2018 and issued the Findings of Fact, Conclusions of Law and Order First Request for Reconsideration – S Bar Ranch: 2-16-18 (“**First Reconsideration Findings**”). In connection with the Development Agreement, and following public hearings on the matter, the Board approved certain changes to the Approval and Conditions. The Board issued Findings of Fact, Conclusions of Law and Order – CUP Amendments, on March 16, 2018 (“**CUP Amendment Findings**”) approving those changes to the Approval and Conditions. The record for the Approval, the Conditions, the Initial Findings, the CUP Amendment Findings, the CUPs, the Development Agreement and the First Reconsideration Matter, as augmented by the record for this Matter, shall be collectively referred to herein as the “**Record**.” All capitalized words used and not defined herein shall have the meanings given to them in the Initial Findings.

Request for Reconsideration:

On March 26, 2018, **S Bar Ranch** filed a “**Second Request for Reconsideration**” of the Approval, the Conditions, the Initial Findings, the CUP Amendment Findings and the Development Agreement (this “**Matter**”) with the Department. The Department presented the Second Request for Reconsideration to the Board, the Board reviewed the request on April 6, 2018 and it scheduled a public hearing on this Matter for May 11, 2018. These Findings of Fact, Conclusions of Law and Order Second Request for Reconsideration – S Bar Ranch: 3-26-18 (“**Second Reconsideration Findings**”) are made and pertain to this Matter. The Board conducted a public hearing, following notice of the hearing, on this Matter, and accepted written and verbal testimony. Following the hearing, the Board closed the Record and took this Matter under advisement. The Board conducted deliberations and issued these Second Reconsideration Findings on May 18, 2018.

Findings of Fact:

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings are based upon the Record before the Board as well as those facts that are commonly known or of which there is general public awareness.

1. Procedural Process.

The Board finds the following as to the procedural matters pertaining to this Matter:

- A. The Procedural Process for the First Request for Reconsideration is not restated herein, but is incorporated herein by reference from the First Reconsideration Findings.
- B. On March 26, 2018, S Bar Ranch filed the Second Request for Reconsideration with the Department and paid the required \$800.00 fee for the reconsideration of one conditional use permit, presumably, CUP-2015-06, although the Second Request for Reconsideration states that it pertains to all five CUPs.
- C. The Department presented the Second Request for Reconsideration to the Board on April 6, 2018, and the Board agreed to hear this Matter and set the hearing for May 11, 2018.
- D. The Department published notice of the hearing for this Matter on April 18, 2018 and mailed notices to the property owners within one mile of the Property and the agencies on April 23, 2018. The Department posted notice of the hearing pertaining to this Matter at 12 locations surrounding the Property on April 30, 2018.
- E. The Board conducted a public hearing on this Matter on May 11, 2018 at which the Board accepted written and verbal testimony pertaining to this Matter.
- F. On May 18, 2018, the Board deliberated this Matter and issued these Second Reconsideration Findings.

2. Applicable Law.

The Board finds the following as the applicable law for consideration of this Matter:

- A. The Elmore County Zoning and Development Ordinance, which was adopted on March 21, 2012, as Ordinance 2012-01; amended on September 19, 2012, as Ordinance 2012-03, and July 23, 2014, as Ordinance 2014-01 (collectively, the "**Zoning Ordinance**"); and
- B. The Local Land Use Planning Act, Idaho Code §§ 67-6501 through -6538 ("**LLUPA**").

3. Incorporation of Findings of Fact from the First Reconsideration Findings into these Second Reconsideration Findings.

The Board incorporates by reference the Findings of Fact from the First Reconsideration Findings into these Second Reconsideration Findings as if such findings were set forth herein in their entirety, but for purposes of brevity does not restate them herein.

4. Timeliness of Filing and Proper Scope of the Second Request for Reconsideration.

The Board finds that under Idaho Code § 67-6535(2)(b), an affected person objecting to the Board's compliance with the writing required under Idaho Code § 67-6535(2) must "seek reconsideration of the final decision within fourteen (14) days" before it may seek judicial review.

