

GEM COUNTY ORDINANCE NO. 2013-01

AN ORDINANCE OF GEM COUNTY, IDAHO, AMENDING FOUR CHAPTERS OF TITLE 11 GEM COUNTY CODE, MINERAL EXTRACTION ORDINANCE, TO WIT: CHAPTERS 2-2; 5-5; 6-5; AND 7-3.

WHEREAS, GEM COUNTY initiated a Zoning Ordinance Amendment to amend Title 11, Chapters 2-2; 5-5; 6-5; and 7-3 of the Gem County Code; and

WHEREAS, the Board of County Commissioners of Gem County approved the amendment as set forth in its Decision and Order entered on the 31st day of December, 2012.


1) BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF GEM COUNTY, IDAHO:

2) THAT the Zoning Ordinance of Gem County (Title 11, Chapters 2-2; 5-5; 6-5; and 7-3 of the Gem County Code) is hereby amended as set forth in the attached Exhibit A.

3) THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT UPON PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW

4) REGULARLY PASSED AND ADOPTED by the Board of County Commissioners of Gem County, Idaho, on this 22nd day of January, 2013.

BOARD OF COUNTY COMMISSIONERS OF GEM
COUNTY


Carlos Bilbao, Chair


Mark Rekow, Commissioner


Lan Smith, Commissioner

ATTEST:


Shelly Tilton, Gem County Clerk

1-22-13
Date

Instrument # 290319

EMMETT, GEM, IDAHO

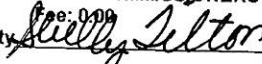
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Recorded for : BOARD OF COUNTY COMMISSIONERS

SHELLY TILTON

Ex-Officio Recorder Deputy

Index to: ORDINANCE



**Approved Gem County Code Amendments
to Four Chapters in Title 11, Zoning Ordinance**

Title 11, Chapter 2-2

Title 11, Chapter 5-5

Title 11, Chapter 6-5

Title 11, Chapter 7-3

Mineral Extraction Operations

*(As approved on **December 31, 2012 at the 9:30am** continued public meeting before
the Board of County Commissioners.)*

Title 11, Chapter 2-2, Definitions

MINERAL: Coal, clay, stone, sand, gravel, metalliferous and non-metalliferous
types of ores, and any other similar, solid material or substance.

Title 11, Chapter 5-5, Matrix

*(The Zoning Commission recommends amendments to three (3) land uses in the Zoning
Matrix (11-5-5) – mining, asphalt plant and concrete plant. See page 12 on the attached
matrix showing proposed amendments to these uses under the "Mining-21" category and
"Manufacturing-31-33" category. Also see a new proposed footnote to be added to the
matrix.)*

Title 11, Chapter 6-5, Section O.

- O.** Gravel Extraction, Rock Quarries, Sand and Clay Extraction and Other Natural
Resources of Commercial Value. ~~Such uses are not allowed within any city or
within any city area of impact.~~
- ~~1. The applicant shall submit a statement to the Commission regarding plans for
private driveway improvements. The applicant shall comply with GCC 11-6-3.J.
regarding construction of an all-weather driveway that meets with the appropriate
Fire District approval.~~
 - ~~2. Prior to the start of any operation, applicant shall provide the Development
Services Department with a letter from the appropriate Fire District approving of
the access.~~
 - ~~3. The permit is non-transferable to another property and is only valid at the location
specified in the application.~~

EXHIBIT A

- ~~4. Any new signs for the business shall comply with Gem County Sign Ordinance (Chapter 10).~~
- ~~5. Rock crushing is permitted only between the hours of 7:00am and 7:00pm.~~
- ~~6. No extraction, movement or stockpiling is allowed within the setback areas.~~
- ~~7. The applicant shall comply with all Department of Lands and other applicable state and/or federal regulations in the operation of the business.~~
- ~~8. Upon depletion of the area, all temporary buildings and structures except property line fences and structures for the loading, measuring or weighing of salable material in storage, shall be entirely removed from the property.~~
- ~~9. Safety fencing shall be erected around all pits that create a safety hazard at a minimum of 6 ft. high.~~
- ~~10. Comply with all relevant chapters of GCC 11-6-5, Section N, regarding grading, earth moving and gravel pit operations.~~
- ~~11. As required by the Commission, applicant/owner shall enter into a separate road mitigation agreement with Gem County to address the impacts on the public road system.~~

