



# CASCADE COUNTY PLANNING DEPARTMENT

"Working Together to Provide Efficient and Effective Public Service"

December 12, 2019

## RE: Special Use Permit 006-2019 Appeal

Dear Zoning Board of Adjustment Members,

On November 21, 2019, the Board of Cascade County Commissioners ("Commissioners") heard an appeal of the Conditions of Approval for Special Use Permit 006-2019. The appeal and report associated with the appeal are enclosed with this letter for your information. In summary, the Commissioners **AFFIRMED** in part and **MODIFIED** Conditions 2, 3, 8, and 17, **REVERSED** Conditions 12, 14, 15, and 16, and **REMANDED** Condition 7 back to the Zoning Board of Adjustment ("ZBOA") "to develop the record concerning (1) why an operating time limitation is necessary; and (2) what makes a limitation from 7 am to 7 pm reasonable."

The remanded condition will need to be discussed and decided on by the ZBOA at an appropriately noticed public meeting within a reasonable amount of time. Findings of fact must be articulated and conclusions made to answer the questions remanded by the Commissioners. The ZBOA may develop the record by using any information contained in the record, and if there is insufficient information can request additional information from the applicant and also open up to public comment on that issue before making a decision.

Thank you for your attention to all of the items that come before you, and thank you for the time and effort you put into these items on behalf of Cascade County. Thank you and Happy Holidays!

Sincerely,

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### WRITTEN DECISION ON THE APPEAL OF SUP #006-2019

Proceeding under the review authority granted under Montana Code Annotated (“MCA”) § 76-2-227 and the Cascade County Zoning Regulations § 12.3.5, on November 21, 2019 the Board of Cascade County Commissioners heard an appeal on a decision made by the Zoning Board of Adjustments conditionally approving Special Use Permit # 006-2019 for a Value-added Agricultural Commodity Processing Facility: Cheese Processing Plant. The following represents the written decision made on the subject appeal issued by the Cascade County Commissioners on November 21, 2019.

#### I. BACKGROUND

The ZBOA may not issue a special use permit unless it first makes the following findings: (1) the proposed development will not “materially endanger” the public health or safety; (2) the proposed development will not harm surrounding property values unless it is deemed to be a public necessity; (3) the proposed development will be “in harmony” with the area in which it is to be located; and (4) the proposed development will be consistent with the Cascade County Growth Policy. Cascade County Zoning Regulations (“CCZR”) §10.6.

Conditions may be required that the ZBOA determines, if implemented, will mitigate potential conflicts in order to reach these conclusions. CCZR § 10.6(1). The ZBOA may approve an application subject to conditions reasonably necessary to carry out the purposes of the CCZR. CCZR § 10.9. The Applicant bears the burden of presenting sufficient factual evidence to support findings of fact that allow the board to reasonably reach each of the required conclusions.” CCZR § 10.9 (“Note”).

On August 28, 2019, the Cascade County Zoning Board of Adjustment (“ZBOA”) made a final decision approving Special Use Permit (“SUP”) #006-2019 for a cheese processing plant, a value-added agricultural commodity processing facility based upon seventeen (17) conditions. SUP Application submitted pertains to a 220.55 acre Parcel (Parcel #0005348300).

Pursuant to CCZR § 12.3.5.1, “[a]ny person or persons, jointly or severally, aggrieved by a decision of the Zoning Board of Adjustment, may present to the Board of Cascade County Commissioners a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality.”

On September 26, 2019, Big Sky Cheese, LLC and Madison Food Park, LLC, the SUP Applicant, submitted an appeal to the Board of Cascade County Commissioners (“Commission”) appealing nine (9) of the seventeen (17) conditions imposed by the ZBOA on grounds of illegality.

The Commission having review authority will review the record as established and considered by the ZBOA. The record consists of the following:

- Application for SUP and supporting documents (Rec: 4/25/19)
- Applicant Supplemental Materials (Rec: 7/11/19)
- Public Notices
- Interested Agency Notice
- Public Comments (Rec: 5/1/19 thru 6/27/19)
- Public Comments on Applicant's Supplemental Materials (Rec: 7/11/19 through 7/26/19)
- Planning Department Staff Report and supporting documents
- Audio recordings for (6/27/19, 7/22/19, 8/28/19)
- Conditional Approval Letter and all supporting documents (8/28/19)
- Applicant's Petition for Appeal (9/26/19)

The Commission will review each of the conditions on appeal for SUP #006-2019 and may take any of the following actions: (1) remand the special exception to the ZBOA; (2) reverse or affirm, wholly or partly, the decision of the ZBOA; and/or (3) modify the decision of the ZBOA. MCA § 76-2-227.

## II. FINDINGS OF FACT & CONCLUSIONS OF LAW

### A. SUP CONDITION #2

**The ZBOA imposed the following condition on Aug. 28, 2019:**

The Applicant obtains the necessary water rights from the Montana Department of Natural Resources and Conservation ("DNRC"). The Applicant shall be required to place meters on wells and submit quarterly reports to the Planning Department, and obtain water rights if usage exceeds the exempt well levels provided by DNRC.

**Applicant appealed SUP Condition #2 as follows:**

"There are multiple problems with this condition of approval. First, exempt wells do not obtain "water rights" but are subject to a notice of completion. Therefore, the first sentence of the condition is impossible to meet. Second, whether meters are required on wells and any associated monitoring obligations is solely within the purview of the DNRC. The Board of Adjustment does not have the authority to supplement or deviate from DNRC rules and regulations. Further, as a practical matter, the Planning Department is not equipped to monitor quarterly well usage reports and lacks the authority to intervene in the event of any deviations, which are solely for DNRC to enforce."

**Applicant request the Commission take the following action:**

"...[D]elete this condition of approval because Big Sky Cheese, LLC, is obligated to abide by DNRC's rules and regulations regardless [of] whether the facility utilizes exempt wells or obtains specific water rights."

CONCLUSION THE ZBOA HAD TO REACH TO APPROVE THE SUP:

WHETHER THE PROPOSED DEVELOPMENT WILL “MATERIALLY ENDANGER” THE PUBLIC HEALTH OR SAFETY. CCZR § 10.6(2).

CONSIDERATION:

PROTECTION OF PUBLIC, COMMUNITY, OR PRIVATE WATER SUPPLIES, INCLUDING “POSSIBLE” ADVERSE EFFECTS ON SURFACE WATER OR GROUND WATER. CCZR § 10.6(2)(d).

QUESTIONS:

WHETHER THE CONDITION IMPOSED BY THE ZBOA WAS REASONABLY NECESSARY TO PROTECT THE PUBLIC, COMMUNITY, OR PRIVATE WATER SUPPLIES, INCLUDING POSSIBLE ADVERSE EFFECTS ON SURFACE WATER OR GROUNDWATER FROM MATERIALLY ENDANGERING THE PUBLIC HEALTH AND/OR SAFETY.

**FACTS PRESENTED**

1. No public, community, or private water supplies exist on the subject property. A new public water supply is proposed to be constructed. SUP Application: Use Statement, at 6 (“R18”); SUP Application: Criteria Responses, at 3.
2. The main water source will be coming from the Madison formation. June 27, 2019 (01:20:14)<sup>1</sup>; SUP Application: Use Statement, at 6 (“R18”).
3. Private wells are located on adjacent properties to serve individual homes and agricultural operations at least a mile from the proposed facility. SUP Application: Criteria Responses, at 3.
4. A well contractor will construct a test well and provide test pumping so as to demonstrate that existing wells on adjacent properties will not experience adverse impacts. SUP Application: Criteria Responses, at 4.
5. Two exempt wells are proposed to be placed on the property. June 27, 2019 (01:08:28-01:20:13).

