

BINGHAM COUNTY COMMISSIONERS

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BINGHAM COUNTY BOARD OF COMMISSIONERS REASON & DECISION

In regard to: The Appeal of the Planning & Zoning Commission's written decision dated July 2, 2026, denying the Applicant's (B&K Gravel and Equipment LLC) Conditional Use Permit (CUP) Application for an approximately 41.84 acre gravel mining and gravel operation, on property zoned "M1" Light Manufacturing, with an approximate parcel location of Southwest of 665 W 150 N, Blackfoot, Idaho.

Appeal Meeting Date: August 19, 2026

Chairman Manwaring welcomed all to the meeting, introductions were held for county staff, and it was reiterated that there will be no public testimony received during the meeting. Chairman Manwaring stated that the Appeal was timely filed, and the required filing fee has been paid.

At the onset of the meeting Chairman Manwaring stated that he needed to declare a conflict pursuant to Idaho Code Section 74-403 and 74-404, that is more indirect and potentially remote but can create a potential conflict of interest and appearance of a conflict with the respect to the matter before the Board. Commissioner Jensen and Commissioner Jackson were both in favor.

Commissioner Jensen was appointed Acting Chairman for this Appeal, and the time was turned to Tiffany Olsen, Planning & Development Director, for presentation of Staff Report.

Ms. Olsen stated the statutory authority falls under Bingham County Code Section 10-10-2: *Appeal of Planning and Zoning Commission Decision*. Ms. Olsen stated that the meeting is an open meeting available to the public but not a public hearing. Therefore, no testimony will be received. The Applicant being B&K Gravel and Equipment, filed the Appeal and within the Appeal they are required to specify portions of the Planning & Zoning Commission's decision that they find to be an error and explain the reasons for determining that the decision is an error and is contrary to the provisions of county zoning code.

Ms. Olsen stated that new or additional evidence could be requested, which could be done through the remand process, and the Application would return to the Planning & Zoning Commission for more information specific to what it is that the Board is requiring in order to make a decision.

The Board had no questions for staff at this time.

Commissioner Jensen referred to "Item 2: Be in accordance with the general objective or with any specific objection of the Comprehensive Plan and/or this title", as listed within the filed Appeal. Commissioner Jensen stated within the Appeal, it states that the proposed Harper Gravel Pit is

consistent with the purposes of the Comprehensive Plan. The Comprehensive Plan encourages Land Use including mineral exploration and extraction. Sand and Gravel are identified as a mineral resource and with a *'large number of sand and gravel deposits'* in the county. Commissioner Jensen asked Ms. Olsen if the property is currently zoned "M1", wherein Ms. Olsen confirmed that to be correct. Commissioner Jensen asked Ms. Olsen, in her opinion, what strengths and weaknesses does the zoning designation have pertaining to the subject application. Ms. Olsen stated within page 2 of Exhibit S-1 within the Planning & Zoning Commission Staff Report, it shows the purpose of zone and describe what an "M1" Light Manufacturing district is for, which is to encourage the development of manufacturing establishments which are relatively clean and free of hazardous or objectionable elements which are generally operated within enclosed structures and generate little industrial traffic. This zone would be kept substantially free from residential and retail commercial activities that are:

1. Serviceable by major roadways.
2. Located to minimize potential traffic problems.
3. Compatible with existing uses.
4. Protected from residential uses.
5. Accessible to adequate utilities.
6. Accessible to rail or air transportation when necessary.
7. Protected from incompatible uses.

Ms. Olsen asked Lindsey Gluch, Commission Clerk, to display the Zoning District & Subdivision Map (Exhibit S-3 of the Planning & Zoning Commission Staff Report) for the Board to view, the subject property is visible and explained the surrounding M1 Zoning District area which is shown within the map. Ms. Olsen stated that the subject property is adjacent to other lands zoned Light Manufacturing. Ms. Olsen stated that it should be in areas that are free from residential use, wherein property surrounding the subject property is a Residential/Agriculture Zone and if developed in the subdivision process, they would be 1-acre minimum lots.