The Board further finds that an aggrieved party may seek reconsideration of the Board's decision if such request is made within 10 days of the Board's decision under Zoning Ordinance at § 6-3-2.F&J.

The Board previously found in the First Reconsideration Findings at page 4 that S Bar Ranch is an affected party for CUP-2015-06 only.

The Board further finds that S Bar Ranch's argument, which was made during the hearing on this Matter, that it is an affected party with respect to CUP-2015-03, CUP-2015-04, CUP-2015-05 and CUP-2015-07 on the grounds that the Applicant's project will affect recreational opportunities in the area of the project is misplaced because the Board previously found in its Initial Findings at page 20 that the project is compatible with current recreation opportunities.

The Board further finds that it issued its CUP Amendment Findings on March 16, 2018. CUP Amendment Findings, page 15.

The Board further finds that S Bar Ranch never asked the Board to permit S Bar Ranch to raise its objections to the CUP Amendment Findings as part of its First Request for Reconsideration, and accordingly, it is not possible that the Board did not permit S Bar Ranch to object to the CUP Amendment Findings as part of its First Request for Reconsideration.

The Board further finds that S Bar Ranch filed its Second Request for Reconsideration on March 26, 2018. Record, page 10173.

The Board further finds that to the extent the Second Request for Reconsideration applies to the amendments to the Approval and Conditions for CUP-2015-06, it was timely filed under Idaho Code § 67-6535(2) and under § 6-3-2.J&K of the Zoning Ordinance.

The Board finds that it previously concluded in the First Reconsideration Findings at pages 15 and 16 that: (i) "S Bar Ranch did not seek timely reconsideration of the Approval under the Initial Findings under Idaho Code § 67-6535(2)" and (ii) "S Bar Ranch is not entitled to seek reconsideration of the Development Agreement, except to the extent that it contains amendments to the Approval and Conditions under Idaho Code § 67-6532(2)."

5. **Issues Raised by S Bar Ranch that are Duplicative of the Issues Raised in the First Request for Reconsideration.**

The Board finds that many of the issues raised in the Second Request for Reconsideration are duplicative of the issues raised in the First Request for Reconsideration and have been addressed in the First Reconsideration Findings.

The Board further finds that under Zoning Ordinance § 6-3-2.K.1, the Board's denial of the request for reconsideration under the First Reconsideration Findings is not subject to further review by the Board.

The Board further finds that to the extent any issues contained in the Second Request for Reconsideration have been decided under the First Reconsideration Findings, such requests are not further reviewable by the Board.

The Board incorporates by reference the First Reconsideration Findings into these Second Reconsideration Findings for those matters that are the duplication of issues raised in the First Request for Reconsideration and restated in the Second Request for Reconsideration as if such findings were set forth herein in their entirety, but for purposes of brevity does not restate them herein.

6. **New Arguments for Previously Raised Issues Set Forth in the Second Request for Reconsideration.**

A. The Board finds that S Bar Ranch again objects to the separation of the CUPs in its Second Request for Reconsideration but fails to make any new arguments that are persuasive to reverse the Board's denial of this objection in its First Reconsideration Findings.

The Board further finds that it addressed the issue in both the CUP Amendment Findings at page 12 and the First Reconsideration Findings at page 4 **and restates such findings and further finds** that it has adequately addressed the issue through its prior findings.

The Board further finds that S Bar Ranch's unsupported objection to the separation of the CUPs in the Second Request for Reconsideration is unpersuasive.

The Board further finds that S Bar Ranch accepted the position of the Board by paying a reconsideration fee in the amount of \$800.00 for the reconsideration of one CUP (CUP-2015-06) and not \$4,000.00 for the reconsideration of five CUPs, as the Applicant paid to appeal the decision of the P&Z Commission to the Board, notwithstanding that S Bar Ranch states in its Second Request for Reconsideration that it is seeking reconsideration of all five CUPs.

B. The Board finds that it adequately addressed the issue of the finality of the Initial Findings in the First Reconsideration Findings at pages 5, 7 and 16.

