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WATER RESOURCES
WESTERN REGION

BEFORE THE OWYHEE COUNTY PLANNING AND ZONING
HEARING EXAMINER

Re: Conditional Use Permit Application	)	No. 04-16
	)	
Filed by:	)	Memorandum of Decision
	)	
J & M CATTLE, INC.	)	
_____	)	

FINDINGS

1. The Applicant applied for a conditional use permit which would authorize a confined animal feeding operation on its property consisting of approximately 180 acres located on Agenbroad Road in Section 13 of Township 1 South, Range 3 West, Boise Meridian, in Owyhee County. Subject property is identified as Assessor's Parcel Number RP 01S03W130003A.
2. The land is located in an Agricultural Zone (Zone A) in which a confined animal feeding operation can be located only under a conditional use permit.
3. The land has a history of feed lot operation, and the applicant purchased the property for the purpose of establishing a feed lot operation. Until purchase of this land, the applicant had no way of expanding his feed lot operation already in place in the County. The Applicant will raise stock for more than 20 Idaho dairies. The economic impact of the operation will make the operation desirable to the public in general: the applicant will employ 45 persons, 35 of them on a daily basis, and will provide an important economic link in the chain of dairy producers now located in Owyhee County.
4. The feed lot operation is not inconsistent with the uses established in the general vicinity: There are 7 feedlots within a two mile radius of the applicant's land. The entire surrounding area is in agricultural use, with scattered residences located among the agricultural uses.
5. The application stated that it sought authorization for "3000 animal units as defined by Idaho Code" for the purpose of bottle feeding and raising calves to reach an average weight of 200 pounds. However, the evidence showed that the

applicant seeks authority for a feed lot operation which could handle 15,000 calves of the 200 pound weight.

6. The County requested that a Site Suitability Determination be made pursuant to Idaho Code. That Determination was made. From the results of the Team report, the Examiner finds that the Team looked at the site as having a capacity of 15,000 calves of the 200 pound average weight. The recommendation of the Team was that the Suitability Determination was "Low Risk", and the Examiner finds from the review that the risk is "low". In performing their statutory duty, the Team could find a determination of "low", "moderate" or "high" risk. According to the evidence, a "low risk" determination means that there is nothing out of the ordinary that would lead to environmental injury.
7. The Applicant has worked with the staff of the Department of Agriculture to determine an adequate lagoon system for waste, and the staff testified, and the Examiner finds that a lagoon system designed with the approval of the Department will be adequate to handle environmental concerns.
8. A confined feed lot of the type proposed by the applicant fits within the A zone of the County ordinance, and the Applicant has satisfied the burden of proof as to the elements contained in the County ordinance for issuance of a conditional use permit. This is an agriculturally oriented county. Prior to the instant ordinance, there was only one zone throughout the County and agricultural uses were allowed at any location. Because of the particular problems facing feed lot operators, the Board of Commissioners placed a conditional use permit requirement on establishment and placement of feed lots, but made it clear that such uses were to be placed in agricultural zones. The placement of this proposed feed lot is consistent with the many other feed lots located in the general vicinity.
9. In considering the elements contained in the Ordinance, the Examiner finds:
 - a. The Ordinance permits the feed lot operation in the zone.
 - b. For reasons stated hereinabove, the proposed operation is desirable from the standpoint of the general public
 - c. The proposed use may create some detriment to residential users in the general vicinity, but special conditions imposed herein can mitigate those detriments. Some elements of detriment associated with feeding cattle cannot be mitigated beyond a certain point, but that is true anytime a residence is established in an agricultural zone. Any detriment which may occur as a result of water usage can be mitigated only by the Department of Water Resources and its control of permits. If the proposal was for a subdivision of residences in an agricultural zone, the water concerns would take on more weight with the Examiner than they do when the proposed use is agricultural, located in an agricultural zone.