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<sup>1</sup> Citation refers to the June 27, 2019 ZBOA meeting audio recording with timestamp in parentheses.

6. Exempt wells need to apply for and file a Notice of Completion with the state. June 27, 2019 (03:08:30-03:08-54).

7. Well construction and protection will adhere to DEQ Circulars 1 & 3 and the Administrative Rules of Montana to protect the new public water supply and groundwater. SUP Application: Criteria Responses, at 4.

8. The proposed wells would be using thirty-five gallons per minute each, which is nearly less than 10 acres per year. June 27, 2019 (03:09:17-03:10:04).

9. Donahue stated that the law allows there to be two wells on the property that are at least 1020 feet away in order for the other well to qualify as an exempt well. June 27, 2019 (03:09:17-03:10:04).

10. The dairy operations are estimated to use 13,000 gallons per day (gpd), equating to 10 to 10.4 acre-feet/year based on a 260 workday/year. SUP Application: Criteria Responses, at 4; *Assessment of Potential Adverse Effects from Pumping Proposed Water Supply Wells* (“HydroSolutions Report”) (July 8, 2019).

11. Annual water volume is estimated to be 3.38 million gallons. See SUP Application: Criteria Responses, at 2 (as corrected).

12. The Madison formation at the subject location is estimated to be 400-500 feet below ground surface and the aquifer is estimated to be 350-500 feet in thickness. SUP Application: Criteria Responses, at 4.

13. The proposed wells are expected to be completed in the Madison Formation at approximate depths of 500 feet. HydroSolutions Report; SUP Application: Criteria Responses, at 3.

14. The proposed wells will be filed through DNRC using Form 602 – Notice of Groundwater Development for wells pumping 35 gallons/minute and 10 acre-feet/year. These

wells are exempt from DNRC permitting and must be located at least one-quarter mile apart and cannot be manifold into a common conveyance or storage system. HydroSolutions Report, at 2.

15. One exempt well is expected to pump at a rate of 25-30 gallons/minute to provide water for the processing facility. The other exempt well is expected to pump at a rate below 25 gallon/minute and utilized for domestic use. HydroSolutions Report, at 7.

16. The closest wells drilled into the Madison Formation are approximately 1.7 miles away from the proposed site. HydroSolutions Report, at 7.

17. The estimated maximum modeled drawdown is 0.37 feet with a buffer radius of one mile. HydroSolutions Report, at 7.

18. The combined appropriation of the two proposed exempt wells exceed the ten acre-feet to be considered exempt under MCA § 85-2-306(3)(A)(iii) and require a permit by DNRC. Aug. 28, 2019 (00:46:51-00:49:17)<sup>2</sup>.

19. In the event permitted wells are required, any depletions of the Missouri River at Great Falls will be offset with water service contract(s) from the U.S. Bureau of Reclamation (BOR) to replace all water pumped from the Madison. The BOR mitigation water would be released from Canyon Ferry Reservoir storage into the Missouri River. HydroSolutions Report, at 7.

20. Comparables: (1) The malting plant uses a portion of the fish hatchery water right and is considered non consumptive, because the water is piped back into the system and then released to the city treatment plant. (2) DNRC advised that the Giant Springs source has a similar arrangement with a fish hatchery using a portion of its water right with approval for a maximum draw of 300 gallon per minute or 432,000 gallons per day. Aug. 28, 2019 (00:06:59-00:16:15).

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<sup>2</sup> Citation refers to the August 28, 2019 ZBOA meeting audio recording with timestamp in parentheses.

21. The ZBOA pointed out that water usage was one of four areas of concern that the public had expressed in their public comments concerning the effect of the water usage for a dairy processing plant and the effects on the Madison Formation aquifer and existing wells. Aug. 28, 2019 (00:06:59-00:16:16).

22. The ZBOA determined placing water meters on exempt wells was necessary to prevent shifting the burden to other private individuals to monitor their existing wells. Aug. 28, 2019 (00:32:43- 00:35:56; 00:46:51-00:49:18).

23. The ZBOA determined quarterly reports were reasonable and necessary to monitor water usage and account for seasonal fluctuations to ensure there was no adverse effect on nearby wells. Aug. 28, 2019 (00:54:08-01:03:51).

24. The ZBOA determined quarterly reports were reasonable and necessary to ensure the proposed develop does not use more water than what exempt wells would allow for without obtaining a DNRC permit. Aug. 28, 2019 (01:02:53-01:03:50).

25. The ZBOA determined quarterly reports should be submitted to the Planning Department for the purpose of (1) public review and (2) tracking baseline data and changes overtime. Aug. 28, 2019 (00:57:02-00:58:14; 01:03:26-01:03:50).

### **FINDINGS AND CONCLUSIONS**

1. Based upon the foregoing facts contained in the record, there may be possible adverse effects on nearby water sources based on the estimated water draw from the Madison Formation aquifer caused by the proposed development justifying imposition of reasonably necessary condition(s) to mitigate the risk.

2. The proposed developer indicated that the two exempt wells are intended to be utilized to their maximum usage allowed under the law to meet the requirements of an exempt

well. Based on the proposed developer's calculation, that usage may exceed 10 acre-feet/year to 10.4 based on a 260 workday/year.

3. The Montana legislature has charged the DNRC with "coordinat[ing] the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its waters." MCA § 85-1-101(3).

4. The Montana Legislature has stated that "[i]t is necessary to coordinate local, state, and federal water resource development and utilization plans and project through a single agency of state government, the department of natural resources and conservation." MCA § 85-1-101(7).

5. The Legislature adopted the Montana Water Use Act which requires any person who wishes to appropriate water after July 1, 1973 to apply for and receive a permit from the DNRC, unless DNRC deems an exception is applicable. MCA § 85-2-301, et seq.

6. The DNRC possess the appropriate expertise concerning development and use of water resources under the state's jurisdiction. See MCA § 85-2-301, et seq.

7. DNRC will determine if, when, and how water usage for the proposed development will be monitored and tracked making quarterly reporting to the Planning Department unnecessary.

8. Reporting to the Planning Department is also unnecessary to ensure the public has access to water monitoring reports as any water monitoring and reporting required by DNRC will be available through DNRC for the public's review upon request.

#### **ACTION TAKEN**

The Cascade County Commission after consideration of the entire record for SUP #006-2019 concerning only Condition #2, **AFFIRM** in part the ZBOA correctly determined that a mitigating condition is reasonably necessary to prevent possible adverse effects on groundwater and existing water wells; but **MODIFY** in part Condition #2, as it is unreasonable as written, as follows:

**The Applicant shall comply with and obtain all necessary approvals from the Montana Department of Natural Resources and Conservation concerning the development and use of the water resources to be utilized by the proposed development.**

**B. SUP CONDITION #3**

**The ZBOA imposed the following condition on Aug. 28, 2019:**

The Applicant obtains approval from the City-County Health Department and Montana Department of Environmental Quality (“MDEQ”) for a new public water supply/wastewater system. The Board requests the DEQ consider requirements for the wastewater ponds to be lined. The Board requires the applicant to provide quarterly reports on the wastewater monitoring wells to the Planning Department.

**Applicant appealed SUP Condition #3 as follows:**

“Big Sky Cheese, LLC, appreciates and understand the need to obtain all required public water supply and wastewater treatment permits from the City-County Health Department and MDEQ and will abide by all such permit requirements. Our concern is with the final sentence. Wastewater monitoring wells are not typically required by MDEQ and the Board of Adjustment lacks all authority to require such wells, any associated monitoring, and any resulting reporting requirements. This condition does not explicitly require the installation of monitoring wells, but implicitly does via the requirement for reporting. It lacks the specificity necessary to know how to satisfy the condition even if the Board had the authority to supplement or deviate from MDEQ’s authority, rules and regulations.”