1. Prohibited Areas

- a. Mineral Extraction Overlay: No new mineral extraction operations shall be located within the areas identified on the "Mineral Extraction" overlay map shown in Exhibit 6-1.
- b. Zones: See GCC 11-5-5 for zones where mineral extraction uses are a prohibited use or a special use.

2. Mineral Extraction Permit Classifications

A permit, as defined below, shall be required before commencing any mineral extraction operation, unless otherwise exempted by this chapter.

- a. Class 1 Permit: This is a permit to meet the needs of small, short-term excavation and/or construction projects. It applies to operations that will not exceed five (5) acres of excavated area to a maximum depth of 20 feet and will be active for no more than 24 months. Class 1 permits are not eligible for time extensions. On-site crushing is not permitted as part of a Class 1 Permit.
- b. Class 2 Permit: This permit applies to operations that will be active for more than 24 months and will not exceed ten (10) acres of excavated area.
- c. Class 3 Permit: This permit applies to all operations that do not fall under Class 1 or Class 2 above.

3. Exceptions: A mineral extraction permit shall not be required for any of the following:

- a. Excavation or grading for agricultural or non-commercial purposes;
- b. Excavation or removal of three hundred (300) cubic yards or less of material per year for use on the owner's property; or
- c. Excavation conducted directly by federal or state authorities in connection with construction or maintenance of roads, highways or utilities or excavation conducted by a local jurisdiction during an emergency as declared by the governing board.

4. Required Findings for Mineral Extraction Permit

In lieu of the Special Use Permit (SUP) General Standards in GCC 11-7-3, the Commission shall use the following findings to review mineral extraction operation permits. The Commission shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use is able to meet each finding:

- a. The use must not create significant negative impact on public health, safety and welfare in the immediate vicinity.
- b. The use must not create unsafe conditions to or an excessive burden on existing parks, schools, roads and other public facilities and utilities that serve or are proposed to serve the area.
- c. The use must be sufficiently compatible or separated by distance or screening from adjacent lands so that existing uses will not be hindered in the enjoyment of their property and there will be no deterrence to the legal development of vacant land.
- d. The structure and site must have an appearance that will not unreasonably create an adverse effect upon adjacent properties.
- e. The use must be consistent with the purposes of the zoning ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use.
- f. The use must be in conformance with the Comprehensive Plan.
- g. The use must not cause a traffic hazard or congestion.
- h. Existing land uses nearby must not be adversely affected unreasonably by intrusion of noise, glare, dust, vibration or general unsightliness.

- i. The use must not cause significant adverse impact to surface or ground water resources.

5. Pre-Application and Application Submittal Requirements

- a. Prior to the submittal of any Special Use Permit application for a Class 2 or Class 3 mineral extraction use, the applicant shall have completed a pre-application conference with the Administrator. An applicant seeking a pre-application conference shall submit one (1) copy of a legible concept plan to the Administrator that includes all properties of record within one-half (1/2) mile of the site, existing buildings, roads, irrigation facilities and other key natural features on the site.
- b. Upon receipt of a Notice to Proceed, the applicant shall submit an application form, provided by the Development Services Department, filled out completely and signed by the property owner.
- c. Submit a list of all documented wells (e.g. domestic, irrigation, injection) located within one-half (1/2) mile of the subject property boundary.
- d. Submit a baseline groundwater depth taken from the proposed excavation area. The data source must be provided and it must be no more than one (1) year old. Depending upon the time of year and the size of the future excavated area, the Administrator may request additional data.
- e. If explosives are intended for use in the excavation operation, the application shall include the estimated timeframes, amounts and impacts of said explosives.
- f. Submit proposed commencement and completion dates for the commercial extraction operation.
- g. Submit a traffic plan showing mitigation of any potential hazards.

