

**Planning & Zoning Commission Meeting  
County Administrative Offices, Duchesne, Utah  
October 2, 2019 - 5:00 p.m.**

**In Attendance were:**

Brad Wells, Planning Commission, Chairman  
Kathy Giles, Planning Commission  
Bobby Drake, Planning Commission  
Ken Richens, Planning Commission  
Ryan Clark, Planning Commission  
Gary Sorensen, Planning Commission  
Connie Sweat, Planning Commission  
Mike Hyde, Community Development Administrator  
CoraLee Sanchez, Planning Secretary

**Visitors:**

Justin Robb

JWT Land Company-CUP

Chairman Wells opened the meeting at 5:00 pm and read the rules of order. He asked if any of the Planning Commission Members had any ex-parte contacts or conflicts of interest associated with the agenda. There were none, so the meeting proceeded.

**PUBLIC HEARINGS:**

- A. Request for a Conditional Use Permit by JWT Land Company to establish a critical infrastructure materials operation (gravel pit & rock crusher) on a 160-acre parcel of land located about ¾ mile southwest of the intersection of Ioka Lane and 9000 West.**

Mr. Hyde referred the commission to their packets and some aerial and site photos of the proposed location and stated JWT Land Company, working with CKC Asphalt, is proposing to extract critical infrastructure materials (gravel pit and rock crusher) from a 160-acre site located about ¾ mile southwest of the intersection of Ioka Lane and 9000 West, in the Ioka area. The property is zoned A-5. Extraction of earth products is a conditionally permitted use in the A-5 zone.

The criteria for approval of the conditional use permit include the following.

- 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.**

Mr. Hyde stated the 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. This includes possessing a valid DEQ Air Quality permit for the operation of a crusher at this location.

Detrimental impacts can also occur if the extraction area is not reclaimed properly. The county has “material pit finishing” standards that prevent the applicant/operator from leaving eyesore or hazardous conditions when mining is completed. During operations, hazardous conditions may exist associated with heavy equipment and cut slopes. To meet this condition, steps should be taken to mitigate these hazards, with any hazardous areas being signed and barricaded/fenced to deter entry. 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 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.

Rock extraction activity and the associated heavy hauling may be detrimental to public improvements in the vicinity; including in this case the public roads, state highway and an irrigation canal. The proposed access to the mining area is via a Class D public road known as 9000 West. Any upgrades to this road to accommodate gravel truck traffic will need to be coordinated with the abutting land owners (Ute Tribe and Lynn Winterton). The County Public Works Director has commented that no gravel trucks will be allowed on the Lemon Bench Road [a.k.a. 4000 South or County Road #60] as it has not been improved to support heavy vehicle traffic. Any intersection or access road improvements required by UDOT Region 3 at 9000 West and Ioka Lane will need to be constructed by the applicant prior to the start of gravel pit operations.

A new crossing of the South Lateral C Canal will need to be constructed to standards established by the Dry Gulch Irrigation Company prior to the start of mining operations.

Mr. Hyde stated the county Nuisance Ordinance sets forth time limits during which noise is permitted (7:00 AM to 9:30 PM on weekdays, 8:00 AM to 9:30 PM on Saturdays and 9:00 AM to 9:30 PM on Sundays and holidays). Such time limits should be applied in this case to ensure that no noise impacts occur. The nearest homes owned by someone other than the applicant are located about  $\frac{3}{4}$  mile to the northeast on the north side of Ioka Lane and nearly a mile to the east along 4000 South.

## **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.**

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 rock products to support the construction industry. Rock products could also be used in the energy industry, which

is active in this part of the County. Such projects are beneficial to the economy of the county and in compliance with the general plan.

**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.**

Mr. Hyde stated the proposed mining would initially take place on approximately 4 acres of the 160 acre quarter-section of land, 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 pit level. The applicants are also required to set the mining area back 660 from existing homes and the crusher is to be set back at least 1,320 feet (1/4 mile) from existing homes. Aerial photos indicate that there is a home within 1,320 feet of the boundaries of this site (which is a rental owned by the applicant). Other homes are located 3/4 mile to the northeast (on the north side of Ioka Lane) and nearly one mile to the east along 4000 South. 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.