**Applicant request the Commission take the following action:**

“...[D]elete this condition of approval.”

CONCLUSION:

WHETHER THE PROPOSED DEVELOPMENT WILL NOT MATERIALLY ENDANGER THE PUBLIC HEALTH OR SAFETY. CCZR § 10.6(2).

CONSIDERATION:

PROTECTION OF PUBLIC, COMMUNITY, OR PRIVATE WATER SUPPLIES, INCLUDING POSSIBLE ADVERSE EFFECTS ON SURFACE WATER OR GROUNDWATER. CCZR § 10.6(2)(d).

QUESTIONS:

WHETHER THE CONDITION IMPOSED BY THE ZBOA WAS REASONABLY NECESSARY TO PROTECT THE PUBLIC, COMMUNITY, OR PRIVATE WATER SUPPLIES, INCLUDING POSSIBLE ADVERSE EFFECTS ON SURFACE WATER OR

**GROUNDWATER, FROM MATERIALLY ENDANGERING THE PUBLIC HEALTH AND/OR SAFETY.**

**FACTS PRESENTED**

1. Montana Department of Environmental Quality (“MDEQ”) will provide review, approval and permitting for wells, process water treatment and storm drainage facilities associated with the proposed development. SUP Application: Use Statement, at 2 (“R6”).
2. Water and wastewater systems for the proposed development will be reviewed and approved by MDEQ. SUP Application: Criteria Responses, at 2.
3. Wastewater treatment will be completed onsite using MDEQ-approved wastewater treatment system(s). SUP Application: Criteria Responses, at 2.
4. The proposed development will have a septic system. June 26, 2019 (01:25:17-01:33:13).
5. A septic permit from the Cascade City-County Health Department will be required. See SUP Application: Use Statement, at 2 (“R6”).
6. Commonly practiced treatment technologies will be used for managing both domestic and process waste streams, and beneficial reuse of treated effluent will be performed in a manner that is compliant with MDEQ and local government regulations. SUP Application: Criteria Responses, at 2.
7. The proposed project will use Dissolved Air Floatation Technology and irrigation ponds. June 27, 2019 (01:25:17-01:33:13).
8. There will be no surface water discharge because it will be used for irrigation. June 27, 2019 (01:25:17-01:33:13).
9. The volume of process wastewater generated by the proposed development is approximately 13,000 gallons per day over the course of 260 days per year for a total of

approximately 3,380,000 gallons of process wastewater per year. See SUP Application: Criteria Responses, at 2; Applicant's Supp. Material (July 11, 2019), at 1.

10. The process wastewater will be pretreated using nutrient reduction and removal technologies seasonally stored in treatment holding cells, and followed by beneficial reuse in the form of land application of treated effluent on approximately 10-15 acres of cropland onsite or on adjacent farmland. SUP Application: Criteria Responses, at 2.

11. The proposed development may use acidification to treat process wastewater before seasonal storage and beneficial reuse application. SUP Application: Criteria Responses, at 2.

12. The domestic wastewater generation is expected to be the equivalent to a single residence, or less than 300 gallons per day. SUP Application: Criteria Responses, at 2.

13. Domestic wastewater will be treated and disposed of by using a septic tank and drainfield in compliance with MDEQ and local standards and regulations. SUP Application: Criteria Responses, at 2.

14. The Applicant's representative from HR Green, Inc. stated that they are looking into pond sizing for the project, as well as treatment during the winter. June 27, 2019 (01:25:17-01:33:13).

15. Applicant states wastewater treatment and/or storage pond design will include adequate liners and/or best management practices to avoid leaks and spills. SUP Application: Criteria Response, at 4.

16. Applicant states that all setback requirement of MDEQ will be maintained between water supply wells and potential hazards to limit contamination risk. SUP Application: Criteria Response, at 4.

17. The Applicant stated that everything will be in line with the regulations and laws for wastewater, in order to protect the ground. June 27, 2019 (01:25:17-01:33:13).

18. A standard requirement from MDEQ for a lagoon system where our wastewater will be stored will be for groundwater monitoring wells, which allows us to track if the liner is leaking or how that lagoon is performing. Aug. 28, 2019 (01:02:04-01:02:36).

19. The ZBOA discussed whether quarterly reports by the ZBOA was even necessary. Aug. 28, 2019 (01:04:55-01:05:09).

20. There was speculation on the requirement for reporting to MDEQ of whether it was conducted quarterly or monthly. Aug. 28, 2019 (01:02:04-01:02:36).

### **FINDINGS AND CONCLUSIONS**

1. The Petitioner only challenges Condition #3 requiring quarterly wastewater monitoring report to be provided to the Planning Department. Therefore, the Commission review of Condition #3 will be limited on review to only the last sentence.

2. The Planning Department lacks expertise to monitor wastewater treatment systems.

3. Instead, the City-County Health Department regulates wastewater pursuant to the Cascade County Regulations for Subsurface Wastewater Treatment Systems (“CCRSWTS”) to protect public health and the environment, and to prevent the occurrences of public health nuisances. CCRSWTS § 1.

4. The City-County Health Department adopted minimum standards for the construction, alteration, or extension of subsurface wastewater treatment systems within Cascade County. CCRSWTS § 1.

5. Construction of onsite wastewater treatment systems must conform to the Administrative Rules of Montana, Title 17, chapter 36, subchapter 9 and Circular DEQ 4. CCRSWTS § 1.

6. Montana Department of Environmental Quality has the proper authority to promulgate rules governing the installation and monitoring of wastewater treatment systems. MCA §§ 75-5-211 and 75-5-602; see ARM Title 17, chapter 38.

7. It is under the authority of MDEQ to determine whether the wastewater treatment system for the proposed development is sufficient, if monitoring is necessary, and if necessary, the frequency required for such reporting. MCA § 75-5-402.

8. In the event, quarterly reports are required, those reports will be submitted to MDEQ. See MCA § 75-5-602 (“Power to require monitoring”).

9. Therefore, the requirement to submit quarterly wastewater treatment system reports to the Planning Department is unnecessary as any reporting requirement will be determined by MDEQ and any such reports will be submitted to MDEQ for monitoring and review purposes.

#### **ACTION TAKEN**

The Cascade County Commission after consideration of the entire record for SUP #006-2019 concerning only Condition #3 **AFFIRM** in part that a mitigating condition is reasonably necessary to protect the public, community, and/or private water supplies, including possible adverse effects on surface water and/or groundwater from materially endangering the public’s health and safety; but **MODIFY** in part Condition #3, as it is unreasonable as written, to read as follows:

**The Applicant obtains approval from the City-County Health Department (“CCHD”) and Montana Department of Environmental Quality (“MDEQ”) for a new public water supply/wastewater system. The Board requests the MDEQ consider requirements for the wastewater ponds to be lined. In the event, MDEQ requires periodic monitoring reports of either the public water supply or wastewater system, the Applicant is required to provide a copy of any such report(s) to the CCHD Environmental Health Division within 10 days of submitting to MDEQ.**

C. SUP CONDITION #7

The ZBOA imposed the following condition on Aug. 28, 2019:

Operation hours shall be limited to 7:00 AM to 7:00 PM.

