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CANYON COUNTY



CANYON COUNTY DEVELOPMENT SERVICES DEPARTMENT

111 North 11th Avenue #310 • Caldwell, Idaho • 83605 • Phone (208) 454-7458
www.canyoncounty.id.gov

DEVELOPMENT AGREEMENT BETWEEN CANYON COUNTY AND APPLICANT

Agreement number: 24-005

THIS AGREEMENT, made and entered into this 2 day of July, 2024, by and between Canyon County, Idaho, a political subdivision of the state of Idaho, hereinafter referred to as "COUNTY" and LGD Ventures, LLC, hereinafter referred to as "Applicant."

RECITALS

WHEREAS, The Applicant has applied to the County for a conditional rezone from an "A" (Agricultural) Zone to "CR-R-1" (Conditional Rezone – Single Family Residential) Zone (RZ2021-0030), which are legally described in the attached EXHIBIT "A," incorporated by reference herein (hereinafter referred to as "Subject Property"); and

WHEREAS, Parcel R30117, approximately 78.55 acres, is owned by the Applicant; and

WHEREAS, on the 1 day of May, 2024, the Canyon County Board of Commissioners approved a conditional rezone with conditions of the Subject Property to a "CR-R-1" Zone, which was done with Applicant's approval. The conditions of the approval for the conditional rezone are attached hereto as EXHIBIT "B"; and

WHEREAS, the parties desire to enter into an agreement to comply with Canyon County Code of Ordinances §07-06-07(2) & 07-06-07(7), Canyon County Zoning Ordinance, or as amended, and to ensure the Applicants will implement and be bound by the conditions of the rezone order issued by the Canyon County Board of Commissioners; and

NOW THEREFORE, the parties hereto do hereby agree to the following terms:

SECTION 1. AUTHORIZATION.

This Agreement is authorized and required by Idaho Code §67-6511A; Canyon County Code of Ordinances 07-06-07 (Conditional Rezoning).

SECTION 2. PROPERTY OWNER.

Applicants are the owner(s) of Subject Properties which is located in the unincorporated area of Canyon County, Idaho, more particularly described in EXHIBIT "A", attached hereto and incorporated herein, which real property is the subject matter of this Agreement. Applicants represent that they currently hold complete legal or equitable interest in the Subject Properties and that all persons holding legal or equitable interests in the Subject Properties or the operation of the business are to be bound by this Agreement.

SECTION 3. RECORDATION.

Pursuant to Idaho Code §67-6511A and Canyon County Code of Ordinances, this Agreement shall be recorded by the Clerk in the Canyon County Recorder’s Office and will take effect upon the adoption, by the Board of County Commissioners, of the amendment to the zoning ordinance as set forth herein.

SECTION 4. TERM.

The parties agree that this Agreement shall run with the land and bind the Subject Property in perpetuity, and shall inure to the benefit of and be enforceable by the parties, and any of their respective legal representatives, heirs, successors, and assignees. Provided, however, this Agreement shall terminate if the Board of County Commissioners subsequently rezones the property to allow for a higher density use or if annexation of the Subject Property by a city occurs. In this event, however, the Agreement shall only terminate in regards to the portion of the Property that is actually rezoned or annexed, while the remainder of the Property shall remain subject to the Agreement.

If any of the privileges or rights created by this Agreement would otherwise be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common law rules imposing time limits, then such provision shall continue until twenty-one (21) years after the death of the last survivor of the now living lawful descendants of George Herbert Walker Bush, former President of the United States, or for such shorter period as may be required to sustain the validity of such provision.

SECTION 5. MODIFICATION.

This Agreement may be modified only in writing signed by the parties, or their successors in interest, after complying with the notice and hearing procedures of Idaho Code §67-6509 and the requirements of Canyon County Code of Ordinances. The modification proposal must be in the form of a revised Development Agreement and must be accompanied by a statement demonstrating the necessity for the requested modification.

SECTION 6. APPLICATION OF OTHER LAWS TO THE SUBJECT PROPERTIES.

This Agreement shall not prevent the County in subsequent actions applicable to the Subject Properties from applying new rules, regulations, or policies that do not conflict with this Agreement.

SECTION 7. COMMITMENTS.

Applicants will fully and completely comply with the conditions of the approved conditional rezone of the Subject Property from “A” (Agricultural) Zone to “CR-R-1” (Conditional Rezone – Single Family Residential) Zone, which conditions are attached hereto as EXHIBIT “B”.

SECTION 8. USES, DENSITY, AND HEIGHT AND SIZE OF BUILDINGS

The density or intensity of use of the Subject Properties is specified in the commitments of Section 7 unless conditioned otherwise (see EXHIBIT “B”). The uses and maximum height and size of the buildings on the Subject Properties shall be those set pursuant to law, including those contained in the Canyon County Code of Ordinances, that are applicable to an “CR-R-1” (Conditional Rezone – Single Family Residential) zone and those provisions of law that are otherwise applicable to the Subject Property.

SECTION 9. LIABILITY AND INDEMNITY OF COUNTY.