The conditional use criteria specific to mining operations are:

- 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;

Mr. Hyde stated a dust control plan must be approved by the TriCounty Health Department prior to operations beginning. Such plan approval was received by letter dated September 16, 2019. The applicant or authorized agent must follow this plan to control dust at active pit areas and along haul routes. With extraction of rock, 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 and farmers. In this case, there are no dwellings located on lands owned by anyone other than the applicant along the gravel road connecting to Highway 87 [Ioka Lane]. However, there is agricultural land along the haul route that would benefit from dust control.

- 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;*

The bonding requirement was waived by the property owner who is also the applicant. The applicant understands that reclamation must occur in accordance with the county material pit finishing standards regardless of this waiver.

**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;

The “Material Pit Finishing Standards” are used by the County to determine how reconditioning is to be accomplished. The applicant and authorized agents are subject to these standards and must call the County for a final inspection upon completion of mining and reclamation at the site.

**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.

The applicants have indicated the proposed gravel pit boundaries will be set back at least 50 feet from the property line to meet the minimum standard of the ordinance. The gravel pit boundary will be set back over 660 feet from the nearest homes as shown on the county aerial parcel maps. The rock crusher location must meet the ¼ mile setback requirement (from a dwelling or city limit line). Aerial photos show that the nearest home is located about ¾ mile to the northeast at 9018 W 3000 South. A cluster of homes is located along 4000 South about mile east of the site. Thus, the distance requirements of this section will be met.

Mr. Hyde’s recommendation is approval of the Conditional Use Permit requested by JWT Land Company, for extraction of earth products, subject to the following conditions:

1. The Owners and their authorized agent(s) shall control dust and noise so neither becomes a nuisance.
  - a. A dust control plan recently approved by the TriCounty Health Department shall be implemented throughout the course of the operations by the owners or authorized agents. Dust control agents, including water or other treatments, shall be applied at active portions of the site and on gravel access roads between the site and Ioka Lane [Highway 87] during periods of hauling.
  - b. Owners and their authorized agents shall comply with the following hours of crusher 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). Operations other than crushing may occur beyond those hours if approved by the Community Development Director, unless noise complaints are received.
2. The Owners 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, berming, fencing or barricades to deter entry.
3. The DEQ Air Quality Division shall be notified that the permitted rock crusher is being moved to this site, prior to the start of crushing operations.
4. Before starting excavation at the site, the Owners or their authorized agents 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.
5. The Owners and their authorized agents agree to maintain a 50-foot wide buffer between the excavation areas and the property lines, a 660-foot buffer between excavation areas and existing homes and a 1,320-foot buffer between the crusher location and existing homes. If the parties are unsure of property line locations, they shall be determined by a surveyor. The term "existing homes" does not include homes in the vicinity owned by the applicant.
6. The Owners or their authorized agents shall obtain approval from UDOT Region 3 for access to Highway 87 at Ioka Lane and make any required improvements prior to the start of operations.
7. The Owners or their authorized agents shall coordinate any widening of 9000 West to support truck traffic with the abutting land owners (Ute Tribe and Lynn Winterton) prior to making such improvements.

8. No gravel truck traffic shall be allowed on the Lemon Bench Road [a.k.a. 4000 South – County Road #60].
9. The Owners or their authorized agents shall construct a crossing of the South Lateral C Canal in accordance with standards approved by the Dry Gulch Irrigation Company. Evidence of such approval shall be provided to the County prior to the start of mining operations.

Mr. Hyde stated that Mr. Taylor is the property owner and has waived the reclamation bonding requirement and they are working to get the appropriate permits.

Commissioner Wells asked Mr. Hyde if they would be able to run 24 hours a day since they are isolated. Mr. Hyde stated that crushing would be limited to the hours stated in condition 1 (b) but that other operations would be permitted beyond these hours if no complaints are received.

