

DUCHESNE COUNTY PLANNING COMMISSION MINUTES

Duchesne County Administration Building, Commission Chambers

June 7, 2023 at 5:00 PM

Attending

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

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

Public: Matt Hyita (Plant Manager for Wildcat Sand), Leslie Pearson, Logan Hibbard, Jim Smart, Jake Smart, Dale M. Rasmussen, Becky Rasmussen, Julie Martin, Iris Elene, Richard Brown, Troy Gadd.

The meeting began at 5:02 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

Jenny Giles opened the public hearing regarding the recessed 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. 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 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

3. 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.

3. 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.

- D. 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 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 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.
7. 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.

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.

Mr. Hyde asked for the applicant to address the planning commission on what has transpired since the public meeting was recessed on May 3, 2023.

Matt Hyita: Plant Manager of Wildcat Sand. We had a great Town Hall Meeting where we presented more details of the operations and addressed some of the main concerns that we heard from the last meeting. We felt like we were able to address all the concerns at this meeting. Dust was one of the main concerns, and we were able to stone that whole pad area and eliminate any remaining piles that were left.

Jenny Giles: How was the attendance at your meeting?

Matt Hyita: We had a pretty good attendance. All the people who were at our last meeting were at this meeting. We held a dinner, we did a presentation on power point for everyone to show them the updates that we are doing. Where the areas are impacted and what the mining offsets really look like on an aerial view. Regarding drainage concerns, we showed where we've put in culverts to remedy that so there will be no problems in the future. We are still in the process of finalizing our SWPP which we should have here shortly. We were able to fence off the area from trespassing. My partner, Leslie Pearson and I were actually able to see all the traffic that goes up that area from other operators in the area and how it creates an issue for the people who live in this area. We are working on putting up signage so it doesn't impact these people as well. We have been working on these situations and continue to work on areas where we can continue to improve as we want to carry forward in order to have a good relationship with everyone. The communication has been very good with everyone and our goal is to strive to continue with a positive relationship and mitigate any problems now and in the future.

Ken Richens: Thank you for doing that for these people. Not everyone would do what you've done.

Jenny Giles: Are there any more proponents.

Iris Elene: I just wanted to say that Wildcat Sand did what they said and did it promptly.

Mike Hyde: I received an email from Troy and Sherry Hone that I forwarded on to the planning commission. They were at our 5-3-23 meeting and were against Wildcat Sand Mining. The email stated that they have withdrawn their objections to the proposal due to the work that has been done out there.

Jenny Giles: Do we have any opponents? There were none.

Mike Hyde: We received a letter from the Airport Master Plan Consultants for Roosevelt City. You may recall in the staff recommendation, as a result of a comment from Roosevelt City, that Condition #5 required that no sand mining would occur within the Roosevelt Municipal Airports runway approach surface. However, we received a new letter from Roosevelt City's consultant dated 5-19-23, indicating after further discussion and evaluation of the proposed methods of the mining we are amending our initial recommendation to no longer prohibit mining operations within the runway approach surface and allow such activities provided all other conditions previously outlined are met. If the planning commission acts on this proposal we would recommend the removal of Condition of #5 that was originally recommended by staff. The other thing to update you on is Condition #1, which requires a dust control plan approved by TriCounty Health and that the applicants will comply with that during the course of operations. TriCounty Health approved a dust control plan for this project by letter dated 5-19-23 so this has already been taken care of. This condition can remain as stated as it talks about conformance with the dust control plan. Staff recommendation remains the same as the last time with Condition #5 being eliminated.

Mike Hyde: Are there any questions?

Connie Sweat: Matt, have you decided how much you will mine at one time?

Matt Hyita: Yes. I don't have a specific amount and I don't want to misspeak. We will mine only a few acres at a time and then cap it before we move on.

Connie Sweat: Are you still using five trucks?

Matt Hyita: Right now we will be using five trucks at each location.

Connie Sweat: I know the new traffic light at the Highway 40 & 87 junction is up and working. Are there any updates on the road situation?

Matt Hyita: We will still use Highway 40 going to Fort Duchesne and head south towards the processing plant from that direction. Also, we were able to show where the southern access road is during our Town Hall meeting to the property that goes across Mr. Patry's property. So as far as the truck traffic there is no truck traffic going next to the properties that we have towards the east.