The Board further finds that S Bar Ranch's citation of *Canal/Norcrest/Columbus Action Comm. v. City of Boise*, 39 P.3d 606, 610 (Idaho 2001) supports the opinion of the Board that the Initial Findings was a final decision ripe for reconsideration on February 10, 2017 even though the conditions had not yet been satisfied.

The Board further finds that S Bar Ranch's reliance on *Johnson v. Blaine County*, 204 P.3d 1127 (Idaho 2009) is misplaced for a number of reasons that include that the Idaho Supreme Court's decision is predicated on language in Idaho Code § 67-6521 that was removed by the Idaho Legislature one year after *Johnson v. Blaine County* was decided.

C. The Board finds that S Bar Ranch's new arguments in connection with its objections that there was no notice and opportunity to be heard concerning the amendments to the Approval and Conditions in connection with the public hearings on the Development Agreement are unpersuasive to change the Board's decision that S Bar Ranch's due process rights were not violated.

The Board further finds that it held hearings on October 20, 2017, December 22, 2017, January 26, 2018 and February 9, 2018 regarding the Development Agreement. Record, pages 8797, 9053–54, 10410–11.

The Board further finds that the notices of the hearings that were published and mailed to landowners within one mile of the Property state that the Record may be reviewed at or prior to the hearings. *Id.*

The Board further finds that the changes to the Initial Findings were set forth and integrated into the Development Agreement, drafts of which were contained in the Record and were distributed or made available at the hearings on December 22, 2017, January 26, 2018 and February 9, 2018. Record, pages 8588–628, 8757–96, 9493–529, 9823–529, 9823–60, 10382–409, 10412–528.

The Board further finds that the Board itself anticipated and provided for modification of the Conditions by the Development Agreement through Condition No. 2(o). Initial Findings, page 49.

The Board further finds that it is uncontroverted that S Bar Ranch had actual notice of the proposed amendments to the Approval and Conditions that were contained in the Development Agreement because its attorney: (i) attended the January 26, 2018 and February 9, 2018 hearings on the Development Agreement; (ii) prior to each of these hearings received current working drafts of the Development Agreement that included the proposed changes to the Approval and Conditions; (iii) provided written comments to the Development Agreement on two separate occasions and the County and the Applicant incorporated certain changes from S Bar Ranch's written comments into the final Development Agreement; and (iv) also obtained a copy of the Development Agreement that compared the changes between the drafts reviewed by the attorney, a copy of the draft language for the water provisions for the Development Agreement and additional information about the Applicant's project, such as the ownership and lease rights for the Property. Record, pages 9767–69, 10351–53, 10565–86, 10587–734, 10737–41, 10788–995.

The Board further finds that S Bar Ranch's attorney reviewed and submitted written comments on the draft of the Development Agreement that was made available at the February 9, 2018 hearing and the only substantive change to that version of the Development Agreement before the final Development Agreement was signed and recorded on February 9, 2018 was the deferral of the negotiation and agreement on the water provisions ("**Water Provisions**") to no later than December 31, 2018 with the requirement that a public hearing with notice be held on the Water Provisions. Record, pages 8967–9903, 10405, 10587–626.

The Board further finds that the four public hearings held on October 20, 2017, December 22, 2017, January 26, 2018 and February 9, 2018 satisfied the minimum procedural requirements of at least one public hearing on the proposed amendments to the Approval and Conditions under Idaho Code § 67-6512(b) and Zoning Ordinance § 6-3-2.H.

The Board further finds that additional means of being heard were afforded to the public during the four public hearings at which any interested person was invited to provide verbal testimony without any restriction on the length of the testimony and S Bar Ranch chose not to avail itself of these opportunities nor did S Bar Ranch object to the amount of time it was given to review the various drafts of the Development Agreement or that the County and the Applicant were negotiating the terms of the Development Agreement before the Board during the public hearings. Record, pages 10357–60, 10389, 10391, 10397, 10403–05.

The Board further finds that the presentation of the County's and the Applicant's differing positions on the proposed terms of the Development Agreement at the public hearings afforded the public the opportunity to comment in a meaningful manner on these terms, as they were invited to do at all of the hearings. Record, pages 10357–60, 10389, 10391–93, 10395, 10397–99, 10403–05.

