

CASSIA COUNTY ZONING AND BUILDING DEPARTMENT

1459 Overland Ave., Room 210, Burley, ID 83318 Ph: 208-878-7302

Notice of Appeal Form

Cassia County File No. 2024- 12-CU/SUB

Date Filed: May 14, 2025

APPEAL FROM:

☐ Decision of Zoning Administrator

or

☒ Decision of Planning and Zoning Commission

Name of Appellant Skyler Podeseck, Dave & Brandi Perry, Aynsley & Bobbie Adams, Leroy Robinson

Address of Appellant C/O Jeffrey Brunson, Attorney for Appellants, 955 Pier View Dr, Idaho Falls, ID

Email of Appellant jeff@beardstclair.com Telephone of Appellant 208-359-5883

Description and narrative of Appellant's standing to appeal decision and the nature of the substantial rights of Appellant that are affected by the decision:

1. State the name of the applicant in the decision that you are appealing: T & H Property Holdings, LLC, Planning and Zoning Commission Resolution 2025-01
2. What is the date of that decision: 4.17.2025, Recorded 4.18.2025, Instrument No. 20250001352
3. What is your bona fide interest in real property which may be adversely affected by issuance or denial of a permit authorizing the development? Appellants all own property adjacent to or nearby to the proposed subdivision. The proposed subdivision will adversely impact Appellants' use of their real property, surface water rights, historic runoff and drainage rights, ground water rights, and historical uses. Applicant's water engineering study states clear uncertainty on effects to Land Creek with likely stream depletion from the development.
4. What standards in Cassia County Code apply to the decision: Cassia County Code, Title 8, Comprehensive Plan, Title 9, Chapter 13, and Title 10, Section 10-3-3.

5. What standards are you claiming were wrongly decided by the Zoning Administrator/Planning and Zoning Commission: Application of the Cassia County Comprehensive Plan to the proposed use outside of the Impact Area, Cassia County Code 9-13-3, in general,
as the proposed use does not meet most of the standards for conditional use approval,
Cassia County Code 10-3-3, in general, and a finding that the proposed use would not
materially and adversely impact surrounding owners' uses and historic surface water rights.
6. Why should the decision of the Zoning Administrator/Planning and Zoning Commission be overturned on this appeal. Please explain in particular and specific detail the actual harm or violation of fundamental rights you will suffer if the decision is reversed: This decision should be overturned due to the Commission's failure to (i) provide procedural due process in the hearing and public review and comment process, (ii) comply with the express standards of the Cassia County Comprehensive Plan is following in applying LLUPA in approving the proposed conditional use, and (ii) render a decision based on the record as a whole. The decision was not based on substantial evidence to issue the CUP under the Cassia County Code and materially impacts the surrounding landowners, and historical surface and ground water rights, and the material impacts on water rights resulting from the proposed use.

(Additional pages may be attached as needed.)

Dated this 13 day of May, 20 25.

SKYLER PODESEK

Digitally signed by SKYLER PODESEK
Date: 2025.05.14 11:11:52 -06'00'

Signature of Appellant

Skyler Podeseck

Printed Name of Appellant

FOR OFFICE USE ONLY:

FILING FEE PAID \$ 400.00

DATE FILING FEE PAID: 5-14-2025

STAY OF PROCEEDING ISSUES: YES ☐ NO ☐ N/A ☐

DATE SCHEDULED FOR A HEARING: _____

Recorded at Request of:
Planning & Zoning, Cassia County, Idaho

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Burley, ID 83318

Instrument # 2025001352

BURLEY, CASSIA, IDAHO

4-18-2025 09:54:11 AM No. of Pages: 17

Recorded for : PLANNING AND ZONING

JOSEPH LARSEN

Fee: 0.00

Ex-Officio Recorder Deputy

Index to: RESOLUTION

(This area for Recorder's Use Only.)

BEFORE THE CASSIA COUNTY PLANNING AND ZONING COMMISSION

RESOLUTION 2025-01

A RESOLUTION OF THE CASSIA COUNTY PLANNING AND ZONING COMMISSION.

The application of T & H Property Holdings LLC, whose address is PO Box 96, Albion Idaho 83311, through its authorized agent, Landrum & Associates, Inc., whose address is 525 F Street, Rupert, Idaho 83350 for a Conditional Use Permit/Standard Subdivision, Application Number 2024-12-CU/SUB came on for hearing before the Planning and Zoning Commission on February 20, 2025, in the Cassia County Commission Chambers, at Cassia County Courthouse, Room #206, 1459 Overland Avenue, Burley, Idaho, after extensive hearing, the Commission sought additional information from the applicant and so recessed the hearing until March 20, 2025 for taking of additional information and evidence. Throughout all of the hearing, Exhibits #1 through #29 were reviewed and accepted as part of the record in these proceedings.

The matter was heard before the Commission, which was made up of Chair Melanie Palmer, who presided, and balance of the Commission participating in this matter was made up of Commissioners Nate Francisco, Angela Hoopes, Kent Durfee, Chuck Larson, and Tom Worthington. Commissioner Tom Worthington could not attend the first part of the hearing on February 20, 2025. It was reviewed with Mr. Worthington on the record on March 20, 2025 that he had listened to the audio recording of the February 20, 2025 part of the hearing and had reviewed the application and all information filed in the matter. Members of the Commission were questioned with respect to any conflicts, it was noted for the record that there were no conflicts disclosed. Applicant was asked if there was any objection to Mr. Worthington participating in the March 20 part of the hearing. The applicant indicated on the record that it had no objection. Commissioner Nate Francisco was not able to attend the March 20, 2025 part of the hearing.

