

# **DUCHESNE COUNTY PLANNING COMMISSION MINUTES**

Duchesne County Administration Building, Commission Chambers

May 3, 2023 at 5:00 PM

## **Attending**

Planning Commission: Jenny Giles, chair; Connie Sweat, vice-chair; Annette Miller, member; Ken Richens, member; and Shon McKinnon, member.

Staff: Mike Hyde, Director of Community Development; and Mike Gottfredson, Deputy Director of Community Development.

Public: Jeff & Sheila Williams, Matt Hyita (Plant Manager for Wildcat Sand), Leslie Pearson, Richard Brown, Troy & Sherry Hone, Tracy Killian, John Laursen, Amber Spencer, James Patry, Troy Gardner, Cathy Patry, Leslie Higley, Heather Woodward, Iris Elene.

The meeting began at 5:00 PM. Commission Chair Jenny Giles read the rules of order. She asked if any of the Commission Members had any ex-parte contacts or conflicts of interest associated with any item on the agenda. There were none.

## **Public Hearings**

Ms. Giles opened the public hearing regarding the request by Wildcat Sand LLC for a Conditional Use Permit to allow the surface mining of sand from approximately 70 acres of land owned by Higley Estates LLC, located on the east side of 7000 West, about 1.25 miles north of Highway 87, in the Ioka area. Mr. Hyde presented the following:

## **FINDINGS OF FACT**

### **1. PROPOSAL DESCRIPTION**

Wildcat Sand, LLC is proposing to mine sand from portions of two parcels of land owned by the Higley Estates LLC, located on the east side of 7000 West, about 1.25 miles north of Highway 87. The property is zoned Agricultural (A-5). Surface mining is allowed as a conditional use in the A-5 zone.

## **HISTORY OF EVENTS**

March 23, 2023	The application was submitted.
March 23, 2023	The application was deemed complete.
April 6, 2023	Notice mailed to property owners within 300 feet of the subject property.
April 19 & 26, 2023	Notice of Public Hearing published in the Uintah Basin Standard
May 3, 2023	Planning Commission hearing.

## **2. DUCHESNE COUNTY ZONING CODE**

### **8-13-1: SCOPE AND PURPOSE:**

*A. Issuance: Conditional use permits may be issued as provided by this title for any of the uses for which a conditional use permit is required as identified in the table of uses and the table of site development standards, as set forth in Chapter 6 of this title.*

*B. Purpose: The purpose of the issuance of a conditional use permit is to allow the proper integration into the county of uses which may be suitable only in specific locations in a zoning district, or only if such uses are designed, arranged or conducted on the site in a particular manner.*

*C. Conditions: A conditional use permit shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed land use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use permit may be denied.*

### **8-13-2: APPLICATION FOR PERMIT:**

*All requests for a conditional use permit shall be made on the application form provided by the county, detailing the nature of the conditional use request. The applicant shall also provide the necessary information identifying the purpose of the conditional use request, and all required information shall be provided to the planning office twenty-one (21) days prior to the planning commission meeting. The planning commission is authorized to render a final decision on the issuance of a conditional use permit following the review and receipt of a recommendation from the zoning administrator.*

### **8-13-3: PUBLIC HEARING REQUIRED:**

*All applications for a conditional use permit shall be made in accordance with the provisions of this title, and shall be the subject of a public hearing held before the planning commission for which a minimum of fourteen (14) days' public notice has been provided and the planning staff notifying all property owners by U.S. mail within three hundred feet of the proposed conditional use.*

### **8-13-4: FINDINGS AND CONDITIONS FOR APPROVAL:**

*A. Findings Required: The planning commission may grant a conditional use permit in compliance with this title if, from the application and the facts presented at the public hearing, it finds:*

*1. The proposed use at the proposed location will not be unduly detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety or general welfare.*

**Findings: Surface mining can be detrimental in terms of noise and dust during operations. Surface disturbance results in noise from the operation of equipment, windblown dust and dust from equipment movement.**

**It is especially important that dust not be allowed to interfere with aircraft operations at the Roosevelt Municipal Airport. Approval of the project by the FAA is required due to the proximity to the airport. As stated in a March 29, 2023 letter from Roosevelt City, this will require the applicants to file a Form 7460-1 with the FAA. Also, the City is requesting that sand mining operations not occur within 1000 feet of the runway or in the approach surface at the east end of the runway (see “No Mining Area” exhibit map prepared by Roosevelt City’s airport engineer – J-U-B Engineers, Inc.). The City is also requiring the applicants to file a NOTAM, which is a notice alerting flight operations personnel of the sand mining operation. Finally, because standing water attracts birds and aircraft bird strikes are a concern, the mining must take place in a manner that does not create open pits or allow water to pond or pool.**

**If the applicants and operators comply with dust standards (administered by the TriCounty Health Department) and noise standards in the county nuisance ordinance, the proposal is less likely to be injurious to public health, safety or welfare. The health department issued an approval of the dust control plan by letter dated March 22, 2023.**

**Detrimental impacts can also occur if the mining area is not reclaimed properly. The county has “material pit finishing” standards that; along with the terms of the lease agreement with the property owner, will prevent the applicant/operator from leaving eyesore or hazardous conditions when mining is completed.**

**Detrimental impacts can occur if excavation results in sedimentation of waterways. Such protections are afforded through the DEQ industrial storm water permit process. The applicant will need to check with the DEQ Water Quality Division to determine if a storm water permit is required at this location.**

**If there are wetlands in the project area. These areas will need to be avoided unless permission to disturb wetlands is obtained from the US Army Corps of Engineers or other agencies with jurisdiction. According to maps prepared by the Utah Division of Drinking Water, the property does not lie within any drinking water source protection zones.**

**Surface mining and the associated heavy hauling may be detrimental to public improvements in the vicinity; especially county roads. The proposed access to the mining area is via 7000 West, which is a gravel county road extending north from Highway 87 to the mining site. This county road has been successfully used for access to Highway 87 in the past as sand mining occurred on lands to the south of the Higley property.**

**Trucks would access Highway 40 at the Ioka Lane (Highway 87) junction, with the ultimate destination for the sand being a site in Uintah County, southwest of Fort Duchesne (see sand haul route map). The applicants prefer to make a right turn onto Highway 40 at Ioka Lane for safety reasons. However, doing so has placed a lot of truck traffic on the “Lamb Trucking Route,” which has caused major damage to that road (see photos taken on April 24, 2023).**

**The applicants met with the Duchesne and Uintah County Road Department Staff and others on April 17, 2023. It was determined that the “Lamb Trucking Route” may no longer be used because of the damage done. The Pole Line Road remains closed to heavy truck traffic. To mitigate road damage, the road departments are requiring that trucks use Highway 40, between the Ioka Junction and the Fort Duchesne traffic signal, (with the exception being road construction, accidents or other unforeseen circumstances on Highway 40). If one of the exceptional circumstances exist on the Highway 40 route to Fort Duchesne, the only acceptable alternate route is the Woods Road route (but temporarily and only until the unforeseen circumstances on the Highway 40 to Fort Duchesne route are remedied). No other Duchesne or Uintah County roads are to be used until the counties are able to work with the applicants to obtain funding and make improvements to other routes.**

**If either the Duchesne or Uintah County Road departments need to apply weight restrictions to the haul routes, the applicants will need to adjust accordingly. Since road damage has already occurred, the applicants shall coordinate with the counties to make repairs.**

**UDOT inquired whether a traffic impact study would be needed. In this case, it is estimated that ten trucks would make up to 5 round trips per day from this location. This amount of traffic is below the 100 new peak hour trip threshold (in the County Transportation Master Plan) that would require a Category I Traffic Impact Study. However, the master plan does state that an increase in heavy truck traffic beyond 25% of normal operating volume is deemed “extraordinary use” which triggers measures to improve the pavement structure of county roads prior to their usage by heavy trucks.**

