

Washington County Commission Decision Affirming the Granting of a Conditional Use
Permit to Good Earth Minerals

This matter came before the Washington County Commission (“the Commission”) on August 21, 2012, at 4:00 p.m. The Commission took evidence, heard arguments, and deliberated on the matter. The Commission then publicly issued a preliminary decision affirming the Planning Commission’s decision. This written decision formalizes that preliminary affirmation and constitutes a final decision of the appellate authority. If any confusion arises due to perceived or actual discrepancies between this decision and the Commission’s preliminary decision or the Planning Commission’s decision, this decision shall govern.

I. DECISION

Based on the Findings of Fact below, the Washington County Commission affirms the decision of the Washington County Planning Commission to grant the conditional use permit in this matter. The Washington County Commission imposes the following conditions:

1. All of the items listed in Section 3.A of the above Findings of Fact are imposed as conditions.
2. GEM shall not begin any construction work until it has secured sufficient water to satisfy the Fugitive Dust Control Plan and to operate its mining equipment.

3. GEM shall regularly report to the Washington County Public Works Director, as often as the director shall deem appropriate, on the status and success of the Fugitive Dust Control Plan.
4. GEM shall follow the directions of the Washington County Public Works Director regarding the placement and number of additional road signs.
5. GEM shall follow the directions of the Washington County Public Works Director regarding the widening and maintenance of the roads used to haul aggregate.

II. BACKGROUND

On June 12, 2012, the Washington County Planning Commission considered whether to grant a conditional use permit to Good Earth Minerals (“GEM” for a Gypsum Mining Operation on 11.3 acres of BLM land, Section 24, T43S, R17W, generally located west of the St. George / Sun River Area. The Planning Commission reviewed the information submitted by GEM and heard evidence and argument on the matter from representatives of GEM and from representatives of SunRiver. At that hearing the Planning Commission did not take action on the permit, but invited GEM to return the following month with additional materials—specifically a more complete site plan.

On July 10, 2012, the Planning Commission again considered the issue by reviewing the information, taking any new evidence, and hearing arguments. At this hearing additional testimony from SunRiver residents was given. Additionally, a formal representative of SunRiver, the developer of SunRiver, and a representative of a local conservation group all provided argument against issuing the conditional use permit. The

Planning Commission then publicly reviewed the Washington County Conditional Use Ordinance, made findings of fact, and unanimously voted to approve the permit with certain conditions.

Soon after the Planning Commission Decision, the Washington County Commission began receiving telephone calls, emails, and other correspondence from those opposed to the conditional use permit. This prompted a careful review of the Washington County Ordinances and the state laws that govern conditional use permit decisions. This review revealed that Washington County Code is ambiguous as to whether a Planning Commission decision regarding conditional use permits constitutes a final decision and as to whether the County Commission would review the decision acting as the land use authority or as an appellate body. In order to fully comply with state law and guarantee due process to all involved, the County Commission decided to treat the Planning Commission decision as a final decision and, consequently, the County Commission heard the matter as an appeal. This was explained in advance to GEM, SunRiver management, Citizens for Dixie's Future, and other concerned individuals.

III. FINDINGS OF FACT

The Washington County Commission makes the following Findings of Fact:

A. Findings Regarding Conditions Previously Imposed

1. The Environmental Assessment performed by the BLM and the BLM Finding of No Significant Impact contain several conditions imposed by the BLM and/or agreed to by GEM. Some of the conditions are that GEM shall:

- a. Follow the approved fugitive dust plan—including having two 4,000-gallon watering trucks—and report on the plan's effectiveness and dust conditions as requested by the Washington County Public Works Director. GEM may be required to report as often as weekly. GEM may also be required to have a public works representative with the plan administrator;
- b. Water the roads it will use daily on days that hauling will occur;
- c. Use mining technology that incorporates misters;
- d. Cover all loads;
- e. Cover material;
- f. Adhere to St. George air quality standards, including that it shall cease operations if a sustained wind event of 30 miles per hour, or greater, occurs;
- g. Be in compliance with state law and report to Washington County Public Works Director if ever found to be out of compliance;
- h. Widen Blake Lambing and Bloomington Mine Valley roads so that trucks can pass safely; the roads must be constructed with crowning and berming to prevent erosion and the final improvements must be approved by the Washington County Public Works Director;
- i. Maintain the roads in a way that makes them safe for travel;
- j. Post signs advising public of truck traffic;
- k. Not use residential roads, including SunRiver Parkway, as a route for hauling trucks—whether they are loaded or empty;

