



BOARD OF COUNTY COMMISSIONERS
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In the matter of the application of:

Jimenez – CU2023-0002-APL

The Canyon County Board of County Commissioners considered the following:

- An appeal submitted by Bristlecone Land Use Consulting, representing JC Excavation regarding a Planning & Zoning Commission's decision for the denial of Case CU2023-0002, a conditional use permit to allow a Staging Area use within an "A" (Agricultural) Zoning District.

[CU2023-0002, 80 S Robinson Rd, Nampa. (Parcel Number: R30624010), a portion of the NW¼ of Section 29, T3N, R1W, BM, Canyon County, Idaho]

Summary of the Record

1. The record is comprised of the following:
 - A. The record includes all testimony, the staff report, exhibits, and documents in CU2023-0002-APL
 - B. Findings of Fact, Conclusions of Law and Order signed by the Planning and Zoning Commission on July 6, 2023. (Exhibit E of the staff report)
 - C. An appeal filed by Elizabeth Allen, Bristlecone Land Use Consultants, LLC was submitted on July 14, 2023 pursuant to Canyon County Code §07-05-07 (Exhibit B & C of the Staff Report).
 - D. On September 21, 2023, the Board of County Commissioners remanded the application back to the Planning and Zoning Commission to more wholly flush out the possible conditions and more fully consider the evidence.
 - E. On January 18, 2024, the Planning and Zoning Commission heard the appeal and signed FCOs on February 1, 2024 in denial of the Appeal and ultimately the Conditional Use Permit.
 - F. On February 12, 2024, an appeal was filed by Elizabeth Allen, Bristlecone Land Use Consultants, LLC pursuant to Canyon County Code §07-05-07.
 - G. On May 29, 2024, the Board of County Commissioners heard the appeal and accepted public testimony. The case was continued to June 17, 2024.
 - H. On June 17, 2024, the Board of County commissioners continued deliberation on the appeal, and rendered a decision to approve the appeal, overturning the decision by the Planning and Zoning Commission. The approval contains conditions.

Applicable Law

1. The following laws and ordinances apply to this decision: Canyon County Code §01-17 (Land Use/Land Division Hearing Procedures), Canyon County Code §07-05 (Notice, Hearing and Appeal Procedures), Canyon County Code §07-07 (Conditional Use Permits), Canyon County Code §07-02-03 (Definitions), Canyon County Code §07-10-27 (Land Use Regulations (Matrix)), Canyon County Code §07-14 (Use Standards), Idaho Code §67-6512 (Special Use Permits, Conditions, and Procedures), and Canyon County Code 09-11-25 (Area of City Impact Agreement).
 - a. Notice of the public hearing(s) was provided per CCZO §07-05-01 and Idaho Code §67-6509.

- b. The decisions of the commission or the hearing examiner may be appealed to the board by filing a written notice of appeal with DSD within fifteen (15) calendar days of the date the FCOs were signed. The notice of appeal should include a statement of the reasons for the appeal and must be accompanied by a filing fee as established by the adopted fee schedule. *See* CCZO §07-05-05.
2. The Board has the authority to exercise powers granted to it by the Idaho Local Land Use and Planning Act (“LLUPA”) and can establish its own ordinances regarding land use. *See* I.C. §67-6504, §67-6512.
3. The Commission shall have those powers and perform those duties assigned by the board that is provided for in the local land use planning act, Idaho Code, title 67, chapter 65, and county ordinances CCZO §07-03-01 and §07-07-01.
4. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Idaho Code § 67-6512.
5. Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those: (1) Minimizing adverse impact on other development; (2) Controlling the sequence and timing of development; (3) Controlling the duration of development; (4) Assuring that development is maintained properly; (5) Designating the exact location and nature of development;(6) Requiring the provision for on-site or off-site public facilities or services; (7) Requiring more restrictive standards than those generally required in an ordinance; (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction. Idaho Code § 67-6512.
6. The burden of persuasion is upon the applicant to prove that all criteria, are satisfied. CCZO §07-05-03.
7. There are no mandates in the Local Planning Act as to when conditional permits may or may not be granted, aside from non-compliance with the community master plan. I.C. § 67-6512. Chambers v. Kootenai Cnty. Bd. of Comm'rs, 125 Idaho 115, 117, 867 P.2d 989, 991 (1994).
8. Idaho Code §67-6535(2) requires the following: The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record. The County’s hearing procedures adopted per Idaho Code §67-6534 require that final decisions be in the form of written findings, conclusions, and orders. CCZO §07-05-03(1)(1).

