



4:45 p.m.

Workshop in the County Council Chambers.

5:30 p.m.

Call to order.

Opening remarks/Pledge – Jason Watterson.

Review and approval of agenda.

Review and approval of the minutes of the November 5, 2015 meeting.

5:35 p.m.

Consent Items

- (1) **Hepner CUP**- A request for approval of a conditional use permit to allow an accessory apartment in a single family dwelling located on 10 acres of property at 815 North Highway 23 in the Agricultural (A10) Zone.
- (2) **Victor Israelsen Subdivision 1st Amendment** - A request for a recommendation of approval to add an additional buildable lot to an existing 1-lot subdivision located on 38.01 acres of property at 1795 South 2400 West, west of Logan in the Agricultural (A10) Zone.

Regular Action Items

- (3) **Public Hearing 5:40 p.m. – Whittier Rezone** - A request for a recommendation of approval to the County Council for the rezone of 5 acres of property from the Agricultural (A10) Zone to the Rural (RU2) Zone, located at 580 South 3200 West, west of Logan.
- (4) **Whisper Ridge CUP** - A request for approval of a conditional use permit to allow guided cat skiing on ~30,000 acres of property located in the Scare Canyon area.
- (5) **Esplin Andersen Subdivision** - A request for a recommendation of approval for a 2-lot subdivision on 5 acres of property located at 4560 North 400 West, west of Smithfield in the Agricultural (A10) Zone.
- (6) **Wild Bunch Kennel CUP** – A request for approval of a conditional use permit to allow a boarding and breeding kennel located on 1.14 acres of property at 5670 North Highway 23, Cache Junction (Agricultural, A10 Zone).
- (7) **Discussion** - 1200 Home Based Business Amendments
- (8) **Discussion** – General code amendments/updates
- (9) **Elections for Planning Commission Chair and Vice Chair**

Board Member Reports

Staff reports

Adjourn



PLANNING COMMISSION MINUTES

05 NOVEMBER 2015

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3. Com-Tech Manufacturing Rezone - Withdrawn	
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5. Wild Bunch Kennel Conditional Use Permit – Moved to December by proponent	
6. Discussion – Floodplain Buffer - Postponed	
7. Discussion – Agri-Tourism - Postponed	

1 **Present:** Chris Harrild, Josh Runhaar, Lane Parker, Chris Sands, Rob Smith, Phillip Olsen, Megan Izatt,
2 Lee Edwards

3
4 **Start Time: 05:33:00**

5
6 **Sands** welcomed and **Smith** gave opening remarks

7
8 **05:35:00**

9
10 **Agenda**

11
12 Adopted with the removal of items 3, 5, 6, and 7.

13
14 **Minutes**

15
16 Adopted with no changes.

17
18 **05:38:000**

19
20 **Regular Action Items**

21
22 **#1 Barber Conditional Use Permit (Andrew & Shelly Barber)**

23
24 **Harrild** reviewed Mr. Andrew Barber’s request for a conditional use permit (CUP) to allow an accessory
25 apartment in a single family dwelling located on 50.25 acres of property at 6189 south 2400 West, east of
26 Wellsville (Agricultural, A10 Zone). The intent for the apartment is for a potential semi-private living
27 space for members of their family at their own discretion, such as elderly parents or married children.
28 The proposed apartment does not have its own entrance, utilities, water, septic, or parking area. The
29 proposed use must comply with the requirements for definition 1120 – Accessory Apartment.

30
31 **Mr. Andrew Barber** if you change the process for this, can I get my money back?

32
33 **Harrild** unfortunately, no.

34
35 **Mr. Andrew Barber** there was some angst over this issue because as I filled out the application with
36 staff I was told to answer “does not apply” for all the questions.

37
38 *Olsen* motioned to approve the Barber Conditional Use Permit with the stated conditions and findings of
39 fact; *Smith* seconded; **Passed 4, 0.**

40
41 **Sands** just for your information that use will now run with the property.

42
43 **05:45:00**

44
45 **#2 Public Hearing: 5:40 p.m. - Powder Mountain Sprint Rezone (Robert Blackie and Shammikka**
46 **Chisolm)**

47
48 **Harrild** reviewed Mr. Robert Blackie and Ms. Shammikka Chisolm’s request for a recommendation of
49 approval for a rezone of a 0.69 acre portion of 73.69 acres of property in the Resort Recreation (RR) Zone
50 to include the Public Infrastructure (PI) Zone, located at Powder Mountain. The existing facility at this
51 site is at present a legal, nonconforming use. Approval of the rezone request would bring the tower into

1 conformance with the Cache County Code, and allow additional permitting to occur on the site. While the
2 closest fire protection on the Cache County side is from Wellsville, it is more likely that fire protection
3 would come from the Weber County side.

4
5 **Lane Fishburn/Sprint** our application is actually for a microwave dish. I've seen the build projects for
6 the next 5 years and I have not seen anything in the plans for another tower at all.

7
8 **5:49:00**

9
10 *Smith* motioned to open the public hearing; **Parker** seconded; **Passed 4, 0.**

11
12 **5:50:00**

13
14 *Smith* motioned to close the public hearing due to no public comment; **Parker** seconded; **Passed 4, 0.**

15
16 *Smith* motioned to recommend approval of the Powder Mountain Sprint Rezone to the County Council
17 with the stated findings of fact; **Parker** seconded; **Passed 4, 0.**

18
19 **05:51:00**

20
21 **#3 Public Hearing: 5:50 p.m. – Com-Tech Manufacturing Services Inc. Rezone**

22
23 Application was withdrawn.

24
25 **#4 Musselman Airport Conditional Use Permit (Greg Musselman)**

26
27 **Harrild** reviewed Mr. Musselman's request for approval of a conditional use permit (CUP) to allow a
28 private airport located on 114.32 acres of property at 11800 South 1300 East, Avon (Agricultural, A10
29 Zone). This item was continued from October's meeting. Staff and commission discussed the items the
30 FFA deemed did not apply to the type of aircraft that will be using this runway and also discussed the
31 location of the nearest home. The flight pattern is setup to not impact or fly over that home unless it is an
32 emergency situation. The road was the main issue and staff was waiting on the review of the fire district
33 at the time of the last planning commission. The Fire Marshall has reviewed the project and has stated
34 that the proposed airstrip, the access road shall be a minimum of 12' wide, all-weather surface such that
35 fire apparatus and emergency medical vehicles are able to access the site in a minimal amount of time
36 under weather conditions common to the area. The other thing to note is the fire district has stated that
37 during the winter the Fire District does not have apparatus capable of traveling over snow and will not be
38 able to provide fire protection in the event of an accident. Furthermore, medical assistance will be delayed
39 and will require a response by the Cache County Sherriff's office Search and Rescue Team.

40
41 **Staff and commission** discussed the necessary improvements on the road. Mr. Musselman will have to
42 lay gravel down to meet the requirements of the Fire District. Some members expressed concerns with
43 applying public road requirements when fire protection and medical personal will not be able to access
44 this site always. Staff upholds the requirements of the Fire Marshall and he has to enforce the code.

45
46 **Mr. Greg Musselman** I actually had an opportunity to talk with the Fire Marshall about this and he wrote
47 a letter to the Development office. My issue is, and Mr. Olsen is aware of the road, the road is just a dirt
48 road and people can drive around on the grass to get past things. But I did scrape the ground today and I
49 sent pictures to Chris. My argument with this is, if the road isn't passable I won't be going up there and
50 there won't be a need for emergency services. Also, in the wintertime if we use this, the Fire Department
51 has already said they won't be able to get up there. I actually propose that we strike #5 from the

1 requirements and I assume the responsibility. Also, if I have an emergency elsewhere, on the side of the
2 mountain or wherever, obviously there won't be a road to access that either. That road has been there a
3 very long time and obviously isn't passable when super wet.

4
5 **Sands** are you concerned with the all-weather surface?

6
7 **Mr. Musselman** if I am going to have to haul in gravel, that road is about ½ mile long and that is going
8 to be a considerable expense. If there is a way for me to assume responsibility for that I would rather let
9 that be a year round thing.

10
11 **Harrild** if we change condition #5 to read "In order to provide for the public safety in the form of fire and
12 emergency medical service to the proposed airstrip, the proponent must make any improvements to the
13 existing access as required by the Cache County Fire District or Fire Board", that way the Fire District
14 can be included in the discussion and if it needs to be appealed to the Fire Board then it can.

15
16 **Staff and commission** discussed condition# 5. Staff is required to uphold the Fire Code so staff cannot
17 give that exemption and this Commission doesn't have the authority to give that exemption either. With
18 rewriting condition #5 then it allows the Fire District and the Fire Board to weigh in on the issue further.
19 Staff is required to work within the code.

20
21 **Mr. Musselman** what constitutes land disturbance?

22
23 **Runhaar** removing the vegetation. If you are farming the land we don't care, but if you are digging it up
24 for roads and buildings, that is considered disturbance.

25
26 **Mr. Musselman** if we are grading it to remove bumps and smooth it out is that disturbing it?

27
28 **Runhaar** keep it less than 5,000 square feet and it will be fine. The meaning for that is we don't want a
29 large rainstorm to come and hit a new construction site and wash all that dirt away.

30
31 **Rebecca Phillips** I apologize in advance; this is very emotional for us. If you look at the proposed site
32 our house is at the end of the strip. I am here against this conditional use. The prior runway that he had
33 was set on a residential area and again the end of the runway was towards our house. There were times he
34 would fly our plane towards our house. When this new proposed runway was set up we didn't have any
35 concerns until we saw that the runway was positioned towards our house. He has stated that he would not
36 fly over house unless it was an emergency situation. That makes us even more concerned and we feel puts
37 our house more at risk if it's an emergency. If you look at this, you can see the semi-circle of trees and
38 then our house is just beyond that. Our frustration is his house is located less than 300 yards to the right of
39 this and yet the only way he could position the runway is right at our house. If this is such a safe
40 endeavor, why couldn't the runway be turned to go over his own home? There is a concern about fire. If
41 fire protection cannot get up there that is a concern. In the summer that is all dry brush but that fire will
42 spread and that will affect our house and other structures in the area. I want the fire department's
43 recommendation to be there. He may want to assume his own reasonability, but what about responsibility
44 for the people and structures around there? We did not buy our house to have a runway near it. The
45 people who are making this decision don't have to live with consequences or potential danger. We keep
46 hearing this is safe but you hear frequently about planes crashing and hitting homes. He may want to
47 assume his own risk for his safety but my concern is the risk to my family, my property, my livestock,
48 everything that we have there. I understand this is his dream but his dream has been our nightmare for
49 years. I just ask you to put yourself in our position.

1 Staff and commission discussed the distances that have been talked about in previous meeting. There is
2 1213 feet from the end of the runway to the structure and the proposed runway is the length required by
3 the FAA. The actually take off distance is supposed to be shorter than the actual runway.
4

5 **Ms. Phillips** is this the direction that you will be flying every time?
6

7 **Mr. Musselman** No. The reason it is the way it is, is because the lay of the land. Also, the wind factors
8 into the location of the airstrip. My intent is that you will actually never see the plane. The traffic pattern
9 that I have identified, that is pretty easy to do. If I'm headed north, those landmark trees are really easy to
10 make and are nowhere near your house. The FAA requirement in a rural area is that you have to clear any
11 structures, vehicles, or people by 500 feet. Worst case scenario, if I take off the very last of that runway I
12 will easily clear your house by 600 feet. Any aircraft right now could fly over any house in that area at
13 500 feet and do so legally and safely. Your house is not in danger from this project. My schedule won't
14 allow me to use it more than once per week anyway. If you had felt that strongly about this, I wish you
15 would have talked to me sooner.
16

17 **Ms. Phillips** we have discussed this several times with him and it is an insult to us for him to say that.
18 I'm frustrated because we have repeatedly voiced our concerns several times over the years about this
19 plane. We have addressed our concern with Mr. Musselman and it has been ignored.
20

21 **Mr. Musselman** I only flew off the other strip for about 6 months before we received the letter from the
22 County that we had to cease and desist because it needed to be zoned. One, I didn't know it was illegal to
23 do that and I discussed this with the county attorney. He told me I'm allowed to taxi my airplane up and
24 down the field but I couldn't take off and land from my land because that constitutes an airport. I have
25 tried to move the airstrip so it is far enough away from everybody. I don't know how much safer we can
26 make this. It's the piece of ground I could find that we can do this and do it safely. It is my intent that they
27 will never see the plane.
28

29 **Staff and commission** discussed the length of the runway and what length of runway is needed to take
30 off.
31

32 *Smith motioned to approve the Musselman Airstrip with the noted conditions and findings of facts with*
33 *the edits to Condition #5; Olsen seconded; Passed 3, 1 (Sands voted nay).*
34

35 **06:24:00**
36

37 **#5 Wild Bunch Kennel Conditional Use Permit** 38

39 Item moved to December at the request of the proponent.
40

41 **Staff Reports** 42

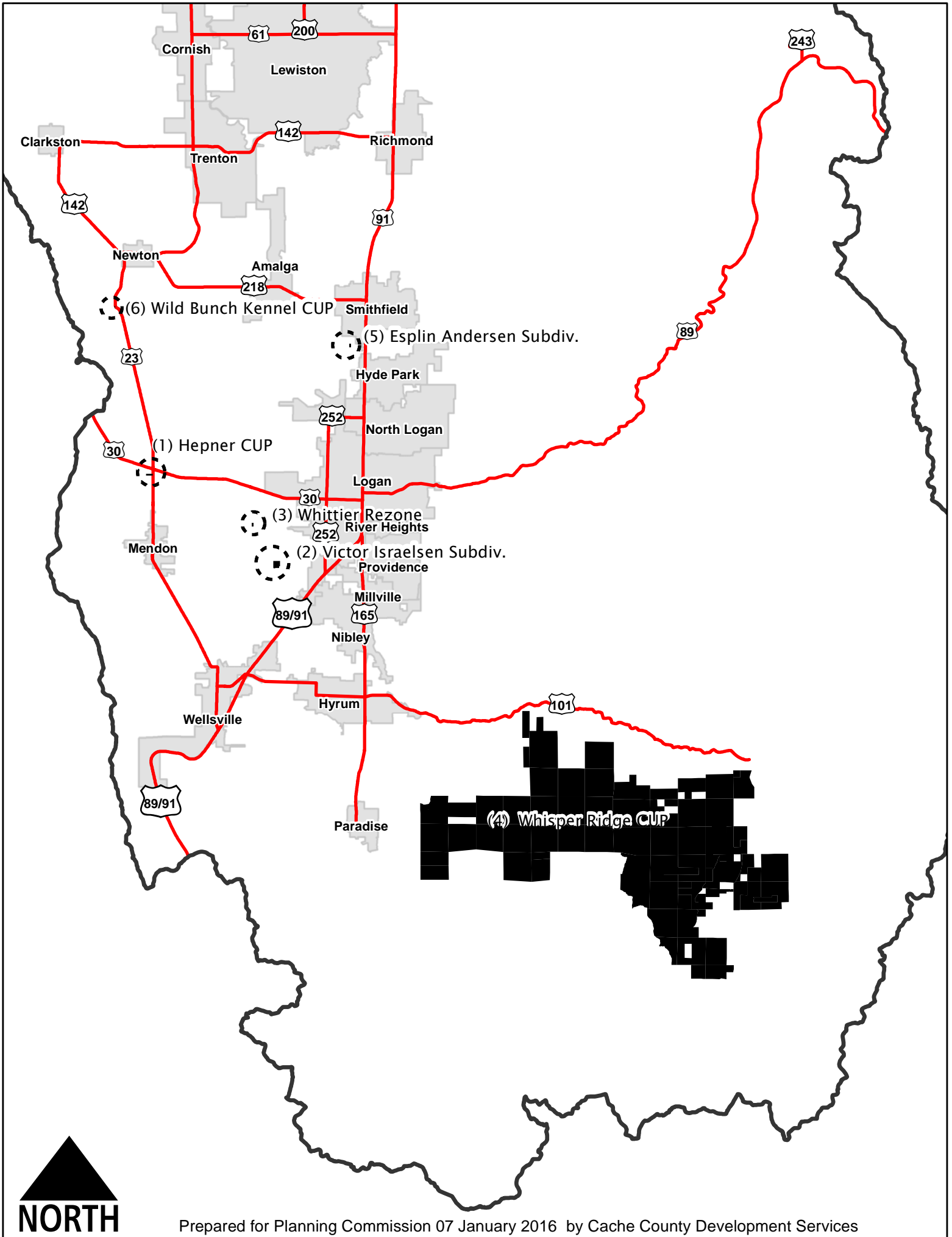
43 **Runhaar** Stephanie turned in her resignation and has her last day two weeks ago. We are actively trying
44 to find someone to fill her position.
45

46 **Harrild** Staff has put together a summit to be held at the Riverwoods Conference center. It is from 9 am
47 to 3 pm and the purpose is to try and have a better conversation between the developers, the planners, and
48 elected officials so everyone knows the intent as Cache Valley grows and further develops. The Plannign
49 Commission is invited to attend.
50

51 **Sands** what does the agenda look like for next month?

1
2 **Harrild** Wild Bunch will most likely be on there and there is another CUP for a recreation facility out by
3 Scare Canyon.
4
5 **06:32:00**
6
7 **Adjourned**

DRAFT



NORTH

STAFF REPORT: HEPNER ACCESSORY APARTMENT CUP

07 January 2016

This staff report is an analysis of the application based on adopted county documents, standard county development practices, and available information. The report is to be used to review and consider the merits of the application. Additional information may be provided that supplements or amends this staff report.

Agent: Ronald Hepner

Parcel ID#: 12-033-0023

Staff Determination: Approval with conditions

Type of Action: Administrative

Land Use Authority: Cache County Planning Commission

PROJECT LOCATION

Reviewed by: Christopher Harrild, Senior Planner

Project Address:

815 North Highway 23

Mendon, UT 84325

Current Zoning:

Agricultural (A10)

Acres: 10.00

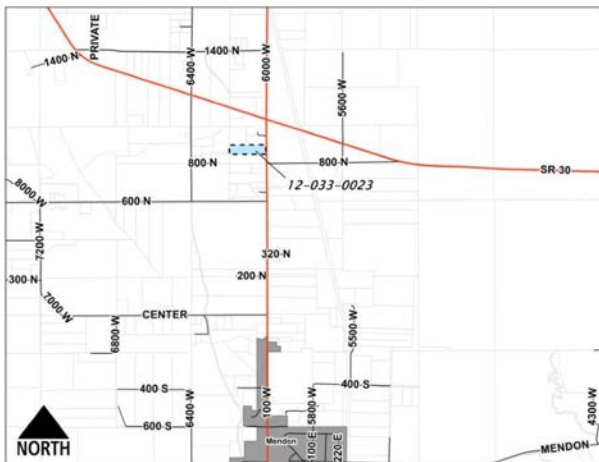
Surrounding Uses:

North – Agricultural/Residential

South – Agricultural/Residential

East – Agricultural

West – Agricultural/Residential



PROJECT PURPOSE, APPLICABLE ORDINANCE, SUMMARY, AND PUBLIC COMMENT

Purpose:

To review and make a decision regarding the request for a conditional use permit to allow an accessory apartment.

Ordinance:

This proposed use is best defined as “1120 Accessory Apartment” under Cache County Ordinance §17.07.020 Definitions, and as per §17.09.030 Schedule of Uses by Zone, this use is permitted as a conditional use in the Agricultural (A10) Zone only if reviewed and approved in accordance with the conditional use review procedures of §17.06 Uses. These procedures are detailed under §17.06.060 Conditional Uses and §17.06.070 Standards and Criteria for Conditional Use.

Summary:

This is an existing single family dwelling. The applicant(s) intends to use an approximately 750 square foot portion of their basement that includes one bedroom, a kitchen, a bathroom, and a private

outside access. The apartment will house up to three tenants, e.g. a small family of three. It is intended that the apartment residents will use the existing parking

Specific to “1120 Accessory Apartment”, the proposed use must comply with the following Cache County requirements:

1. Be located within an existing single-family dwelling which has been designated, built, or converted to accommodate an independent housing unit.
2. Must be approved by the Bear River Health Department and County Building Department with respect to sanitation, water, drainage, and all applicable health codes and requirements and must also comply with all applicable zoning, building, and safety codes, including the obtaining of a building permit.
3. Only one accessory apartment is allowed per legal lot.
4. The existing primary single-family dwelling unit or the accessory apartment must remain owner occupied.

Access:

- Access to the property is from State Route 23 and is adequate. Previous review by UDOT identified that while the issuance of a CUP triggers their review process, a cursory review on their part is adequate in this case, as the extent of development is not sufficient for a formal review.

Water & Septic:

- An adequate, approved, domestic water right is in place for the existing dwelling.
- There is an existing on-site septic tank system.

Service Provision:

- Emergency access to the site is adequate. Fire protection will be provided by the Mendon Fire Department.

Public Comment:

Notices were mailed to the property owners located within 300 feet and municipalities within one mile of the subject property. At this time no public comment regarding this proposal has been received by the Development Services Department.

STAFF DETERMINATION AND FINDINGS OF FACT (3)

It is staff’s determination that the request for the Hepner Conditional Use Permit, located in the Agricultural (A10) Zone at 815 North Highway 23 with parcel number 12-033-0023 is in conformance with the Cache County Ordinance and should be approved. This determination is based on the following findings of fact:

1. The Hepner Conditional Use Permit has been revised and amended by the conditions of project approval to address the issues and concerns raised within the public and administrative records.
2. The Hepner Conditional Use Permit has been revised and amended by the conditions of project approval to conform to the requirements of Title 17 of the Cache County Code and the requirements of various departments and agencies.
3. The Hepner Conditional Use Permit has been reviewed in conformance with §17.06.070 of the Cache County Ordinance, Standards and Criteria for Conditional Use, and conforms to said title, pursuant to the conditions of approval, and specifically:
 - a. Is located within an existing single-family dwelling which has been designated, built, or converted to accommodate an independent housing unit.

- b.** Has been approved by the Bear River Health Department and County Building Department with respect to sanitation, water, drainage, and all applicable health codes and requirements and must also comply with all applicable zoning, building, and safety codes, including the obtaining of a building permit.
- c.** Only one accessory apartment is being requested.

CONDITIONS OF APPROVAL (1)

The following condition is appurtenant to the existing property and must be followed for the development to conform to the County Ordinance and the requirements of county service providers.

- 1.** The existing primary single-family dwelling unit or the accessory apartment shall remain owner occupied.

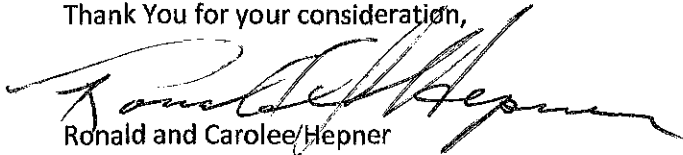
Nov 20, 2015

Cache County Development Services Department

We have an area in our basement that is approximately 750 square feet with one bedroom that we propose to use as an apartment. The area has full kitchen and bathroom. It has a private outside access. We propose to use this apartment for grandchildren going to college and as a general use apartment for individuals, couples and possibly a young family up to three maximum tenants if this is acceptable to the County. We do not want more than two adults and one child living in the apartment. If we foresee a need for a grandchild in the future it may be unused for an extended period of time to ensure it is available for family use.

We have ample parking for those using the apartment. Our home has a well with emergency power for the well and heating system in case the power is out. The tenants will use the garbage and recycle bins used by the primary residents of the home.

Thank You for your consideration,



Ronald and Carolee Hepner

STAFF REPORT: VICTOR ISRAELSEN 1ST SUBDIVISION AMENDMENT

07 January 2016

This staff report is an analysis of the application based on adopted county documents, standard county development practices, and available information. The report is to be used to review and consider the merits of the application. Additional information may be provided that supplements or amends this staff report.

Agent: Andrew Israelsen

Parcel ID#: 11-028-0025

Staff Determination: Approval with conditions

Type of Action: Administrative

Land Use Authority: Cache County Council

LOCATION

Reviewed by: Chris Harrild - Senior Planner

Project Address:

~1795 North 2400 West

West of Logan

Current Zoning:

Agricultural (A10)

Acres: 38.01

Surrounding Uses:

North – Agricultural/Residential

South – Agricultural/Residential

East – Agricultural/Residential

West – Agricultural/Residential



PROJECT PURPOSE, APPLICABLE ORDINANCE, SUMMARY, AND PUBLIC COMMENT

Purpose:

To review and make a recommendation to the County Council regarding the proposed amendment to the Victor Israelsen Subdivision.

Ordinance:

As per the Cache County Zoning Ordinance Table §17.10.030 Development Density and Standards Specific to Base Zoning Districts, this proposed subdivision qualifies for a development density of one (1) unit per ten (10) acres.

Summary:

This subdivision was created via CUP in 1986. It currently consists of one parcel with an existing dwelling and an agricultural parcel. The intent of this proposal is to divide an additional buildable lot from the existing agricultural parcel with access to the new parcel from 1800 South.

Access:

- The current Cache County Manual of Roadway Design and Construction Standards §2.5 specifies that:
 - ▶ Roads serving more than three dwellings must meet the minimum standard of a 22' wide paved surface with 1' wide gravel shoulders.
 - ▶ Roads serving 3 or fewer dwellings must meet the minimum standard of a 20' wide gravel surface; a 2' wide gravel shoulder may also be required.
- Access to the proposed lot is from county road West 1800 South; the county performs winter maintenance on this road.
- West 1800 South meets and/or exceeds the county minimum standard. At this location the county road currently serves more than 3 dwellings, provides farm access, and has an average paved width of 21.5', with 1.5' wide gravel shoulders.
- Staff recommends that a design exception be granted for the substandard portions of West 1800 South as the total road width exceeds the minimum standard.

Water & Septic:

- An adequate, approved, domestic water right must be in place at the time of final plat recordation for both building lots within the proposed subdivision.
- The proposed lot is feasible for an on-site septic tank system.

Service Provision:

- The residents shall provide sufficient shoulder space on West 1800 South for the residential refuse and recycle containers to sit four feet apart and be out of the travel lane for Monday collection.
- A school bus stop is located at 2400 West 1800 South at the southeast corner of the proposed subdivision.
- Any driveways shall meet all applicable requirements of the current International Fire Code, minimum County standards, and any other applicable codes.
- Access for emergency services is adequate. Water supply will be provided by the Logan City Fire Department.

Public Comment:

Notices were mailed to the property owners located within 300 feet and municipalities within one mile of the subject property. At this time no public comment regarding this proposal has been received by the Development Services Department.

STAFF DETERMINATION AND FINDINGS OF FACT (5)

It is staff's determination that the Victor Israelsen Subdivision 1st Amendment, on parcel 11-028-0025 located at approximately 1795 North 2400 West, is in conformance with the Cache County Ordinance requirements and should be forwarded to the County Council with a recommendation of approval. This determination is based on the following findings of fact:

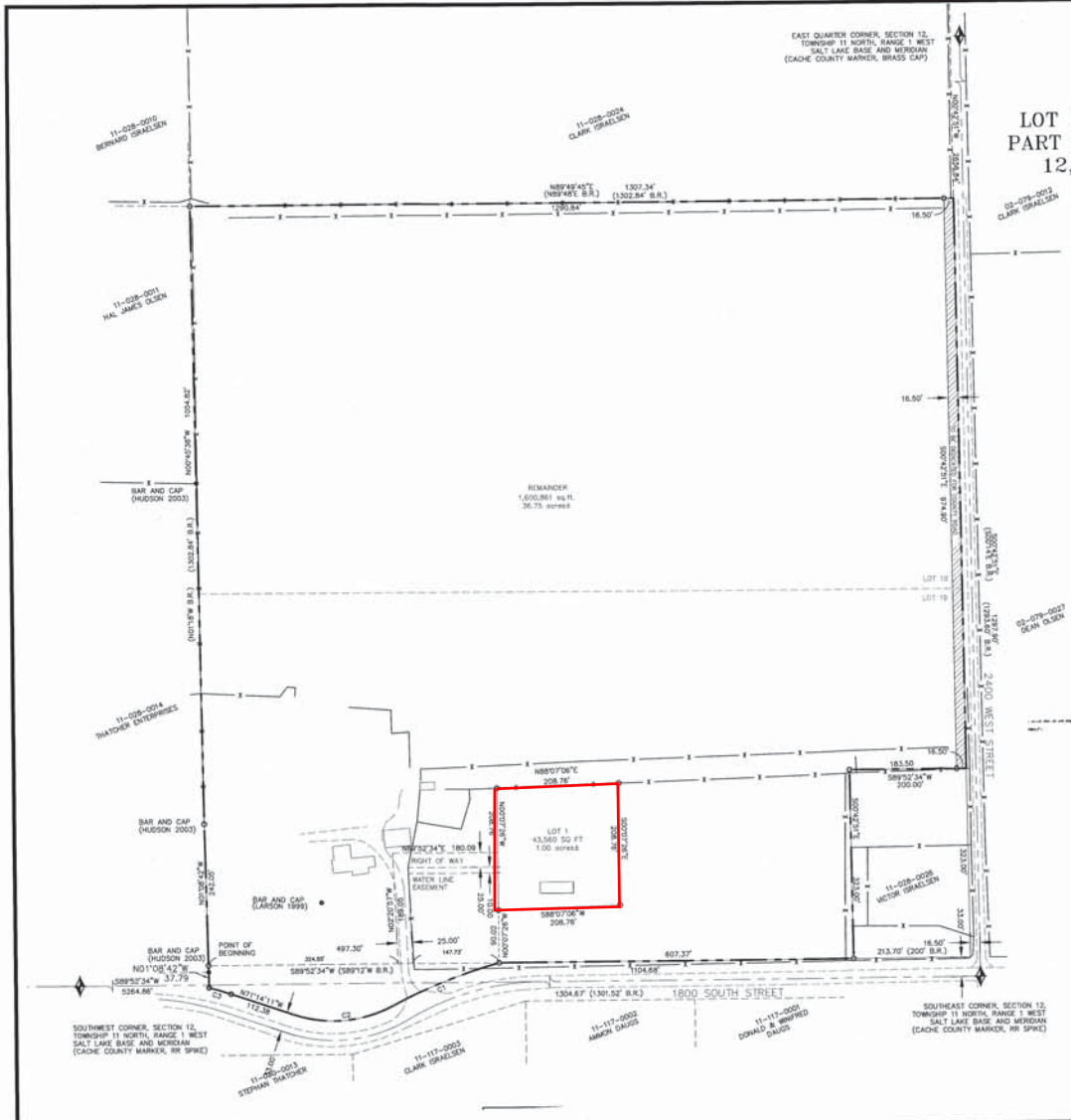
1. The Victor Israelsen Subdivision 1st Amendment has been revised and amended by the conditions of project approval to address the issues and concerns raised within the public and administrative records.
2. The Victor Israelsen Subdivision 1st Amendment has been revised and amended by the conditions of project approval to conform to the requirements of Titles 16 and 17 of the Cache County Code and the requirements of various departments and agencies.
3. The Victor Israelsen Subdivision 1st Amendment conforms to the preliminary and final plat requirements of §16.03.030 and §16.03.040 of the Cache County Subdivision Ordinance.