A. COUNTY REVIEW.

Applicants acknowledge and agree that the County is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the County's review and approval of any plans or improvements, or the issuance of any approvals, permits, certificates or acceptances, relating to the use and development of the property described in EXHIBIT "A," and that the County's review and approval of any such plans and the improvements or the issuance of any such approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure or ensure Applicants or any of Applicants' heirs, successors, assigns, tenants, and licensees, against damage or injury of any kind and/or at any time.

B. COUNTY PROCEDURES.

Applicants acknowledge that notices, meetings, and hearings have been lawfully and properly given and held by the County with respect to Applicant's conditional rezone application in Development Services Department Case Number RZ2021-0030 and any related or resulting development agreements, ordinances, rules and regulations, resolutions or orders of the Board of County Commissioners. Applicants agree not to challenge the lawfulness, procedures, proceedings, correctness or validity of any of such notices, meetings, hearings, development agreements, ordinances, rules, regulations, resolutions or orders.

C. INDEMNITY.

Applicants agree to, and do hereby, defend, hold harmless and indemnify the County, the Board of County Commissioners, all County elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any such parties in connection with (i) the County's review and approval of any plans or improvements, or the issuance of any approvals, permits, certificates, or acceptances relating to the use and/or development of the Subject Properties; (ii) any actions taken by the County pursuant to Subsection 9(B) of this Agreement; (iii) the development, construction, and maintenance of the property; and (iv) the performance by County of its obligations under this Agreement and all related ordinances, resolutions, or other agreements.

D. DEFENSE EXPENSES.

Applicants shall, and do hereby agree, to pay, without protest, all expenses incurred by the County in defending itself with regard to any and all of the claims identified in Subsection 9 of this Agreement. These expenses shall include all out-of-pocket expenses, including, but not limited to, attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employees of the County.

SECTION 10. PERIODIC REVIEW.

The County's Development Services Department will administer the Agreement after it becomes effective and will conduct a review of compliance with the terms of this Agreement on a periodic basis, including, but not limited to, each time a development of the Property is platted. Applicants shall have the duty to demonstrate Applicants' compliance with the terms of this Agreement during such review.

SECTION 11. REQUIRED PERFORMANCE.

Applicants shall timely carry out all steps required to be performed and maintain all commitments set forth

in this Agreement and as set forth in County laws, ordinances, rules and regulations as they pertain to the Subject Property including, but not limited to, those concerning the commencement of development, completion of development, preliminary platting and final platting.

SECTION 12. DEFAULT AND REMEDIES.

In the event of a default or breach of this Agreement or of any of its terms or conditions, the party alleging default shall give the breaching party not less than thirty (30) days, Notice of Default, in writing, unless an emergency exists threatening the health and safety of the public. If such an emergency exists, written notice shall be given in a reasonable time and manner in light of the circumstances of the breach. The time of the giving of the notice shall be measured from the date of the written Notice of Default. The Notice of Default shall specify the nature of the alleged default and, where appropriate, the manner and period of time during which said default may be satisfactorily cured. During any period of curing, the party charged shall not be considered in default for the purposes of termination or zoning reversion, or the institution of legal proceedings. If the default is cured, then no default shall exist and the charging party shall take no further action.

SECTION 13. ZONING REVERSION CONSENT.

The execution of this Agreement shall be deemed written consent by Applicants to change the zoning of the Subject Property to its prior designation upon failure to comply with the terms and conditions imposed by the approved conditional rezone and this Agreement. No reversion shall take place until after a hearing on this matter pursuant to Idaho Code §67-6511A. Upon notice and hearing, as provided in this Agreement and in Idaho Code §67-6509, if the properties described in attached EXHIBIT "A " are not used as approved, or if the approved use ends or is abandoned, the Board of County Commissioners may order that the property will revert to the zoning designation (and land uses allowed by that zoning designation) existing immediately prior to the rezone action, i.e., the Subject Property conditionally rezoned from "A" (Agricultural) Zone designation to "CR-R-1" (Conditional Rezone – Single Family Residential) Zone designation shall revert back to the "A" (Agricultural) Zone designation.

SECTION 14. COMPLIANCE WITH LAWS.

Applicants agree that they will comply with all federal, state, county and local laws, rules and regulations, which appertain to the Subject Property.

SECTION 15. RELATIONSHIP OF PARTIES.

It is understood that this Agreement between Applicants and the County is such that Applicants are an independent party and are not an agent of the County.

SECTION 16. CHANGES IN LAW.

Any reference to laws, ordinances, rules, regulations, or resolutions shall include such laws, ordinances, rules, regulations, or resolutions as they have been, or as they may hereafter be amended.

SECTION 17. NOTICES.

Except as otherwise provided in this Agreement and/or by law, all notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof, (1) when delivered in person on a business day at the address set forth below, or (2) in the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage paid, certified or registered mail, return receipt requested, at the addresses set forth below.

Notices and communications required to be given to County shall be addressed to, and delivered at, the following address:

Director
Development Services Department
Canyon County Administration
111 North 11th Avenue, #310
Caldwell, Idaho 83605

Notices and communications required to be given to the Applicant shall be addressed to, and delivered at, the following addresses:

Name: LGD Ventures, LLC
Street Address: PO Box 9325
City, State, Zip: Boise, ID 83707

A party may change its address by giving notice, in writing, to the other party, in the manner provided for in this section. Thereafter, notices, demands, and other pertinent correspondence shall be addressed and transmitted to the new address.

