

DUCHESNE COUNTY

PLANNING COMMISSION MEETING

APRIL 6, 2016

REQUEST TYPE:	Conditional Use Permit
APPLICANT:	EP Energy
PROPOSAL:	Extraction of Earth Products – Sand Pit
LOCATION:	Approximately one mile east of the intersection of Highway 87 and Highway 35, in Section 5, Township 3 South, Range 4 West, in the Blue Bench area, north of Duchesne.
ZONING DESIGNATION:	A-5

REPORT CONTENTS

FINDINGS OF FACT.....	2
CONCLUSIONS	7
RECOMMENDATION.....	8

FINDINGS OF FACT

1. PROPOSAL DESCRIPTION

EP Energy is applying for this permit to authorize the extraction of earth products (sand) from a portion of a 160-acre site located on the Blue Bench. Extraction of earth products is a conditionally permitted use in the A-5 zone. It is anticipated that sand from this location will be used for application to oilfield roads during the winter and for pipe bedding.

2. HISTORY OF EVENTS

March 14, 2016	The application was submitted.
March 15, 2016	The application was deemed complete.
March 18, 2016	Notice mailed to property owners within 660 feet of the subject property.
March 22 & 29, 2016	Notice of Public Hearing published in the Uintah Basin Standard
April 6, 2016	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. In this case, mailed notice was provided to property owners within 660 feet due to the 660 foot minimum setback from mining sites to residences.

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: Extraction of earth products can be detrimental in terms of noise and dust during operations. Surface disturbance results in noise from operation of equipment, windblown dust and dust from equipment movement. However, if the applicant and operators comply with dust and noise standards, the proposal is less likely to be injurious to public health, safety or welfare.

Detrimental impacts can also occur if the extraction area is not reclaimed properly. The county has "material pit finishing" standards that should 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. There are no waterways located in this area; however, the applicants should contact the Utah DEQ to determine if a storm water permit is required.

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

Extraction activity and the associated heavy hauling may be detrimental to public improvements in the vicinity; especially the county roads. In this case, the mining area receives access to Highway 87 via Class D Roads that extend east from Highway 87. These roads serve oil well locations in the EP Energy operating area, handle existing truck traffic and receive maintenance from EP Energy.

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 if noise complaints are received by the county.

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 earth products to support their own needs for pipe bedding material and sand for roads in the winter, which is beneficial to the economy and energy industry 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 approximately 80-90 acres of the 160-acre site. The site 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 level. The applicants are also required to set the mining area back 660 from existing homes. 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: EXTRACTION OF EARTH PRODUCTS:

- 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 pit areas and driving surfaces during times of operation is considered maintaining a near dust free condition;

Findings: A dust control plan must be presented by the applicant or authorized agent to the TriCounty Health Department for approval prior to operations continuing. The applicant or authorized agent must follow this plan to control dust at active mining areas and on driving surfaces.

With extraction of earth products, haul roads between the site and the nearest paved road can generate dust and heavy truck traffic that can be a nuisance for nearby dwellings. In this case, there are no dwellings in close proximity to the extraction site and haul road. However, the dust control plan must demonstrate that dust at the mining site and along the haul road can be controlled.

- 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 bonding requirement has been waived by the property owner/applicant by letter dated February 9, 2016.

- 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 has agreed, by letter dated February 9, 2016, to recondition the property in accordance with these standards. During operations, the property shall be maintained in a condition that is not hazardous, with any hazardous areas being signed and fenced or bermed.

- D. Distance Requirement for Gravel Pits and Rock Crushing 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 gravel pit boundary shall be set back 660 feet 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 gravel pit boundary shall be set back at least 50 feet 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) consent 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 extraction of earth products would occur.

Findings: The distance requirements of this section will be met. The proposed excavation boundaries must be set back at least 50 feet from the property lines to meet the minimum standard of the ordinance. The excavation boundary will be set back 660 feet from the nearest homes. County records show a secondary dwelling located about 1,870 feet west of the west subject property boundary and a residence under construction on the Henry property, about 740 feet from the southwest corner of the subject property. There will be no rock crusher located at this 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. The request is valid.

RECOMMENDATION

Approval of the Conditional Use Permit requested by EP Energy for extraction of earth products, subject to the following conditions:

1. Owners or their authorized agent(s) shall control dust and noise so neither becomes a nuisance.
 - a. A dust control plan approved by the TriCounty Health Department shall be obtained prior to starting excavation and implemented throughout the course of the operations by the owners or authorized agents. Dust control agents shall be applied at active portions of the site and on gravel access roads between the site and the nearest paved road during periods of hauling.
 - b. If noise complaints are received by the county, owners and their authorized agents shall comply with the following hours of operation: (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. Owner(s) or their authorized agents 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 and/or fencing. Mining areas shall be set back at least 50 feet from the property lines.
3. Before starting excavation at the site, the applicants shall contact the Water Quality Division of the Utah Department of Environmental Quality to determine if an industrial stormwater permit is required.

Mike Hyde, AICP
Community Development Director