As there were no further questions, Jenny Giles closed the public hearing.

Ken Richens moved to approve the Wildcat Sand mining Conditional Use Permit, omitting original Condition #5.

Annette Miller seconded the motion.

The motion passed unanimously.

Jenny Giles opened the next public hearing at 5:20pm.

Mike Hyde presented Item B on the Public Hearings Agenda that is a request by Dale Rasmussen (Rasmussen Rock) for a conditional use permit to allow a shale, sand and gravel pit on an 82.74-acre parcel located on the east side of the Pariette Road at approximately 12250 South, in the Pleasant Valley area.

FINDINGS OF FACT

1. PROPOSAL DESCRIPTION

Rasmussen Rock is proposing to mine sand from portions of 82.74 acres of land that they own, located on the east side of the Pariette Road [at about 12250 South] in Section 23, Township 4 South, Range 2 West, in the Pleasant Valley area.

2. HISTORY OF EVENTS

May5, 2023	The application was submitted.
May 8, 2023	The application was deemed complete.
May 8, 2023	Notice mailed to property owners within 300 feet of the subject property.
May 24 & 31, 2023	Notice of Public Hearing published in the Uintah Basin Standard
June 7, 2023	Planning Commission hearing.

3. 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: Mining of shale, sand and gravel 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. 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 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.

While there is no rock crusher proposed at this location, mined materials are screened to various sizes based on customer demand. The screening process generates dust and is regulated by the Utah Department of Environmental Quality, Air Quality Division. The applicant will need to submit proof of an active air quality permit from that agency to the county.

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. In this case, material would be transported via the Pariette Road, which was upgraded by the County several years ago to a standard designed to support heavy truck traffic associated with the energy industry.

The applicants anticipate that the hours of mining operations will vary. During the spring, summer and fall, mining could 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). No operations after dark are anticipated. Very rarely would trucks be loaded in the evenings or on Sundays. Time limits should be applied in this case to mitigate potential noise impacts.

The nearest homes are located 2,250 feet to the north (Ovard) and 1,660 feet to the northwest (Alania), which are well beyond the 660 foot minimum setback from mining areas.

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 shale, sand and gravel to support the energy, construction and landscaping 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.

3. 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 82.74-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, residential, educational, public, religious or commercial structures located within 660 feet of the mining area.

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 applicant 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). The Johnson Water District has verified by letter dated May 10, 2023

that there is a water connection at 4400 West 12400 South that will provide water for dust control. If dust complaints received by Duchesne County 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 residential, educational, public, religious or commercial structures. There is no rock crusher proposed for this location. The nearest homes are located 2,250 feet to the north (Ovard) and 1,660 feet to the northwest (Alania), which are well beyond the 660 foot minimum setback from mining areas.

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. The request is valid.

RECOMMENDATION

Approval of the Conditional Use Permit requested by Dale Rasmussen [Rasmussen Rock], for the mining of shale, sand and gravel, 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 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 screening mined material at the site, the applicant shall provide the County proof that an air quality permit has been obtained from the Utah Department of Environmental Quality, Air Quality Division and the permit remains in force.
 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 and a 660-foot buffer between the excavation areas and existing dwelling units. If the applicant is unsure of property line locations, they shall be determined by a surveyor.

Mike Hyde added that Johnson Water has sent a letter stating that the applicants have a water connection that they can use for dust control. It is from a ¾" meter located at 4400 W 12400 S, which is very close to the operation, which will help them with their dust control.

As there were no questions for staff, Jenny Giles called for the applicant to speak.

Dale Rasmussen = We got a CUP in 2006 and now we have a pit next door to this one and we are just trying to make Duchesne County a better place to be.

Ken Richens = Are you good with the conditions?

Dale Rasmussen = Yes. We have MSHA that we keep up with that requires us to operate safely and tells us what we can and cannot do in order to operate a pit.

Shon McKinnon = Can you tell us about your water use? The ¾" meter seems small. Does it go into a holding tank that you pull from?

Dale Rasmussen = We have a 2000 gallon water truck that we put it into and then we spread it as needed.

Jenny Giles = Any other proponents? There were none.

Jenny Giles = Are there any opponents? There were none.

As there were no additional testimony or questions, Jenny Giles closed the public hearing.