4. The Victor Israelsen Subdivision 1st Amendment is compatible with surrounding land uses and will not interfere with the use and enjoyment of adjoining or area properties.
5. A design exception is hereby granted for the substandard portions of West 1800 South as the total road width exceeds the minimum standard.

CONDITIONS OF APPROVAL (5)

The following conditions must be met for the developments to conform to the County Ordinance and the requirements of county service providers.

1. Prior to final plat recordation the proponent shall meet all applicable standards of the Cache County Ordinance.
2. Prior to final plat recordation, adequate, approved, domestic water rights shall be in place for all building lots within the subdivision.
3. The applicant shall reaffirm their 33' portion of Cache County's 66' wide right-of-way for all county roads along the proposed subdivision boundary.
4. An encroachment permit must be obtained for any work, including access drives, within the Cache County right-of-way.
5. The proponent shall provide sufficient shoulder space on West 1800 South for the residential refuse and recycle containers to sit four feet apart and be out of the travel lane.



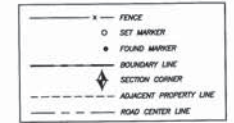
VMI SUBDIVISION
LOT 19 AND 19 RICHLAND ACRES ALSO BEING
PART OF THE SOUTHEAST QUARTER OF SECTION
12, TOWNSHIP 11 NORTH, RANGE 1 WEST,
SALT LAKE BASE & MERIDIAN
CONTAINING 38.12 ACRES +/-



- SURVEY ABSTRACT**
1. THE BASIS OF BEARING FOR THIS SURVEY IS SOUTH 07°32'1" EAST ALONG EAST SECTION LINE OF SAID SECTION 19 FROM FOUND MARKERS.
 2. THE PURPOSE OF THIS SURVEY IS TO ENDEAVOR TO DIVIDE THE PARCELS OF LAND RECORDED UNDER ENTRY NUMBER 1033282, BOOK 1886, PAGE 288 IN THE OFFICE OF THE CACHE COUNTY RECORDER AS SHOWN.
 3. RETRACEMENT: THE SOUTH LINE WAS RETRACED BY A 33.00' OFFSET FROM THE SECTION LINE AS INDICATED BY THE RICHLAND ACRES PLAN FOR THE NORTH LINE OF 2400 SOUTH STREET. THE EAST LINE IS BY 18.1' OFFSET FROM THE EAST QUARTER SECTION LINE AS INDICATED BY THE RICHLAND ACRES PLAN. REVDICES ALONG THE WEST AND NORTH RELATIVELY CLOSELY MATCH THE PLATTED DIMENSIONS.
 4. 5/8" X 3/4" REBAR AND PLASTIC CAPS TO BE SET FOR CORNERS.

- ADDITIONAL NOTES**
1. CACHE COUNTY HAS NOT DETERMINED THE AVAILABILITY AND ADEQUACY OF CULINARY WATER TO ANY OF THE LOTS DESCRIBED. ALL OWNERS ARE ADVISED OF THE REQUIREMENTS TO OBTAIN AN APPROVED CULINARY WATER SOURCE AND COMPLY WITH ALL OTHER REQUIREMENTS FOR THE ISSUANCE OF TONING CLEARANCE, PRIOR TO THE ISSUANCE OF ANY BUILDING PERMITS.
 2. NO STORM WATER DRAINAGE SHALL BE ALLOWED TO FLOW FROM ANY LOT OR PARCEL OF THE SUBDIVISION TO ANY ADJACENT PROPERTIES OR LOTS, DITCHES, CANALS, OR WATERWAYS WITHOUT THE PRIOR WRITTEN AUTHORIZATION FROM THE AFFECTED PARTY.
 3. PRESENT AND FUTURE PROPERTY OWNERS MUST BE AWARE THAT THEY WILL BE SUBJECT TO THE SIGHTS, SMELLS, AND SOUNDS OF AGRICULTURAL ACTIVITIES WHICH ARE THE PERMITTED USES IN THE AGRICULTURAL ZONE.
 4. BUILDING SETBACKS: FRONT: 30 FEET; SIDE: 12 FEET; BACK: 30 FEET.

CURVE	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	184.51	233.45	194.09	S87°27'00"W	330°30'
C2	178.03	217.00	173.08	S80°15'30"W	470°26'
C3	38.95	508.00	38.94	N73°25'58"W	473.20'



SURVEY CERTIFICATE

I, Victor Israelson, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR AND THAT I HOLD CERTIFICATE NO. 23865, AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY THAT BY THE AUTHORITY OF THE CHIEF OF STATE I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAN AND DESCRIBED BELOW AND HAVE SUBDIVIDED SAID TRACT INTO LOTS AND STREETS, HEREINAFTER TO BE KNOWN AS THE SUBDIVISION, AND THE SAME HAS BEEN CORRECTLY MEASURED AND ALL STREETS ARE THE DIMENSIONS SHOWN.

Victor Israelson SURVEYOR
1790 NORTH 2400 WEST OFFICE
 SALT LAKE CITY, UTAH

BOUNDARY DESCRIPTION

Legal Description

Part of Lot 19 and Lot 18 of Richland Acres Subdivision also located in the Southeast Quarter of Section 12, Township 11 North, Range 1 West Salt Lake Base and Meridian and further described as follows:

Beginning at the Southwest corner of said Lot 19; and thence Northerly along the West line of said Lots 19 and 18 in the following 2 courses (N 07°18'42" West, 242.05 feet to 2. North 07°45'38" West, 1054.82 feet to the Northeast corner of said Lot 18; thence North 89°49'45" East along the North line of said Lot 18, 1302.34 feet (N 89°49'45" East, 1302.84 feet by record) to the Northeast corner of said Lot 18; thence South 02°42'51" East along the posted West right of way line of 2400 West Street and the East line of said Lot 18 and Lot 19 (South 07°14' East by record), 874.80 feet to a point that bears North 07°42'51" West (N 07°14' W by record), 323.00 feet to the Southwest corner of said Lot 18; thence South 89°23'24" West (West by record), 300.00 feet; thence South 02°42'51" East (South by record), 323.00 feet to the North line of 1800 South Street and the South line of said Lot 18; thence South 89°23'24" West along the South line of said Lot 18, 602.37 feet; thence Westerly along the North right of way line of said 1800 South Street being Northerly, 32.00 feet to the center line of said 1800 South Street in the following 4 courses: 1. 134.51 feet along a curve to the left with a radius of 853.45 feet, included angle of 170°33'00" and a long chord that bears South 86°17'08" West, 184.09 feet to a point of reverse curvature; 2. 178.03 feet along a curve to the right with a radius of 217.00 feet, included angle of 47°02'26" and a long chord that bears South 85°13'30" West, 173.08 feet; 3. 178.03 feet along a curve to the left with a radius of 217.00 feet, included angle of 47°02'26" and a long chord that bears North 73°25'58" West, 38.94 feet to the Southern extension of the West line of said Lot 18; thence North 07°18'42" West along the Southern extension of the West line of said Lot 18, 37.29 feet to the beginning. Containing 38.12 acres +/-.

OWNER/SUBDIVIDER:
VICTOR ISRAELSON
1790 NORTH 2400 WEST
YOUNG WARD, UTAH 84321
1-435-838-9468



Project Title: **VMI SUBDIVISION**
 YOUNG WARD, UTAH

Sheet Title: **FINAL PLAN**

Drawn By: LJM/SH	Project Number: 12-050	Sheet No.: 1
Designed By: LJM/SH	Date: 27 APR 2012	1 of 1
Reviewed By: LJM/SH	Sheet Scale: 1" = 100'	

COUNCIL APPROVAL AND ACCEPTANCE

PRESENTED TO THE _____ COUNCIL THIS _____ DAY OF _____ A.D. 20____ AT WHICH TIME THIS SUBDIVISION WAS APPROVED AND ACCEPTED.

 COUNCIL CHAIRPERSON

 ATTEST: CLERK

CACHE COUNTY ATTORNEY

APPROVED AS TO FORM THIS _____ DAY OF _____ A.D. 20____

 ATTORNEY

COUNTY PLANNING COMMISSION

THIS PLAN HAS BEEN REVIEWED BY THE CACHE COUNTY PLANNING COMMISSION ON _____ 20____. IT IS THE RECOMMENDATION OF THE BOARD TO APPROVE / DENY THIS SUBDIVISION BASED ON FINDINGS: _____

 CHAIRPERSON

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, THE UNDERSIGNED OWNERS OF THE ABOVE DESCRIBED TRACT OF LAND, HAVING CHOSEN THE SAME TO BE SUBDIVIDED INTO LOTS AND STREETS TO BE HEREINAFTER KNOWN AS THE SUBDIVISION, DO HEREBY WARRANT AND GIVE THE COUNTY HARMLESS FROM ANY EASEMENTS AND ENCUMBRANCES AND DO HEREBY DEDICATE FOR THE PERPETUAL USE OF THE PUBLIC ALL PARCELS OF LAND SHOWN ON THIS PLAN AS INTENDED FOR PUBLIC USE.

IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR SIGNATURES THIS _____ DAY OF _____ A.D. 20____.

COUNTY RECORDER'S No. _____

STATE OF UTAH, COUNTY OF _____, RECORDED AND FILED AT THE REQUEST OF _____ TIME _____ FEE _____

ABSTRACTED _____

INDEX FILED IN: FILE # OF PLATS _____ COUNTY RECORDER _____

DEPUTY COUNTY SURVEYOR'S CERTIFICATE

I CERTIFY THAT I HAVE EXAMINED THIS PLAN AND FIND IT TO BE CORRECT AND IN ACCORDANCE WITH THE INFORMATION CONTAINED THEREIN AND I HAVE BEEN ADVISED BY THE INFORMATION CONTAINED THEREIN THAT IT IS THE INTENTION OF THE PARTIES TO THIS OFFICE.

DATE _____ DEPUTY COUNTY SURVEYOR _____

ACKNOWLEDGMENT

STATE OF _____

ON THE _____ DAY OF _____ 20____, PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC IN AND FOR SAID COUNTY OF _____, IN SAID STATE OF _____, _____, IN PERSON, WHO IDENTIFIED HIMSELF AS _____, AND HE ACKNOWLEDGED TO ME THAT HE SIGNED IT FREELY AND VOLUNTARILY AND FOR THE PURPOSES THEREIN MENTIONED.

MY COMMISSION EXPIRES _____ NOTARY PUBLIC _____

BEAR RIVER HEALTH DEPARTMENT APPROVAL

THE SUBDIVISION DESCRIBED IN THIS PLAN HAS BEEN APPROVED BY THE BEAR RIVER HEALTH DEPARTMENT THE _____ DAY OF _____ 20____.

DATE _____ TITLE: _____

STAFF REPORT: WHITTIER REZONE

07 January 2016

This staff report is an analysis of the application based on adopted county documents, standard county development practices, and available information. The report is to be used to review and consider the merits of the application. Additional information may be provided that supplements or amends this staff report.

Agent: Dick and Betty Whittier
Staff Recommendation: None
Type of Action: Legislative
Land Use Authority: Cache County Council

Parcel ID#: 11-002-0023

LOCATION

Reviewed by: Chris Harrild - Senior Planner

Project Address: 580 South 3200 West
 West of Logan
Current Zoning: Agricultural (A10)
Proposed Zoning: Rural 2 (RU2)

Surrounding Uses:
 North – Agricultural/Residential
 South – Agricultural/Residential
 East – Agricultural/Residential
 West – Agricultural/Residential



PROJECT PURPOSE, APPLICABLE ORDINANCE, SUMMARY, AND PUBLIC COMMENT

Purpose:

To review the proposed Whittier Rezone; a request to rezone the 5 acre parcel 11-002-0023 currently zoned Agricultural (A-10) to the Rural 2 (RU-2) Zone.

Ordinance:

Current Ordinance does not specify appropriate locations for the Rural 2 (RU2) Zone. The Cache County Comprehensive Plan also does not currently support the RU2 Zone.

The Cache County Ordinance Title §17.08.030[A] identifies the purpose of the RU2 Zone and includes the following:

“A. Rural 2 Zone (RU2):

1. To allow for residential development in a moderately dense pattern that can allow for rural subdivisions, and to allow for clustering plans larger than a single parcel. This type of development should be located and designed to not unreasonably impede adjacent

agricultural uses, nor to unreasonably conflict with the development standards of adjacent municipalities.

2. To implement the policies of Cache Countywide Comprehensive Plan, including those regarding improved roadways, density based residential standards, clustering, moderate income housing and municipality standards.
3. This zone must be appropriately served by suitable public roads, have access to the necessary water and utilities, and have adequate provision of public services.”

Any impacts related to permitted and conditional uses allowed within the Rural 2 (RU2) Zone will be addressed as part of each respective approval process required prior to site development activities.

Summary:

Staff has identified general information as pertains to the subject property to assist the Planning Commission and County Council in arriving at a decision. This information is reflected in the attached map and in the following text:

Property Context: This is a legal parcel as per a CUP recorded in 1991 for the expansion of the existing home on this property. If rezoned, a subdivision of the property would be required for an additional residence, and the RU2 Zone would allow no more than one additional building lot.

Density (see map): Within a one-mile radius of this property, the surrounding parcels reflect an average parcel size of 19.4 acres, and an average parcel size of 9.9 acres of properties with a dwelling.

Zone Placement: As identified by the Planning Commission and the County Council at the time the RU2 Zone was adopted, the intended/anticipated placement of said zone was the areas of the unincorporated county adjacent to municipalities. While this proposed rezone is approximately 1.2 miles west of Logan City, this property is within Logan City’s future annexation area.

Access and Maintenance: Access to this property from county roads 600 South (Mendon Road) and 3200 West and is adequate. There is existing county winter maintenance on both roads. Access for fire protection and emergency services will require further review prior to development but appears adequate at this time.

Water: Access to water will require further review prior to development. The existing dwelling has an existing water right and relies on a private well for culinary water.

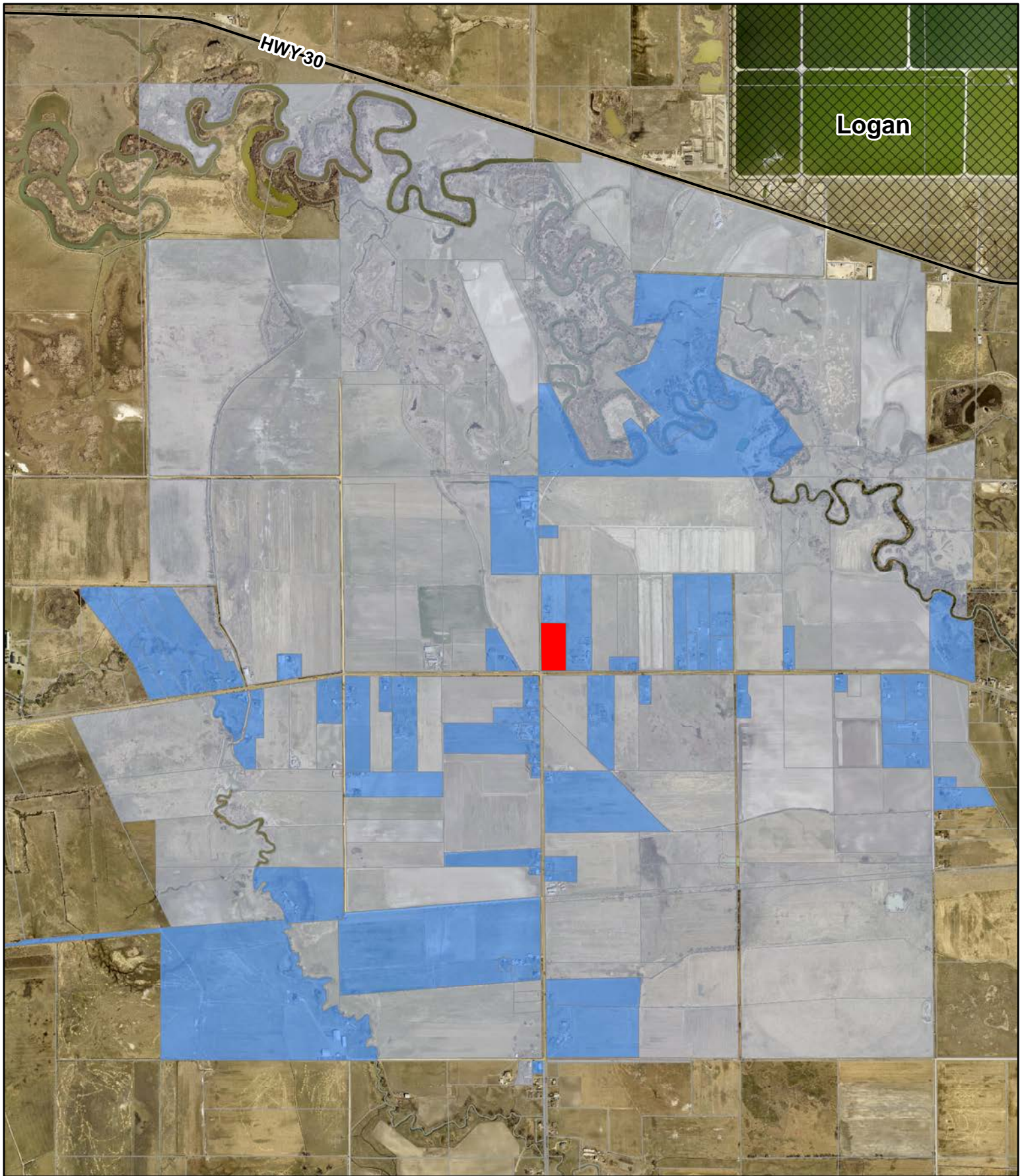
Public Comment:

Notices were mailed to the property owners located within 300 feet and municipalities within one mile of the subject property. At this time no public comment regarding this proposal has been received by the Development Services Department.

STAFF DETERMINATION

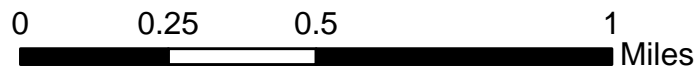
This report has been provided to the Planning Commission and County Council to assist them in their review of this rezone request. No determination or finding(s) of fact has been identified by staff, however all relevant information regarding the rezone request has been provided.

Staff recommends that the Planning Commission and County Council strongly consider the intended location of the RU2 Zone and the long term cost and burden to the county associated with the maintenance of road systems that serve high density areas, and arrive at a determination based on finding(s) of fact prior to any legislative action. Staff will assist in the drafting of a determination and finding(s) of fact once they have been identified by the Planning Commission and/or County Council.



Legend

- Proposed Rezone
- Parcels with Dwellings
- Parcels in 1 Mile Buffer
- Parcels



Average Parcel Size: 19.4 Acres
Average Parcel Size With a Home: 9.9 Acres

Dec. 2015

STAFF REPORT: WHISPER RIDGE CONDITIONAL USE PERMIT

07 January 2016

This staff report is an analysis of the application based on adopted county documents, standard county development practices, and available information. The report is to be used to review and consider the merits of the application. Additional information may be provided that supplements or amends this staff report.

Agent: Dan Lockwood, Tommy Keating, Cortland Lockwood

Parcel ID#: Multiple

Staff Determination: Approval with conditions

(See Exhibit A)

Type of Action: Administrative

Land Use Authority: Cache County Planning Commission

PROJECT LOCATION

Reviewed by: Chris Harrild - Senior Planner

Project Address:

Blacksmith Fork and Scare Canyon Area

Surrounding Uses:

North – Forest/Recreation/Hwy 101

South – Forest/Recreation

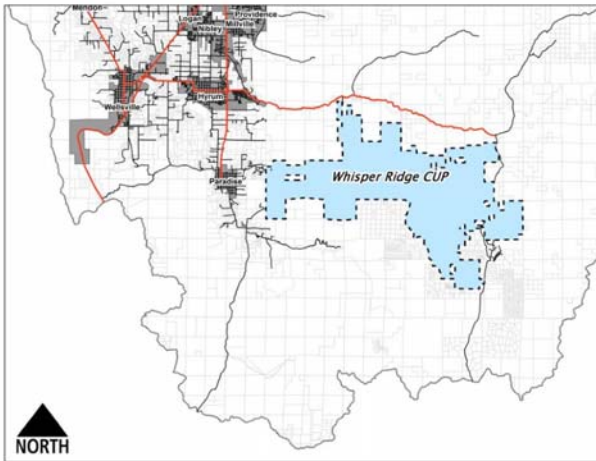
East – Forest/Recreation/Ant Flat Road

West – Forest/Recreation/Paradise City

Current Zoning:

Acres: 32,332.36

Forest Recreation (FR-40)



PROJECT PURPOSE, APPLICABLE ORDINANCE, SUMMARY, AND PUBLIC COMMENT

Purpose:

To review the request for a conditional use permit to allow guided snow cat skiing.

Ordinance:

This proposed use is best defined as a "5100 Recreational Facility" under Cache County Ordinance §17.07.020 Definitions, and as per §17.09.030 Schedule of Uses by Zone, this use is permitted as a conditional use in the Forest Recreation (FR-40) Zone only if reviewed and approved in accordance with the conditional use review procedures of §17.06 Uses. These procedures are detailed under §17.06.060 Conditional Uses and §17.06.070 Standards and Criteria for Conditional Use.

Summary:

To the best of the county’s knowledge, and with the exception of parcels 16-031-0001, and 17-017-0007 where seasonal cabins are present, the other existing parcels are currently vacant. The intent of the use is to provide recreational powder skiing with the use of snow cats and professional guides. This use will be based out of the Avon area at approximately 2000 East Paradise Dry Road on parcel 16-031-0001. Each guided trip will typically consist of 12 guests per snow cat, but may range as high as 16 on occasion. Customers will arrive at this site and be transported via snow cat over Paradise Dry Road to the identified private property and the various ski sites therein.

The use of the cabin as part of this use has not been identified by the proponent. The proponent has identified that they will not use the existing cabin on parcel 16-031-0001. Staff anticipates the same is true of the cabins on parcel 17-017-0007 and has addressed that possibility in the conditions of approval. If the proponent ever expands the intent of the use, including but not limited to the said cabins, an application, review, and approval of that expansion by the appropriate land use authority shall be required. Additional permitting and review by the Cache County Fire District and Building Department may also be required.

As identified in the submitted letter of intent, the following is a summary of the intended use with staff comment as necessary:

	Year 1	Subsequent Years
1. Property	~30,000 ac.	Additional acreage may be added. <u>Any additional acreage shall require the review and approval of the Cache County Planning Commission.</u>
2. Employees	Approximately 15 FTE ~6 guides ~3 snow cat operators ~2 ski patrollers	Up to 25 FTE
3. Structures	A mobile shop located at the base site. No other structures are intended for the first year.	Multiple yurt and/or cabin sites with stand alone decking sites for view settings. The location and number of said structures is undetermined. <u>Prior to the development of any structures, the review and approval of the appropriate county authority shall be required.</u>
4. Equipment	3 snow cats 3 snowmobiles 2 ATV’s	Up to 7 snow cats
5. Active Operation	Approximately December 1 - April 15 each year (weather dependent); Daily operations will be from 7 a.m. to 5 p.m., 7 days a week, including holidays. Maintenance and snow road construction may take place 24 hours a day.	
6. Deliveries	Occasional deliveries of catered food to clients at the base site.	
7. Fuel/Maintenance	It is anticipated that all fuel and maintenance for operations will be located on parcel 16-031-0001. <u>If any fuel/maintenance structures are found to be necessary aside from this area, additional permitting and approval from Cache County is required.</u>	

8. Explosives Explosives will be transported and kept near avalanche terrain/ski patrol areas. Placement of two ATF approved “bomb boxes” for said explosives will be coordinated with the ATF. The boxes shall be stocked and utilized by ATF certified/approved technicians. A blasting permit from the Utah State Fire Marshall for avalanche control is required. A copy of this permit must be submitted to the Development Services Department prior to any blasting. A copy of ATF certification has been provided to the Development Services Department, and the location of the “bomb boxes” has been disclosed to the Cache County Fire District.
9. Signage The property will be signed with general “No Trespassing” signs, and with “Warning” signs in avalanche control areas.
10. Garbage A zero impact policy will be followed. All garbage will be packed out daily.
11. Septic Portable toilet(s) will be enclosed in a wooden structure and placed on skis and transported to locations central to skiing activity. These will be serviced as necessary.
12. Parking Vehicle parking for clients and the proponent will be located at the base site. It is anticipated that in the first year, 8-10 vehicles would be present at the site at any one time. The identified parking areas would accommodate more than 50 vehicles. Snow cat parking is identified separately. A Parking Analysis is not required at this time. A Parking Analysis and improvements may be required with future development and/or expansion.
13. Safety Personnel Members of the snow cat staff have search and rescue training. In emergency/trauma situations air evacuation will be used. Life Flight and Air Med have been notified of the proposed operation. A smaller, rescue snow cat will also be present with a trauma pack and backboards if necessary. Emergency services for back country areas are handled by Cache County Search and Rescue.

Access:

- The current Cache County Manual of Roadway Design and Construction Standards specifies that:
 - ▶ Roads serving conditional use permit requests must meet the county’s minimum standard design limits as identified under Table 2.2 – Roadway Typical Sections of the County Road Manual.
 - ▶ Rural Roadways, up to 30 average daily trips (ADT), must meet the minimum standard of a 20’ wide gravel surface with a 2’ wide gravel shoulder.
 - ▶ Local Roadways, more than 30 ADT, must meet the minimum standard of a 22’ wide paved surface with 1’ wide gravel shoulders.
- Access to the base site on parcel 16-031-0001 is via county roads East 11000 South to South 800 East to East 10600 South, and then from Paradise Dry Road. Access to the ski areas from the base site will be over Paradise Dry Road and then over private property through the back country via snow cat.
- The county performs winter maintenance on these roadways with the exception of Paradise Dry Road.
- It is anticipated that the proposed use will result in a maximum of an additional 16-20 ADT.
- East 11000 South (Old Highway 165) meets the minimum county standard.
- As a Rural Roadway, the paved portion of South 800 East meets the minimum county standard. At this location South 800 East has an average paved width of 20’ with 2’ wide gravel shoulders. The gravel portion does not meet the minimum county standard and has an average gravel width

of 18' and some sight distance issues. This road currently provides residential, agricultural, and recreational access.

- As a Rural Roadway, East 10600 South does not meet the minimum county standard. At this location East 10600 South has an average gravel width of 18', and currently and provides agricultural and recreational access.
- Paradise Dry Road does not meet the minimum county standard. At this location Paradise Dry Road has an average gravel width of 16', and currently provides agricultural and recreational access.
- Staff recommends that a design exception be granted for the substandard portions of the county roadways due to the following:
 - a. The anticipated number of trips per day creates a minimal impact equal to 16-20 ADT. Use by skiers is limited and controlled by the number of open seats in the snow cats, and will typically consist of said persons arriving and departing only once to and from the site.
 - b. No built structures are proposed or in use, and therefore there is not a need to provide tender truck access for fire suppression.
 - c. This is a seasonal winter operation.

