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BEFORE THE PLANNING AND ZONING COMMISSION DEPARTMENT OF WATER RESOURCES

OF POWER COUNTY, STATE OF IDAHO

In Re: APPLICATION FOR SPECIAL USE
PERMIT FOR SOUTHEAST IDAHO
ENERGY, LLC.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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Department of Water Resources
Eastern Region

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The Planning and Zoning Commission of Power County, Idaho, held a public hearing on Tuesday, August 5, 2008, in relation to the Application for Special Use Permit ("Application") submitted by Southeast Idaho Energy, LLC ("SIE, LLC"). The Application requests permission to design, construct, and operate a new nitrogen based fertilizer production facility approximately 2 miles southwest of American Falls, Idaho. A quorum was present. Chairman Fitzgerald convened the public hearing at 7:30 p.m. and inquired if any of the Commissioners had a conflict. None did.

Chairman Fitzgerald then explained that he had attended a coal gasification conference, unrelated to Southeast Idaho Energy, in the mid-West. At that conference he had received materials, which he introduced into the record and provided for anyone to review.

The following exhibits were introduced into the record:

1. Jim Fitzgerald materials from the coal gasification conference.
2. A copy of the Notice of Public Hearing published in the Power County Press on July 16, 2008;
3. A Certificate of Mailing dated July 17, 2008 showing notice of the Public Hearing was sent to property owners located within 1000 feet of the proposed project
4. A picture showing the physical posting of notice of the public hearing on the property.
5. The original application for the Special Use Permit, received by the Power County Building Administrator July 10, 2008.
6. A letter of comment from the Idaho Department of Commerce.
7. A copy of the Powerpoint presentation made by Southeast Idaho Energy to the Commissioners at the public hearing.
8. The Applicant's packet consisting of copies of the Application, Introduction, various consultation and engineering studies.
9. The sign-in sheet for the Public Hearing.
10. The Application for Authorization to Construct the PCAE to the Idaho Department of Environmental Quality.

Based upon the record submitted and the testimony received at the public hearing, the Planning and Zoning Commission approves the Application subject to a variety of conditions, based upon the following findings of fact and conclusions of law.

I. BACKGROUND AND PROCEDURAL HISTORY

A. Procedure for Special Use Permit

According to the Power County Development Code, “[t]he purpose of the special use permit procedure is to implement the comprehensive plan by requiring intensive public review of certain developments, and by requiring those developments to comply with performance standards designed to assure their compatibility with neighboring uses, the landscape setting, and the capacity of public facilities and services.” (PCDC § 10-2-2(I)).

The developer must file a completed application form, the required supporting materials, including a site plan, and the application fee. (PCDC § 10-2-2(I)(2)). The building administrator provides notice of the hearing by the following steps: (a) The administrator sends a notice of the hearing by first class mail to any adjoining property owners within 1000 feet of the site, at least 15 days before the hearing; (b) The administrator publishes one legal notice in the official newspaper, so that it appears at least 15 days before the hearing; (c) The administrator sends the notice of hearing by first class mail or by facsimile to the media and any interested agencies and any individuals who have requested notice; and (d) The administrator posts a sign at a visible location on the site at least seven days prior to the hearing giving notice of the hearing. (PCDC §10-2-2(I)(4)).

The Planning and Zoning Commission holds a hearing on the special use

permit. The developer or a representative of the developer must be present at the hearing. (PCDC §10-2-2(I)(5)). At the hearing, the Planning and Zoning Commission determines whether the proposed special use is in compliance with the Comprehensive Plan and all requirements of the Development Code. (PCDC §10-2-2(I)(6)).

Conditions may be attached to the approval of the special use permit, subject to the requirements of Section 10-2-2(J). (PCDC §10-2-2(I)(7)). According to the Development Code, conditions may be imposed on the approval of a special use permit, but only if: (a) the conditions are clearly designed to assure compliance with a specific requirement of the Development Code; and (b) a list of all of the conditions imposed is provided to the developer with notice of the decision. The list must specifically identify the provision of the Development Code the condition is designed to implement. (PCDC § 10-2-2(J)). Idaho Code § 67-6512 also provides that “conditions may be attached to a special use permit including, but not limited to, those:

- (a) Minimizing adverse impact on other development;
- (b) Controlling the sequence and timing of development;
- (c) Controlling the duration of development;
- (d) Assuring that development is maintained properly;
- (e) Designating the exact location and nature of development;
- (f) Requiring the provision for on-site or off-site public facilities or services;
- (g) Requiring more restrictive standards than those generally required in an ordinance; and
- (h) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.”

(Idaho Code § 67-6512(d)).

An approval of a special use permit is valid for one year from the date of approval, unless extended by a development agreement. The Planning and Zoning Commission may authorize an extension if the application shows reasonable cause for a reasonable extension. (PCDC §10-2-2(L)).

The decision of the Planning and Zoning Commission may be appealed to the County Commissioners, according to the appeal procedure of Section 10-2-3(A). The notice of appeal must be filed within fourteen days after notice of the decision is mailed. (PCDC §10-2-2(I)(8)).

B. Application for Special Use Permit

SIE has submitted a Special Use Permit Application on the form provided by Power County, along with the required application fee. (Application, Ex. S). SIE also submitted a detailed narrative which describes the proposed plant and discusses the plant's attempt to comply with each of the performance standards of the Development Code. (Application). Along with this narrative, SIE has submitted evidence regarding the various performance standards in the form of exhibits to the Application. These exhibits include the following items of evidence:

Exhibit	Description
A	July 10, 2008 Letter from Charles E. Brockway, Brockway Engineering PLLC, regarding Water Supply for Proposed SIE Facility
B	IDAPA 58.01.03 Individual / Subsurface Sewage Disposal Rules
C	Map showing Existing Irrigation Canal
D	Maps showing Proposed Irrigation Canal Options
E	Site Plan showing Existing Power Transmission Lines
F	Site Plan showing Proposed Power Transmission Lines

G	Site Plan showing Existing and Proposed Natural Gas Pipeline
H	American Falls, Idaho, Power County Advanced Energy Center Traffic Impact Study (July 2008) by HDR Engineering, Inc.
I	Memorandum from Dave Baker and Mark Bastasch of CH2M Hill, Inc. regarding Noise Levels of proposed Power County Advanced Energy Center
J	Site Plan showing Elevation Contours
K	Power County Comprehensive Plan (1993)
L	Wildland Fire Mitigation Plan, Power County, Idaho, prepared for Power County Commissioners, by Dynamac Corporation (February 2004)
M	Phase I Environmental Site Assessment for SE Idaho Energy for 476 Acres of Agricultural Land in Power County, Idaho (February 22, 2007), by E3 Consulting
N	Class I Archaeological Overview for the Proposed Coal Gasification Plant, Power County, Idaho, prepared by William M. Harding, North Wind, Inc. (July 2008)
O	Wildlife Habitat Survey for the Coal Gasification Plant, Power County, Idaho, prepared for REH, Inc., by North Wind, Inc. (July 2008)
P	Technical Memorandum from Christine Whittaker to Tom Hornyak re: Wetlands Delineation (March 19, 2007)
Q	Site Plan showing Proposed Plant Layout
R	Partial Decree for Water Right 29-02284; Partial Decree for Water Right 29-02301; Notice of Change in Water Right Ownership from FMC Corporation to Southeast Idaho Energy, LLC
S	Special Use Permit Application with Legal Descriptions and Fee Receipt

C. Background Information regarding Proposed Plant

SIE plans to design the PCAEC to produce nitrogen-based fertilizers efficiently and cost effectively from the gasification of coal and petroleum coke and that these fertilizers will supply local and regional agricultural demand. SIE plans to design the PCAEC to produce approximately 2,000 tons per day (“TPD”) of ammonia for direct

sale and for manufacture of downstream products, such as granular urea and urea ammonium nitrate. Total fertilizer production will be in the 3,300-3,900 TPD range. (Application, p. 13).

The PCAEC will produce fertilizer products through the gasification of coal and petroleum coke, or petcoke. (Application, p. 16). The PCAEC will use General Electric (GE) gasification technology. The gasifier is a large high-pressure vessel. Coal and petcoke will be the feedstock for the PCAEC's gasifiers. Inside the gasifier, a process takes place in which carbon, hydrogen, and water react with oxygen to form synthesis gas, or syngas. Syngas is primarily a mixture of CO, CO₂, and H₂. Sulfur compounds and water vapor are also present. The CO and H₂ are the building blocks for the Project's products. The CO in the syngas is reacted with water to make a pure H₂ stream, which is used to manufacture ammonia. Ammonia is then used to produce other nitrogen-based fertilizers. (Application, p. 19).

II. REQUIREMENTS OF POWER COUNTY ZONING ORDINANCE

A. Power County Comprehensive Plan

The Power County Comprehensive Plan provides "general guidance for land use decisions that must be made by the Power County Planning and Zoning Commission and Power County Board of County Commissioners" and "is designed to provide county officials with a sound policy basis from which to respond to development proposals." (PCCP p. 1).

The Comprehensive Plan found that that industrial sectors directly provided more than 57% of all jobs in Power County in 1991, and that industrial lands and improvements accounted for 22% of Power County's assessed real property

valuation. (PCCP, p. 21). The Power County Comprehensive Plan “encourages the maintenance and expansion of existing industrial plants, and new industrial development.” (p. 21). The Comprehensive Plan explains that the “Heavy Industrial” zone is for “industrial uses with significant nuisance potential” and that “[i]t should not be applied, through zoning map amendments, to any land that is within one-half mile of a residential area. (p. 21). The Comprehensive Plan also recommends “maintaining large agricultural buffers between existing and proposed industrial areas and homes,” but recognizes that “[t]here are places, however, where the past pattern of development brings industrial and residential uses into close proximity.” (p. 21).

The Comprehensive Plan also recognizes that “[s]tate and federal agencies have primary jurisdiction over air and water quality, but Power County should take these issues into account in land use decisions.” (PCCP, p. 23).

B. Power County Zoning Ordinance

The purpose of the Heavy Industrial Zoning District is “to provide adequate, appropriate area for industrial uses that have a significant nuisance potential.” (PCDC § 10-5-1). There are some uses within the Heavy Industrial Zoning District that do not require a special use permit. (PCDC § 10-5-2(A)). Other uses may be allowed by means of a special permit. Section 10-5-3 of the Development Code states: “Special Permit Uses: Any industrial use meeting the following criteria: Industrial Uses not otherwise permitted outright.” (PCDC § 10-5-3 (2005 Amendment)).