SECTION 18. TERMINATION.

This Agreement may be terminated in accordance with the notice and hearing procedures of Idaho Code §67-6509, and the zoning designation upon which the use is based reversed, upon failure of Applicant(s), a subsequent owner, or other person acquiring an interest in the property described in attached EXHIBIT "A" to comply with the terms of this Agreement. Applicants shall comply with all commitments in this Agreement prior to establishing the approved land use.

SECTION 19. EFFECTIVE DATE.

The commitments contained in this Agreement shall take effect in the manner described in this Agreement upon the County's adoption of the amendment to the zoning ordinance as set forth herein.

SECTION 20. TIME OF ESSENCE.

Time is of the essence in the performance of all terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
CANYON COUNTY, IDAHO

APPLICANT



Commissioner Leslie Van Beek



Garrett Goldberg, LGD Ventures, Property
Owner



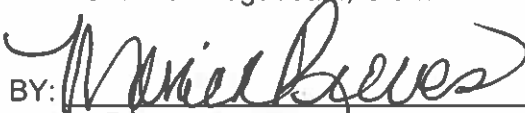
Commissioner Brad Holton



Commissioner Zach Brooks



ATTEST: Rick Hogaboam, Clerk

BY: 

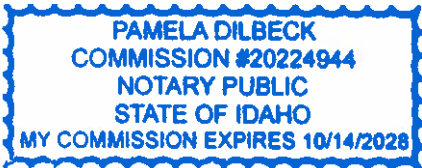
Deputy

DATE: July 2, 2024

(All Applicants must sign and their signatures must be notarized)

STATE OF IDAHO)
) ss.
County of Canyon)

On this 2nd day of July, 2024, before me, a notary public, personally appeared Garrett Goldberg, known to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he/she executed the same on behalf of the Applicant.





Notary Public for Idaho

Residing at: Canyon County Idaho

My Commission Expires: 10/14/2028

EXHIBIT "A"

LEGAL DESCRIPTION

The Northwest Quarter of the Northeast Quarter and then Northeast Quarter of the Northwest Quarter of Section 13, Township 2 North, Range 3 West, Boise Meridian, Canyon County, Idaho;

Excepting therefrom:

Commencing at the Northeast corner of the Northwest Quarter of the Northeast Quarter

of Section 13, Township 2 North, Range 3 West., Boise Meridian, Canyon County, Idaho, the INITIAL POINT of this road right-of-way; thence

South 0°05'02" East (formerly stated at South 0°13'25" West) 1,325.25 feet along the East line of the said Northwest Quarter of the Northeast Quarter, to the Southeast corner thereof; thence

South 89°44'01" West 60.00 feet along the South line of the said Northwest Quarter of the Northeast Quarter; thence

North 0°05'02" West 1,325.22 feet parallel with the said East line to a point on the North line of said Northwest Quarter of the Northeast Quarter; thence

North 89°42'12" East 60.00 feet along the said North line to the INITIAL POINT of this road right-of-way.

EXHIBIT "B"

CONDITIONS OF APPROVAL

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules and regulations that pertain to the property.
2. The subject parcel shall be in subjection to the Canyon County Zoning Ordinance Chapter 7, Article 17 for platting with a maximum of 31 buildable lots with an average lot size of 2.00 acres, in substantial conformance of the concept plan (Lewis Heights Preliminary Plat).
3. The applicant shall comply with CCZO §07-06-07 (4) Time Requirements: "All conditional rezones for a land use shall commence within two (2) years of the approval of the board."
 - a. Commencement shall be the submission of a Preliminary Plat application, submittals and fees to Development Services Department.
4. All storm water drainage shall be retained on site via retention ponds.
5. Internal roadways shall be public roads and built to Nampa Highway District No. 1 standards. The requirements of Nampa Highway District No. 1 shall be met.
6. Pressurized irrigation shall provide irrigation water to each residential lot within the subdivision.
7. A lighted bus stop area shall be placed near the entrance of the subdivision, with coordination with Nampa School District, prior to the Board's signature on the final plat.
8. The development will supply water via a Community Water System.



Board of County Commissioners
Goldberg/LGD Ventures, LLC. - Conditional Rezone — RZ2021-0030

