

# Grand County Planning Commission Minutes

October 14, 2009

A regular meeting of the Grand County Planning Commission convened on the above date at 6:00 PM in the Grand County Courthouse, Council Chambers.

**Members Present:** Chair Jean Binyon, Dave Cozzens, Mike Duncan, Dave Stolfa, and Kalen Jones. D.L. Taylor and Ed Bridges, were absent.  
Council liaison – Gene Ciarus.

**Others Present:** County staff Krissie Killoy, Mary Hofhine, and Mark Wright and other concerned citizens.

The Chair called the meeting to order at 6:00 PM and requested that all cell phones be turned off.

The Chair asked the Commission if there were any conflicts of interest or ex parte communication that needed to be disclosed in regards to the agenda; there were none.

The Chair stated that there was a training session last week at the City offices that were very informative and useful.

The Chair explained the process for the public hearings; staff will give their presentation, applicants will get 10 minutes to make a presentation and the public will have 3 minutes to speak on the subject.

**Public Hearing** – Westwater Farms LLC, Conditional Use Application for a production water injection and recycling facility located approximately 5.5 miles from the Colorado state line northeast of Interstate-70 at exit 227.

Staff read into the record for reference the General Plan as amended to date the Land Use Code as amended to date and staff reports with supporting materials.

The application is submitted by Tom Warnes on behalf of the property owner Westwater Farms LLC and is requesting site plan and conditional use permit approval for a production water injection well and production water recycling facility. The proposed facility is located in northeastern Grand County approximately 5.5 miles from the Colorado state line northeast of Interstate-70 and exit 227. The project site is approximately 90 acres in size in the Range and Grazing (RG) zoning district.

The applicant proposes to accept exploration and production water from oil and gas wells. The water will be trucked to the facility and offloaded into a holding tank. Hydrocarbons will be removed from the water and pumped into adjacent tanks for resale. Production water will be treated for on-site irrigation use or off-site resale, or disposal in one of two proposed injection wells. All production water planned for on-site irrigation and/or off-site resale will go through a series of treatment systems.

Conditional Use Permits shall be approved where the County determines that there will not be a significant negative impact upon residents of surrounding property or upon the public. The following criteria shall be considered in the application review:

***Effect on Environment***

*The location, size, design and operation characteristics of the proposed use shall not be detrimental to the health, welfare, and safety of the surrounding neighborhood or its occupants, nor be substantially or permanently injurious to neighboring property, nor cause substantial or permanent interference with the right to peaceful enjoyment of property.*

Staff Finding:

A leak detection and monitoring system is proposed for the tanks and mainlines, as well as an internal liner on the 200,000 gallon storage tank. The main concern for this facility is siting and any potential impacts of the injection well(s) on ground water. These concerns are addressed in the attached report by an independent geologist (Dr. Wayne Downs, Downs Engineering, consultant to Horrocks Engineering).

The applicant proposes an enclosed facility to minimize the release of air pollutants. The facility has received a "Small Source Exemption Permit" through the Division of Air Quality.

**Compatible with Surrounding Area**

*The proposed site plan, circulation plan and schematic architectural designs shall be complementary with the character of the surrounding area with relationship to scale, height, landscaping and screening, building coverage, and density.*

Staff Finding:

The proposed use and site plan are compatible with the surrounding area. The site is located more than a mile from any residence, residential zone district, or national park. The site is not visible from a scenic byway. This area was recently identified as appropriate for a different type of production water facility due to the limited impact on surrounding property owners and proximity to the I-70 corridor.

**External Impacts Minimized**

*The proposed use shall not have negative impacts on existing uses in the area and in the county through the creation of noise, glare, fumes and odors, dust, smoke, vibration, fire hazard, excessive light, or other injurious or noxious impact. The applicant shall provide adequate mitigation responses to these impacts.*

Staff Finding:

The proposed use is not anticipated to have negative impacts on existing uses in the area.