The Development Code provides several “performance standards” that apply to the Heavy Industrial Zoning District. These performance standards fall into two categories: (a) performance standards that are specific to the HI Zoning District, and (b)

performance standards that apply to all developments in the county. Each of these performance standards are listed in the following checklist.

III. PERFORMANCE STANDARDS CHECKLIST

Performance Standards (Development Code § 10-13-1)	Application Meets Requirements	Application Meets Requirements With Exceptions	Requirements Not Relevant to Application	Application Fails Requirements
Adequate Infrastructure (§ 10-13-3)				
The developer must provide evidence that there is an adequate quantity and quality of water available for the proposed development. (PCDC § 10-13-3(A)(1). This evidence must be in the form of documented experiences with existing wells on geologically similar sites. The developer shall also provide any necessary permit from the Idaho Department of Water Resources.	☒			
On-site sewage disposal systems must be sited, designed, and constructed in compliance with State of Idaho standards. (PCDC § 10-13-3(A)(2)).		☒		
Central water and sewerage utilities must be sited, designed, and constructed in compliance with State of Idaho standards. (PCDC § 10-13-3(A)(3)).		☒		
No building shall be placed in any utility or irrigation easement, public or private. Only fences with separable sections can cross utility easements. (PCDC § 10-13-3(A)(4)).		☒		
All developments shall have safe and direct access to a dedicated public road that meets the design and construction standards of the Power County Highway District. (PCDC § 10-13-3(B)(1)).		☒		
If the development requires extension of the winter road maintenance currently followed by Power County, the developer must provide a study prepared by competent professionals demonstrating that the tax revenues generated by the proposed development will cover the costs of extending winter road maintenance. (PCDC § 10-13-3(B)(2)).		☒		
Clear vision triangles shall be provided and maintained at all intersections and all points of access to public roads. (PCDC § 10-13-3(B)(3)).		☒		
The number of points of access to arterial roads shall be minimized. (PCDC § 10-13-3(B)(4)).		☒		
No industrial use shall have its principal access through an existing residential development or through an RR Zoning District. (PCDC § 10-13-3(B)(5)).	☒			
Large developments must have a minimum of two points of ingress and egress from the public road or highway serving the development. (PCDC § 10-13-3(B)(6)).		☒		
The development must provide the off-street parking and loading facilities required by Section 10-17-4 of the Development Code. The parking plan must incorporate areas for snow storage that does not reduce the required off-street parking. (PCDC § 10-13-4(C)).		☒		

Performance Standards (Development Code § 10-13-1)	Application Meets Requirements	Application Meets Requirements With Exceptions	Requirements Not Relevant to Application	Application Fails Requirements
Public Health and Safety (§10-13-4)				
Any use subject to the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) must demonstrate compliance with State and Federal requirements for the storage and handling of hazardous substances. (PCDC § 10-13-4(A)).		☒		
No industrial development shall create excessive levels of noise adversely affecting other commercial or residential uses. Noise from an industrial site shall not exceed an L10 level of 75 dBA. (PCDC § 10-13-4(B)(1)).		☒		
No industrial development shall direct light, glare, or heat beyond the boundary of an industrial zoning district. (PCDC § 10-13-4(B)(2)).		☒		
No industrial development shall generate dust, smoke, odors or other airborne pollutants that travel beyond the boundary of the industrial zoning district, except as permitted by State and Federal air quality standards. (PCDC § 10-13-4(B)(3)).		☒		
No development shall channel liquid waste or storm water runoff so as to adversely affect neighboring properties. (PCDC § 10-13-4(B)(4)).		☒		
Solid waste shall be stored in enclosures in such a manner as not to attract rodents or animals, or generate odors beyond the property line, or permit blowing of paper. (PCDC § 10-13-4(B)(5)). No solid waste, including construction debris, shall be buried or disposed of except at a site permitted by State and Federal law, and approved as a Heavy Industrial use in compliance with the Development Code. (PCDC § 10-13-4(B)(5)).		☒		
It shall be the duty and responsibility of all persons to control noxious weeds on land and property they own. (PCDC § 10-13-4(B)(6)).		☒		
Livestock shall be confined so as to not create a nuisance impacting neighboring properties. (PCDC § 10-13-4(B)(7)).			☒	
Any excavation or grading must comply with Appendix Chapter 70 of the International Building Code. (PCDC § 10-13-4(C)).		☒		
Developments are not permitted on certain slopes. (PCDC § 10-13-4(D)).	☒			
Developments are not permitted within certain setbacks from the American Falls Reservoir. (PCDC § 10-13-4(E)).	☒			
Developments on alluvial fans require special designs. (PCDC § 10-13-4(F)).	☒			
All developments shall comply with certain wildfire hazard requirements. (PCDC § 10-13-4(H)).		☒		
Any child care services provided must comply with the Development Code, State of Idaho law, and performance standards for home occupations. (PCDC § 10-13-4(H)).			☒	
Land Use Compatibility (§ 10-13-5)				
Yards created by required setbacks shall remain unenclosed, with certain exceptions. (PCDC § 10-13-5(A)).			☒	
The development must be compatible with neighboring uses, with compatibility being judged by the following factors: (1) lot coverage	☒			

Performance Standards (Development Code § 10-13-1)	Application Meets Requirements	Application Meets Requirements With Exceptions	Requirements Not Relevant to Application	Application Fails Requirements
and the extent of landscaping, and the effectiveness of landscape buffers; (2) building bulk, height, and scale; (3) effect on scenic views from adjoining properties; (4) activity levels, as measured by traffic and noise, parking, signs, and hours of operation; (5) the extent of functional connections with adjoining developments, including shared access to arterials, shared parking and service access, shared buffering and open space, and shared pedestrian circulation. (PCDC § 10-13-5(B)).				
Residential construction on arterial roads must include reverse frontage, deep lots, and landscaped buffers. (PCDC § 10-13-5(C)).			☒	
Landscaped buffers shall be provided as required by Section 10-13-5(D); Table 2 of Section 10-13-8, and Appendix C of Section 10-17-3.		☒		
All developments including or adjoining irrigated lands shall be reviewed by the responsible irrigation entity. No development shall adversely impact the operation of any irrigation system. (PCDC § 10-13-5(E)).		☒		
Natural and Cultural Assets (§ 10-13-6)				
There is a minimum development setback of fifty (50) feet from the annual average high water mark. (PCDC § 10-13-6(A)). Stream corridors shall not be developed in any way, with certain exceptions. (PCDC § 10-13-6(A)(1)). The development setbacks for stream corridors shall be clearly shown on final site plans and plats, and shall be shown by a permanent monument on each lot line running perpendicular to the stream. (PCDC § 10-13-6(A)(5)).	☒			
All developments shall demonstrate compliance with State and Federal wetlands protection requirements. (PCDC § 10-13-6(B)).		☒		
Archeological and historic sites shall remain undeveloped, with certain exceptions. (PCDC § 10-13-6(C)).	☒			
Important wildlife habitat shall remain undeveloped, except where the Planning and Zoning Commission finds that its protection will create a severe hardship on the developer. If such an exception is granted, the developer must implement a plan for wildlife habitat protection, which must include specific elements. (PCDC § 10-13-6(D)).	☒			
Specific Performance Standards (§ 10-5-6)				
HI sites must be more than 2,640 feet away from any existing residential area. (PCDC § 10-5-6(A)).	☒			
Signs in the HI Zoning District must meet the requirements of Section 10-17-1. (PCDC § 10-5-6(A)(2)).		☒		
The site must have landscaped buffers in compliance with the requirements of Section 10-13-5(D). (PCDC § 10-5-6(A)(3)).		☒		

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The performance standards that apply to all zoning districts are called

“county-wide performance standards.” Section 10-13-1 establishes general performance standards for land and building development activity throughout Power County. These performance standards provide most of the criteria that the project must satisfy in order to obtain the special use permit.

B. The property is located in Power County, Idaho, and is currently zoned heavy industrial.

C. A \$300 initial application fee was paid for the Special Use Permit Application. The Applicant has secured an option to purchase approximately 450 acres within the heavy industrial district for purposes of the project.

D. Adequate Infrastructure (§ 10-13-3)

The performance standards that apply to all zoning districts are called “county-wide performance standards.” Section 10-13-1 establishes general performance standards for land and building development activity throughout Power County. These performance standards provide most of the criteria that the project must satisfy in order to obtain the special use permit.

1. Water

The Development Code requires evidence that there is an adequate quantity and quality of water available for the proposed development. (PCDC § 10-13-3(A)(1). In appropriate circumstances, the Development Code also requires the developer to provide any necessary permit from the Idaho Department of Water Resources. (PCDC § 10-13-3(A)(1)).

SIE has provided evidence that the PCAEC is expected to use approximately 750,000 gallons of process water per day, and an annual average of

approximately one million gallons of cooling water makeup water per day. (Application, p. 25).

SIE has obtained two water rights from FMC Corporation to satisfy these requirements. These water rights are numbered Water Right No. 29-2284, and Water Right No. 29-2301. SIE has submitted the Water Right Report from the Idaho Department of Water Resources demonstrating these rights. (Water Right Report, No. 29-2284; Water Right Report, No. 29-2301). The water rights obtained from the FMC site are shown below:

Number	Type of Use	Priority	Discharge (cubic feet per second)	Annual Volume (acre feet)
29-2284	Industrial	3/2/1949	4.5	3257.9
29-2301	Industrial	4/25/1951	4.0	2895.9

(Application, Ex. A, p. 2). SIE is currently in the process of transferring these water rights with the Idaho Department of Water Resources from their point of diversion near the former FMC facility in Power County to the location of proposed new wells at the PCAEC.

SIE has also submitted evidence supporting the PCAEC's compliance with this requirement in the form of a letter from Charles E. Brockway, P.E., Ph.D., of Brockway Engineering PLLC. (Application, Ex. A). Brockway explains that "Ground water quality available at the proposed site is excellent and contains no elements which exceed drinking water standards. An evaluation of available water quality reports for monitoring wells in the vicinity, as reported by the U.S. Geological Survey show no parameters which would preclude the use of the ground water for purposes proposed by SEI." (Application, Ex. A).

Brockway has also conducted a local well interference analysis to evaluate the potential impacts on local wells from the proposed PCAEC wells. Brockway explains that this analysis has shown that "the estimated drawdown at a distance of one mile from the proposed SIE well pumping at the maximum discharge for 60 days would be less than 0.5 ft." (Application, Ex. A p. 2). Brockway stated that this is a conservative estimate because continuous pumping at the maximum discharge rate for 60 days is unlikely. (Application, Ex. A, p. 2).