Findings of Fact, Conclusions of Law, and Order

Conditional Rezone - RZ2021-0030

Findings of Fact

1. Darren Goldberg of LGD Ventures, LLC, is requesting a conditional rezone of parcel R30117 from an "A" (Agricultural) Zone to a "CR-R-R" (Conditional Rezone Rural Residential) Zone. The request also includes a proposed Development Agreement with conditions.
2. The 78.5-acre property (Parcel No. R30117) is located on the south side of Lewis Lane, approximately 1300 ft. east of the intersection of Sky Ranch Road and Lewis Ln., Nampa, Idaho. The property is located in a portion of the NE 1/4 of Section 13, T2N, R3W, B.M., Canyon County, Idaho.
3. The conditional rezone is being considered concurrently with the Preliminary Plat for Lewis Heights Subdivision (SD2021-0018).
4. The subject property is not located within an area of city impact.
5. A neighborhood meeting was held on March 16, 2021 pursuant to CCZO §07-01-15.
6. The subject property is located within Nampa Highway District No. 1, Upper Deer Flat Fire District, Nampa School District and Boise Project Board of Control.
7. The public hearing was held by the Planning & Zoning Commission on April 7, 2022, after which the Commission recommended denial of Case No. RZ2021-0030 and SD2021-0018.
8. On November 16, 2022, the Board of County Commissioners held a public hearing at which time they agreed with the applicants request to send the case with new evidence back to the Planning and Zoning Commission review and recommendation.
9. Additional materials from applicant including, but not limited to, updated Preliminary Plat, memo related to community water system, modified letter of intent, and fire district information has been submitted.
10. The public hearing was held by the Planning & Zoning Commission on December 21, 2023, after which the Commission recommended denial of Case No. RZ2021-0030 and SD2021-0018.
11. Notice of the Board of County Commissioners public hearing was provided in accordance with CCZO §07-05-01. Agency notice was provided on January 29, 2024. Full political notice was sent on January 29, 2024. Newspaper notice was published on February 3, 2024. Property owners within 600' were notified by mail on January 29, 2024 and re-noticed on February 9, 2024. The property was posted on February 15, 2024.
12. The record includes all testimony received at the public hearing held on March 14, 2024, as well as public testimony from other hearings, as noted in the minutes of those hearings, the staff report, exhibits, late exhibits entered into the record on March 14, 2024 at the Board of County Commissioner's hearing and documents in Case file No. SD2021-0018.
13. The Board of County Commissioners requested new FCO's to be drafted in the affirmative as well as an updated Development Agreement with conditions be drafted to be presented at a public hearing on May 1, 2024 at 1:30 pm.
14. The record includes all testimony received at the public hearing held May 1, 2024, as well as public testimony from other hearings, as noted in the minutes of those hearings, the staff report, exhibits, late exhibits entered into the record on March 14, 2024 at the Board of County Commissioner's hearing and documents in Case file No. RZ2021-0030.

Conclusions of Law

For this request, the Board of County Commissioners must find and conclude the following regarding the Standards of Review for a Conditional Rezone (CCZO §07-06-07(6)):

1. Is the proposed conditional rezone generally consistent with the comprehensive plan?

The Board in evaluating this criterion considered the following policies, goals and maps from the Plan.

- 1) The subject property is designated as "residential" on the Future Land Use map within the 2020 Canyon County Comprehensive Plan. This is the map applicable to the request and is a portion of the Plan intended to provide guidance to the Board on where uses are predicted to change in the County. This designation is an indication that the Plan would support change of the subject property to a residential use. It's one factor demonstrating the proposed rezone is consistent with the Plan.

2) Chapter 1. Property Rights

Goal 1. Canyon County will ensure that land use policies, restrictions, conditions and fees do not violate private property rights or create unnecessary technical limitations on the use of property.

Policy 8. Promote orderly development that benefits the public good and protects the individual with a minimum of conflict.

Policy 12. Property owners acknowledge and expect that Canyon County will preserve private property rights and values by enforcing regulations that will ensure against incompatible and detrimental neighboring land uses.

The Property Rights section, as highlighted with the selections above, supports the designation change. The Plan favors minimizing incompatibility and use conflict, which the Board believes the proposal does because the use, as a whole, is similar to those surrounding it.

3) Chapter 2. Population

Goal 1. Consider population growth trends when making land use decisions.

Policy 3. Encourage future population to locate in areas that are conducive for residential living and that do not pose an incompatible land use to other land uses.

The Population section, as highlighted with the selections above, supports the designation change. The Plan favors "population to locate for residential living" and considering growth trends. There is a clear residential growth trend in this area, and in the County as a whole, the Plan would encourage continuing to develop in these existing residential areas.

4) Chapter 5. Land Use

Goal 1. To encourage growth and development in an orderly fashion, minimize adverse impacts on differing land uses, public health, safety, infrastructure and services.

Goal 2. To provide for the orderly growth and accompanying development of the resources within the county that is compatible with the surrounding area.

Goal 3. Use appropriate techniques to mitigate incompatible land uses.

Goal 5. Achieve a land use balance, which recognizes that existing agricultural uses and non-agricultural development may occur in the same area.

Goal 6. Designate areas where rural type residential development will likely occur and recognize areas where agricultural development will likely occur.

Policy 1. Review all residential, commercial and industrial development proposals to determine the land use compatibility and impact to surrounding areas.

Policy 2. Encourage orderly development of subdivisions and individual land parcels, and require development agreements when appropriate.

Policy 6. Review all development proposals in areas that are critical to groundwater recharge and sources to determine impacts, if any, to surface and groundwater quantity and quality.