Ken Richens moved to approve the Dale Rasmussen Conditional Use Permit.

Shon McKinnon seconded the motion. The motion was unanimously passed.

Jenny Giles opened the next public hearing at 5:30 pm.

Mike Hyde presented Item C on the Public Hearings Agenda that is a request for the Amendment of Pinon Ridge Subdivision, Unit 2.

FINDINGS OF FACT

1. PROPOSAL DESCRIPTION

Samuel Lee, the owner of Lots 50 and 51 in the Pinon Ridge Subdivision, Unit 2, is proposing to combine the two lots and vacate the ten-foot wide utility easement running along the current lot line to create a 1.35-acre building site. This requires an amendment of the subdivision plat.

4. HISTORY OF EVENTS

May 17, 2023	The application was submitted.
May 17, 2023	The application was deemed complete.
May 17, 2023	Notice of hearings mailed to property owners within 300 feet
May 24 & 31, 2023	Notice of hearings published in the Uintah Basin Standard
June 7, 2023	Planning Commission hearing
June 12, 2023	County Commissioner's hearing

5. DUCHESNE COUNTY SUBDIVISION CODE

9-5-4: VACATING OR CHANGING SUBDIVISION PLAT, PUBLIC STREET, RIGHT OF WAY OR EASEMENT:

Proposals to vacate or change a subdivision plat, public street, right of way or easement shall be processed in accordance with Utah Code Annotated sections 17-27a-608, 17-27a-609 and 17-27a-609.5, and subsequent amendments thereto, with public notice of such actions to be given as provided by Utah Code Annotated section 17-27a-208, and subsequent amendments thereto.

6. UTAH CODE FOR PLAT AMENDMENTS

17-27a-608. Subdivision amendments.

- (1) (a) A fee owner of a lot, as shown on the last county assessment roll, in a plat that has been laid out and platted as provided in this part may file a written petition with the land use authority to request a subdivision amendment.
Findings: A written application has been received.
- (b) Upon filing a written petition to request a subdivision amendment under Subsection [\(1\)\(a\)](#), the owner shall prepare and, if approved by the land use authority, record a plat in accordance with Section [17-27a-603](#) that:
 - (i) depicts only the portion of the subdivision that is proposed to be amended;
 - (ii) includes a plat name distinguishing the amended plat from the original plat;
 - (iii) describes the differences between the amended plat and the original plat; and
 - (iv) includes references to the original plat.**Findings: The required plat amendment survey has been received.**
- (c) If a petition is filed under Subsection [\(1\)\(a\)](#), the land use authority shall provide notice of the petition by mail, email, or other effective means to each affected entity that provides a service to an owner of record of the portion of the plat that is being amended at least 10 calendar days before the land use authority may approve the petition for a subdivision amendment. **Findings: A notice of the proposal was mailed to property owners in the vicinity on and emailed to affected utility entities on May 17, 2023.**
- (d) If a petition is filed under Subsection [\(1\)\(a\)](#), the land use authority shall hold a public hearing within 45 days after the day on which the petition is filed if:
 - (i) any owner within the plat notifies the county of the owner's objection in writing within 10 days of mailed notification; or
 - (ii) a public hearing is required because all of the owners in the subdivision have not signed the revised plat.

- (e) A land use authority may not approve a petition for a subdivision amendment under this section unless the amendment identifies and preserves any easements owned by a culinary water authority and sanitary sewer authority for existing facilities located within the subdivision. **Findings: Since all of the owners in the subdivision will not sign the plat amendment survey, a public hearing will be held by the County Planning Commission on June 7, 2023 and by the County Commissioners on June 12, 2023. There are no piped water or sewer lines in this development. The Pinion Forest Special Service District, which currently offers only a water hauling station, has been asked to comment on the request (as have other utilities).**