**Applicant appealed SUP Condition #7 as follows:**

“Because of the nature of the proposed facility as a cheese processing plant, some activities such as routine maintenance, cleaning and disinfection of equipment, wastewater treatment plant operations and similar tasks will be occurring at the facility as much as 24 hours a day. Therefore, it is impossible to both operate the facility and abide by this condition of approval. There are no findings of fact or conclusions of law adopted by the Board of Adjustments which would support the imposition of this condition. The facility is located more than a mile from any other existing structures and the site was chosen specifically because of the extremely low density of housing and other land uses in the area. Therefore, the facility is in an appropriate area for the proposed use, there are no other land uses limited on hours of operation in the area, there are no findings of fact which support limiting these hours, and it would be impossible to operate the facility with such limitations.”

**Applicant request the Commission take the following action:**

“...[D]elete this condition of approval.”

OPERATIONS:

OPERATIONS IN CONNECTION WITH THE SPECIAL USE PERMIT SHALL NOT BE MORE OBJECTIONABLE TO NEARBY PROPERTIES BY REASON OF NOISE, FUMES, VIBRATIONS, OR FLASHING LIGHTS, THAN WOULD BE THE OPERATION OF ANY PERMITTED USE. CCZR § 10.7.

REVIEW:

THE BOARD MAY APPROVE A PETITION ONLY IF IT REACHES ALL OF THE REQUIRED CONCLUSIONS SET OUT IN CCZR § 10.6. CCZR § 10.7 DOES NOT PROVIDE GROUNDS FOR THE BOARD TO DENY THE SUP ALONE. THEREFORE, THE BOARD MAY IMPOSE A CONDITION IF IT FINDS IT IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE OF SECTION 10. CCZR § 10.9.

CONCLUSION:

WHETHER THE PROPOSED DEVELOPMENT WILL BE IN HARMONY WITH THE AREA IN WHICH IT IS LOCATED. CCZR § 10.6(4).

CONSIDERATIONS:

THE RELATIONSHIP OF THE PROPOSED USE AND THE CHARACTER OF DEVELOPMENT TO SURROUNDING USES AND DEVELOPMENT, INCLUDING

POSSIBLE CONFLICTS BETWEEN THEM AND HOW THESE CONFLICTS WILL BE RESOLVED. CCZR § 10.6(4)(a).

QUESTIONS:

WHETHER THE CONDITION IMPOSED BY THE ZBOA WAS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE OF SECTION 10. SPECIFICALLY, WHETHER THE PROPOSED DEVELOPMENT'S OPERATIONS WOULD BE MORE OBJECTIONABLE TO NEARBY PROPERTIES BY REASON OF NOISE, FUMES, VIBRATIONS, OR FLASHING LIGHTS, THAN WOULD BE THE OPERATION OF ANY PERMITTED USE.

IF YES, THEN WAS THE LIMIT ON OPERATING HOURS REASONABLY NECESSARY TO MITIGATE THE OPERATION'S OBJECTIONABLENESS TO NEARBY PROPERTIES BY LIMITING OPERATION HOURS FROM 7 AM TO 7 PM?

WHETHER THE CONTION IMPOSED BY THE ZBOA WAS REASONABLY NECESSARY TO MITIGATE CONFLICTS BETWEEN SURROUNDING USES AND DEVELOPMENT SO THE PROPOSED DEVELOPMENT IS IN HARMONY WITH THE AREA IN WHICH IT IS LOCATED.

**FACTS PRESENTED**

1. The proposed development is located in the Agricultural District. Staff Report, at 10.
2. The Agricultural District allows the proposed type of use, a value-added agricultural commodity processing facility, with an approved SUP. Staff Report at 10; SUP Application: Criteria Responses, at 5.
3. Nine parcels border the proposed development: Six of those parcels are owned by Madison Food Park and the remaining three parcels are owned by two different property owners. SUP Application: Exhibit B.
4. Land uses in the vicinity primarily consist of large-scale agricultural operations, including the Hill Top Colony, and associated rural residential uses. SUP Application: Criteria Responses, at 4, 5; Staff Report, at 11.

5. The dairy processing facility will be located more than one mile from any existing dwelling or agricultural buildings. SUP Application: Criteria Responses, at 4, 5; Staff Report, at 11.

6. Large portions of the property will remain in agricultural production which is consistent with and in harmony with adjacent land uses. SUP Application: Criteria Responses, at 5.

7. The proposed Cheese Processing Facility is expected to operate 260 days per year (5 days a week). Applicant's Use Statement at 2.

8. The proposed Cheese Processing Facility is expected to operate during a typical processing day from 7 am to 4 pm. Applicant's Use Statement at 2.

9. The proposed Cheese Processing Facility cleaning, disinfecting, maintenance, and repairs will be completed through the day from 4 pm to 7 pm each evening and on Saturday from 8 am to 2 pm. Applicant's Use Statement at 2.

10. The Applicant stated that the dairy processing facility will receive deliveries of fresh milk and regularly export finished cheese products; supplies used in manufacturing of the cheese will be delivered to the site; transport and delivery services will be coordinated by logistics staffing. SUP Application: Use Statement, at 3 ("R10").

11. The proposed Cheese Processing Facility anticipates exterior activities to the dairy building including transport, loading and unloading, security, maintenance, wastewater management, refrigeration, etc. SUP Application: Use Statement, at 2-3.

12. The proposed development is to be contained within a structure that will house the processing operations, which will be less disruptive than a normal agricultural operation, or other permitted principal uses in the agricultural district, such as a riding and roping arena, a Commercial dairy, or a power plant producing up to one megawatt. Staff Report at 24.

13. The proposed development is less objectionable than other possible special uses, such as a quarry, major or minor utility installations, a junk/salvage yard, or other sports and recreation/outdoor entertainment. Staff Report at 24.

14. Possible conflicts are expected to be minimal, but could include additional traffic, visual changes (additional buildings, night-time lighting), and some noise, which the Applicant intends to mitigate noise and visual impacts by using buffering features when possible. SUP Application: Use Statement, at 5 (“R15”); Criteria Responses, at 4.

15. Processing agricultural products and maintaining undeveloped land in agricultural use fits the character of the surrounding development. Staff Report, at 12.

16. No significant conflicts are anticipated. The applicant has chosen to locate in excess of one mile from existing residences creating a buffer that mitigates conflict. Staff Report, at 12.

17. Permitted land uses in the Agricultural zoning district have the potential to create similar conflicts including the potential to create some noise, night-time lighting, dust, and odor. SUP Application: Criteria Responses, at 4; SUP Application: Use Statement, at 5 (“R15”).

18. The potential conflicts can be mitigated. SUP Application: Use Statement, at 5 (“R15”).

19. The Applicant intends to mitigate these possible conflicts by: placing all bulk materials within a covered, fully enclosed structure to eliminate the potential of creating an unsightly appearance; properly surface roads and parking areas to minimize dust; conduct manufacturing operations indoors to minimize noise impacts; direct outdoor lighting downward to reduce glare. SUP Application: Use Statement, at 5 (“R15”); SUP Application: Criteria Responses, at 4.

20. The Applicant also chose to place this proposed development on the subject parcel because it provides a natural buffer zone between the proposed facility and any nearby existing residential dwelling to reduce or eliminate impacts from noise, glare, dust, and odors. SUP Application: Use Statement, at 5 (“R15”).

21. The proposed development is agriculturally based and complements existing uses of the surrounding properties. SUP Application: Criteria Responses, at 4.

### **FINDINGS & CONCLUSIONS**

1. Based on the foregoing facts in the record, the proposed development is not in harmony with surrounding uses and development due to rural residential uses in the area.

2. Potential conflicts are mitigated by the incorporation of a one-mile buffer zone between the proposed facility and existing rural residential uses.

