

ORDINANCE NO. 2017- 22

AN ORDINANCE AMENDING SECTIONS 2-2 AND 3-25 TO ADD REQUIREMENTS FOR EARTH EXTRACTION OPERATIONS RELATED TO AIR AND WATER QUALITY, REQUIRED LANDSCAPING, HOURS OF OPERATION, NOISE, AND OTHER RELATED IMPACTS

WHEREAS, the Planning Commission initiated a review of the Utah County Land Use Ordinance (UCLUO), dealing with amending Sections 2-2 and 3-25 to add requirements for earth extraction operations related to air and water quality, required landscaping, hours of operation, noise, and other related impacts; and

WHEREAS, the Planning Commission addressed the proposed amendment to the Utah County Land Use Ordinance during the regularly scheduled meeting of the Planning Commission on August 15, 2017, held a public hearing regarding the proposed amendment, and made a recommendation to the Board of County Commissioners regarding the proposed amendment; and

WHEREAS, the Board of County Commissioners has received and carefully reviewed the recommendation from the Planning Commission regarding the proposed amendment, and the minutes of the Planning Commission meeting and the public hearing regarding the proposed amendment to the Utah County Land Use Ordinance; and

WHEREAS, the Board of County Commissioners has received and carefully reviewed the input, documents, and testimony from the public regarding the proposed amendment to the Utah County Land Use Ordinance; and

WHEREAS, the Board of County Commissioners finds the proposed amendment to the Utah County Land Use Ordinance conforms to the Utah County General Plan, 2014, and is consistent with the other provisions of the Utah County Land Use Ordinance; and

WHEREAS, the Board of County Commissioners finds that the proposed amendment to the Utah County Land Use Ordinance is in the best interest of the health, safety, and welfare of the citizens of Utah County, considering all factors.

NOW, THEREFORE, THE COUNTY LEGISLATIVE BODY OF UTAH COUNTY ORDAINS AS FOLLOWS:

Part I:

Section 2-2 of the Utah County Land Use Ordinance is hereby amended to read as follows:

2-2: DEFINITIONS

- A. For purposes of this land use ordinance, definitions are provided for the following terms. Not all of the terms are used in this land use ordinance. The inclusion of any term defining a land use does not imply that the term is a permitted or conditionally permitted use in any zone, unless specifically stated as such in the applicable zone. Any term which is defined, but not used in this land use ordinance, is included to differentiate the term from other terms which are used in this land use ordinance:
5. Agriculture Production: Land used for the growing and production of crops such as grain, foliage, and fruit, and land used for feedlots or other confined conditions for the raising of livestock or poultry. This definition shall also include any land designated as prime farmland as depicted on the most recent version of a soil survey map from the U. S. Department of Agricultural Natural Resource Conservation Service or any successor agency.
125. Storm Water Pollution Protection Plan(SWPPP): A plan that; 1) identifies all potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from a construction or excavation site; and 2) describes practices to be used to reduce pollutants in storm water discharges from the site.

Part II:

Sections 3-25 of the Utah County Land Use Ordinance is hereby amended to read as follows:

3-25: OPEN PIT EXTRACTION OF EARTH PRODUCTS

A. INTENT

The intent and purpose of this section is to provide for the extraction of earth products using surface mining methods, for stockpiling mined materials, and for the placement of overburden and leftover earth materials in mining waste dumps, while protecting the environment, the rights of neighboring property owners, and roads and other public facilities from unusual wear or damage.

B. SCOPE

The provisions of this section shall apply to all sites where sand, gravel, clay, topsoil, rocks or minerals will be extracted by an open pit method; to all sites where such extracted earth products are stockpiled; and to sites where overburden and leftover earth materials are placed in waste dumps.

Exception: Sites having a valid, current permit at the time of passage of this ordinance shall be completed according to the terms of such permit and any bonding agreements appurtenant thereto. The exception applies only to the portion of the site under permit. Any expansion of pits, dumps, storage pits or operation areas beyond the existing permit is subject to all provisions of this section.

C. CONDITIONS

Conditions 2, 3, 4, 5, 6, and 7, as listed below, shall be deemed satisfied by submission of an approved operation and reclamation plan for mining operations as specified in the Utah State Code, otherwise, the Zoning Administrator shall issue a permit for an open pit,

a stockpile, or a waste dump only when all of the following are met, and all operations and rehabilitation shall comply with all of the following requirements:

1. The site lies in a zone where such use is a permitted use or where it may be approved as a conditional use by the Board of Adjustment and has received such approval.
2. The applicant has submitted an accurate site plan that shows the current topography, utilities, roads, and structures on the site, and an accurate site plan that shows the proposed utilities, roads, and structures during operations.
3. The applicant has presented an accurate final post-reclamation site plan that shows the topography, utilities, roads and structures on the site after completing the excavation and rehabilitation of the pit.
4. Only the portion of the parcel covered by the required rehabilitation bond may be disturbed or involved in the extraction process.
5. The standards for rehabilitating the site shall be:
 - a. The side walls of a pit or mound shall be smoothed and evenly contoured, and the floor of a pit or top of a mound shall be flattened and leveled.
 - b. Mounds of fill shall not remain after rehabilitation of an extraction operation, except for mounds around utility poles. Mounds may be permitted in conjunction with a mine waste dump.
 - c. Impoundments, pits, and ponds, must be approved as part of a post mining land use and reclamation plan by the Utah County Engineer. Natural drainage patterns should be restored or realigned whenever possible.
 - d. No slope shall be steeper than the critical angle of repose (e.g. 33 degrees for gravel deposits).
 - e. All disturbed areas shall be covered with not less than a one-inch thick layer of topsoil, re-seeded with a hardy plant species, and the hardy plant species shall be established with sufficient concentration of vegetation to screen at least 25% of the exposed surface from view.

Exception: Disturbed areas located in desert or sloped areas which naturally lack soil or vegetation shall be restored to a vegetation and soil surface that corresponds with the adjacent native conditions.
6. The operator shall place clearly identifiable survey markers on the outer boundaries of the bonded area and shall maintain such until the bond is released by Utah County. The County Commission may request an annual on-site investigation and report of the County Engineer to determine whether the terms of the grading plan, rehabilitation plan and bond agreement are being met.
7. Dust generated in the extraction and processing of the earth products shall be kept under control by the operator by keeping the extraction area, main roads in the pit, and loaded trucks, watered down. Placing berms or landscape screening for protection from the prevailing winds, and other suitable measures, may also be used. Any un-paved access road to the pit from the paved road system shall be maintained by the pit operator for dust control by watering down the access road surface or placing dust inhibiting material on the surface of the access road.
8. All cuts and fills shall be set back from the property boundary and from the boundary of the approved bonded extraction site a distance of at least fifteen (15)

feet; except that when a bonded extraction boundary crosses a property line, extraction may take place through the property line.

9. The pit and/or extraction operation shall not constitute a nuisance according to the Utah County Code or Utah State Code.
10. The Zoning Administrator has received an approval letter from the County Engineer stating that the applicant has complied with the following items and stating that the following items have been reviewed and approved by the County Engineer:
 - a. The applicant shall submit an accurate travel route site plan for the operation that includes designated travel routes to and from the extraction site in relation to the surrounding communities. Verification of the status of all public roads utilized for the haul routes shall be required from all agencies with jurisdiction over the roads. The applicant shall require that all material haul vehicles coming to and leaving the extraction site use the designated travel routes, and shall submit a travel route enforcement plan.
 - b. The applicant shall submit a traffic analysis which includes the estimated trips per day coming to and leaving the extraction point on the various travel routes. This analysis shall include the vehicle type and average weight per vehicle both to and from the extraction point.
 - c. The applicant shall submit a travel route roads analysis, prepared and signed by a Utah licensed engineer, detailing the integrity, vehicle volume capacity, weight capacity, pavement thickness and quality, sub-base thickness and quality, and other features of the travel route roads and appurtenant facilities, and the anticipated effects on such roads and facilities resulting from the use of the travel routes both during the operation as well as upon completion of the extraction process, including a comparison of the current vehicular traffic at the current rate of growth with the proposed increased vehicular traffic generated by the extraction operation at the proposed rate of growth and its effects on the current and expected life of the road structures before failure is eminent. The analysis shall establish that the designated travel routes have the durability and capacity sufficient to accommodate the additional vehicular traffic generated by the extraction site, both during the operation as well as upon completion of the extraction process, or, if the analysis shows that the designated travel routes are not sufficient, the analysis shall specify the road improvements which are required to make the roads sufficient. The travel route roads analysis may be waived, in writing, by the County Engineer, if the County Engineer determines that sufficient data exists to confirm that the designated travel route roads have the durability and capacity sufficient to accommodate the additional vehicular traffic generated by the extraction site, both during the operation as well as upon completion of the extraction process.
 - d. If the travel route roads analysis shows, or the County Engineer determines, that the designated travel route roads are insufficient, the application shall not be approved until the deficient roads are improved to

the required durability and capacity standards, at Applicant's expense, or the Applicant has entered into an agreement with the entity having jurisdiction of the deficient roads to address the deficient roads, which may include the posting of cash or bond based on an engineered estimated cost for the construction and restoration of the roads and appurtenant facilities.