The Land Use section, as highlighted with the selections above, supports the designation change. The Plan encourages ordered growth, minimizing impacts, using appropriate mitigation, designating where rural residential development will occur, and the review of development and groundwater impacts. Again, a consistent factor in considering this proposal is the equivalent surrounding uses because the Plan promotes the order of the continued development pattern. Moreover, this land use process resulted in extensive review of potential impacts, including to groundwater, resulting in increased mitigation in the proposal, which is the process the Plan promotes.

- 5) **Agricultural Policy 3.** Canyon County supports Idaho's Right to Farm laws (Idaho Code § 22-4501-22-4504), as amended.

The proposal will be required to comply with these laws as a condition of the Development Agreement, which the Plan supports.

6) **Chapter 8. Public Services, Facilities and Utilities Component**

Policy 3. Encourage the establishment of new development to be located within the boundaries of a rural fire protection district.

This proposal is within a rural fire protection district, which the Plan supports.

7) **Chapter 9. Transportation**

Policy 13. Ensure that all new development is accessible to regularly maintained roads for fire protection and emergency service purposes.

This proposal will have access to a regularly maintained road, which the Plan supports.

8) **Chapter 11. Housing**

Goal 1. Encourage opportunities for a diversity of housing choices in Canyon County.

The Plan encourages a diversity of housing choices, which includes encouraging large lot rural residential development like the proposal as an option among varied housing choices.

9) **Chapter 12. Community Design**

Policy 9. Encourage pressurized irrigation systems using non-potable water where reasonably possible (Idaho Code 67-6537).

This proposal includes a pressurized irrigation system using non-potable water, which the Plan supports.

In reviewing the Future Land Use Map designation, the sections of the Plan identified herein, and considering the proposed use as discussed above, the Board finds that the proposed conditional is in generally consistent with the comprehensive plan.

2. When considering the surrounding land uses, is the proposed conditional rezone more appropriate than the current zoning designation?

In evaluating this question, the Board must first identify the surrounding land uses. In reviewing the area maps, substantial residential zoning is present within a mile-radius of the subject property. Further, a substantial portion of the public testimony and written comment was provided by residential users within the vicinity. Looking closer, immediately adjacent to the subject property land uses on the east, north, west, and south are platted residential subdivisions. Another residential subdivision was approved immediately to the south of this parcel. Although some agricultural use is ongoing in the area, as noted on both the maps and in public testimony, for the purposes of identifying a primary surrounding use, the Board finds that surrounding land use is substantially residential because of the development of platted subdivisions surrounding the subject parcel.

In reviewing the “more appropriate than the current zoning designation” standard, the Board considers the current and future plan for the area. Considering the predominate, immediate uses are residential from this planning perspective it would make sense for the infill area to change to reflect these uses. The applicant also testified about the limitations of the current agricultural designation because of the immediate residential development. Given these limitations, and the available solution to match the immediate and surrounding zoning, the Board finds the proposed conditional rezone is more appropriate than the current zoning designation of agriculture when the surrounding land uses are considered.

3. Is the proposed conditional rezone compatible with surrounding land uses?

The surrounding land uses are identified in the preceding section and adopted here by reference. The surrounding land use is residential. At the public hearing, opposition raised issues with compatibility primarily in terms of traffic and water impacts and general support for maintaining agricultural uses in the County. Traffic and water impacts will be addressed more specifically later in this decision and those findings are incorporate here by reference.

In this section, the Board is to consider compatibility in comparison to the surrounding land uses. Here, the proposed use is large lot rural residential, which is equivalent in size and scope to surrounding uses. Because the uses are the same, the Board does not find that there will be compatibility issues with the use from a zoning perspective like an industrial use might present to a residential area. For this reason, the Board finds the proposed use is compatible with the surrounding land uses.

4. Will the proposed conditional rezone negatively affect the character of the area? What measures will be implemented to mitigate impacts?

This area south of Lake Lowell was once used for agricultural production, that is not contested. The question before the Board now is whether the character of the area has shifted. Some opposition to the conditional rezone believes that the subject property should remain in agricultural use because the use adds to the character of the area. The opposition also asserts the traffic and water use of the rezone would affect the character of the area.

The property is identified as "residential" on the Canyon County Future Land Use Map and, as noted above, has moved towards that designation to the extent that the subject property is surrounded by residential use on all sides. Because the use has changed along the lines of the Map designation the Board would characterize the immediate area around the subject property as rural residential.

The proposal includes a limited number of large lot residential uses. These uses are equivalent to the surrounding uses. Because the proposed use is equivalent to surrounding uses the Board cannot find that the character of the area would be changed by the use. A dense, small lot subdivision, like those developed within cities, would call for a different determination.

The Board cannot consider the proposition that keeping the subject parcel as agricultural is necessary to preserve other rural residential users' perception of the area. This would violate the property right tenants of the County's Plan discussed above. Traffic and water impacts are discussed and resolved in later sections and adopted here by reference. The Board because they are equivalent traffic and water impacts to those of other users cannot find that this proposed rezone would alter the character of the area.

The proposed conditional rezone will not negatively impact the character of the area.

5. Will adequate facilities and services including sewer, water, drainage, irrigation and utilities be provided to accommodate the proposed conditional rezone?

In this application, the adequacy of sewer, drainage, irrigation and public utilities facilities and services were largely not contested while the adequacy of water facilities and services was a central contested issue. For this reason, each facilities and services category will be addressed separately here.