Public Comment:

Notices were mailed to the property owners located within 300 feet and municipalities within one mile of the subject property. At this time no written public comment regarding this proposal has been received by the Development Services Department.

STAFF DETERMINATION AND FINDINGS OF FACT (4)

It is staff's determination that the request for a conditional use permit for Whisper Ridge, located in the Forest Recreation (FR-40) Zone, in the Blacksmith Fork and Scare Canyon Area on the parcels as noted in Exhibit A is in conformance with the Cache County Ordinance and should be approved. This determination is based on the following findings of fact:

1. The Whisper Ridge Conditional Use Permit has been revised and amended by the conditions of project approval to address the issues and concerns raised within the public and administrative records.
2. The Whisper Ridge Conditional Use Permit has been revised and amended by the conditions of project approval to conform to the requirements of Titles 16 and 17 of the Cache County Code and the requirements of various departments and agencies.
3. The Whisper Ridge Conditional Use Permit has been reviewed in conformance with §17.06.070 of the Cache County Ordinance, Standards and Criteria for Conditional Use, and conforms to said title, pursuant to the conditions of approval.
4. A design exception is hereby granted for the substandard portions of the county roadways due to the following:
 - a. The anticipated number of trips per day creates a minimal impact equal to 16-20 ADT. Use by skiers is limited and controlled by the number of open seats in the snow cats, and will typically consist of said persons arriving and departing only once to and from the site.
 - b. No built structures are proposed or in use, and therefore there is not a need to provide tender truck access for fire suppression.
 - c. This is a seasonal, winter operation.

CONDITIONS OF APPROVAL (6)

The following conditions are appurtenant to the existing properties as identified in Exhibit A and must be followed for the development to conform to the County Ordinance and the requirements of county service providers

1. Prior to recordation the proponent shall meet all applicable standards of the Cache County Ordinance.
2. A blasting permit from the Utah State Fire Marshall for avalanche control is required. The proponent must provide a copy of this permit to the Development Services Department prior to any blasting.
3. Any existing cabins shall not be used to accommodate the proposed use.
4. A Cache County Business License must be obtained prior to operation.
5. Any expansion or modification of the proposed use, including but not limited to the use and/or development of any yurt and/or cabin sites or fuel and maintenance structures, or change in the base of operations and access to the noted properties shall require the approval of the designated land use authority.
6. Future development, expansion, or increase in the number of employees may require a Parking Analysis and associated site improvements.

01-091-0002	17-002-0011
01-111-0001	17-002-0013
16-031-0001	17-005-0001
16-031-0002	17-005-0002
16-076-0002	17-005-0003
16-076-0004	17-005-0004
16-076-0005	17-006-0001
16-086-0001	17-006-0004
16-086-0003	17-006-0006
16-086-0006	17-008-0001
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16-093-0008	17-019-0002
16-097-0001	17-019-0004
16-097-0003	17-019-0005
16-097-0008	

Letter of Intent - Business License

1. The proposed business name is Whisper Ridge Utah, LLC. Our mailing address is PO Box 1108, physical address 4776 E 2600 N Eden Utah 84310. We have two phone numbers for contact: office 801-876-4664 and personal cell for Tommy Keating 801-917-7437.
2. Our type of use is recreational powder skiing via use of snow cats and professional guides. Our guides have been in the search and rescue and ski patrol (current average twenty years of experience).
3. We will be employing approximately 6 guides, 3 snowcat operators and 2 ski patrollers. This number will bring our employment to approximately 15 full time employees. We may expand to 25 full time employees during next few years.
4. Our winter operations will start with early season avalanche control work approximately Dec 1st, weather permitting. We will provide our services until approximately April 15th each season. Our daily operations during season will be 7am until 5pm, 7 days a week including holidays. Maintenance and snow road construction may take place 24 hours a day.
5. There will be in the future some deliveries to our clients some catered food.
6. All fuel and maintenance for operations will be in Eden (or onsite when necessary).
7. There will be explosives transported via snowcat to avalanche terrain and ski patrol. We are working with the ATF to locate two or more approved "bomb boxes". They will be strategically placed off the beaten path. The boxes are stocked and utilized by ATF certified/approved technicians.
8. At this current start up the property will be signed for No trespassing and Warning signs for Avalanche control areas. In future seasons we plan to put up a yurt, maybe two and some decking for view settings. We will be considering Lodging via cabin sites or stand-alone cabin construction. We anticipate additional permits for yurts and cabin site, uncertain where they will be located.
9. We follow a zero impact policy and all garbage will be brought out daily to Eden-Recycle Center.
10. We have a porta potty enclosed in a wooden structure on ski's. The structure or structures will be moved to central locations as we focus on certain terrain for accessibility. Service contracted to Ogden Businesses.
11. There will be snow cats on the property in Cache County. Three snow cats the first year maybe five-seven within next couple of years. Two-three snowmobiles and 2 ATV's early season.
12. At this time we will either meet at our Eden office or at the snowmobile parking lot at Monte Cristo. Transfer to the snow cats will take place at the snowmobile parking lot. Parking will be at Eden office and or Snowmobile parking lot.
13. Additionally there will be search and rescue professionals with clients. Air evacuation, (Life Flight and Air Med are aware of the operation) weather permitting, will be used in trauma situations We also have a rescue cat, little smaller, with trauma pack and backboards, if necessary. Safety is our main concern with this exciting powder adventure.
14. Currently we have thirty plus thousand acres of leased private land and may add additional acreage in the near future. We understand Planning and Zoning will need to be aware of any parcel changes

December 31, 2015

Christopher Harrild

Senior Planner Cache County

#1 The snow cats we have carry 10-16 guests based on their varied size (pistonbully 300's and 200's) The 200's carry fewer passengers. The most passengers in a single larger (300) sized cat, are as follows Driver, lead guide up front (occasionally skiers like to ride up front especially if motion sickness is a problem) there is a bench seat facing to the rear that seats three. Two seats facing sideways up front and three rows of four seats facing forwards for a total 19 seats some of which will always be staff (3) and the remaining could be guests. However the typical guest count is 12 which is where our cat is considered booked. It would be the rare occasion that we would allow more than 12. But may happen based on the request of the guests.

#2 We are considering different jump or start points for the day. The Eden Office. Monte Cristo parking lot. Or the Ward cabin in Paradise. As of now no permits are in place for the Weber County sites. We will be seeking those through a business license application we are currently working on. However as of now logistically the Paradise site offers the shortest Cat ride. This year there is ample snow for the Cat however we may look into permits from other sites on the Weber County side (ie, Monte Cristo etc) in the future. Catered food would be in the way of build your own sack lunch and light pack along (in Cat) breakfast items (continental type) Our Cats and mobile shop would be parked at the Ward cabin site near the cattle loading corral (google maps description included)

#3 Our travel route for this season will be meet at the Ward parcel park (google description) customer vehicles there board cat and proceed to ski area. However we may from time to time need to meet at Monte Cristo public parking area shuttle the guest to the Cat on the County road and proceed to the ranch via the Ant flat road. This route is less desirable and would be only be used if snow conditions at the Ward parcel was not conducive to travel (Lack of snow). We will be talking with Weber County about their needs if any on the public roads or at our Eden facility (for future use).

#4 8-10 vehicles will be anticipated. And will be parked in the areas shown on the map (google earth)

Whisper Ridge Cat Skiing

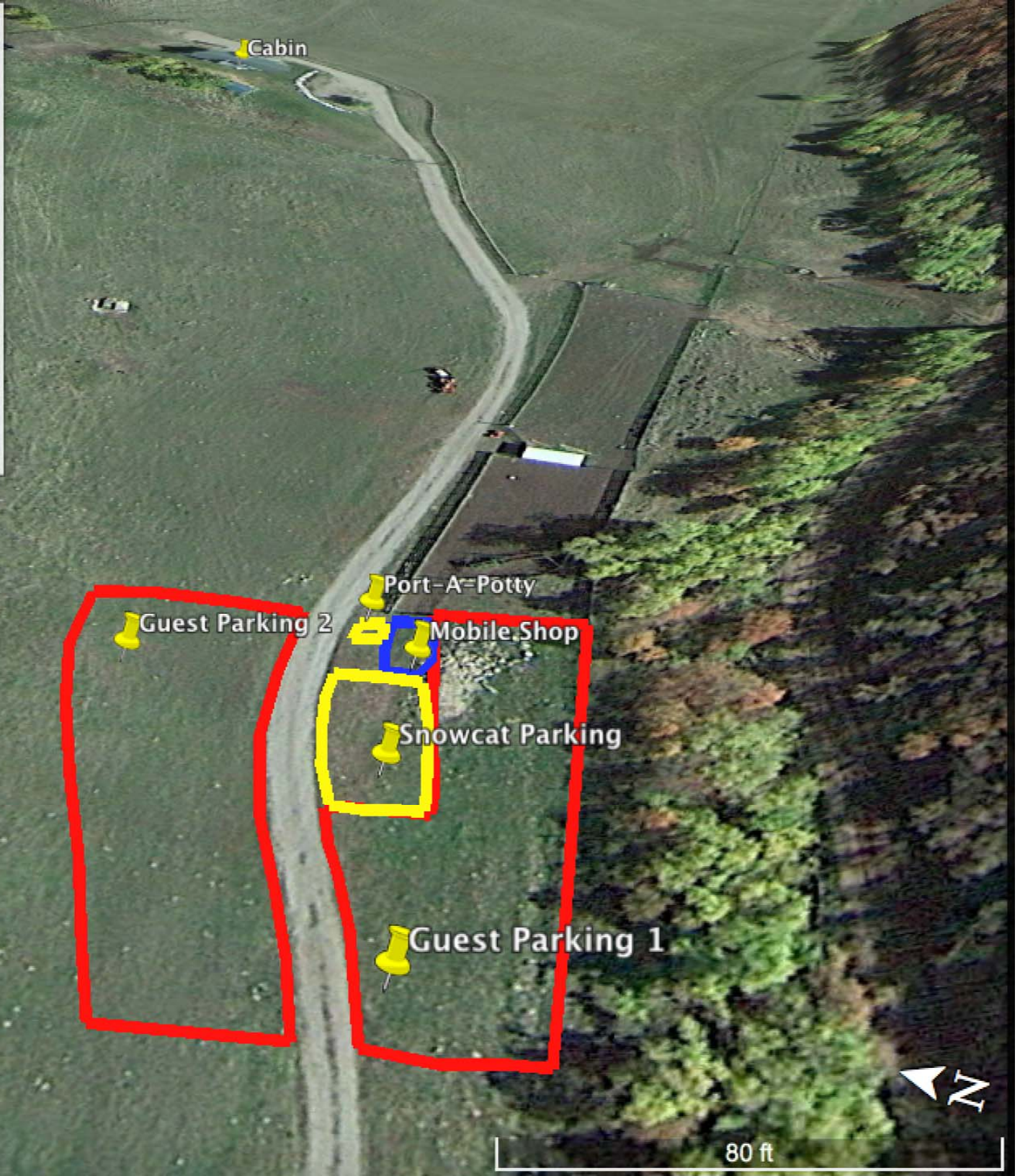
Guest Parking 1- Perimeter= 443 ft.
Area = 6979 sq. ft.

Guest Parking 2- Perimeter= 441 ft.
Area = 8236 sq. ft.

Mobile Office- Perimeter= 75.7 ft.
Area = 322 sq. ft.

Port-A-Potty- Perimeter= 32.5 ft.
Area = 64.3 sq. ft.

Snowcat Parking- Perimeter= 162 ft.
Area = 1469 sq. ft.



Cabin

Port-A-Potty

Guest Parking 2

Mobile Shop

Snowcat Parking

Guest Parking 1



Dan Lockwood
PO Box 1108
4776 E 2600 N
Eden, UT 84310

Chris Harrild, AICP
Senior Planner
Cache County Development
Services

Dear Chris,

This letter is to inform you that Whisper Ridge has no intention and will not be using the existing cabin on parcel #16-031-0001. If you have any questions, please contact myself at 801-876-4664 (office) or 435-994-2061 (cell).

Thank you very much,

A handwritten signature in black ink, appearing to read 'Dan Lockwood', is written over a large, light-colored scribble or smudge. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dan Lockwood
Whisper Ridge

STAFF REPORT: ESPLIN ANDERSEN SUBDIVISION

07 January 2016

This staff report is an analysis of the application based on adopted county documents, standard county development practices, and available information. The report is to be used to review and consider the merits of the application. Additional information may be provided that supplements or amends this staff report.

Agent: Dennis Andersen

Parcel ID#: 04-013-0001

Staff Determination: Approval with conditions

Type of Action: Administrative

Land Use Authority: Cache County Council

LOCATION

Reviewed by: Chris Harrild, Senior Planner

Project Address:
4560 North 400 West
West of Smithfield

Surrounding Uses:
North – Agricultural/Residential
South – Agricultural/Residential/Airport
East – Agricultural/Smithfield City
West – Agricultural/Residential

Current Zoning: Agricultural (A10) Zone **Acres:** 5.0



PURPOSE AND SUMMARY

Purpose:

To review the proposed Esplin Andersen Subdivision and forward a recommendation to the County Council.

Ordinance:

As per the Cache County Zoning Ordinance Table §17.10.030 Development Density and Standards Specific to Base Zoning Districts regarding 1970 parcels, this proposed 2-lot subdivision qualifies for a development density of one (1) unit per two (2) acres. Future development must meet a development density of one (1) unit per ten (10) acres.

Summary:

This request intends to divide the 1970 parcel 04-013-0001 into two (2) developable lots. This request originated through county enforcement action regarding a vehicle repair business, Trail Riders Repair, that was operating without license or approval. Said business was operating from what was permitted as an agricultural structure on the north half of the property. If the subdivision is approved, it is the stated intent of Mr. Esplin, the operator of said business, to then pursue a rezone of the northern parcel, Lot 1. This type of use is permitted as a conditional use in both the Commercial and Industrial Zones. If both the subdivision and a rezone are approved, a conditional use permit for the commercial business must then be obtained.

Access:

- The current Cache County Manual of Roadway Design and Construction Standards §2.5 specifies that:
 - ▶ Roads serving a commercial business or more than three dwellings must meet the minimum standard of a 22' wide paved surface with 1' wide gravel shoulders.
 - ▶ Roads serving 3 or fewer dwellings must meet the minimum standard of a 20' wide gravel surface; a 2' wide gravel shoulder may also be required.
- Access to the lots is from county roads West 4600 North and North 400 West; the county performs winter maintenance on both of these roads.
- West 4600 North does not meet the minimum county standard. At this location West 4600 North has an average paved width of 20', with 2' wide gravel shoulders, and currently serves more than 3 dwellings and provides agriculture access. This proposal would add service for two (2) dwellings and potentially a commercial business.
- Staff recommends that a design exception be granted for the substandard portions of West 4600 North as the total road width meets the minimum standard, and it is not practical to construct a 2' wide paved roadway surface.
- North 400 West does not meet the minimum county standard. At this location North 400 West is a 17' wide gravel road that currently provides agriculture access only. This proposal would add service for two (2) dwellings and potentially a commercial business. The minimum requirement for the current proposal of a 2-lot subdivision is that North 400 West must have a total width of 24' consisting of two 10' wide gravel travel lanes with 2' wide gravel shoulders along the property boundary that fronts North 400 West. A 22' wide paved surface from West 4600 North to the point of access from North 400 West would be required at the time a commercial business is proposed.

Water & Septic:

- An adequate, approved, domestic water right must be in place at the time of final plat recordation for all building lots within the proposed subdivision.
- An updated letter indicating septic system feasibility from the Bear River Health Department must be provided.
- If future development disturbs land area greater than 5000 SF a Notice of Intent (NOI) and Stormwater Pollution Prevention Plan shall be required.

Service Provision:

- The residents shall provide sufficient shoulder space for the residential refuse and recycle containers to sit four feet apart and be out of the travel lane of 400 West.
- A school bus stop is located at 762 West 4600 North.
- Water supply for fire suppression will be provided by the Smithfield City Fire Department. Access for emergency services is adequate.

Sensitive Areas:

- This property is located within the Airport Limitation Area and has received Federal Aviation Administration (FAA) review and a determination of "no hazard to air navigation" for the existing structure on the proposed Lot #1, and as per §17.17.100 [B] of the County Code, additional FAA

notification is not required for structures of a similar height. However, if any proposed structure exceeds the height of the existing structures and may adversely affect air navigation, then further review of the FAA may be required.

Public Comment:

Notices were mailed to the property owners located within 300 feet and municipalities within one mile of the subject property. At this time no public comment regarding this proposal has been received by the Development Services Department.

STAFF DETERMINATION AND FINDINGS OF FACT (5)

It is staff's determination that the Esplin Andersen Subdivision located on parcel 04-013-0001 at approximately 4560 North 400 West is in conformance with the Cache County Ordinance requirements and should be approved. This determination is based on the following findings of fact:

1. The Esplin Andersen Subdivision has been revised and amended by the conditions of project approval to address the issues and concerns rose within the public and administrative records.
2. The Esplin Andersen Subdivision has been revised and amended to conform to the requirements of the Cache County Code, State Code, and the requirements of various departments and agencies.
3. The Esplin Andersen Subdivision conforms to the subdivision amendment requirements of the Cache County Subdivision Ordinance.
4. The Esplin Andersen Subdivision is compatible with surrounding land uses and will not interfere with the use and enjoyment of adjoining or area properties.
5. A design exception is hereby granted for the substandard portions of West 4600 North as the total road width meets the minimum standard, and it is not practical to construct a 2' wide paved roadway surface.

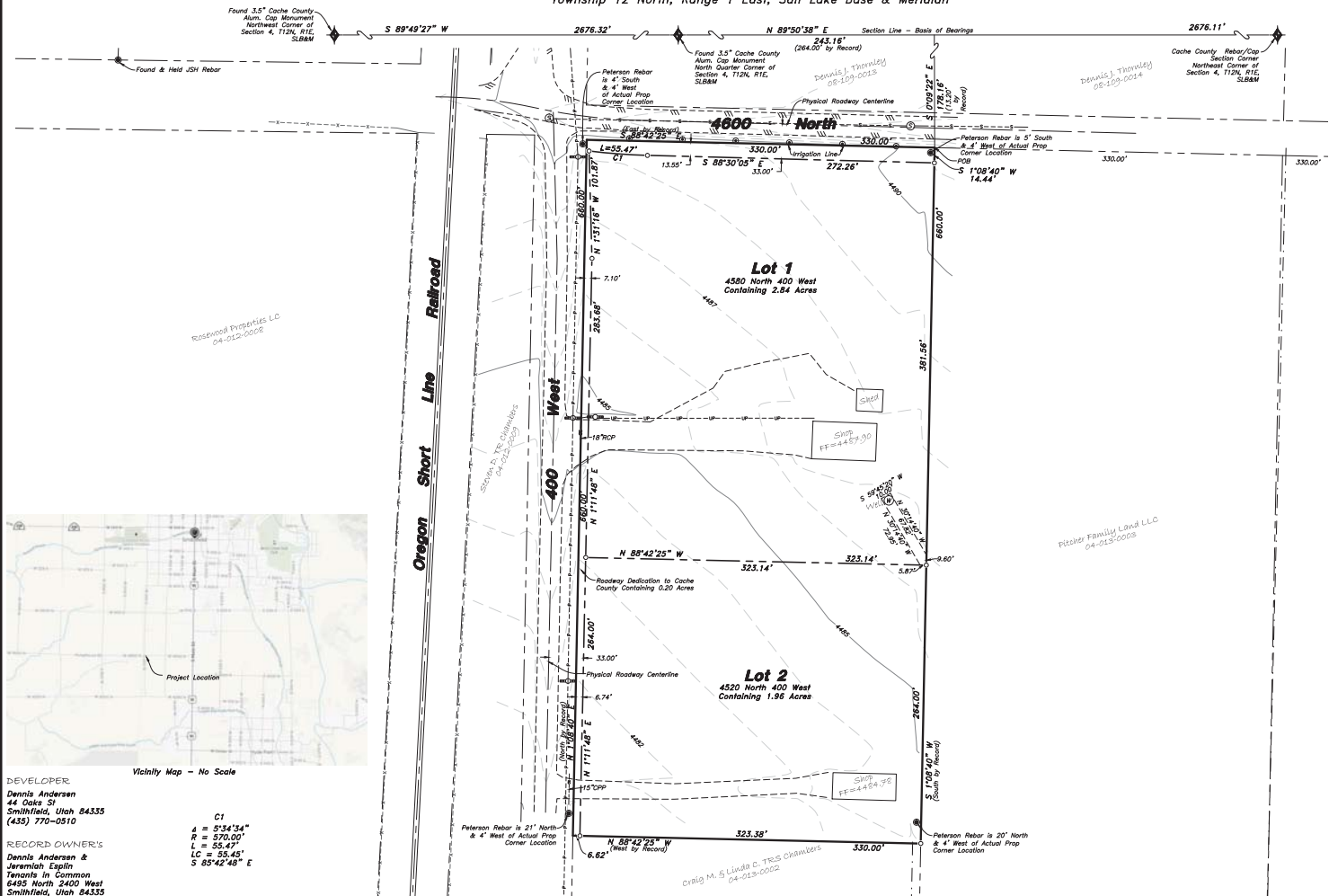
CONDITIONS OF APPROVAL (5)

The following conditions must be met prior to recordation, and/or adequate financial surety must be provided by the proponent for the developments to conform to the County Ordinance and the requirements of county service providers.

1. The proponent shall meet all applicable standards of the Cache County Ordinance.
2. Adequate, approved, domestic water rights shall be in place for all building lots within the subdivision.
3. The applicant shall reaffirm their 33' portion of Cache County's 66' wide right-of-way for all county roads along the proposed subdivision boundary.
4. The proponent must improve North 400 West to a total width of 24' consisting of two 10' wide gravel travel lanes with 2' wide gravel shoulders along the property boundary that fronts North 400 West.
5. The design of North 400 West shall be reviewed and approved by the Cache County Engineer for compliance with applicable codes. A full set of engineered design and construction plans shall be submitted and shall address issues of grade, drainage, base preparation and construction, and surfacing for the road. Fees for any engineering review of the private road shall be borne by the proponent.

Esplin Andersen Subdivision

Near Smithfield City, Cache County, Utah
A Part of the North Half of Section 4,
Township 12 North, Range 1 East, Salt Lake Base & Meridian



SURVEYOR'S CERTIFICATE
I, Clinton G. Hansen, do hereby certify that I am a Registered Land Surveyor, and that I hold certificate No. 7881387, as prescribed under the laws of the State of Utah, I further certify that by authority of the owners I have made a survey of the tract of land shown on this plat and described below, and have subdivided said tract of land hereafter to be known as Esplin Andersen Subdivision and the same had been correctly surveyed and all streets are the dimensions shown.

SUBDIVISION BOUNDARY

A Part of the North Half of Section 4, Township 12 North, Range 1 East of the Salt Lake Base and Meridian

Beginning 243.16 Feet North 89°50'38" East Along the North Line of the Northeast Quarter of said Section (264.00 Feet East by Record) and 176.16 Feet South 00°09'22" East (13.20 Feet South by Record) of the Northwest Corner of said Northeast Quarter and Running Thence South 01°08'40" West (South by Record) 660.00 Feet; Thence North 88°42'25" West (West by Record) 330.00 Feet; Thence North 01°08'40" East (North by Record) 660.00 Feet; Thence South 88°42'25" East 330.00 Feet to the Point of Beginning. Containing 5.00 Acres.



Clinton G. Hansen Date
P.L.S. No. 7881387

OWNER'S DEDICATION

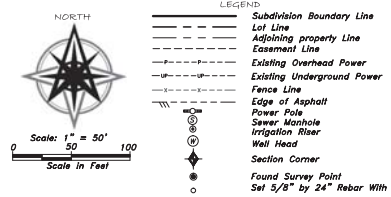
Know all men by these presents that we the undersigned owners of the tract of land depicted and described herein, having caused the same to be subdivided into lots and streets (as pertinent), the whole to be hereinafter known as the Esplin Andersen Subdivision. Further we dedicate and/or quit claim as appropriate the portion of property of [04-013-0001] that lies within 33' of the center line of the existing right-of-way, and as shown on this plat, to cache county, for the use of the public forever, and hereby grant to the county the right to make any and all improvements for the construction, maintenance, and repair of said roadway. Further we dedicate to the future owner's of Lot 2 a water line easement for access, maintenance, repair, and upgrades of a culinary water line and well.

Jeremiah Esplin Date Dennis Andersen Date

ACKNOWLEDGMENT

State of Utah
County of _____
On this _____ day of _____, 2016, Jeremiah Esplin and Dennis Andersen, as Tenants in Common, Personally Appeared before me, the Undersigned Notary Public in and for said County, in the State of Utah, the Signers of the Attached Owners Dedication, two in Numbers, who duly acknowledged to me they Signed It Freely and Voluntarily and for the Purpose therein Mentioned.

Notary Public



COUNTY RECORDER

State of Utah
County of Cache
This plat has been duly acknowledged, certified, and approved and may lawfully be recorded in Cache County, Utah.

Filed and Recorded:
Filing No.: _____
Date: _____
Book: _____
Page: _____
Request of: _____

Cache County Recorder

DEVELOPER
Dennis Andersen
44 Oaks St
Smithfield, Utah 84335
(435) 770-0510

RECORD OWNERS
Dennis Andersen &
Jeremiah Esplin
Tenants in Common
6485 North 2400 West
Smithfield, Utah 84335

C1
4 = 9'34"34"
R = 370.00'
L = 55.47'
LC = 35.45'
S 85°42'48" E

NARRATIVE

The Purpose of this Survey was to subdivide the existing parcel as shown and Described Hereon. This Survey was Ordered by Dennis Andersen. The Control used to Establish the Property Corners was the existing County Survey monumentation/recordations within Section 4, Township 12 North, Range 1 East, Salt Lake Base and Meridian. Felt Peterson rebar was found at the corners of the subdivision. The Peterson corner pins have no record of survey filed and don't fill local occupation. The basis of bearings is the North Line of the Northeast Quarter of said Section which bears North 89°50'38" East, Utah North, State Plane NAD83(2011) Calculated Bearing.

COUNTY ATTORNEY APPROVAL

I certify that I have examined this plat and approve this plat as to form as required by State law and County ordinance.

Cache County Attorney Date

BEAR RIVER HEALTH DEPARTMENT APPROVAL

This subdivision described in this plat has been approved by the Bear River Health Department on the _____ day of _____, A.D. 20__.

By: _____ Title: _____
Director

APPROVAL AS TO FORM

Approved as to form this _____ day of _____, 20__.

Attorney

DIRECTOR OF DEVELOPMENT SERVICES

This plat was approved and accepted by the Cache County Director of Development Services this _____ day of _____, A.D. 20__.

Director

GENERAL NOTES:

A. Culinary Water Note: Culinary Water Cache County has not determined the availability or adequacy of culinary water to any of the lots identified. All owners are advised of the requirements to obtain an approved culinary water source and comply with all other requirements for the issuance of a zoning clearance, prior to the issuance of a building permit.

B. Storm Water Drainage Note: Storm Water Drainage: Compliance with the standards of the Cache County Manual of Roadway Design and Construction Standards and State of Utah storm water permitting are required. This includes, but is not limited to, any increased level of storm water drainage from any portion of any lot or remainder parcel of this subdivision to any adjacent properties, ditches, canals, or waterways, or the alteration of any existing, historic, or natural drainage without prior written authorization provided by the affected party or entity (may include but is not limited to adjacent property owner(s), ditch or canal company, Cache County, or the State Water Engineer's Office.)

C. Agricultural Note: Agricultural Uses: Current and future property owners must be aware that they will be subject to the sights, sounds, and smells associated with agricultural activities which are permitted uses in the Agricultural Zone and Forest Recreation Zone.

D. Setback Lines for Primary Buildings are: 12.00' on Side Yard; 30.00' on Front Yard; 30.00' on Rear Yard

770 Research Park Way #11
Logan Utah 84341
(p) 435-779-9585 (f) 435-514-9583
www.advancedland.com

STAFF REPORT: WILD BUNCH KENNEL CONDITIONAL USE PERMIT

07 January 2016

This staff report is an analysis of the application based on adopted county documents, standard county development practices, and available information. The report is to be used to review and consider the merits of the application. Additional information may be provided that supplements or amends this staff report.