**If either county is not comfortable with the recommended conditions of approval associated with roads, it would be wise for the two counties (Commissioners, Community Development and Road Departments) to meet with the applicants to prepare a truck route plan, a road repair plan and a road upgrade plan before hauling begins from this location.**

**The county Nuisance Ordinance sets forth time limits during which noise is permitted (7:00 AM to 9:30 PM on weekdays, 8:00 AM to 9:30 PM on Saturdays and 9:00 AM to 9:30 PM on Sundays and holidays). Such time limits should be applied in this case to ensure that no noise impacts occur. The**

**nearest homes are located on the applicant’s property (other homes are roughly a mile to the west, east and south). The applicants anticipate that mining will occur up to seven days a week, between 7:00 AM & 9:30 PM on weekdays, 8:00 AM to 9:30 PM on Saturdays, and 9:00 AM to 9:30 PM on Sundays and holidays (complies with the Nuisance Ordinance limitations).**

**The Higley property contains a large amount of junk vehicles and junk farm equipment, which is in violation of the Duchesne County Nuisance and Solid Waste Ordinances. Since the property owners have not removed these materials, the County filed a Notice of Noncompliance against the property on February 8, 2023. If this conditional use permit is approved, the permit will not become effecting until the property owners remove all junk from the property or store it in an enclosed building (upon which the Notice of Noncompliance will be rescinded and mining may commence). Vehicles and equipment are defined to be “junk” if missing parts.**

**B. Conditions:**

1. In approving a conditional use permit, the planning commission may impose such reasonable conditions or restrictions as it deems necessary to secure the purposes of the county general plan and to assure operation of the use in a manner compatible with the aesthetics, mass, bulk and character of existing and potential uses in the general vicinity. Minimum conditions shall be included for produced water disposal facilities, extraction of earth products and residential treatment or secure treatment facilities as indicated in section 8-13-5 of this chapter.
2. When approving a conditional use permit, the planning commission may impose such requirements and conditions as follows: location, construction, maintenance, odor control, operation, site planning, traffic control, dust control, noise, time limits and other items for the conditional use permit as deemed necessary for the protection of adjacent properties and the public interest. The planning commission may require guarantees or other evidence that such conditions will be met and complied with.

**8-13-5-2: SURFACE OR SUBSURFACE MINING AND CRITICAL INFRASTRUCTURE MATERIALS OPERATIONS**

- A. Dust Free Condition:** Must be maintained in a near dust free condition. A dust control plan shall be provided by the applicant to the county, the Tri-County health department and the state DEQ that contains an inventory of dust control equipment and procedures that will be utilized at the site and a documented source of adequate water. Rock crushers shall have a DEQ air quality permit in effect during operation, with a copy of such permit provided to the county, unless the crusher is considered exempt from permit requirements by the Utah DEQ. Watering or applying chemical treatments to active mining areas and driving surfaces during times of operation is considered maintaining a near dust free condition;

**Findings: The applicants must obtain TriCounty Health Department approval of a dust control plan for this location. The applicant or authorized agent must follow this plan to control dust at active mining areas and driving surfaces, including roads between Highway 87 and the mining site. The county nuisance ordinance and state air quality rules require 24/7 dust control by applications of water and/or dust suppressants (such as magnesium chloride). If any dust complaints are received by Duchesne County, Roosevelt City or TriCounty Health, the mining operations shall cease until the dust event can be mitigated.**

- B. Bond Required:** A bond shall be issued in the amount of five thousand dollars (\$5,000.00) for the first acre, and three thousand dollars (\$3,000.00) for each additional acre from which such material is taken as a guarantee of reconditioning. The number of acres must be specified on the conditional use permit and cannot be enlarged or modified until the issue is re-presented to the planning commission for a new conditional use permit and the enlargement or modification is approved. This bonding requirement may be waived in writing by the property owner but such waiver does not waive the reconditioning requirements;

**Findings: The property owners have the option to require bonding as set forth in this section or waive the bonding requirement if they feel protected by the terms of their lease agreement. The county must either receive the bonding or the waiver prior to commencement of mining operations on the property.**

- C. Reconditioning:** Reconditioning, in a manner agreed to by the county, the property owner and the applicant, to assure the surrounding property is protected along with the beauty of the landscape. Guidelines known as the *Material Pit Finishing Standards* on file at the County Planning Department are suggested for use in reclamation planning;

**Findings: The “Material Pit Finishing Standards” attached hereto are used by the County to determine how reconditioning is to be accomplished. The applicant and authorized agents are subject to these standards. During operations, the property shall be maintained in a condition that is not hazardous, with any hazardous areas being signed and fenced. The lease agreement between the applicant and property owner calls for the applicants to leave the site in a clean and sanitary condition and protect existing large trees and spring improvements during the mining operations.**

- D. Distance Requirement for Surface or Subsurface Mining and Critical Infrastructure Materials Operations:** Rock crushing operations must be a minimum of one thousand three hundred twenty feet (1,320') from any city, town or residential use, measured from the center of the crusher location. In addition, the Surface or Subsurface Mining and Critical Infrastructure Materials Operation boundary shall be set back six hundred sixty feet (660') from the edge of the proposed disturbed area to the closest city or town boundary line, the closest point of a residential, educational, public, religious or

commercial structure or the closest point on the boundary of an enclosed area of a concentrated livestock facility. In addition, the proposed disturbed area or Surface or Subsurface Mining and Critical Infrastructure Materials Operation boundary shall be set back at least fifty feet (50') from a property line. The setback requirements may be waived in writing by the owner(s) of land within the setback area if such owner(s) consents to a lesser distance. These setback requirements do not apply to land uses owned and occupied by the owner(s) of the same parcel on which the Surface or Subsurface Mining and Critical Infrastructure Materials Operation would occur.

**Findings: The proposed surface mining excavation must be set back at least 50 feet from the property line to meet the minimum standard of the ordinance and allow for gentle slopes between the finished grade and adjacent property grade. The mining area boundary exceeds the required 660 foot setback from the nearest home. There are no educational, public, religious or commercial structures within the minimum setback area. There is no rock crusher in this case.**

**8-13-6: TERM OF PERMIT:**

Unless there is substantial action under a conditional use permit within a period of eighteen (18) months of its issuance, the permit shall be considered null and void.

**8-13-7: REVOCATION OR MODIFICATION OF PERMIT:**

A. Authority: If there is cause to believe that grounds exist for revocation or modification of an approved conditional use permit, the planning commission shall hold a public hearing on the question of modification or revocation of a conditional use permit granted under the terms and the provisions of this title.

B. Conditions: A conditional use permit may be modified or revoked if the planning commission finds that one or more of the following conditions exist:

1. The conditional use permit was obtained in a fraudulent manner.
2. The use for which the conditional use permit was granted has now ceased for at least six (6) consecutive calendar months.
3. One or more of the conditions of the conditional use permit have not been met.

C. Modification by Planning Commission: Additionally, the conditions under which a conditional use permit was originally approved may be modified by the planning commission without the consent of the property owner or operator, if the planning commission finds that the use or related development constitutes or is creating a demonstrated nuisance. Should reclamation be necessary, complete restoration, to such an extent that the area will not depreciate the surrounding property or impair the beauty of the landscape, shall be accomplished within a twelve (12) month time frame.