Brandon Landrum, consultant for the applicant, and Troy Mortensen, representing the applicant presented the proposal. The proposal began as a project to develop a 28-lot residential subdivision on 37.39 acres located approximately at the location of 1125 East 900 South, Albion, Idaho. This land is located in the Multiple Use zone (MU). Presenter reviewed the proposal with the Commission. Thereafter, the Commission took testimony from a number of concerned participants.

The Commission then discussed the conditional use permit information set forth in the application, as supplemented by information presented at the Hearing, and considered the testimony in opposition to the proposal which was presented. The Commission determined that they required more information to make a decision on the matter, and so continued the hearing to the Commission's next regular meeting on Thursday, March 20, 2025. In making this continuance, the Commission set out those areas that the Commission wanted additional information about from the Applicant. The Commission asked the Zoning Administrator to reduce the items for more information to writing and send to the applicant and post on the website for interested and affected parties to review. The Commission also asked the Applicant to provide the requested additional information to the Zoning Office by 12 noon on Monday, March 10, 2025, so that other interested and affected parties could review the information before the hearing was taken up on March 20th. Others were advised that they were not required to pre-submit comments before March 20th. The items for which the Commission requested additional information were:

1. With the change in the plat, the plat presented at the February 20, 2025 hearing should be provided to the following entities, allowing them opportunity to review and comment on the new proposal: Albion Highway District, Albion Fire Protection District, South Central Public Health District and Army Corps of Engineers. As a new plat, it should also be provided, for review and comment to the following: school district, fuel company, power company, water district, and any other appropriate districts listed under Cassia County Code 10-2-1 (C). The Commission would encourage you to work with these entities to have them provide an official response or comment letter, rather than informal responses, such as text messages or emails. The Commission, as mentioned at the hearing, recognizes that it may be difficult to obtain comment from the Army Corps of Engineers, but good and reasonable effort should be made. Especially with the Army Corps, the Commission is looking for their official determination that this property is not a wetland. If the plat is approved, the Commission will not sign the final plat until there is an official comment from the Army Corps.
2. Please address the issues of density, mainly as covered under section E.2-3 of the Cassia County Comprehensive Plan, which states:

E.2-3 Residential or Residential-Type Development: Residential growth should be encouraged in and near established communities where public investments

have already been made in the necessary facilities, services and utilities. Two specific objectives of this policy are:

- 1. The area should provide for residential living that is safe, convenient and attractive.*
- 2. That residential development not within areas of city impact be limited to large lots, and shall not develop at usual urban densities, unless central water and central sewer are made available.*

This policy is intended to encourage sequential residential development to facilitate county/city cooperation in planning and to help implement other policies of this plan. Residential areas are generally described as those areas adjacent to or in close proximity to cities, where existing or contemplated development is occurring.

Subdivision development is encouraged to take place within the city impact areas and rural centers where public infrastructure, services and facilities are available or where they are planned and will be provided in the near future.

The issue is whether or not the proposed subdivision is in conflict with the comprehensive plan policy of "...not develop[ing] at usual urban densities ..." and whether or not the concentration in housing proposed by the project will be out of character with the surrounding area. Please address this issue.

3. Please address the issue of sufficiency of water for the proposed subdivision and also its impact on surrounding properties. Commission members are concerned about having more specific and in-depth evidence, on water sufficiency and the impact of drawdown on neighbors. They are seeking a more formal water study and more substantial evidence upon which they can rely upon in formulating a decision. Part of the concern here is, does the water impact conflict with maintaining the character of general area. The Commission has concern about combined impact that the subdivision and its individual wells would have in the area.
4. With respect to CC&Rs, there is concern about either improper direction or lack of direction in use of surface water and irrigation well, rather than domestic well water, for irrigating the lots. The Commission would also, along with more clarity in how irrigation water will be used, like to see a plan for the infrastructure within the proposed subdivision that would facilitate use of irrigation water in the subdivision.
5. Also, the Commission seeks more information of how water run off that now crosses the property will be handled and how it is anticipated that it will impact the highway district roads and downstream neighbors. The concern is that by

rerouting the run on/run off water and not allowing for any percolation or infiltration on the parcel, that the impact will be increased and maybe even more concentrated on the downstream landowners, and the Highway's downstream road system. How will this be mitigated?

6. The Commission would ask for an intersection study of the 900 South, 1150 East, Hwy 77 intersection and how the proposed subdivision will impact that intersection. How will that impact be addressed? The Commission would like input from ITD with respect to the proposed subdivision's impact on that intersection.
7. Any other information to clarify or strengthen your proposal in light of the Cassia County Comprehensive Plan, the Cassia County Conditional Use Permit regulations of Title 9, Chapter 13, and the Subdivision regulations of Title 10.

The matter was taken up again on March 20, 2025. The Applicant presented and informed the Commission that the preliminary plat had been changed, including reduction of lots to 24, road reconfiguration and stormwater drainage reconfiguration. The matters as delineated by the Commission for further discussion were addressed. Additional comment was taken from the general public. From presentations made, the significant issues revolve around: water quantity and quality for subdivision and neighboring properties; handling of stormwater runoff and stormwater management; change to the character of the general vicinity; and road related issues.