Agent: John Mullin **Legal Counsel:** Brett Chambers **Parcel ID#:** 13-048-0046
Staff Determination: Approval with conditions, or Continue up to 90 days 13-048-0047
Type of Action: Administrative
Land Use Authority: Cache County Planning Commission

PROJECT LOCATION

Reviewed by: Chris Harrild - Senior Planner

Project Address:

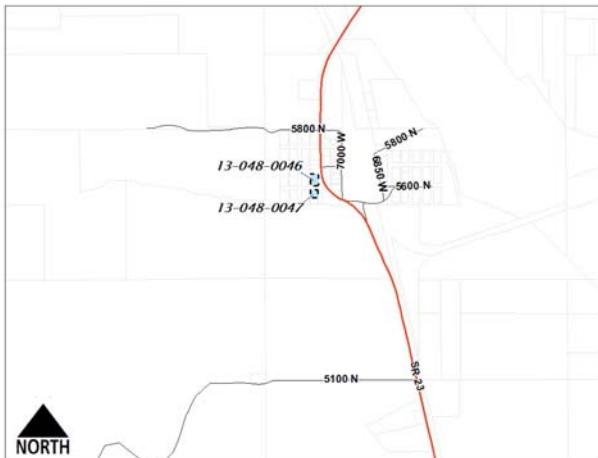
5670 North Highway 23
 Cache Junction

Current Zoning:
 Agricultural (A10)

Acres: 1.14

Surrounding Uses:

North – Agricultural/Residential/Industrial
 South – Agricultural/Residential
 East – Hwy 23/Agricultural/Residential/Industrial
 West – Agricultural/Residential



PROJECT PURPOSE, APPLICABLE ORDINANCE, SUMMARY, AND PUBLIC COMMENT

Purpose:

To review the request for a conditional use permit (CUP) to allow the operation of a kennel that will board up to 42 adult dogs for breeding purposes. This item was previously heard by the Planning Commission on July 7, 2014. At that time the Commission voted to deny the request. It was then appealed to the Board of Adjustments, who, following a clarification of findings, supported the Commission and denied the appeal. It was then appealed to District Court where a Court Order remanded the request back to the Planning Commission to be reviewed as directed by the Utah Property Rights Ombudsman (Exhibit A).

Applicable Ordinance:

As part of the District Court Order, the ordinance that existed at the time application was made, July 7, 2014, must be used in considering the proposed use. Therefore, under that ordinance this proposed use is best defined as “7200 Boarding Facility” under Cache County Ordinance §17.07.020 Definitions,

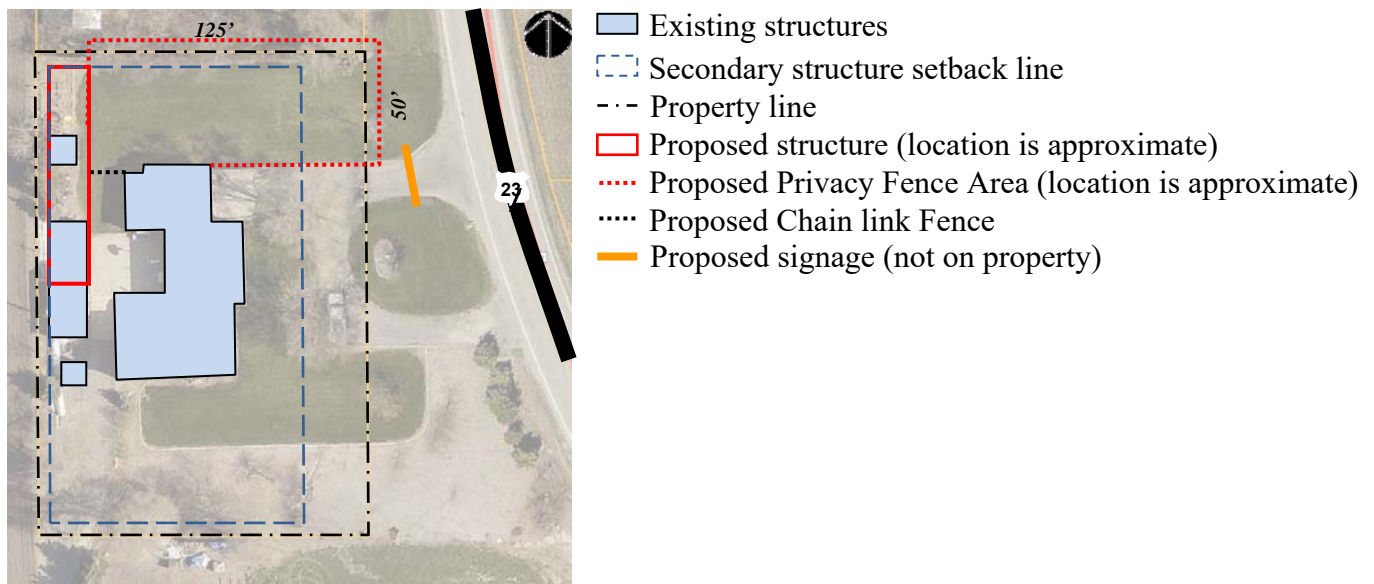
and as per §17.09.030 Schedule of Uses by Zone, this use is permitted as a conditional use in the Agricultural (A10) Zone only if reviewed and approved in accordance with the conditional use review procedures of §17.06 Uses, as also existed at that time. Those procedures are detailed under §17.06.060 Conditional Uses and §17.06.070 Standards and Criteria for Conditional Use. All portions of the code as directly pertain to this request have been attached as Exhibit B.

Said Order also stated that any ordinances adopted since the date of application shall not be considered or imposed, and ordered that the Commission only consider the impacts produced by noise and odor. Additional permitting may also be required under the rules of the United States Department of Agriculture (USDA).

Summary:

The proponent included parcel 13-048-0047 in the initial request, however, the initial and current letter of intent and site plan identify no construction or activity on said parcel. Said parcel is currently vacant.

This request is for a CUP for a breeding kennel for 42 adult Pugs and the sale of approximately 10 litters/30-50 puppies per year. There is an existing home and accessory structures on parcel 13-048-0046. This request includes the construction of an additional 90’x16’ building for a kennel and a 125’x50’ privacy fence area. Given setback requirements, the location of the proposed structures is in question as the provided site plan and area measurements indicate conflicts with existing property lines and structures. Additional information is required to adequately review the placement of the structures.



The proponent has identified that the dogs shall be confined to the property within the fence and/or kennel building. Specifically, as per the letter dated October 9, 2015, from the Mullins legal counsel Mr. Chambers, the dogs will be kept within the kennel structure with the exception of allowing up to 6 dogs outside at any one time, usually for 10 minutes depending on the weather. There is no indication as to how many times this will occur per day.

Customers will not visit or purchase dogs at the site/kennel. Most puppies/dogs are sold on-line and flown out of Salt Lake. Local persons with inquires are not invited to the site but are sent pictures via email, and then an employee will meet with local customers at another location. There will be no anticipated increase in traffic due to the kennel. The only employees shall be the residents of the property. The proponent has identified hours of operation being seven days a week from 7:00 a.m. to

10:00 p.m., however, as the dogs live at the site, hours reflecting a use occurring 24/7 may be more accurate.

A history of permits issued for kennels within the unincorporated county has also been provided as Exhibit C. This history reflects a pattern in the A10 Zone over the last 10 years of kennels housing between 12-25 dogs. Prior to that, one kennel was approved that allowed up to 50 animals. That specific approval has been a consistent enforcement issue in part due to the number of animals and the associated impacts.

Access:

- Access is from Highway 23, a UDOT facility. Additional impacts/requirements due to the use are not anticipated by UDOT and no additional UDOT review is required.
- The existing driveways meet the applicable requirements of the current International Fire Code and minimum County standards.

Water & Septic:

- An adequate, approved, domestic water right is in place for the existing dwelling.
- There is an existing septic system on the property. Any animal waste shall not be disposed of in the septic system, but is to be disposed of at a sanitary landfill.

Service Provision:

- Logan City has identified that sufficient shoulder space must be provided for the residential refuse and recycle containers to sit four feet apart and be out of the travel lane, and must be placed so as not to be blown over by passing traffic. Additional waste containers as needed are available through the Logan City Environmental Department. As this access is from a state road, and if necessary, any work within the UDOT right-of-way must be reviewed with UDOT.
- Emergency access to the site is adequate. Water supply for fire suppression will be provided by the Smithfield Fire Department.

Context Specific Impacts and Mitigation:

- Reasonably Anticipated Impacts: Odor and noise from the proposed 42 adult dogs as per District Court Order.
- Mitigation: The proponent has proposed mitigation in the letters of intent and letters from legal counsel that includes (Exhibit D):
 - A. Odor Mitigation: The proponent has identified that waste will be bagged and stored daily, and then transported to a sanitary landfill on a weekly basis with the existing Logan City/County collection service. The waste from the dogs will fill approximately three tall kitchen bags.
 - B. Noise Mitigation:
 1. While the loudness of this specific kennel has not been identified, ¹Coppola et al (2010) identified that daytime noise levels in a new kennel exceeded the measuring capability of their noise dosimeter at 118.9 dBA. ²Sales et al (1997) also identified that daytime noise levels in kennels regularly exceeded 100 dBA and often reached 125 dBA.
 2. The proponent has provided information stating that sound proofing insulation to be installed in the wall of the proposed kennel will reduce the overall sound levels by more than 90% if installed properly. Therefore, while it may not occur in every case, if a maximum loudness of 125 dBA is assumed, and a reduction of sound by 90% is attained, the noise originating immediately outside the kennel should not exceed 12.5 dBA and is an acceptable level of noise mitigation.
 3. The construction and sound proofing of the kennel roof/ceiling has not yet been identified. The material identified for sound proofing the walls may also be adequate for the roof/ceiling.

4. Once the kennel is constructed, verification must be provided from a professional source (noise dosimeter) identifying the reduction in noise from the interior of the kennel to the exterior of the kennel so that the increase in noise from all use related sources is no greater than 10 dBA at the property line. Noise levels that exceed this standard may require further mitigation, the reduction in the number of dogs, or an alteration to the number of dogs outside at any given time.
5. The number of dogs outside at any one to time shall be restricted to six (6), usually for 10 minutes at a time depending on the weather. However, the total amount of time that dogs will be outside in the fenced area is currently unknown, and therefore the impact due to dogs barking outside the enclosed kennel is unknown.

Incomplete Items:

- A. The proponent must provide the following details to address the noted deficiencies in the provided information:
 1. An updated site plan showing the location and placement of the kennel, fencing, and signage accounting for the existing structures and property lines.
 2. The type of sound damping material and damping capability of the ceiling/roof of the kennel.
 3. While staff is uncertain if the proposed noise mitigation is sufficient, the proponent may provide evidence that sufficient mitigation has been accomplished such that the increase in noise no greater than 10 dBA at the property line.

Signage:

- The ranch style entrance sign as proposed must be located on the same property as the use, and must obtain the approval and required permitting of UDOT and Cache County.

Public Comment:

Public comment from the previous August 7, 2014, Planning Commission meeting is available for review online at <https://www.cachecounty.org/pz/current/cup.html> under 2014, Wild Bunch Kennel. Public comment regarding this current proposal has been received by the Development Services Office and is available online at <https://www.cachecounty.org/pz/current/cup.html> under 2015, Wild Bunch Kennel.

DETERMINATION AND FINDINGS OF FACT (3)

It is the Planning Commission's determination that the request for a conditional use permit for the Wild Bunch Kennel, located in the Agricultural (A-10) Zone at approximately 5670 North Highway 23 on parcel 13-048-0046 and 13-048-0047 is in conformance with the Cache County Ordinance and should be approved. This determination is based on the following findings of fact:

1. The Wild Bunch Kennel Conditional Use Permit has been revised and amended by the conditions of project approval to address the issues and concerns raised within the public and administrative records.
2. The Wild Bunch Kennel Conditional Use Permit has been revised and amended by the conditions of project approval to conform to the requirements of Title 17 of the Cache County Code at the time the application was made in July of 2014, and conforms to the requirements of various departments and agencies.
3. The Wild Bunch Kennel Conditional Use Permit has been reviewed in conformance with §17.06.070 of the Cache County Ordinance, Standards and Criteria for Conditional Use, and conforms to said title that was applicable at the time the application was made in July of 2014, and pursuant to the conditions of approval.

CONDITIONS OF APPROVAL (10)

The following conditions are appurtenant to the existing property and must be followed for the development to conform to the County Ordinance and the requirements of county service providers:

1. Prior to recordation the proponent shall meet all applicable standards of the Cache County Ordinance.
2. The proponent shall abide by the submitted letters of intent, site plans, and construction specifications, and by the information provided by the proponent's legal counsel.
3. The proponent must provide the following details to address the noted gaps in information prior to recordation:
 - a. An updated site plan showing the location and placement of the kennel, fencing, and signage that accounts for the existing structures and property lines.
 - b. The sound damping capability and material type of the roof/ceiling of the kennel.
4. Once the kennel is constructed, verification must be provided from a professional source (noise dosimeter) identifying the reduction in noise from the interior of the kennel to the exterior of the kennel so that the increase in noise from all use related sources is no greater than 10 dBA at the property line. Noise levels that exceed this standard may require further mitigation, the reduction in the number of dogs, or an alteration to the number of dogs outside at any given time.
5. This permit is issued only for the breed of dog identified as a Pug. This approval does not apply to any other breed of dog or any other animal.
6. No more than 42 adult dogs shall be allowed on the site at any one time.
7. No more than 6 dogs shall be allowed outside in the fenced area at any one time.
8. The entrance sign as proposed must be located on the same property as the use, and must meet the requirements and obtain the approval and required permitting of UDOT and Cache County.
9. The applicant shall submit a copy of any required USDA permitting to the Development Services Department prior to operation of said kennel.
10. Any expansion or modification of the facility, site, or change to the breed of dog shall require the approval of the designated land use authority.

¹ Coppola CL, Enns MR, Grandin T. 2010. Noise in the Animal Shelter Environment: Building Design and the Effects of Daily Noise Exposure. *Journal of Applied Animal Welfare Science* 9:1-7

² Sales, G. D., Hubrecht, R., Peyvandi, A., Milligan, S., & Shield, B. (1997). Noise in dog kennelling: Is barking a welfare problem for dogs? *Applied Animal Behaviour Science*, 52. 321-329.

Wild Bunch Kennel Staff Report

05 November 2015

Exhibits (A-D)

A – District Court Order and Arbitration Decision of
the Utah Property Rights Ombudsman

B – Applicable Ordinance

C – History of Kennel Permit Issuance

D – Letter of Intent Documents

The Order of Court is stated below:

Dated: October 16, 2015
11:41:56 AM

/s/ Thomas Willmore
District Court Judge



Exhibit A

Joseph Chambers #0612
J. Brett Chambers #15106
HARRIS, PRESTON & CHAMBERS, LLP
31 Federal Avenue
Logan, Utah 84321
T: 435.752.3551
F: 435.752.3556
jchambers@utahlawfirm.com
jbc@utahlawfirm.com
Attorneys for Plaintiffs-Petitioners

**IN THE FIRST JUDICIAL DISTRICT COURT
CACHE COUNTY, STATE OF UTAH**

JOHN MULLIN, an individual, CARYN MULLIN,
an individual,

Plaintiffs-Petitioners,

v.

CACHE COUNTY, a municipality,
CACHE COUNTY PLANNING COMMISSION,
a subdivision of Cache County,
CACHE COUNTY BOARD OF ADJUSTMENT,
a subdivision of Cache County,

Defendants-Respondents.

**ORDER ON SEPTEMBER
17, 2015 HEARING**

Civil No. 150100060
Judge Thomas Willmore

This matter came before the Court on September 17, 2015 for a Pretrial Conference following the conclusion of the nonbinding mediation/arbitration with the Office of Property Rights Ombudsman which was previously ordered by the Court. The Ombudsman's written decision was filed with the Court and reviewed by the Court prior to the hearing. The Plaintiff

John Mullin was present and represented by his attorneys Joseph M. Chambers and J. Brett Chambers. The Defendant was represented by Lee Edwards, Deputy Cache County Attorney. The Court indicated that it had reviewed the Office of the Property Rights Ombudsman's August 6, 2015 Arbitration Decision and following a discussion between counsel and the Court, the Court entered the following order:

IT IS HEREBY ORDERED:

1. The Court orders the parties to work together in good faith as envisioned by Title 17, Chapter 27a of the Utah Code. Notwithstanding the remand as set forth below in paragraph 2, the Court retains jurisdiction of this matter.
2. The matter is remanded back to the Cache County Planning Commission for re-consideration of the Mullins' Conditional Use application in light of the direction and guidance given by the Utah Property Rights Ombudsman. The Court further orders the Planning Commission to carry out their responsibilities as set forth in Utah Code Section 17-27a-506. In this regard the Planning Commission shall re-consider the application only in light of the Cache County Ordinances that were in effect at the time of the Mullin's application on July 7, 2014. The Planning Commission and Planning Department shall not consider or impose the standards of any revised, updated, or new ordinances passed subsequent to the Mullins' July 7, 2014 application. The only two issues to be considered by the Planning Commission are odor and noise. If reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use (*i.e.*, a dog kennel

in Cache Junction), which is already zoned as an agricultural area, then the Planning Commission is obligated to issue the conditional use permit in accordance with the legislative mandate contained in Utah Code 17-27a-506.

3. The Mullins may supplement their application as may be needed for the Planning Commission to perform their statutory responsibilities.

WITNESS, the Judge's signature and the Seal of this Court affixed above in accordance with Rule 4-403 Utah Code of Judicial Administration and Release Notes for Efiling Enhancement 4-2-2013 adopted by the Utah Board of District Judges approving the placement of the court seal and signature at the top of the document.

----- END OF ORDER -----

NOTICE OF COMPLIANCE WITH URCP 7(f)

Pursuant to, and in accordance with, URCP 7(f), objections to the foregoing proposed order, must be filed with the Court within seven (7) days of service. The proposed order is being uploaded to the court file and will be submitted by the clerks on the date that is seven (7) days after the date set forth in the Certificate of Service below.

CERTIFICATE OF SERVICE

I hereby certify on the 1st day of October, 2015, I served a true and correct copy of the foregoing **ORDER ON SEPTEMBER 17, 2015 HEARING** was sent via the Utah Courts Electronic Court Filing system (ECF/NEF) to the following:

Lee Edwards, Deputy Cache County Attorney
Tony Baird, Deputy Cache County Attorney
James Swink, Cache County Attorney

/s/ Jos M. Chambers



GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah
Department of Commerce

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

IN AN ARBITRATION CONDUCTED UNDER UTAH CODE §13-43-204
BY AND THROUGH THE OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

In the Arbitration between:

John and Caryn Mullin,
Property Owners

and

Cache County
Governmental Entity

ARBITRATION DECISION

Arbitrator: Brent N. Bateman

Date of Decision: August 6, 2015

This Arbitration Decision is issued in accordance with UTAH CODE § 13-43-204. As arbitrator, the Office of the Property Rights Ombudsman ("OPRO") is a neutral party, and its attorneys do not represent any party to this dispute. In issuing a decision hereunder, the arbitrator is required to follow the existing Utah law. UTAH CODE § 13-43-204(3)(d). This arbitration was conducted informally under the procedures of the Utah Uniform Arbitration Act, UTAH CODE § 78B-11-101 *et seq.*

In accordance therewith, the OPRO issues the following Arbitration Decision.

BACKGROUND

John and Caryn Mullin (the "Mullins") own a residential parcel of property at 5670 North Highway 23, Cache Junction, Cache County, Utah (the "Parcel"). The parcel is 1.14 acres, and is located in the Agricultural (A10) zone. Although the area is fairly rural, the parcel is located near several residences.

The Mullins currently operate a boarding and breeding dog kennel out of their home in Wyoming, and wish to relocate the kennel to the Parcel in Cache County. Cache County Code categorizes the Kennel as a *7200 Boarding Facility*, which is listed as a conditional use in the A10 zone and requires the approval of the Planning Commission. On July 7, 2014, the Mullins submitted a conditional use permit ("CUP") application to the Cache County Planning

Page - 2 -
August 6, 2015
John & Caryn Mullin/Cache County

Commission. The Mullins applied to establish the *Wild Bunch Kennel* ("Kennel"), and detailed their plan to board forty-two dogs.

On August 7, 2014, the County considered the Mullins' request for a CUP. At the CUP hearing, Rob Smith, the Planning Commission Vice-Chair, made a motion to deny, stating, "it would be difficult to mitigate the damage to surrounding neighbors and did not see how mitigation could occur with the number of dogs proposed." See Letter from Lee Edwards dated May 29, 2015. Also at the hearing, Commissioner Leslie Larson stated that if the noise was mitigated with building materials or a reduction in the number of dogs consistent with a previous proposal she would be comfortable with the issuance of the permit. *Id.* Following further discussion, the motion to deny the CUP passed four to zero. *Id.*

The Planning Commission later issued its *Findings of Fact*, "finding that the standards found in § 17.06.070 of the Cache County Code could not be met as the proposed use was not compatible with the character of the site, adjacent properties and other existing and proposed development." *Findings of Fact*, number 10(a). The Commission further found "that the use would be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity or injurious to property or improvement of vicinity." *Findings of Fact*, number 10(b).

On August 20, 2014, the Mullins appealed that decision to the County Board of Adjustments ("Board"). On November 20, 2014, the Board heard the appeal. The Board obtained information from Mullin and county staff, and also elected to hold a public hearing as part of the appeal, receiving comments from neighboring residents. The Board of Adjustments sent the matter back to the Planning Commission for "their review and clarification of their findings fact taken from the existing record." *Findings of Fact*, number 8.

On December 4, 2014, the Commission responded to the Board's request for clarification by issuing a *Clarification of Findings* to the Board, which stated that the CUP "is not in conformance with the Cache County Ordinance as the standards of §17.06.070 Standards and Criteria for the CUP cannot be met and should therefore be denied." *Id.*

On January 15, 2015, the Board reheard the Mullin's appeal. The Mullins argued that the Commission erred in their decision to deny the CUP. After consideration, the Board concurred with the Commission's decision to deny the Mullins' CUP request, and held that the Mullins failed to provide substantial evidence that the Commission erred in its initial decision. The Mullins have appealed that decision to the District Court. Upon stipulation to the Court, the parties have agreed to enter in the present non-binding arbitration to the Office of the Property Rights Ombudsman.

The issues addressed in this arbitration are 1) whether the Planning Commission adhered to the requirements and standards of the Cache County Ordinance and State Code in receiving, hearing and acting upon the Mullins' CUP; and 2) whether the Mullins failed to provide substantial evidence that the Planning Commission erred in its decision to deny his application for a CUP allowing a kennel for forty-two dogs.

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ANALYSIS

Cache County argues that the Kennel is not compatible with the character of the site and adjacent properties, which are claimed to be residential in nature. Additionally, they claim that the proposed use would be detrimental to health, safety, and/or general welfare of persons residing or working in the vicinity, or injurious to property. The County argues number of dogs (forty-two) may create a noise and/or odor nuisance.

Moreover, the County claimed this case is similar to *Thurston v. Cache County*, where the plaintiff presented no evidence, nor does the record suggest any, which leads inescapably to the conclusion that the decision of the Planning Commission was "illegal, discriminatory, or exercised an abuse of discretion." 626 P. 2d 440, 445 (Utah 1981). The County further argued that the denial of the CUP was "carefully considered by the Commission and based on the evidence from neighboring property owners and the lack of proposed mitigation by the applicants." See Letter from Lee Edwards dated May 29, 2015. Cache County claims that it was a "legitimate exercise of governmental authority" in denying the issuance of the CUP. *Id.*, quoting *Thurston*, 626 P. 2d at 445.

The Mullins argue that the Commission recognized that mitigation was possible, but instead denied the application without recommending changes or attempting to impose conditions. Further, they argue that the Commission did not fulfill their statutory obligation to "impose reasonable conditions." Finally, the Mullins argue that the County Code contains no standards that permit the County to limit the number of dogs at the facility, and that the Commission's denial was illegitimately based on public clamor without a factual basis in the record.

I. The Cache County Planning Commission Erred when it Denied the Mullins' Conditional Use Permit

The County erred when it denied the Mullins' conditional use permit. Conditional uses may only be denied where the reasonably anticipated detrimental effects *cannot* be substantially mitigated by imposing reasonable conditions. The County failed to include in the record substantial evidence that imposing reasonable conditions was impossible. Reasonable conditions could have been imposed, requiring approval of the CUP.

Conditional uses are governed by the County Land Use, Development, and Management Act ("CLUDMA") found in Title 17, chapter 27a of the Utah Code. In order to deny an application for a CUP, the County must establish that "the reasonably anticipated detrimental effects of a proposed conditional use *cannot* be substantially mitigated by the proposal or imposition of reasonable conditions to achieve compliance with applicable standards." UTAH CODE § 17-27a-506(2)(b) (emphasis added). The plain language of the statute indicates that a CUP may only be denied if substantial mitigation *cannot* occur, a very high bar for denial of a CUP.

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Denial of a conditional use must be based on something more concrete than neighborhood opposition and unfounded expressions of concern for public safety and welfare. *Davis County v. Clearfield City*, 756 P.2d 704, 710 (Utah Ct. App. 1988). Denial of a conditional use permit must be supported by substantial evidence. *Ralph L. Wadsworth Constr. v. West Jordan City*, 2000 UT App 49, ¶9. Substantial evidence is “that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.” *Bradley v. Payson City Corp.*, 2003 UT 16, ¶15.

Substantial factual evidence is necessary to support the County’s decision, and the County may not simply rely on deference or a presumption of validity. *Wadsworth*, 2000 UT App at ¶16. Because the County must show factual evidence in the record, the burden is on the County to support its own decision. It is not the applicant’s responsibility to provide evidence to overcome a presumption that the County’s decision is correct.

Uintah Mt. RTC, L.L.C. v. Duchesne County, 2005 UT App 565, is very instructive in this matter. In that case, the applicants sought a conditional use permit to create a residential treatment center. In *Uintah Mt.* the Court reviewed each of the reasons offered by the County for denial of the CUP (some of which resemble the reasons proffered in the present case). The Court discussed the need for factual evidence rather than clamor and unsupported conclusions. The court concluded that the denial was not supported by substantial evidence and was wrongly denied. See also *Wadsworth* for a similar discussion.

Accordingly, in order to have lawfully denied the CUP request, the County would have to show by substantial evidence that the kennel’s reasonably anticipated detrimental effects could not be substantially mitigated by reasonable conditions. The County did not provide in either its *Findings of Fact* or its *Clarification of Findings* sufficient factual evidence to show that the detrimental effects could not be mitigated. Instead, the record shows that the commission discussed mitigating conditions. Rather than providing facts to show that no conditions could mitigate the detrimental effects, the planning commission seems to have based the denial largely on the fact that the Mullins would not accept a reduction in the number of dogs.

The County did not supply substantial evidence that the detrimental effects could not be mitigated by the proposal or imposition of reasonable conditions. Indeed, it cannot be said that imposing conditions to mitigate the detrimental effects, (i.e. requiring soundboard insulation, limiting the number of dogs), was not possible. Accordingly, the conditional use permit should have been approved with conditions, and was wrongly denied.

II. The County May Impose Reasonable Conditions

The County should have approved the Mullins’ Conditional Use Permit, and could have imposed conditions to mitigate the detrimental effects of the use. Those conditions must be reasonable, and must relate to a standard in the ordinance. However, the conditions need not be approved by or acceptable to the Mullins.

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The state statute on conditional uses is clear: "A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards." UTAH CODE § 17-27a-506(2)(a). The term *propose* in the statute by its plain language implies a responsibility to discuss potential mitigation efforts with the applicant, and to consider suggestions from the applicant. However, the legislature also included the word *impose* as an alternative. The term *impose* by its plain language indicates an act of authority without agreement of the recipient. Thus, according to the statute, should *proposing* fail, the County may *impose* reasonable conditions to mitigate the detrimental effects.

Cache County acknowledges that it discussed possible conditions with the Mullins, and that the County denied the CUP when it became clear that the Mullins would not accept conditions that the County desired, such as a reduction in the number of dogs. In support of its decision to deny the Conditional Use Permit, the County found that the Mullins had not "shown or provided documentation that the proposed kennel has functional capability of controlling and/or reducing the probable noise and/or odor." *Findings of Fact*, number 10(b). The rejection appears based upon the fact that the Mullins failed to *propose* mitigating conditions. However, the County may still *impose* conditions to mitigate the detrimental effect. As long as the County is able to impose conditions, then the County cannot deny the CUP. There is no requirement that the imposed conditions be agreeable to the applicant. The statute only requires that the conditions be reasonable and relate to the standards in the ordinance. UTAH CODE § 17-27a-506(2)(a).

The standards in the ordinance are key. The County must show that a condition it imposes achieves compliance with a standard in the Cache County Ordinance. UTAH CODE § 17-27a-506. The standards must be stated in the ordinance. Local governments cannot make up conditions that suit their response to a particular application.