### **CONCLUSIONS**

1. The request will comply with the Conditional Use Permit requirements of the Duchesne County Zoning Code, provided that conditions are imposed.
2. If either county is not comfortable with the recommended conditions of approval associated with roads, it would be wise for the two counties (Commissioners, Community Development and Road Departments) to meet with the applicants to prepare a truck route plan, a road repair plan and a road upgrade plan before hauling begins from this location. This would require a recess of the public hearing to a date certain, but not sooner than July 5, 2023).
3. The request is valid.

### **RECOMMENDATION**

- A. If either county is not comfortable with the recommended conditions of approval associated with roads, the public hearing should be recessed until July 5, 2023 to allow the two counties (Commissioners, Community Development and Road Departments) to meet with the applicants to prepare a truck route plan, a road repair plan and a road upgrade plan before hauling begins from this location.
- B. If no request to recess the public hearing is received, staff recommends approval of the Conditional Use Permit requested by Wildcat Sand LLC, for the surface mining of sand from approximately 70 acres of the Higley property, subject to the following conditions:
  1. The applicant shall control dust and noise so neither becomes a nuisance.
    - a. The applicant shall conform to the dust control plan approved by the TriCounty Health Department. The applicant shall provide dust control at all times by application of water and/or dust suppressants such as magnesium chloride. If there are any dust complaints received by Duchesne County, Roosevelt City or the TriCounty Health Department, the mining operations shall cease until the dust event can be mitigated.
    - b. The applicant shall comply with the following hours of mining operations: (7:00 AM to 9:30 PM on weekdays, 8:00 AM to 9:30 PM on Saturdays and 9:00 AM to 9:30 PM on Sundays and holidays).
  2. The applicant shall reclaim the property in accordance with the county's "Material Pit Finishing Standards" and protect the public from any hazardous conditions on the site by signage, berming and/or fencing.



3. Before starting excavation at the site, the applicant shall obtain an industrial stormwater permit, if required, from the Utah Department of Environmental Quality, Water Quality Division, and provide a copy to the County.
4. Before starting excavation at the site, the applicant shall obtain authorization from the Federal Aviation Administration (FAA) using Form 7460-1 and provide a copy to the County and Roosevelt City. The applicants shall file a NOTAM with Roosevelt City, which is a notice alerting flight operations personnel of the sand mining operation.
5. No wetland areas shall be disturbed unless permitted by the US Army Corps of Engineers or other authorities with jurisdiction.
6. The applicant agrees to maintain a 50-foot wide buffer between the excavation areas and the property lines. If the applicants are unsure of property line locations, they shall be determined by a surveyor.
7. Applicants shall ensure that haul trucks utilize the Highway 40 route between the Ioka Junction and the traffic light at Fort Duchesne. Exceptions to using this route may be granted due to accidents, construction projects or unforeseen circumstances on Highway 40. If one of the unforeseen circumstances exist on the Highway 40 route to Fort Duchesne, the only acceptable alternate route is the Woods Road route (but only until the unforeseen circumstances on the approved route are remedied). No other Duchesne or Uintah County roads are to be used until the counties are able to work with the applicants to obtain funding and make improvements to other routes. The Pole Line Road and the Lamb Trucking route shown on the Sand Haul Routes map are not to be used for sand hauling until further notice. These requirements may be amended after additional discussions between the applicant and the counties occur.
8. If either the Duchesne or Uintah County Road Departments need to apply weight restrictions to the haul routes, the applicants will need to adjust accordingly. Since road damage has already occurred due to trucks hauling sand, the applicants shall coordinate with the counties to fund and make repairs.
9. No mining shall occur on the Higley site until the Duchesne County Code Enforcement Officer rescinds the Notice of Noncompliance; filed due to the junk vehicles, junk farm equipment and other solid waste on the Higley property.

**Mr. Hyde asked for any questions from the Planning Commission.**

Ken Richens: So how serious are we getting together about this Lamb Road? You're sending them quite a bit further. I'm sure they'd rather have a shorter route.

- a. Mr. Hyde: We have Commissioner Killian here from Duchesne County and Commissioner Laursen here from Uintah County and they've been out on those roads and they've been talking to the applicants and they've also been talking to the governor's office about the state needing to step up here since the state is getting a lot of revenue from the industry. They might want to elaborate on that during the process. It seems to be heading in a good direction to where the counties will be attempting to make some improvements in working with the applicants to address the road issues.
- b. Ken Richens: It needs to happen.

Jenny Giles: Are there any other questions from the Planning Commission? There were none so she asked for any comments from the Proponents.

- a. Matt Hyita: I am here to give you the best information and address any of your concerns. We aim to be safe and do minimal impact for the land use. We are targeting loose blow sand and using basic heavy equipment that you would see in any construction site. We are leveling off the areas and using that sand to fulfill our company needs for oil and gas purposes. At that same time as we're mining we are reclaiming as we go and we're reclaiming the land better than it was before we started. We always welcome input in any form. Me and my partner Leslie Pearson, who is here tonight, are the direct line of contact for you at any time.

Mike Hyde: Commissioners do you have any questions for Mr. Hyita? There were none.

Mike Hyde: Our office has not received any dust complaints on current operations on the Patry property, but I have heard that at the airport they have had sand blowing in and around their fueling station that has been problematic. I don't know if it is coming from your operation or the natural blow sand in the area. Can you describe for the commission what you have in terms of access to water and equipment to keep the dust down on a 24/7 basis?

- a. Matt Hyita: We have a few different sources of water. Some of those sources reside on site that we are currently operating on. Plus we have access to the city water taps too. We have water trucks constantly going up and down the roads. Blow sand constantly travels. Part of our reclamation process is we are capping it with a high clay content material so we're actually making it better for a dust control climate until vegetation takes hold.

Mike Hyde: The follow-up question to that would be, "Is there enough of that clay material on the Higley property or left over on the Patry property next door to do a good job of establishing that crust over the top when you're going along?"

- a. Matt Hyita: There is. We transport that back from our sand plant.

Connie Sweat: When we have spoke before and you have said you will have five trucks round tripping sand. How many water trucks will you have so we understand what the truck traffic is?

- a. Matt Hyita: We have one water truck that is constantly going.
- b. Annette Miller: That water truck doesn't leave the site?
- c. Matt Hyita: Not currently where we're working. We will use the city tap there in Roosevelt.
- d. Mr. Hyde: Where is that tap located?
- e. Matt Hyita: It is located right by the airport.
- f. Annette Miller: That won't affect truck traffic on the main haul?
- g. Matt Hyita: No

Ken Richens: What do you think will be your biggest challenge?

- a. Matt Hyita: Listening to the comments now I would say it's not a challenge, but we are going to have our standards which are regulated by the county, state and federal agencies. Our standards are going to be over and above those especially with dust conditions.
- b. Ken Richins: The road thing seems to be the biggest challenge. Am I wrong?
- c. Matt Hyita: No. We are always willing to come to the table to see what the county wants.
- d. Ken Richins: Which route would you prefer?
- e. Matt Hyita: As long as it is safe and compliant, we will use that route, but not if it isn't. Pole Line is the direct route, but I've never been able to run on that route.
- f. Tracy Killian: Pole Line will never be an allowed route because it couldn't hold the traffic. If we could get some funding the Lamb Road we will bring up to standards. It is up to Uintah County too. We've let them know that we're willing to meet with them. We are not opposed to this at all. Our road department has went out and assessed the Lamb Road and they are going to start in the next couple of weeks to repair the Lamb Road. They will put cement down on the bad spots and then asphalt on top of the cement to make it stronger. We talked to the governor's people after we sent them the pictures that you all got tonight. They about died at how bad the impacts on the roads are. They are willing to work with us and Uintah County. That's why Commissioner Laursen and I are here tonight.

Jenny Giles: Are there any other questions or comments in favor of the proponents?