Brockway also concludes that "The allowed combined discharge and annual volume under these rights are sufficient so that even with any reasonable reduction of those water rights in connection with the transfer process, the available water supply should be sufficient for the proposed development." (Application, Ex. A). Brockway concludes that "there is an adequate quantity and quality of water available for the developments proposed by SIE." (Application, Ex. A).

Based upon the evidence submitted, the Commission finds that there is an adequate quantity and quality of water available for the proposed development and that the requirements of Section 10-13-3(A) of the Development Code have been met.

2. *Sewage Disposal System*

The Development Code requires that on-site sewage disposal systems be sited, designed, and constructed in compliance with State of Idaho standards. (PCDC § 10-13-3(A)(2)).

The Idaho Department of Environmental Quality has promulgated a set of rules that regulate on-site sewage disposal systems. These rules are found at IDAPA 58.01.03. As outlined in the Idaho Department of Environmental Quality Rules, the State

of Idaho delegates to the owner of any real property the responsibility of any storage, treatment, and disposal of any wastewater created on the property, and for obtaining all necessary permits and approvals for wastewater disposal systems, and for the abandonment of any wastewater disposal system. The intent of the State of Idaho is to ensure that all wastewater is treated safely, and is contained or discharged from a system that ensures that the waste is not accessible to humans, is not a public nuisance due to odor or unsightly appearance, and does not interfere with current or future uses of the waters of the State. IDAPA 58.01.03.002.04; 58.01.03.004.01.

The standards for design and construction of a subsurface disposal facility can be found in Section 008 of IDAPA 58.01.03. Depending on the soil present at a specific site, varying design parameters are set forth for constructing a drain field. Guidelines independent of the type of soil are also established. Section 0013 of IDAPA 58.01.03 defines the requirements for the absorption system design and construction. This section also outlines monitoring that is required after the sewage system is operational. Monthly monitoring is typically required to ensure that the requirements of the State of Idaho are being satisfactorily met, as well as all federal and local rules and regulations.

SIE has explained the measures it intends to take to comply with the requirements of the rules of the State of Idaho Department of Environmental Quality in relation to sewage and wastewater treatment systems. (Application, pp. 26-27). SIE has also provided evidence that the Project's soil type supports the construction of a subsurface disposal facility. (Application, p. 26, Ex. M). However, these actions have not yet taken place, and cannot take place without the approval of this Application.

For these reasons, and based upon the evidence submitted, the Commission finds that on-site sewage disposal systems must be sited, designed, and constructed in compliance with State of Idaho standards, and that this cannot take place without the approval of this Application. For those reasons, the Commission requires as a condition of the special use permit that on-site sewage disposal systems for the PCAEC shall be sited, designed, and constructed in compliance with State of Idaho standards.

3. *Central Water Facilities*

The Development Code requires that central water and sewage utilities must be sited, designed, and constructed in compliance with State of Idaho standards. (PCDC § 10-13-3(A)(3)). Central sewer utilities are discussed above, in relation to the proposed sewage disposal system for the PCAEC.

The Idaho Department of Environmental Quality has promulgated a set of rules that regulate central water systems. These rules are found at IDAPA 58.01.08. The intent of these rules is to control and regulate the design, construction, operation, maintenance, and quality control of public drinking water systems to provide a degree of assurance that such systems are protected from contamination and maintained free from contaminants which may injure the health of the consumer.

SIE has explained that it intends to take the necessary measures to comply with the requirements of the rules of the State of Idaho Department of Environmental Quality in relation to the siting, design, and construction of its central drinking water system. (Application, pp. 26-27). However, these actions have not yet taken place, and cannot take place without the approval of this Application.

For these reasons, and based upon the evidence submitted, the

Commission finds that central water utilities at the PCAEC must be sited, designed, and constructed in compliance with State of Idaho standards, and that this cannot take place without the approval of this Application. For those reasons, the Commission requires as a condition of the special use permit that central water utilities shall be sited, designed, and constructed in compliance with State of Idaho standards.

4. Utility and Irrigation Easements

The Development Code provides that no building shall be placed in any utility or irrigation easement, public or private. The Development Code also requires that only fences with separable sections can cross utility easements. (PCDC § 10-13-3(A)(4)).

The proposed site is currently farmed, and irrigation water is supplied from the existing canal. The canal consists of an open dirt channel and underground piping used to route the water through the site. (Application, Ex. C). The irrigation facilities located on site are operated by the Aberdeen-Springfield Canal Company ("Aberdeen-Springfield").

SIE has stated that it has worked with Aberdeen-Springfield to design alternative canal routes to comply with the design requirements of the canal company. According to SIE, Aberdeen-Springfield has asked that the canal route be designed with a capacity south of the Union Pacific mainline of 24 cubic feet per second ("cfs"): 20 cfs is required for an emergency spill, and 4 cfs is required for delivery to parcel #588 (Idaho Power ground) directly west of the site. Typically, between 1 to 2 cfs are continuously discharged to the Snake River directly south.

SIE states that it intends to re-route the irrigation canal in a manner that is

consistent with the requirements of Aberdeen-Springfield. SIE has provided evidence showing three options that meet the design criteria provided by Aberdeen-Springfield. SIE also states that it has met with Aberdeen-Springfield in order to develop an acceptable plan for rerouting the canal. (Application, p. 27-28, Ex. D). All three options would consist of concrete channels, underground piping or a combination of both. Concrete channel and piping would enhance the delivery system and help prevent erosion problems. (Application, p. 28). The headgates would also be made SCADA-ready (Supervisory Control and Data Acquisition), capable of being retrofitted with motors and instrumentation for future flow monitoring. (Application, p. 28). SIE also submits that at any point where a fence crosses the easement, a separable fence section will be constructed in order to meet PCDC requirements. (Application, p. 28).

SIE has explained that it intends to take the necessary measures to comply with the requirements easement requirements of the Development Code. (Application, p. 28). SIE states that it intends to work with Idaho Power, Lamb Weston, and Aberdeen-Springfield Canal Company to select the appropriate route for the canal. (Application, p. 28). SIE states that it intends to select one of these three options to present to the Aberdeen-Springfield board for approval. (Application, p. 28). SIE also states that all engineering design documents relating to the canal location and construction will also be submitted to Aberdeen-Springfield for approval prior to construction. (Application, p. 28). However, the canal re-location has not yet taken place, and cannot take place without the approval of this Application.

At the public hearing Steve Houser, of the Aberdeen Springfield Canal Company confirmed that SIE has been working with the canal company to properly reroute the canal. The Aberdeen Springfield Canal Company expressed support for the

project and indicated that they had no concern that they would be able to work with the Applicant to a successful resolution of any canal rerouting.

The Commission concludes that no building shall be placed in any utility or irrigation easement, public or private. For this reason, the Commission requires as a condition of the special use permit for the PCAEC that no building shall be placed in any utility or irrigation easement, public or private, and that only wire or rail fences, or solid wood fences with a separable section or gate across the easement may be constructed across utility easements.

An additional condition shall be that the PCAEC will coordinate with the Aberdeen Springfield Canal Company for any changes to canal routes, and the Aberdeen Springfield Canal Company shall approve any rerouting changes.

Other conditions of the Special Use Permit concerning utility easements are that SIE shall coordinate with Idaho Power Company to reconfigure the power transmission lines on the property and place them in a location satisfactory to both entities. SIE will work with Intermountain Gas Company to reconfigure the underground gas lines to meet the requirements of the Power County Code and the needs of both parties to the satisfaction of both parties.

5. *Public Road Access*

The Development Code provides that all developments shall have safe and direct access to a dedicated public road that meets the design and construction standards of the Power County Highway District. (PCDC § 10-13-3(B)(1)).

The PCAEC will have an access to Lake Channel Road, which is a Power County roadway. Lake Channel Road will then lead to Lamb-Weston Road, another

Power County Highway, and then to State Highway 39. Each of these are dedicated public roads. (Application, Ex. H, Fig. 1, Fig. 5, Fig. 6; Ex. Q (Site Plan)).

SIE proposes to re-route the roads to provide a more direct route to the PCAEC and to eliminate an on-grade railroad crossing. Currently, access to the project site is by turning east on Lamb Weston Road onto Borah Road, and then turning south across an on-grade railroad crossing onto Lake Channel Road. SIE proposes to eliminate the on-grade rail crossing and to create a more direct route by straightening Lake Channel Road. This reconfiguration is shown in Figure 6 of Exhibit H to the Application. (Application, Ex. H, Fig. 6). In the reconfiguration, Lamb Weston Road would proceed directly south to an overpass over the existing Union Pacific railroad track. SIE, working with the Power County Highway District and Union Pacific Railroad (UPRR) would construct an overpass over the Union Pacific railroad track which would lead to a new Lake Channel Road that proceeded directly south from Lamb Weston Road. The resulting road will essentially be a straight north-south road. At the same time, SIE will provide a ramp that will provide access to Borah Road from Lamb Weston Road without a left turn across traffic. (Application, Ex. H, Fig. 6).

The Commission concludes that this reconfiguration has several advantages. It will eliminate a hazardous at-grade crossing over the UPRR, resulting in more safety for drivers and passengers and for the railroad. It will also provide a safe and direct access to the PCAEC site. It will also shorten the distance from Lamb Weston Road to points further south on Lake Channel Road.

SIE reports that it has coordinated the proposed changes to Lake Channel Road with the Power County Highway District and Lamb Weston. SIE states that it will

continue to work closely with the PCHD and Lamb Weston to ensure that the access roads to the Project site meet all requirements.

The Commission concludes that the PCAEC as proposed will have safe direct access to a dedicated public road that meets the design and construction standards of the Power County Highway District. The Commission requires as a condition of the special use permit for the PCAEC that SIE obtain approval of its plans for Lake Channel Road and the railroad crossing from the Power County Highway District, and from the Union Pacific Railroad.

6. *Winter Road Access*

Section 10-13-3(B)(2) of the Development Code provides that, if the development requires extension of the winter road maintenance currently followed by Power County, the developer must provide a study prepared by competent professionals demonstrating that the tax revenues generated by the proposed development will cover the costs of extending winter road maintenance. (PCDC § 10-13-3(B)(2)).

Currently, the Power County Highway District (PCHD) provides winter road maintenance in Power County, including Lamb Weston Road, Lake Channel Road and Borah Road, which are the roads providing access to the PCAEC site. (Application, p. 30). Rerouting Lake Channel Road will not cause an extension of the current winter road maintenance currently provided by PCHD, and instead will decrease the length of winter road maintenance currently provided by PCHD by virtue of the shorter road configuration.