The Mullins argue that the County lacks applicable standards that would allow it to impose the conditions the commissioners would prefer. The applicable standards are found in Cache County Ordinance Section 17.06.070. Although the applicable standards in the Cache County Ordinance are sparse, consisting generally of broad policy statements, those standards are nevertheless sufficient for conditional use analysis, and conditions that relate to them may be imposed. *Thurston v. Cache County*, 626 P2d 440, 443-44 (Utah 1981) ("A generalized exposition of overall standards or policy goals suffices to direct the inquiry and deliberation of the zoning authority, and to permit appellate review of the decision."). Specificity in the standards would be better, but generalized statements suffice so long as the County's findings related to them are based on substantial evidence. *See generally, Uintah Mt. and Wadsworth* for an examination of generalized unspecific standards similar to Cache County's.

Accordingly, the County's generalized standards may be able to support specific conditions. If the county determined, by substantial evidence, that noise from dogs is a detrimental effect, they would likewise need to include evidence that the condition they impose, perhaps requiring extra insulation on the kennel, or requiring distance from dogs to other residences, or reducing the number of dogs, would reduce the noise levels sufficiently to bring the use into compliance with

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a stated County standard. The standard need not specifically mention dogs. But whatever standard is being advanced, perhaps Cache County Standard 5 -- detrimental to the health, safety, and welfare of the community --substantial evidence is required to show that the condition advances that standard. In other words, facts must be placed in the record to show that reducing the number of dogs would advance the health, safety, and welfare of citizens. If substantial evidence to show that connection exists, the County may impose the condition, whether the Mullins agree or not. Without evidence relating the condition to the standard, the County cannot impose the condition.

That means that if a reduction in the number of dogs is reasonable, substantially mitigates the detrimental effects, and achieves compliance with a standard in the ordinance, that condition or others like it may be imposed, even though the Mullins find it unacceptable. Within these guidelines, and supported with substantial evidence, the County has great discretion to impose conditions to substantially mitigate the detrimental effects of the proposed use.

III. Conclusion

When a local government lists a conditional use in its zoning code, it has welcomed that use into the zone. The policy decision regarding the desirability of that use has been made previously, and cannot be made again when an application for that use arrives. The County's administrative decision at that point must be based upon evidence. The amount of evidence necessary to show that conditions *cannot* be imposed to mitigate the potential detrimental effects is significant. The County did not include substantial evidence in support of denial here. Accordingly, Cache County's decision to deny the conditional use permit was in error.

However, the victory for the Mullins is tempered by the ability of the County to impose conditions. The County need not impose conditions that the Mullins agree to (although they should try). The County has significant discretion in imposing conditions, if supported by substantial evidence. That discretion is limited by reasonableness and the standards in the County's ordinance. Generalized policy standards are not good standards, but they are standards nonetheless, and can be used to impose specific conditions as long as the evidence-based connection to the standard is shown. So the answer may be "Yes, your permit is granted" but granted with conditions that the Mullins do not like.

ISSUED on this 6th day of August, 2015



Brent N. Bateman, Arbitrator

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APPEAL

Appeal of this decision may be made in one of three ways:

1. Within twenty (20) days of receipt of this decision, any party may submit a motion to the Arbitrator for change or clarification if the decision based on mistake, miscalculation, or other limited grounds. The motion must be made in writing to the Arbitrator, with copies to all other parties. See UTAH CODE § 78B-11-121.
2. As the parties are already in litigation concerning this matter, a new action for *de novo* review or other appeal or review by the district court review would appear unnecessary. This arbitration decision is non-binding on all parties.

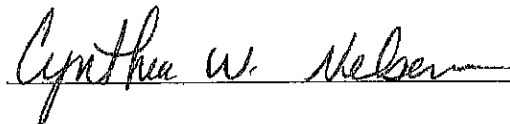
MAILING CERTIFICATE

THIS CERTIFIES that copies of the foregoing Arbitration Decision were mailed to the following Addresses:

Brent J. Chambers
Harris Preston & Chambers
31 Federal Ave
Logan, Utah 84321
Attorney for John & Caryn Mullin

Lee W. Edwards
Cache County Attorney's Office
199 North Main Street
Logan, Utah 84321
Attorney for Cache County

DATED this 6th day of August, 2015.



7120 LIVESTOCK AUCTION FACILITY: A structure or structures with associated pens, yards, corrals, and loading and unloading facilities used for the sale of livestock.

7200 BOARDING FACILITY: A series of stables, barns, paddocks, and/or other shelters and exercising facilities in which farm animals are fed, exercised and/or cared for on a short or long term basis for a fee.

1. **Kennel:** Any establishment at which four (4) or more dogs are bred or raised for sale, boarded, or cared for.

7300 FORESTRY ACTIVITIES: The felling and transportation of commercially harvested trees. Forestry activities do not include the harvesting of firewood or trees for private use. Excludes sawmills or the production/finishing of lumber.

7400 MINERAL EXTRACTION: The extraction of metallic and nonmetallic minerals or materials; including the accessory uses of rock crushing, screening, and the storage of explosives; except where such excavation is for purposes of grading for a building lot or roadway, where grass sod is removed to be used for landscaping, or where materials are excavated from a lot for use on that same lot or an adjoining parcel by the owner of the property. Includes stone quarries and sand/gravel pits.

7410 TOPSOIL EXTRACTION: Extraction activities limited to the removal and sale of topsoil, except where such excavation is for purposes of grading for a building lot or roadway, where grass sod is removed to be used for landscaping, or where materials are excavated from a lot for use on that same lot or an adjoining parcel by the owner of the property.

7420 SITE GRADING: The act of excavation or filling or combination thereof or any leveling to a smooth horizontal or sloping surface on a property in preparation for the construction of a building, but not including normal cultivation associated with an agricultural operation. Excavation shall be less than 1,500 cubic yards per parcel. Additional excavation may only be permitted with a variance.

6000	Public, Institutional, and Utility Uses	RU2	RU5	A10	FR40	RR	C	I	ME	PI
6100	Public/Institutional Uses									
6110	Cemetery	N	N	C	N	N	N	N	N	-
6120	Public Uses	P	P	P	P	P	P	P	N	-
6130	Religious Meeting House	C	C	C	N	C	C	N	N	-
6140	Correctional Facility	N	N	N	N	N	N	N	N	-
6150	Animal Shelter	N	N	N	N	N	C	C	N	-
6160	Educational Facility	N	N	N	N	N	C	N	N	-
6200	Utilities									
6210	Utility Facility, Transmission	N	N	N	N	N	N	N	N	C
6220	Utility Facility, Distribution	C	C	C	C	C	C	C	C	C
6230	Utility Facility, Service	P	P	P	P	P	P	P	P	P
6240	Telecommunication Facility	N	N	N	N	N	C	C	N	C
6300	Airport	N	N	N	N	N	N	N	N	C
6400	Solid Waste Facilities	N	N	N	N	N	N	N	N	C
6410	Nuclear Waste Facility	N	N	N	N	N	N	N	N	N
7000	Resource Production and Extraction	RU2	RU5	A10	FR40	RR	C	I	ME	PI
7100	Agricultural Production	P	P	P	P	P	P	P	P	-
7110	Concentrated Animal Feed Operation	N	N	C	N	N	N	N	N	-
7120	Livestock Auction Facility	N	N	C	N	N	C	C	N	-
7200	Boarding Facility	C	C	C	N	C	C	N	N	-
7300	Forestry Activities	N	N	N	C	C	N	N	N	-
7400	Mineral Extraction	N	N	N	N	N	N	N	C	-
7410	Topsoil Extraction	N	N	C	N	N	N	N	C	-
7420	Site Grading	P	P	P	P	P	P	P	P	-

code) as adopted and as applicable. A permitted use application shall be reviewed in accordance with the following general standards and criteria:

- A. The zoning administrator shall review the permitted use request and determine if the request meets the following requirements:
 - 1. The use is identified as a permitted use within the zoning district as identified in chapter 17.09, "Schedule Of Zoning Uses", of this title.
 - 2. The use complies with the requirements for the zoning district with respect to minimum area, setback requirements, height, buffer and landscape standards, maximum coverage, parking, unloading, and all other requirements applicable to the district.
 - 3. The use does not have an adverse effect on any sensitive areas, as defined by this title.
 - 4. The use complies with all road dedication requirements of the county and provides necessary infrastructure as required and recommended by the county road department and/or Utah department of transportation.
 - 5. The use meets all requirements of the Bear River health department and Utah department of environmental quality as required and applicable.
- B. Upon finding that the proposed use, building or structure complies with the standards and requirements of this title, the zoning administrator shall issue a zoning clearance. With the receipt of a zoning clearance, the proposed building or structure shall be reviewed for compliance with the county building codes, as adopted. If the request for a permitted use complies with the requirements of this title, the county building codes, as adopted, and the requirements of the Bear River health department or the Utah department of environmental quality, as applicable, the permitted use shall be authorized.

17.06.060: Conditional Uses:

- A. The purpose of the issuance of a conditional use permit is to allow the proper integration into the county of those uses which may be suitable in specific locations or if such uses are designed, arranged or conducted on the site in a particular manner.
- B. Conditional use permits may be approved by the planning commission as provided by this title for any of the uses for which a conditional use permit is required as identified in chapter 17.09, "Schedule of Zoning Uses", of this title. The planning commission is also authorized to impose such other reasonable conditions as provided in section 17.06.070 of this chapter.

17.06.070: Standards and Criteria for Conditional Use:

- A. The planning commission shall review a conditional use request with the following general standards and criteria:
 - 1. The use applied for at the location proposed is necessary or desirable to provide a service or facility that will contribute to the general well being of the area and the county;
 - 2. Compatibility of the proposed use with the intent, function and policies established in the Cache countywide comprehensive plan;
 - 3. Compatibility of the proposed use with the character of the site, adjacent properties and other existing and proposed development;
 - 4. The availability of, or ability to provide adequate services, drainage, parking and loading space, fire protection, and safe transportation access and vehicular circulation;
 - 5. Such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity;

6. If the planning commission determines that the standards of this section cannot be met and that adequate mitigation measures cannot be imposed to bring the use into conformity with the standards and criteria, the planning commission may deny the request for a conditional use permit.
- B. In approving a conditional use permit, the planning commission may impose such reasonable conditions with respect to location, construction, maintenance, operation, site planning, traffic control, flood control, time limits, and other items for the conditional use permit as deemed necessary for the protection of adjacent properties and the public interest. The planning commission may require guarantees or other evidence that such conditions will be met and complied with.

17.06.080: Revocation or Modification of a Conditional Use Permit:

- A. If there is cause to believe that grounds exist for revocation or modification of an approved conditional use permit, the planning commission shall schedule the item for consideration at a regular meeting. A minimum notice of fourteen (14) days prior to the meeting shall be provided to the owner and the operator of the approved conditional use permit.
- B. A conditional use permit may be modified or revoked by the planning commission if the planning commission finds that one or more of the following conditions exist:
 1. The conditional use permit was obtained in a fraudulent manner.
 2. The use for which the conditional use permit was granted has now ceased for at least eighteen (18) consecutive calendar months.
 3. The nature of the use for which the conditional use permit was granted has changed or the intensity of use has increased beyond that originally approved.
 4. The use constitutes a nuisance.
 5. One or more of the conditions of the conditional use permit have not been met.

17.06.090: Conditional Use Permit to Run with the Land:

All conditional use permits authorized and approved as required by this title are determined to run with the land.

17.06.100: Temporary Uses:

- A. The purpose of the issuance of a temporary use is to allow the establishment of a use on a temporary basis which will not create an undue risk to the public health, welfare and safety, and which will not create a nuisance. Such uses may include, but are not limited to, construction offices, or the storage of materials and equipment necessary for construction, and seasonal activities such as a corn maze, pumpkin patch/stand, fireworks stand, and Christmas tree lot.
- B. A temporary use shall be approved by the zoning administrator, as provided by this title, for any of the uses for which a temporary use is identified in chapter 17.09, "Schedule of Zoning Uses", of this title. A temporary use shall only be authorized by the zoning administrator for a period of up to six (6) months. As required by the county building codes, all requests for a temporary use shall also provide application for a building permit and/or application for a business license, as required by the county. No temporary use shall become effective until approval is received from the zoning administrator and a building permit and/or business license, if required, is issued by the county building official and/or county clerk. The zoning

Kennel Permit Issuance

Project Name	# of Dogs	Acres/Dog	Date	Type	Parcel	Acres	Zone	Other
Stocker Kennels	18	1.645	1/20/2000	ZC	16-052-0018	29.61	A	
Kathy Carmichael	10	4.223	4/17/2000	CUP	16-046-0009	42.23	A	100' setback from structures
Four Paws Rescue	50	0.22	2/15/2001	ZC	03-049-0012	11	A	# includes any animals
Summit Creek Kennels	20	0.2255	10/16/2002	CUP	08-088-0019	4.51	A	# includes puppies
Galloping Husky Ranch	25	0.56	6/20/2005	CUP	03-068-0004 03-068-0019	14	A	
The Companion Place	40	0.0378	6/29/2007	CUP	02-089-0022	1.51	C	Limited to 25 dogs overnight
North Star Golden Retrievers	20	0.2325	12/28/2009	ZC, BLC	15-023-0025	4.65	A10	
PJM Animal Care	80	0.0356	1/3/2013	CUP	03-009-0040	2.85	A10	Denied
Cache Humane Society	-	-	7/13/2013	CUP	05-057-0008	1.42	C	
Road to Paradise	15	0.334	2/6/2014	CUP	01-080-0071	5.01	A10	
Rita LaVern Stephens	10	0.3	4/10/2014	CUP	01-092-0055	3	A10	Application withdrawn
Mountain View Kennels	12	1.535	6/4/2015	CUP	12-036-0043	18.42	A10	
Wild Bunch Kennel	42	0.0271	In process	CUP	13-048-0046	1.14	A10	In process
Crazy Cascade Blueticks	12	0.125	In process	CUP	09-028-0006	1.5	A10	In process

The maximum number of dogs allowed in approved kennel requests in the Agriculture Zone:

	# of Dogs	Acres/Dog	Acres
Known history	50	0.22	11
Last 10 years	25	0.56	14
Last 5 years	15	0.33	5.01
Wild Bunch Kennel	42	0.0271	1.14

Comparison of equivalent maximum number of dogs of Wild Bunch Kennel to existing acreage ratios:

	# of Dogs	Acres/Dog	Acres
Known history	5	0.22	1.14
Last 10 years	3	0.33	1.14
Last 5 years	2	0.56	1.14

December 23, 2015

SENT VIA REGULAR MAIL & EMAIL

Josh Runhaar and Chris Harrild
Cache County
Development Services
179 North Main St. Suite 305
Logan UT, 84321

Re: Wild Bunch Kennel – Supplemental Staff Report

Dear Mr. Runhaar and Mr. Harrild:

Thank you for sending me a preliminary staff report on the Wild Bunch Kennel Conditional Use Permit. As you know, it's my hope we can work together to resolve the application for both the County and the Mullins.

First, my impression from your supplemental report is that you are frustrated with a "lack of information that has been provided," (pg. 3). Respectfully, I am not sure why you have not reached out to me or the Mullins if you wanted specific additional information. One of the reasons for the Court's overturning of the Commission's first decision was for this lack of communication. Under Utah Code § 17-27a-506, the conditional use permit and review is a dual process, requiring both parties to work constructively and cooperatively with another. Having said that, my few conversations with Chris have been very amenable, and I believe we have worked cooperatively one with another; (that is part of why I was surprised to see the "lack of information.") We look forward to continuing to work with you constructively, but please contact me for specific information.

The following are certain items that have arisen that the Commission may be interested to know, and other items that I thought should be addressed. Per the Court's order, we are focusing on the matters limited to review:

- *Cost of Sound Study: \$~4,000 - \$70,000+.*

Although the Mullins are in no way required to conduct a sound study under the County ordinance in place at the time, there seems to be a continuing requirement that they perform a sound study to allay additional obligations that were not under the prevailing ordinance.

Despite this, in a good faith attempt, we explored requesting a sound assessment and were quoted with prices that ranged from between \$4,000 to \$70,000. Unfortunately, even the lowest priced estimate is an exorbitant cost that is unreasonable to place on the Mullins, especially considering that the ordinance does not require such. If the County was concerned about these requirements, they should

have included them in the original ordinance – they did not. They cannot now *ex post facto* require them, or their underlying obligations.

- *Agricultural Area.*

From my research, I have strong doubts as to whether Cache County even has authority to limit dog kennels in an agricultural area. I have include a copy of my research at the close of this letter.

In the event our application is again denied, or accepted with unreasonable conditions (including a reduced number of dogs), we will likely pursue judicial remedies once again. Given the high number of fees our clients have incurred to this point, it is possible the county would be responsible for covering all legal costs incurred by the Mullins. I do not intend these as a threat. However, I believe open dialogue is best, and I want to plainly explain our intended next steps.

- *Litters & Dogs Outside.*

On page 3 of your supplemental report, under Context Specific Impacts and Mitigation (D)(2)(a), you speculate that there could be “ten litters at any one time,” which you then calculate to mean that 72-92 dogs could be outside for 2 to 2.7 hours. This is incorrect. For the puppies’ safety health, only adult dogs are allowed outside. The puppies do not have the necessary fur length to stay warm outside for long periods of time. Additionally, multiple environmental bacteria make it unsafe for them to be outside without strong antibiotics, which the Mullins avoid for ethical reasons. You also incorrectly estimate that the Mullins have 10-12 litters at one time. Average litters for the year are only expected to be 10, which translates to 30-50 puppies over the course of one year. If you’d like additional information, I am happy to provide such.

- *Odor.*

Page three of your supplemental report stated that the applicant “proposed to remove waste daily in plastic containers.” The Mullins are proposing to remove waste daily, but have not proposed to do so in plastic containers. The Mullins may very well use plastic containers but I do not wish to limit them to using plastic containers. Waste will be taken to the sanitary landfill on a weekly basis.

I am confident that this should resolve any concerns regarding odor, especially given that this is an agricultural area subject to the “sights and sounds” of agriculture.

- *Enforcement Issues – Odor – USDA.*

It may be of interest to you to know that the Mullins are also required to meet strict sanitary and facility requirements. Enclosed are materials covering some of these requirements. I am confident that this should address any enforcement issues the County has regarding possible odor.

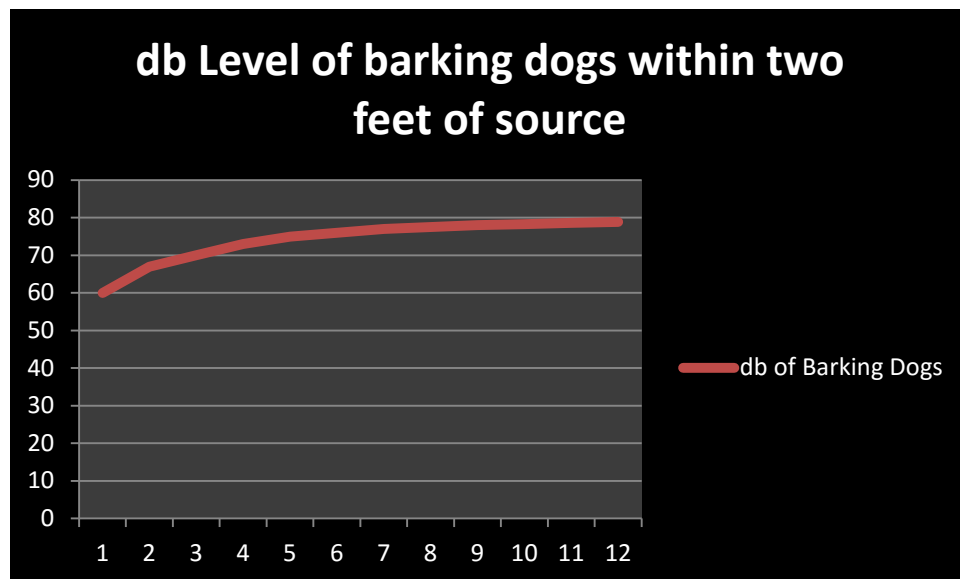
- *Noise.*

Enclosed are additional materials regarding the insulation that will be used. As part of my research, I spoke with an industry sound expert who informed me that if this material is properly installed, it should reduce overall sound levels by over 90%.

While it is impossible to completely eliminate any sound from the kennel, these steps should significantly, and more than sufficiently, reduce potential noise.

Likewise, from my research and conversations with sound experts, there seems to be a maximum decibel level of the dogs, regardless of the number housed. It is based on the principle of diminishing returns. Each dog increases the sound output of the kennel, but at a decreasing level. For example, if one dog's bark is 60db, then two dogs will create 67db, then three dogs will create 70db, then four dogs will create 73db, then five dogs will create 75db, then six dogs will create 76db, etc. To illustrate the bell curve, please see below. This is also assuming that adult dogs will be barking simultaneously, which is unlikely. In short, there is a maximum sound level that can be created, regardless of the number of dogs.

It is unsound to artificially limit the number of dogs based on a concern that they could create large levels of noise; (pun intended).



- *Other Kennels.*

A point is continually raised that permits have historically only been granted to kennels with 12-25 dogs, and therefore, a permit should only be granted for 12-25 dogs. This is a circular argument. In essence, you are saying: we have only authorized small dog kennels. We have never had a problem with a dog kennel. Therefore, in order to not have a problem with a dog kennel, it must be small. Rather, there are a variety of stronger reasons as to why you have not had a problem with a sized kennel, each of which have nothing to do with its size.

A point is also continually raised that a facility with 50 animals has been a problem. This is a straw man argument. That facility handled 50 animals – not dogs.

It is my understanding it housed a variety of animals which it was not equipped to do. Likewise, it is my understanding it was not an indoor facility with the insulation and design of the Mullins' kennel. Respectfully, you are comparing apples or oranges.

Again, I believe these steps more than alleviate any potential or reasonably anticipated detrimental effects of the kennel use. Regarding smell, by removing waste daily in plastic containers, there is no possibility for noxious odors. Regarding sound, the proposed insulation is specifically designed to reduce sound and has been used with success in many truly noise-emitting environments.

If you have any questions, please do not hesitate to contact me – 435.752.3551 or jbc@utahlawfirm.com.

Sincerely,

A handwritten signature in purple ink that reads "Brett Chambers".

J. Brett Chambers
Attorney at Law

cc: Lee Edwards, *Cache County Attorney*; John and Caryn Mullin

AGRICULTURAL USE RESEARCH – PENDING USE IN FURTHER JUDICIAL ACTION

Under Cache County Ordinance § 17.10.050, the county exempts from being a nuisance those “sights, sounds, smells, air quality, water use, animal use, hours of operation, etc., accompanying regular and customary agricultural uses.” CACHE COUNTY ORDINANCE § 17.10.050. All agricultural uses and their “operations that are consistent with sound agricultural practices are declared reasonable and ***shall not constitute a nuisance***. Agricultural operations that are in conformity with federal, state, and local laws and regulations are presumed to be operating within sound agricultural practices.” *Id.* (emphasis added). The intended use of the property – the breeding of domestic animals (dogs) – is incontrovertibly agricultural.

In *Davis v. Industrial Commission of Utah*, 206 P. 267, 268 (Utah 1922) the Utah Supreme Court defined “agriculture” to include “rearing, feeding, and management of livestock... [and] husbandry.” The court also declared that “There is no reason for believing that [the legislature] intended that the words should be given the most narrow definition of which they are susceptible.” *Id.*

The Commission cannot adopt its own definition of terms. See *Mike & Laurie Jorgensen, Park City*, Office of the Property Rights Ombudsman, March 28, 2014, pg. 7, (for the basic legal principle that “The Planning Commission must follow the terms and definitions adopted by the City, and does not have discretion to adopt its own definitions... If a term is defined in either the City’s ordinances or the State Code, the Planning Commission is bound to follow that definition, and does not have discretion to change the established meaning of the term.”). See UTAH CODE § 17-27a-508(2) (“A county is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.”). Under either *Davis* category – “husbandry” or “livestock” – the Wild Bunch CUP was agricultural.

i. Husbandry

Husbandry is the “the science of breeding, feeding, and tending domestic animals.”¹ “Domestic animals” are “dogs ... or other tame animals ... which serve some purpose for its owner or others.” DUHAIME’S LAW DICTIONARY, Domestic Animal, *available at* <http://www.duhaime.org/LegalDictionary/D/DomesticAnimal.aspx>. By all definitions, dogs are “domestic animals.”² The raising and breeding of dogs for selective qualities is “husbandry.” The Wild Bunch’s use is husbandry, which is agricultural. *See also* Iowa State University – Dog Husbandry, *available at* <http://www.cfsph.iastate.edu/pdf/commercial-dog-husbandry-standards-slides>, (teaching students how to conduct dog husbandry as part of a larger agricultural focus on animal husbandry).³

ii. Livestock

Under Utah Code § 17-41-403 – which preempts subpolitical contrary definitions of agricultural nuisance – livestock is defined by referencing⁴ § 59-2-102(21). There, livestock is defined to be: “a domestic animal; a fish; a fur-bearing animal; a honeybee; or poultry.” The legislature’s definition is anything but narrow. As a “domestic animal” and a “fur-bearing animal,”⁵ dogs certainly qualify as livestock and thus are agricultural.

¹ <http://dictionary.reference.com/browse/animal+husbandry>

² Brief research showed that most dictionaries define such using a common variation of ‘domestic animal’ or ‘domestic mammal.’

³ For additional information regarding dog husbandry as an agricultural practice, *see generally* the state agricultural websites of Utah, the USDA, Missouri, Iowa, Ohio, Wisconsin, New York, Pennsylvania, Georgia, and many others (regulating and controlling the breeding, importing, exporting, and raising of dog breeds).

⁴ Utah Code § 17-41-101(6)(a)(iii) states that its definition of livestock is “livestock as defined in Section 59-2-102.”

⁵ Fur is defined as “the hairy coat of a mammal.” WEBSTERS DICTIONARY, *Fur*, *available at* <http://www.merriam-webster.com/dictionary/fur>.

Interestingly, this very issue was examined by the Massachusetts Court of Appeals in *Town of Sturbridge v. McDowell*, 35 Mass.App.Ct. 924, 624 N.E.2d 114 (1993). There, a municipality determined that an individual who “housed as many as forty dogs in kennels” was not engaged in agriculture and thus violated zoning regulations. *Id.* at 116. The district court disagreed with the municipality and the appellate court affirmed. The court found that dog breeding is agriculture. Examining the definition of livestock, it found:

Livestock ... is defined as “[d]omestic animals, such as cattle or horses, raised for home use or for profit, especially on a farm.” [Dictionary source omitted]... While dogs are not specifically enumerated in the dictionary definition of livestock ... they are considered domestic animals, [citation omitted], and are raised “for home use or for profit.” We fail to see how the raising and training of dogs for sale is distinguishable from the raising and training of other domestic animals such as ponies or horses which we concluded [citation omitted] amounted to an agricultural pursuit.

Consequently, we conclude that the breeding, raising, and training of dogs owned by the defendant on the land is an agricultural pursuit.

Town of Sturbridge, 35 Mass.App.Ct. 924, 624 N.E.2d 114 (1993).

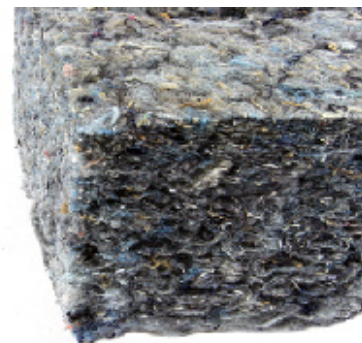
Under Utah Code § 17-41-403, the county cannot preempt state law and find the Wild Bunch CUP could constitute a nuisance. It is clear that the county exempted agricultural operations from being a nuisance: “operations that are consistent with sound agricultural practices are declared reasonable and shall not constitute a nuisance. Agricultural operations that are in conformity with federal, state, and local laws and regulations are presumed to be operating within sound agricultural practices.” CACHE COUNTY ORDINANCE § 17.10.050. Intent is discerned by looking to the plain language used. *See Selman v. Box Elder County*, 2011 UT 18, ¶ 18, 251 P.3d 804, 807 (“[It is] presume[d] that the [legislative body] used each word advisedly and read each term according to its ordinary and accepted meaning. ...When the plain meaning of the statute can be discerned from its language, no other interpretive tools are needed.”).

Any ambiguity must be read as favoring the use. *See Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 1208, 1216 (“since zoning ordinances are in derogation of a property owner’s use of land . . . any ordinance prohibiting a proposed use should be strictly construed in favor of allowing the use.”) It is clear that the state and county intended to protect all agricultural activities, including the Wild Bunch CUP.

Quiet Batt® Soundproofing Insulation

Features & Benefits:

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Quiet Batt® is a premium high-performance soundproofing insulation with thermal qualities. Acoustically, Quiet Batt® often outperforms typical fiberglass, cellulose and foam insulations.

Quiet Batt® Soundproofing Insulation products are designed for interior and exterior walls, ceilings and attic applications. Our user-friendly home and commercial insulation materials are easy to install with minimal tools required. Quiet Batt® installs with a tight friction fit between wood and metal studs to minimize sound and thermal energy transmission.