Septic. The applicant proposes individual septic systems for each residential lot. Southwest District Health Department has jurisdiction over these systems. The record includes information from the applicants planning meeting with the Department indicating what requirements the Department will have. The Department will require a Subdivision Engineering Report (SER) before the Department will approve the final plat. Based on this information, the applicant's proposed sewer plan is adequate to accommodate the proposed rezone.

Water. The applicant initially proposed utilization of individual wells for domestic water. During the hearing process, neighboring residential property owners expressed concerns with the impact of the additional residential water use on their own wells and the availability of ground water in the area in general. Some testimony attributed the area water issues to high agricultural use periods, well construction or maintenance, or well depth—regardless of cause, it is clear that for some residential users a significant issue exists. To assuage concerns about the impact of this proposal, the applicant developed a community water system. The system would be permitted through the Idaho Department of Water Resources, require continual monitoring, limit the number of individual wells and require substantially greater well depth, with the aim of mitigating the concerns with the proposals overall impact on area ground water. Neighboring residential uses maintained their objection to the proposal after the applicant developed the community water system proposal. The applicant's response to the ongoing objection is multifaceted. The applicant's engineer testified that water data for the area indicates that the water table is stable. With the community system proposed the applicant asserts that the total groundwater drawn will be less than the current available agricultural groundwater draw—increasing the water available for all users.

The Board's objective in this section is to determine the adequacy of the proposed water facilities and services for the proposed rezone. Here, because the availability of water to the area in general was contested, the evidence presented has drifted from the question. The applicant provided detailed plans for the community water system supported by professional engineers which demonstrate facilities and services proposed will support the proposed use. To the question of overall availability of ground water for all users, although a resolution is not required for a positive finding here, the applicant has made a compelling case that the proposed community system will lessen the overall water usage of the subject parcel and, thus, leave more water available in total. The Board finds the applicant has met his burden to show that the water facilities and services are adequate for the proposed use.

It's clear that there are legitimate concerns and issues in the area. That said, this zoning hearing, or any zoning hearing for that matter, is not the venue to resolve individual water issues or general concern with water availability in this area.

Drainage. Boise Project Board of Control indicate that storm water runoff must be retained on site. The applicant has proposed retaining runoff on site in retention ponds. County engineers indicate this plan is adequate for the use. Based on this information, the applicant's proposed drainage plan is adequate to accommodate the proposed rezone.

Irrigation. The area irrigation districts state that the subject property is without surface irrigation rights. The applicant doesn't dispute this. Instead, the applicant proposes utilizing ground water for pressurized irrigation for each residential lot. The applicant's letter of intent states the existing irrigation well on the property will be used to supply the water. The applicant proposes a pump station to be located within a common lot for this purpose. There is significant debate in the record regarding the availability of ground water, that is addressed herein; however, the adequacy of the irrigation plan itself is not contested. Based on this information, the applicant's proposed irrigation plan is adequate to accommodate the proposed rezone.

Public utilities. The applicant proposes using public power utility systems for each residential lot. This plan was not contested. Based on this information, the applicant's proposed utility plan is adequate to accommodate the proposed rezone.

6. Does the proposed conditional rezone require public street improvements in order to provide adequate access to and from the subject property to minimize undue interference with existing or future traffic patterns? What measures have been taken to mitigate road improvements or traffic impacts?

The Board's record contains input from the Idaho Transportation Department and Nampa Highway District No. 1 on the potential need for public road improvement and the potential for interference with existing or future traffic patterns. ITD said the development would create minimal impact. The highway district indicated that the traffic generated by the proposed development would not require a traffic impact study. The highway district accepted the applicant's access request. The record also contains public comment on concerns with residential use interfering with agricultural users and generalized concerns about additional residential users increasing traffic congestion and general concern that the roads are insufficient for current or additional traffic.

In this case, where there is a discrepancy between the public's perception of roadway capacity and the roadway jurisdiction's view, the Board will rely on the roadway jurisdiction's guidance on these questions as the agencies have the authority and expertise for roadway planning and capacity. Public perception of roadway needs is often different from the technical or engineering requirements—and the Board does not discount the public perspective. However, the Board's view of this questions is that it calls for review of the technical need for public road improvement and for this reason the agencies view on these issues carries a substantial weight.

The comments from the roadway agencies indicate that proposed conditional rezone will not require public street improvements, in reliance on this evidence, the Board finds the proposed conditional does not rezone require public street improvements in order to provide adequate access to and from the subject property to minimize undue interference with existing or future traffic patterns. Any mitigation measures to mitigate road improvements or traffic impacts requested by the roadway agencies will be incorporated into the development agreement as a condition of approval and listed therein.

7. Does legal access to the subject property for the development exist or will it exist at the time of development?

The applicant has proposed public road access via parcel frontage on Lewis Lane, a public road. Nampa Highway District No.1 has jurisdiction over Lewis Lane. In NHD's communication on this case it specified what its requirements for public road access from the subject property. The highway district is a signatory on the final plat and can determine, at the time of the final plat, if its requirements are satisfied. There is no evidence in the record contesting the subject properties ability to gain access via Lewis Lane at the time of development. Because NHD has accepted the applicant's public road access plan the Board finds that legal access to the subject property will exist at the time of development.