- d. There will be no adverse impact on essential public services, and to the contrary, the economic impact from the operation will benefit funding to those public services.
 - e. Water systems and their adequacy are matters, in this case, for the Department of Water Resources to consider.
 - f. The Examiner cannot find from the evidence that there will be adverse impact on water supplies, particularly in view of the history of water allowance for feed lot use on the land. The Site Suitability Team found that "there appears to be adequate water rights for the stock water use" and determined, as does the Examiner, that issues involving water availability are matters within the jurisdiction of the IDWR, absent particular proof of insufficient water.
 - g. The Examiner cannot find that there will be endangerment of human or animal or plant health and safety from this agricultural use which would not be caused by other established agricultural uses in the general vicinity, and thus cannot find that this particular land use, more than other established similar uses in the vicinity, would endanger health and safety beyond what can be mitigated by the special conditions imposed herein.
 - h. There are special conditions which are necessary to mitigate any potential adverse impact which might result from the use.
10. Appropriation of water from the two existing wells has been approved by the Department of Water Resources.
11. Because of the concern of the public about odor management, the Applicant has committed to the following good odor management practices, and the Examiner finds that as a special condition, the Applicant must follow them and follow the supplement to the application submitted to the County on July 30, 2004, a copy of which is attached to this set of Findings as Attachment A:
- a. Request that the Department of Agriculture staff provide ongoing assistance to recommend any appropriate changes and/or activities that would improve animal waste odors;
 - b. Maintain an adequate work crew of approximately 35 persons for the care and feeding of calves and to perform the necessary maintenance of the facility including the removal of animal waste to minimize odor.
 - c. Remove calves every 75 days from each hutch row and flush with water.
 - d. Dry scrape and remove to the compost area the manure from each corral in the spring and fall.
 - e. Compost the cattle manure on site to help eliminate flies and control odor.
 - f. Design and locate and maintain the waste water runoff lagoons in accordance with recommendations of the Department of Agriculture.
 - g. Follow a site layout which takes into account the prevalent wind pattern to minimize odors, and locates the compost ten acre site approximately one quarter mile west of the existing county road, and maintain at least a 100 foot setback for all improvements along the county road.

12. The Examiner finds that the application contained information about wind patterns which was obtained from the nearest USDA Agricultural Research Service, from which Applicant drew the conclusion that "the prevalent wind pattern...is from the south...", however, testimony from two life long residents from the immediate area of the proposed site was that the prevailing wind pattern is from southeast to northwest or northwest to southeast, paralleling the path of the Snake River, and the Examiner finds this testimony credible.
 13. From the testimony, the Examiner finds that the Applicant has a reputation for operating a clean feeding site, and finds this based upon testimony from a person who visits 20 or 30 feed lots a week, and has visited an applicant site for 3 years on a weekly basis. From this record, and the special condition based upon paragraph 11 hereinabove, the odor problems should be mitigated to an acceptable level.
 14. The water rights now held by the Applicant are adequate to furnish water sufficient for the cattle feeding operation as shown by the supplemental offerings by applicant in response to questions from the Examiner. However, the Examiner finds that the CAFO Siting Team, in the Site Suitability Determination, makes the following statement: "There appears to be adequate water rights for the stock water use. Additional water rights or transfers will be needed for the industrial/commercial use for this facility."
 15. The Site Team made a "low risk" determination based upon an analysis of putting 15,000 head of calves on the land site. The examiner finds no reason, in the evidence, to doubt that determination, and accepts the determination and finds that there will be "low risk" to the environment.
 16. However, the confined feed operation definition in the County Ordinance is in terms of animal units, not head. It may be that Applicant's argument that the definition is not a restriction on the quantity is valid, but the Examiner does not feel justified in making that decision without some clarification from the Board of County Commissioners. The application will be granted for the number of animal units which equates to 15,000 head of calves. The applicant has suggested in a supplemental offering of evidence that 9,000 animal units equates to the 15,000 head of calves of 200 pounds. Therefore, the application should be granted for 9,000 animal unit feed operation. Applicant is correct that a review of the application and of the Site Team Determination showed clearly the magnitude of the request being made by the applicant.
- a
17. Applicant has met the burden of proof established by the Ordinance, and the application should be granted as stated in paragraph 15 hereinabove.
 18. Special conditions as set forth in the Conclusions are necessary for mitigation as provided by the Ordinance and justified by testimony.