- l. Use the haul route as the water truck route to and from the site;
 - m. Follow all county, state, and federal standards for drilling and blasting;
 - n. Coordinate with Washington County Public Works, Dixie REA, Rio Virgin Telephone, and any other affected utility company in widening and maintaining the roads;
 - o. Have days of operation be Monday – Friday, and hours of operation be daylight hours;
 - p. Post the reclamation bond required by Utah Division of Oil, Gas, and Mining;
 - q. Continue reclamation until new and appropriate vegetation is established;
 - r. Not store any explosives on site;
 - s. Have a trash receptacle on site, and deposit trash at Washington County Landfill on a regular basis;
 - t. Have an on-site trailer and must have a toilet for the security guard and other employees;
 - u. Conduct mining so that slopes left at the end of the mining will be consistent with stable, natural slopes; and
 - v. Contain any generator within housing.
2. The BLM also made several findings based on the studies done in order to complete the Environmental Assessment and assuming the above conditions are followed. Some of these findings are:

- a. Air quality monitoring is not required to ensure compliance with any federal, state, county, or local regulations because of the amount of dust that will be produced;
 - b. Vibrations from the infrequent blasting that may occur are highly unlikely to reach SunRiver;
 - c. It is not likely that a measurable amount of gypsum dust from the mine will be carried to SunRiver considering distance (4+ miles) and dust control measures that are in place;
 - d. The mining operation will not increase the likelihood of residents of St. George or SunRiver contracting Valley Fever contained in dust particles; and
 - e. Any sound from the mining operation in SunRiver will be minimal—generally less than the sound of freeway traffic, neighbors talking in their yards, and similar to a running refrigerator.
3. The Utah Division of Oil, Gas and Mining has imposed the condition of a reclamation bond in an amount determined to be appropriate by that agency.
 4. The air emissions from the site shall be monitored by the Utah Division of Air Quality
 5. In the appeal hearing, GEM voluntarily agreed to:
 - a. Install and maintain an anemometer to measure wind speed at the mine site; and

- b. Use a haul-route that will travel South on Old Highway 91 to the Arizona border rather than through the local communities.
6. The Washington County Planning Commission unanimously voted to place the following conditions on the GEM mining operation:
- a. Proof of sufficient water in order to follow the Fugitive Dust Control Plan must be submitted to Washington County prior to the beginning of *any* operations, including road construction or the transportation of equipment to the mine site.
 - b. Additional road signs warning of truck traffic shall be installed in the locations selected by Washington County prior to trucks hauling material from the mine site.
 - c. When the County deems appropriate, GEM shall install and maintain an air monitoring station as part of an air monitoring system put in place by the County and municipalities in the area;
 - d. Dust shall be controlled to St. George City air quality standards;
 - e. If any blasting is needed, it shall only be permitted between the hours of 9:00 a.m. and 3:00 p.m.;
 - f. Equipment making noise that is heard in the surrounding communities shall only be operated during the hours from sunrise to sunset.
 - g. GEM must follow the approved plan of reclamation as required by federal and state agencies.

B. Findings Regarding the Washington County Planning Commission's Decision

7. The Washington County Planning Commission unanimously voted to approve the GEM mining operations conditional use permit after addressing the matter in two properly noticed public meetings and after having taken comments from representatives from SunRiver, the SunRiver Developer, citizen conservation and cycling groups, and Washington County residents.
8. The Planning Commission made several findings of fact which are supported by the record and which support its decision.
9. The Planning Commission imposed reasonable conditions, as outlined above, which are supported by substantial evidence in the record.
10. The Planning Commissioners' voting to approve the conditional use permit with the conditions imposed was supported by substantial evidence in the record.