The site for which the conditional use permit and preliminary plat approval is being sought is commonly known as approximately 1125 East 900 South, Albion, Cassia County, Idaho. A more complete legal description of the subject property is found at Exhibit #3, which is attached hereto, and hereby incorporated herein, all such property being located in Cassia County, Idaho.

Upon the whole record, as compiled by the Applicant and the Planning and Zoning Commission, including evidence, and information received at public hearings, and in written form on the record (including Exhibits #1 through #29), the Planning and Zoning Commission, having duly considered all such evidence, testimony and background information presented, now makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Upon the whole record before them including testimony, exhibits and evidence presented, all of which the Commission considered and weighed in its deliberations, and taking notice of those facts which are common knowledge or of which there is general public awareness, the Cassia County Planning and Zoning Commission finds and concludes as follows:

1. Notice of public hearing on the preliminary plat and conditional use permit was published in the official newspaper of Cassia County at least thirty (30) days prior to commencement of the public hearing on February 20, 2025, as by law provided. Applicant also provided proof of mailing of the Notice of Public Hearing to property owners of all real property located within one (1) mile

beyond the external boundaries of the land being considered for the conditional use permit; as well as posting of the property, as by regulation required. The applicant and affected parties were given full opportunity to express comments and submit evidence. Notice of the date and time for the continued hearing, that being March 20, 2025, at 300 pm or as soon thereafter as the matter could be taken up, was provided verbally at the end of the part of the hearing held on February 20, 2025

2. The Commission reviewed all of the requirements for submission of preliminary plats and after such review finds that the Preliminary Plat meets the requirements and provisions set forth in Section 10-3-3, Cassia County Code. (See Preliminary Plat Review, hereinafter set forth.)

3. Section 9-13-3 of the Cassia County Code Zoning Regulations provides that "The decision-making body shall review the particular facts and circumstances of each proposed conditional use in terms of the following standards and shall determine if adequate evidence has been presented showing that such use [meets those standards] at the proposed location". Those standards and the Commission's findings in regard to each area is as follows:

a. WILL IN FACT, CONSTITUTE A CONDITIONAL USE AS ESTABLISHED BY THE OFFICIAL SCHEDULE OF ZONING REGULATIONS FOR THE ZONE INVOLVED.

The proposed location of this use is within an area identified as the Multiple Use zone (MU). In review of Cassia County Zoning Charts, at Section 9-8-2, under "Residential" – Standard Subdivisions in the MU Zone require a conditional use permit.

The Commission finds adequate evidence showing that the proposed use will in fact constitute a conditional use as established in the official zoning regulations administered and enforced by Cassia County.

b. WILL BE HARMONIOUS WITH AND IN ACCORDANCE WITH THE GENERAL OBJECTIVES OR WITH ANY SPECIFIC OBJECTIVE OF THE COMPREHENSIVE PLAN AND/OR THE ZONING ORDINANCE.

A majority of the Commission finds that the application and evidence in support thereof is not in conflict with the Cassia County Comprehensive Plan. At Plan Section E.2-3(2), it states that the plan policy is "That residential development not within the areas of city impact be limited to large lots, and shall not develop at usual urban densities, unless central water and central sewer are made available." The Commission finds that the proposed site is not within an area of city impact, that it proposes twenty-four (24) lots of at least one (1) acre each in size, and some lots up to three (3) acres in size, and is near the City of Albion and its residential development. The Commission discussed usual urban densities as being a quarter (1/4) to a third (1/3) of an acre in size. The Commission finds that this proposal meets the County required minimum lot size of one (1) acre. The Commission finds, by vote of 4 to 1 that this development is not being developed at usual urban densities, but is being develop on lots considered to be "large" lots.

A majority of the Commission finds that this subdivision will be harmonious and in accordance with the general objectives of the county zoning ordinance in that it is located in a MU zone. Cassia County Code, Section 9-7-4 defines the purpose and regulations applicable to the MU Zone. The purpose is to "...classify land which is considered to be of remote location, less productive land, or is otherwise situated or categorized so as to require no regulation at this time except that certain uses listed hereafter, will not be permitted in said zone without first obtaining a conditional use permit." Subdivisions are listed uses requiring a conditional use permit and the testimony supports that this is less productive ground, and therefore the ordinance seeks no regulation outside of those conditions proposed in the conditional use permit. The ordinance goes on to set forth the objective of multiple use zoned property "... is to provide maximum opportunity for private property owners to make decisions for development and management of [such] areas... ."

The Commission discussed that while these homes are not dispersed over large distances, that is offset by the general location of the subdivision near the City of Albion. A majority of the Commission finds that the proposed development will maintain the character of the area, in that it will consist of residences on marginally productive, non-prime agricultural ground that already has a number of homes in the general area. Thus, the Commission, by 4 to 1 vote, deems this standard to be met.