- a. John Laursen: We provided a letter to this commission dated April 27<sup>th</sup>. We would like to rescind this letter based on conversations that we've had with the company and the assurances we've had that they've changed their truck route going over to the Uintah County road that goes through Fort Duchesne (known as AR88) going up to the stop light and staying on Highway 40. We are working together as a team and we have no objections to approving this matter.

Mike Hyde: County commissioners, right now our recommendation on #7 asks the company to stay off of the Woods Road route until such time as we can make improvements to it and only use Highway 40 out to Fort Duchesne and then head south. Are the commissioners ok with allowing them to use Woods Route?

- a. John Laursen: It was my understanding that it was built as a truck route road which means it should have been built to specifications for the heavy traffic. Our only concern would be if they don't have scales and they don't know what their trucks are weighing might be a problem.
- b. Matt Hyita: I can answer that question. We do have scales on our loaders.
- c. John Laursen: Great! We have no objections.

Tracy Killian: Highway 40 is the truck route. If an emergency comes up, in order to not stop the job, they can use the Woods Road, but only if it is an emergency. Give us time to get a plan in place for our roads and they'll hold to the two routes we have talked about and put in writing.

- a. John Laursen: We as Uintah County will agree to that condition.

James Patry: Wildcat Sand is currently operating on my property. I wanted my property to be reclaimed back in to pasture. Wildcat Sand has worked very well with me so far. To me this is a win/win situation for my property.

Jenny Giles: Are there any more proponents? There were none.

Jenny Giles: We would now ask if there are any opponents to come up one at a time.

Troy Hone: I have a couple questions. I don't know what the requirement is in the reclamation for revegetation. I would also like to ask about how the structure of this meeting goes as I have never done this before.

- a. Mike Hyde: As the chair announced at the start of the meeting, the hearings are structured. First involves the proponents and following is the opponents.

Troy Hone: Surface Mining gives me question. To what depth are we allowing them to take sand? What will that do to us as property owners that this will affect. I am concerned about water and everyone downstream.

- a. Matt Hyita: We are only extracting from the rolling dunes sand. The depths vary, but we are only talking about the sub surface which is not very far down. As far as storm water, we will have in place a storm water prevention plan that identifies the outfall areas which way the water goes and what we have to do to make sure we don't have any storm run-off from the sites.

Connie Sweat: I have a question. It appears that this all is contingent on the clean-up of the Higley property? Is there a plan for that?

- a. Mike Hyde: Yes, there is a plan.
- b. Leslie Higley: We have a lot of vehicles that people like to restore and we are trying to find who would like them. We have four different companies we are going to reach out to. Because of the snow, I would estimate that it will all be complete within two months, at least the vehicles that are on the property to be mined.

Jenny Giles: Now does that all still need to be cleaned up even if they don't mine that area?

- a. Mike Hyde: Yes, it does. The Notice of Non-Compliance that was issued applies to the entire Higley property. Any vehicle that is missing parts is considered a “junk vehicle” and must be removed in order to take the non-compliance off the property.
- b. Leslie Higley: Is there something I can do to keep a couple of the vehicles that I want to use with my photography?
- c. Mike Hyde: You could store them inside of a building or you could apply for a conditional use permit to store those vehicles within a fence or a berm which keeps them out of sight to the public.

Jenny Giles: Are there any comments in rebuttal? There were none. The public hearing was closed.

Ken Richens: I make a motion that we approve this CUP, subject to the following conditions:

1. The applicant shall control dust and noise so neither becomes a nuisance.
  - a. The applicant shall conform to the dust control plan approved by the TriCounty Health Department. The applicant shall provide dust control at all times by application of water and/or dust suppressants such as magnesium chloride. If there are any dust complaints received by Duchesne County, Roosevelt City or the TriCounty Health Department, the mining operations shall cease until the dust event can be mitigated.
  - b. The applicant shall comply with the following hours of mining operations: (7:00 AM to 9:30 PM on weekdays, 8:00 AM to 9:30 PM on Saturdays and 9:00 AM to 9:30 PM on Sundays and holidays).
2. The applicant shall reclaim the property in accordance with the county’s “Material Pit Finishing Standards” and protect the public from any hazardous conditions on the site by signage, berming and/or fencing.
3. Before starting excavation at the site, the applicant shall obtain an industrial stormwater permit, if required, from the Utah Department of Environmental Quality, Water Quality Division, and provide a copy to the County.
4. Before starting excavation at the site, the applicant shall obtain authorization from the Federal Aviation Administration (FAA) using Form 7460-1 and provide a copy to the County and Roosevelt City. The applicants shall file a NOTAM with Roosevelt City, which is a notice alerting flight operations personnel of the sand mining operation.
5. No wetland areas shall be disturbed unless permitted by the US Army Corps of Engineers or other authorities with jurisdiction.
6. The applicant agrees to maintain a 50-foot wide buffer between the excavation areas and the property lines. If the applicants are unsure of property line locations, they shall be determined by a surveyor.

7. Applicants shall ensure that haul trucks utilize the Highway 40 route between the Ioka Junction and the traffic light at Fort Duchesne. Exceptions to using this route may be granted due to accidents, construction projects or unforeseen circumstances on Highway 40. If one of the unforeseen circumstances exist on the Highway 40 route to Fort Duchesne, the only acceptable alternate route is the Woods Road route (but only until the unforeseen circumstances on the approved route are remedied). No other Duchesne or Uintah County roads are to be used until the counties are able to work with the applicants to obtain funding and make improvements to other routes. The Pole Line Road and the Lamb Trucking route shown on the Sand Haul Routes map are not to be used for sand hauling until further notice. These requirements may be amended after additional discussions between the applicant and the counties occur.
8. If either the Duchesne or Uintah County Road Departments need to apply weight restrictions to the haul routes, the applicants will need to adjust accordingly. Since road damage has already occurred due to trucks hauling sand, the applicants shall coordinate with the counties to fund and make repairs.
9. No mining shall occur on the Higley site until the Duchesne County Code Enforcement Officer rescinds the Notice of Noncompliance; filed due to the junk vehicles, junk farm equipment and other solid waste on the Higley property.

Connie Sweat: I second it.  
The motion was passed unanimously.

Jenny Giles opened the public hearing regarding the request by Wildcat Sand LLC, for a Conditional Use Permit to allow the surface mining of sand from approximately 500.29 acres of land owned by the applicant, located generally between the South Cove Road and 2000 South, west of 5000 West to the border of Ute tribal land, in the area west of Roosevelt. Mr. Hyde presented the following:

### **FINDINGS OF FACT**

#### **1. PROPOSAL DESCRIPTION**

Wildcat Sand, LLC is proposing to mine sand from portions of 500.29 acres of land that they own, located in Sections 22 and 27, Township 2 South, Range 2 West. The parcels are located generally between the South Cove Road and Dry Gulch Creek, between 5000 West and Ute tribal lands, west of Roosevelt.

#### **2. History of Events**

April 5, 2023	The application was submitted.
April 6, 2023	The application was deemed complete.
April 6, 2023	Notice mailed to property owners within 300 feet of the subject property.

April 19 & 26, 2023	Notice of Public Hearing published in the Uintah Basin Standard.
May 3, 2023	Planning Commission hearing (recessed)
June 7, 2023	Continuation of Public hearing.

## **2. DUCHESNE COUNTY ZONING CODE**

### **8-13-1: SCOPE AND PURPOSE:**

- A. Issuance: Conditional use permits may be issued as provided by this title for any of the uses for which a conditional use permit is required as identified in the table of uses and the table of site development standards, as set forth in Chapter 6 of this title.
- B. Purpose: The purpose of the issuance of a conditional use permit is to allow the proper integration into the county of uses which may be suitable only in specific locations in a zoning district, or only if such uses are designed, arranged or conducted on the site in a particular manner.
- C. Conditions: A conditional use permit shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed land use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use permit may be denied.