Commissioner Jackson referred to Exhibit S-3 and asked Ms. Olsen if it was safe to say that on three sides of the subject property are Residential and one side is Light Manufacturing, wherein Ms. Olsen stated that there is manufacturing on two sides of the subject property. Ms. Olsen asked Ms. Gluch to display Exhibit S-4 (Comprehensive Plan Map) and explained that the Comprehensive Plan has the general area showing where Industrial, Commercial, Manufacturing types are used. Ms. Olsen added that the subject property is zoned Light Manufacturing and phase 1 is proposed to be 6 acres, phase 2 is proposed to be 16.58 acres and phase 3 at 12 acres. Paul Rogers, County Legal Counsel, added that the subject property shape is irregular, extending oddly into areas with different zoning but the property in its entirety is zoned Light Manufacturing.

Ms. Olsen stated that she believes that the Applicant within the Appeal is trying to convey to the Board is that there are pockets of Light Manufacturing in areas with Residential Zoning nearby, but the property is not a pocket because it is surrounded by large parcels of Light Manufacturing development and bare ground in Residential/Agriculture.

Commissioner Jensen stated from what he understands within the Appeal, the Appellants state that the Application meets the criteria with mining of gravel and sand. Ms. Olsen stated within "Item 2: Be in accordance with the general objectives or with any specific objection of the Comprehensive Plan Map and/or this title", meaning it is the general objectives, not all of the objectives and the Appellant is stating that the Application is consistent because the Comprehensive Plan encourages land use including mineral exploration and extraction, such as sand and gravel in the zone. Ms. Olsen stated that the Appellant also sites several sections from the Comprehensive Plan, which includes CP Policy F1, to promote extraction of mineral resources within mitigation of the impact to neighboring uses, when compatible with surrounding land uses.

Commissioner Jensen referred to page 3 of the filed Appeal and stated that the Harpers currently have a small gravel pit, but he is not certain how long that has been there. Ms. Olsen stated that small gravel pit has been in place since the fifties. Ms. Olsen stated that gravel pits were an allowed use in a Light Manufacturing zone up until 2024, when the Land Use Chart was modified to require a Conditional Use Permit in any zone that gravel pits were considered. Ms. Olsen stated the small gravel pit would be referred to as a non-conforming pre-existing use. Once the Applicant sought to expand operations beyond the historical area, a Conditional Use Permit because required under current county code.

Commissioner Jackson asked how much gravel was taken from the small gravel pit per day, was it for personal use or was it for commercial use, wherein Ms. Olsen stated that testimony within the record indicates that historic use served as both personal use and other projects; however, it is not stated specifically within the record that it was used for commercial third-party sales. Ms. Olsen stated that she believes there was frequent use when being used. Mr. Rogers referred to page 19 of Exhibit S-19 of the Planning & Zoning Commission's Staff Report, wherein testimony was provided by Danny Harper (T-18) that a portion of the subject property had historically been used as a gravel pit approximately 20-30 years and Testimony provided by Clinton Harper (T-19) stating that he expressed his desire to help the community just as his late father had. Mr. Harper testified that there were a lot of different options that he and his family wanted to do on their lands which also included the possibility of working with his brother to start an orchard. Mr. Rogers stated that it does not state specifically what the mining was used for previously.

Ms. Olsen added that within Item 2 of the Appeal, it indicates that in the event that a mining and gravel application is not approved, the Applicants will consider other uses that are allowed without a Conditional Use Permit on the property which included a grain elevator, livestock auction, bottling plant & distribution, bulk storage plant, cannery, car wash, commercial meat packing facility, equipment rental, fertilizer storage, grain mill, machine shop, RV Storage and truck stops, noting that the tradeoff for another economic interest may be a worse effect, without conditions, on residences than a gravel pit. Ms. Olsen states that within the Appeal it states that the 100 ft. wide tree line buffer along residential exposure on 700 W and along the west end of East Moreland Road provides the mitigation of impact on neighboring properties.