The Board previously found in the CUP Amendment Findings at pages 4 and 5 that the Development Agreement is not an Idaho Code § 67-6511A or a Zoning Ordinance, Chapter 29 Development Agreement **and further finds** that the public's right to a hearing on the Development Agreement was not mandated by LLUPA or the Zoning Ordinance but rather a right provided by the Board as part of Condition No. 2 of the Initial Findings.

The Board further finds that S Bar Ranch's due process rights were not violated because S Bar Ranch had actual notice of the proposed amendments to the Approval and Conditions that were the subject matter of the hearings attended by S Bar Ranch, S Bar Ranch participated in these hearings by submitting written comments, and S Bar Ranch was given an opportunity to be heard at a meaningful time and in a meaningful manner at these hearings that exceeds the procedural requirements of LLUPA, the Zoning Ordinance and other law.

7. New Issues Set Forth in the Second Request for Reconsideration.

A. The Board finds that S Bar Ranch's objection to the two year extension within the total possible period of approval of the CUPs is untimely and separate from the one year extension under § 6-27-6.A of the Zoning Ordinance.

The Board further finds that the deadline for objecting to the two year extension expired on February 20, 2017 under § 6-3-2.J&K of the Zoning Ordinance and expired on February 24, 2017 under Idaho Code § 67-6535(2) because the CUP Amendment Findings added one year to the base period of approval of the CUPs but did not change the two year extension such that the total possible period of approval of the CUPs increased from six to seven years. Initial Findings, page 48; CUP Amendment Findings, page 11.

The Board further finds that the Zoning Ordinance provides that conditional use permits “shall be limited to a one (1) year period, unless some other period of time is specified in the permit, in which the applicant or owner must obtain all necessary permits and obtain a zoning permit.” Zoning Ordinance § 6-27-3.E (emphasis added); see also Zoning Ordinance § 6-27-5.A (“The term of approval of a Conditional Use Permit shall not exceed twelve (12) months unless some other period of time is specified in the permit.”).

The Board further finds that the Board provided “some other period of time” in Condition No. 1 as amended by the CUP Amendment Findings. Initial Findings, page 48; CUP Amendment Findings, page 11.

The Board further finds that the option of the two year extension within the total possible approval period of seven years for the CUPs is not a Zoning Ordinance § 6-27-6.A extension because it is separate from the Applicant’s right to seek a one year extension of the CUPs under § 6-27-6.A of the Zoning Ordinance.

B. The Board finds that the Board’s approval of the new master site plan satisfied Zoning Ordinance § 6-27-2.B’s requirement of a new conditional use approval and did not violate S Bar Ranch’s due process rights.

The Board further finds that Zoning Ordinance § 6-27-2.B requires “a new conditional use approval” to adopt a new master site plan for a previously approved conditional use.

The Board further finds that a new conditional use approval by the Board was made when the Board approved the CUP Amendment Findings because the CUP Amendment Findings amended the Approval and Conditions only to the extent of the amendments set forth in the CUP Amendment Findings and all other terms of the Initial Findings remained intact, including the required findings and conclusions for a conditional use approval under LLUPA and the Zoning Ordinance. CUP Amendment Findings, pages 14–15.

The Board further finds that the process for amending a condition use permit is the same process for approving a conditional use permit under Idaho Code §§ 67-6512 and 67-6535 and Zoning Ordinance, Chapters 3 and 27.

The Board further finds that S Bar Ranch states in its Supplemental Memorandum in Support of its Second Request for Reconsideration, dated April 6, 2018, at page 4 that it does not contest that the Board can amend the Conditions.

The Board has previously found that the County held four hearings regarding the Development Agreement and the proposed amendments to the Approval and Conditions, following public notice and the opportunity to be heard by the public, including S Bar Ranch, and that the Approvals and Conditions were properly amended pursuant to the process for approving and amending conditional use permits under LLUPA and the Zoning Ordinance. CUP Amendment Findings, pages 14–15.

C. The Board finds that Condition No. 2(o) of the Initial Findings is not a limit on the Board’s authority to amend the Approval and Conditions.