Quiet Batt® Soundproofing Insulation can be used separately or in conjunction with a variety of our other soundproofing products. Quiet Batt® can be cut with a utility knife or simply tear off unneeded pieces.

Applications:

- Professional and Home Theaters • Professional and Home Recording Studios • Offices • Homes, Condos and Apartments
• Band practice rooms • Broadcast Studios • Workshops • Equipment Enclosures
Any environment that needs soundproofing

Acoustic Data:

frequency	125	250	500	1K	2K	4K	NRC*	SAA*
3 inch	.39	.86	.99	.92	.96	1.01	0.95	0.94

* NRC = noise reduction coefficient

*SAA = sound absorption average

continued on back of page

ADDRESS

Soundproofcow
440 Ramsey Avenue
Chambersburg, PA 17201

PHONE

P: 1-866-9499-COW
F: (717) 261-1790

WEB

www.soundproofcow.com



Thermal Data:

3 in. Quiet Batt® Soundproofing Insulation	
overall density	1.20 lbs/ft ³
average thermal conductance (c)	0.079 Btu/hr ft ² °F
average thermal resistance (R)	12.7 hr ft ² °F/Btu
average thermal resistance (Rsi)	2.24 m ² K/W
average thermal conductivity (k)	0.275 Btu-in./hr ft ² °F

Product Availability and Coverage:

- box of 4 batts - 3 in. x 16 in. x 96 in. = 42.67 sqft
- box of 3 batts - 3 in. x 24 in. x 96 in. = 48 sqft

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LIVING WITH USDA LICENSING

Background

Retail sellers have long been provided an exemption from federal licensing through the broad definition of "retail pet store". APHIS proposes to revise this definition and bring more pet animals sold at retail under the Animal Welfare Act (AWA) licensing and regulations. APHIS will limit the definition of retail pet store so that it means a place of business or residence that EACH buyer physically enters in order to personally observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase. Under the proposed rule, no dog or other pet animal will be sold at retail without either public or APHIS oversight. If you sell dogs, cats, rabbits, small exotic animals, or other small pets and cannot qualify for exemption in the AWA then you must obtain a federal license and meet set standards.

What does USDA Licensed Facility Mean?

Living under USDA licensing is NOT an option for the average retail seller. The average house cannot be converted to a USDA compliant facility. Federal engineered standards for licensed facilities dictate enclosure sizes, sanitation, surfaces that are impervious to moisture, ventilation, bio-hazard control, veterinary care, exercise, temperature controls, waste disposal systems, diurnal lighting, drainage systems, washrooms, perimeter fencing, as well as transportation standards for regulated animals. It does not matter how well you think you care for your animals, Federal regulations are not flexible and do not allow for your own discretion. You must strictly adhere to what the regulations and your inspector say are acceptable equipment, care, and husbandry practices.

- The USDA license will classify you as a commercial business. You will need to know the allowed uses for your property in the current zoning and land use regulations. There may be minimum acreage requirements for commercial land uses.
- You will need to know what the required setbacks are. In land use, a setback is the distance which a building or other structure is set back from a street or road, or other things like fences and property lines. There may also be limitations on the size and height of the building you need to set up for your animals. Building permits will be required.
- Separate facility will be needed for females within two weeks of whelp.
- In order to bring female into your home for whelping or birthing the room used must meet USDA standards – impervious to moisture – meaning tile floor and vinyl-coated walls.
- Kittens under 4 months of age may not be housed in the same primary enclosure with adult cats, other than the dam or foster dam.
- Separate facility meeting USDA standards will be needed for puppies (they cannot be with adults).
- NO breeding stock allowed to run loose in your home unless it meets the requirements. Your house is not impervious to moisture, so therefore not up to USDA code.
- All surfaces touched by animals must be waterproof and sterilized every two weeks with your choice of live steam under pressure, 180 degree water and detergent with disinfectant, or a combination detergent/disinfectant product.
- Use of cat trees/scratching posts may need approval from your inspector as they are not impervious to moisture, difficult to sanitize, and will need frequent replacement if allowed.
- Pens, runs, and outdoor housing areas using gravel, sand, or earth which cannot be sanitized with live steam or detergent must be sanitized by removing and replacing the material as necessary in order to prevent odors. This would be at the discretion of the inspector.
- Facilities must be equipped with disposal and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry.
- Facilities must provide readily accessible washrooms, basins, or sinks.
- Facilities must provide evenly diffused natural or artificial lighting on regular diurnal cycles.

LIVING WITH USDA LICENSING

- You must have a separate food preparation area from your kitchen. Food cannot be left in bags, but must be stored in airtight containers.
- Temperature of the kennel facility must be within the allowed range (45-85 degrees) at all times and a daily high-low record maintained.
- You must employ a veterinarian under formal arrangements which must include regularly scheduled visits to your premises and a written program of veterinary care.
- You must hire sufficient staff to carry out and maintain the required level of husbandry practices and care required in the regulations.
- If you are licensed and inspected locally or by the state, you are NOT exempt from federal licensing and regulation. You would be required to carry both licenses and meet all requirements.

Living With USDA Inspections and Being "Written Up" For Violations

The 60 plus pages of current USDA standards as written are designed for research labs and commercial facilities where animals are bred and raised as a business for resale. The regulations were not designed for small part time breeders or mom and pop kennels working out of their homes.

- Breeding is your hobby, not your livelihood, but you have enough animals that you cannot meet any exemptions. You are at work when the inspector comes, so you are written up for not being there. Fines can be up to \$10,000.00.
- The only one who can allow an inspector to conduct an inspection of a kennel is the person named on the license or a designee that is listed as being allowed to accompany the inspector in the absence of the licensee. In the absence of either, it is listed as a violation when the inspector shows up unannounced to conduct an inspection.
- Broken kennel wire? Dirty windows? Lid off a food container? Clogged drain that created a puddle of standing water. Footprints in your kennel building on a rainy day? All of these can get you "written up" for a violation. Three write ups and you will be fined.
- Inspectors will always find something to write you up for. They have to or else they will be accused of not doing their jobs.

Invasion of Privacy or "Hi, I'm from the government, and I'm here to see if you've scooped your kennel runs this morning"

Every violation write-up you receive is public information and can be obtained from USDA through the Freedom of Information Act. Efforts to protect such lists from public disclosure have failed.

We do know that the animal rights activists already compile lists of breeders from referral sources, show catalogs, and advertising to give to enforcement authorities. They also do their own sting operations, calling breeders to see if they have puppies available, do they know anyone else who does, etc. The proposed rule will create tens of thousands of new USDA licensed "dealers." All new dealer names and precise addresses will be posted on a USDA website for every animal rightist zealot to access.

<http://www.aphis.usda.gov/ac/publications.html>

Furthermore, both HSUS and ASPCA offer "bounties" for breeders. These organizations encourage vigilante actions and how much easier they will be once self-appointed inspectors are equipped with USDA provided dealer address lists. It will only take a couple of bounty-inspired incidents to render the dog-breeding community completely terrorized. How long do you think it will take until all breeders are vanquished -- either by direct assault from these groups or willingly leaving out of fear?

Questions and Answers: Regulation of Dog/Cat Breeders and Dealers

Q. Who regulates commercial dog/cat breeders and dealers?

A. Facilities that breed and sell their animals to pet stores, brokers, or research facilities are covered under the Animal Welfare Act (AWA). The facility operators are required to obtain a license from the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). APHIS inspectors from the Animal Care program conduct unannounced compliance inspections to ensure that the animals receive humane care and treatment. Many States and local governments also have their own laws that protect animals. USDA-licensed breeders and dealers also have to comply with these laws.

Q. What types of dog/cat breeders and dealers does the USDA regulate? Which breeders and dealers are not regulated under the AWA?

A. The AWA requires that the following breeders/dealers obtain USDA licenses: (1) people who breed dogs and cats for use as pets or for other purposes and sell them sight unseen at the retail level; and (2) the wholesale dealers who supply these animals to pet stores, brokers, or research facilities. The AWA does not cover all animals in all situations, including household pets sold face-to-face at retail, pets owned by individuals, and pets housed in shelters or pounds. USDA's jurisdiction is limited to the authority granted by the AWA. As indicated previously, States and local governments may create and enforce their own laws and regulations to protect animals, which may exceed the AWA standards.

Q. How do facilities become licensed?

A. In order to engage in regulated activities, a dog/cat breeder or dealer must first apply for an AWA license from USDA. Next, the applicant must pass a pre-license inspection and be in full compliance with all of the AWA standards and regulations. If the applicant passes the inspection and then pays the appropriate license fee, USDA Animal Care issues him or her a license.

Q. What system does the USDA use to inspect dog/cat breeding facilities?

A. USDA uses a risk-based inspection system to make the best use of its resources. The frequency of a facility's inspections is determined by its compliance record. All licensed facilities are inspected, but USDA inspectors conduct more frequent inspections at those facilities that have more difficulty adhering to the regulations. Inspectors may also visit a facility when USDA receives a complaint regarding that facility.

Q. What standards of care and other conditions does USDA require of dog/cat breeders and dealers?

A. USDA-licensed breeders and dealers are required to meet the standards of humane animal care and treatment established by the AWA and its associated regulations. These regulations and standards cover areas such as housing, sanitation, food, water, and protection against extremes of weather and temperature. Breeders and dealers must also employ a full-time veterinarian or arrange for a contract veterinarian to visit their business regularly. A facility that employs a part-time or contract veterinarian needs to establish a written program of veterinary care, which must be available to USDA inspectors for review. To prevent lost or stolen animals from being used for AWA-regulated activities, USDA requires breeders and dealers to maintain accurate and complete records of the sources of all their animals. They are also required to keep records of the dates of acquisition and disposition and to properly identify the animals on their premises.

Q. What is USDA's role regarding the commercial transport of animals?

A. AWA regulations require licensed dealers, contract carriers, and intermediate handlers to provide regulated animals with humane care and treatment. Transported animals must meet established minimum age and health certification requirements. They must be housed in proper containers with adequate space and ventilation, and they must be protected from extreme temperatures. Animals arriving at a terminal must be promptly picked up and must receive proper care until they are picked up by the receiving party. Dogs imported into the United States for the purpose of resale must be vaccinated and in good health, and they must be at least 6 months of age.

Q. Why and under what circumstances does USDA confiscate animals?

A. If a regulated animal is in a state of unrelieved suffering and the licensee/registrant is not arranging for the proper veterinary care, USDA is authorized by the AWA to confiscate that animal. USDA will issue the facility a notice of intent to confiscate, which gives the licensee/registrant a final opportunity to arrange for proper medical care. If adequate veterinary care is not given at that point, the confiscation process moves quickly. In some cases, USDA will negotiate with the facility so that it surrenders the animal(s) directly to an outside organization, thus simplifying the process and expediting placement of the animal(s).

Q. How does USDA address AWA violations?

A. USDA conducts thorough inspections. If an inspector sees anything that is not in compliance with the AWA standards and regulations, he or she will cite this as a noncompliant item on the inspection report. The inspector will explain the item to the licensee/registrant and establish a deadline for when the matter must be corrected. Repeat noncompliances and serious incidents may warrant investigations, which are the precursors to potential enforcement actions, including warning letters, monetary fines, cease-and-desist orders, license suspensions, and license revocations. Only a USDA administrative law judge can designate a noncompliant item as an actual violation.

Q. Can an AWA violation ever be a criminal offense?

A. Only certain AWA violations are pursued as criminal offenses, such as those related to animal fighting or maintaining fraudulent acquisition/disposition records. In these cases, the USDA Office of the Inspector General typically conducts investigations, and the U.S. Department of Justice prosecutes them. These cases are not overseen by USDA administrative law judges. Outcomes in criminal cases may include a prison sentence and/or monetary fines.

Additional Information

For more specific information about the AWA and its regulations and standards, visit the USDA Animal Care Web site at www.aphis.usda.gov/animal_welfare.

Contact information for the Animal Care regional and headquarters offices is listed below.

Eastern Region

Animal Care, APHIS-USDA
920 Main Campus Drive, Suite 200
Raleigh, NC 27606-5210
Phone: (919) 855-7100
Fax: (919) 855-7123
Email: aceast@aphis.usda.gov

Western Region

Animal Care, APHIS-USDA
Building B, Mailstop #3W11
2150 Centre Avenue
Fort Collins, CO 80526-8117
Phone: (970) 494-7478
Fax: (970) 494-7461
Email: acwest@aphis.usda.gov

Headquarters

Animal Care, APHIS-USDA
4700 River Road, Unit 84
Riverdale, MD 20737-1234
Phone: (301) 851-3751
Fax: (301) 734-4978
Email: ace@aphis.usda.gov

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OLR RESEARCH REPORT

September 6, 2013

2013-R-0309

STANDARDS OF CARE FOR DOG AND CAT BREEDERS

By: Janet L. Kaminski Leduc, Senior Legislative Attorney

You asked for a summary of federal and state laws and regulations that establish standards for the care of animals by dog and cat breeders. You also want to know what positions large animal advocacy organizations hold on this issue. We contacted the American Kennel Club, American Cat Fanciers Association, and Humane Society of the United States for their positions. The American Kennel Club and the Humane Society provided responses for this report.

SUMMARY

Federal laws and regulations establish minimum standards of care for the treatment of cats and dogs by commercial breeders. These standards apply to certain midsized and large breeders and exempt small and so-called hobby breeders. They set requirements for humane handling, shelter, space requirements, feeding, watering, sanitation, ventilation, veterinary care, and transport.

At least 19 states have laws and regulations establishing standards of care for commercial breeders to follow. These standards typically cover kennel size, limitations on cage stacking, access to water and food, sanitation, flooring material, temperature and ventilation, lighting, exercise, socialization, and veterinary care.

The American Kennel Club maintains a care and conditions policy for dog owners and breeders to follow and it conducts investigations and inspections to ensure compliance. We include the policy further below.

According to The Humane Society of the United States, federal laws and regulations applicable to dog and cat breeders are "extremely limited in scope, exclude a large percentage of breeders and other pet dealers, and provide very minimal standards of care." As a result, "many states have enacted statutes to provide some degree of protection for dogs living in breeding facilities that are not subject to federal regulation and create more stringent standards than those set forth under [federal law]."

FEDERAL REGULATION OF BREEDERS

The federal Animal Welfare Act (AWA) and accompanying U.S. Department of Agriculture (USDA) regulations set minimum standards for commercial breeders (i.e., those that breed and sell animals to pet stores, brokers, or research facilities) to follow (7 U.S.C. § 2131 et seq. and 9 CFR § 1.1 et seq.). These breeders are required to obtain a license from the USDA's Animal and Plant Health Inspection Service (APHIS). Before APHIS issues a license, the applicant must comply with all standards and regulations. To ensure that licensed facilities continue to comply with the AWA, APHIS inspectors regularly make unannounced inspections.

While the AWA requires people who breed cats and dogs for sale to pet stores, brokers, or research facilities to be licensed and adhere to minimum standards of care, the act does not apply to all animals in all situations. For example, it does not apply to breeders who sell directly to the public, so-called hobby breeders (e.g., people who derive no more than \$500 in gross income from the sale of animals), or breeders with fewer than four breeding females (9 CFR § 2.1(a)(3)).

Standards of Care

All USDA/APHIS-licensed breeders must comply with the standards of care outlined in federal regulations (9 CFR §§ 2.40 and 3.1-3.19). These standards set minimum requirements for humane handling, shelter, space requirements, feeding, watering, sanitation, ventilation, veterinary care, and transport, among other things. APHIS encourages licensees to provide care that exceeds the minimum standards.

Table 1 provides examples of the federal standards.

Table 1: Federal Minimum Standards of Care for Animal Breeders

Category	General Standard
Housing and Primary Enclosures	Animals must be housed in structurally sound facilities and enclosures that are in good repair and meet APHIS' minimum space requirements. The facility must contain the animals and protect them from other animals and extreme weather and temperatures. Drainage systems must be in good repair. Floors must protect the animals from injury. Cages must be dry and clean and allow animals easy access to food and water. If the shelter is outdoors, it must protect animals from sunlight, precipitation, and extreme temperatures.
Ventilation	Animals must be provided with (1) cool air or increased ventilation if the ambient temperature is above 85 degrees Fahrenheit or (2) heat if the temperature falls below 45 degrees Fahrenheit.
Lighting	Facilities must be lit well enough to allow safe and easy access for feeding, cleaning, and complete inspection.
Interior Surfaces	The interior of a facility must be substantially impervious to moisture and able to be easily cleaned and sanitized.
Cleaning and Sanitation	Excreta and food waste must be removed and disposed of at least daily and as often as necessary. Primary cages or enclosures and food and water receptacles must be sanitized at least once every two weeks. Facilities must not allow trash to accumulate.
Pest Control	Facility managers must have an effective program to control insects, ectoparasites, and avian and mammalian pests.
Feeding and Watering	At least once each day, animals must be provided with nutritious, palatable food that is free from contamination, properly stored, and served in a clean receptacle. Potable water must be made available twice daily for one hour if it is not available all the time.
Compatibility	Female animals in heat must be separated from male animals except for breeding purposes. Additionally, (1) animals with vicious dispositions should be housed apart from other animals, (2) puppies and kittens should be separated from adult animals other than their mothers, and (3) different species of animals should not be housed together unless compatible.
Veterinary Care	Programs of disease control and prevention, euthanasia, and veterinary care must be established and maintained under the supervision and assistance of a veterinarian. Additionally, a caretaker must observe the animals daily.
Handling	Every licensee is required to handle animals properly at all times whether he or she is petting, working, feeding, crating, or transferring them.
Transportation	Licensees must provide animals with adequate space, ventilation, and shipping containers during transportation.

Source: USDA APHIS

States have the authority to impose higher standards of care than those required under the AWA. At least 19 states have specified standards of care for commercial breeders or large kennel operators in state law and regulations. These state requirements generally (1) apply to more breeders than the AWA and (2) establish more stringent standards of care than the AWA requires.

Generally, a commercial breeder under these state laws is someone who breeds a large number of dogs within a specified time period. This excludes hobby breeders who may breed just one or two litters every year. Breeders subject to the AWA must also comply with state laws and regulations.

The standards of care in state laws address things such as adequate food and water, regular exercise, veterinary care, lighting, adequate living space, and protection from the elements and extreme temperatures.

Table 2 provides, by state, the standards of care required for animals maintained by breeders, as that term is defined in state law; the facility inspection provisions under state law; and associated penalties for violations. The information is based on research compiled by the Michigan State University College of Law's Animal Legal & Historical Center. (See <http://www.animallaw.info/articles/State%20Tables/tbuscommercialbreeders.htm>.)

Table 2: State Commercial Breeder Laws and Regulations

State and Citation	Definition of commercial breeder	Standards of care required	Inspection provisions	Penalties
<p>California Cal. Health & Safety Code §§ 122045 - 122315</p>	<p>"Dog breeder" or "breeder" means a person, firm, partnership, corporation, or other association that has sold, transferred, or given away all or part of three or more litters or 20 or more dogs during the preceding 12 months that were bred and reared on the premises of the person, firm, partnership, corporation, or other association.</p>	<p>The law requires breeders to:</p> <ul style="list-style-type: none"> ● maintain facilities in a sanitary condition; ● provide adequate nutrition and potable water; ● provide "adequate space" appropriate to the dog's age, size, weight, and breed; ● provide a rest board, floormat, or similar device that can be maintained in a sanitary condition; ● provide adequate socialization (physical contact with other dogs and with human beings) and exercise; ● provide veterinary care without delay when necessary; and ● have staff wash their hands before and after handling an infectious or contagious dog. <p>It is unlawful for a breeder to primarily house a dog on wire flooring.</p>	<p>None listed</p>	<p>Violators are subject to a civil penalty of up to \$1,000 per violation.</p>
<p>Colorado Colo. Rev. Stat. Ann. §§ 35-80-101 - 117 8 Colo. Code Regs. § 1201-11</p>	<p>"Dog breeder" means any firm, person, or corporation engaged in breeding and raising dogs for the purpose of selling, trading, bartering, giving away, or otherwise transferring the animals, excluding racing greyhounds that are not intended to be companion pets.</p> <p>"Pet animal facility" means any place or premise used in whole or in part, which part is used for the keeping of pet animals for the purpose of adoption, breeding, boarding, grooming,</p>	<p>Regulations set standards for:</p> <ul style="list-style-type: none"> ● facilities (e.g., structural, electrical service, potable water, wastewater removal system, protection from escape, etc.); ● animal enclosures (e.g., wire flooring, tethering, heating, cooling, ventilation, lighting, isolation areas, protection from the elements with outdoor housing, specific spatial requirements for primary enclosures depending on the dog's size, nursery, and exercise areas); 	<p>Per law, the agriculture commissioner, upon his or her own motion or upon the complaint of any person, may make any investigations necessary to ensure compliance.</p> <p>Per regulations, all licensed facilities may be inspected upon application, routinely thereafter, and upon a complaint to the commissioner or the department about a particular facility.</p>	<p>The commissioner can issue a civil penalty of up to \$1,000 for violations of the law. He can also issue a cease and desist order. If a person fails to comply with an order within 24 hours, the commissioner may sue for a temporary restraining order and injunctive relief.</p> <p>Certain violations, including operating a pet animal facility without a license, are class 2 misdemeanors.</p>

	<p>handling, selling, sheltering, trading, or otherwise transferring such animals. "Pet animal facility" also includes any individual animals kept by such a facility as breeding stock.</p> <p>Pet animal facilities must be licensed.</p>	<ul style="list-style-type: none"> ● care and handling of pet animals (e.g., food, water, separation of animals, sanitation, observation, grooming, and identification); ● transportation (e.g., temporary enclosures, vehicle enclosures, protection from the elements, and sanitation); ● sanitation generally (e.g., cleaning of animal enclosures, sanitation of runs and exercise areas, waste disposal, pest control, etc.); and ● sale and transfer issues (i.e., it is unlawful to sell, transfer, or adopt dogs under the age of eight weeks) 	<p>All licensees or applicants for licensure or license renewal must make their respective facilities, animals, and records available for inspection by the commissioner during business hours or at other mutually agreeable times.</p>	<p>The commissioner may issue letters of admonition or deny, suspend, restrict, refuse to renew, or revoke any license for falsifying license information, violating law or rule, being convicted of an animal cruelty-related offense, or failing three reinspections within a single license year.</p>
<p>Connecticut</p> <p>CGS §§ 22-342 and 22-344</p> <p>Conn. Agencies Regs. §§ 22-344-1-15</p>	<p>The term "breeder" is not defined in the law.</p> <p>Any kennel owner or keeper who breeds more than two litters of dogs annually must apply to the town clerk in the town in which such kennel is located for a kennel license.</p> <p>No person may maintain a commercial kennel unless he or she has obtained from the agriculture commissioner a commercial kennel license. Licenses are renewed annually.</p> <p>"Commercial kennel" means a kennel maintained for boarding or grooming dogs or cats, and includes any veterinary hospital which boards or grooms dogs or cats for nonmedical purposes.</p>	<p>Facilities for housing dogs must be structurally sound and maintained in good repair.</p> <p>Kennel floors and removable rest boards, if provided, must be constructed of non-toxic, easily cleaned, water impervious materials, and walls and ceilings must be painted and kept clean.</p> <p>Inside and outside runs must be constructed to meet listed weight requirements for dogs.</p> <p>Lighting by either natural or artificial means must provide a minimum of 30 candle power for at least eight hours per day, except where otherwise indicated for health reasons.</p> <p>Hot and cold water must be provided.</p> <p>Kennel space must be ventilated to provide fresh air at all times.</p> <p>Kennel temperature must be maintained at a reasonable and suitable level to promote the health and comfort of the type of dogs housed.</p> <p>Sanitation must keep vermin at a minimum.</p> <p>There must be isolation facilities for dogs under quarantine or treatment for communicable diseases.</p> <p>Puppy litters must be segregated.</p> <p>Dogs confined in cages must be caged individually, except where otherwise indicated for health or welfare reasons.</p> <p>Cages must be large enough for the dog to turn about freely, stand erect, and lie down in a natural position</p> <p>Facilities must provide shelter from inclement weather that keeps dogs clean, warm, and dry.</p> <p>There must be clean and fresh water and sufficient and wholesome food, and food and water containers must be kept clean and sanitized.</p>	<p>The agriculture commissioner or any state animal control officer may at any time inspect all facilities of any kennel in which dogs are bred or housed.</p> <p>The commissioner may, at any time, inspect a commercial kennel.</p>	<p>Anyone maintaining a commercial kennel without the required license is subject to a fine of up to \$200. Anyone maintaining a kennel after having his or her kennel license revoked or suspended is guilty of a class B misdemeanor.</p> <p>Any owner or keeper of a kennel who breeds more than two litters of dogs annually and (1) fails to apply for a kennel license or (2) fails to allow an inspection of such facility is guilty of a class B misdemeanor.</p> <p>The commissioner may revoke the license of any commercial kennel owner who fails to comply with the law, regulations, or the commissioner's orders.</p> <p>Upon inspection of a commercial kennel, if the commissioner finds violations of the law, he may issue a fine of up to \$500 for each animal that is the subject of the violation, issue orders necessary for the correction of the conditions, and quarantine the premises and animals.</p>

<p>Indiana</p> <p>Ind. Code Ann. §§ 15-17-3-15 and 15-21-1-1 et seq.</p> <p>345 Ind. Admin. Code 13-1-1 et seq.</p>	<p>"Commercial dog breeder" means a person who maintains more than 20 unaltered female dogs that are at least 12 months of age.</p> <p>A commercial dog breeder must register annually with the Indiana State Board of Animal Health.</p>	<p>By law, a commercial dog breeder must comply with the standards of care set forth in the federal Animal Welfare Act regulations.</p> <p>A commercial dog breeder:</p> <ul style="list-style-type: none"> ● may not house a dog in a cage containing a wire floor unless the cage contains an accommodation that allows the dog to be off the wire floor; ● who houses a dog in a wire cage must use a cage that is large enough to allow for reasonable movement by the dog; and ● must provide every dog with a reasonable opportunity for exercise outside of a cage at least once per day. <p>A commercial dog breeder who permits a dog access to a run at least once per day has satisfied the exercise requirement. However, a commercial dog breeder is not required to provide a dog with the opportunity for exercise if exercise would endanger the dog's life or health.</p>	<p>The board may (1) make sanitary inspections and surveys and (2) enter upon any public or private property where any animals are quartered to inspect the property and examine the animals.</p>	<p>Knowingly or intentionally failing to register with the board as a commercial dog breeder is a class A misdemeanor. The breeder is liable to the state for two times the amount of registration fees that it failed to pay.</p> <p>The board can:</p> <ul style="list-style-type: none"> ● seek injunctive relief; ● issue a compliance order identifying a violation and requiring corrective action by a certain date; or ● impose a civil penalty of up to \$500 for a knowing violation, \$1,000 for an intentional violation, and \$5,000 for knowingly or intentionally violating an injunction.
<p>Iowa</p> <p>Iowa Code Ann. § 162.1 et seq.</p> <p>Iowa Admin. Code r. 12-67.1(162) - 13</p>	<p>"Commercial breeder" means a person, engaged in the business of breeding dogs or cats, who sells, exchanges, or leases dogs or cats in return for consideration, or who offers to do so, whether or not the animals are raised, trained, groomed, or boarded by the person. A person who owns or harbors three or fewer breeding males or females is not a commercial breeder. However, a person who breeds any number of breeding male or female greyhounds for the purposes of using them for pari-mutuel wagering at a racetrack is considered a commercial breeder irrespective of whether the person sells, leases, or exchanges the greyhounds for consideration or offers to do so.</p> <p>A commercial breeder may only operate pursuant to a state license.</p>	<p>The law requires a commercial establishment to provide for a standard of care that ensures that an animal in its possession or under its control is not lacking any of the following:</p> <ul style="list-style-type: none"> ● adequate food and water, housing facilities, sanitary control, or grooming practices and ● veterinary care. <p>Regulations provide specific standards for:</p> <ul style="list-style-type: none"> ● housing facilities, ● primary enclosures, ● in-home kennels, ● feeding and watering, ● sanitation, ● veterinary care, ● personnel in the facilities, and ● transportation of animals <p>A commercial establishment fails to provide for a standard of care if it commits abuse, neglect, or torture.</p>	<p>The law allows the Department of Agriculture and Land Stewardship to monitor a permittee's commercial establishment by entering onto its business premises at any time during normal working hours. The department must monitor the establishment for the limited purpose of determining whether the permittee is providing for the required standard of care. If the owner or person in charge of the establishment refuses admittance, the department may obtain an administrative search warrant.</p> <p>In order to enter onto a permittee's business premises, the department must have reasonable cause to suspect that the permittee is not providing for the required standard of care.</p>	<p>A license may be denied or revoked if, after public hearing, it is determined that the housing facilities or primary enclosures are inadequate or if the feeding, watering, cleaning, and housing practices are not in compliance with the law.</p> <p>An authorized commercial establishment that violates the law is subject to a civil penalty of up to \$500. The official who determines a violation exists must provide a corrective plan to the establishment describing how the violation will be corrected within 15 days.</p> <p>An unauthorized commercial establishment is subject to a civil penalty of up to \$1,000.</p> <p>Operating a commercial establishment without authorization is a misdemeanor. Failure to meet the required standard of care is a misdemeanor.</p>
<p>Kansas</p> <p>Kan. Stat. Ann. §§ 47-1701 et seq.</p> <p>Kan. Admin. Regs. 9-18-1 - 3 and 9-25-1 - 15</p>	<p>"Animal breeder" means any person who operates animal breeder premises.</p> <p>"Animal breeder premises" means any premises where all or part of six or more litters of dogs or cats, or both, or 30 or more dogs or cats, or both, are sold, or</p>	<p>Breeders must provide animals with:</p> <ul style="list-style-type: none"> ● an adequate housing facility or primary enclosure; ● adequate feeding, watering, sanitizing, and housing practices; and 	<p>The animal health commissioner or his or her authorized, trained representatives (1) must inspect the premises for which an application for an original license is made and (2) may make an</p>	<p>Failing to provide adequate care can result in license revocation, suspension, or the refusal to issue a license.</p> <p>Upon a finding that a person has violated or failed to comply with the law, the commissioner may impose a civil fine of up to</p>