6. General Requirements (applicable to all Class 1 – 3 permits)

- a. The owner/operator shall comply with all relevant sections of GCC 11-6-5.N regarding grading, earth moving and gravel pit operations.
- b. All mineral extraction operations shall be considered a temporary use of land.
- c. Mineral extraction permits are non-transferable to another property and only valid at the location specified in the application. Permits may be transferred to a new owner. All terms and conditions of the original permit remain in effect and in full force upon any transfer to a new owner.
- d. Proposed hours of operation for both extraction and crushing shall be disclosed in the Special Use Permit application and may be limited by the County in the permit to protect the public welfare.
- e. All permits shall be subject to an on-site review at the discretion of the Development Services Department to ensure compliance.
- f. Unless otherwise approved by the Commission during the SUP process, any new signs shall comply with GCC 11-10.

- g. Prior to the start of operations, the owner/operator shall provide the Development Services Department with a letter from the appropriate Fire District approving the vehicular access to the site.
- h. Prior to the start of operations, the owner/operator shall provide the Development Services Department with a copy of the Reclamation Plan approved by the Idaho Department of Lands.
- i. The owner/operator shall comply with all Idaho Department of Lands, Idaho Department of Environmental Quality, Idaho Department of Water Resources, Idaho Transportation Department, Occupational Safety & Health Administration, Mining Safety & Health Administration, Environmental Protection Agency and any other applicable state or federal regulations.
- j. All costs incurred to comply with the conditions of approval shall be borne by the owner/operator.
- k. All public notices for extraction operations shall be done in accordance with GCC 11-7-6 except that the public mailing shall be provided to property owners and residents up to ½ mile beyond the external boundaries of the land being considered for all Permits.
- l. Outdoor site lighting, if used, shall be downcast lighting compatible with dark sky protection standards.
- m. The owner/operator shall comply with all relevant sections of GCC Title 13 regarding property located within the 100-year floodplain.

7. Extraction & Operating Standards

- a. No extraction, movement or stockpiling is allowed within the minimum yard setback areas as defined in GCC 11-5-7 except where ponds are contiguous and the County encourages the potential joining of ponds. The tops and toes of cut and fill slopes shall remain outside the setback areas.
- b. Unless waived by the Commission or Board, safety fencing, at a minimum of six (6) feet in height, shall be erected around any active extraction areas.

8. Mineral Processing Standards (post-extraction activities)

- a. Any rock crusher associated with a Class 2 or Class 3 operation shall be placed in a location as determined during the public hearing and sited to minimize noise impacts in compliance with all Federal and State regulations. (Class 1 permits do not allow on-site rock crushing.)
- b. The crusher shall be operated in accordance with dust abatement standards of the Idaho Department of Environmental Quality.
- c. Upon depletion of the area, all temporary buildings and structures except property line fences and structures for the loading, measuring or weighing of salable material in storage, shall be entirely removed from the property.
- d. For any mineral extraction operation that results in a permanent pond, the following standards shall apply:

- i. For the purpose of this section, a "pond" shall be defined as any pit, mine or quarry area where the reclamation plan results in an area designed to contain standing water year-round that is greater than three (3) feet in depth;
- ii. The pond shall be designed to create a meandering edge around the full perimeter;
- iii. If the pond will be a public access pond and stocked with fish or other aquatic species regulated by Idaho Fish and Game, the applicant shall provide documentation from Idaho Fish and Game's Regional Office to the Development Services Department that the proposed pond is designed to create viable fish and/or wildlife habitat;
- iv. If applicable, the applicant shall provide documentation from Southwest District Health that the proposed pond shall not cause septic leach fields on adjacent properties to fail;
- v. The applicant shall comply with all requirements of the publication, "Best Management Practices for Mining in Idaho," published by the Idaho Department of Lands.