Based on the evidence presented, the Commission concludes that the proposed development meets the requirement of Section 10-13-3(B)(2) of the

Development Code, which requires that the development not extend winter road maintenance without proof of sufficient tax revenues to cover the increased costs.

7. *Clear Vision Triangles*

The Development Code requires that clear vision triangles shall be provided and maintained at all intersections and all points of access to public roads. (PCDC § 10-13-3(B)(3)). The Development Code also contains requirements for the maintenance of the areas of clear vision triangles.

The road reconfiguration proposed by PCAEC will eliminate the intersection of Borah Road and Lake Channel Road, thus eliminating one traffic intersection. (Application, Ex. H, Fig. 6). Another intersection will be located at the intersection of the points of access of the PCAEC and Lake Channel Road. (Application, Ex. Q). SIE states that it intends to construct a clear vision triangle at these intersections to ensure safe access from the Project site to public roads. (Application, p. 30).

The Commission concludes that the PCAEC as proposed will meet the requirements of Section 10-13-3(B)(3) of the Development Code. The Commission requires as a condition of the special use permit for the PCAEC that the intersections of the point of access and Lake Channel Road will be built to include a clear vision triangle as required by Section 10-13-3(B)(3) of the Development Code, and that the inside of the clear vision triangle will be maintained to meet the requirements set forth by that section, which are that parking will be not allowed within the triangle, no solid obstructions greater than three (3) feet in height above grade, and no trees with a height greater than seven (7) feet will be allowed within the triangle area.

8. *Arterial Road Points of Access*

Section 10-13-3(B)(4) of the Development Code provides that the number of points of access to arterial roads shall be minimized. (PCDC § 10-13-3(B)(4)). At the same time, Section 10-13-3(B)(6) requires that an industrial development the size of the PCAEC must have at least two points of ingress and egress. (PCDC § 10-13-3(B)(6)).

SIE asserts that the number of points of access to arterial roads will be minimized by having only two points located off of Lake Channel Road. Access to both the inner and outer-rail loops on the Project site will be off of Lake Channel Road. A primary or main access will proceed to the south into the Project site as Lake Channel Road curves to the west. This access will stay to the exterior of the railroad tracks, and will lead to the parking at the administration and maintenance buildings. There will be access off of this primary or main access to the interior of the railroad tracks through an underpass under the railroad tracks. A secondary access will be a "T" intersection off of Lake Channel Road. This intersection will provide access to the interior of the rail loop, and will be used when large pieces of equipment or construction vehicles, such as cranes, need to be brought onto the Project site.

The Commission concludes that the PCAEC as proposed will meet the requirements of Sections 10-13-3(B)(3) and 10-13-3(B)(6) of the Development Code. The Commission requires as a condition of the special use permit for the PCAEC that there be two points of ingress and egress to the site, and that the number of points of access to Lake Channel Road be limited to these two access points.

9. *No Access Through Residential District*

The Development Code provides that no industrial use shall have its

principal access through an existing residential development or through an RR Zoning District. (PCDC § 10-13-3(B)(5)).

The Commission finds that neither of the points of access proposed by SIE for the Project are through an existing residential development or any area in the RR Zoning District. (Application, Ex. Q).

10. *Two Points of Egress*

Section 10-13-3(B)(6) of the Development Code provides that large developments must have a minimum of two points of ingress and egress from the public road or highway serving the development. (PCDC § 10-13-3(B)(6)). This factor has been addressed in relation to the "Access to Arterials" section above.

11. *Off Street Parking and Loading*

Section 10-13-4(C) of the Development Code requires that the development provide the off-street parking and loading facilities required by Section 10-17-4 of the Development Code. The parking plan must incorporate areas for snow storage that does not reduce the required off-street parking. (PCDC § 10-13-4(C)).

SIE states that, in developing the Project site, it has taken steps to ensure that there will be adequate parking onsite for all employees and transportation vehicles, and that the parking lots comply with the requirements of the ordinance. (Application, p. 32). SIE states that parking for up to 150 plant employees will be off-street and will be located next to the administration and maintenance buildings on the south side of the Project site. (Application, p. 32, Ex. Q). The parking lots will be constructed in order to comply with the development code. Designated areas will be set aside for snow removal

in order to ensure that the capacity of the parking lots remain the same during winter months. (Application, p. 32).

SIE states that, in addition, loading facilities will be located next to the various product storage locations, and will include adequate parking for vehicles used for transportation of the products. The loading facilities will also be constructed in order to comply with the code. (Application, p. 32).

The Commission concludes that the PCAEC as proposed will meet the requirements of Sections 10-13-3(C) of the Development Code. The Commission requires as a condition of the special use permit for the PCAEC that the development shall provide off-street parking and loading areas as required by Appendix D, Section 10-17-4 of the Development Code, and that snow storage shall not be permitted to reduce the size of the required off-street parking or loading areas.

12. Large Scale Development status

Under Power County Code 10-13-7, "Large Scale Development" is defined. One of the definitions under that is a commercial use that will potentially generate 400 or more average daily trips. According to the model in the studies presented by the Applicant, this development will potentially generate 400 or more average daily trips and therefore can be defined as a large scale development. Under Power County Code 10-13-7(B) a development study is required to determine the public facility needs of any large scale development. The Power County Building Administrator has worked closely with Southeast Idaho Energy over the past several months and adequate development studies have been prepared, at the cost of the Applicant with the cooperation and consultation of the Administrator.

The Commission finds that the requirements under Power County Code 10-13-7 for Large Scale Development studies has been met to their satisfaction.

Public Health and Safety (§ 10-13-4)

13. *EPCRA*

The Development Code provides that any use subject to the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) must demonstrate continuing compliance with State and Federal requirements for the storage and handling of hazardous substances. (PCDC § 10-13-4(A)).

EPCRA was put into place to help communities prepare plans for emergencies that involve hazardous substances. It dictates that each community and any facilities therein must be part of an emergency response plan. EPCRA also dictates chemical reporting requirements associated with the storage, use and release of certain hazardous chemicals. EPCRA identifies certain chemicals as Extremely Hazardous Substances (EHS) and sets forth Threshold Planning Quantities (TPQs) for them. Any facility that uses or stores quantities of EHS at or above the relevant TPQs must comply with EPCRA requirements. As part of their emergency response planning, facilities must designate a facility emergency coordinator who participates in the community planning process. Facilities must also notify the appropriate State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) within 60 days of becoming subject to the emergency planning requirements. Facilities must also prepare an emergency response plan.

SIE states that the Project will produce, use or store the following substances, defined as hazardous substances, in quantities higher than the EPCRA thresholds:

- Ammonia > 500 lbs
- Hydrogen Sulfide > 500 lbs

- Nitric Acid >1,000 lbs

(Application, p. 36). The presence of these substances makes the Center subject to EPCRA requirements. (Application, p. 36).

As a result, SIE states that the PCAEC will develop an Emergency Response Plan. It will also comply with the chemical reporting requirements for these and any other regulated chemicals that will be produced, used or stored on the Project Site above the thresholds set forth by EPCRA. Substances regulated under EPCRA will be stored and handled with the appropriate measures to ensure the safety of the plant personnel and the general public. The Project will also designate a Facility Emergency Coordinator to help prepare an Emergency Response Plan for the Project. This individual will coordinate with the SERC, LEPC and local fire department to provide the appropriate MSDS for regulated substances, prepare the required inventory reports and any accidental release reports, and ensure compliance with any further EPCRA requirements. (Application, p. 36).

The Commission concludes that the PCAEC as proposed will be a use that is, or may reasonably be expected to be, subject to the reporting requirements of EPCRA, as stated in Section 10-13-4(A) of the Development Code. As a result, the Commission requires as a condition of the special use permit for the PCAEC that the development demonstrate continuing compliance with State and Federal requirements for the storage and handling of hazardous substances.

14. Noise

Section 10-13-4(B)(1) of the Development Code requires that no industrial development shall create excessive levels of noise adversely affecting other commercial or residential uses. That section defines "excessive noise" as any noise, as measured at

the property line of the affected use that exceeds the standard of an L₁₀ level of 75 dBA for the land use category of the Heavy Industrial Zoning District. (PCDC § 10-13-4(B)(1)).

A decibel is a logarithmic measurement of the relative strength or loudness of a sound. The “A” refers to a decibel being “A” weighted,” the typical method used because the “A” weighting generally corresponds to the frequencies that can be detected by the human ear. L₁₀ indicates the sound level exceeded 10 percent of the time. For instance, in order to exceed the L₁₀ level of 75 dBA, the noise measured from the Project would need to exceed 75 dBA for 10 percent, or 6 minutes of any hour. (Application, p. 37).

SIE states that the Project will produce noises that are typical of heavy industrial facilities, from sources such as: pumps, compressors, electric motors, turbines, fans, grinders, dust collectors, crushers, boilers and electrical transformers. (Application, p. 37). Noise from these sources can be controlled at the source, along the path from the source to the receptor, or at the receptor. For purposes of this discussion, a receptor is defined as a location sensitive to increases in noise. For instance, a residential dwelling would be considered a noise receptor. (Application, p. 37).

SIE engaged CH2MHill to perform a noise study outlining the local noise regulations, the existing background noise levels in the area, the Project’s expected noise sources and levels, and any measures the Project may take to mitigate noise. (Application, Ex. I). This study provides background noise levels, and modeling regarding the transmission of noise from the Project site. (Application, Ex. I).

SIE has committed that, in accordance with the Power County noise

regulations found in the Development Code, the noise from the Project, measured at the property line of the affected use, will not exceed an L10 level of 75 decibels (dBA).

(Application, p. 37). SIE states a more detailed noise study, including modeling expected noise levels, will be performed on the Project during detailed engineering, when equipment is specified and purchased. At that time, SIE will be able to determine which noise abatement methods will be required, and what noise levels will be expected at various receptors surrounding the Project site. (Application, p. 38).

The Commission concludes that the PCAEC as proposed will be a use that could generate exterior noise levels of the type contemplated by Section 10-13-4(B)(1) of the Development Code. The Commission also concludes that the PCAEC is located within the Heavy Industrial Zoning Area and is a heavy industrial land use. As a result, the Commission requires as a condition of the special use permit for the PCAEC that the development not create excessive levels of noise adversely affecting other commercial or residential uses. For the purpose of this condition, "excessive noise" is any noise, as measured at the property line of the affected use that exceeds the standard of an L10 level of 75 dBA.

15. Light, Glare and Heat

The Development Code provides that no industrial use shall direct light, glare, or heat beyond the boundary of an industrial zoning district. (PCDC § 10-13-4(B)(2)). The Development Code also provides that welding equipment and other sources of intense light or glare shall be shielded from the view of neighboring properties or public ways by enclosure in a building, location on the property, or construction by a fence or wall. (PCDC § 10-13-4(B)(2)).