- (2) The public hearing requirement of Subsection [\(1\)\(d\)](#) does not apply and a land use authority may consider at a public meeting an owner's petition for a subdivision amendment if:
 - (a) the petition seeks to:
 - (i) join two or more of the petitioning fee owner's contiguous lots; **Findings: while there is a lot consolidation associated with this plat amendment, there is also a public utility easement vacation, which requires a public hearing.**
 - (ii) subdivide one or more of the petitioning fee owner's lots, if the subdivision will not result in a violation of a land use ordinance or a development condition;
 - (iii) adjust the lot lines of adjoining lots or between a lot and an adjoining parcel if the fee owners of each of the adjoining properties join the petition, regardless of whether the properties are located in the same subdivision;
 - (iv) on a lot owned by the petitioning fee owner, adjust an internal lot restriction imposed by the local political subdivision; or
 - (v) alter the plat in a manner that does not change existing boundaries or other attributes of lots within the subdivision that are not:
 - (A) owned by the petitioner; or
 - (B) designated as a common area; and

- (b) notice has been given to adjoining property owners in accordance with any applicable local ordinance. **Findings: Notice has been given to property owners within 300 feet of the amended lots on May 17, 2023.**

- (3) A petition under Subsection [\(1\)\(a\)](#) that contains a request to amend a public street or county utility easement is also subject to Section [17-27a-609.5](#). **Findings: This section of the state code applies to vacation of a public street or easement.**

- (4) A petition under Subsection [\(1\)\(a\)](#) that contains a request to amend an entire plat or a portion of a plat shall include:
 - (a) the name and address of each owner of record of the land contained in:
 - (i) the entire plat; or
 - (ii) that portion of the plan described in the petition; and
 - (b) the signature of each owner who consents to the petition.

- (5)
 - (a) The owners of record of adjoining properties where one or more of the properties is a lot may exchange title to portions of those properties if the exchange of title is approved by the land use authority in accordance with Subsection [\(5\)\(b\)](#).
 - (b) The land use authority shall approve an exchange of title under Subsection [\(5\)\(a\)](#) if the exchange of title will not result in a violation of any land use ordinance.
 - (c) If an exchange of title is approved under Subsection [\(5\)\(b\)](#):
 - (i) a notice of approval shall be recorded in the office of the county recorder which:
 - (A) is executed by each owner included in the exchange and by the land use authority;
 - (B) contains an acknowledgment for each party executing the notice in accordance with the provisions of [Title 57, Chapter 2a, Recognition of Acknowledgments Act](#); and
 - (C) recites the legal descriptions of both the properties and the properties resulting from the exchange of title; and

- (ii) a document of conveyance of title reflecting the approved change shall be recorded in the office of the county recorder with an amended plat.
- (d) A notice of approval recorded under this Subsection [\(5\)](#) does not act as a conveyance of title to real property and is not required to record a document conveying title to real property.
- (6)
 - (a) The name of a recorded subdivision may be changed by recording an amended plat making that change, as provided in this section and subject to Subsection [\(6\)\(c\)](#).
 - (b) The surveyor preparing the amended plat shall certify that the surveyor:
 - (i) holds a license in accordance with [Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act](#);
 - (ii)
 - (A) has completed a survey of the property described on the plat in accordance with Section [17-23-17](#) and has verified all measurements; or
 - (B) has referenced a record of survey map of the existing property boundaries shown on the plat and verified the locations of the boundaries; and
 - (iii) has placed monuments as represented on the plat.

Findings: The survey prepared meets these requirements.

- (c) An owner of land may not submit for recording an amended plat that gives the subdivision described in the amended plat the same name as a subdivision recorded in the county recorder's office.
- (d) Except as provided in Subsection [\(6\)\(a\)](#), the recording of a declaration or other document that purports to change the name of a recorded plat is void.

17-27a-609.5. Petition to vacate a public street.

- (1) In lieu of vacating some or all of a public street through a plat or amended plat in accordance with Sections [17-27a-603](#) through [17-27a-609](#), a legislative body may approve a petition to vacate a public street in accordance with this section.
- (2) A petition to vacate some or all of a public street or **county utility easement** shall include:
 - (a) the name and address of each owner of record of land that is:
 - (i) adjacent to the public street or county utility easement between the two nearest public street intersections; or
 - (ii) accessed exclusively by or within 300 feet of the public street or county utility easement;
 - (b) proof of written notice to operators of utilities and culinary water or sanitary sewer facilities located within the bounds of the public street or county utility easement sought to be vacated; and **Notification to the public utility companies (Strata Networks, Moon Lake Electric, Dominion Energy and the Pinion Forest Special Service District) was accomplished by email on May 17, 2023).**
 - (c) the signature of each owner under Subsection [\(2\)\(a\)](#) who consents to the vacation.
- (3) If a petition is submitted containing a request to vacate some or all of a public street or county utility easement, the legislative body shall hold a public hearing in accordance with Section [17-27a-208](#) and determine whether:
 - (a) **good cause exists for the vacation; and**
 - (b) **the public interest of any person will be materially injured by the proposed vacation.**
- (4) The legislative body may adopt an ordinance granting a petition to vacate some or all of a public street or county utility easement if the legislative body finds that:
 - (a) good cause exists for the vacation; and
 - (b) neither the public interest nor any person will be materially injured by the vacation.
- (5) If the legislative body adopts an ordinance vacating some or all of a public street or county utility easement, the legislative body shall ensure that one or both of the