9. Roads & Access

- a. The owner/operator shall comply with GCC 11-6-3.I and J regarding construction of an all-weather driveway that meets the applicable fire authority standards.
- b. When determined appropriate by the Road & Bridge Department, the owner/operator shall enter into a road mitigation agreement with Gem County to address the impacts on the public road system. Said agreement shall be signed and executed prior to the start of operation.
- c. No gate serving the property shall be located within 100 feet of a public road right-of-way to allow for adequate turnout distance for emergency vehicles and other trucks.
- d. All haul roads shall have a durable surface and shall be graded to drain all surface water from the road driving surface.

10. Groundwater, Dewatering & Wells

- a. The Zoning Commission, based on information presented in the public record, may require an on-site groundwater monitoring system to be installed to help provide information regarding potential impacts and draw-downs of off-site domestic wells in the vicinity of the excavation.
- b. If dewatering of the on-site monitoring well(s) or domestic wells in the vicinity occurs, the County shall have the authority to place a Stop Work Order on the operation until the problem is resolved to the satisfaction of the County Engineer.
- c. If site dewatering creates a public nuisance to property in the vicinity (e.g. flooding, standing water for long periods of time, etc.), the County shall have

the authority to place a Stop Work Order on the operation until the problem is resolved to the satisfaction of the County.

11. Permit Timeframes, Phasing & Extensions

- a. Commencement: The land use time limitations outlined in GCC 11-7-11 shall apply to all Class 2 and Class 3 permits. These timeframes apply only to the required improvements outlined in the permit and do not apply to the extraction operation itself.
- b. Phasing:
 - i. A phasing plan shall be submitted with the Special Use Permit application for all Class 2 and Class 3 permits. Said plan shall be reviewed as part of the public hearing and become an operation plan of the permit.
 - ii. The Zoning Commission shall review the status of every permit after the completion of any phase or at the five (5) year anniversary of issuance of the permit, whichever period is shorter. Said review shall be held in a public meeting but not require a public hearing. If the Commission makes a determination that full compliance with the terms of the permit is not met, the Commission shall give the owner/operator an appropriate time period in which to bring the site into compliance. If, at the end of said period, there is still no compliance, the Commission may begin permit revocation proceedings.
 - iii. As each phase is completed, it shall be reclaimed in accordance with the state-approved Reclamation Plan and any applicable County reclamation conditions prior to commencement of the next phase.
- c. Permit Duration & Time Extensions:
 - i. The County shall have the authority to establish operation durations on each permit based upon site specific and neighborhood specific factors. Relevant factors include, but are not limited to, proximity to residential, education or commercial uses, the zoning district, length of operating season, and similar factors. However, in no case shall a Class 2 permit be less than two years or a Class 3 permit be less than three (3) years. Neither a Class 2 or Class 3 permit shall be greater than ten (10) years. This does not preclude the ability to apply for a time extension.
 - ii. All Class 2 and Class 3 permits are eligible to apply for a time extension to the permit. Time extensions require submittal of an application and a public hearing. Public notice for a time extension shall be done in accordance with the same noticing process used for the original Special Use Permit. The Commission shall base its decision upon the original record, relevant code enforcement records, public complaints of record, other regulatory agency records and testimony from the owner/operator, affected parties and staff.

12. Performance Guarantees & Bonding

As a condition of approval, the Zoning Commission may require the owner/operator post a financial guarantee for improvements not already required by the Idaho Department of Lands.