**Infrastructure Impacts Minimized**

*The proposed use shall not have negative impacts on existing uses in the area and in the county through impacts on public infrastructure such as roads, parking facilities and water and sewer systems, and on public services such as police and fire protection and solid waste collection, and the ability of existing infrastructure and services to provide services adequately.*

Staff Finding:

The applicant has addressed public service and infrastructure impacts through a Road Agreement with the Road Department and an emergency services agreement with the Fire Department. Additionally, the applicant has received water and septic system approval from the State Sanitarian as well as agreed to routine site inspections and a monitoring fee.

**Consistent with LUC and General Plan**

*The proposed use will be consistent with the purposes of this LUC, the General Plan, and any other statutes, ordinances or policies that may be applicable, and will support rather than interfere with the uses otherwise permitted in the zone in which it is located.*

Staff Finding:

Use-specific criteria have not been adopted for this type of facility; however, the applicant has submitted information in a format similar to an existing production water facility. The proposed use and location are consistent with uses otherwise permitted in the RG zone district.

**Parcel Size**

*The proposed use may be required to have additional land area, in excess of the lot area otherwise allowed by the underlying zoning district, as necessary to ensure adequate mitigation of impacts on surrounding land uses and the zoning district.*

Staff Finding:

No additional land area is necessary.

Additional considerations for the Commission are:

### **Monitoring Plans**

Monitoring plans have not been submitted for:

- a) ensuring receiving water meets established standards
- b) ensuring that treated water meets established standards for on-site irrigation, off-site resale, and injection.

### **Referral Agencies**

Referral agency letters from the Division of Oil, Gas, and Mining, Division of Air Quality, and Division of Drinking Water are required.

### **Reclamation Plan & Bond**

Plant decommissioning costs seem to be underestimated. Costs should include the following:

- a) removal of remaining waste,
- b) removal of structures,
- c) management of contaminated materials,
- d) re-grading, and
- e) re-vegetation

### **Operational Status**

Grand County will be notified within 30 days of any changes in ownership, operation, or permit provisions.

### **Fees**

The facility shall be subject to a monitoring fee as determined by the Grand County fee schedule as updated annually. The 2009 monitoring fee for produced water disposal has been set at ten cents per barrel (42 US gallons). The applicant shall submit a monthly summary report of barrels received. The applicant shall provide the summary report to the County Clerk by the 5<sup>th</sup> day of the following month. Billing invoices for the monitoring fee shall be subject to a standard 30 day payment term.

The Chair thanked Tom Warnes, (Applicant) for the providing a tour of the site on September 24<sup>th</sup>, this tour was advertized as a meeting and there were citizens in attendance, the meeting was opened at the beginning of the tour and closed at the end of the tour.

Mr. Warnes was given the floor to make his presentation.

Mr. Warnes thanked the staff for the work on the report. Mr. Warnes gave a presentation on the project and the production recycling process. They plan to use the processed water for agriculture use, orchards and gardens.

The Chair opened the public hearing and asked that speakers come to the front and give their names.

Staff provided a written comment from Pam Hackley for the record.

**John Weisheit**, Conservation Director of Living Rivers, submitted a letter that was sent to Clint Dworshak regarding concerns and would like to submit for the record also a white paper report regarding the potential exposure-related human health effects of oil and gas development, and news releases on tainted water and the effects on the aquifers in Colorado and Wyoming.

Mr. Weisheit expressed a concern regarding available contact from the technical advisors and would like to have the advisors available to the public.

The Chair asked the County Engineer to take the floor to answer the question regarding the technical information provided in the Dr. Downs report.

The County Engineer explained that Dr. Downs is a sub contractor to Horrocks and was used as an independent geologist since the expertise in this matter was beyond the County Engineers capability. The time is billed to and was paid for by the applicant if there are questions they should be directed to this body and the County Engineer will answer them or if need be, contact Dr. Downs for an answer. It is not appropriate for anyone, but this body to ask questions of this highly paid expert as the costs are born by the applicant. The Commission and the public were able to ask questions of Dr Downs when he made his

presentation to the Commission on August 26th and Dr. Downs will be available again at the Council public hearing.