following is recorded in the office of the recorder of the county in which the land is located:

- (a) **a plat reflecting the vacation;** or
 - (b)
 - (i) an ordinance described in Subsection [\(4\)](#); and
 - (ii) a legal description of the public street to be vacated.
- (6) The action of the legislative body vacating some or all of a public street or county utility easement that has been dedicated to public use:
- (a) operates to the extent to which it is vacated, upon the effective date of the recorded plat or ordinance, as a revocation of the acceptance of and the relinquishment of the county's fee in the vacated street, right-of-way, or easement; and
 - (b) may not be construed to impair:
 - (i) any right-of-way or easement of any parcel or lot owner;
 - (ii) the rights of any public utility; or
 - (iii) the rights of a culinary water authority or sanitary sewer authority.
- (7) (a) A county may submit a petition, in accordance with Subsection [\(2\)](#), and initiate and complete a process to vacate some or all of a public street.
- (b) If a county submits a petition and initiates a process under Subsection [\(7\)\(a\)](#):
- (i) the legislative body shall hold a public hearing;
 - (ii) the petition and process may not apply to or affect a public utility easement, except to the extent:
 - (A) the easement is not a protected utility easement as defined in Section [54-3-27](#);
 - (B) the easement is included within the public street; and
 - (C) the notice to vacate the public street also contains a notice to vacate the easement; and

- (iii) a recorded ordinance to vacate a public street has the same legal effect as vacating a public street through a recorded plat or amended plat.
- (8) A legislative body may not approve a petition to vacate a public street under this section unless the vacation identifies and preserves any easements owned by a culinary water authority and sanitary sewer authority for existing facilities located within the public street.

Findings: There is good cause for approving the plat amendment to combine the lots and vacate the utility easement. The minimum lot size in this area is now 5 acres. By combining the two lots, the building site becomes 1.35 acres, which is less nonconforming than the current .68 and .67 acre lots. A utility easement will still exist along the north and west boundaries of the lots and future utilities could also be constructed in the abutting Orem Road right of way. Site photos indicate there is a rock ledge trending east-west through the affected lots which could be problematic for utility installation in the subject easement.

COMMENTS RECEIVED

The proposal has been submitted to Moon Lake Electric, Dominion Energy, Strata Networks and the Pinion Forest Special Service District. All four utilities responded that they have no objection to the vacation.

CONCLUSIONS

1. The request complies with the requirements of the Duchesne County Subdivision Code and Utah law associated with plat amendments and easement vacations.
2. The request is valid.

RECOMMENDATION

That the Planning Commission recommend to the County Commissioners the approval of the amended plat.

Jenny Giles = Are there any proponents? There were none.

Jenny Giles = Are there any opponents? There were none, so the public hearing was closed.

Annette Miller made a motion to approve the request.

Shon McKinnon seconded the motion. The motion was unanimously passed.

Jenny Giles opened the next public hearing at 5:36pm

Mike Gottfredson presented Item D on the Public Hearings Agenda for the request by Richard Stevenson & Julie Martin for a conditional use permit to operate short term rental/resort lodge at 14800 N North Fork Road in the Hanna area.

FINDINGS OF FACT

1. PROPOSAL DESCRIPTION

Richard Stevenson and Julie Martin are proposing to operate a short-term rental at their cabin on their property in the North Fork Ranchettes Subdivision, north of Hanna. Short-term rentals fall within the definition of a “Resort Lodge,” [*A facility, including either a single building or resort cabins, which serves as a destination point for visitors, and generally has accessory recreational facilities for the use of guests. Guest residency is limited to no more than ninety (90) days*]. Resort Lodges, including short-term rentals, are allowed in the A-5 zoning district with a conditional use permit.