The Board further finds that Condition No. 2(o) provides that the Conditions must be incorporated into the terms of the Development Agreement and in doing so the Conditions “may be expanded and refined by the Board and Applicant.”

The Board further finds that pursuant to the Board’s authority to adopt the Conditions in connection with its Approval under Idaho Code § 67-6512(d) and Zoning Ordinance § 6-27-4.J, following at least one public hearing and notice of the hearing to the public, the Board also has the authority to approve changes to the Conditions after satisfying the same minimum procedural requirements, which it did by holding four public hearings following notice in connection with the approval of the Development Agreement.

The Board has previously found that the Approvals and Conditions were properly amended pursuant to the process for approving and amending conditional use permits under LLUPA and the Zoning Ordinance. CUP Amendment Findings, pages 14–15.

D. The Board finds that the Board required the Applicant to comply with Zoning Ordinance § 6-8-94 pertaining to Electrical Generating Facilities and as such there is no conflict with Zoning Ordinance § 6-8-13(D)(1)(A)’s requirement that a conditional use permit be obtained for a wind turbine that exceeds the maximum height limitations of the applicable base zone. Initial Findings, page 16.

The Board further finds that the Board stated that it determined the Property was more than five miles from the Mountain Home Air Force Base (“**MHAFB**”), and accordingly, the restriction set forth in Zoning Ordinance § 6-8-94(10) is not applicable to the Applicant’s project. Initial Findings, page 43.

The Board further finds that the coordination and approval requirements of Zoning Ordinance § 6-8-94(A)(9) for the height of the wind turbines to exceed the height restrictions contained in Table 6-8-12(C) apply to the Applicant’s project. CUP Amendment Findings, page 5 (Exhibit D stating maximum height of the wind turbine towers not to exceed 500 feet); Zoning Ordinance Table 6-8-12(C).

The Board further finds that the County sent the Applications to the MHAFB, Idaho National Guard, Mountain Home airport and the Glens Ferry airport for review and comment. Record, pages 10956–58.

The Board further finds that neither the MHAFB, Idaho National Guard nor the Glens Ferry and Mountain Home airports responded to the request for comment regarding the Applicant’s project and that such acquiescence to the Applicant’s project by virtue of declining to comment or object to the Applications satisfies the approval requirement of Zoning Ordinance § 6-8-94(A)(9).

E. The Board finds that the failure of the notices of the P&Z Commission and Board appeal hearings on the Applications to describe the proposed height and location of the wind turbines did not violate S Bar Ranch’s due process rights.

The Board further finds that it previously denied S Bar Ranch’s claim that its due process rights were violated by defects in the notice provided for the P&Z Commission hearings. First Reconsideration Findings, pages 8–9.

The Board further finds that notice of the Board appeal hearings was posted along the boundaries of the Property, giving S Bar Ranch notice that the Applicant’s project would

cover property that neighbors its land and the potential impact on its land such that S Bar Ranch's due process rights were not violated. Record, page 10767.

F. The Board finds that S Bar Ranch's conclusory statement in its Second Request for Reconsideration that the amendments to the Approval and Conditions violated LLUPA is unpersuasive for the Board to remand this Matter to the Director for further reconsideration.

G. The Board finds that it is premature for the Board to respond to S Bar Ranch's allegation regarding an unlawful taking of S Bar Ranch's property in light of the Board's order in these Second Reconsideration Findings, which is set forth below, to hold another public hearing on the amendments to the Approval and Conditions.

H. The Board finds, notwithstanding the Initial Findings, the CUP Amendment Findings, the First Reconsideration Findings and these Second Reconsideration Findings, in the abundance of fairness and to dispel any contention that notice and a full and fair opportunity to be heard was denied, to provide further notice, to permit further opportunity to be heard and to ensure that the rights afforded to S Bar Ranch and the public in connection with their concerns regarding the amendments to the Approval and Conditions exceed the procedural requirements under LLUPA, the Zoning Ordinance and other law, and without admitting any error on its part, that it will conduct an additional hearing on the amendments to the Approval and Conditions, which are set forth on Exhibit A attached hereto and made a part hereof.