Commissioner Hoopes does not join in the above-stated finding, rather finding that because the dispersal is not at large distances, the proposal will not maintain the character of the vicinity. As well, because this proposal is not within an area of city impact, and does not have access to existing or planned public infrastructure (i.e., public sewer and water), it fails to maintain the character.

c. WILL BE DESIGNED, CONSTRUCTED, OPERATED AND MAINTAINED TO BE REASONABLY HARMONIOUS AND APPROPRIATE IN APPEARANCE WITH THE EXISTING OR INTENDED CHARACTER OF THE GENERAL VICINITY; AND THAT SUCH USE WILL NOT CHANGE THE ESSENTIAL CHARACTER OF THE GENERAL VICINITY.

A majority of the Commission finds that evidence presented is that the homes in the subdivision will be appropriate and harmonious with the existing character of the general vicinity. The proposal is for lots with at least a minimum size of one (1) acre. The Commission also finds that this proposal provides better management of road issues and will be designed, constructed and maintained to be reasonably harmonious and appropriate in appearance with the existing character of the general vicinity as the standard requires. Also, by developing residences in a subdivision, the residences will not be taking up farm or pasture ground. Because of the control asserted by subdivision requirements, the proposal should help avoid places that become eyesores, and so would enhance appearance in the general vicinity. The Commission, by 4 to 1 vote, determines that the proposal meets this standard.

Commissioner Hoopes does not join in the above-stated finding because this proposal is not within an area of city impact, and does not have access to existing or planned public infrastructure (i.e., public sewer and water), and so it is not reasonably harmonious with the existing character of the general vicinity, in that the proposal brings in a more urban, dense development that is outside of a city impact area and that changes the essential character of the general vicinity.

d. WILL NOT BE UNREASONABLY HAZARDOUS OR DISTURBING TO EXISTING OR FUTURE NEIGHBORING USES.

The Commission heard a significant amount of evidence related to this standard. One item that was raised early on was that the subject property was in an Idaho Department of Environmental Quality designated "high nitrate priority area". The Commission determined that, although there is a March Creek High Nitrate Priority Area, it is located at the lower portion of Marsh Creek, near the Snake River, and does not cover the Albion Valley in that designation. The Applicant also provided information concerning nitrates in and around the area of the proposed subdivision in Exhibit #21, the Ground Water Assessment suggesting that nitrate levels are not a concern and that concentration of nitrates are in a decreasing trend.

Another item concerned having the potential for twenty-four (24) septic systems and the same number of domestic use wells within the 37 acre subdivision. The concern is that water quality for the subdivision and for neighboring properties might be compromised. The Commission finds that, based upon Exhibit 19A the letter from South Central Public Health District (hereinafter "SCPHD") dated March 6, 2025, that the professional opinion of Mr. Scott Arnell is "... that this proposed subdivision can meet applicable subsurface sewage disposal statutes if the well and septic envelope designations are followed and the high groundwater for lots 2-9 are addressed." That letter proposed three options to address the septic systems on these lots. The Commission finds that this potential hazard is adequately mitigated so as to not be unreasonably hazardous to existing or future neighboring uses, with a condition being imposed that the Applicant follow the SCPHD's directions in installation of septic systems on subdivision lots.

Water quantity was identified as a potential issue that is hazardous or disturbing to neighboring uses. A lot of discussion speculated that there may be drawdown from 24 additional wells being drilled in the subdivision. Jim D. Kempton, at Exhibit # 14b, provides evidence of already existing seasonal drawdown, associated with the water season, then recovery over the Winter season. In Exhibit #21, Idaho Water Engineering provided a Ground Water Assessment for the Cottonwood Acres. That assessment, conducted by an Idaho Licensed Geologist concludes that "... new domestic wells completed within each lot of the proposed subdivision (24 lots total) should provide a sufficient water supply, meeting the stated minimums for quantity and flow, and that water will likely be of sufficient water quality sufficient for domestic uses. This investigation also finds that the addition of wells for the 24 lots proposed will have an impact on local aquifer levels, but that impact will be moderated by non-consumptive water use due to infiltration from onsite wastewater

disposal and by infiltration due to surface water supplied for irrigation.” [Assessment report page 14.] The Commission also considered Applicant’s proposal to use the irrigation water rights for the property and recognize that such use will cut down on use of ground water for irrigation of lots, possibly even using less water than is being used now to irrigate the entire pasture. The Commission is concerned and seeks a condition in the restrictive covenants that residences in the subdivision must hook up to, and use surface water for primary irrigation purposes. Based upon the Ground Water Assessment report, the Commission finds that it agrees with the conclusion of that report that even though there will be impact, the evidence presented is that such impact will be moderated or mitigated so as to not be unreasonably disturbing to existing neighboring uses.

Another potential hazard that was addressed was stormwater runoff of flooding from the property and the runoff water or floodwater that courses through the property. The Commission finds that with the added retention ponds and irrigation system, the subject property runoff is adequately controlled to meet this standard. Also, as to the stormwater or flood water that runs through the property, the Commission finds that the development of the water way through the middle of the property will control what is now a chaotic flow in times of high running water. This will protect structures in the subdivision as well as allowing for down gradient control of stormwaters that could be beneficial for both landowners as well as the highway district.

The possibility of a wetlands on the subdivision property was raised. Evidence of record is that the Army Corp of Engineers is scheduled to meet at the site with Applicant on April 1, 2025 to determine if there is a wetlands issue, and if so, how that will need to be dealt with. The Commission finds that these wetland measures, if any, will need to be properly treated and approved by the Army Corp of Engineers before the final plat will be signed.