3. The Applicant has represented that they will also resolve potential conflict with rural residential uses by placing all bulk materials within a covered, fully enclosed structure to eliminate the potential of creating an unsightly appearance; properly surface roads and parking areas to minimize dust; conduct manufacturing operations indoors to minimize noise impacts; and direct outdoor lighting downward to reduce glare.

4. The proposed development is complementary to other allowed agricultural operations nearby, particularly the Hill Top Colony to the south.

### **ACTION TAKEN**

The Cascade County Commission after consideration of the entire record for SUP #006-2019 concerning only Condition #7, **REMAND** Condition #7 back to the ZBOA to develop the record concerning (1) why an operating time limitation is necessary; and (2) what makes a limitation from 7 am to 7 p.m. reasonable.

**D. SUP CONDITION #8**

**The ZBOA imposed the following condition on Aug. 28, 2019:**

All cheese manufacturing process activities must occur inside a fully enclosed building and not be visible to the general public, with air from the internal cheese manufacturing process being treated or filtered to address odor concerns. The applicant is to design and adopt odor control measures.

**Applicant appealed SUP Condition #8 as follows:**

“Our concern with this condition of approval is that it is too vague to allow our client to know how to comply or to allow the Planning Department to know when the condition has been met. Generally speaking, all manufacturing process activities will be occurring inside the facility and exhaust ducts will utilize filters to reduce or eliminate odors. However, the condition is worded in such a way in which it could be interpreted as preventing deliveries of milk or other supplies used in the manufacturing process because they occur outside the building. Plus, there are no specifications to determine what “odor control measures” are acceptable. Certainly, Big Sky Cheese, LLC intends to conduct its manufacturing inside and ensure there are no unreasonable levels of odors. However, the facility is located in an area with significant agricultural operations which generate a host of odors, none of which are subject to requirements to be conducted indoors and with odor control measures.”

**Applicant request the Commission take the following action:**

“...[D]elete this condition of approval.”

OPERATIONS:

OPERATIONS IN CONNECTION WITH THE SPECIAL USE PERMIT SHALL NOT BE MORE OBJECTIONABLE TO NEARBY PROPERTIES BY REASON OF NOISE, FUMES, VIBRATIONS, OR FLASHING LIGHTS, THAN WOULD BE THE OPERATION OF ANY PERMITTED USE. CCZR § 10.7.

REVIEW:

THE BOARD MAY APPROVE A PETITION ONLY IF IT REACHES ALL OF THE REQUIRED CONCLUSIONS SET OUT IN CCZR § 10.6. CCZR § 10.7 DOES NOT PROVIDE GROUNDS FOR THE BOARD TO DENY THE SUP ALONE. THEREFORE, THE BOARD MAY IMPOSE A CONDITION IF IT FINDS IT IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE OF SECTION 10.

CONCLUSION:

WHETHER THE PROPOSED DEVELOPMENT WILL NOT SUBSTANTIALLY INJURE THE VALUE OF ADJOINING PROPERTY, OR IS A PUBLIC NECESSITY. CCZR § 10.6(3).

CONSIDERATION:

THE RELATIONSHIP OF THE PROPOSED USE AND THE CHARACTER OF DEVELOPMENT TO SURROUNDING USES AND DEVELOPMENT, INCLUDING POSSIBLE CONFLICTS BETWEEN THEM AND HOW THESE CONFLICTS WILL BE RESOLVED. CCZR § 10.6(3)(a).

QUESTIONS:

WHETHER THE CONDITION IMPOSED BY THE ZBOA WAS REASONABLY NECESSARY TO THE RELATIONSHIP OF THE PROPOSED USE AND THE CHARACTER OF DEVELOPMENT TO SURROUNDING USES AND DEVELOPMENT, INCLUDING POSSIBLE CONFLICTS BETWEEN THEM AND HOW THESE CONFLICTS WILL BE RESOLVED FROM SUBSTANTIALLY INJURING THE VALUE OF ADJOINING PROPERTY, OR IS A PUBLIC NECESSITY.

**FACTS PRESENTED**

1. Applicant states that everything will be inside of a building and there will be filtered exhaust. June 27, 2019 (01:25:17-01:33:13).
2. The entire cheese manufacturing process will occur inside a fully enclosed building and will not be visible to the general public. SUP Application: Use Statement, at 5.
3. Agricultural operations tend to generate dust and odors associated with tilling, planting, harvesting, and the use of chemicals. SUP Application: Criteria Responses, at 4.
4. Commercial dairies generate their own impact from odors. SUP Application: Criteria Responses, at 4.
5. The proposed facility has the potential to create odors. SUP Application: Use Statement, at 5 (“R15”).
6. The proposed development will have similar impacts to those land uses already permitted in the Agricultural district and can be mitigated using readily available measures. SUP Application: Criteria Responses, at 4.
7. No buildings or operations will be located within one mile of existing residences, which will create a buffer zone that will reduce or eliminate odors. SUP Application: Criteria Responses, at 5; SUP Application: Use Statement, at 5 (“R15”).

8. Large portions of the subject property will remain in agricultural production. SUP Application: Criteria Responses, at 5.

9. The Applicant stated that the wastewater treatment will be a totally chemical process and will prevent biological processes from becoming septic and the acidification process also assist in reducing odor due to the low pH, which prevent bacterial development. Aug. 28, 2019 (01:06:30-01:06:49).

10. The Applicant stated that odor is not anticipated in a D.A.F.T. (Dissolved Air Flootation Technology) building and in the past they have put carbon filters on the HVAC exhaust to help with odor. Aug. 28, 2019 (01:06:30-01:06:49).

11. The ZBOA proposes that the applicant design and adopt odor controls to reduce air quality emissions. Aug. 28, 2019 (01:06:30-01:06:49).

12. The ZBOA states that odor was a concern mentioned by numerous public comments. Aug. 28, 2019 (01:07:26-01:08:07).

### **FINDINGS & CONCLUSIONS**

1. Based on the foregoing facts in the record, the proposed development is in potential conflict with the other rural residential uses in the area because of the emission of odor from the facility.

2. The proposed development is complementary to other allowed agricultural operations nearby, particularly the Hill Top Colony to the south.

3. The Applicant has demonstrated that potential conflicts with surrounding land uses and development will be resolved by keeping manufacturing processes located inside and proposes that they will incorporate installing a filtered exhaust system in the proposed facility.

4. The Applicant did not represent that odor emissions would not occur or be reduced without a filtered exhaust system.

5. The Applicant's one-mile buffer zone to mitigate the odor is based on dispersal of the odor into the air, but does not aid in reducing or eliminating the odor emitted from the facility.

#### **ACTION TAKEN**

The Cascade County Commission after consideration of the entire record for SUP #006-2019 concerning only Condition #8, **AFFIRM** in part the ZBOA's decision that a mitigating condition is reasonably necessary to harmonize the proposed development with that of surrounding land uses and development and to resolve potential conflicts concerning odor; but **MODIFY** in part Condition #8 as it was unreasonable as written. Therefore, we modify Condition #8 to read:

**The Applicant shall install a filtered exhaust system inside the cheese processing facility for the purpose of reducing odors released into the outside air. Additionally, any outdoor activities must be compliant with activities allowed in the Agricultural District without the issuance of a special use permit.**

#### **E. SUP CONDITION #12**

**The ZBOA imposed the following condition on Aug. 28, 2019:**

The Applicant is to execute or obtain and record a road easement from US Highway 89 to the parcel the Cheese Processing Plant is located on.