Commissioner Jensen stated that the Applicant feels that the Application is compatible with the area due to 12 gravel pits being within a 3.8 mile radius and with an M1 Zone, 1 gravel pit in an R/A Zone and 3 gravel pits in A/NR zones. This includes how the use functions in relation to the

surrounding and future uses. The Board found that every individual can have different opinions in regard to this matter but there is substantial evidence supporting the Planning & Zoning Commission's conclusion that the project does not fully align with all relevant Comprehensive Plan objectives, particularly those relating to long-term residential/agricultural compatibility and avoiding over-concentration of intensive uses. Ms. Olsen stated that each Commissioner may have different opinions on what is compatible or not and when looking at surrounding land uses, residential zones, existing land uses of the same, there is nothing within code that limits how many of one land use that can be in one area and that is it is subject to a Conditional Use Permit to determine in the zone, can it conditionally exist with conditions that mitigate neighbor concerns.

Discussion was held in regard to CP Policy A2 Private Property Rights, wherein Commissioner Jensen explained that within the Appeal it asks does the regulation or action result in a permanent or temporary or physical occupation of private property and asked Commissioner Jackson if he feels that the concern has been discussed thoroughly with the Planning & Zoning Commission or if further discussion was needed. Commissioner Jackson stated that individuals have private property rights as long as they do not violate another person's property rights in the immediate vicinity. Commissioner Jensen referred to the question if the regulation deprives the owner of all economically viable uses of the property by denying the application and asked Commissioner Jackson for his input. Commissioner Jackson stated the Applicant mentioned there were other options for use of the property which included a tree farm and a possible lumber mill and if the subject application was denied, they could pursue. Therefore, Commissioner Jackson stated that he does not feel that the denial does not restrict.

Discussion was held in regard to "Item 3: Be designed, constructed, operated and maintained to be 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 area as far as is possible", wherein Commissioner Jackson stated within the appeal it refers to 12 other gravel pits within a certain radius and he does not like the idea of over saturation of one area whether it be cattle operations, housing, or gravel pits and there should be a limit.

Discussion was held in regard to "Item 4: Not be unduly hazardous or disturbing to existing or future neighboring uses; nor involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to persons, property or the general welfare of the public by reason of excessive production of traffic, noise, smoke, fumes, odors or other pollutants". Commissioner Jackson asked who would regulate the gravel pits, wherein Ms. Olsen stated that smoke, fumes and other pollutants are regulated by the Department of Environmental Quality through Air Quality Permits, traffic would be regulated through a Traffic Impact Study and recommendation from Public Works. Ms. Olsen stated that the Public Works Director had no concerns but that widening and right out of the facility were suggested. Mr. Whited added that a mining operation would also be regulated by MSHA (Mine Safety and Health Administration), wherein it regulates noise levels, dust levels, periodic checks on all operating mines within the State of Idaho to be sure that requirements are met. Mr. Whited stated that employees within the mining operation are provided with a monitor to wear for one day, which will monitor the noise levels to be sure that the noise is within acceptable levels, monitors are placed to monitor the amount of dust being admitted from the crusher and several other tests are conducted.

Commissioner Jensen stated that he recalls reading that they have shares in the canal company to assist with dust mitigation through watering. Mr. Whited confirmed that to be correct and that there will be nozzles on the conveyor belts and decks of the equipment that will spray material down as it is transferred from one place to another to reduce dust.

Commissioner Jackson asked Ms. Olsen what she would define "future neighboring uses" as stated within the Appeal, wherein Ms. Olsen explained that it is hard to speculate what is going to be developed in the future. Ms. Olsen stated the farm parcel to the west is quite large and has been there for quite some time. Ms. Olsen stated that the Board should keep in mind that there are a number of land uses that are also conditionally permitted within Residential/Agriculture zones that are not homes. Therefore, there could be other uses in a Residential/Agriculture parcel that do not include residential occupancy. Commissioner Jackson emphasized the proximity to Residential Agriculture and the question of future growth patterns, expressing concern that prolonged truck traffic, noise, and dust could be inconsistent with and disturbing to current and anticipated residential uses.

Commissioner Jensen referenced verbiage within the Appeal that states that determination of review must be based on substantial competent evidence. Evidence is not lay speculation to replace professional opinion, public outcry to establish law, and ultimately allowing property rights to be dismissed. Commissioner Jensen asked Commissioner Jackson for his input wherein Commissioner Jackson stated a lot of the individuals that are either in favor or opposition of the subject application, it is by opinion and he appreciates facts being provided for review.