11. The applicant has submitted and received approval from the County Engineer of a Storm Water Pollution Protection Plan(SWPPP).
12. Operations shall comply with all applicable requirements of the Utah County Health Department and the Utah Department of Environmental Quality for air quality. The applicant shall obtain approval of a plan for the control of fugitive dust from the Utah Department of Environmental Quality.
13. Operations shall comply with all applicable requirements of the Utah County Health Department and the Utah Department of Environmental Quality for water quality, including the prevention of groundwater contamination.
14. In addition to the requirements listed above, any operation, or portion of operation, located within one-half(1/2) mile of an existing dwelling in Utah County or existing area of active agricultural production in Utah County shall meet the requirements listed below. For purposes of determining the one-half(1/2) mile distance, measurement shall be from any portion of the bonded boundary of the mine or pit to the nearest outside perimeter of any dwelling or area of active agricultural production. Some of the requirements listed below may be addressed through an approved SWPPP. The applicant shall submit an operation plan which shall be approved by the County Commission which addresses the following:
 - a. Hours of operation;
 - b. Noise mitigation;
 - c. Landscaping;
 - d. Dust containment;
 - e. Lighting.

D. EXTRACTION SITE RECLAMATION BOND

The bond and bond agreement requirements under this section may be satisfied by submission of a properly executed Reclamation Contract for Surety under the Mining Operations requirements as found in the Utah State Code, otherwise, the applicant and the property owner shall provide a bond and shall execute a bond agreement meeting the following requirements:

1. Cash or bond in the amount \$5000.00 per acre or alternatively; cash or bond in the amount established by the most recent Reclamation Surety Costs for Small Mining Operations issued by the State of Utah Board of Oil, Gas and Mining for the applicable size of operation, or cash or bond in the amount as determined by a detailed rehabilitation cost analysis supplied and paid for by the applicant and reviewed and approved by the Utah County Engineer, shall be posted by the applicant and property owner to guarantee compliance with the provisions of this section. A violation of this section, or of the rehabilitation bond agreement, shall be sufficient grounds for forfeiture of the bond to Utah County. If the bond is over the minimum bond amount per acre and the owner disputes the cost of

- reclamation set by the County Engineer, the County Commission may determine the cost and set the bond amount, upon appeal by the owner or applicant.
2. The maximum term of the bond shall be seven (7) years, after which time the bond amount shall be reevaluated based on inflation, the current costs of rehabilitation, and the amount of rehabilitation or excavation that has occurred during the elapsed time.
 3. Any bond shall be accompanied by an agreement among Utah County, the applicant, and the property owner wherein the county agrees to return the bond at the completion of work if the standards of this section have been met, and the applicant and property owner agree that the bond shall be forfeited in the event of noncompliance and to permit the county to enter upon the land to close operations and rehabilitate the excavated or filled areas. Exception: The agreement does not need to include the property owner for lands owned by the federal government.
 4. Rehabilitation of the site shall be completed on or before the earliest to occur of the following dates: (i) six months prior to the date of termination or expiration of the rehabilitation bond, (ii) one year after the date of cessation of operations, (iii) one year after the last date that any earth product materials are extracted from the site, (iv) June 30th of any fiscal year in which a business license has not been issued by Utah County for such operations, and (v) December 31st of any year in which a valid Utah County zoning compliance permit is not in effect for the operation.
 5. Notwithstanding the forfeiture of the bond, the applicant and the property owner shall retain individual responsibility to fully comply with this ordinance, the terms of the permits issued thereunder, and the balance of any expense not covered by the bond to rehabilitate the property.

E. PERMITS

Prior to the issuance of business licenses and building (or grading) permits required elsewhere in county ordinances, any open pit operation shall be required to have a zoning compliance permit.

Part III:

A copy of the Utah County Land Use Ordinance, as amended herein, is hereby ordered to be filed in the office of the Utah County Clerk/Auditor.

Part IV:

If any of the sections, sentences, clauses or provisions of this ordinance shall for any reason be adjudged inapplicable or invalid by a court of competent jurisdiction, such shall not affect or invalidate the remaining portion contained herein.

Part V:

This ordinance shall become effective fifteen (15) days after it is passed and upon at least one (1) publication in a newspaper published in and having general circulation in Utah County.

PASSED and ordered published this 26th day of September 2017.

UTAH COUNTY COMMISSION

VOTE



WILLIAM C. LEE, CHAIR

aye



GREG GRAVES, VICE-CHAIR

NAY



NATHAN IVIE, COMMISSIONER

aye

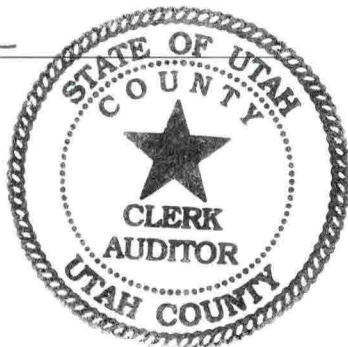
ATTEST:
BRYAN E. THOMPSON
County Clerk/Auditor

APPROVED AS TO FORM:
JEFFREY R. BUHMAN
County Attorney

By: 

Deputy

Approved



Disapproved
By: 

Deputy

Date of Publication: Once only, as soon as possible