SIE explains that the entire Project site will be equipped with artificial lighting to help ensure safe operations at all times of the day. SIE also states that general maintenance of equipment will also require degrees of welding which, if outside, will produce light and possible glare. SIE also explains that onsite flares will produce light during normal operations. These flares ensure safe handling of process gas during times of upset conditions. During normal operations, a pilot light will be continuously present, produced through burning natural gas. There will be three flares on the Project site; a gasifier flare, a process flare, and an ammonia storage flare. (Application, p. 38). SIE also states that a variety of equipment at the Center has the potential to produce glare. (Application, p. 38).

SIE states that the plant will be designed to minimize light generation without compromising safety. SIE states that artificial lighting will be turned off when it is not necessary. The Project will eliminate all over-lighting and minimize the use of up-light. Light coverings and shades will also be used to direct the light to the necessary points of the plant without excessively lighting other points. The flares will be designed to burn the least amount of natural gas and produce the least amount of visible light while ensuring an adequate pilot light. These measures will not only help minimize light generation and pollution, but they will also reduce the Project's electricity and natural gas costs. Glare from equipment will be minimized by using low-reflective paint and other methods. (Application, pp. 38-39). SIE also explains that, during maintenance requiring welding, screens will be used when practicable to reduce light and glare offsite. Also, when possible, welding will be performed only during daylight hours. (Application, pp. 39).

In relation to heat, SIE states that the flares and operating equipment of the Project will be expected to generate heat. During normal operations, the three Project flares will continuously produce a negligible amount of heat as they burn natural gas to provide a pilot. The flares will be optimized to minimize natural gas use while still producing a sufficient pilot. This optimization will minimize heat production, as well as natural gas consumption and cost. Heat from plant processes will be dissipated through the Project's cooling water system. This system will use an evaporative cooling tower to dissipate heat through evaporation. The cooling tower and plant processes will be located on the Project site to ensure that heat is not discernable offsite. (Application, p. 39).

SIE states that all of the equipment will be designed to minimize heat loss. SIE also states that the Project will be designed to be efficient and recover heat throughout its processes. SIE will take the necessary measures to ensure that no light, glare, or heat is directed beyond the boundary of the heavy industrial zone. (Application, p. 39).

The Commission concludes that the PCAEC as proposed will be a use that is expected to generate some amounts of light, glare, and heat. As a result, the Commission requires as a condition of the special use permit for the PCAEC that the development shall not direct light, glare, or heat beyond the boundary of the Heavy Industrial Zoning District. The Commission also requires as a condition of the special use permit for the PCAEC that welding equipment and other sources of intense light or glare shall be shielded from the view of neighboring properties or public ways by enclosure in a building, location on the property, or construction by a fence or wall.

16. *Dust and Smoke*

The Development Code provides that no industrial development shall

generate dust, smoke, odors or other airborne pollutants that travel beyond the boundary of the Heavy Industrial Zoning District, except as permitted by State and Federal air quality standards. (PCDC § 10-13-4(B)(3)).

Any business that emits or has the potential to emit pollutants to the atmosphere in Idaho must submit to the Idaho Department of Environmental Quality an Application for Authorization to Construct (“Application”). The application contains a description of the Center’s processes, emission estimates, emission control technologies, and modeling analyses. IDEQ then has 30 days to determine the application administratively complete. Next, IDEQ performs a technical review of the application to determine if process technologies, emission control technologies, and emission estimates ensure compliance with State and Federal environmental regulations and standards. The IDEQ will evaluate the modeling analyses performed by SIE to confirm that the Center will not cause or contribute to a violation of any state or National Ambient Air Quality Standard. At the conclusion of its review, the IDEQ will issue the proposed draft air permit. IDEQ then provides a 30-day period for the public to comment on the proposed permit and responds to any request for hearings. A 60-day review of all comments follows, and a final air permit will then be issued. (Application, p. 39).

The Power County Advanced Energy Center will comply with this Power County requirement by obtaining a Permit to Construct from the Idaho Department of Environmental Quality (IDEQ). SIE submitted the application in April of 2008 and a subsequent addendum to the application July 1 of 2008. (Exhibit 10). By verifying modeling and data submitted by SIE and issuing the permit, IDEQ will confirm that the Project will operate well within State and Federal air quality standards. During its review

process, IDEQ will provide ample opportunity for public review of the work and public comment. (Application, p. 39).

The Commission concludes that the PCAEC as proposed will be a use that is expected to generate airborne pollutants that travel beyond the boundary of the Heavy Industrial Zoning District. As a result, the Commission requires as a condition of the special use permit for the PCAEC that the development shall not generate dust, smoke, odors, or other airborne pollutants that travel beyond the boundary of the Heavy Industrial Zoning District, except as permitted by State and Federal air quality standards pursuant to a validly issued permit from the IDEQ.

SEI has indicated that it will agree to a condition of the Special Use Permit that SIE will completely enclose coal handling including storing all feed stock in covered silos and all of the materials handling process will be contained and routed to bag houses for particulate control. The cooling tower will utilize high efficiency drift and mist eliminators to reduce water loss and associated particulate emissions. The project will design a flaring system for smokeless operation. Therefore it is a condition of this special use permit that SIE will completely enclose all coal handling processes including storing all feed stock in covered silos. It is a further condition that all of the materials handling processes will be contained and routed to bag houses for particulate control. It is a condition that the cooling tower will utilize high efficiency drift and mist eliminators to reduce water loss and associated particulate emissions. It is a condition that the project will design a flaring system for smokeless operation.

17. *Drainage*

The Development Code provides that no development shall channel liquid waste or storm water runoff so as to adversely affect neighboring properties or public

ways. (PCDC § 10-13-4(B)(4)).

SIE states that the Project will have berms constructed around each individual process and each individual holding tank at a height adequate to contain potential maximums of liquid waste or storm water runoff. (Application, p. 42). SIE states that the berms will be constructed out of concrete, or will be constructed using dirt with an industrial lining. SIE states that storm water will only be drained from a bermed area after it has been inspected. SIE states that the Project will take the necessary measures to ensure that no liquid waste or storm water runoff will adversely affect neighboring properties or public ways. (Application, p. 42).

The Commission concludes that the Development Code requires that developments channel liquid waste or storm or melt water runoff so as to not adversely affect neighboring properties or public ways. As a result, the Commission requires as a condition of the special use permit for the PCAEC that the development shall not channel liquid waste or storm water runoff so as to adversely affect neighboring properties or public ways.

18. *Solid Waste Storage*

The Development Code provides that solid waste shall be stored in enclosures in such a manner as not to attract rodents or animals, or generate odors beyond the property line, or permit blowing of paper or other lightweight waste. (PCDC § 10-13-4(B)(5)). No solid waste, including construction debris, shall be buried or disposed of except at a site permitted by State and Federal law, and approved as a Heavy Industrial use in compliance with the Development Code. (PCDC § 10-13-4(B)(5)). Where permitted by State and Federal law, and the International Building Code, solid waste may

be used as rubble fill for a construction site. (PCDC § 10-13-4(B)(5)).

SIE states that the Project is expected to generate solid wastes associated with day-to-day business activities. In addition, some activities and processes of the plant operations will generate solid waste. These may include, but are not limited to, the zero liquid discharge system, process filters, process capture beds, maintenance activities, and onsite warehouse and machine shop activities. (Application, p. 42).

The solid wastes generated at the Project will be evaluated using appropriate methods to determine if they are a hazardous waste regulated under the Resource Conservation and Recovery Act (RCRA). The State of Idaho statutes regarding Hazardous Waste, found in Title 39, Chapter 44 of the Idaho Code, which recognize the regulations under RCRA, establish requirements for generators and transporters concerning treatment, storage, and disposal facilities for hazardous wastes. Wastes subject to regulation under RCRA are those that meet the definition of a hazardous waste. RCRA defines hazardous wastes as a type of solid waste. Solid waste is defined under the Code of Federal Regulations, as "garbage, refuse, sludge or other discarded material." If a waste is a solid waste, the generator must determine if it is hazardous. Hazardous wastes are wastes that are either 1) listed on one of four lists of hazardous wastes located in 40 CFR 261, Subpart D (F, K, P, or U), or 2) that exhibit one of four characteristics located in 40 CFR 261, Subpart C. It is the responsibility of waste generators to characterize any waste as hazardous by determining if the waste exhibits any of the four characteristics of a hazardous waste. (Application, pp. 42-43). SIE states that after characterization of the wastes, it will handle the wastes as follows:

Non-RCRA Solid Wastes. The Center will temporarily

store onsite solid wastes that are not regulated under RCRA in containers or enclosures prior to being sent offsite. The containers or enclosures will be such that they will not attract rodents or vermin, will not be susceptible to spillage by small animals, will not generate odors or liquid runoff, and will not permit blowing of paper or other lightweight waste. In addition, no solid waste will be buried or otherwise disposed of on the Project site, unless under conditions otherwise permitted by State and Federal law. (Application, p. 42).

RCRA Wastes. Solid wastes that are regulated by RCRA, as defined below, will be disposed of in accordance with RCRA regulations, and 40 CFR Chapter 1, Parts 260 through 265. These regulations include documentation and proper handling and disposal of the waste by appropriately licensed and qualified personnel. (Application, p. 42).

SIE has committed that solid wastes from the Project will be stored and disposed of in accordance with the rules set forth in the Development Code. SIE states that solid wastes from the Project will be determined to be hazardous or not through the above methods, including any required testing, and both hazardous and non-hazardous solid wastes will be disposed of in accordance with all Federal, State and Local codes and regulations.

The Commission concludes that the Development Code requires appropriate handling of solid waste, and that the Project will generate solid waste. As a result, the Commission requires as a condition of the special use permit for the PCAEC that solid waste shall be stored in enclosures in such a manner as not to attract rodents or other vermin, not be susceptible to spillage by dogs or cats, not generate odors beyond the property line, and not to permit blowing of paper or other lightweight waste; (PCDC § 10-13-4(B)(5)). The Commission also requires as a condition of the special use permit for the PCAEC that no solid waste, including construction or demolition debris, shall be

buried or disposed of except at a site permitted by State and Federal law, and approved as a Heavy Industrial use in compliance with the Development Code, or, where permitted by State and Federal law, and the International Building Code, as rubble fill for a construction site. (PCDC § 10-13-4(B)(5)).

19. *Weed Control*

The Development Code states that it shall be the duty and responsibility of all persons to control noxious weeds on land and property they own. (PCDC § 10-13-4(B)(6)).