8. Will the proposed conditional rezone amendment impact essential public services and facilities, such as schools, police, fire and emergency medical services? What measures will be implemented to mitigate impacts?

Notice of the proposal was provided to the required public service entities. Deer Flat Fire District indicated it could

provide fire services under certain conditions. Nampa School District indicated a general concern with overcrowding of school but did not specifically assert that services would be impacted. NSD did request that the applicant install a lighted bus stop area. No other essential service provider provided comment or indicated that the proposed use would require additional public funding to meet the needs created by the requested use to school, police, fire, and emergency medical services. Based on the responses received from the agencies, and lack of responses from other noticed agencies, the Board does not find evidence from an essential service provider that the proposal will have a significant impact on essential public services and facilities. The Development Agreement will include the fire suppression measures required by the Fire District and the bus stop requested by the School District as mitigation to potential impacts.



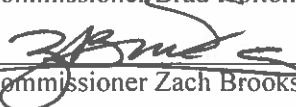
Order

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Board of County Commissioners **approves** Case #RZ2021-0030, a conditional rezone from an "A" zone (Agricultural) to an "CR-R-R" zone (Conditional Rezone Rural Residential) for Parcel No. R30117 subject to conditions of the development agreement (Attachment A of this document).

DATED this 2 day of July, 2024.

CANYON COUNTY BOARD OF COMMISSIONERS

- Motion Carried Unanimously
- Motion Carried/Split Vote Below
- Motion Defeated/Split Vote Below

	Yes	No	Did Not Vote
 _____ Commissioner Leslie Van Beek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 _____ Commissioner Brad Holton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 _____ Commissioner Zach Brooks	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Attest: Rick Hogaboam, Clerk

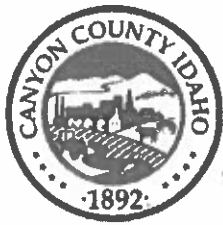
By: 

Deputy

Date: 7-2-24

ATTACHMENT A
CONDITIONS OF THE DEVELOPMENT AGREEMENT

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules and regulations that pertain to the property.
2. The subject parcel shall be in subjection to the Canyon County Zoning Ordinance Chapter 7, Article 17 for platting with a maximum of 31 buildable lots with an average lot size of 2.00 acres, in substantial conformance of the concept plan (Lewis Heights Preliminary Plat).
3. The applicant shall comply with CCZO §07-06-07 (4) Time Requirements: "All conditional rezones for a land use shall commence within two (2) years of the approval of the board."
 - a. Commencement shall be the submission of a Preliminary Plat application, submittals and fees to Development Services Department.
4. All storm water drainage shall be retained on site via retention ponds.
5. Internal roadways shall be public roads and built to Nampa Highway District No. 1 standards. The requirements of Nampa Highway District No. 1 shall be met.
6. Pressurized irrigation shall provide irrigation water to each residential lot within the subdivision.
7. A lighted bus stop area shall be placed near the entrance of the subdivision, with coordination with Nampa School District, prior to the Board's signature on the final plat.
8. The development will supply water via a Community Water System.



**Board of County Commissioners
Lewis Heights Subdivision — SD2021-0018**

FINDINGS, CONCLUSIONS, CONDITIONS, ORDER

Preliminary Plat — SD2021-0018

Findings

1. Darren Goldberg LGD Ventures, LLC, is a preliminary plat (including irrigation & drainage) for Lewis Heights Subdivision (Attachment A).
2. The 78.5-acre property (Parcel No. R30117) is located on the south side of Lewis Lane, approximately 1300 ft. east of the intersection of Sky Ranch Road and Lewis Ln., Nampa, Idaho. The property is located in a portion of the NE¹/₄ of Section 13, T2N, R3W, B.M., Canyon County, Idaho.
3. The plat is being considered concurrently with a conditional rezone from an "A" (Agricultural) Zone to a "CR-R-R" (Conditional Rezone Rural Residential) Zone (RZ2021-0030). The conditional rezone application was recommended for approval on December 21, 2023.
4. The subject property is not located within an area of city impact.
5. Lewis Heights Subdivision contains 31 residential lots.
6. The Subdivision would be serviced by individual septic systems and a community water system.
7. Internal public roads will provide access to each residential lot.
8. The subject property is located within Nampa Highway District No. 1, Upper Deer Flat Fire District, Nampa School District and Boise Project Board of Control.
9. The development is not located in a floodplain (Flood Zone X).
10. The public hearing was held by the Planning & Zoning Commission on April 7, 2022, after which the Commission recommended denial of Case No. RZ2021-0030 and SD2021-0018.
11. On November 16, 2022, the Board of County Commissioners held a public hearing at which time they agreed with the applicants request to send the case with new evidence back to the Planning and Zoning Commission.
12. Additional materials from applicant including, but not limited to, updated Preliminary Plat, memo related to community water system, modified letter of intent, and fire district information has been submitted.
13. The public hearing was held by the Planning & Zoning Commission on December 21, 2023, after which the Commission recommended denial of Case No. RZ2021-0030 and SD2021-0018.
14. Notice of the Board of County Commissioners public hearing was provided in accordance with CCZO §07-05-01. Agency notice was provided on January 29, 2024. Full political notice was sent on January 29, 2024. Newspaper notice was published on February 3, 2024. Property owners within 600' were notified by mail on January 29, 2024 and re-noticed on February 9, 2024. The property was posted on February 15, 2024.
15. The record includes all testimony received at the public hearing held on March 14, 2024, as well as public testimony from other hearings, as noted in the minutes of those hearings, the staff report, exhibits, late exhibits entered into the record on March 14, 2024 at the Board of County Commissioner's hearing and documents in Case file No. SD2021-0018.
16. The Board of County Commissioners requested new FCO's to be drafted in the affirmative as well as an updated Development Agreement with conditions be drafted to be presented at a public hearing on May 1, 2024 at 1:30 pm.
17. The record includes all testimony received at the public hearing held May 1, 2024, as well as public testimony from other hearings, as noted in the minutes of those hearings, the staff report, exhibits, late exhibits entered