**Applicant appealed SUP Condition #12 as follows:**

"We have two primary concerns with this condition. First, there are no findings of fact and conclusions of law adopted by the Board of Adjustment to explain the basis for requiring an easement – i.e., no finding that there is some intervening private land that might prevent access to the cheese processing facility. Thus, we are unable to determine what concern this condition is attempting to address. Second, we anticipate all the land will be owned by Madison Food Park, LLC. Under Montana law, a landowner cannot grant an easement to itself. Thus, upon recording of such an easement, the easement automatically terminates by operation of law and we would never be able to comply with this condition."

**Applicant request the Commission take the following action:**

"...[D]elete this condition of approval."

CONCLUSION:

WHETHER THE PROPOSED DEVELOPMENT WILL NOT MATERIALLY ENDANGER THE PUBLIC HEALTH OR SAFETY. CCZR § 10.6(2).

CONSIDERATION:

TRAFFIC CONDITIONS IN THE VICINITY, INCLUDING THE EFFECT OF ADDITIONAL TRAFFIC ON THE STREETS AND STREET INTERSECTIONS, AND SIGHT LINES AT STREET INTERSECTION AND APPROACHES. CCZR § 10.6(2)(a).

QUESTIONS:

WHETHER THE CONDITION IMPOSED BY THE ZBOA WAS REASONABLY NECESSARY TO TRAFFIC CONDITIONS IN THE VICINITY, INCLUDING THE EFFECT OF ADDITIONAL TRAFFIC ON THE STREETS AND STREET INTERSECTIONS, AND SIGHT LINES AT STREET INTERSECTION AND APPROACHES FROM MATERIALLY ENDANGERING THE PUBLIC HEALTH AND/OR SAFETY.

**FACTS PRESENTED**

1. The proposed development is located on parcel # 0005348300 approximately 5-8 miles east/southeast to the City of Great Falls city limits. Staff Report, at 3-4.
2. The subject property is landlocked. SUP Application, Exhibit B (Property Ownership & Land Use Map Dairy/Cheese Plant).
3. Parcel #0005348300 (Assessment Code 53483) is directly south of Parcel #0005339300 (Assessment Code 53393), which is adjacent to US Highway 89 and owned by Madison Food Park, LLC. SUP Application: Use Statement Form, at pg. 1 (“R2”); SUP Application: Exhibit B.
4. “Legal, public access will be provided to the property from US Highway 89. Access to the dairy processing facility will be via an ingress/egress route to and from US Highway 89 on the MFP [Madison Food Park] property. SUP Application Use Statement Form, at 1 (“R2”).

**FINDINGS & CONCLUSIONS**

1. Based upon the foregoing facts contained in the record, the proposed development will not materially endanger public health and safety to support additional mitigating conditions, not already addressed by Condition #1, which is not being appealed.

2. No other findings of facts or conclusion were determined by the ZBOA to support a finding that obtaining and recording a road easement is necessary for legal, public access to and from the proposed development.

3. Obtaining and recording a road easement from US Highway 89 is unnecessary as the proposed development intends to utilize a property presently owned by the developer to the north to provide access to US Highway 89.

4. It is impossible to grant an easement to one's self as a matter of law. MCA § 70-17-105 ("A servitude [easement] thereon cannot be held by the owner of the servient tenement [burdened property]."); see MCA § 70-17-111(a) ("...[A] servitude is extinguished by the vesting of the right to the servitude and the right to the servient tenement in the same person.").

#### **ACTION TAKEN**

The Cascade County Commission after consideration of the entire record for SUP #006-2019 concerning only Condition #12, **REVERSE** the ZBOA's decision to impose Condition #12 on the grounds that an easement is unnecessary to obtain legal access to the proposed development and is unreasonable since it is impossible for Applicant to satisfy.

#### **F. SUP CONDITION #14**

**The ZBOA imposed the following condition on Aug. 28, 2019:**

Livestock and dairy cows are prohibited on site.

**Applicant appealed SUP Condition #14 as follows:**

"There are no findings of fact and conclusions of law adopted by the Board of Adjustment to explain the basis for prohibiting livestock and dairy cows on the Madison Food Park site. The project is located in the Agricultural zoning district that expressly permits livestock and agricultural production as a permitted use. There is no basis explained in the record of the proceedings to justify eliminating a permitted use under the zoning regulations. Further, the project is surrounded by agricultural land uses including crop production and livestock grazing. While Big Sky Cheese and Madison Food Park do not have plans for livestock use on the property, the property contains thousands of acres and some leasing for grazing could be a useful option."

**Applicant request the Commission take the following action:**

“...[D]elete this condition of approval.”

CONCLUSION:

WHETHER THE PROPOSED DEVELOPMENT WILL NOT SUBSTANTIALLY INJURE THE VALUE OF ADJOINING PROPERTY, OR IS A PUBLIC NECESSITY. CCZR § 10.6(3).

CONSIDERATION:

THE RELATIONSHIP OF THE PROPOSED USE AND THE CHARACTER OF DEVELOPMENT TO SURROUNDING USES AND DEVELOPMENT, INCLUDING POSSIBLE CONFLICTS BETWEEN THEM AND HOW THESE CONFLICTS WILL BE RESOLVED. CCZR § 10.6(3)(a).

QUESTIONS:

WHETHER THE CONDITION IMPOSED BY THE ZBOA WAS REASONABLY NECESSARY TO THE RELATIONSHIP OF THE PROPOSED USE AND THE CHARACTER OF DEVELOPMENT TO SURROUNDING USES AND DEVELOPMENT, INCLUDING POSSIBLE CONFLICTS BETWEEN THEM AND HOW THESE CONFLICTS WILL BE RESOLVED FROM SUBSTANTIALLY INJURING THE VALUE OF ADJOINING PROPERTY, OR IS A PUBLIC NECESSITY.

**FACTS PRESENTED**

1. The proposed development is located on Parcel 005348300 which consists of approximately 220.55 acres. Cascade County Location/Conformance Permit Application #070-2019.
2. Madison Food Park, LLC owns contiguous property including the Parcel #005348300, which totals approximately 3,018 acres currently operated as farmland. SUP Application: Project Overview & Abstract; Cascade County Location/Conformance Permit Application #070-2019.
3. The proposed use will rely upon fresh milk which is provided by area producers' livestock and will be delivered to the site via milk delivery trucks; however, no livestock or dairy cows will exist onsite. SUP Application Use Statement Form, at pg. 5 (“R16”).
4. Public comments contained concerns regarding the odor produced by the dairy processing facility. June 27, 2019.

5. ZBOA states that prohibiting livestock and dairy cows on the applicant's property would help to mitigate odor concerns expressed by written public comments. Aug. 28, 2019 (00:32:43-00:35:56; 01:07:26-01:08:07).

6. The property is currently utilized for both livestock grazing and dryland farming consistent with the continuance of agriculture in the County in furtherance of Goal 2 of the Cascade County Growth Policy (protect and maintain Cascade County's rural character and the community's historic relationship with natural resource development). Staff Report, at 17-18; SUP Application: Criteria Response, at 8.

7. The developed parcel will house the proposed structures, wastewater treatment and storage system components, and farmland for the beneficial reuse of treated effluent. Staff Report, at 18; SUP Application: Criteria Responses, at 8 ("C").

8. Maintaining land as rangeland and farmland on the site preserves open space and adds to a more aesthetic design and development. Staff Report, at 19.

### **FINDINGS & CONCLUSIONS**

1. Based upon the foregoing facts contained in the record, the ZBOA determined that having livestock and dairy cows on site would cause odor.

2. The applicant represented that "no livestock or dairy cows will exist onsite" which makes a mitigating condition unnecessary.