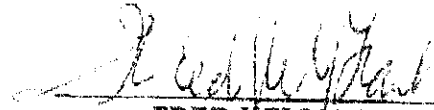
CONCLUSIONS

1. The application should be granted for a confined animal feeding operation of 9,000 animal units since it is desirable to the general public.
2. The special conditions applied in this conclusion are necessary for mitigation:
 - a. Request that the Idaho Department of Agriculture staff provide ongoing assistance to recommend any appropriate changes and/or activities that would improve control of animal waste odors.
 - b. Maintain an adequate work crew for the care and feeding of the calves and to perform the necessary maintenance of the facility including the removal of animal waste to minimize odor.
 - c. Dry scrape and remove to the compost area the manure from each corral, at a minimum, in the spring and fall.
 - d. Compost the cattle manure on site to help eliminate flies and control odor.
 - e. In accordance with recommendations of the Idaho Department of Agriculture, locate, build and maintain waste water runoff lagoons.
 - f. Provide a site layout similar to the one contained in the conditional use permit application that takes into account the prevalent wind patterns to minimize odor for the existing residential development to the east, such as locating the ten acre compost site approximately one quarter mile west of the existing County road and maintaining at least a 100 foot setback for all improvements along the County road
 - g. Remove calves from hutch pens on a regular basis for the scraping of manure.
 - h. Minimize, to the greatest extent possible, the amount of on-site waste water.
 - i. Remove waste water from the lagoons for land application as early in the spring as possible.
 - j. Submit final facility engineering and site plans to Idaho Department of Agriculture for approval prior to the commencement of construction.
 - k. Access routes from the public road to the various buildings on site must be constructed with all weather surfaces and will provide adequate ingress and egress dimension necessary for the safe, efficient operation of emergency vehicles, including the turnaround spaces approved by the local fire district.
 - l. Prior to the commencement of construction of any buildings to be placed on site, Applicant must contact the County building department for a determination as to whether or not a building permit is required.
 - m. Any wastewater containment structures, including berming, must be approved by Idaho Department of Agriculture prior to use.
 - n. This decision must be recorded in the official records of Owyhee County prior to the commencement of construction.
 - o. Compliance with all applicable laws and regulations.

ORDER

The conditional use permit application filed by J & M Cattle, Inc. is granted, subject to the special conditions set forth in Conclusion 2 above.

Issued this 30 day of January, 2005.


FRED KELLY GRANT
Hearing Examiner

Attest: K Kelly Branch

Appeal Deadline: 31 January, 2005 at 5 PM

July 30, 2004

To: Ms. Kay Kelly, Planning and Zoning Administrator
Owyhee County
Post Office Box 128
Murphy, Idaho 83650

From: Jon Mortensen, Property owner

Subject: Odor Management

I am submitting supplemental Odor Management information concerning my pending Conditional Use Permit (CUP) application for 3000 animal units on 180 acres of land. The requested CUP is for the purpose of bottle feeding and raising calves to reach an average weight of 200 lbs.

It is our intent to exercise good management practices at this site to minimize adverse odor impacts on adjoining property. Agricultural activities as allowed and intended for use within the current Agricultural zoning classification will result in some expected odors that can not be totally eliminated. We will incorporate proven "best management practices" to control odor to the extent possible.

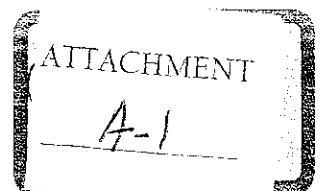
We have demonstrated good odor control management methods regarding the similar J and M Cattle calf feeding facility that is operating on the nearby 40 acres located at 14022 Upper Reynolds Creek Road. The Idaho Department of Agricultural on May 26, 2004 issued a routine Livestock Facilities Waste Inspection Report for the 40 acre site stating that, **see attached copy:**

- Ponds are earthed and are empty at the time
- Adequate berming is in place to prevent runoff into waterway
- Ponds provide adequate liquid storage
- No evidence of past discharge was noted
- Animals are confined from the waterway
- Waste facility is well maintained
- Nutrient Management Plan has been written
- NPDES has not been applied for

Also, the Idaho Department of Agricultural on May 26, 2004 issued a pre-qualifying 3000 animal unit Livestock Facilities Waste Inspection Report for the proposed 180 acre site stating that, "Facility was purchased for Sam Pitman and is to be built on for a calf raising facility. No facility is on this premise at this time." **see attached copy.**