The County Engineer gave a brief explanation, as he understood it, of Dr. Downs report to the Commission and the public.

Mr. Weisheit finished his comments by stating that he has been a river guide since the 1970's and understands the geology of the basin. Westwater has endangered fish and if they "see" any pollution they will use the clean water act to mitigate the situation.

**Bill Love** – Mr. Love has had conversations with UDOGM and would like to have Westwater bond for the test well and is still concerned about the aquifer cracks between the Entrada formation, this is an unknown. Would like the Commission to postpone until the technical data is available for review and has further concerns that the County will destroy the aquifer due to the chemicals in the water that will be injected into the ground and leak into the Colorado River.

**Damian Bollerman**, Castle Valley Mayor - Has concerns about Dr. Downs report; it doesn't mention the wells in Castle Valley and would like the following questions answered;

- 1) Is there an oversight on addressing potential effects on Castle Valley wells.
- 2) Impacts on other springs in the area not just Moab and the Colorado River.
- 3) Has there been any attempt to characterize the chemical constituents of the water to be injected.

There are many reports of the problems of injection waters contaminating drinking water and also recommends to table further action until more analysis is known on the affect of the injection wells in Castle Valley.

**Laura Kamala** - Director of Utah Programs for Grand County Trust - There is water leaking out of the spring at Ruby Canyon going into the Colorado River, there is a fear of migration. If the water from the injection wells get into the river it would trigger a lawsuit via the clean water act.

**David Earley** – explained that he has a Water Science degree from Cal Davis, in reading Dr. Downs report doesn't feel the questions are adequately answered. With the amount of water being injected into the ground the hydro static formations seem to be pushing water uphill to the river which is evident with the springs on the river. Concerns of cracks in the well casing, Harley Dome is a dome and water does go towards the Book Cliffs, would like a test well between the river and Harley Dome to check for water coming the other way. Much of the County's economy comes from recreation on the river and not from industry. The County should not be so concerned with the investment of the applicant it was a choice they made; requests the Commission table until the state has answers of the wells and where the water is really going.

**Sara Melencoff** - This process speaks to the collective insanity of the human race this needs to stop before we destroy the rocks, water and fish.

**Sarah Fields** – it is very irresponsible for the Planning Commission to pass this on and recommends the Commission table until the well has been drilled. There is no scientific information that will confirm that the contaminants will not migrate to the river.'

With no other comments the Chair closed the public hearing and asked if Mr. Warnes would like to respond to the concerns that have been expressed.

The Chair asked if the applicant would like to comment. Mr. Warnes responded that there will be no water injected into the Entrada formation. T-the lower st formation, the Wingate, that will be used for injection which is the Wingate which is 1,300 to 1,800 feet down. There are 35 wells around the property and they are all dry, the analysis used by David Allin (Westwater Geologist) was from the data collected from the wells.

The Chair called for the motion – Kalen Jones moved to table until requested material from the August 26<sup>th</sup> meeting is submitted to staff including the State agency Permits, Wildlife Resources and Division of Water Quality. Mike Duncan Seconded

Discussion - **Kalen Jones** declared that it has been six weeks since the letter from Wildlife Resources was requested and there is still no letter.

**Mike Duncan** – Is the letter from UDOGM also needed; it seems to be a more critical issue.

**Kalen Jones** stated that there seems to be confusion in the sequence of events. The Chair asked the County Engineer to comment on this.

The County Engineer stated that in order to obtain a permit to inject water is a two step process. First a permit to drill the bore is issued, Westwater farms has obtained [this first permit to](#) drill an [investigative](#) bore (well). Then after the bore is completed the data collected is required to be submitted to UDOGM in an application to inject. The information submitted to UDOGM includes a log of the geology, water samples and water levels. This is also when the bonding amount required by UDOGM will be determined.