### **8-13-2: APPLICATION FOR PERMIT:**

All requests for a conditional use permit shall be made on the application form provided by the county, detailing the nature of the conditional use request. The applicant shall also provide the necessary information identifying the purpose of the conditional use request, and all required information shall be provided to the planning office twenty-one (21) days prior to the planning commission meeting. The planning commission is authorized to render a final decision on the issuance of a conditional use permit following the review and receipt of a recommendation from the zoning administrator.

### **8-13-3: PUBLIC HEARING REQUIRED:**

All applications for a conditional use permit shall be made in accordance with the provisions of this title, and shall be the subject of a public hearing held before the planning commission for which a minimum of fourteen (14) days' public notice has been provided and the planning staff notifying all property owners by U.S. mail within three hundred feet of the proposed conditional use.

### **8-13-4: FINDINGS AND CONDITIONS FOR APPROVAL:**

A. Findings Required: The planning commission may grant a conditional use permit in compliance with this title if, from the application and the facts presented at the public hearing, it finds:

1. The proposed use at the proposed location will not be unduly detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety or general welfare.

**Findings: Surface mining can be detrimental in terms of noise and dust during operations. Surface disturbance results in noise from the operation of equipment, windblown dust and dust from equipment movement.**

**It is especially important that dust not be allowed to interfere with aircraft operations at the Roosevelt Municipal Airport (which is located downwind and less than two miles from the proposed mining site). Approval of the project by the FAA is required due to the proximity to the airport. As stated in an April 24, 2023 letter from Roosevelt City's Aviation Project Manager [JUB Engineering], this will require the applicants to file a Form 7460-1 with the FAA. The City is also requiring the applicants to file a NOTAM, which is a notice alerting flight operations personnel of the sand mining operation. Finally, the southeastern portion of the 500-acre site lies within the approach surface to the runway (see map prepared by JUB). The City requests that no mining occur in that approach surface to mitigate dust impacts on the airport.**

**If the applicants and operators comply with dust standards (administered by the TriCounty Health Department) and noise standards in the county nuisance ordinance, the proposal is less likely to be injurious to public health, safety or welfare.**

**Detrimental impacts can also occur if the mining area is not reclaimed properly. The county has "material pit finishing" standards that, along with the terms of the lease agreement with the property owner, will prevent the applicant/operator from leaving eyesore or hazardous conditions when mining is completed.**

**Detrimental impacts can occur if excavation results in sedimentation of waterways. Such protections are afforded through the DEQ industrial storm water permit process. The applicant will need to check with the DEQ Water Quality Division to determine if a storm water permit is required at this location. If there are wetlands in the project area, these areas will need to be avoided unless permission to disturb wetlands is obtained from the US Army Corps of Engineers or other agencies with jurisdiction.**

**According to maps prepared by the Utah Division of Drinking Water, the property does not lie within any drinking water source protection zones.**



**Surface mining and the associated heavy hauling may be detrimental to public improvements in the vicinity; especially county roads. The proposed access to the mining area is as shown on the “Wildcat Zubiata Route” map.**

**Under the applicant’s proposal, trucks would use the Crooked Sky Road [County Road #264], the South Cove Road [County Road #155] and 3000 West [County Road #152] to access Highway 40 at the traffic signal at 2000 West. The ultimate destination for the sand is a site in Uintah County, southwest of Fort Duchesne (see sand haul route map).**

**Oil wells are currently being drilled in the vicinity, which is already placing heavy truck traffic on the above roads. The Crooked Sky Road and the South Cove Road have not been constructed to support heavy truck traffic. 3000 West was built to truck route standards; however, the amount of heavy truck traffic on this road is lessening the useful life of that road. Adding sand haul trucks to these roads will exacerbate the problem. For this reason, the Duchesne County Road Department has asked the applicants to investigate the feasibility of constructing a haul road from this site to the mining areas to the southwest. This would allow trucks to continue using the 7000 West route to Highway 87 then to Highway 40 and remove truck traffic associated with sand hauling from Crooked Sky Road, the South Cove Road and 3000 West.**

**Trucks would access Highway 40 at the Ioka Lane [Highway 87] junction. The applicants prefer to make a right turn onto Highway 40 at Ioka Lane for safety reasons. However, doing so has placed a lot of truck traffic on the “Lamb Trucking Route,” which has caused major damage to that road (see photos taken on April 24, 2023). This safety concern will be alleviated soon as UDOT plans to install a traffic signal at the Highway 40-Highway 87 intersection in late Spring or Summer of 2023.**

**The applicants met with the Duchesne and Uintah County Road Department staff and others on April 17, 2023. It was determined that the “Lamb Trucking Route” may no longer be used because of the damage done. The Pole Line Road remains closed to heavy truck traffic. To mitigate road damage, the road departments are requiring that trucks the Highway 40 route, between the Ioka Junction and the Fort Duchesne traffic signal, (with the exception being road construction, accidents or other unforeseen circumstances on Highway 40). If one of the unforeseen circumstances exist on the Highway 40 route to Fort Duchesne, the only acceptable alternate route is the Woods Road route (but temporarily and only until the unforeseen circumstances on the Highway 40 to Fort Duchesne route are remedied). No other Duchesne or Uintah County roads are to be used until the counties are able to work with the applicants to obtain funding and make improvements to other routes.**

**If either the Duchesne or Uintah County Road Departments need to apply weight restrictions to the haul routes, the applicants will need to adjust accordingly. Since**

road damage has already occurred, the applicants shall coordinate with the counties to make repairs.

UDOT inquired whether a traffic impact study would be needed. In this case, it is estimated that ten trucks would make up to 5 round trips per day from this location. This amount of traffic is below the 100 new peak hour trip threshold (in the County Transportation Master Plan) that would require a Category I Traffic Impact Study. However, the master plan does state that an increase in heavy truck traffic beyond 25% of normal operating volume is deemed “extraordinary use” which triggers measures to improve the pavement structure of county roads prior to their usage by heavy trucks.

If either county is not comfortable with the recommended conditions of approval associated with roads, it would be wise for the two counties (Commissioners, Community Development and Road Departments) to meet with the applicants to prepare a truck route plan, a road repair plan and a road upgrade plan before hauling begins from this location.

The applicants anticipate that mining will occur up to seven days a week, between 7:00 AM & 9:30 PM on weekdays, 8:00 AM to 9:30 PM on Saturdays, and 9:00 AM to 9:30 PM on Sundays and holidays (which complies with the Nuisance Ordinance limitations). Such time limits should be applied in this case to ensure that no noise impacts occur.

The nearest homes are located 900 feet to the north [Cory Sweat], 75 feet to the east [Cathy Patry rentals], 260 feet to the east [Troy Hone], 408 feet to the east [Steven Loftis], 535 feet to the east [Iris Elene], 695 feet to the east [Starr Spencer], 390 feet to the south [Michael Hullinger], 360 feet to the south [Hollie Pedockie], 476 feet to the east [Awilda Torres], 1,630 feet to the east [Brad Jenkins], 1,150 feet to the south [Ben Crowley] and 1,135 feet to the northwest [Mitchell Johnson]. The applicants won't be able to mine on the site within 660 feet of any of those residences, to help mitigate noise and dust impacts (unless a residential property owner agrees in writing to a lesser distance).

2. The proposed use will be located and conducted in compliance with the goals and policies of the county general plan and the purposes of this title.