3. The Applicant's representation that livestock and dairy cows would not be onsite only apply to Parcel #0005348300 for which the proposed development's SUP Application pertains.

4. The Applicant represented this in regard to the proposed facility's operations, particularly that dairy cows will not be milked on site, but instead trucks will deliver the milk.

5. This self-imposed restriction should not be construed to unreasonably prohibit all livestock and/or dairy cows from being on the premises which do not concern the operations of the facility and are not under control and possession of the Applicant. For example, this operational restriction would not apply to a customer who brings trailered livestock and/or dairy cows onto the premises while they are conducting business with the Applicant.

6. Surrounding uses and development include the Hill Top Colony and other rural residential uses, which are allowed to have livestock which have the potential to emit similar odors caused by having livestock and/or dairy cows on the subject parcel.

7. Agricultural uses of land is a permitted principal use of the land pursuant to CCZR § 7.2.2(1).

#### **ACTION TAKEN**

The Cascade County Commission after consideration of the entire record for SUP #006-2019 concerning only Condition #14, **REVERSE** Condition #14 on the grounds that it is an unreasonable condition to impose when having livestock and dairy cows on property located in the Agricultural District is an allowed use of the land.

#### **G. SUP CONDITION #15**

**The ZBOA imposed the following condition on Aug. 28, 2019:**

Design Standards regarding width, pavement and subsurface for access road to accommodate emergency vehicles and provide for dust control shall be implemented.

**Applicant appealed SUP Condition #15 as follows:**

“Our concern with this condition is the requirement for paving the road. There are no findings of fact and conclusions of law adopted by the Board of Adjustment to explain the basis for requiring paving, particularly where many of the roads in the area are constructed to a gravel standard. The zoning regulations do not require roads to be paved as a condition of approval for a special use permit. Madison Food Park does expect the road to eventually be paved. However, there are several methods of dust control which can be implemented in the interim which would significantly reduce or eliminate the potential for any significant dust arising from use of a gravel surface.”

**Applicant request the Commission take the following action:**

“...[T]he Commissioners revise this condition of approval to remove the paving requirement and, instead, require dust control measures.”

CONCLUSION:

WHETHER THE PROPOSED DEVELOPMENT WILL NOT MATERIALLY ENDANGER THE PUBLIC HEALTH OR SAFETY. CCZR § 10.6(2).

CONSIDERATION:

TRAFFIC CONDITIONS IN THE VICINITY, INCLUDING THE EFFECT OF ADDITIONAL TRAFFIC ON STREETS AND STREET INTERSECTIONS, AND SIGHT LINES AT STREET INTERSECTION AND APPROACHES.

PROVISION OF SERVICES AND UTILITIES, INCLUDING SEWER, WATER, ELECTRICAL, TELECOMMUNICATIONS, GARBAGE COLLECTIONS, AND FIRE PROTECTION.

QUESTIONS:

WHETHER THE CONDITION IMPOSED BY THE ZBOA WAS REASONABLY NECESSARY (1) TO THE TRAFFIC CONDITIONS IN THE VICINITY, INCLUDING THE EFFECT OF ADDITIONAL TRAFFIC ON STREETS AND STREET INTERSECTIONS, AND (2) TO THE PROVISION OF SERVICES AND UTILITIES, INCLUDING SEWER, WATER, ELECTRICAL, TELECOMMUNICATIONS, GARBAGE COLLECTIONS, AND FIRE PROTECTION FROM MATERIALLY ENDANGERING THE PUBLIC HEALTH AND/OR SAFETY.

**FACTS PRESENTED**

1. ZBOA states that there have been public concerns about onsite roads being insufficient to accommodate emergency vehicles like fire trucks. Aug. 28, 2019 (00:32:43-00:35:56; 01:08:50-01:09:23).
2. ZBOA stated that there were public concerns with air quality, specifically that paving could reduce dust. Aug. 28, 2019 (00:32:43-00:35:56; 01:08:50-01:09:23).
3. Agricultural operations, by their nature, tend to generate dust and odors associated with tilling, planting, harvesting, and the use of chemicals. SUP Application: Criteria Responses, at 4.

4. The proposed development impacts will be similar to those land uses already permitted by the zoning district and can be mitigated using readily available measures. SUP Application: Criteria Responses, at 4.

5. The Applicant indicated that “[p]roper surfacing of roads and parking areas will minimize dust.” SUP Application: Use Statement, at 5 (“R15”).

6. It is estimated at the proposed development will have between 47-67 vehicular trips per day: 7 delivery trucks per day; 5-10 employee vehicle trips per day; and about 35-50 retail customer trips per day. SUP Application: Use Statement, at 3 (“R8,” “R9,” “R10”).

7. Sand Coulee Volunteer Fire Department was notified and provided no comment. Aug. 28, 2019 (00:35:58-00:36:22).

8. ZBOA recommended the onsite access road meets design standard to accommodate emergency vehicles and to provide for dust control. Aug. 28, 2019 (01:08:50-01:09:23).

### **FINDINGS & CONCLUSIONS**

1. Based upon the foregoing facts contained in the record, the condition unreasonably requires the Applicant to pave a road for emergency access and dust control.

2. The County has street and road design standards for subdivisions per the Cascade County Subdivision Regulation § 10-4, which does not require paving as the only road surfacing option.

3. The record is void of any responses from emergency services indicating there are any issues with emergency services ability to utilize the proposed access road.

4. There is insufficient evidence in the record to support that the amount of dust created by vehicular traffic on the road to the proposed development will endanger the public’s health or safety.

## ACTION TAKEN

The Cascade County Commission after consideration of the entire record for SUP #006-2019 concerning only Condition #15, **REVERSE** Condition #15 as not reasonably necessary to ensure an adequate provision of emergency services or that dust control measures are reasonably necessary to prevent materially endangering the public's health and safety.

### H. SUP CONDITION #16

**The ZBOA imposed the following condition on Aug. 28, 2019:**

Applicant shall provide emergency secondary access.

**Applicant appealed SUP Condition #16 as follows:**

"There are no findings of fact and conclusions of law adopted by the Board of Adjustment to explain the basis for requiring a secondary access. Further, there are no specifications in the condition of approval to allow our client to know how to meet the condition, or to allow the Planning Department to know whether the condition has been met. The Planning Department requested comments from the Fire Department and the Department declined to provide any. We presume this condition is rooted in the County's Subdivision Regulations, but no such requirement exists in the County's Zoning Regulations. Having not been requested by the local volunteer Fire Department and having no findings of fact and conclusions of law supporting the imposition of the condition..."

**Applicant request the Commission take the following action:**

"...[D]elete this condition of approval."

### CONCLUSION:

WHETHER THE PROPOSED DEVELOPMENT WILL NOT MATERIALLY ENDANGER THE PUBLIC HEALTH OR SAFETY. CCZR § 10.6(2).

### CONSIDERATION:

PROVISION OF SERVICES AND UTILITIES, INCLUDING SEWER, WATER, ELECTRICAL, TELECOMMUNICATIONS, GARBAGE COLLECTIONS, AND FIRE PROTECTION. CCZR § 10.6(2)(b).