2. HISTORY OF EVENTS

May 17, 2023	The application was submitted.
May 17, 2023	The application was deemed complete.
May 18, 2023	Notice mailed to property owners within 300 feet of the subject property.
May 24 & 31, 2023	Notice of Public Hearing published in Uintah Basin Standard.
June 7, 2023	Planning Commission hearing.

3. 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 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 (300') 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: The proposed use is not unduly detrimental or injurious to property or improvements in any vicinity, and is not detrimental to public health, safety, or general welfare. There are water and wastewater facilities in place mitigating potential public health detriments.

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 states that future growth and development decisions should be made with sensitivity to rural residential and agricultural interests. The plan indicates that the county wishes to encourage business

activity and support efforts to recruit new businesses, retain existing businesses and assist with the expansion of existing businesses. The proposal complies with this section of the General Plan as a new business would be supported and more recreational opportunities provided in a manner that does not impact rural residential and agricultural interests.

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.

3. 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.

The subject property is 3.08 acres in size and includes a secondary residence (cabin) built in 2016. The cabin has four (4) bedrooms and three (3) bathrooms.

The parcel is sufficiently large for the cabin and the cabin will accommodate the short-term rental. The business can operate in a manner that is not detrimental to surrounding property owners if noise is controlled pursuant to the Duchesne County Nuisance Ordinance and trespass is discouraged. The nearest dwelling is located 110 feet to the north. Land to the north, west, and south are private, and is owned by the Ashley National Forest to the east.

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.

8-13-5-5: ADDITIONAL CONDITIONS SPECIFIED:

These conditions may include:

- A. Landscaping, Design: That the site will be suitably landscaped and maintained and that the design, setbacks, fences, walls and buffers of all buildings and other structures are adequate to protect property and preserve and/or enhance the appearance and character of the area.

Findings: There is no significant outdoor storage of equipment or other materials associated with the short-term rental. A fence runs the perimeter of the property. However, applicants should educate clients to not trespass onto properties in other ownerships.

- B. Parking: Provisions of parking facilities, including vehicular ingress and egress, loading and unloading areas and the surfacing of parking areas and driveways to specified standards.

Findings: There is safe public access to the property from North Fork Road (County Road #7). The parking area is sufficient for up to four (4) vehicles. The driveway is graveled.

- C. Streets, Water, Sewer, Fire Protection: The provision of required street and highway dedication and improvements, and adequate water supply, sewage disposal and fire protection.

Findings:

Roads: The property is accessed from North Fork Road, north of Hanna. North Fork Road is a paved County road (CR#7).

Water: The property is supplied by a non-public water system served by a community water well. The proposed short-term rental will have a similar impact on water usage as a single-family dwelling (permitted at 5 bedrooms maximum). The water system must remain in operating order and in compliance with the TriCounty Health Department rules for the property to be used for short-term rental.

Sewer: The property has an onsite wastewater disposal system and is approved by Tri-County Health District (Permit # 2016-DUWW-0058 "C").

Fire: The property and building meet Wildland Urban Interface (WUI) code requirements for defensible space (September 4, 2019). The building will meet R-3 Owner Occupied Lodging House and R-3 Boarding Transient House provided that certain smoke and CO detectors are provided (see Short Term Rental Restrictions for Single Family Dwellings attachment). These standards limit each dwelling unit to five guest rooms and ten total guests.

- D. Signs: Regulation of signs.

Findings: The applicant desires to place a sign at the entrance gate to the property. All signs must comply with Duchesne County ordinances (Title 8-9-14, 8-13-5-5-D).

- E. Nuisances: The mitigation of nuisance factors, such as noise, vibrations, smoke, dust dirt, odors, gases, noxious matter, heat, glare, electromagnetic disturbances and radiation.

Findings: This business is not anticipated to generate significant amounts of noise. The applicant proposes to instruct renters to respect adjacent property owners and not create noise problems.

The Duchesne County Nuisance Ordinance allows noise between the hours of 7:00 A.M. and 9:30 P.M. on weekdays, 8:00 A.M. to 9:30 P.M. on Saturdays, and 9:00 A.M. to 9:30 P.M. on Sundays. Conditions should be considered to ensure that noise, which could disturb others, does not occur earlier or later than these allowed times.