Fracing is not a term used in association with injection wells; over pressure or bursting pressure is the term used. The well permit will include a maximum TDS and a maximum pressure that will be allowed for the proposed injection well.

Chair called for a vote – all opposed

Chair entertained another motion – Dave Cozzens moved to forward to the County Council with the staff reports recommendation. To allow the applicant to bore the test hole and forward to the Council once staff has approved the document. Mike Duncan seconded – no discussion the Chair called for the motion – Jean Binyon and Dave Cozzens were in favor, Mike Duncan, Dave Stolfa and Kalen Jones opposed – Motion failed.

A lengthy discussion ensued with the Commission on the process and concerns about sending forward.

Dave Stolfa moved to table until the results of the test bore hole have been approved by UDOGM and presented to the Planning Commission for review. Mike Duncan seconded

Chair asked if there was discussion - Dave Stolfa was comfortable sending it forward, but would like to see the results of the test before sending a favorable recommendation to the Council.

The Chair called for the vote and all voted in favor to table the Conditional Use Permit and site plan until the test results are available to review and approved by UDOGM.

**Public Hearing** – Rezone application for property owned by Nimitz and Gierlinski on property located on Highway 191 and State Route 313 from Range Grazing, (RG) to Resort Special, (RS).

Staff read into the record for reference the General Plan as amended to date the Land Use Code as amended to date and staff reports with supporting materials.

This application is submitted by Kristie Whipple, Property Owner Representative, on behalf of Gerald Gierlinski, Applicant (property under contract). The application requests a rezone from Range and Grazing (RG) to Resort Special (RS) of 43.5 acres located approximately seven miles north of Moab adjacent to Highway 191 and State Road 313 at the turnoff to Dead Horse Park (DHP) and Canyonlands National Park.

Adjacent properties are zoned RG and include vacant lands as well as a parking lot with kiosk identifying trails in the area. The Union Pacific rail line runs along the western border of the property.

“The Highway 191 North Corridor Area Plan” was adopted in February 1999 as a guide for making future land use decisions along Highway 191. Plan framework includes clustered development nodes along DHP turnoff, Crescent Junction, and the airport and the preservation between nodes of open, natural corridors. The area plan designates the DHP turnoff “node” as primarily for visible, tourist-oriented, commercial development. The RS District was adopted and designed specifically to implement the area plan and offers development standards (building design, site design, signage, and general standards) for implementing the Highway 191 North Corridor Area Plan’s goals, objectives, and policies.

The Chair opened the public hearing and asked the applicants if they would like to make a presentation. Tim Keogh and Kristie Whipple, the property owner representatives, said the proposed use is not to be an item of discussion. A letter was submitted to substantiate the rezone request.

The Chair asked if there were any comments from the audience.

**Richard Lance Christie** – stated that this request is consistent with the General Plan and Area Plan for the Resort Special zone district and would recommend the Planning Commission send it forward with a favorable recommendation.

With no other comment the Chair closed the public hearing and entertained a motion.

Mike Duncan moved to recommend approval to the Council for the rezone from Range and Grazing to Resort Special based on consistency with both: (1) the Highway 191 North Corridor Area Plan goals, objectives, and policies as identified in the General Plan, and (2) the standard rezoning criteria of Section 6.2.6 of the Land Use Code. Dave Cozzens seconded.

With no other discussion the Chair called for the vote – all voted in favor of the motion.

**Public Hearing** – Outdoor Recreation Conditional Use Application for an open air dinosaur tracks museum located at Highway 191 and State Route 313.

Staff read into the record for reference the General Plan as amended to date the Land Use Code as amended to date and staff reports with supporting materials.