**Findings:** The Duchesne County General Plan contains the following statements with respect to mining activities: *“Today, extractive-use industries: livestock, timber, mining, and oil; remain the backbone of the region's economy. The County continues to encourage and support these industries, acknowledging that industry patterns, fluctuating markets, and changing political winds predict periodic good times followed by lean.”*

In this case, the applicants intend to use the sand to support the energy and construction industries. Such projects are beneficial to the economy of the county and in compliance with the general plan.

**The purposes of the Zoning Ordinance are set forth below:**

**8-1-2: PURPOSE:**

- A. The purpose of this title is to implement the goals and policies of the county general plan. This title contains standards, provisions and requirements intended to protect the health, safety and welfare of the citizens of the county by ensuring that neighbors, adjacent and neighboring properties are protected from potential negative impacts in the development and use of land and resources. It is the intent of this title to provide a means of ensuring predictability and consistency in the use of land and individual properties, and to guide and direct the development of land.
- B. These purposes are met by:
1. Providing the means of implementing the various policies and other provisions of the county general plan;
  2. Generally directing and guiding land development so more intense development is located in areas of the county having the necessary services and facilities sufficient to meet the demands of the proposed development;
  3. Promoting the public health, safety and general welfare by regulating the location and use of buildings, structures and land for residential, commercial and other specified uses;
  4. Protecting landowners from potential adverse impacts from adjoining uses; and
  5. Directing and managing, through the establishment of use districts, the type, distribution and intensity of activity.

**Findings: If the applicant meets the Conditional Use permit criteria and complies with the conditions of approval, the purposes of the Zoning Ordinance will be met.**

1. That the property on which the use, building or other structure is proposed is of adequate size and dimensions to permit the conduct of the use in such a manner that will not be materially detrimental to adjoining and surrounding properties.

**Findings: The proposed mining would take place on the majority of the 500 acre site, which is certainly large enough to accommodate the proposed use. The applicants are required to set the mining areas back at least 50 feet from the property lines to provide adequate space for a transitional slope between natural grade and the**

**finished grade. The applicants are also required to set the mining area back 660 feet from existing city limit lines and residential, educational, public, religious or commercial structures unless the property owner(s) grants a waiver. Aerial photos indicate that there are no city limit lines, educational, public, religious or commercial structures located within 660 feet of the mining area. However, there are several residential structures located within 660 feet of the Wildcat Sand property as set forth above. The applicants will need to ensure that no mining occurs within 660 feet of these homes [unless the owner(s) agree in writing to a lesser distance]. Pursuant to the JUB Engineering letter to Roosevelt City, the applicants will also be required not to mine in areas under the airport runway approach surface.**

**The anticipated conditions of approval, if adhered to, will enable the use to be conducted in a manner that will not be materially detrimental to adjoining and surrounding properties.**

B. Conditions:

1. In approving a conditional use permit, the planning commission may impose such reasonable conditions or restrictions as it deems necessary to secure the purposes of the county general plan and to assure operation of the use in a manner compatible with the aesthetics, mass, bulk and character of existing and potential uses in the general vicinity. Minimum conditions shall be included for produced water disposal facilities, extraction of earth products and residential treatment or secure treatment facilities as indicated in section 8-13-5 of this chapter.
2. When approving a conditional use permit, the planning commission may impose such requirements and conditions as follows: location, construction, maintenance, odor control, operation, site planning, traffic control, dust control, noise, time limits and other items for the conditional use permit as deemed necessary for the protection of adjacent properties and the public interest. The planning commission may require guarantees or other evidence that such conditions will be met and complied with.

**8-13-5-2: SURFACE OR SUBSURFACE MINING AND CRITICAL INFRASTRUCTURE MATERIALS OPERATIONS**

A. Dust Free Condition: Must be maintained in a near dust free condition. A dust control plan shall be provided by the applicant to the county, the Tri-County health department and the state DEQ that contains an inventory of dust control equipment and procedures that will be utilized at the site and a documented source of adequate water. Rock crushers shall have a DEQ air quality permit in effect during operation, with a copy of such permit provided to the county, unless the crusher is considered exempt from permit requirements by the Utah DEQ. Watering or applying chemical treatments to active mining areas and driving surfaces during times of operation is considered maintaining a near dust free condition;

**Findings: The applicants must obtain TriCounty Health Department approval of a dust control plan for this location. The applicant or authorized agent must follow**

**this plan to control dust at active mining areas and driving surfaces, including haul roads. The county nuisance ordinance and state air quality rules require 24/7 dust control by applications of water and/or dust suppressants (such as magnesium chloride). If dust complaints received by Duchesne County, Roosevelt City or TriCounty Health, the mining operations shall cease until the event can be mitigated.**

**B. Bond Required:** A bond shall be issued in the amount of five thousand dollars (\$5,000.00) for the first acre, and three thousand dollars (\$3,000.00) for each additional acre from which such material is taken as a guarantee of reconditioning. The number of acres must be specified on the conditional use permit and cannot be enlarged or modified until the issue is re-presented to the planning commission for a new conditional use permit and the enlargement or modification is approved. This bonding requirement may be waived in writing by the property owner but such waiver does not waive the reconditioning requirements;

**Findings: The property owners are the applicants in this case, so they don't need to post a bond to protect their interests.**

**C. Reconditioning:** Reconditioning, in a manner agreed to by the county, the property owner and the applicant, to assure the surrounding property is protected along with the beauty of the landscape. Guidelines known as the *Material Pit Finishing Standards* on file at the County Planning Department are suggested for use in reclamation planning;

**Findings: The "Material Pit Finishing Standards" attached hereto are used by the County to determine how reconditioning is to be accomplished. The applicant/property owner is subject to these standards. During operations, the property shall be maintained in a condition that is not hazardous, with any hazardous areas being signed and fenced.**

**D. Distance Requirement for Surface or Subsurface Mining and Critical Infrastructure Materials Operations:** Rock crushing operations must be a minimum of one thousand three hundred twenty feet (1,320') from any city, town or residential use, measured from the center of the crusher location. In addition, the Surface or Subsurface Mining and Critical Infrastructure Materials Operation boundary shall be set back six hundred sixty feet (660') from the edge of the proposed disturbed area to the closest city or town boundary line, the closest point of a residential, educational, public, religious or commercial structure or the closest point on the boundary of an enclosed area of a concentrated livestock facility. In addition, the proposed disturbed area or Surface or Subsurface Mining and Critical Infrastructure Materials Operation boundary shall be set back at least fifty feet (50') from a property line. The setback requirements may be waived in writing by the owner(s) of land within the setback area if such owner(s) consents to a lesser distance. These setback requirements do not apply to land uses owned

and occupied by the owner(s) of the same parcel on which the Surface or Subsurface Mining and Critical Infrastructure Materials Operation would occur.

**Findings: The proposed surface mining excavation must be set back at least 50 feet from the property line to meet the minimum standard of the ordinance and allow for gentle slopes between the finished grade and adjacent property grade. The mining area boundary exceeds the required 660 foot setback from the nearest educational, public, religious or commercial structures. However, there are residential structures located within 660 feet of the Wildcat Sand property as set forth above. The applicants will need to ensure that no mining occurs within 660 feet of these homes. The applicants will also need to ensure that no mining occurs within the Roosevelt Airport runway approach surface, which affects the southeastern portion of the site.**

**8-13-6: TERM OF PERMIT:**

Unless there is substantial action under a conditional use permit within a period of eighteen (18) months of its issuance, the permit shall be considered null and void.

**8-13-7: REVOCATION OR MODIFICATION OF PERMIT:**

A. Authority: If there is cause to believe that grounds exist for revocation or modification of an approved conditional use permit, the planning commission shall hold a public hearing on the question of modification or revocation of a conditional use permit granted under the terms and the provisions of this title.