Commissioner Jensen asked Commissioner Jackson if he recalls a statement being made in regard to noise level off of a crusher within documentation provided, of what the decibel level may be. Commissioner Jackson stated that he does recall reading that but does not recall the exact amount. Ms. Olsen stated referred to the Planning & Zoning Commission's Staff Report on Page 9 of 22 (Exhibit S-1), it reads "The proposed gravel put will generate noise primarily from crushing and screening equipment, loaders, and truck traffic. Typical operational noise levels may range from approximately 80-100 dBA at the source. However, due to the distance attenuation and surrounding agricultural land buffers, noise levels are expected to reduce to acceptable residential standards (approximately 45-55 dBA) prior to reaching nearby dwellings. *dBA stands for A-weighted decibel, and represents the "A-weighted" filter, which adjusts measurements to match the human ear's frequency response.* Applicant indicates compliance with MSHA noise standards for worker safety and states that noise levels at or beyond the property boundary will remain below levels considered a nuisance".

Commissioner Jackson asked Mr. Whited how long it would take the mine to get down to the depth of 30 feet if mining a 5-acre lot, as that could assist with noise mitigation. Ms. Olsen stated the timeline for mining is April 15 through October 15. Commissioner Jensen stated that his understanding is that the decibel readings that were quoted were not taken into account if it is sitting in the ground but above ground. Ms. Olsen stated the anticipated operation timeline for all three phases is 15-20 years with 30 truck trips per day. Ms. Olsen stated that within the Staff Report it was mentioned that Phase 1 would be mined in seven years, Phase 2 would be mined in seven years, and Phase 3 would be mined in seven years. Ms. Olsen stated if that was a consistent cycle

of excavating, loading, crushing, screening, stock piling and loading but production rates may increase or decrease from the anticipated capacity.

Commissioner Jackson referred to a statement provided that the gravel pit must be designed, constructed, operated and maintained to be appropriate in appearance with the existing or intending character of the general vicinity and that such use will not change the essential character of the area as far as is possible. Commissioner Jackson would agree and that the Appellant stated that the Planning & Zoning Commission found that the establishment of an approximately 41.84 acre gravel mining operation with a crusher would change the appearance and character of the vicinity as the project site is near residentially developed parcels.

Commissioner Jensen asked Commissioner Jackson if the vicinity of the entire community would change or, if approved, would the project change the subject property. Commissioner Jackson stated that he believes it would change the character of the property, but he is thinking what the future would be of the property and the surrounding area where it is in close proximity to the township of Moreland and potential growth in the area. Therefore, it would change the character. Commissioner Jensen stated in review of the photographs submitted within the Staff Report, but it looks like there is berm around a portion of the property currently. Commissioner Jackson stated there are tree lines but that it would change the appearance and character of the area. Ms. Olsen referred to the site plan and explained there are a number of berm areas that are present currently and indicates where future berms would be located. Ms. Olsen stated the height of the berms are 3 ½ feet and width is 5 feet, which would be berms constructed and meet MSHA requirements. Commissioner Jackson stated the size of the berm would not limit the site of construction whatsoever. Ms. Olsen stated if the Board finds the size is not sufficient, a condition could be placed to increase the size that the Board would find sufficient.

Commissioner Jensen stated that some of the testimony was that the individuals did not want to have to look at a big berm. Commissioner Jackson stated if a berm is not built correctly, it could be worse than the gravel pit.

Commissioner Jensen referred to item 4, which states “not be unduly hazardous or disturbing to existing or future neighboring uses; nor involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to persons, property or the general welfare of the public by reason of excessive production of traffic, noise, smoke, fumes, odors or other pollutants. Commissioner Jensen asked Mr. Whited if the traffic would be excessive, wherein Mr. Whited explained that is a matter of opinion, but he does not believe that it would be excessive.

Commissioner Jackson stated that the subject property sits on the borderline of R/A and M1 properties, if residential were to occur it would be disturbing with truck traffic, operational noise and dust generating activities that are inconsistent with and disturbing to the existing residential uses surrounding the project site.

Commissioner Jensen stated the Applicant proposed mitigation measures in compliance with state and county regulations. Therefore, the Applicant is willing to do what is mandatory by the state and county regulations to mitigate issues. Commissioner Jensen stated the current farm use is in

the spring and fall but the truck traffic could be similar, as well as the dust. Commissioner Jackson stated that he would agree but farm use is temporary for a few days out of the year, but the proposed project could be significantly bigger.