Mr. John Bilderback, Engineer, Idaho Department of Agricultural, ph. 867-0103 provided the following comments to minimize the cattle waste odor for the 180 acre proposed facility:

- Frequent cleaning of the corrals
- Composing of the manure
- Large and shallow lagoon areas for the handling of water runoff



- Minimize the amount of on site waste water
 - Remove waste water from the lagoons to apply to the fields as early as possible in the spring
 - Remove calves from the hutch pens on a regular basis for the scraping of manure
- Mr. Bilderback stated that he would be willing to provide on site assistance as the property is developed and in operation to recommend any appropriate changes and/or activities that would improve animal waste odors.

We have made arrangements for on site composting of cattle manure with Mr. Matt Roorda, Owner of the Soil Essentials Company, ph. 573-3779. Mr. Roorda has 2 ½ years experience in the composting of dairy cattle manure, has a dairy background and has an Associate Degree in Animal Science. Mr. Roorda contends that the composting of cattle manure works perfectly for odor control when done properly. An example of his successful composting activities can be observed at the Roorda Dairies facility located on Willis Road near Middleton. The composting process takes approximately 6 to 8 weeks plus approximately one month for curing depending on the weather and temperature conditions before the finished product is used as commercial fertilizer.

Mr. Jim Stewart, Owner of the Stewart's dairy, ph. 466-6996 located on Deer Flat Road has been composting dairy cattle manure for the past 15 years. He currently has 900 dairy cattle and has concluded that the composting of manure is the best method to help control flies and odor. His composting time takes from 6 weeks to 4 months depending on the weather conditions and temperature. It has been Mr. Stewart's experience that the primary odor from the cattle manure occurs when the fresh manure is transported.

An aggressive ongoing maintenance program is most helpful to remove cattle waste before becoming an odor problem. We have an adequate crew of approximately 35 persons for the care and feeding of the calves and to perform the necessary maintenance of the facility including the removal of animal waste to minimize odor. Calves in each of the hutch rows will be removed every 75 days and flushed with water. A thorough dry scraping of manure in each of corrals will occur in the spring and fall.

In summary, we will do as a minimum the following good odor management practices at the subject 180 acre site:

1. Request that the Idaho Department of Agricultural staff provide ongoing assistance to recommend any appropriate changes and/or activities that would improve animal waste odors.
2. Maintain an adequate work crew of approximately 35 persons for the care and feeding of the calves and to perform the necessary maintenance of the facility including the removal of animal waste to minimize odor.
3. Remove the calves every 75 days from each hutch row and flush with water.
4. Dry scrape and remove to the compost area the manure from each corral in the spring and fall.
5. Compost the cattle manure on site to help eliminate flies and control odor.

ATTACHMENT

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6. Location, size and maintenance of the waste water runoff lagoons will be done in accordance to the recommendation of the Idaho Department of Agricultural taking into account good odor management practices.
7. Provide a site layout as contained in the CUP application that takes into account the prevalent southerly wind to minimize odor for the existing residential development to the east. Some measures that have been included in the site layout consist of locating the compost ten acre site approximately one quarter mile west of the existing county road and maintain at least a 100 ft. setback for all improvements along the county road.

I am confident that the odor management planning effort will pay off and help to achieve a successful calf feeding operation that will be an asset to the agricultural area.

ATTACHMENT

Idaho Department Of Agriculture
Animal Industries Division
P.O. Box 790, Boise Id 83701-0790
(208) 332-8550

Livestock Facility Waste Inspection Report

Facility Name: <u>JM Feedlot #1</u>	Date: <u>5-26-04</u>	Inspection Type: ☒ Routine ☐ Follow-up ☐ Pre-Qualifying ☐ Qualifying ☐ Other ☐ Complaint:	Repeat Non-Compliance ☐
Owner: <u>John Montevon</u>	Time: <u>pm</u>		Time Frame:
Address: <u>14022 Upper Reynolds Crk</u>	Number of Animals: <u>5000</u>		Discharge Violation ☐
City/State/Zip: <u>Boise, ID 83701</u>	Permit Amount: <u>6500</u>		GPS Coordinates North: <u>43° 19' 37.9"</u> West: <u>116° 38' 07.1"</u>
Phone Number: <u>899-1570</u>	A livestock waste facility inspection was conducted at your facility on this date. Items found to be in non-compliance with State Rules are identified below. Please be aware that repeat non-compliance items found to exist on the next inspection may be cause for regulatory action.		