B. Conditions: A conditional use permit may be modified or revoked if the planning commission finds that one or more of the following conditions exist:

1. The conditional use permit was obtained in a fraudulent manner.
2. The use for which the conditional use permit was granted has now ceased for at least six (6) consecutive calendar months.
3. One or more of the conditions of the conditional use permit have not been met.

C. Modification by Planning Commission: Additionally, the conditions under which a conditional use permit was originally approved may be modified by the planning commission without the consent of the property owner or operator, if the planning commission finds that the use or related development constitutes or is creating a demonstrated nuisance. Should reclamation be necessary, complete restoration, to such an extent that the area will not depreciate the surrounding property or impair the beauty of the landscape, shall be accomplished within a twelve (12) month time frame.

### **CONCLUSIONS**

1. The request will comply with the Conditional Use Permit requirements of the Duchesne County Zoning Code, provided that conditions are imposed.
2. If either county is not comfortable with the recommended conditions of approval associated with roads, it would be wise for the two counties (Commissioners, Community Development and Road Departments) to meet with the applicants to prepare a truck route plan, a road repair plan and a road upgrade plan before hauling begins from this location. This would require a recess of the public hearing to a date certain, such as July 5, 2023).
3. The request is valid.

### **RECOMMENDATION**

- A. If either county is not comfortable with the recommended conditions of approval associated with roads, the public hearing should be recessed until July 5, 2023 to allow the two counties (Commissioners, Community Development and Road Departments) to meet with the applicants to prepare a truck route plan, a road repair plan and a road upgrade plan before hauling begins from this location.
- B. If no request to recess the public hearing is received, staff recommends approval of the Conditional Use Permit requested by Wildcat Sand LLC, for the surface mining of sand from the applicant's property located generally between the South Cove Road and 2000 South, between 5000 West and the Ute Tribe lands, subject to the following conditions:
  1. The applicant shall control dust and noise so neither becomes a nuisance.
    - a. The applicant shall conform to the dust control plan approved by the TriCounty Health Department. The applicant shall provide dust control at all times by application of water and/or dust suppressants such as magnesium chloride. If there are any dust complaints received by Duchesne County, Roosevelt City or TriCounty Health, the mining operations shall cease until the event can be mitigated.
    - b. The applicant shall comply with the following hours of mining operations: (7:00 AM to 9:30 PM on weekdays, 8:00 AM to 9:30 PM on Saturdays and 9:00 AM to 9:30 PM on Sundays and holidays).
  - 2.. The applicant shall reclaim the property in accordance with the county's "Material Pit Finishing Standards" and protect the public from any hazardous conditions on the site by signage, berming and/or fencing.
  3. Before starting excavation at the site, the applicant shall obtain an industrial stormwater permit, if required, from the Utah Department of Environmental Quality, Water Quality Division, and provide a copy to the County.

4. Before starting excavation at the site, the applicant shall obtain authorization from the Federal Aviation Administration (FAA) using Form 7460-1 and provide a copy to the County and Roosevelt City. The applicants shall file a NOTAM with Roosevelt City, which is a notice alerting flight operations personnel of the sand mining operation.
5. No mining shall occur within the Roosevelt Municipal Airport runway approach surface as mapped by JUB Engineering unless Roosevelt City issues written approval to mine in that area.
6. No wetland areas shall be disturbed unless permitted by the US Army Corps of Engineers or other authorities with jurisdiction.
7. The applicant agrees to maintain a 50-foot wide buffer between the excavation areas and the property lines and a 660 foot buffer between the excavation areas and existing residences [unless the residential property owner(s) agree in writing to a lesser distance]. If the applicants are unsure of property line locations, they shall be determined by a surveyor.
8. Applicants shall not use the Crooked Sky Road, the South Cove Road or 3000 West to access Highway 40 from this mining site. Instead, the applicants shall construct a haul road between the site and 7000 West and use it to access Highway 87 eastbound to Highway 40. Applicants shall ensure that haul trucks use the Highway 40 route between the Ioka Junction and the traffic light at Fort Duchesne. Exceptions to using this route may be granted due to accidents, construction projects or unforeseen circumstances. If one of the unforeseen circumstances exist on the Highway 40 route to Fort Duchesne, the only acceptable alternate route is the Woods Road route (temporarily and only until the unforeseen circumstances on the approved Highway 40 route are remedied). No other Duchesne or Uintah County roads are to be used until the counties are able to work with the applicants to obtain funding and make improvements to other routes. The Pole Line Road and the Lamb Trucking route shown on the Sand Haul Routes map are not to be used for sand hauling until further notice. These requirements may be amended after additional discussions between the applicant and the counties occur.
9. If either the Duchesne or Uintah County Road Departments need to apply weight restrictions to the haul routes, the applicants will need to adjust accordingly. Since road damage has already occurred due to trucks hauling sand, the applicants shall coordinate with the counties to fund and make repairs.

**Mr. Hyde asked for any questions from the Planning Commission. There were none.**

Jenny Giles asked if there were any proponents that would like to speak.

Matt Hyita: Being close to residents we want to make sure that we take the proper procedures before we even do anything. Noise, we use heavy equipment, we have back-up alarms. We install squawkers so it is not a loud beeping noise. It will help mitigate any noise concerns the



residents may have for us. In reference to the FAA requirement, we are ok with what's been provided at this time, but we would like to have a further discussion because we are in the early exploration of this property. We are investing in our sites to develop our own roads and are waiting to get bids back so we are compliant.

Mike Gottfredson: I had a conversation with Drew Eschler from Roosevelt City today and he wasn't able to be here today. They want to work with Wildcat and FAA. They are aware that you are looking at the possibility of finding a way forward. They are waiting on the FAA and are not able to have that answer tonight.

Jenny Giles: Are there any other proponents? There were none.

Jenny Giles: Are there any opponents?

Troy Hone: The setback has been a point of confusion for me. I thought it was 660 feet from my property line and not the home. Am I wrong?

- a. Mike Hyde: It says on page 8 item D of the staff report 660 feet from the edge of the disturbed area to the closest city or town boundary line or the closest point of a residential structure.
- b. Troy Hone: So that is just over two football fields. There is going to be dust. I have animals, a garden, trees and I breathe and I am not sure how you are going to effectively maintain the fine dust that we breathe. How are you going to mitigate this situation? I have a neighbor who works in the night and sleeps in the day. Regarding the time they are mining I was told 6-10 years. I need a little tighter window. What if you hit my well and contaminate it? How do I get compensated for devaluation of my property?

Jeff Williams: My concerns are the water table and how deep are you going down when you mine the sand? My property has 3 wells on it. What if they bust down the aquifer? The eco system of the area around our property is very fragile. I would really like to see assurances on these concerns.

Iris Elene: My question is about the waiver we are being asked to sign.

- a. Mike Hyde: If the residents up there don't want Wildcat mining sand closer to their home than 660 feet then don't sign the waiver.

Troy Gardner: I have a couple of concerns. We have a couple of rental properties by this project. It is going to be harder for me to rent my properties. Was this zoned for mining and when?

- a. Mike Hyde: The A5 Zone allows mining as a conditional use. That's why we are having a public hearing tonight.

Richard Brown: I'm concerned about the value of my 5-acres of property. I would like a guarantee that this won't affect me any way financially.

Cathy Patry: I want to say I agree with all these people.

Troy Hone: Is there any way we can get a sign that tells them the direction to take their trucks instead of coming the wrong way up our road?

- a. Mike Hyde: You need to talk to the Duchesne County Roads Dept. with any sign requests.
- b. Troy Hone: I already did. They said, "I don't know".
- c. Mike Hyde: Trucks will be heading down to 7000 West and Ioka Lane.

Mike Hyde: I have an email I received that I would like to read from Steven Loftis. He stated his concern of traffic, and dust and is not happy with this whole situation. He doesn't know that the traffic will be going the other way.