Commissioner Jensen reviewed the Reason & Decisions of the Planning & Zoning Commission, which were as follows:

1. The evidence submitted demonstrates that the proposed use satisfies some of the approval criteria contained in Bingham County Code Section 10-8-3(A) but does not satisfy all criteria required for approval. Specifically, the Application.
 - a. “Constitute(s) a conditional use as established on the official schedule of zoning regulations or as determined by the Commission to be a conditional use for the zone involved”.
 - b. Is not “in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title”
 - c. Is not “designed, constructed, operated and maintained to be appropriate in appearance with existing or intended character of the general vicinity and that such use will not change the essential character of the area as far as it possible”.
 - d. Is “unduly hazardous or disturbing to existing or future neighboring uses; nor involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to persons, property or the general welfare of the public by reason of excessive production of traffic, noise, smoke, fumes, odors or other pollutants”
 - e. Does not “create excessive additional requirements at public cost for public facilities and services will not be detrimental to economic welfare of the County”
 - f. Is “served adequately by essential public facilities and services or that the persons or agencies responsible for the establishment of the proposed use shall be ale to provide such services”
 - g. There is “legal access to the subject property for the development,” and the property has “vehicular approaches to the property that are designed to eliminate a traffic hazard on adjacent public thoroughfares”
 - h. Will not “result in the destruction, loss or damage to a scenic or historic feature of major importance” and,

- i. To the extent it is applicable, it has “adequate water, sewer, irrigation, drainage and stormwater drainage facilities, and will have utility systems provided accommodate said use”

Ms. Olsen reviewed potential conditions if the Board makes the decision to reverse the decision of the Planning & Zoning Commission.

DECISION

Commissioner Jackson moved to uphold the decision of the Planning & Zoning Commission to deny the Conditional Use Permit for the operation of a gravel pit/mining-crushing/excavation, in a “M1 Light Manufacturing Zoning District submitted by B&K Gravel and Equipment, LLC, B&K Harper Farms, LLC owned and/or operated by Daniel “Danny” Harper, Kimberly Harper and Taylor Harper.

The motion failed to pass due to lack of a second.

Commissioner Jensen stated that he feels that Application meets the code criteria of M1 “Light Manufacturing” Zoning District.

Therefore, the final decision will revert to the decision of the Planning & Zoning Commission, which was denied.

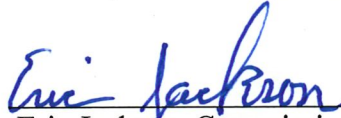
Request for Reconsideration/Judicial Review: Upon denial or approval of a zone change, with adverse conditions, pursuant to Idaho Code Section 67-6535(2)(b), the Applicant or affected person seeking Judicial Review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought.

Regulatory Takings: Additionally, the Applicant may request a regulatory takings analysis as per Idaho Code Section 67-8003. An affected person aggrieved by a final decision concerning matters identified in Section 67-6521(1)(a), Idaho Code may within twenty-eight (28) days after all remedies have been exhausted under local ordinance, seek Judicial Review as provided by Chapter 52, Title 67, Idaho Code.

Dated this 16th day of September 2026.

**Board of Bingham County Commissioners
Bingham County, Idaho**

Whitney Manwaring, Chairman



Eric Jackson, Commissioner



Drew Jensen, Commissioner

CERTIFICATE OF SERVICE

I certify that on the 16th day of September 2026, I served a true and correct copy of the Appeal filed by B&K Gravel and Equipment, LLC, upon the following person(s) in the manner(s) indicated:

- ☐ Mail
- ☒ Email: drexmcnair@gmail.com
- ☐ Hand Delivered
- ☐ Designated Courthouse Box

Daniel McNair
Applicant/Appellant's Representative

- ☒ Mail
- ☐ Email:
- ☐ Hand Delivered
- ☐ Designated Courthouse Box

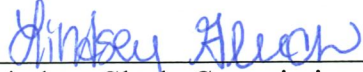
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Jacob B. Robison
Holden, Kidwell, Hahn & Crapo, P.L.L.C



Lindsey Gluch, Commission Clerk