Testimony suggested that traffic volume increase could become a hazard situation. Idaho Transportation Department issued an email in this matter, Exhibit #27, that: “After reviewing the plans for the proposed Cottonwood Acres Subdivision, we do not anticipate that this development will have any significant impact on highway traffic.” The Commission understands that the local area will experience more traffic, but not enough that it will be unreasonably hazardous or disturbing to the area. Also, the Albion Highway District, by letter dated March 14, 2025 indicates that there are requirements identified in the “Highway Standards and Development Procedures”, October 2021 edition, adopted by the highway district that the Applicant needs to meet in order for the AHD to approve the final plat. That letter includes six (6) identified requirements and requests that those noted items be included as conditions in a conditional use permit for this project. The Commission having reviewed this matter, finds that with a condition that the Applicant meet the Albion Highways District’s requirement to obtain their approval of the final plat, the roads issues can be resolved and thereby this standard will be met.

The Commission also addressed the concern about the nearby airport and its request for language in the Conditions, Covenants and Restrictions advising homeowners in the proposed subdivision that normal airport activities may create noise, so that future home owners are advised of that existing use in the area. The requested language from the airport owners, that should be included in the restrictive covenants is: "this subdivision is adjacent to an airport on the East and the subdivision is subject to the noise and other activities of the airport that may be offensive."

With appropriate conditions, as hereinbefore discussed, being put into place, the Commission finds that this standard will be met.

e. WILL BE SERVED ADEQUATELY BY ESSENTIAL PUBLIC FACILITIES AND SERVICES SUCH AS HIGHWAYS, STREETS, POLICE AND FIRE PROTECTION, DRAINAGE STRUCTURES, REFUSE DISPOSAL, WATER AND SEWER AND SCHOOLS; OR THAT THE PERSONS OR AGENCIES RESPONSIBLE FOR THE ESTABLISHMENT OF THE PROPOSED USE WILL PROVIDE ADEQUATELY FOR ANY SUCH SERVICES.

The Commission heard from the Idaho Transportation Department (hereinafter "ITD") that this proposal does not pose significant impact. Also, the Albion Highway District has a number of conditions and requirements that will need to be resolved to obtain their signature on a final plat. The Albion Fire Protection District, through the Deputy State Fire Marshall, Exhibit #19B, indicate that the proposed plat is compliant with the International Fire Code, 2018 edition. Also, evidence was presented of a riser in the subdivision that can provide water for fire suppression purposes when the irrigation system is charged. The Cassia County School District was asked for comment but declined to present a comment. Based upon the evidence of record, with appropriate conditions being imposed and followed, the Commission finds that this standard can be met.

f. WILL NOT CREATE EXCESSIVE ADDITIONAL REQUIREMENTS AT PUBLIC COST FOR PUBLIC FACILITIES AND SERVICES AND WILL NOT BE UNREASONABLY DETRIMENTAL TO THE ECONOMIC WELFARE OF THE COMMUNITY.

The Commission finds that the evidence of record in this matter is that the proposed subdivision will not create excessive additional requirements at public cost for public facilities and services and will not have any significant impact on the economic welfare of the community. Evidence was presented that the developer is going to pave part of 1150 East Road. The Commission determined that this could result in additional public cost, later on, for maintenance. In regard to that pavement proposal, the Commission will leave that discussion to the developer and the Albion Highway District on whether to pave or to leave that as a gravel road, inasmuch as that matter is under the exclusive jurisdiction of the highway district and not a matter for the Commission to determine or to set as a condition. That determination will need to be made soon so that it is properly designated on the final plat. The Commission recognizes that with more

people living in the area, that this project would contribute positively to the economic welfare of the area, in that they would be using area service stations, restaurants and so forth. Therefore, the Commission determines that this standard is met.

g. WILL NOT INVOLVE USES, ACTIVITIES, PROCESSES, MATERIALS, EQUIPMENT OR CONDITIONS OF OPERATION THAT WILL BE DETRIMENTAL TO ANY PERSONS, PROPERTY OR THE GENERAL WELFARE BY REASON OF EXCESSIVE PRODUCTION OF TRAFFIC, NOISE, SMOKE, FUMES, GLARE, POLLUTION OR ODORS.

The Commission finds, based upon Applicant's presentation, including the information from ITD, that the proposed development of the subdivision will not produce excessive traffic. Additionally, there was no evidence of any excessive noise, smoke, fumes, glare, pollution or odors. The Commission recognizes that the proposed CC&Rs provide for reduction of glare and/or light pollution by requiring that external lighting be "downlighting." Therefore, the Commission finds this standard to be met.

h. WILL NOT BE OR CREATE CONDITIONS THAT ARE UNREASONABLY HARMFUL OR DANGEROUS TO THE INDIVIDUAL SAFETY OR WELFARE OF PERSONS ON THE PREMISES OF THE USE OR LIVING OR WORKING IN THE VICINITY OF THE USE; OR WILL NOT CREATE CONDITIONS THAT COULD BE UNREASONABLY HARMFUL TO THE GENERAL SAFETY, HEALTH OR WELFARE OF THE COMMUNITY.