Conclusions of Law:

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

- 1. The Board incorporates herein by reference** the Conclusions of Law from the First Reconsideration Findings into these Second Reconsideration Findings in their entirety, but for purposes of brevity does not restate them herein.
- 2. The Board concludes** that it conducted one public hearing, following notice published in the Mountain Home News on April 18, 2018, mailed on April 23, 2018 and posted at 12 locations surrounding the Property on April 30, 2018, and heard any and all parties desiring to present verbal and written testimony regarding the Second Request for Reconsideration.
- 3. The Board concludes** that S Bar Ranch was timely in its Second Request for Reconsideration of the amendments to the Approval and Conditions pertaining to CUP-2015-06 under Idaho Code § 67-6535(2) and under Zoning Ordinance § 6-3-2.
- 4. The Board concludes** that S Bar Ranch is an affected party under Idaho Code § 67-6521(1)(a)(i) for CUP-2015-06.
- 5. The Board concludes** that S Bar Ranch is not an affected party under Idaho Code § 67-6521(1)(a)(i) for CUP-2015-03, CUP-2015-04, CUP-2015-05 and CUP-2015-07.
- 6. The Board concludes** that the Board's denial in its First Reconsideration Findings of the objections and arguments raised in S Bar Ranch's First Request for Reconsideration are not subject to further review by the Board under Zoning Ordinance § 6-3-2.K.1.

7. **The Board concludes** that S Bar Ranch was given notice and an opportunity to be heard at a meaningful time and in a meaningful manner at all four of the public hearings on the terms of the Development Agreement, including the proposals to amend the Approval and Conditions, that exceeds the minimum requirements of LLUPA and the Zoning Ordinance for amending the Approval and Conditions and did not violate S Bar Ranch's due process rights.

8. **The Board concludes** that since S Bar Ranch had actual notice of two or more of the hearings on the Development Agreement and the amendments to the Approval and Conditions, because representatives of S Bar Ranch attended two hearings and submitted written materials in connection with the same, any defect in notice of the proposed amendments to the Approval and Conditions did not prejudice S Bar Ranch's substantial rights as required for a violation of due process.

9. **The Board concludes** that in commenting on the second to last version of the Development Agreement and the Board's requirement for a public hearing following notice on the Water Provisions, S Bar Ranch had notice of and the opportunity to be heard at a meaningful time and in a meaningful manner on all terms of the Development Agreement that have been adopted by the Board, including without limitation those terms that proposed amendments to the Approval and Conditions, and will have the opportunity to be heard on the Water Provisions when they are under consideration of the Board, and as a result, the due process rights of S Bar Ranch were not denied in connection with the amendments to the Approval and Conditions and the Development Agreement.

10. **The Board concludes** that S Bar Ranch's objection to the two year extension within the total possible period of approval of the CUPs is untimely, not a Zoning Ordinance § 6-27-6.A extension and separate from the one year extension under § 6-27-6.A of the Zoning Ordinance.

11. **The Board concludes** that Zoning Ordinance § 6-27-2.B's requirement of a new conditional use approval was met as result of the four public hearings, following notice, on the terms of the Development Agreement and the amendments to the Approval and Conditions, including the adoption of a new master site plan, and S Bar Ranch's due process rights were not violated.

12. **The Board concludes** that the process for amending a condition use permit is the same process for approving a conditional use permit under Idaho Code §§ 67-6512 and 67-6535 and Zoning Ordinance, Chapters 3 and 27.

13. **The Board concludes** that the Board's authority to amend the Approval and Conditions is not limited or otherwise affected by its inclusion of Condition No. 2(o) in its Initial Findings.

14. **The Board concludes** that there is no conflict between Zoning Ordinance § 6-8-13(D)(1)(A) and the Board's requirement that the Applicant comply with Zoning Ordinance § 6-8-94.

15. **The Board concludes** that the failure of the notices of the P&Z Commission and Board appeal hearings on the Applications to describe the proposed height and location of the wind turbines did not prejudice S Bar Ranch's substantial rights.

16. **The Board concludes** that there is no legal basis for remanding this Matter to the Director for further reconsideration.