Mike Hyde: If the Planning Commission makes the decision tonight any decision you make can be appealed to the County Commissioners. If the Commission makes the decision to approve with conditions and opponents feel that those conditions do not sufficiently mitigate potential impacts there will be a 10 day period in which opponents can appeal to the County Commissioners and they will have a new hearing. Then if opponents don't like the County Commissioners decision this is when you would get an attorney and appeal to the District Court.

Jenny Giles asked if the proponents would like to come up and rebut the opponents concerns.

Matt Hyita: These are all good concerns and I understand them all. I will say that every concern has been written down by Leslie Pearson and we will be addressing them. You know my face and you have my contact information. Regarding the duration, what is yet to be proven is yet to be determined. However, I will say we are long term partners. Regarding the mining depth; we are regulated by state and federal rules that we have to adhere to. Dust mitigation. We don't just blow and go. We target certain areas and we follow certain steps. As far as access around the area, we are very highly regulated. Another regulatory agency is Mine Safety and Health Administration, MSHA. Any unforeseen entrances to our locations, we do not want any of that and want it to be safe and compliant for everyone. There are a lot of good things we will be following up on. Your concerns are now my concerns.

Ken Richens: Why are we approving or disapproving something that is in Roosevelt when we haven't heard from the airport or Roosevelt City?

- a. Mike Hyde: We have heard from them. They have a letter in the packet that led to condition #4 in the Recommendation with their FAA approval. Roosevelt City said they are ok with it if the FAA is ok with it. They said, "No mining within the approach surface of their runway." If the city comes back after further review they can change it at that time if they want to.

Connie Sweat: In a nutshell are you guys digging or are you just scraping the sand off the surface?

- a. Matt Hyita: We are just scraping with D9 dozers.

Ken Richens: Have you tested all this property?

- a. Matt Hyita: Yes, we have.
- b. Ken Richens: So how deep is it?
- c. Matt Hyita: There is a dip to it. A lot of it has weathered out. There are some high ridge areas and low valley areas. Everything outcrops to the south and the dip goes to the east. It just depends on where we're digging. We did some drilling tests anywhere from 20 feet down typically to 100 feet down. As far as mining and geology, that is what we are still mapping out. At the same time, mining wise that is not what we are talking about right now. We're talking about targeting our surface sands which is our rolling sands we are going after.

Connie Sweat: I just wanted to say that I realize 660 feet is close, but that's a little over two city blocks. An oil well only has to be 300 feet, and we don't do a CUP when an oil well wants to drill, yet there is still sand. I believe what your doing will be very helpful because your getting rid of the sand.

- a. Matt Hyita: We want that loose sand so that is what we are targeting.
- b. Mike Hyde: One slight correction to what Commissioner Sweat said is oil wells are required to be back 660 feet, but if they reach an agreement with the property owner to be closer and do some mitigation they can go less than 660 feet.

Shon McKinnon: Can you tell me on the 500 acre parcel will there be portions that are being worked but not yet capped or reclaimed?

- a. Matt Hyita: I do not have the exact figures. This is exactly what we are doing right now is filling our needs right now on these current properties. We might have 500 acres, but that doesn't mean we can mine all 500 acres. There are a lot of right of ways, pads, set backs and so that still hasn't been put in place because we are still targeting where the actual sands are at on the properties.

Jenny Giles: Are there any other questions?

Iris Elene: We also have wildlife. What will happen to them? Will there be a reclamation of the wildlife?

- a. Matt Hyita: Any time we do mining those studies are done on the property. At that stage of the operation we are trying to do as little impact as possible. We are regulated by MSHA and that is where we restore things better than how we found them. We will make things habitable for wild life to live.

Mike Hyde: Some of the other mitigation we have is noise. Will you have light plants to allow work after dark?

- a. Matt Hyita: We typically work within the daylight hours. We do not plan on bringing any light plants.

Mike Hyde: What about the concerns of daytime sleepers?

- a. Matt Hyita: You can hear the equipment when you are next to them because you do not want to get run over by heavy machinery. You do not hear the squawkers echo away from them. It really helps out with the noise. We don't have a lot of equipment so the noise will be minimal as well.

Mike Hyde: Regarding the storm drainage. Are you going to hire an engineer to prepare a plan for the Utah DEQ? Will they try to make sure that you contour things with hay bales and any other mitigation measures to keeping storm drainage on the property or will some be able to run off the property?

- a. Matt Hyita: All of the above. We have storm water pollution prevention plans in place right now and we also have an outside engineering group that is working on this as we speak. It is very critical to have in place for us. We have outfall inspections on a quarterly and semi-annual basis. At the same time regulatory agencies come in and check on our operation. We follow these guidelines very closely.

Mike Hyde: Do you have a local engineer who can run out there from Roosevelt?

- a. Matt Hyita: People on site have to be trained to do this on our job site. We are all trained. Our office people are trained on the plant and at the mining site. We have very good mapping that tells us where to go from very detailed information.

Mike Hyde: We've had a lot of issues with gravel pits and dust. It seems like the most effective way to handle those problems are for the property owners who are affected by this to have a direct line to call someone. If it happens on a weekend or in the evening I will not be in the office. Can you give the people a hotline they can call?

- a. Matt Hyita: That's a good suggestion. I will say that our phones are always on us 24/7, and we can be reached at any time or at the plant. We will make sure the numbers are available for everyone who this project affects.

Troy Gardner: As far as dust control, do you have anything in place during high wind conditions? Do you guys shut down?

- a. Matt Hyita: Yes, we shut down if this happens.

Mike Hyde: Now would be the time for the Planning Commissioners to discuss among yourselves to try to determine from the public testimony if you feel the staff recommendations are sufficient to mitigate the impacts? Do you want to recess the hearing, do you want to take a field trip to see what it looks like? If you don't think the conditions of approval are adequate to mitigate the impacts you could direct staff to come back at a date certain with a Findings to Deny the Request. These are all options.

Mike Hyde: I would like to add to Condition #5 to give flexibility for the mining of the runway approach surface if Roosevelt City changes their minds after further consultation with the FAA consultants. On Condition #7 it needs to be modified to reflect the

fact that the applicants can go less than 660 feet if they reach an agreement with the individual home owners. And also, Condition #8 on the roads, as we've heard from the commissioners today, we can provide some flexibility there on the road usage in the event the applicants, the counties and the road department reach an agreement that we can provide them some flexibility moving forward.

Mike Hyde: When the Commission is done discussing, you can close the hearing. In the discussion you might find the need to ask somebody in the audience another question with the public hearing open, until your satisfied to make a motion.

Ken Richens: I'd like to make a comment. The audience has been very polite. We appreciate that a lot. I've been through this very thing with WW Clyde. I was very hesitant and I'm glad I was as I came out the winner on it. It could be a very positive thing. I think you need to get together and talk. I believe you don't even need us as I think you can figure it out among yourselves. If you aren't able to come to a conclusion with Wildcat, then come back here. You can lawyer up, but if you do everybody loses. The lawyers win. Would that work for you guys if we made a motion to have you all sit down Matt Hyita?

The public and Matt Hyita with Wildcat Sand Mining decided to meet before the June 7, 2023 commission meeting so they can all have their individual concerns addressed.

Connie Sweat moved to recess the public hearing until June 7, 2023 at 5pm.  
Annette Miller seconded the motion.  
The motion passed unanimously.

Jenny Giles called for a motion regarding the April 5, 2023 Duchesne County Planning Commission Minutes.

Annette Miller moved to approve the April 5, 2023 minutes.  
Ken Richens seconded the motion.  
The motion passed unanimously.

The meeting adjourned at 7:40pm