The Commission, in discussion of this standard, refers to its previous review and findings herein regarding traffic and stormwater/flooding control. The Commission finds that, from the facts and evidence in the application and testimony at the hearing, this proposal meets the standards set forth in Cassia County regulations for both a conditional use permit and a subdivision preliminary plat approval, and that the developer indicates a reasonable willingness to follow reasonable conditions appointed herewith. The Commission finds that this standard is met, with appropriate conditions being put in place.

i. WILL HAVE VEHICULAR APPROACHES TO THE PROPERTY WHICH ARE SO DESIGNED AS NOT TO CREATE SAFETY HAZARDS OR INTERFERENCE WITH TRAFFIC ON SURROUNDING PUBLIC THOROUGHFARES.

Based upon conditions of approval that the developer meets the requirements of the "Highway Standards and Development Procedures" as requested by the Albion Highway District, in constructing, developing and maintaining vehicular approaches, safety hazards should be reduced and interference with traffic on surrounding public thoroughfares should be mitigated. Also, with condition that interior roads and approaches meet the requirements of the Albion Fire Protection District, safety is promoted and interference is mitigated. With reasonable conditions being put into place regarding the approach and the construction of the private road accessing the interior of the proposed subdivision, the Commission finds that this standard will be adequately met.

j. WILL NOT RESULT IN THE DESTRUCTION OF OR LOSS OR DAMAGE TO ANY NATURAL, SCENIC OR HISTORIC FEATURE OR RESOURCE OF IMPORTANCE TO THE PUBLIC.

Based upon the application, evidence, testimony and information of record in this matter, a majority of the Commission finds that there is no evidence of destruction, loss or damage to any historic features. The Commission discussed that the issue with this proposal is if there is destruction, loss or damage of scenic importance to the public. The Commission finds that because there is already residential housing in the vicinity, and because the proposed subdivision will have restrictive covenants that will provide that lot owners keep their property maintained and orderly, that thereby the proposal will not result in destruction, loss or damage from a scenic aspect.

Commissioner Hoopes does not join with the majority. Her finding is that by placing such dense housing as is proposed by this subdivision it will negatively affect the scenic features of the area that is of importance to the public. By a majority, the Commission finds this standard to be met.

**PRELIMINARY PLAT REVIEW
Pursuant to Section 10-3-3, Cassia County Code**

Based upon the record before them at the time of decision in this matter, the Planning and Zoning Commission provides the following summary review of the Preliminary Plat requirements as set out in Section 10-3-3, Cassia County Code:

- A. Name: The proposed name of the subdivision, Cottonwood Acres is indicated on the Preliminary Plat, Exhibit #24.
- B. Location: Shown in Exhibit #24.
- C. Legal Description: Shown on Exhibit #24.
- D. Personal Information: Shown on Exhibit #24.
- E. Boundary Lines: Shown on Exhibit #24.
- F. Dimensions Of Features: Shown on Exhibit #24.
- G. Power Lines And Storm Drains: Shown on Exhibit #24.
- H. Flood Hazard Boundaries: Shown on Exhibit #24.
- I. Location And Dimensions Of Streets: Shown on Exhibit #24.
- J. North Point: North point, scale, and date. Shown on Exhibit #24.
- K. Covenants: A review copy of proposed protective covenants, if applicable. Contained in Exhibit #22.
- L. Natural Features Analysis: The following features shall be mapped, described, or noted as not applicable in the natural features analysis:

1. Hydrology: Shown on Exhibit #24.
2. Soils: Shown on Exhibit #24, also some on Exhibit #21-well driller logs & SCPHD letter of Exhibit #19A.
3. Topography: Shown on Exhibit #24.
4. Vegetation: Narrative review of preliminary plat, Exhibit #2 indicates currently pasture.
5. Sensitive Plant And Wildlife Species: Narrative review of preliminary plat, Exhibit #2 indicates property is currently grazing pasture ground, and no records of sensitive plant or wildlife habitat.
6. Historic Resources: Narrative review of preliminary plat, Exhibit #2, states no historical resources or sites located on proposed parcel.
7. Hazardous Areas: Narrative review of preliminary plat, Exhibit #2, discusses surface water runoff. The original stormwater plan was amended to provide a course of flow through the mid part of the parcel, South to North as set out in part of Exhibit #24
8. Impact On Natural Features: Developer claims no impact to natural features. The identified natural feature is the swale through the property, which Developer proposes to delineate and use to manage surface water runoff.
9. Map Features: Shown on Exhibit #24.
10. Other Supplemental Data: Not applicable to this project.

M. Ground Water Quantity: Exhibit #21, the Ground Water Assessment for the Cottonwood Acres Subdivision concludes "that new domestic wells within each lot of the proposed subdivision (24 lots total) should provide sufficient water supply, meeting the stated minimums for quantity and flow, and that water will likely be of sufficient water quality for domestic uses. This investigation also finds that the addition of wells for the 24 lots proposed will have an impact on local aquifer levels, but that impact will be moderated by non-consumptive water use due to infiltration from onsite wastewater disposal and by infiltration due to surface water supplied for irrigation."

N. Conceptual Site Disturbance and Storm Water Plan: Shown on Exhibit #24, specifically on page 7 of the exhibit.

O. Lots: Shown on Exhibit #24.

P. Phasing. No phasing proposed.

Q. Construction And Fencing: No fencing required or shown.

R. County Weed Plan: Exhibit #12.

After review of all of the stated and applicable requirements for a standard subdivision preliminary plat, the Commission determines that all applicable requirements for said preliminary plat have been met, or through appropriate conditions listed in this conditional use permit will be met.