17. **The Board concludes** that it is premature for the Board to undertake a regulatory takings analysis with respect to S Bar Ranch's property when it has decided to hold another public hearing on the amendments to the Approval and Conditions.

18. **The Board concludes**, notwithstanding that it has determined that S Bar Ranch's due process rights were not violated, and without admitting any error on its part, that a rehearing on the amendments to the Approval and Conditions should be held and in doing so S Bar Ranch and the public will be given further notice and opportunity to be heard that far exceed the procedural requirements under LLUPA, the Zoning Ordinance and other law.

19. **The Board concludes** that S Bar Ranch's due process rights under LLUPA, the Zoning Ordinance and other law were not violated in connection with the Initial Findings, the Approval, the Conditions, the Development Agreement, the CUP Amendment Findings and the First Reconsideration Findings.

ORDER

Based upon the foregoing Findings of Fact and Conclusion of Law and this Order, the Board issues these Findings of Fact, Conclusions of Law and Order Second Request for Reconsideration – S Bar Ranch: 3-26-18 ("**Second Reconsideration Findings**") as of the date hereof and hereby **orders a rehearing** in front of this Board for those matters pertaining to the amendments to the Approval and Conditions as set forth in in the CUP Amendment Findings, or otherwise contained in the Development Agreement, as further set forth on Exhibit A, which exhibit is attached hereto and made a part hereof, at such time and date as is reasonably determined by the Department and the County Clerk.

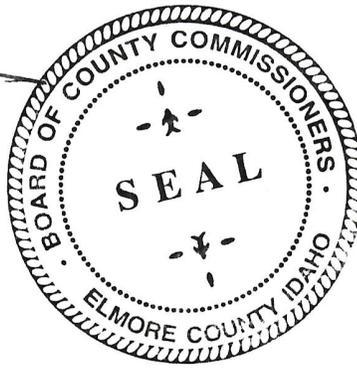
Dated this 18th day of May 2018.

ELMORE COUNTY BOARD OF COMMISSIONERS:

By: Wesley R. Woolan
Wesley R. Woolan, Chairman

By: Franklin L. Corbus
Franklin L. Corbus, Commissioner

By: [recusal]
Albert Hofer, Commissioner



Attest:

By. 
Barbara Steele, Clerk

NOTICES PURSUANT TO IDAHO CODE §§ 67-6512 and 67-6519(4)(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 § 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 Idaho Code title 67, ch. 52.

Exhibit A

Subject Matters of Rehearing

A rehearing on the amendments to the Approval and Conditions contemplated by the Development Agreement shall cover the modification, removal or addition of findings of fact, conclusions of law or conditions set forth in the Initial Findings on the following subject matters:

1. An extension of the time the Applicant has to satisfy Conditions No. 2(b) and (c) of the Initial Findings with respect to CUP-2015-04 (hydro project);
2. The site plan and project description;
3. The Stakeholder Board (as defined in Condition No. 2(d) of the Initial Findings);
4. Annual fish stocking in Anderson Ranch Reservoir;
5. Conservation efforts affecting areas of sage-grouse habitat surrounding wind turbine areas 2 and 3 in the eastern part of Wood Creek Ranch;
6. Erosion control measures;
7. The Applicant's erosion control plan;
8. Visual mitigation measures;
9. Communication with governmental agencies regarding fish and wildlife habitats and other matters;
10. Noise standards;
11. The Scholarship Fund (as defined in Condition No. 30 of the Initial Findings);
12. The term of approval of the CUPs, including any option to extend the approval within the possible period of approval of the CUPs;
13. The Senior Fund (as defined in Condition No. 31 of the Initial Findings);
14. An updated Wildlife Mitigation Plan/Environmental Impact Statement;
15. A power sale agreement between the Applicant and Idaho Power;
16. The Interconnection Application;
17. The annual report requirement;
18. The County's right to terminate the CUPs;
19. Separation of the Board's approvals of the CUPs to allow phasing of the Applicant's project; and
20. Any other matter raised in the Development Agreement to the extent that it amends the Initial Findings, the Approval or the Conditions.