Summary of Class 1, 2 & 3 Permit Standards			
Standard	Class 1	Class 2	Class 3
Maximum excavated area	5 acres	10 acres	No maximum
Maximum pit depth	20 feet	None	None
Maximum period of permit/operation	24 months	None	None
Time extension allowed	No	Yes	Yes
Requires pre-application conference	No	Yes	Yes
On-site rock crushing allowed	No	Yes	Yes
Phasing plan required	No	Yes	Yes
Prohibited on the Mineral Extraction Overlay Map	No	Yes	Yes

Title 11, Chapter 7-3, General Standards

11-7-3: GENERAL STANDARDS *:

The Commission shall review the particular facts and circumstances of each proposed special use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

- A. Will in fact, constitute a special use as established in the schedule of zoning regulations as adopted in Chapter 11-5-2 of this title for the zoning district involved;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this title;
- C. Will be designed, constructed, operated and maintained to be 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 same area;
- D. Will not be hazardous or disturbing to existing or future neighboring uses;

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 shall be able to provide adequately any such services;

F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

G. Will not involve uses, activities, processes, materials, equipment and conditions or operation that will be detrimental to any person, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;

H. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and

I. Will not result in the destruction, loss or damage of a natural, scenic or historic features of major importance. (Ord. 95-04, 5-22-1995)

* Note: Special Use Permits for mineral extraction uses are required to follow a separate set of standards. See GCC 11-6-5.O for a list of findings and standards for mineral extraction uses.

AI/CS Class	Description	Pub	A1	A2	A3	R2	R3	MR	MX	M-1	M-2	C-1	C-2	HT
Mining 21	Mining and extraction activities ¹ and related services 24 2122, 2123*	-	SUP	SUP ⁴	SUP	-	-	-	SUP	SUP	SUP	-	-	-
Utilities 22	Above ground transmission lines	P	P	P	P	-	-	-	-	P	P	P	P	P
	Communication, Equipment Buildings	-	SUP	SUP	SUP	-	-	-	-	SUP	P	SUP	P	SUP
	Radio and Television Studios 515112	-	-	-	-	-	-	-	-	P	P	SUP	P	P
	Transmitting Towers	P	SUP	SUP	SUP	-	-	-	-	SUP	SUP	SUP	SUP	SUP
	Utility Buildings (Over 1,200 square feet)	SUP	P	P	P	SUP	SUP	SUP	SUP	P	P	P	P	P
	Utility Buildings (Under 1,200 square feet)	SUP	P	P	P	SUP	SUP	SUP	SUP	P	P	P	P	P
	Utility Substation	P	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP
		-	-	-	-	-	-	-	SUP	P	P	SUP	SUP	-
Manufacturing 31-33	Apparel and other finished products made from fabrics, leather, and similar materials 315	-	-	-	-	-	-	-	SUP	P	P	SUP	SUP	-
	Asphalt Plant 324121	-	SUP	SUP	SUP	-	-	-	-	SUP	P	-	-	-
	Concrete Plant 327320	-	SUP	SUP	SUP	-	-	-	-	SUP	P	-	-	-

¹ See Mineral Extraction Overlay Map and other mineral extraction standards in GCC 11-6-5.O.

P = Permitted use ; SUP = Special Use Permit ; "-" (dash) = Prohibited use
 * = see Section 11-6-5 for special standards that apply
⁴ Extraction useee prohibited within Area-of-City Impact boundary



EXHIBIT 6-1


GEM COUNTY, ID

THIS DRAWING IS TO BE USED FOR
 REFERENCE PURPOSES ONLY AND THE COUNTY IS NOT
 RESPONSIBLE FOR ANY INACCURACIES HEREIN
 CONTAINED.

MINERAL EXTRACTION OVERLAY

 CLASS 1-3 MINERAL EXTRACTION PERMITS PROHIBITED

- CITY OF EMMETT BUFFER ZONE
- 1000' FROM:
 - CEMETERIES (C)
 - SCHOOLS (S)
 - PARKS (P)
 - EMMETT AIRPORT (EA)
- 1/2 MILE FROM TOWN CENTERS (TC):
 - LETHA
 - MONTOUR
 - SWEET
 - OLA

 CLASS 3 MINERAL EXTRACTION PERMITS PROHIBITED
 (CLASS 1 AND 2 ALLOWED)