C. Findings Regarding Public Health Concerns

11. The County Commissioners received a petition in opposition to the Planning Commission's decision that contained several hundred signatures. They also received several individual communications in the form of emails and telephone calls. One or more of the County Commissioners also communicated directly with representatives from SunRiver and the SunRiver Developer to ensure that the County Commission fully understood the opposition to the Planning Commission's decision.

12. Most, if not all, of the concerns raised regarded the requirement that the conditional use not be “detrimental to the public health, safety and welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.” Washington County Code 10-18-6(1)(b).
13. No evidence has been submitted either to the Planning Commission or to the County Commission which would provide a basis for not relying on the studies and findings of the BLM in this matter as accurate.
14. Based on the testimony of David Blodgett M.D., M.P.H., the Health Officer for Washington County, there is no public health reason which would justify denying the permit. No evidence was submitted which would contradict or discredit Dr. Blodgett’s testimony.

C. Ordinance Specific Findings

15. The proposed mining operation does comply with all applicable provisions of local, state, and federal laws.
16. The proposed operation is not detrimental to the public health, safety, and welfare of persons residing or working in the vicinity, or injurious to the property or improvements in the vicinity.
17. The proposed operation is consistent with the characteristics and purposes stated in the Washington County General Plan.
18. The proposed operation is consistent with the characteristics and purposes stated for the zone in which the operation is to be located.
19. The proposed operation meets the site plan requirements of Washington County Code § 10-18-6-(1)(e).

20. The conditions imposed and the proposed activities by GEM show that the management and maintenance requirements on the operation are adequate.
21. The proposed operation will not result in a situation which will create a need for essential services which cannot be reasonably met by local service providers.
22. Noise and dust pollution will not negatively impact surrounding uses as long as the Fugitive Dust Control Plan is followed.
23. Once the road is widened as planned so that trucks may pass each other when traveling in opposite directions, ingress and egress will be sufficient to allow for safe travel for vehicles and pedestrians surrounding the conditional use.
24. The hours of operation for crushing, processing, or hauling aggregate will not significantly negatively impact surrounding uses.
25. The plan for reclamation, as required by federal and state agencies, complies with local, state, and federal laws.

IV. DUE PROCESS

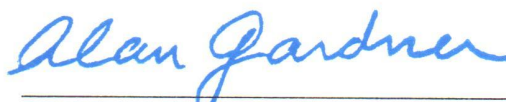
At the appeal hearing, counsel for SunRiver asked for a 180 day continuance on due process grounds. SunRiver argued that there had been insufficient time for it to review the information before the Commission and to gather evidence refuting the studies and conclusions drawn by the BLM and the Utah Division of Oil, Gas and Mining. It sought the continuance in order to have time to seek out and contract with qualified professionals who would then conduct their own studies.

The due process requirements of the law are satisfied without granting SunRiver a continuance. SunRiver had several months to hire experts to conduct studies refuting the findings of the BLM and Utah Division of Oil, Gas and Mining. At this late point in the process SunRiver needs to be able to provide some justification for a continuance other than arguments with no evidentiary support.

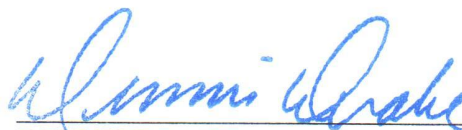
V. Appeal

Any person adversely affected by this decision may file a petition for review of the decision with the Fifth District Court within 30 days of the issuance of this opinion.

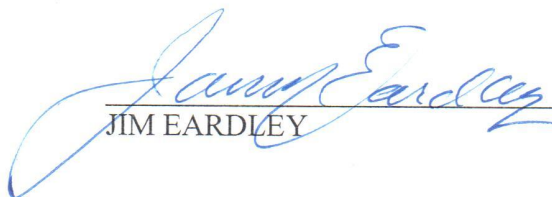
DATED this 4th day of September, 2012.



ALAN GARDNER, Chair



DENNY DRAKE



JIM EARDLEY

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Findings of Fact and Decision, postage prepaid, on the ____ day of September, 2012 to the following:

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