CONCLUSIONS OF LAW

T & H Property Holdings LLC, whose address is PO Box 96, Albion Idaho 83311, through its authorized agent, Landrum & Associates, Inc., whose address is 525 F Street, Rupert, Idaho 83350 is the Applicant for a Conditional Use permit to develop a standard subdivision under Chapter 13, of the Cassia County Code Zoning Regulation. In making that application, Applicant must produce adequate evidence that the standards set forth as "General Standards Applicable to

All Conditional Uses” have been met, and as well, that standards for subdivisions are satisfied as set forth in Chapter 3, Title 10, Cassia County Code. The Applicant has met or upon implementation of stated conditions will adequately meet all of the standards. It is hereby the conclusion of the Cassia County Planning and Zoning Commission that, based upon the foregoing Findings of Fact, and upon meeting all of the stated standards in the ordinance, application 2024-12-CU/SUB is approved, with conditions.

DECISION

NOW THEREFORE, be it resolved by the Planning and Zoning Commission of Cassia County, Idaho, that the Preliminary Plat for the Cottonwood Acres Subdivision and Conditional Use Permit application of T&H Property Holdings LLC seeking to develop, construct and operate a standard residential subdivision at the subject property at approximately 1125 East 900 South, Albion, Cassia County, Idaho, pursuant to Chapter 13, Title 9 and Chapter 3, Title 10 of the Cassia County Code Zoning and Subdivision Regulations, be and hereby is **approved, to run with the land**, based upon the following conditions:

1. That the proposed use be constructed, developed and maintained in accordance with, and as presented by, the application, accompanying materials and presentation to the Commission, and including self-imposed conditions in the application and presentation though such may not be indicated otherwise herein.
2. That Permittee shall implement and follow the County Weed Plan, as set forth in Application Exhibit #12 in the development, operation, and maintenance of this use.
3. That the Developer and the subdivision will comply with the Albion Highway District policies and procedures in its approaches onto the Albion Highway system.
4. That the Developer meet the requirements, in drawing the final plat of the subdivision, that are required and in accordance with the applicable Highway Standards and Development Procedures, October 2021 edition, as adopted by AHD.
5. That the Developer satisfy all requirements of the South-Central Public Health District in determining and installing appropriate septic systems in the subdivision, and comply with South Central Public Health District’s proposed three (3) options relative to construction of appropriate septic systems on subdivision lots which are:
 - a. Install simple monitoring wells to obtain real time data by monitoring the groundwater during spring runoff period.
 - b. Require proprietary onsite septic systems that are designed for a one-foot vertical separation to groundwater.
 - c. Require mound septic systems which will elevate the drainfields above the high groundwater.

6. That all roads in the subdivision must meet 2018 International Fire Code requirements, and will have to meet the 75,000-pound weight limits for fire apparatus roads.
7. That the proposed Covenants, Conditions and Restrictions pertaining to Cottonwood Acres Subdivision be amended as follows:
 - a. As part of Article B, paragraph 27 concerning "Water Supply (Irrigation), Developer must include language in the CC&Rs requiring each lot owner within the subdivision to hook up to the pressurized irrigation system and use that irrigation system as the primary means of irrigation of their respective lots before use of any ground water for irrigation purposes.
 - b. Article C, paragraph 17 regarding "airport" be amended to read: "This subdivision is adjacent to an airport on the East and the subdivision is subject to noise and other activities of the airport that may be offensive."
 - c. Article H, paragraph 4, is to be amended to require that CC&Rs not be terminated, at least as to requirements for a Homeowner's Association to maintain shared infrastructure, including but not limited to subdivision roads and other common infrastructure, such as irrigation system and stormwater drainage system.
8. That the Developer meet with any requirements as may be imposed by the Army Corp. of Engineers in working with wetland issues, if any, before the final plat will be signed by the County. Such requirements must be met and approved by the Army Corp. of Engineers in developing the subject property into subdivision lots and in siting any buildings thereon. Army Corp. of Engineer documentation of requirements and approval of meeting those requirements, or alternatively that there are no wetlands issues to resolve, must be provided to the Cassia County Zoning and Building Office prior to the final plat being presented to the Commission for signature.
9. That the Developer obtain approval of Marsh Creek District 45-F regarding installation of the irrigation system in the subdivision.
10. That Developer of the subdivision, and any landowner within the subdivision, shall allow any authorized County officer or employee to enter upon private property identified with this permit to enforce the provisions of this permit, ensure issues of compliance are suitably met, and to review or seek to remedy any other applicable provisions of state or local law.
11. That in preparation of the Final plat, a note must be provided on the final plat documenting the current flood zone in which the property or properties are located. The boundary line must be drawn on the plat in situations where two or more flood zones intersect over the property or properties being surveyed.

Said note shall contain the following information:

FEMA FIRM panel(s): #160xxxxxxC, & 160xxxxxxE, etc.
FIRM effective date(s): mm/dd/year

Flood Zone(s): Zone X, Zone A, Zone AE, Zone AO, Zone AH, Zone D, etc.

Base Flood Elevation(s): AE _____.0 ft., etc.

Flood Zones are subject to change by FEMA and all land within a floodplain is regulated by Title 12 of the Cassia County Code.