### QUESTIONS:

WHETHER THE CONDITION IMPOSED BY THE ZBOA WAS REASONABLY NECESSARY TO THE PROVISION OF SERVICES AND UTILITIES, INCLUDING SEWER, WATER, ELECTRICAL, TELECOMMUNICATIONS, GARBAGE COLLECTIONS, AND

**FIRE PROTECTION FROM MATERIALLY ENDANGERING THE PUBLIC HEALTH AND/OR SAFETY.**

**FACTS PRESENTED**

1. ZBOA states the applicant needs to add a second point of access as a way out in the case of an emergency. (ZBOA Meeting Minutes, Michele Levine, 8/28/2019 01:09:35-01:09:50)
2. ZBOA states that a second driveway hasn't been a concern brought to the ZBOA's attention. Aug. 28, 2019 (01:09:51-01:10:02).
3. Sand Coulee Volunteer Fire Department was notified and provided no comment. Aug. 28, 2019 (00:35:58-00:36:22).

**FINDINGS & CONCLUSIONS**

1. Based upon the foregoing facts contained in the record, there are no facts or finding presented to reasonably impose that the Applicant obtain secondary access to the proposed development.
2. No facts in the record indicate that having one primary access to and from the proposed facility is inadequate to ensure the public's safety in the event of an emergency.

**ACTION TAKEN**

The Cascade County Commission after consideration of the entire record for SUP #006-2019 concerning only Condition #16, **REVERSE** Condition #16 as not reasonably necessary to prevent materially endangering the public safety.

**I. SUP CONDITION #17**

**The ZBOA imposed the following condition on Aug. 28, 2019:**

Applicant obtains fire suppression cistern approval from the Rural Volunteer Fire Department for the fire suppression system.

**Applicant appealed SUP Condition 17 as follows:**

“Because the cheese processing plant is a commercial facility, the design and construction, including fire suppression systems, will be required to meet State of Montana Building Codes through the State’s permitting process. This condition, as worded, lacks any specificity for our client to know how to meet the condition, or to allow the Planning Department to know whether the condition has been met.”

**Applicant request the Commission take the following action:**

“...[D]elete this condition of approval, or revise it to default to State of Montana Building Code requirements.”

CONCLUSION:

WHETHER THE PROPOSED DEVELOPMENT WILL NOT MATERIALLY ENDANGER THE PUBLIC HEALTH OR SAFETY. CCZR § 10.6(2).

CONSIDERATION:

PROVISION OF SERVICES AND UTILITIES, INCLUDING SEWER, WATER, ELECTRICAL, TELECOMMUNICATIONS, GARBAGE COLLECTIONS, AND FIRE PROTECTION. CCZR § 10.6(2)(b).

QUESTIONS:

WHETHER THE CONDITION IMPOSED BY THE ZBOA WAS REASONABLY NECESSARY TO ENSURE ADEQUATE PROVISION FOR FIRE PROTECTION TO PREVENT MATERIALLY ENDANGERING THE PUBLIC HEALTH OR SAFETY.

**FACTS PRESENTED**

1. Fire protection will be provided by Sand Coulee Volunteer Fire Department. Staff Report, at 7.
2. The Sand Coulee Volunteer Fire Department did not comment on whether the applicant’s provisions for firefighting would meet their needs. Aug. 28, 2019 ( 00:32:43-00:35:56; 00:35:58-00:36:08).
3. Applicant intends to provide onsite water storage and booster pumps to provide onsite fire protection. SUP Application: Criteria Responses, at 11; Staff Report, at 7.

4. Applicant states that in addition to incorporating onsite storage and pumps to provide onsite fire prevention measures to the structures, onsite fire storage may be available to adjacent properties in the event of emergencies, if necessary, as a hydrant can be placed onsite for local fire department use, and that fire storage may be utilized by regional firefighting activities that will benefit all residents and land owners in the general vicinity of the proposed development. SUP Application: Criteria Responses, at 11 (“C”).

5. Applicant states that there will be a well for fire suppression, domestic use, and for the developmental use. June 27, 2019 (01:20:14-01:25:16).

6. ZBOA states that in subdivisions it is common that applicants obtain approval from the applicable fire district to make sure that they are providing adequate water supply for fire protection and other fire concerns. Aug. 28, 2019 (01:11:10-01:11:50).

7. The ZBOA stated that there was public concern regarding the proposed development having adequate fire protection. Aug. 28, 2019 (01:11:51-01:12:07).

8. There was public concern that the well capacity or capacity of onsite storage tanks would be sufficient for fire protection and if these wells and/or storage tanks would be adequate to fight structure fires associated with industrial buildings. Public Comment, MRFLU Memo #4 (dated 6/24/19).

9. The proposed development is considering fire storage systems onsite and utilizing the water supply from their wells. Aug. 28, 2019 (01:11:54-01:13:09).

10. When the ZBOA asked the Applicant whether the fire suppression cisterns were part of the proposed development design, the Applicant responded that fire protection measures of some sort were part of the design. Aug. 28, 2019 (01:13:01-01:13:07).

11. The Notice of Conditional Approval stated that the Location/Conformance Permit will “be issued once conditions 1-17 have been verified” and “the relevant documents should be

provided to the Planning Department upon acquisition of any relevant permits or licenses....”  
Notice of Conditional Approval, at 3.

### **FINDINGS & CONCLUSIONS**

1. Based upon the foregoing facts contained in the record, there are facts in the record that support that an adequate fire suppression system should be in place at the proposed development to ensure the protection of the people at the facility and surrounding area.

2. The ZBOA does not provide facts to support that a fire cistern is the only acceptable fire suppression system available to adequately provide fire protection to the proposed development, but instead the record reflects that a fire cistern is one fire suppression system that may be utilized by the proposed development.

3. The proposed development is not regulated under the Montana Subdivision and Platting Act (MCA § 76-3-504(1)(e)), but are subject to state building codes adopted by the Department of Labor and Industry, which addresses building fire protection. The ZBOA was not applying the MSPA, but was obtaining guidance as to the general practice of the County to ensure that fire protection measures are in place for the proposed development.

4. The approved condition states that approval must be given from the Rural Volunteer Fire Department for the fire suppression system and relevant documents are to be provided to the Planning Department for any relevant permits or licenses. Notice of Conditional Approval, at 2. We do find that the condition as written could be more specific as to what “approval” means as it applies to this SUP and the Sand Coulee Volunteer Fire Department and what is needed to show that the applicant has satisfied the condition.

5. The Sand Coulee Volunteer Fire Department serves the proposed development in cases of fire and it is reasonably necessary to require the Applicant to obtain a letter from the Sand

Coulee Volunteer Fire Department stating the onsite fire suppression system is adequate to protect the proposed development and surrounding area in the event a fire occurs.

6. The Sand Coulee Volunteer Fire Department letter discussed above shall be provided to the Planning Department to show that this condition has been satisfied.

**ACTION TAKEN**

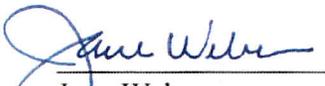
The Cascade County Commission after consideration of the entire record for SUP #006-2019 concerning only Condition #17, **AFFIRM** in part the ZBOA's decision that an adequate fire suppression system is needed to ensure the public health and safety is not materially endangered; but **MODIFY** in part Condition #17 as it is unreasonable as written as it implies only a fire cistern can be installed to provide adequate fire protection. Therefore, we modify Condition #17 as follows:

**Applicant shall install an onsite fire suppression system meeting Montana State Building Code requirements and obtain a letter from the Sand Coulee Volunteer Fire Department stating their belief that the onsite fire suppression system is adequate to ensure fire protection for the subject parcel.**

DATED this 25<sup>th</sup> day of November, 2019 by the Board of Cascade County Commissioners.

  
\_\_\_\_\_  
Joe Briggs  
Chairman

  
\_\_\_\_\_  
James L. Larson  
Commissioner

  
\_\_\_\_\_  
Jane Weber  
Commissioner

Attestd 11/25/2019

 by deputy K Baker