F. Operating Hours: The regulation of operating hours for activities affecting normal schedules and functions.

Findings: As indicated in the ADDITIONAL CONDITIONS SPECIFIED Section E, the applicant is required to follow the Duchesne County noise ordinance regulating operating business hours.

Applicant anticipates renting the cabin at their property seasonally, from June to October of each year. Utah Code Section 17-50-337 defines “Short-term rental” as a residential unit or any portion of a residential unit that the owner of record or the lessee of the residential unit offers for occupancy for fewer than 30 consecutive days. Any operator of short-term rentals in the State of Utah must comply with this code.

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 found in Title 8 Zoning Regulations of the Duchesne County Code, provided that conditions are imposed.

2. The request is valid.

RECOMMENDATION

Recommended Motion: I move that the Planning Commission approve the Conditional Use Permit requested by Richard Stevenson and Julie Martin, subject to the following conditions:

1. A Duchesne County business license shall be obtained and maintained for the duration of this conditional use permit.
2. The Transient Room Tax [TRT] shall be collected from guests.
3. Ingress/egress, driveway, and parking area, shall be maintained to WUI code standards.
4. WUI code defensible space around structures shall be maintained at all times.
5. The “Short Term Rental Restrictions for Single Family Dwellings” document established by the Duchesne County Building Official shall remain in force for the duration of this conditional use permit. To ensure compliance and prior to occupancy by the public, the applicant shall request an inspection by the Department of Building Safety to ensure that the required safety standards have been met. This inspection has an additional fee paid to the Department of Building Safety.
6. Applicant shall inform clients of the Duchesne County noise ordinance standards and the property boundaries to deter noise nuisances and trespassing.
7. Applicant shall comply with Utah Code Section 17-50-337, while the cabin is offered for short-term rentals.
8. Signs must follow Duchesne County Code (Title 8-9-14, 8-13-5-5-D). As such, signs must comply with the following:
 - a. Placed on premise only (includes on a gate or fence);
 - b. Are not internally lit;
 - c. Does not exceed 16 ft² in size;
 - d. A sign may be attached to the cabin, if:
 - i. mounted flush to the face of the building,
 - ii. is non-illuminated,
 - iii. does not exceed 2 ft² in size.
9. The community water system must be operational and remain in compliance with Utah Division of Drinking Water requirements prior to and during short-term rental occupancy.

Jenny Giles: Any questions from the planning commission? There were none.

Jenny Giles: Would the proponent like to come up and address the audience?

Julie Martin: Our rental is operational only when we have access as it is in the Ashley National Forest. It is very beautiful. My husband and I owned the land for 15 years before we built on it. This is income that supplements the mortgage in this short period of time. We usually get about 10 rentals. We only rent through Vrbo. The rules are all stated on their site. When the time comes for our renters to come I start to communicate with them through texting and again I send the renters the rules. There are also house rules in the house as well. We have an HOA and we comply

with the Ranchette HOA Rules. They don't want to see RV's or tents and we comply by those rules.

Ken Richens: How much do you rent it out for per night?

Julie Martin: \$450.00 per night.

Jenny Giles: Do we have any more proponents? There were none.

Jenny Giles: Do we have any opponents?

Mike Gottfredson stated that he received two emails that would fit into this category which he read aloud. The first one was from Micheal Blommer. The second letter was from Teresa Crockett.

Julie Martin addressed the concerns of the two emails by stating she would make sure their renters understood the Duchesne County Noise Ordinance times before the renters come to their property. She also stated that the noise ordinance rules would be posted in their rental in a place where everyone could see them. Julie added that she would make her phone number available to the surrounding property owners so if in the future there are any concerns with noise they can call her.

As there were no further questions, Jenny Giles closed the public hearing.

Connie Sweat made a motion to approve the request by Richard Stevenson & Julie Martin, as stated.

Shilo Hatch seconded the motion. The motion was unanimously passed.

Jenny Giles called for a motion regarding the May 3, 2023 Duchesne County Planning Commission Minutes.

Ken Richens moved to approve the May 3, 2023 minutes.

Connie Sweat seconded the motion.

The motion passed unanimously.

The meeting adjourned at 6:16 pm