SIE states that the Project will entertain a variety of methods to ensure the control of noxious weeds on the Project site. If necessary, the site will be mowed, and regional wild grass and shrubs will be planted. If required, herbicides will be used to curb and kill the growth of noxious weeds. (Application, p. 43).

The Commission concludes that the Development Code requires that it is the duty and responsibility of all persons to control noxious weeds on land and property they own. (PCDC § 10-13-4(B)(6)). The Commission also concludes that there is a potential for the need for weed control on the Project site. As a result, the Commission requires as a condition of the special use permit for the PCAEC that the Project be maintained so as to control noxious weeds on the Project site.

20. *Livestock*

The Development Code requires that livestock shall be confined so as to not create a nuisance impacting neighboring properties. (PCDC § 10-13-4(B)(7)). SIE states that it will not have any livestock on site. The Commission concludes that this provision is not relevant to this development.

21. *Excavation and Grading*

The Development Code provides that any excavation or grading must comply with Appendix Chapter 70 of the International Building Code. (PCDC § 10-13-4(C)).

Chapter 70 of the International Building Code establishes rules and regulations necessary to protect property, personnel, and public welfare in relation to excavation work. These guidelines control excavation, grading, and earthwork related to the construction of structures. It also sets out the procedures for issuance of permits, plan approval, and construction inspections. (Application, p. 44).

SIE states that it intends to secure the proper permits for the excavation and grading of the site in order to meet the requirements of the International Building Code. (Application, p. 44). As part of the permit application, SIE or its contractor will submit a grading plan and engineered grading requirements, soils report, and geology report. Plan review fees and grading permit fees will be paid in full. SIE expects to fill and cut areas and will comply with an approved soil engineering report or rules outlined in the International Building Code to ensure compliance with the Development Code. SIE states that it understands that the grading plan and engineered grading requirements will follow the rules for setbacks, drainage and terracing, and erosion control. SIE will also ensure that the permit requirements for inspections of work completed will be conducted by the proper officials. (Application, p. 44). SIE states that it will follow the requirements of the Development Code for excavation and grading. (Application, p. 44).

The Commission concludes that the Development Code adopts chapter 70 of the International Building Code to regulate excavation and grading activities. (PCDC

§ 10-13-4(C)). The Commission finds that the Project will involve excavation and grading activities. As a result, the Commission requires as a condition of the special use permit for the PCAEC that all excavation and grading activities in relation to the Project will comply with Appendix chapter 70 of the International Building Code.

22. *Slopes*

The Development Code provides that developments are not permitted on slopes of thirty percent (30%) or more, or other slopes identified as being unstable, or within three hundred feet (300') of the top edge of bluffs of seventy five feet (75') or more in height, without a certification from a geotechnical engineer. (PCDC § 10-13-4(D)(1)). The Development Code also provides that structures shall also be more than one hundred feet (100') from the Snake River canyon rim and other canyon rims which are composed of solid rock cliffs. (PCDC § 10-13-4(D)(2)).

SIE has performed a detailed survey of the site and overlaid the site plan to show the relation to demonstrate overall compliance with the Development Code. Exhibit J displays the characteristics of the land and proximity of the facility. SIE has provided a contour map of the Project site. (Application, Ex. J). The site property is relatively flat in most areas and has historically been used as farmland. Gradual slopes descend toward the Snake River. These slopes are near the boundaries of the property on the southern edge and part of the eastern edge. (Application, p. 44).

Based on the evidence presented, the Commission finds that the proposed development is not located on any slope of thirty percent (30%) or more, or on other slopes identified as being unstable. The Commission also finds that the development is not within 300 hundred feet (300') of the top edge of any bluff of seventy five feet (75')

or more in height. Although there are gradual slopes at the edges of the property, none of these gradual slopes meet the criteria of a "bluff" or a "cliff." The Commission interprets the requirement of a "bluff" to require some type of vertical angle, and the gradual slopes involved here do not include any vertical portion.

Based upon the evidence submitted, the Commission concludes that the proposed development meets the requirements of Section 10-13-4(D) of the Development Code.

23. *American Falls Reservoir*

The Development Code provides that developments are not permitted within 300 feet (300') from the high water mark of the American Falls Reservoir. (PCDC § 10-13-4(E)). SIE has submitted evidence regarding the location of the Project site. (Application, Ex. Q). The Commission finds that the Project site is not located within 300 feet (300') of the high water mark of the American Falls Reservoir. Based upon the evidence submitted, the Commission concludes that the proposed development meets the requirements of Section 10-13-4(E) of the Development Code.

24. *Alluvial Fans*

The Development Code provides that developments on "alluvial fans" shall be designed to minimize debris flow and sheet flooding hazards. (PCDC § 10-13-4(F)). SIE has submitted evidence regarding the location of the Project site. (Application, Ex. Q). The definition of "alluvial fans" are found in the Power County Comprehensive Plan. (Comprehensive Plan, p. 7, p. 4 Map of "Power County Landscape Units".) The Commission finds that the Project site is not located on or near any "alluvial fans" as defined by the Commission and the Comprehensive Plan. Based upon

the evidence submitted, the Commission concludes that the proposed development meets the requirements of Section 10-13-4(F) of the Development Code.

25. *Wildfire Hazards*

The Development Code provides that all developments in or adjacent to forested areas or areas of flammable brushy vegetation shall comply with certain wildfire hazard requirements. (PCDC § 10-13-4(H)). Individual structures must provide a fire defensible space of at least thirty feet (30') around the home or structure. Maintenance of the defensible space is a requirement for continuing compliance with the Development Code. (PCDC § 10-13-4(G)).

SIE states that the PCAEC is located on farmland and does not have any forested lands on or near the property. SIE states that although there are currently areas of brushy vegetation, those areas will be graded during construction and eventually replaced with indigenous vegetation similar in type to local uncultivated and un-irrigated lands. (Application, p. 45).

SIE also states that the Project will be constructed of materials that are fire resistant. (Application, p. 45). SIE states that there will be an emergency firewater pump with its own generator and emergency equipment on hand, and that project personnel will be trained to use this equipment to respond to any fires that may occur. (Application, p. 45).

The Power County Commissioners have issued a Fire Mitigation Plan. (Application, Ex. L). According to the Areas of Concern and the Wildland Fire History maps in the Fire Mitigation Plan, the site does not fall in an area of concern or have a recent history of any major wildfire. (Application, Ex. L). Nevertheless, SIE states that

an emergency response plan will be drafted and personnel trained to handle fire hazards as part of Project operating and maintenance procedures. (Application, p. 45). SIE also states that it will work with all parties involved to develop a facility emergency response plan to meet goals outlined in the Power County Fire Mitigation Plan and take the necessary steps to comply with the Wildfire Hazards Development Code. (Application, p. 45).

The Commission finds that the Project site does not fall in an area of concern shown in the Fire Mitigation Plan, and that the site does not have a recent history of any major wildfire. (Application, Ex. L). Nevertheless, the Commission requires as a condition of the special use permit for the PCAEC that the development shall maintain a fire defensible space of at least thirty feet (30') around the structures on the Project site.

26. *Child Care Services*

Any child care services provided must comply with the Development Code, State of Idaho law, and performance standards for home occupations. (PCDC § 10-13-4(H)). SIE states that no child care services will be provided by the facility. (Application, p. 45). The Commission concludes that this provision is not relevant to the application for special use permit.

B. Land Use Compatibility (§ 10-13-5)

1. *Unenclosed Setbacks*

The Development Code provides that yards created by required setbacks shall remain unenclosed, with certain exceptions. (PCDC § 10-13-5(A)). The Heavy Industrial Zone in which the proposed Center would be located does not include any required setbacks. (PCDC § 10-5-6). The Commission concludes that this provision of the Development Code is not relevant to SIE's application for special use permit.

2. *Compatibility with Neighboring Uses*

The Development Code requires that the review of a special use permit application must include a determination that the proposed development is compatible with neighboring uses, with compatibility being judged by the following factors: (1) lot coverage and the extent of landscaping, including the effectiveness of landscape buffers; (2) building bulk, height, and scale; (3) effect on scenic views from adjoining properties; (4) activity levels, as measured by traffic and noise, parking, signs, and hours of operation; and (5) the extent of functional connections with adjoining developments (existing and anticipated), including shared access to arterials, shared parking and service access, shared buffering and open space, and shared pedestrian circulation. (PCDC § 10-13-5(B)).

The proposed Center is a heavy industrial facility that will be located in an area designated as a Heavy Industrial Zoning District decades ago. Because the area has long been designated as Heavy Industrial Zoning District, and the proposed Center is an industrial facility, it will be compatible with neighboring uses, both present and future. The Heavy Industrial Zoning District was designed to accommodate this type of use. Adjacent to the Project site is another Heavy Industrial Property: the ConAgra Foods' Lamb Weston facility, which processes agricultural products into food. The Center will produce fertilizers, which are central to the production of the raw agricultural materials for ConAgra and other food processors. (Application, p. 46).

a. *Lot Coverage and Extent of Landscaping*

SIE states that most of the over 450 acres that it has optioned for the Center will remain fenced, undeveloped land. (Application, p. 46). The Center's

footprint, including an extensive rail loop, is approximately 225 acres. The Center's processes will be located on the western portion of the optioned acreage. SIE states that the enclosed structures on the project will cover only a small portion to the land, of about 20 acres or less. (Application, p. 46).

The Center will have landscaping buffers as required by the Development Code. SIE will establish landscape buffers, as explained in full below (see section E), consistent with the requirements of Section 10-13-8 and Section 10-17-3 of the Development Code. These buffers will be designed to minimize noise from operations and enhance the visual appeal of the site. SIE specifically plans to maintain the line of tall trees at the southern boundary of property currently owned by Tom and Katie Ballard. SIE has an option to purchase this property at the time site preparation begins. As appropriate, SIE will add rapidly growing trees as buffer. Other general landscaping will be used within the site boundary to add to the aesthetics of the Center. SIE will plant indigenous vegetation including grasses, ground covers and shrubs. The indigenous vegetation on unused land will be maintained.

The extent of this landscaping is discussed in more detail below, in relation to landscape buffers. This type of landscaping is consistent with landscaping required for neighboring industrial uses.

The Commission concludes that the lot coverage and extent of landscaping is compatible with the lot coverage and extent of landscaping of other industrial and agricultural uses found within this Heavy Industrial Zoning District.

b. Building Bulk, Height, and Scale

SIE states that the tallest building on the site, the slip form concrete coal

and petcoke silos, will be approximately 180 feet tall. At this height, it will be somewhat, but not significantly, taller than Lamb Weston structures or grain elevators in American Falls. Furthermore, the bulk, height, and scale of buildings and other structures will be small to moderate in proportion to the large size of the property. Also, the bulk, height, and scale of the buildings and other structures are customary for the heavy industrial uses expected within the Heavy Industrial Zoning District.