The application CU2023-0002 (CU2023-0002-APL) was presented at a public hearing before the Canyon County Board of County Commissioners on May 29, 2024. The hearing was continued to June 17, 2024 for deliberation. Having considered all the written and documentary evidence, the record, the staff report, oral testimony, and other evidence provided, including the conditions of approval and project plans, the Board of County Commissioners decides as follows:

FINDINGS OF FACT & CONCLUSION OF LAW

- (1) The applicant filed an appeal to CU2023-0002-APL on February 12, 2024, pursuant to Canyon County Code §07-05-05 asking the Board of County Commissioners (“Board”) to deny the findings signed by the Planning and Zoning Commission. (Staff Report Exhibits C1)
- (2) The Board reviewed the written findings (Staff Report Exhibit A), testimony, and evidence presented in the public hearings on the application. The Board remanded the case back to the Planning and Zoning Commission to more wholly flush out possible conditions and to more fully consider the evidence. (See Summery of the Record 1C and 1D)

- (3) The Board of County Commissioners found the criteria have not been adequately supported by evidence demonstrating consistency with the required criteria pursuant to CCZO §07-07-05.
- (4) The Board reviewed the written findings from the second Planning and Zoning Commission decision (Staff Report Exhibit C1), testimony (Staff Report Exhibit D1), and evidence presented in the public hearings on the application. The Board, after reconsidering the Conditional Use Permit application along with proposed conditions of approval, does not concur with the Planning and Zoning Commissions' decision and findings of fact denying the case (Staff Report Exhibit E) and there is sufficient evidence to *support positive findings* for all criteria pursuant to CCZO §07-07-05 with conditions imposed. By supporting the appeal, the decision therefore approves the Conditional Use Permit.

Criteria 1: Is the proposed use permitted in the zone by conditional use permit?

Per Canyon County Zoning Ordinance §07-10-27, a staging area is allowed in the "A" agricultural zone subject to an approved conditional use permit.

Criteria 2: What is the nature of the request?

The request for the staging area is for the applicant's excavation business. This includes the capability to store the necessary materials and vehicles on site, allowing the employees to come and retrieve the proper equipment and materials daily. All work is to be done off-site.

Criteria 3: Is the proposed use consistent with the comprehensive plan?

The request is consistent with seven (7) goals and ten (10) policies from the 2030 Comprehensive Plan.

Chapter 1: Property Rights	
G1.01.00	Protect the integrity of individual property rights while safeguarding public health, safety, and welfare.
P1.01.01	No person should be deprived of private property without due process of law.
Chapter 2: Population	
G1.02.00	Acknowledge the responsibilities of each property owner as a steward of the land, use their property wisely, maintain it in good condition, and preserve it for future generations without becoming a public nuisance.
G2.02.00	Promote housing, business, and service types needed to meet the demand of the future and existing population.
Chapter 3: Economic Development	
G3.01.00	Promote a healthy and sustainable regional economy by retaining, expanding, and recruiting businesses to favorable locations.
P3.01.01	Direct business development to locations that can provide necessary services and infrastructure.
P3.01.02	Support suitable sites for economic growth and expansion compatible with the surrounding area.
P3.01.03	Support business development in opportunity zones, foreign trade zones, and urban renewal districts.
G3.05.00	Support a diverse economy in Canyon County and recognize that residential, commercial, and industrial uses are necessary components of overall economic stability.
Chapter 4: Land Use and Community Design	
G4.01.00	Support livability and high quality of life as the community changes over time.
P4.01.01	Maintain a balance between residential growth and agriculture that protects the rural character.

P4.01.02	Planning, zoning, and land-use decisions should balance the community's interests and protect private property rights.
G4.03.00	Develop land in a well-organized and orderly manner while mitigating or avoiding incompatible uses, protecting public health and safety, and creating a vibrant economy through sustainable land use planning.
P4.03.01	Designate areas that may be appropriate for industrial, commercial, and residential land uses while protecting and conserving farmland and natural resources.
P4.03.02	Encourage the development of individual parcels and subdivisions that do not fragment existing land use patterns.
P4.03.03	Recognize that each land use application is unique and that agricultural and non-agricultural uses may be compatible and co-exist in the same area and in some instances may require conditions of approval to promote compatibility.
P4.04.01	Support development in locations where services, utilities, and amenities are or can be provided.

Criteria 4: Will the proposed use be injurious to other property in the immediate vicinity and/or negatively change the essential character of the area?

As conditioned, the proposed use was not found to be injurious to other property owners in the immediate vicinity, and/or negatively change the essential character of the area.