Mr. Hyde stated he received an email from Ben Henderson, the Public Works Director that stated they will not allow use of 4000 South as an access. Instead they must use 9000 west going north to the Ioka Lane.

Mr. Hyde asked if there were any other questions or comments. There were none, so the applicant was invited to speak.

Justin Robb, applicant and owner/operator of CKC Asphalt, thanked Mr. Hyde for his help during this process and stated Jim Taylor is the property owner and he has waived the bonding requirements. They are working with TriCounty Health for the dust control plan and the DEQ for the portable crusher and air quality permits.

Mr. Robb stated they have met with the Ute Tribe about the access issues and are going to reach out to Dry Gulch Irrigation for construction on the new canal crossing.

There was some discussion about their test holes and the amount of rock they will have available.

With no other questions and no one in the audience to speak either in favor or against the applicant's proposal, the hearing was closed.

Commissioner Drake motioned to approve the Conditional Use Permit requested by JWT Land Company, for extraction of earth products, subject to the conditions stated in the staff report. Commissioner Sweat seconded the motion and it passed unanimously.

**B. Recommendation to the County Commissioners regarding proposed Ordinance #19-373; amending the zoning ordinance.**

Mr. Hyde stated that Duchesne County proposes to amend its zoning ordinance to address the following as a result of the 2019 legislative session.

- A. Section 1. Adds definitions for new terms from the 2019 Legislative Session associated with gravel pits and medical cannabis.
- B. Section 2. Amends the Table of Land Uses allowed in the various zoning districts to include the districts where medical cannabis production and medical cannabis pharmacies are allowed. Recognizes the new term for gravel pits (Critical Infrastructure Materials sites) established in the 2019 Legislative Session.
- C. Section 3. Amends the livestock provisions to recognize that there are no designated open range areas on private land in the county.
- D. Section 4. Incorporates the new state standards for medical cannabis production and medical cannabis pharmacies into the county code; including their setbacks from residential areas and community facilities. Note that all such facilities are licensed by the state and the number of facilities is strictly regulated.
- E. Section 5. Eliminates the requirements for bonding at produced water disposal facilities. This bonding was originally required to cover reclamation of portions of the site not covered by evaporation ponds. State administrative rules have since changed and now require bonding to cover all reclamation; not just the ponds. The county requirement is thus duplicative bonding and can be deleted.
- F. Section 6. Incorporates the new state standards for Critical Infrastructure Materials operations into the county code. Mining operations in existence prior to January 1, 2019 and before the County began regulating such operations have a vested right to continue operations until the operator records a declaration of abandonment. Operations approved by conditional use permit must continue to meet the conditions of approval. A notice is now required on new subdivision plats if there is a vested mining operation within 1,000 feet of the subdivision to put owners on notice that the operation may occasionally cause annoyance or inconvenience.
- G. Section 7. Clarifies that a period of inactivity longer than six months does not disqualify a Critical Infrastructure Materials operation from restarting under its vested rights or earlier conditional use permit.
- H. Section 8. Clarifies the appeal process when decisions of the Zoning Administrator are appealed to the Planning Commission.
- I. Section 9. Incorporates new state law that allows the County and an appellant to designate a third party as an appeal authority.

Mr. Hyde and the Planning Commission reviewed the ordinances and changes and had some discussion about each section.

Mr. Hyde recommends that the Planning Commission recommend to the Duchesne County Commissioners the approval of the amendments to the Duchesne County Zoning Ordinance as set forth in proposed Ordinance #19-373.

Commissioner Clark motioned to send the amendments of the zoning ordinance #19-373 to the County Commission. Commissioner Drake seconded the motion and it passed unanimously.

**NEW BUSINESS:**

None

**Minutes: Approval of August 7, 2019 minutes:**

Commissioner Sweat moved to approve the minutes of August 7, 2019. Commissioner Sorensen seconded the motion and it passed unanimously.

**Commission Comments and Staff Information Items:**

There will be a meeting on November 6 to discuss Senate Bill 34 and a proposed amendment to the housing element of the general plan.

**Adjournment:**

Meeting adjourned at 6:15p.m.