The Commission concludes that the building bulk, height, and scale of the Project will be compatible with neighboring uses.

c. Effect on Scenic Views from Adjoining Properties

The Project should not adversely affect any scenic views from adjoining properties. The Project is a heavy industrial use in the Heavy Industrial Zoning District, and will have a look similar to the existing Lamb-Weston potato processing facility.

d. Activity Levels, as Measured by Traffic and Noise, Parking, Signs, and Hours of Operation;

SIE states that the activity level at the Center will be similar to that of Lamb Weston and other industrial facilities in the area. The Center will operate 24 hours per day, 52 weeks per year. Rail will be the predominant mode of transportation for both raw materials and products. Between 30 to 50% of the Center's products and by-products will be shipped by truck. The Center will employ up to 150 employees. (Application, p. 47).

A traffic study prepared for SIE by HDR concludes that current average daily trips (ADT) at the SH-39 and Lamb Weston Road intersection are 1,896 trips. Center operations will increase the average daily trips to 2,549, which is an increase of

approximately 34 percent. (Application, Ex. H).

SIE states that sufficient parking will be available onsite for employees and visitors. Further findings in relation to parking are found in the discussion of off-street parking and loading, above.

SIE has had preliminary discussions with Lamb Weston aimed at minimizing impacts on traffic by staggering shift changes. SIE also states that, as the project progresses, details related to construction and operations will be worked out with local officials, the PCHD, Lamb Weston and other nearby businesses.

In relation to noise, SIE states that it is committed to shielding equipment and implementing good operations practices so that offsite noise impacts are minimized. Details are provided in the noise study conducted for SIE by CH2MHill. SIE will meet the 75 dBA limit established in the Development Code. Further findings in relation to noise are found in the discussion of Section 10-13-4(B)(1), above.

SIE states that signage will be minimal, and all signs will comply with the established sign code.

The Commission concludes that the activity levels, as measured by traffic and noise, parking, signs, and hours of operation are compatible with the neighboring uses.

e. Extent of Functional Connections with Adjoining Developments (Existing and Anticipated), including Shared Access to Arterials, Shared Parking and Service Access, Shared Buffering and Open Space, and Shared Pedestrian Circulation

The Commission finds that the SIE has attempted to optimize functional connections with adjoining developments, both existing and anticipated. SIE is

connected to agricultural lands on the west and to the east. SIE is connected to the Lamb-Weston processing facility on the north.

SIE has proposed a reconfiguration of Lamb Weston Road and Lake Channel Road that will optimize shared access to arterials. The Project site is too large to accommodate shared parking and service access, or shared pedestrian circulation. SIE will provide landscape buffering as required by the Development Code, and will provide ample open space, with a relatively small building footprint on a large tract of land.

For these reasons, the Commission concludes that the Project is compatible with neighboring uses, as measured by the extent of functional connections with adjoining developments (existing and anticipated), including shared access to arterials, shared parking and service access, shared buffering and open space, and shared pedestrian circulation.

3. *Residential Construction on Arterial Roads*

The Development Code provides that residential construction on arterial roads must include reverse frontage, deep lots, and landscaped buffers. (PCDC § 10-13-5(C)). The Commission concludes that this provision is not relevant to SIE's application.

4. *Landscape Buffers*

The Development Code provides that landscaped buffers shall be provided as required by two separate sections: (a) Table 2, Section 10-13-8, and (b) Appendix C, Section 10-17-3. (PCDC § 10-13-5(D)(1)).

Section 10-13-8. Table 2, Section 10-13-8, requires a twelve (12') foot wide buffer along any arterial street in a Heavy Industrial zone. (Section 10-13-8, Table 2 – Buffering Requirements). A security fence is also required.

(Section 10-13-8, Table 2).

Section 10-17-3. Appendix C, Section 10-17-3, provides further buffering requirements:

- (1) At least four (4) major trees per one hundred (100) lineal foot of buffer. (PCDC § 10-17-3(B));
- (2) The buffer width requirement may be reduced if a berm is included. (PCDC § 10-17-3(D));
- (3) The buffer width requirement may also be reduced if additional plantings of major trees, understory trees, or shrubs are included. (PCDC § 10-17-3(E));
- (4) The minimum buffer width is ten (10) feet, regardless of any reductions permitted. (PCDC § 10-17-3(F));
- (5) The code also provides specifications for the plant materials planted. (PCDC § 10-17-3(H)); and
- (6) Perpetual maintenance of the buffers is required. (PCDC § 10-17-3(I)).

Further, Section 10-13-5 provides that a planting plan shall be required as part of the application for permit for any landscape buffer plan. (PCDC § 10-13-5(C)(1)). Section 10-13-5 also explains that existing vegetation shall be retained for buffering whenever possible. (PCDC § 10-13-5(C)(2)).

SIE states that the plan submitted for the PCAEC will comply with all landscape buffering requirements and adhere to all plant material specifications and maintenance, and that the landscape buffer will be used to enhance the visual appeal of the site and minimize noise. SIE states that the plan will include a twelve-foot (12') buffer along Lake Channel and Borah Roads, and that at least four major trees will be planted every one hundred feet (100'). Other indigenous grass, shrubs and ground cover will be used in the landscaped buffers and berms. Existing vegetation will be retained for

buffering whenever possible. SIE also states that a security fence will be installed as an additional buffer, and that all landscape buffers will be perpetually maintained.

The Commission concludes that the PCAEC must meet the landscape buffering requirements found in Section 10-13-5(D), Table 2 of Section 10-13-8, and Appendix C of 10-17-3 of the Development Code. The Commission interprets the requirement of a planting plan to apply at the time of SIE's application for a building permit. (PCDC §§ 10-13-5(D); 8-1-2(B)). As a result, the Commission requires as a condition of the special use permit for the PCAEC that the Project must meet the landscape buffering requirements found in Section 10-13-5(D), Table 2 of Section 10-13-8, and Appendix C of 10-17-3, and that SIE submit its landscape buffer planting plan with its application for a building permit.

5. *Irrigation Entity Review*

The Development Code states that all developments including or adjoining irrigated lands shall be reviewed by the responsible irrigation entity, and that no development shall adversely impact the operation of any irrigation system. (PCDC § 10-13-5(E)).

The Commission finds that the irrigation entity impacted by the development is the Aberdeen-Springfield Canal Company. (Application, p. 27). SIE's efforts to obtain review and approval from the Aberdeen-Springfield Canal Company are discussed above, in relation to utility and irrigation easements.

The Commission requires as a condition of the special use permit for the PCAEC that the plans for the Project impacting the Aberdeen-Springfield Canal Company be reviewed by Aberdeen-Springfield, to ensure that the development does not

adversely impact the operation of the Aberdeen-Springfield irrigation system.

C. Natural and Cultural Assets (§ 10-13-6)

1. *Stream Corridors*

The Development Code provides that there is a minimum development setback of fifty (50) feet from the annual average high water mark along all streams, perennial and intermittent. (PCDC § 10-13-6(A)). The Development Code also provides that stream corridors shall not be developed in any way, with certain exceptions. (PCDC § 10-13-6(A)(1)). The Development Code also requires that the development setbacks for stream corridors shall be clearly shown on final site plans and plats, and shall be shown by a permanent monument on each lot line running perpendicular to the stream. (PCDC § 10-13-6(A)(5)).

SIE has provided evidence that the Project complies with these requirements. The Project is located on the north side of the Snake River approximately 200 feet above the river embankment and will not be within the Snake River corridor. (Application, p. 50; Ex. J, Ex. C, Ex. D). SIE has provided a Phase I Environmental Site Assessment, prepared by E3 Consulting, which shows that there are no springs or streams on the property. (Application, p. 50; Ex. M). The evidence provided demonstrates compliance with the setbacks required by the Code. The Commission concludes that the Project meets the requirements of Section 10-13-6(A) of the Development Code.

2. *Wetlands*

The Development Code provides that all developments shall demonstrate compliance with State and Federal wetlands protection requirements. (PCDC § 10-13-6(B)).

SIE contracted with HDR Engineering to perform a Wetlands Delineation Study of the site on March 19, 2007. HDR conducted a site inspection and interviewed property owners to obtain background information. SIE has submitted HDR's report as Exhibit P to its Application. (Application, Ex. P). The report indicates that the Project site has long been used as farmland, and that irrigation water is pumped from a pond supplied by the Aberdeen-Springfield Canal. This irrigation pond contains water during the growing season but is dry the rest of the year. HDR concluded that the irrigation pond is not a suitable wetland habitat. (Application, Ex. P p. 3). HDR reviewed U.S. Fish and Wildlife Service National Wetland Inventory Maps to make this determination. (Application, Ex. P p. 1). HDR concluded that there are no wetlands, springs or streams on the site.

In addition to these wetlands requirements, the United States EPA and the Idaho DEQ have a number of standards in place to protect wetland environments. These standards cover surface water, ground water, and drinking water resources that are protected by the Clean Water Act. (Application, p. 50). SIE states that it will not discharge any process water, but may need to obtain a National Pollution Discharge Elimination System (NPDES) permit to release excess storm water. SIE states that a plan for such discharges will be developed with the guidance of the IDEQ to meet the necessary requirements. (Application, p. 50).

The Commission finds that there are no wetlands of concern on the Project site. However, there are also other federal and state laws designed to protect wetlands. Based on these conclusions and findings, the Commission requires as a condition of the special use permit for the PCAEC that the development comply with all State and Federal

wetlands protection requirements.

3. *Historic and Archaeological Sites*

The Development Code requires that archeological and historic sites shall remain undeveloped, and also provides an exception procedure. (PCDC § 10-13-6(C)).

SIE contracted with North Wind, Inc., to perform a Class I Archeological Overview of the Project site. SIE has submitted this report as evidence in support of its application. (Application, Ex. N). According to the report, there are three sites that occur within the project area of potential effect: 10PR20 is located in the northeast corner of the Site, 10PR643 is located in the southwest corner of the Site, and 10PR801 is also located in the southwest corner of the Site. (Application, Ex. N p. 12, Table 3.2, Figure 3.1). 10PR20 was found to contain lithic scatter and artifacts, while 10PR643 contains lithic scatter, flakes, and historic trash scatter. 10PR801 has more distinguished findings, including a historic foundation, root cellar, and ceramic and glass scatter. (Application, Ex. N p. 13 Table 3.3).