ITEM/DESCRIPTION	Comment	Non-Compliance	Discharge
1. WASTE SYSTEM			
a. Waste Containment Pond	☒	☐	☐
Type: <u>Earthen</u>			
Freeboard: <u>8'</u>			
b. Corral Containment	☐	☐	☐
Adequate Berming			
c. Separation System	☐	☐	☐
d. Construction Approved	☐	☐	☐
e. Adequate Liquid Storage	☒	☐	☐
f. Waste Facilities Well Maintained	☒	☐	☐
g. Evidence of Past Discharge	☒	☐	☐
h. Animals Confined From Waterways	☒	☐	☐
2. NUTRIENT MANAGEMENT			
a. Nutrient Management Plan	☐	☐	☐
1. Crop Rotation and Yield	☐	☐	☐
2. Animal Numbers	☐	☐	☐
3. Barn Water Use	☐	☐	☐
4. Waste Export	☐	☐	☐
b. Record Keeping Current	☐	☐	☐
c. Liquid Application	☐	☐	☐
d. Solid Application	☐	☐	☐

Remarks:

Ponds are earthen and are empty at this time

Adequate berming is in place to prevent runoff into waterway

Ponds provide adequate liquid storage
No evidence of past discharge was noted

Animals are confined from waterway
Waste facility is well maintained

Nutrient Management Plan has been written
NPDES has not been applied for

INSPECTOR SIGNATURE

PRODUCER SIGNATURE

ATTACHMENT

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Idaho Department Of Agriculture
Animal Industries Division
P.O. Box 790, Boise Id 83701-0790
(208) 332-8560

Livestock Facility Waste Inspection Report

Facility Name: JM Feedlot #2
Owner: John Montanaro
Address: Physical - None Sec 13 150
2318
mailing - 1000 E. Harbor Grove Dr
City/State/Zip: Nampa ID 83686
Phone Number: 899-1570

Date: 5-26-09
Time: 3W. PM
Number of Animals: 3000
Permit Amount: 3000

Inspection Type:
☐ Routine
☐ Follow-up
☒ Pre-Qualifying
☐ Qualifying
☐ Other
☐ Complaint:

Repeat Non-Compliance ☐

Time Frame:

Discharge Violation ☐

GPS Coordinates
North:
West:

A livestock waste facility inspection was conducted at your facility on this date. Items found to be in non-compliance with State Rules are identified below. Please be aware that repeat non-compliance items found to exist on the next inspection may be cause for regulatory action.

ITEM/DESCRIPTION	Comment	Non-Compliance	Discharge
1. WASTE SYSTEM			
a. Waste Containment Pond	☐	☐	☐
Type:			
Freeboard:			
b. Corral Containment	☐	☐	☐
Adequate Berming			
c. Separation System	☐	☐	☐
d. Construction Approved	☐	☐	☐
e. Adequate Liquid Storage	☐	☐	☐
f. Waste Facilities Well Maintained	☐	☐	☐
g. Evidence of Past Discharge	☐	☐	☐
h. Animals Confined From Waterways	☐	☐	☐
2. NUTRIENT MANAGEMENT			
a. Nutrient Management Plan	☐	☐	☐
1. Crop Rotation and Yield	☐	☐	☐
2. Animal Numbers	☐	☐	☐
3. Barn Water Use	☐	☐	☐
4. Waste Export	☐	☐	☐
b. Record Keeping Current	☐	☐	☐
c. Liquid Application	☐	☐	☐
d. Solid Application	☐	☐	☐

Remarks:

Facility was purchased from ~~Sam~~
Sam Pitman and is to be built on
for a calf raising facility.
No facility is on this premises at
this time

INSPECTOR SIGNATURE

PRODUCER SIGNATURE

ATTACHMENT

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