12. That the Applicant will need to install infrastructure (i.e., private roads, electricity, telephone, stormwater/surface water drainage waterway and irrigation system) prior to the final plat being signed by the County. Applicant is given relief from Cassia County Code, Section 10-3-6, in that Applicant is now authorized to proceed to construct, excavate, and grade as necessary to install common infrastructure for the subdivision. In accordance with Cassia County Code, Section 10-4-6, "Before recordation, the applicant shall install required improvements and repair any existing streets and other public facilities disturbed or damaged in the development of the subdivision. The applicant shall be responsible for the successful operation and all repair to the improvements for a two (2) year period following their installation."

NOTICE OF APPEAL RIGHTS

Pursuant to provision of Cassia County Code Zoning Regulation, Section 9-5-7, any person, who is defined as an affected person under Idaho's Local Land Use Planning Act, Idaho Code Chapter 65, Title 67, is hereby notified that they have a right to file an appeal of this decision to the Board of County Commissioners for Cassia County, Idaho within Twenty-eight (28) days after the date of the final decision or action, by submitting to the Zoning Administrator a notice of appeal specifying the grounds therefor and paying the appropriate fee.

Notice to Applicant – Right to Request Regulatory Taking Analysis

Idaho Code Section 67-8003 (2) provides that:

Upon the written request of an owner of real property that is the subject of such action, such request being filed with the clerk or the agency or entity undertaking the regulatory or administrative action not more than twenty-eight (28) days after the final decision concerning the matter at issue, a state agency or local governmental entity shall prepare a written taking analysis concerning the action. Any regulatory taking analysis prepared hereto shall comply with the process set forth in this chapter, including use of the checklist developed by the attorney general pursuant to subsection (1) of this section and shall be provided to the real property owner no longer than forty-two (42) days after the date of filing the request with the clerk or secretary of the agency whose action is questioned. A regulatory taking analysis prepared pursuant to this section shall be considered public information.

A request for a regulatory taking analysis in this matter, if requested, shall be filed with the Administrative Assistant of the Planning and Zoning Commission, in Courthouse Room # 210, 1459 Overland Avenue, Burley, Cassia County, Idaho.

DATED this 17 day of April, 2025.

Approved this date by the following vote:

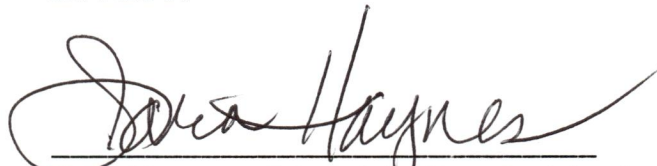
Melanie Palmer	Aye <u>✓</u>	Nay <u> </u>	Excused <u> </u>
Nate Francisco	Aye <u> </u>	Nay <u> </u>	Excused <u>✓</u>
Kent Durfee	Aye <u>✓</u>	Nay <u> </u>	Excused <u> </u>
Chuck Larson	Aye <u>✓</u>	Nay <u> </u>	Excused <u> </u>
Angela Hoopes	Aye <u> </u>	Nay <u>✓</u>	Excused <u> </u>
Tom Worthington	Aye <u>✓</u>	Nay <u> </u>	Excused <u> </u>

PLANNING AND ZONING COMMISSION

ATTEST:



Melanie Palmer, Chair



Sara Haynes, Administrative Assistant
To Planning and Zoning Commission

Cottonwood Acres Subdivision

Cassia County, ID

Personal Information

T & H Holdings Property Holdings, LLC
Troy Mortensen
P.O. Box 96
Albion, ID 83311
208-869-2141

Legal Description

COTTONWOOD ACRES SUBDIVISION

TOWNSHIP 12 SOUTH, RANGE 25 EAST, BOISE MERIDIAN, CASSIA COUNTY, IDAHO.

SECTION 7: A PART OF THE NORTHEAST QUARTER, MORE PARTICULARLY DESCRIBED BELOW:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 7 MONUMENTED BY A 5/8" REBAR WITH AN ALUMINUM CAP RECORDED OCTOBER 10, 1991 AS INST. No. 215642, CASSIA COUNTY RECORDS; THENCE ALONG THE EAST LINE OF SECTION 7 SOUTH 00°39'52" WEST 58.68 FEET TO A 5/8" REBAR AND PLS CAP ON THE HIGHWAY RIGHT-OF-WAY AND THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID EAST LINE SOUTH 00°D39'52" WEST 1212.14 FEET TO A 1/2" REBAR;

THENCE LEAVING SAID EAST LINE SOUTH 89°34'02" WEST 1313.44 FEET TO A 1/2" REBAR;

THENCE NORTH 03°30'05" EAST 1273.53 FEET TO A 1/2" REBAR ON THE NORTH LINE OF SECTION 7;

THENCE ALONG SAID NORTH LINE NORTH 89°33'53" EAST 1189.83 FEET TO A 5/8" REBAR AND PLS CAP ON THE HIGHWAY RIGHT-OF-WAY;

THENCE ALONG SAID HIGHWAY RIGHT-OF-WAY SOUTH 45°49'02" EAST 83.52 FEET TO THE TRUE POINT OF BEGINNING.

LOT CONTAINS 37.39 ACRES, MORE OR LESS, AND MAY BE SUBJECT TO EASEMENTS OF RECORD OR THOSE LEGALLY ESTABLISHED.

Existing Use

The property is currently being used as pasture for livestock.