This application is submitted by Kristie Whipple, Property Owner Representative, on behalf of Gerard Gierlinski, Applicant (property under contract). The applicant is requesting site plan approval and an “outdoor recreational use” conditional use permit (Sec. 3.1 Use Table) for an open-air dinosaur tracks museum. The subject property consists of 43.5 acres and is located approximately seven miles north of Moab adjacent to Highway 191 and State Road 313 at the turnoff to Dead Horse Park and Canyonlands National Park.

This application is being processed in accordance with the use specific standards outlined in Sec. 3.2.3(J) of the land use code for “outdoor recreational use”. Additional pertinent land use code provisions include the Resort Special (RS) building design, site design, signage, and general development standards adopted and designed specifically to implement the Highway 191 North Corridor Area Plan’s goals, objectives, and policies.

Staff has had many sessions with the applicant’s agents in review of the proposed project and there are requirements that are still outstanding, including many details in the general development standards and site plan. The site plan is essentially for construction assurances and should be complete.

The Chair opened the public hearing and asked the representatives if they would like to make a presentation.

Tim Keogh and Kristie Whipple explained that the developer is interested in the area for research and preserving the history of the area. There will be a make shift dig site and the trail will include many of the preserved dinosaur tracks from the area. They also expressed that the plan and narrative should answer many of the questions staff has including that the fence will be of concrete and the landscaping was proposed to be as natural as possible. The dinosaur replicas will meet the 24 foot height requirement although the site plan showed otherwise and will be built from a resin product. They do plan on building a sign and will provide that information to staff. The applicant expects to accommodate the large parking lot.

The Chair opened the comment session of the public hearing and asked that anyone who wishes to speak to give their name.

**Dave Earley** – Director of Utah Open Lands has interest in the water in the area, he noticed that there was a proposed man made reservoir and asked how it would be fed. The water in the National and State Parks needs to be protected. The large asphalt parking lot may have drainage concerns.

**Sarah Fields** – Has concern with the application the paperwork on the project is not complete; this is the public hearing and there are unanswered questions. Incomplete applications should not be put on the agenda. This needs more information before the Commission can make their decision.

**Richard Lance Christie** – this appears to be an incomplete application including parking and screening, this application should be tabled until receipt of all required information.

With no other comments the Chair closed the public hearing and entertained a motion.

Kalen Jones moved to table and continued the public hearing until the following items are provided for review:

1. **Parking Study and Plan.** Submission of a parking study and plan with supporting information regarding the number of spaces proposed and screening methods utilized.
2. **Project Screening.** Submission of an updated site plan demonstrating methods utilized (landscaping, berming, site planning choices, etc) for screening buildings and structures from off-site view.
3. **Landscaping.** Submission of an updated landscaping plan to include an underground irrigation system and landscaping along the undeveloped areas of the street yard and parking areas;
4. **Height of Structures.** Submission of an updated site plan to include the location and height of all proposed structures, including dinosaur exhibits (staff notes there is a 24 foot height limit in the RS zone district versus handout indicates exhibits between 9 and 60 ft.).
5. **Signs.** Submission of an updated site plan to include the location and dimensions of all proposed signs.
6. **Drainage, Floodplain, and Steep Slopes.** County Engineer to review;
7. **Reclamation Plan, Cost Estimate, and Bond.** Submission of a reclamation plan, cost estimate, and bond sufficient to ensure restoration of the site to a reasonably natural or preconstruction state.

Dave Stolfa seconded.

Discussion – The Commission had concerns with the following;

- large parking lot,
- the inability to screen parking from
- the higher roadways,
- The artificial reservoir and the water rights.

The Chair called for a vote on the motion and all voted in favor.

**Approval of Minutes** - The Commission accepted the August 26, minutes as corrected. September 9<sup>th</sup> minutes were accepted with corrections.

**Community Development Updates** – Staff brought the Commission up to date on the amendment to the Wastewater Ordinance.

**County Council Update** – Gene Ciarus didn't have anything to report.

With no other items on the Agenda the Vice Chair called for adjournment.

**Adjournment:** The meeting was adjourned at 8:30 P.M.