The site visit and subsequent written materials and pictures presented by the applicant showed the surrounding area is clustered with agricultural production, some residential uses in the agricultural zone, and other permitted and unpermitted businesses utilizing similar equipment and materials. Within one mile of the proposed staging area, there is an approved contractor shop/staging area with similar conditions (PH2013-9) approximately 300 feet south, gravel extraction operation to the north and a feed lot and a dairy to the South.

Public testimony on the January 18, 2024 at the Planning and Zoning Commission and May 24, 2024 at the Board included divergent opinions from nearby residents regarding the impact on their properties from the use. Two residents testified on May 24, 2024 with concerns regarding the size of the property in relation to the magnitude and scope of the business operation being too large were discussed, and concerns about the noise of the machinery used to load materials and dust abatement. Two other residents testified on May 24, 2024 that there are other nearby similar uses as what is being requested and they do not have a problem with the applicant's current work and find them to be good neighbors.

According to the letter of intent filed with this appeal and pictures shown at the hearing, the applicant has removed the dirt storage at the site, to mitigate some of the impact to neighbors and a condition was proposed to ensure no dirt will be stored on the site, reducing some impact with machinery needed to load the trucks with dirt on site. An updated site plan presented by the applicant also included additional berms and fencing. Applicant's representative also indicated other similar uses nearby and that much of the equipment utilized on the site is similar to farming equipment being used nearby in active agricultural operations.

Conditions are included with the approval that will mitigate impact to other properties in the immediate vicinity and address the potential for any changes to the essential character of the area. The Board also noted that while there are larger lot residential uses in the vicinity, the zoning is agricultural and the requested use is similar in nature with equipment, hours and impact as agricultural activities. A condition is also included for modified hours of operation which will mitigate many of the public concerns.

Evidence includes the application, additional materials provided by the applicant, public testimony, and the staff report and exhibits found in both case number CU2023-0002 and case number CU2023-0002-APL.

Criteria 5: Will adequate water, sewer, irrigation, drainage and stormwater drainage facilities, and utility systems be provided to accommodate the use?

Adequate sewer, water, drainage, irrigation, and utilities will be provided to accommodate the request. The request includes no increase or effect on the use of sewer, water, drainage, irrigation, and utilities. All the affected agencies were notified and no comments were received.

Criteria 6: Does legal access to the subject property for the development exist or will it exist at the time of development?

As conditioned, the site must comply with Nampa Highway District requirements, which will achieve legal access. According to the comment letter received from Nampa Highway District, the applicant will need to comply with all standards set forth by the highway district as seen in Exhibit G1, Exhibit G, Attachment 5b in the Staff Report.

Criteria 7: Will there be undue interference with existing or future traffic patterns?

After reviewing the entire record including pictures, comments by Nampa Highway District, public testimony, rebuttal testimony on the issue from the applicant's representative, and further discussions on the site layout and access, finds that as conditioned, the requested use of the site will not cause undue interference with traffic patterns and that the testimony of the public was not compelling on this issue. Robinson Road is relatively flat in this area, with sufficient site distance and future plans to support the use.

Per review by the Nampa Highway District, there is no indication that the use would increase the traffic enough to warrant a traffic impact study. Nampa Highway District required that a paved apron to meet Commercial standards be constructed. (Exhibit G1, Exhibit G, Attachment 5b from the Staff Report).

Public testimony given at the Planning and Zoning Commission hearing on June 15, 2023 (Exhibit G1, Exhibit F from the Staff Report for January 18, 2024), testimony given at the January 18, 2024 public hearing, and testimony at the Board public hearing on May 29, 2024, included concerns regarding the high existing traffic volume on Robinson Road and the potential impacts heavy equipment would have coming and leaving the property. With the appeal, the applicant has proposed removing the dirt storage on the site. This would decrease the amount of equipment coming and going throughout the day, essentially reducing the amount of heavy truck traffic.

Criteria 8: Will essential services be provided to accommodate the use including, but not limited to, school facilities, police and fire protection, emergency medical services, and irrigation facilities, and will the services be negatively impacted by such use or require additional public funding in order to meet the needs created by the requested use?

All essential services will be adequately provided to the request and will not negatively impact or require more public funding for the requested needs. All essential services were notified and no comments of concern or objection were received.

Nampa Fire District does not oppose the application and verified that essential services will be provided to accommodate the requested use. (Exhibit G1, Exhibit 4, Attachment a)

- (5) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on April 17, 2024. Newspaper notice was published on April 19, 2024. Property owners within 600' were notified by mail on April 16, 2024. The property was posted on April 25, 2024.
- (6) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0002-APL & Case No. CU2023-0002.