	<p>offered or maintained for sale, primarily at wholesale for resale to another.</p> <p>It is unlawful for any person to act as or be an animal breeder unless he or she has obtained from the animal health commissioner an animal breeder license for each animal breeder premises operated by such person.</p> <p>It is also unlawful for any person to knowingly purchase a dog or a cat for the purpose of resale to another from someone required to be licensed under federal or state law if that person is not so licensed.</p>	<ul style="list-style-type: none"> • adequate veterinary care. <p>Regulations provide standards for:</p> <ul style="list-style-type: none"> • housing facilities; • primary enclosures (e.g., space; resting area; protection from weather, including excess heat or cold; and access to food and water); • sanitation, cleaning, and pest control; • compatible grouping; • exercise; • feeding and watering; • employees (e.g., supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of dogs and cats); and • adequate veterinary care. 	<p>inspection at least twice a year.</p> <p>The commissioner must make an inspection if there are reasonable grounds to believe that the person is violating the law and regulations, or that there are grounds for suspension or revocation of such person's license or permit.</p>	<p>\$1,000 for each violation or require the person to attend an educational course regarding animals and their care and treatment. If the commissioner imposes the educational course, the person may choose either a fine or the educational course.</p> <p>Any violation of or failure to comply with the law, or any regulation adopted thereunder, is a class A nonperson misdemeanor.</p>
<p>Maine</p> <p>Me. Rev. Stat. Ann. tit. 7, §§ 3901 et seq. and 3931-A et seq.</p> <p>01-001 Code Me. R. Ch. 701</p>	<p>A "breeding kennel" is a location where (1) five or more adult female dogs or cats capable of breeding are kept and some or all of the offspring are offered for sale, sold, or exchanged for value or (2) more than 16 dogs or cats raised on the premises are sold to the public in a 12-month period. It does not include a kennel licensed by a municipality when (1) the dogs are kept primarily for hunting, show, training, sledding, competition, field trials, or exhibition purposes and (2) 16 or fewer dogs are offered for sale, sold, or exchanged for value within a 12-month period.</p> <p>A person maintaining a breeding kennel must obtain a license from the Department of Agriculture, Conservation, and Forestry.</p>	<p>Regulations require all kennels to be composed of a primary structure that is in good repair and structurally sound. All primary structures must have available running water, heat, and electricity.</p> <p>Regulations establish general standards for temperature control, sanitation, food, disease control, noise, ventilation, and lighting.</p> <p>Regulations also establish specific standards for kennels. For example:</p> <ul style="list-style-type: none"> • dogs must be removed from the cage a minimum of twice every 24-hour period; • there must be a separate and suitable exercise area properly controlled for the animals' safety; • animals may not be placed in cages over other animals unless the enclosure is properly constructed to prevent excreta from entering the lower enclosure; • females may not be housed with males unless requested by owners or keepers; • all cages and pens must have a clean dry place for the animal to lie down, the flooring must be of solid type material without perforations, and there must be clean and sufficient bedding material to retain the animal's normal body heat; and • the design and location of a cage and exercise area must permit ready and convenient access for cleaning, sanitation, and care of the animal. 	<p>The Department of Agriculture, Conservation, and Forestry commissioner, a state humane agent, a veterinarian employed by the state, or a licensed veterinarian at the commissioner's direction may, at any reasonable time, enter a breeding kennel, make examinations, and conduct any recognized tests for the existence of contagious or infectious diseases or conditions.</p> <p>Upon written complaint made to the commissioner by any person alleging violation of law or regulations by any licensee, the commissioner must investigate matters related in the complaint.</p>	<p>A person maintaining a breeding kennel without having obtained a license, or after a license has been revoked or suspended, commits a civil violation and is subject to a fine of between \$50 and \$200 a day.</p> <p>If, following an investigation, a violation is found to exist, the department or the attorney general may file a complaint with the Administrative Court for revocation or suspension of the license.</p> <p>The commissioner may revoke or suspend a breeding kennel license if a person maintaining the breeding kennel violates any quarantine or maintains animals contrary to the law and regulations.</p>

<p>Massachusetts</p> <p>Mass. Gen. Laws Ann. ch. 140, §§ 136A, 137A, 137C, & 137D</p>	<p>A "kennel" is a pack or collection of dogs on a single premise, including a commercial boarding or training kennel, commercial breeder kennel, domestic charitable corporation kennel, personal kennel or veterinary kennel.</p> <p>A "commercial breeder kennel" is an establishment, other than a personal kennel, engaged in the business of breeding animals for sale or exchange to wholesalers, brokers, or pet shops in return for consideration.</p> <p>A person maintaining a kennel must obtain a kennel license from a licensing authority (i.e., Boston city police commissioner or municipality clerk.)</p>	<p>A kennel must be maintained in a sanitary and humane manner.</p>	<p>The mayor of a city or selectmen of a town, or in Boston the police commissioner, or a chief of police or an animal control officer within his jurisdiction, may at any time inspect or cause to be inspected, any kennel and if, in his or her judgment, the same is not being maintained in a sanitary and humane manner, he or she must by order revoke or suspend the kennel license.</p>	<p>Any person maintaining a kennel after a license is revoked or suspended is fined up to \$250.</p> <p>A kennel license is void and must be surrendered if the licensee violates certain animal cruelty statutes. No person will be given a license during a period of five years from the date of his being found guilty or penalized for offenses against animals.</p>
<p>Missouri</p> <p>Mo. Rev. Stat. § 273.325 et seq.</p> <p>Mo. Code Regs. Ann. tit. 2, § 30-9.010 - 9.030</p>	<p>The law applies to any person having custody or ownership of more than 10 female dogs for the purpose of breeding those animals and selling any offspring for use as a pet.</p> <p>A "commercial breeder" is a person, other than a hobby or show breeder, engaged in the business of breeding animals for sale or exchange in return for a consideration, and who harbors more than three intact females for the primary purpose of breeding animals for sale.</p> <p>Commercial breeders must obtain a license. (People engaged in breeding dogs and cats who harbor three or fewer intact females are exempt from the license requirement.)</p>	<p>The law establishes standards for:</p> <ul style="list-style-type: none"> ● sufficient food and clean water; ● necessary veterinary care; ● sufficient housing, including protection from the elements; ● sufficient space to turn and stretch freely, lie down, and fully extend limbs; ● regular exercise; and ● adequate rest between breeding cycles. <p>Regulations establish additional standards for:</p> <ul style="list-style-type: none"> ● housing facilities; ● primary enclosures (e.g., those constructed after April 2011 may not have wire strand or bare metal flooring); ● space and compatibility; ● exercise; ● feeding and watering; ● sanitation, cleaning, and pest control; and ● transportation. 	<p>A license may be issued only upon inspection by the state veterinarian, his designee, or an animal welfare official.</p> <p>The state veterinarian has the duty and authority to inspect all licensed facilities. Inspections must be conducted at least once a year, or upon a complaint to the agriculture department regarding a particular facility.</p>	<p>Whenever a state veterinarian or animal welfare official finds past violations of the law have occurred and have not been addressed, including operating without a valid license, the agriculture director may request the attorney general or the county prosecuting attorney or circuit attorney to sue in circuit court in the county where the violations have occurred for a temporary restraining order, preliminary injunction, permanent injunction, or a remedial order enforceable in a circuit court to correct such violations. In addition, the court may assess a civil penalty of up to \$1,000 for each violation.</p> <p>A person commits canine cruelty if he or she repeatedly violates the law so as to pose a substantial risk to the health and welfare of animals in such person's custody, or knowingly violates a remedial order involving the safety and welfare of animals. Canine cruelty is a class C misdemeanor, unless the person has previously pled guilty or nolo contendere to or been found guilty of a violation of this subsection, in which case each violation is a class A misdemeanor.</p> <p>Any person required to have a license who houses animals in stacked cages without an impervious barrier between the levels of such cages, except when cleaning such cages, is guilty of a class A misdemeanor.</p>

<p>Nebraska</p> <p>Neb. Rev. St. Ann. §§ 54-625 - 643</p> <p>23 Neb. Admin. Code Ch. 18, § 001 - 015</p>	<p>A "commercial breeder" is a person:</p> <ul style="list-style-type: none"> ● who sells, exchanges, leases, or in any way transfers 31 or more dogs or cats in a 12-month period; ● engaged in the business of breeding dogs or cats who owns or harbors four or more dogs or cats, intended for breeding, in a 12-month period; ● whose dogs or cats produce a total of four or more litters within a 12-month period; or ● who knowingly sells, exchanges, or leases dogs or cats for later retail sale or brokered trading. <p>A commercial breeder must be licensed by the Department of Agriculture.</p>	<p>A commercial breeder must:</p> <ul style="list-style-type: none"> ● maintain housing facilities and primary enclosures in a sanitary condition, ● enable all dogs and cats to remain dry and clean, ● provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs and cats, ● provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time, ● provide dogs and cats with easy and convenient access to adequate amounts of clean food and water, ● provide dogs with adequate socialization and exercise, ● assure that a handler's hands are washed before and after handling each infectious or contagious dog or cat, ● maintain a written veterinary care plan developed in conjunction with an attending veterinarian, and ● provide veterinary care without delay when necessary. 	<p>The Department of Agriculture's Bureau of Animal Industry must inspect each licensee's premises at least once in a 24-month period to determine whether the licensee is in compliance with the law.</p>	<p>The department may:</p> <ul style="list-style-type: none"> ● issue a stop-movement order if it has reasonable cause to believe that there is noncompliance; ● apply for a restraining order, temporary or permanent injunction, or mandatory injunction against any person violating or threatening to violate the act, the rules and regulations, or any order; ● suspend or revoke licenses for noncompliance with the law or regulations; or ● impose an administrative fine of up to \$5,000 for any violation. <p>Operating as a commercial breeder without a license or violating the law is a class I misdemeanor.</p>
<p>Nevada</p> <p>Nev. Rev. Stat. Ann. 574.210 - 510</p>	<p>"Breeder" means a dealer, operator, or other person who is responsible for operating a commercial establishment engaged in the business of breeding dogs or cats for sale or trade. It does not include a person who breeds dogs or cats as a hobby.</p> <p>"Operator" means a person responsible for operating (1) a cattery, kennel, or commercial establishment engaged in the business of selling animals or (2) an animal shelter.</p> <p>The board of county commissioners of each county or city council of a city (if not limited by an interlocal agreement) must adopt an ordinance requiring each breeder in an unincorporated area of the county or city to obtain an annual permit to act as a breeder.</p>	<p>By law, a breeder must not:</p> <p>(1) sell a dog or cat (a) unless the dog or cat has had (i) a registered microchip subcutaneously inserted and (ii) all the required vaccinations for rabies which are appropriate based upon the age of the dog or cat or (b) without providing a written sales contract to the purchaser or</p> <p>(2) breed a female dog (a) before she is 18 months old or (b) more than once a year.</p> <p>The law establishes standards of care for "operators," including standards for buildings and grounds, enclosures, food and water, and sanitization.</p>	<p>Any animal control agent of a breeder permit-issuing authority may enter and inspect the premises specified on the permit at any reasonable hour.</p>	<p>An ordinance may provide for the suspension, revocation, or denial of a breeder permit for violating state law, as it applies to breeders.</p>
<p>Oregon</p> <p>Or. Rev. Stat. §§ 167.310, 374, & 376</p>	<p>The law does not define "breeder." Standards of care for dog breeding apply only to a person that possesses, controls, or otherwise has charge of at the same time 10 or more sexually</p>	<p>Owners must provide minimum care sufficient to preserve the animal's health and well-being (e.g., food, water, shelter, and appropriate veterinary care).</p> <p>Owners must:</p>	<p>None listed</p>	<p>A violation of the law is a class B misdemeanor.</p> <p>With respect to the "more than 50 dogs" requirement, a court must suspend the sentence if the violator agrees to have a</p>

	<p>intact dogs that are at least eight months old. But this excludes:</p> <ul style="list-style-type: none"> ● an animal control agency, humane society, or animal shelter; ● a person who provides care for dogs at the request of a unit of government, government agency, humane society, or animal shelter; ● a veterinary facility; ● a person that is transporting dogs; and ● a boarding kennel. <p>A person may not have more than 50 sexually intact dogs that are two years old or older for the primary purpose of reproduction.</p>	<ul style="list-style-type: none"> ● provide each dog with sufficient space to turn about freely, stand, sit, and lie down without the head, face, tail, legs, or feet touching the sides of the enclosure or touching any other dog; ● provide each dog with an enclosure that (1) has a solid floor without slats or gaps; (2) is six inches higher than the head of the tallest dog in that enclosure when the tallest dog is in a normal standing position; (3) if elevated above the floor of a room, is placed so that the floor of the enclosure is no more than 42 inches above the floor of the room and; (4) is not stacked or otherwise placed above or below any other dog enclosure; ● provide each dog that is more than four months old with at least one hour of regular exercise each day, unless a veterinarian has certified that the dog is medically precluded from exercise; and ● remove waste and contaminants from the enclosure at least once each day (the dog must be outside the enclosure when doing this). 		<p>sufficient number of dogs spayed or neutered to remedy the violation.</p>
<p>Pennsylvania 3 Pa. Cons. Stat. Ann. §§ 459-102, 206, 207, 211, and 218;</p>	<p>A "commercial kennel" is a kennel that breeds or whelps dogs and (1) sells or transfers any dog to a dealer or pet shop kennel or (2) sells or transfers more than 60 dogs per calendar year.</p> <p>Anyone who operates a kennel must annually apply to the Department of Agriculture for a kennel license.</p>	<p>Kennel class C license holders (commercial kennels) must maintain primary enclosures in a way that protects the dogs from injury; provides shelter and protection from temperatures and weather conditions that may be uncomfortable or hazardous to any dog; provides sufficient space to shelter all the dogs housed in the primary enclosure at one time; provides potable water at all times, unless otherwise directed by a veterinarian; and provides space to allow each dog to turn about freely and lie down while fully extended. Primary enclosures must also be designed and constructed so that they are structurally sound and kept in good repair.</p> <p>Additionally, kennel class C license holders must:</p> <ul style="list-style-type: none"> ● establish a veterinarian-client-patient relationship and provide a written program of veterinary care; ● provide sufficient heating, cooling, lighting, and ventilation in housing facilities; ● ensure floors and walls of the primary enclosure are impervious to moisture; ● not stack primary enclosures more than two rows high, keep the bottom of the uppermost primary enclosure no more than four and one-half feet off the housing facility floor, and equip the enclosure with a device to collect urine and excreta; 	<p>The agriculture department may not issue a kennel license unless a state dog warden or agriculture department employee has inspected and approved the kennel.</p> <p>A state dog warden or department employee must inspect all licensed kennels at least twice each calendar year.</p>	<p>The agriculture secretary must revoke a kennel license if the licensee is convicted of animal cruelty.</p> <p>In addition to any other penalty, the secretary may assess a civil penalty against an unlicensed kennel of between \$500 and \$1,000 for each day it operates in violation of the law.</p> <p>The secretary may provide a written cease and desist order to an owner who is operating a kennel without a license.</p> <p>Failure to take action or to meet the conditions imposed may, in addition to any other penalties allowed, result in the department imposing an administrative penalty of between \$100 and \$500 per day for each violation.</p> <p>Any violation constitutes a 3rd degree misdemeanor.</p>

		<ul style="list-style-type: none"> • equip all kennels with a smoke alarm and have a means of fire suppression, such as fire extinguishers or a sprinkler system on the premises; • have detailed sanitization processes for both primary enclosures and food and water receptacles; and • have an effective pest control program. 		
<p>Tennessee</p> <p>Tenn. Code Ann. §§ 44-17-701 - 715</p> <p>Tenn. Comp. R. & Regs. 1200-33-01-.01 - .09</p>	<p>"Commercial breeder" means any person who possesses or maintains, under the person's immediate control, 20 or more unsterilized adult female dogs or cats for the purpose of selling the offspring as companion animals. It excludes those possessing companion animals for veterinary medicine, hunting, training, boarding, or grooming.</p> <p>A commercial breeder may not advertise, sell, or offer to sell any companion animal unless he or she has a valid license from the Department of Health commissioner.</p>	<p>Each licensee must comply with applicable federal or state laws or rules relative to the premises, including the federal AWA regulations.</p> <p>Each licensee must ensure that any act that constitutes the practice of veterinary medicine is performed by an individual licensed as a veterinarian by the Board of Veterinary Medical Examiners.</p>	<p>The health commissioner or the commissioner's representative must inspect a breeder's premises as considered necessary.</p>	<p>Any commercial breeder who advertises, sells, or offers to sell a companion animal without having a valid license from the commissioner is subject to a civil penalty of between \$50 and \$1,000 per violation. Each day of continued violation constitutes a separate violation.</p> <p>After inspections, a commercial breeder has 30 days from notice of violation to make a correction. If the breeder fails to make a correction, the commissioner may assess a civil penalty of between \$50 and \$1,000 per violation.</p>
<p>Texas</p> <p>Tex. Occ. Code Ann. §§ 802.001 et seq.</p>	<p>"Dog or cat breeder" means a person who possesses 11 or more adult intact female animals and (1) is engaged in the business of breeding those animals for direct or indirect sale or for exchange in return for consideration and (2) who sells or exchanges, or offers to sell or exchange, at least 20 animals in a calendar year.</p> <p>A person may not act as, offer to act as, or represent that he or she is a dog or cat breeder unless he or she holds a license for each facility owned or operated in the state.</p>	<p>The Commission of Licensing and Regulation must adopt standards of care, which must, at a minimum, meet federal regulations. They must also:</p> <ul style="list-style-type: none"> • require each dog 12 weeks old and older have at least one hour of daily exercise; • require an adequate period between the breeding cycles; • require the provision of basic grooming to each animal; • meet specific requirements for primary enclosures; • prohibit the placement of a primary enclosure of an animal on top of one of another animal unless an impervious barrier is present; • prohibit stacking dogs' primary enclosures above three vertical levels; • require at least one regular veterinary examination a year for a breeding animal; • require the provision of necessary routine and preventive care; • prohibit a person from euthanizing an adult animal or performing a 	<p>The Department of Licensing and Regulation must (1) conduct a pre-license inspection of an applicant's facility and (2) inspect each facility of a licensed breeder at least once in every 18-month period and at other times as necessary to ensure compliance.</p>	<p>If a person violates the law or a rule adopted pursuant to it, the person is subject to any action or penalty under law, including administrative penalties, cease and desist orders, injunctive relief, and license denial. Penalties include a fine of up to \$5,000 per day for each violation. Each day of a continuing violation is a separate violation.</p>

		<p>surgical birth of an animal unless the person is a veterinarian; and</p> <ul style="list-style-type: none"> ● prohibit a dog or cat breeder from selling, trading, or giving away an animal before the animal is eight weeks old. 		
<p>Vermont Vt. Stat. Ann. tit. 20, §§ 3583, 3681-3684 Vt. Code R. 2-4-300:3.1 et seq.</p>	<p>"Pet dealer" means any person who sells or exchanges or offers to sell or exchange cats, dogs, or wolf-hybrids from three or more litters in any 12-month period. It excludes pet shops, animal shelters, and rescue organizations.</p> <p>A pet dealer must apply to the municipal clerk of the town in which the cats, dogs, or wolf-hybrids are kept for a pet dealer permit.</p>	<p>The owner or keeper of domestic pets and wolf-hybrids kept for breeding purposes must keep the animals within a proper enclosure, which is a locked fence or structure of sufficient height and depth into the ground to prevent the entry of young children and to prevent the animal from escaping. It also provides humane shelter for the animal.</p> <p>Regulations provide specific standards relating to:</p> <ul style="list-style-type: none"> ● facilities, ● primary enclosures, ● animal health and husbandry, ● watering, ● sanitation, ● classification and separation of animals, ● veterinary care, and ● transportation. 	<p>A pet dealer must allow inspections of the premises as a condition of receiving and keeping a pet dealer permit. Inspections may be conducted by a municipal animal control officer, a law enforcement officer, or an employee of the Agency of Agriculture, Food, and Markets.</p>	<p>A person who (1) fails to remedy conditions specified in a quarantine order, other than the prevalence of contagious disease, within 10 days after receiving notice of such order, or (2) sells, gives away, or otherwise removes a domestic pet or wolf-hybrid under quarantine or affected with a contagious disease, is subject to imprisonment of up to one year, a fine of up to \$2,000, or both. Second and subsequent convictions are punishable by imprisonment of up to two years, a fine of up to \$5,000, or both.</p>
<p>Virginia Va. Code Ann. §§ 3.2-6500 to 6503 and 3.2-6507.1 to 6507.6</p>	<p>"Commercial dog breeder" means any person who, during any 12-month period, maintains 30 or more adult female dogs for the primary purpose of the sale of their offspring as companion animals.</p> <p>A commercial dog breeder may not breed dogs without a valid business license issued by the locality where the dogs are kept.</p>	<p>"Adequate care" means the responsible practice of good animal husbandry, handling, production, management, confinement, feeding, watering, protection, shelter, transportation, treatment, and euthanasia when necessary. The care must be appropriate for the age, species, condition, size, and type of the animal. Veterinary care must be provided when needed to prevent suffering or impairment of health.</p> <p>Adequate care provisions apply to all owners of companion animals. Each owner must provide for each of his or her companion animals:</p> <ul style="list-style-type: none"> ● adequate food and water; ● adequate shelter that is properly cleaned; ● adequate space in the primary enclosure for the particular type of animal depending upon its age, size, species, and weight; ● adequate exercise; ● adequate care, treatment, and transportation; and ● veterinary care when needed or to prevent suffering or disease transmission. 	<p>The state veterinarian is authorized to inspect any business premises where animals are housed or kept at any reasonable time.</p> <p>The agriculture commissioner, state veterinarian, or any animal control officer may, upon receiving a complaint or upon his or her own motion, investigate a breeder's premises for any violation of the law.</p>	<p>Any commercial dog breeder violating any provision of the law is guilty of a class 1 misdemeanor.</p>

<p>Washington</p> <p>Wash. Rev. Code Ann. § 16.52.310</p>	<p>"Breeder" is not specifically defined, but the law applies to a person who keeps 10 or more dogs with intact sexual organs over the age of six months in an enclosure for the majority of the day. It does not apply to a:</p> <ul style="list-style-type: none"> ● publicly operated animal control facility or animal shelter; ● private, charitable not-for-profit humane society or animal adoption organization; ● veterinary facility; ● retail pet store; ● research institution; ● boarding facility; or ● grooming facility. <p>The law prohibits keeping more than 50 dogs, but this limitation does not apply to a commercial dog breeder licensed before January 1, 2010 by the USDA.</p>	<p>By law, a person must provide:</p> <ul style="list-style-type: none"> ● enough space for a dog to turn around freely, stand, sit, and lie down; ● a dog one hour of exercise each day; ● adequate housing facilities and primary enclosures that are kept in a sanitary condition (e.g., must be ventilated, provide shelter from extreme weather, have floors that protect the dogs' feet from injury, and remove feces and debris); ● a compatible grouping of dogs; ● easy and convenient access to adequate clean food and water; and ● veterinary care without delay when necessary. 	<p>None listed</p>	<p>A person who keeps more than 50 dogs or who violates the standards of care is guilty of a gross misdemeanor.</p>
<p>Wisconsin</p> <p>Wis. Stat. Ann. § 173.41</p> <p>Wis. Admin. Code §§ 16.01 - 30</p>	<p>"Dog breeder" means a person who sells 25 or more dogs in a year that the person has bred and raised, except that "dog breeder" does not include a person who sells 25 or more dogs in a year that the person has bred and raised if all of those dogs are from no more than three litters.</p> <p>A dog breeder must be licensed by the Department of Agriculture, Trade, and Consumer Protection.</p>	<p>The law provides standards of care that require:</p> <ul style="list-style-type: none"> ● sufficient food for a dog's good health, ● sufficient fresh water, ● necessary and standard veterinarian care in a timely manner, ● specific enclosure standards for dogs kept inside or outside (e.g., structurally sound, good repair, adequate lighting and ventilation, and sanitary condition), ● adequate daily exercise, and ● dogs to be checked daily by the caretaker. 	<p>The Department of Agriculture, Trade, and Consumer Protection must inspect facilities before initial licensing and at least once every two years after that.</p>	<p>A person who violates the standards of care or other non-licensing issues is subject to a fine of up to \$1,000 for a first offense and between \$200 to \$2,000 for a second or subsequent offense within a five-year time period. Each animal is a separate violation.</p> <p>A person who operates a breeding facility without a license is subject to a fine of up to \$10,000, nine months imprisonment, or both.</p>

Source: Animal Legal & Historical Center, Michigan State University College of Law, Table of State Commercial Pet Breeders Laws (2012) available at <http://www.animallaw.info/articles/State%20Tables/tbuscommercialbreeders.htm> and individual state statutes and regulations.

ANIMAL ADVOCACY ORGANIZATIONS' POSITIONS

American Kennel Club

According to Sarah Sprouse, legislative analyst for The American Kennel Club (AKC), the AKC expects people who register litters with it to raise their dogs in a humane manner. It maintains a "care and conditions of dogs" policy for owners and breeders to follow and conducts investigations and inspections to ensure compliance. The AKC suspends privileges for anyone convicted of animal cruelty involving dogs.

The AKC updated its care and conditions policy in April 2012. According to the AKC, the policy provides guidelines "for helping individuals ensure that dog care practices are performed and housing facilities are maintained in a

safe, humane, and responsible manner.” AKC also expects individuals to comply with all applicable federal, state, and local laws and regulations regarding the ownership and maintenance of dogs.

Table 3 details the AKC’s care and conditions policy, which is broken into three categories: care of dogs, kennels and housing, and operations.

Table 3: American Kennel Club’s Care and Conditions of Dogs Policy

Category	General Standard
Care of Dogs	<p>Dogs should have access on a daily basis for play and exercise.</p> <p>Dogs must have access to fresh water as appropriate.</p> <p>Dogs must have access to fresh food provided at appropriate intervals to maintain a healthy weight.</p> <p>Dogs must be provided appropriate health care, including routine and preventative care.</p> <p>Dogs should be provided with daily positive human contact and socialization.</p> <p>Each dog should have its overall health and behavior assessed daily. Any deviation in its health must be addressed expeditiously and appropriately.</p> <p>Dogs should be free from internal and external parasites.</p> <p>Dogs should be afforded regular grooming to ensure health and comfort.</p> <p>When euthanasia is necessary, it must always be performed humanely.</p>
Kennels and Housing	<p>The primary enclosure must be large enough to allow the dogs to sit, stand, lie down, or turn around comfortably without overcrowding.</p> <p>The primary enclosure must be constructed and maintained so that (1) dogs are securely confined and (2) it does not cause them injury.</p> <p>Facilities must provide protection from adverse or extreme weather conditions.</p> <p>While flooring that provides solid footing is preferred, if wire is used as flooring of a primary enclosure, it should be composed of a material featuring a protective coating, be of an appropriate size to prevent injury (especially to feet), and must be kept in good repair. If wire is used, a solid platform of sufficient size should be provided to allow the dogs to attain solid footing and to offer a space for resting.</p> <p>Facilities must be lighted to provide a regular lighting cycle for the dogs.</p> <p>Bedding material made available to dogs should be clean and not pose a risk to them.</p>
Operations	<p>There must be a sufficient number of staff to carry out appropriate levels of care and conditions for the number of dogs kept.</p> <p>Facility and primary enclosures should be clean, free from debris and odor, and feces should be picked up and disposed of as frequently as necessary to maintain the dogs’ health.</p> <p>Each kennel should maintain an adequate emergency preparedness plan for the type of facility owned and breeds of dogs maintained therein.</p>

Source: American Kennel Club

In addition, the AKC will notify federal, state, or local agencies of unsanitary or unhealthy conditions found by AKC inspectors during their kennel inspections. This includes notifying the USDA’s APHIS if it is a federally licensed facility or state or local governmental or humane agencies when the kennel is not regulated by federal law.