Based on these findings, North Wind determined that a site inventory needed to be done in order to determine the impact of the development on these sites and the historic value the sites retain. On July 11, 2008, North Wind drafted an Archeological Letter Report for Reconnaissance Inventory that summarizes the results of their site inspection. (Application, Ex. N, July 11, 2008 Letter from William M. Harding). A North Wind archeologist examined the sites and evaluated the impacts of the Project on the identified resources. He concluded that as the plant is designed, there would be no impact to sites 10PR20 and 10PR643. However, if the design of the rail loop and road infrastructure were modified to affect these sites, mitigating measures

would need to be discussed with the State Historic Preservation Office (SHPO). The archeologist found that site 10PR801 is not located on the Project property and would not be affected by the Center. (Application, Ex. N, July 11, 2008 Letter).

The Commission finds that the PCAEC will comply with the Development Code, as it does not propose to develop or impact any archeological or historical sites.

4. *Wildlife Habitat*

The Development Code provides that important wildlife habitat shall remain undeveloped. The Development Code provides a procedure for exceptions to this requirement if protection would create a severe hardship on the developer. (PCDC § 10-13-6(D)).

SIE retained North Wind, Inc., to perform a Wildlife Habitat Survey of the Project site. SIE has submitted the report from North Wind, Inc. as evidence in support of its application. (Application, Ex. O). This field survey, performed on July 9, 2008, assessed the potential to support species protected under the Endangered Species Act (ESA), State sensitive wildlife species, migratory bird species, and general wildlife species.

The North Wind report states that 90% of the land is currently being used for agriculture cash crops and provides very little habitat for wildlife species. (Application, Ex. O p. 4). The North Wind report identified the irrigation pond located in the northwest corner of the project area as an area that supports open water habitat. However, the report indicates that the irrigation pond is associated with the irrigation system and holds water only during the irrigation season and is dry during the remainder of the year. (Application, Ex. O p. 6). The report concluded that the irrigation pond

habitat is not a critical to the survival of any of the species listed in the area. The Snake River and American Falls Reservoir, they concluded, provide abundant water sources for the migratory birds and water fowl. (Application, Ex. O pp. 6-7).

Two endangered species, the Utah valvata snail and yellow-billed cuckoo, are suspected to be in the area, but North Wind concluded that no suitable habitat existed on site for these species and that the development would not threaten their existence. (Application, Ex. O p. 6). North Wind concluded that the Project will not impact significant wildlife habitat, and a wildlife habitat protection plan is not required. (Application, Ex. O p. 7).

The Commission finds that the proposed Project complies with the requirement of the Development Code requiring that important wildlife habitat shall remain undeveloped.

D. Specific Performance Standards

There are three performance standards specific to the Heavy Industrial Zoning District. (PCDC § 10-5-6(A)). The Commission finds that the Application meets each of these standards.

1. Residential Areas

The Development Code provides that “[s]ites that are within two thousand six hundred forty feet (2,640’) of an existing residential area should not be added to the HI Zoning District.” (PCDC § 10-5-6(A)).

The PCAEC is located well within the Heavy Industrial Zoning District, which was established many years ago to accommodate this type of industrial development. As a result, no residential areas have been allowed to develop near this

Project site. Although there is a single farm residence near the northern boundary of the plant site and a single farm residence near the southeastern boundary, the Commission does not consider these residences are not a “residential area” for the purpose of the Development Code. Furthermore, SIE states that it will purchase the residence at the southeastern boundary at the time of construction. The owners of this residence, Tom and Katie Ballard, appeared at the hearing on this Application and indicated their support for the Special Use Permit. In addition, the south and southeastern boundary is buffered by the Snake River, which the Commission considers a sufficient buffer between residential and non-residential facilities.

The Commission finds that the Project site is not within 2,640 feet of any existing residential area, and that the specific performance standard found in Section 10-5-6(A)(1) of the Development Code is satisfied.

2. *Sign Code*

The Development Code provides that signs in the HI Zoning District must meet the requirements of Section 10-17-1. (PCDC § 10-5-6(A)(2)).

The PCAEC is not proposed as a retail outlet, and would not be expected to require signage for marketing purposes. SIE states that a minimal number of signs will be used at the plant including: directional signs, ground signs, logos, pole signs, temporary signs, traffic control signs and wall signs. (Application, p. 52). SIE states that one ground or pole sign no more than fifty feet (50') in height will be placed on Lake Channel Road at the main entrance to the plant. SIE also states that two offsite directional signs will be displayed to direct individuals to the facility. SIE states that additional traffic-control signs, onsite directional and traffic-control signs will be used to ensure

safety. (Application, p. 52). SIE states that all signs used will comply with the required permits, maintenance and sign standards. (Application, p. 52).

Based upon these findings, the Commission requires as a condition of the special use permit for the PCAEC that the development comply with the sign standards applicable to the Heavy Industrial Zoning District found in Appendix A of Section 10-17-1 of the Development Code.

3. *Landscape Buffers*

The Development Code provides that the site must have landscaped buffers in compliance with the requirements of Section 10-13-5(D). (PCDC § 10-5-6(A)(3)). The Commission adopts by reference its discussion, conclusions, findings, and conditions found in relation to the discussion of landscape buffers above.

V. CONCLUSION AND ORDER

The Planning and Zoning Commission concludes that proper notice was given of the Public Hearing pursuant to Idaho law and Power County Code.

The Planning and Zoning Commission concludes that the Application complies with the requirements of the Power County Development Code and the objectives of the Power County Comprehensive Plan, and approves the special use permit requested by SIE, subject to the following conditions:

- (1) On-site sewage disposal systems for the PCAEC shall be sited, designed, and constructed in compliance with State of Idaho standards.
- (2) Central water utilities shall be sited, designed, and constructed in compliance with State of Idaho standards.
- (3) No building shall be placed in any utility or irrigation easement, public or private, and that only wire or rail fences, or solid wood fences with a separable

section or gate across the easement may be constructed across utility easements.

- (4) PCAEC will coordinate with the Aberdeen Springfield Canal Company for any changes to canal routes, and the Aberdeen Springfield Canal Company shall approve any rerouting changes.
- (5) The electrical power elements and natural gas supply lines that currently cross the property shall be rerouted and reconfigured in cooperation with and as agreed upon by Idaho Power Company and Intermountain Gas Company.
- (6) SIE will obtain approval of its plans for the reconfiguration of Lake Channel Road and the railroad crossing from the Power County Highway District, and the Union Pacific Railroad.
- (7) The intersection of the point of access of the PCAEC and Lake Channel Road will be built to include a clear vision triangle as required by Section 10-13-3(B)(3) of the Development Code, and the inside of the clear vision triangle will be maintained to meet the requirements set forth by that section, which are that parking will be not allowed within the triangle, no solid obstructions greater than three (3) feet in height above grade, and no trees with a height greater than seven (7) feet will be allowed within the triangle area.
- (8) There must be two points of ingress and egress to the PCAEC site, but the number of points of access to Lake Channel Road will be limited to these two access points.
- (9) The development shall provide off-street parking and loading areas as required by Appendix D, Section 10-17-4 of the Development Code, and snow storage shall not be permitted to reduce the size of the required off-street parking or loading areas.
- (10) The development must demonstrate continuing compliance with State and Federal requirements for the storage and handling of hazardous substances.
- (11) The development shall not create excessive levels of noise adversely affecting other commercial or residential uses. For the purpose of this condition, "excessive noise" is any noise, as measured at the property line of the affected use, that exceeds the standard of an L10 level of 75 dBA.
- (12) The development shall not direct light, glare, or heat beyond the boundary of the Heavy Industrial Zoning District. Welding equipment and other sources of intense light or glare shall be shielded from the view of neighboring properties or public ways by enclosure in a building, location on the property, or construction by a fence or wall.
- (13) The development shall not generate dust, smoke, odors, or other airborne pollutants that travel beyond the boundary of the Heavy Industrial Zoning District, except as permitted by State and Federal air quality standards pursuant to

a validly issued permit from the IDEQ.

(14) SIE will completely enclose all coal processes including storing all feed stock in covered silos. All of the materials handling processes will be contained and routed to bag houses for particulate control. The cooling tower will utilize high efficiency drift and mist eliminators to reduce water loss and associated particulate emissions. The project will design the flaring systems for smokeless operations.

(15) The development shall not channel liquid waste or storm water runoff so as to adversely affect neighboring properties or public ways.

(16) Solid waste shall be stored in enclosures in such a manner as not to attract rodents or other vermin, not be susceptible to spillage by dogs or cats, not generate odors beyond the property line, and not to permit blowing of paper or other lightweight waste.

(17) No solid waste, including construction or demolition debris, shall be buried or disposed of except at a site permitted by State and Federal law, and approved as a Heavy Industrial use in compliance with the Development Code, or, where permitted by State and Federal law, and the International Building Code, as rubble fill for a construction site.

(18) SIE will maintain the property so as to control noxious weeds at the site.

(19) All excavation and grading activities in relation to the Project will comply with Appendix chapter 70 of the International Building Code.

(20) The development shall maintain a fire defensible space of at least thirty feet (30') around the structures on the Project site.

(21) The Project must meet the landscape buffering requirements found in Section 10-13-5(D), Table 2 of Section 10-13-8, and Appendix C of 10-17-3, and SIE will submit the landscape buffer planting plan with its application for a building permit.

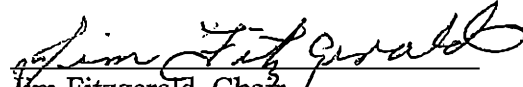
(22) The plans for the Project impacting the Aberdeen-Springfield Canal Company must be reviewed by Aberdeen-Springfield, to ensure that the development does not adversely impact the operation of the Aberdeen-Springfield irrigation system.

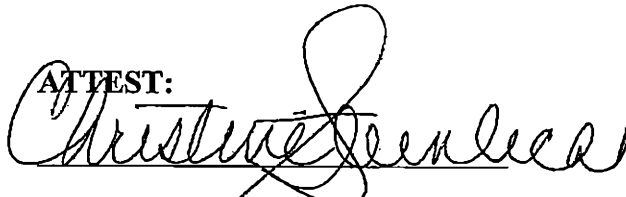
(23) The development must comply with all State and Federal wetlands protection requirements.

(24) The development must comply with the sign standards applicable to the Heavy Industrial Zoning District found in Appendix A of Section 10-17-1 of the Development Code.

DATED this 9th day of September, 2008.

**POWER COUNTY PLANNING AND
ZONING COMMISSION**


Jim Fitzgerald, Chair

ATTEST:

Christine Steinlicht, Clerk