**Canyon County Code 09-11-25 (Area of City Impact Agreement) –NAMPA AREA OF CITY IMPACT
AGREEMENT ORDINANCE**

Conclusion: The property is located within the Nampa Area of City Impact. A notice was sent to the City of Nampa per Canyon County Code Section 09-11-25. Pursuant Canyon County Code Section 09-11-25, the City of Nampa provided comment on the request seen in Staff Report Exhibit G, Attachment 5a. Conditions have been applied to ensure the use does not impact Nampa’s planned future use.

The City of Nampa was notified on February 23, 2023, August 9, 2023, December 6, 2023, and April 17, 2024, pursuant to Section 09-11-25 of the Canyon County Code. The comment letter received from the City of Nampa (Staff Report Exhibit G, Attachment 5a) are in regards to their Comprehensive Plan and their Future Land Use designation of Low Density Residential. The future designation does not support the staging area use.

According to Canyon County Code Section 09-11-17: Canyon County’s Comprehensive Plan has jurisdiction within Nampa’s area of City Impact. Canyon County shall give consideration to the city’s comprehensive plan map designations when evaluating development requests within the Nampa area of city impact. Canyon County’s Comprehensive Plan designates the Future Land Use of this area as Agriculture. As a condition of approval, the proposed use of the staging area shall terminate at such time that Nampa city limits are touching the subject property on two sides.

Order

Based upon the Findings of Fact, Conclusions of Law, and Order contained herein, the Board of County Commissioners approve Case No. CU2023-0002-APL, the appeal for a Conditional Use Permit for a Staging Area for Parcel No. R30624010. By the Board support of the appeal, the application is also approved, subject to the following conditions as enumerated:

Conditions of Approval

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules, and regulations that pertain to the subject property and the proposed use.
2. The development shall be in general conformance with the applicant’s operations plan, letter of intent, and site plan with the exception of excluding the placement of berms. (Exhibit B1, Attachment a)
3. The applicant shall comply with all Nampa Fire District requirements in accordance with the Idaho State adopted International Fire Code.
4. The applicant shall comply with Nampa Highway District access requirements.
5. The access road/driveway to the business must comply with CCZO §07-10-03 Private Road and Driveway Standards. Evidence shall be an engineer’s certification and approval by Development Services that roads meet the established requirements for private road and driveway standards within six months of the approval date of the CUP.
6. The facility shall be maintained in compliance with CCZO Chapter 2 Article 1: Public Nuisances.
7. Sight obscuring six-foot vinyl solid fences shall be installed along the frontage of Robinson Blvd, outside of any right-of-way, easements, and sight triangle, and along the northern property line adjacent to the staging area use. The fence must be constructed within 6 months of the approval date of the CUP.
8. No dirt shall be staged on site. Staging area will be treated and kept in a condition to mitigate dust. Dust shall be controlled per applicable federal, state, and county laws, ordinances, rules, and regulations that pertain to operations including but not limited to nuisance regulations (CCZO Chapter 2 Article 1: Public Nuisances) and

shall be consistent with Idaho Department of Environmental Quality (DEQ) and Environmental Protection Agency (EPA) requirements.

- 9. The use of the staging area shall terminate at such time that Nampa city limits are touching the subject property on two sides.
- 10. All exterior lighting, if installed, shall be downward facing and directed away from surrounding properties.
- 11. Signage shall meet all applicable requirements of CCZO §07-10-13 prior to constructing any signs on the property.
- 12. The hours of operation shall be 8:00 a.m. to 6:00 p.m. Monday through Friday.
- 13. This conditional use permit must follow land use time limitation as stated in CCZO 07-07-23: “When a conditional use permit is granted, the land use or construction of its facility proposed in the application must have commenced within three (3) years of the date of the final decision by the presiding party or a court of appropriate jurisdiction. The improvements for the approved use must be completed within five (5) years of the same date.
- 14. This permit shall be granted only to JC Excavation. The use shall expire upon change of ownership of the business or the property.

Pursuant to Section 67-6535 of the Idaho Code, there are 14 days from the date of the final, written decision to seek reconsideration before seeking judicial review.

DATED this 11th 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			
<u>Brad Holton</u> Commissioner Brad Holton	X		
<u>Zach Brooks</u> Commissioner Zach Brooks	X		

Attest: Rick Hogaboam, Clerk

By: JROSS

Date: 07.11.24