If an AKC inspector determines that a person is not maintaining his or her dogs or facility in a manner that complies with the AKC’s care and conditions policy, the person’s AKC privileges may be temporarily suspended. The person will be notified in writing of specific deficiencies and necessary steps for attaining compliance with the policy. The person has 45 days to correct deficiencies and request a re-inspection. If deficiencies are not corrected

or re-inspections are not requested, the AKC may proceed with disciplinary action leading to suspension of all AKC privileges.

The Humane Society of the United States

Annie Hornish, Connecticut state director of The Humane Society of the United States, noted that federal requirements for dog and cat breeders (i.e., those contained in the AWA and USDA regulations) are “extremely limited in scope, exclude a large percentage of breeders and other pet dealers, and provide very minimal standards of care.” In addition, she says there is inadequate agency enforcement of the basic welfare standards.

Hornish pointed out that the AWA does not apply to pet stores or breeders, dealers, or brokers who sell directly to the public. As such, it “does not apply to Internet sales made directly from breeders to consumers or live sales by the breeder (such as sales at flea markets).” Additionally, Hornish stated:

The animal care standards set forth in the AWA regulations are so minimal that breeding facilities can be considered compliant even if they keep dogs in small, stacked wire cages for their entire lives. Dogs at such legal facilities may have the minimum amount of cage space required plus regular food and water, but they may never have access to the outdoors, adequate exercise, fresh air, socialization or other enrichments, or annual veterinary exams.

ADDITIONAL RESOURCES AND HYPERLINKS

- USDA APHIS publications:

http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/fs_compliance_inspection.pdf

http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/faq_animal_dealers.pdf

- American Kennel Club government relations position statements and policy manual:

http://www.akc.org/governmentrelations/policy_resources.cfm

http://images.akc.org/pdf/canine_legislation/value.pdf

<http://www.akc.org/about/depts/investigations.cfm>

<http://www.akc.org/rules/policymanual.cfm?page=7#Deficiencies>

- The Humane Society of the United States, “*A Horrible Hundred: Problem Puppy Mills in the United States*” and “puppy mill” laws:

http://www.humanesociety.org/assets/pdfs/pets/puppy_mills/100-puppy-mills-report.pdf

http://www.humanesociety.org/assets/pdfs/legislation/state_puppy_mill_laws.pdf

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Dog Kennel & Daycare Soundproofing



Dog Kennel Soundproofing...Why You Need It

Let's face it...there's no way to stop the noise of barking dogs. The only way to fix dog kennel noise issues is by installing proper dog kennel soundproofing.

Dog Kennels, with their concrete floors and cinderblock walls, are perfect for creating unwanted echoes and amplifying noise. Because the surfaces are hard, sound waves bounce off them and back into the space. However, hard surfaces are easy-to-clean, which is important in your business.

Dog owners want to make sure their dog is happy. If they visit your kennel and hear the piercing sound of barking dogs, they won't want to use your kennel. Your business suffers.

Another common problem of dog kennels is complaints from neighbors. Barking dogs can disturb nearby homes and businesses.

Many dog kennel owners come to Soundproof Cow to fix their noise problems. Most don't realize how large of a problem the barking was until after they install dog kennel soundproofing products.

What Dog Kennel Soundproofing Can Do for You

Dog Kennel Soundproofing products:

- Keep the noise of barking dogs within your building so you don't get complaints from neighbors
- Reduce the noise of barking dogs within your kennel...dog owners will be more likely to leave their dog in your care and your business will improve
- Provide a safe working environment for your employees by reducing the noise volume

Dog Kennel Soundproofing Products



[Quiet Barrier Soundproofing Barrier](#)



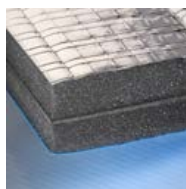
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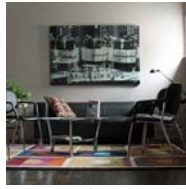
[Soundproofing Questions](#)

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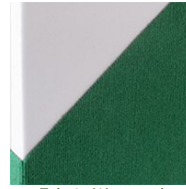
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Brewster812

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Michael

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FAX (435) 752-3556GEORGE W. PRESTON,
Of CounselJOSEPH M. CHAMBERS
MAYBELL ROMERO
JOSH CHAMBERS*
J. BRETT CHAMBERS

October 9, 2015

*Licensed in Utah and
New York**SENT VIA REGULAR MAIL & EMAIL**

Josh Runhaar
Cache County - Director of Development Services
Development Services
179 North Main St. Suite 305
Logan UT, 84321

Re: Wild Bunch Kennel – Proposal of Conditions

Dear Mr. Runhaar:

I am writing to propose conditions under UTAH CODE § 17-27a-506 for the Mullins conditional use permit application, the Wild Bunch Kennel. First, thank you for taking the time to draft a list of items that you believe would facilitate acceptance by the Planning Commission. I have reviewed the list and the Mullins are willing to accept some of the items.

The Mullins are willing to accept ¶¶ 1, 2, 3, and 5, subject to clarifications or reservations, including:

¶ 1) *“Prior to recordation the proponent shall meet all applicable standards of the Cache County Ordinance.”*

I believe this refers to the Cache County Ordinances in place at the time of application. Assuming this is correct, the Mullins do not have any problem with this.

¶ 2) *“The proponent shall abide by the letter of intent, site plan, and construction specifications as submitted to the Cache County Development Services Office, and by all representations made by the proponent or proponent's representative.”*

Neither I nor the Mullins are aware of any representations or other specifications conflicting with the Mullins original application (including supplementations through this letter of additional acceptable conditions). If there are specific representations or other specifications that you have in mind or are referring to, please let us know so we can appropriately put such down in writing.

¶ 3) *“This permit is issued only for the breed of dog identified as a Pug. This approval does not apply to any other breed of dog, nor any other animal.”*

The Mullins do not have any problem with a pug-specific conditional use permit. While there are no plans for any other breeds or animals, if somehow they wish to make any change, they will submit such to the planning commission.

Wild Bunch Kennel – Proposal of Conditions
October 9, 2015
Page 2

¶ 5) “Any further expansion or modification of the facility, site, or change to the breed of dog shall require the approval of the designated land use authority.”

Please see comments to ¶ 3 above.

Regarding paragraphs 4 and 6, please see my comments below:

¶ 4) “Based on the specific breed type and details as provided in the letter of intent, site plan, and related information, no more than _____* adult dogs, limited to the Pug breed, shall be allowed on the site at any one time.”

Smell and sound – the only issues to be addressed on remand – are reasonably mitigatable with 43 dogs through the steps taken by the Mullins, as described below.

¶ 6) “A Sound Level Impact and Assessment Report performed by a licensed professional must be completed and identify the ambient sound and impact of the noise generated by the use on surrounding properties. Using the comparison measure Leq, the impact must be no more than 10 decibels (dBA) above measured ambient sound at the outside property line at any time of day. If that impact exceeds the noted maximum, mitigation strategies may, be proposed to reduce the noise impact to an acceptable level.”

Respectfully, this is not a requirement under the applicable ordinance. Rather, sound studies are a requirement under ordinances passed after the original application. It is our position that the County cannot legally impose a sound study for acceptance. However, more problematic is that our research into a meaningful sound study indicates the costs are at minimum \$5,000.00. With a dog specific breed limited to the Pug breed, this already addresses a significant sound limitation, as literature indicates that this breed usually snort and snore louder than they bark; in other words, they are not ‘noisy’ animals. The Mullins are responsible people and are happy to address noise problems in the unlikely and unforeseeable event they do arise after their precautions. It is my understanding that none of their Wyoming neighbors has ever complained about the kennel, and this is without the sound-proofing that will occur here.

In addition to the previously proposed conditions in the original application, the Mullins will:

- Remove Waste Daily;
- Allow Only Six Dogs Outside at a Time (usually 10 minutes as this breed is extremely susceptible to heat and cold);
- Install A Privacy Fence; and
- Install Sound Proofing Insulation (See Attached). This is the same type of insulation used in recording studios. It is my understanding there have been three dogs at the property – not being bred – since around July 2014. To my knowledge, there have been no complaints about sound issues. And this is without any sound proofing insulation.

Wild Bunch Kennel – Proposal of Conditions
October 9, 2015
Page 3

I believe these steps more than alleviate any potential or reasonably anticipated detrimental effects of the kennel use. Regarding smell, by removing waste daily in plastic containers, there is no possibility for noxious odors. Please also keep in mind that only six dogs will be outside at a time during short periods of the day. Regarding sound, the proposed insulation is specifically designed to reduce sound and has been used with success in many truly noise-emitting environments.

Lastly, while we have no desire to continue litigation of the matter, we have advised our clients that additional court intervention may be necessary to ensure their rights are not impinged. The Mullins look forward to constructively working with the County but are prepared to move forward through alternative resolution if necessary.

If you have any questions, please do not hesitate to contact me – 435.752.3551 or jbc@utahlawfirm.com.

Sincerely,



J. Brett Chambers
Attorney at Law

cc: Lee Edwards, *Cache County Attorney*; John and Caryn Mullin

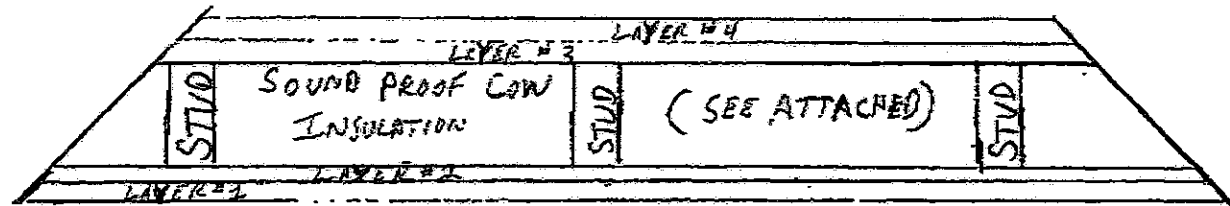
CUT AWAY VIEW OF WALL CONSTRUCTION

LAYER #1 - METAL OR LAP SIDING

LAYER #2 - CELUTEX

LAYER #3 - 1/2" X 4' X 8' SHEET ROCK

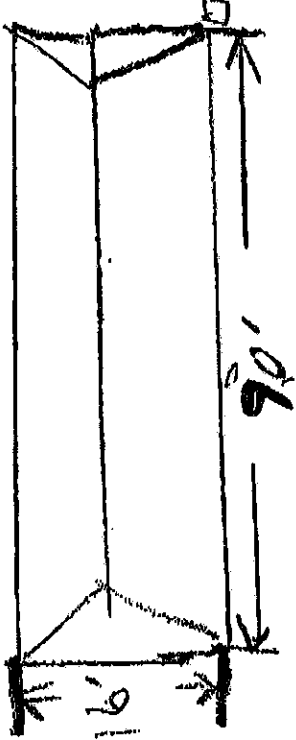
LAYER #4 - 1/8" X 4' HIGH POLYMAX (SEE ATTACHED)





SE CONDA 21411100 WADON HALL

PRIVACY FENCE + CHAIN LINK
DOGS EXERCISE AREA
125' X 50'



CHAIN LINK FENCE

WOOD STAIRS
LEAN TO

GARAGE

DRIVEWAY

GATE

The following materials will be used in the construction of the Wild Bunch Kennel facility. The walls will be of 2x4 framing. The outside will start with insulation board and then lap board siding. The interior will consist of R-19 insulation followed by ½ inch sheetrock than ½ inch sound board and finally 1/8 inch thick polyethylene board. This building will have the same sound effects as a recording studio. All sound emitted inside will stay inside building and outside noise will stay outside. Since noise was one of the main issues of our neighbors it will be eliminated by this construction.



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Thickness	3 in.
Weight	16 in. = 28 lbs./box, 24 in. = 30 lbs./box
Coverage	16 in. = 42 sqft., 24 in. = 48 sqft.
Quantity	16 in. = 4 batts, 24 in. = 3 batts
NRC Rating	0.95
Thermal Resistance	R 13
Availability	Usually ships in 1-3 business days
Technical Data	Product Data Sheet
Installation	Step-by-Step Instructions

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OR

Description

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typically out performs standard fiberglass, cellulose and foam insulations. Quiet Batt® 30 installs with a tight friction fit between wood and metal studs to minimize sound and thermal energy transmission, and is a fine stand alone product or can be used in conjunction with a variety of our other soundproofing products.

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See how Quiet Batt® stands up to the competition in our burn test video!



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Excellent Sound Absorption Performance – Quiet Batt® absorbs sound within wall and ceiling cavities, reducing the sound transfer from one space to the next. Quiet Batt® has the highest NRC obtainable of 1.00.

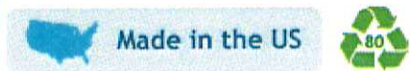
Keep it Green – Quiet Batt® is manufactured with 80% recycled natural cotton fibers.

Easy to Install – Quiet Batt® is friction fit between 16 inch and 24 inch on center studs and does not require any special tools to install. Quiet Batt® can be used between wood or steel studs.

Easy to Handle – Quiet Batt® is itch free and does not contain formaldehydes or other harmful chemicals..

Excellent Flammability Rating – Quiet Batt® has a Class A™ flammability rating. This product passes most building code flammability requirements for exposed materials.

Energy Savings – Quiet Batt® helps keep your house warmer in the winter and cooler in the summer.



Details

Great for:

- Broadcast Studios
- Commercial Recording Studios
- Commercial Theaters
- Equipment Enclosures
- Homes Theaters
- Multi Family Dwellings
- Offices
- Recording Studios
- Restaurants
- Single Family Dwellings

Acoustic Data

frequency	125	250	500	1K	2K	4K	NRC*	SAA*
3 inch	.39	.86	.99	.92	.96	1.01	0.95	0.94

*NRC = noise reduction coefficient, *SAA = sound absorption average

3 in. Quiet Batt® Soundproofing Insulation

overall density	1.20 lbs/ft ³
average thermal conductance (c)	0.079 Btu/hr ft ² °F
average thermal resistance (R)	12.7 hr ft ² °F/Btu
average thermal resistance (Rsi)	2.24 m ² K/W
average thermal conductivity (k)	0.275 Btu-in./hr ft ² °F



[Quiet Barrier HD Soundproofing Material \(Sheet\)](#)

\$93.98



[isoTRAX Soundproofing System](#)

\$180.15



[Quiet Batt Insulation Supports \(16 in\)](#)

\$13.93



[Quiet Batt Insulation Supports \(24 in\)](#)

\$21.95



[OSI Pro-Series SC-175 Acoustical Sound Sealant \(Case of 12\)](#)

\$155.88



[Convuluted Acoustic Foam Panel](#)

\$54.99



[EcoPod Vibration Isolators \(Pack of 4\)](#)

\$28.50



[Green Glue Noiseproofing Compound \(Case of 12\)](#)

\$158.00

Installation Details

Tools Needed: Utility Knife, Tape Measure

Materials Needed: A vapor barrier is recommended for external wall applications

Installation PDF

[Quiet Batt Install](#)

Product rating

Sign in to rate

Customer Reviews

Author: B. Thurman, OH

“What a great company to deal with from start to finish. I called in not knowing what product I needed, and the gentleman I spoke with was very patient with me learning on the fly. The end result is I’m no longer dealing with my noisy neighbors. The Quiet Batt 30 worked almost immediately in stopping the noise of their tv. I got a great night’s sleep for the first time in five years. Thank you Soundproof Cow.”

Author: J. Freely, CO

I originally went with a blown in insulation because I was told it was the best way to go. After paying top dollar to have everything installed I was a little more than surprised to find out it didn’t do much for the sound. I began looking for a solid replacement and came across Soundproof Cow. After talking with Kellen, he sent me over some data sheets and samples. I was pretty confident this is what I needed. He was able to provide me with a fair discount because of how much I needed. I wish I had gone with this the first time because it worked perfectly. I can’t believe that something 3 inches thick did more than 5 inches worth of the blown in insulation. Lesson learned: Soundproof Cow is the way to go.

Author: Jeanie

Even if this product would not have worked as well as it did, I would call back for more material in an instant. The gentleman I talked to, Drew, was so helpful in guiding me to the right product, and he was very good at not just getting me to the right product, but also helping me understand how it works. The Quiet Batt 30 worked better than I could have imagined and I know when I have another soundproofing need I will be contacting Drew to get what works best for me.

Author: Dave Plummer

The Quiet Batt 30 cost a little bit more than I would have liked to originally spend, but it was well worth the extra cost. When the material was first installed I did not hear a significant change, so I called to ask why it was not working. I spoke with Kellen who told me that it needs time to expand back to full thickness. After about three days I really started to hear the change, and stopped hearing my neighbor’s snoring.

Author: Charles Toosch

The Quiet Batt 30 is something I already have and will again recommend to my friends. I can't even remember how noisy my upstairs neighbor used to be.

ABOUT

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HELP

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AWARDS

NeoCon 2011 Gold
[ADAPT™ Acoustical
Treatments](#)

RESOURCES



PAYMENT



Date: 07/08/2014

To: Cache County
Development Services Department

Wild Bunch Kennel
John & Caryn Mullin

Letter of Intent:

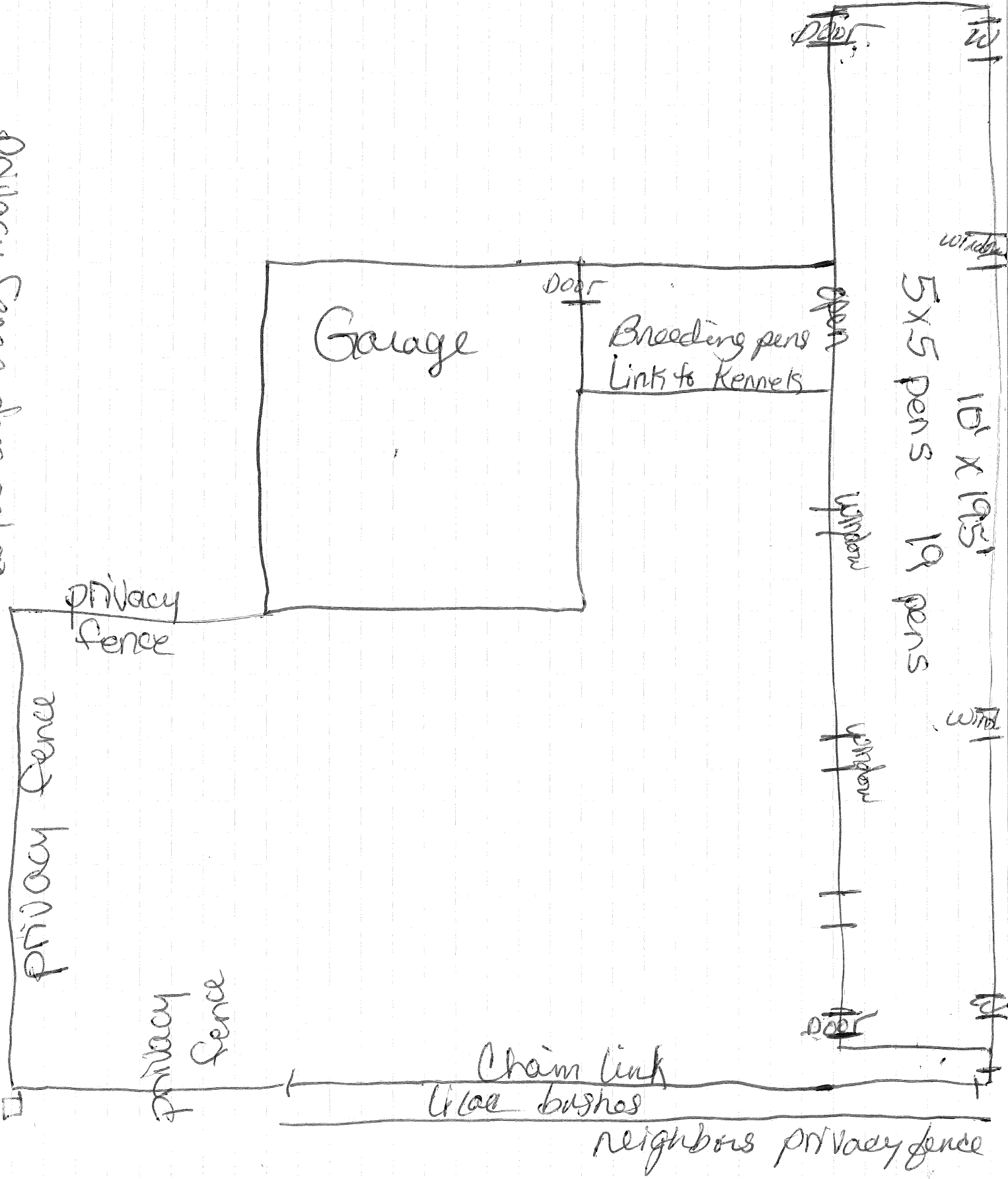
To Whom it may concern,

We, John and Caryn Mullin, are applying for a conditional use permit. We are purchasing a home at 5670 N. Highway 23 Cache Junction, Utah and do hereby apply to establish our kennel there. We propose to have a boarding and breeding kennel on the afore mentioned property. The pupose for the kennel is to breed and sell puppies/dogs of the Pug breed. We will construct a building to house these pets and erect a privacy fence to keep them from view of the highway and not be a distraction. At no time will they ever be able to leave this property and roam freely. We will have two connecting buildings erected on the above mentioned property to house our pets. We do not foresee any problems with driver distraction on the highway. With the privacy fence there should be limited noise and nuisance from afore mentioned pets. Most of the puppies sold will be done so on the internet and flown out of Salt Lake. All local inquiries will be sent pictures via email. We will meet local adopting customers in town which will keep travel on highway 23 at its normal level. All feces and other excrements will be disposed of properly and WILL NOT be disposed of in the septic tank on said property. It is our intent to be as inconspicuous as possible. By not selling puppies/dogs out of the home parking or traffic will not be a concern. John and Caryn Mullin are the sole owners and operators of this business. Jeremy Mullin, son of the owners helps with business also. Since this is family owned and operated business where all employees reside at the residence. We receive between 5 and 10 deliveries a year by Fed Ex and UPS. All other deliveries to the business will be to a post office box, which will be opened at the local post office along with all mail. The kennel operates during waking hours usually from 7:00 am to 10:00 pm. Seven days a week. There will be a ranch sign erected typical of most. There will be 2 large tall posts planted at entrance to driveway and the sign attached to them. It will be noticeable just like all the other ranch signs in the area of Logan. We use a power washer to wash kennels with Pine Sol and water. A Rug Doctor shampoo machine is used to vacuum up all excess water and cleaner. This material will be put into 5 gallon buckets and disposed of in accordance with local ordinances. Feces will be bagged and disposed of in waste container provided by local waste company. The waste from pets will only be three tall kitchen bags.

This property sits on .65 of an acre with an additional .49 of an acre. It has plenty of space for the above mentioned kennel. There is an easement between the two parts of the property for a future street if needed by the county. This street would be First South Street. However, this street would be south of the home and our buildings will be on the west and north so there should be no conflict.

Privacy fence does not go to driveway only to property line.

corner marker



Window

10' x 195'

5x5 pens 19 pens

Window

Window

neighbors privacy fence

Chain link
Ulae bushes

Privacy fence

Privacy fence

Privacy fence

Door

Breeding pens
Link to Kennels

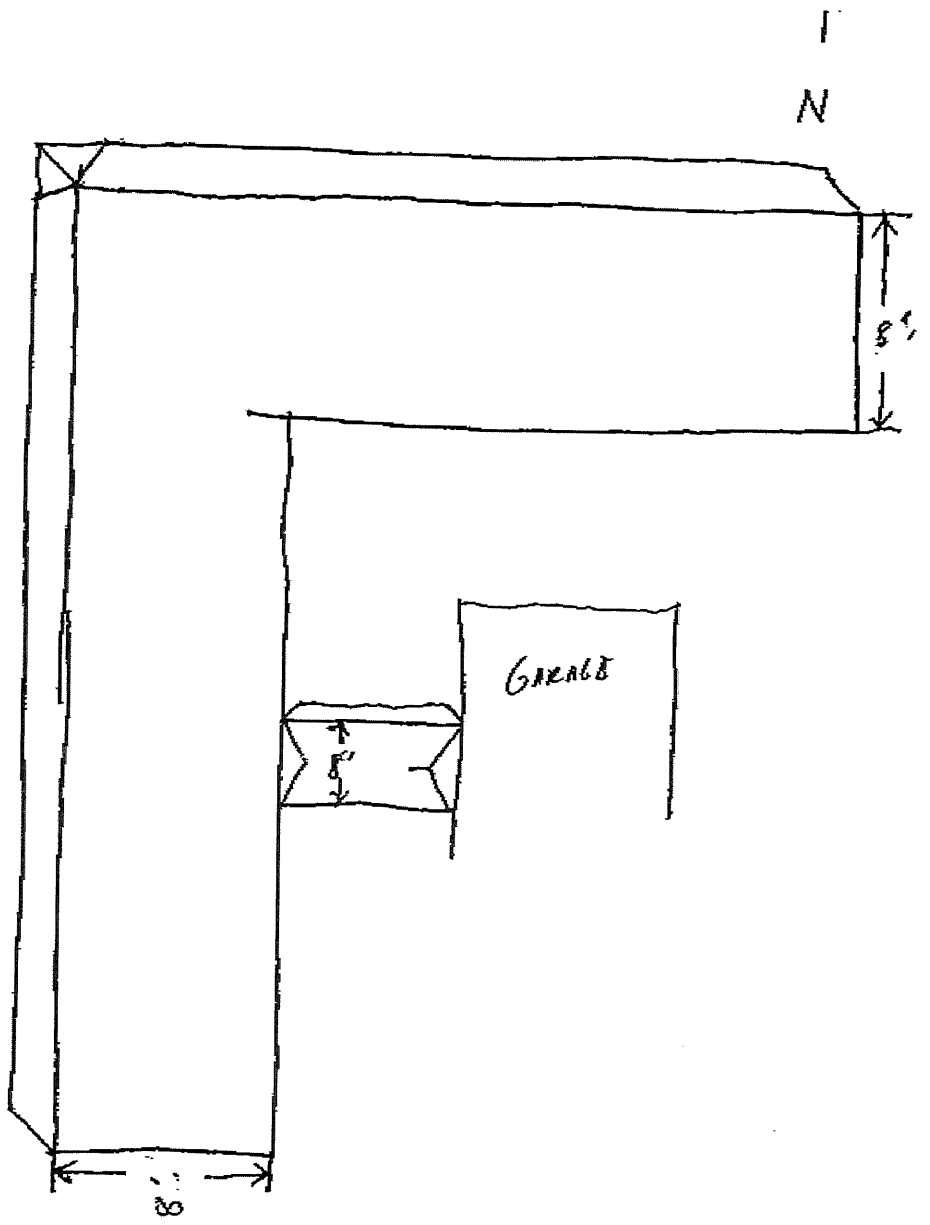
Door

Door

Window

Window

Door



FLOORS WILL BE CONCRETE w/ SMOOTH FINISH (w)

ADDED STRUCTURES WILL BE 10' HIGH

OUTER MATERIAL AND ROOF WILL BE METAL

GUTTERS WILL BE ADDED ON TO DIRECT RUNOFF THREE FEET FROM BUILDING

THE BUILDINGS WILL BE HEATED AND COOLED TO KEEP PETS SAFE.

THERE WILL BE A PRIVACY FENCE BUILT TO KEEP DOWN VISIBILITY OF BUILDINGS AND PETS FROM HIGHWAY

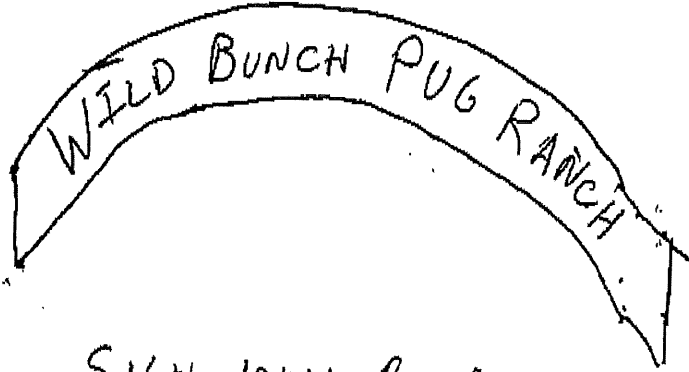
WEST BLOB IS 95' L x 10' W x 8' H

NORTH ADDITION IS 60' L x 10' W x 8' H

FROM GARAGE TO WEST BLOB IS

20' L x 8' W x 8' H

SIGN



SIGN WILL BE APPROXIMATELY
20' FROM HIGHWAY