into the record on March 14, 2024 at the Board of County Commissioner's hearing and documents in Case file No. SD2021-0018.

Conclusions of Law

Pursuant to CCZO §07-17-09(4): Commission Action:

"The commission or hearing examiner shall hold a noticed public hearing on the preliminary plat. The hearing body shall recommend that the board approve, approve conditionally, modify, or deny the preliminary plat. The reasons for such action will be shown in the Commission's minutes. The reasons for action taken shall specify:

- 1. The ordinance and standards used in evaluating the application;*
- 2. Recommendations for conditions of approval that would minimize adverse conditions, if any;*
- 3. The reasons for recommending the approval, conditional approval, modification, or denial; and*
- 4. If denied, the actions, if any, that the applicant could take to gain approval of the proposed subdivision."*

Pursuant to CCZO §07-17-09(5): Board Action:

"The board shall consider the commission's recommendation at a noticed public hearing. The board shall base its findings upon the evidence presented at the board's public hearing, and within thirty (30) calendar days declare its findings. It may sustain, modify or reject the recommendations of the commission and make such findings as are consistent with the provisions of this chapter and the Idaho Code. The findings shall specify:

- 1. The ordinance and standards used in evaluating the application;*
- 2. The reasons for approval or denial; and*
- 3. If denied, the actions, if any, that the applicant could take to gain approval of the proposed subdivision."*

Standard of Review for Subdivision Plat:

- A. Idaho Code, Sections 67-6512, 6509 and 6535 (Subdivisions, Hearings, Decisions);
- B. Idaho Code, Sections 50-1301 through 50-1329 (Platting);
- C. Idaho Code, 31-3805 (Irrigation)
- D. Canyon County Code §07-17-19 (Preliminary Plat)
- E. Canyon County Zoning Ordinance (CCZO), Article 17 (Subdivision Regulations).
 - a. The preliminary plat was found to be complete by Keller Associates (Exhibit C, Attachment 1) subject to conditions of approval.

Conditions of Approval

1. All subdivision improvements and amenities shall be bonded or completed prior to the Board of County Commissioner's signature on the final plat.
2. Historic irrigation lateral, drain, ditch flow patterns, and easements shall be maintained unless approved in writing by the local irrigation entity.
3. Finish grades at subdivision boundaries shall match existing finish grades. Runoff shall be maintained on subdivision property unless otherwise approved (Exhibit C, Attachment 1).
4. Plat shall comply with the requirements of Nampa Highway District No. 1 (Exhibit I, Attachment 7b). Evidence of compliance shall be Nampa Highway District No. 1 signature on the final plat.
5. The development shall comply with Southwest District Health requirements (Exhibit C, Attachment 9). Evidence of compliance shall be Southwest District Health's signature on the final plat.

6. An Irrigation Water User's Maintenance Agreement for all lots within the development shall be recorded with the Canyon County Recorder's Office prior to the Board signing the final plat.
7. Prior to the Board signing the final plat, an easement or common lot shall be added to provide a United States Postal Service community mailbox unless waived by the United States Postal Service.
8. Plat shall comply with the International Fire Code as administered through Upper Deer Flat Fire District.
9. A lighted bus stop area shall be placed near the entrance of the subdivision, with coordination with Nampa School District, prior to the Board's signature on the final plat.

Order

Based upon the Findings of Fact, Conclusions of Law contained herein for Case No. SD2021-0018 the Board of County Commissioners **approves** the Preliminary Plat (irrigation & drainage plan) for Lewis Heights Subdivision.

DATED this 2 day of July, 2024.

CANYON COUNTY BOARD OF COMMISSIONERS

- Motion Carried Unanimously
 Motion Carried/Split Vote Below
 Motion Defeated/Split Vote Below

	Yes	No	Did Not Vote
<u>Commissioner Leslie Van Beek</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Commissioner Brad Holton</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Commissioner Zach Brooks</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Attest: Rick Hogaboam, Clerk

By: Theresa Reeves
Deputy

Date: 7-2-24