

District Court Delta County, State of Colorado 508 Palmer Street Delta, CO 81416	FILED Document CO Delta County District Court 7th JD Filing Date: Jul 5 2012 11:39AM MDT Filing ID: 45168528
PLAINTIFFS: Travis Jardon; Reg Cridler; Diane Cridler; Susan Raymond; and Mark Cool; v. DEFENDANTS: Delta County Board of Commissioners; Edwin Hostetler; Eileen Hostetler; Roland Hostetler; and Anna Hostetler	Review Clerk: Daniel Ruiz ▲ COURT USE ONLY ▲ <hr/> Case Number: 11CV282 Div.: 2
ORDER ON RULE 106 CLAIM	

This is an action concerning specific development approval of two poultry operations submitted by the Hostetler Defendants (hereinafter "Applicants") to the Defendant Board of County Commissioners (hereinafter generally referred to as "Delta County"). Plaintiffs are neighboring property owners to the proposed operations.

Pending before the Court are the fully briefed arguments by Plaintiffs and Delta County with respect to the Colorado Rules of Civil Procedure Rule 106(a)(4) portion of this litigation challenging the conditional approval by Delta County of the two applications on Powell Mesa and Redlands Mesa near Hotchkiss in the unincorporated portion of Delta County. The resolutions of conditional approval are attached as Exhibits 1 and 2 to this Order and were executed October 3, 2011.

The Court has reviewed the record which exceeds 1100 pages. The Court has also reviewed the briefing and other pleadings. This Court conducted a preliminary injunction hearing in this case and, for reasons stated on the record at the conclusion of

the hearing, denied the request by Plaintiffs for a preliminary injunction during the pendency of these proceedings.

This litigation involves proposals for a 15,000-hen egg-laying operation on each of the separate parcels submitted by Western Slope Layers on Powell Mesa and Rocky Mountain Layers on Redlands Mesa. Delta County does not have traditional zoning. There is a Delta County Master Plan. Record 1090-1103. Delta County does regulate certain uses of property through its regulation of specific development, which applies in this instance. (Record 1039-1083.)

The Leroux Creek Advisory Planning Committee recommended denial of each proposal. The Delta County Planning Commission recommended denial of each proposal. Each of these steps is advisory to the ultimate decision of Delta County.

On August 29, 2012, following a public hearing on August 15, Defendant Delta County Board of County Commissioners conditionally approved both proposals. The approvals included a number of conditions and commitments by the Applicants. Formal resolutions were adopted on October 3, 2011. These proceedings followed that approval.

These proposals each contemplate a 400 x 50-foot barn with a 335 x 90-foot fenced pasture adjoining the barn. This would enable the operation to be considered "cage free." These operations would each house 15,000 chickens.

The Applicants based their plan for such operations on similar plans of relatives' operations in Illinois and Iowa. Delta County imposed conditions with respect to water quality, access, manure plan, noise plan, air quality, solid waste, monitoring, and other conditions.

It is undisputed that the majority of the people who spoke or submitted comments to any of the planning bodies during the course of this land use process articulated concerns related to impact on property values of neighboring properties, incompatibility with the neighborhood, noise, odor, air quality, traffic, disease, waste management, manure management, soil salinity, impact on views, inability to preserve the character of the neighborhood, flies, predators, impact on wild birds, rodents, disposal of remains of dead chickens, use of insecticides, adverse impact on groundwater and surface water, inability of the County to adequately monitor the operation or compliance with the conditions, access, roads, lighting, setback, inhumane treatment of the chickens, and lack of economic benefit to the County. Petitions in opposition were signed by 70 people on Powell Mesa, 227 people from the North Fork Valley, and more than 30 people in the Willow Heights Subdivision, which adjoins one of the proposed sites. Several Opposers contended the proposals were inconsistent with the Delta County Master Plan.

Those who spoke in support of the applications indicated that the concerns could be addressed by effective management, that this is a rural and agricultural use, that this was not a confined animal feeding operation as that term is defined and regulated by the Colorado State Department of Health and Environment, that "management is key," that compatibility can be assured by mitigation, that management plans in place and subject to County regulation will address all ongoing concerns, that this is a smaller operation than other poultry operations in Delta County, that there have not been complaints by neighbors for similar operations in Iowa and Illinois, that there is a statutory right to farm and Delta County has a similar resolution, that they will be purchasing local corn, that they have found a buyer in the community for the manure,

that 15,000 chickens have the comparable impact of 50 steers, the fundamental rights on use of one's private property and that they have developed management plans for all issues of concern which have been identified.

The Commissioners, in their deliberations, indicated that each side had property rights, that the proposals, together with the conditions and undertakings of the Applicants, would be compatible with the surrounding property uses, that the Master Plan, statutory intent of the Colorado right to farm, C.R.S. Section 35-3.5-101 et seq. and the philosophy of the Delta County Resolution 96-R-033, also on the right to farm and ranch, support this use, and that the applications were consistent with the Master Plan goals of preserving agricultural land and operations, preserving the rural lifestyle, encouraging development to occur where infrastructure was in place, protect private property rights and promote the economic base of the County.

LEGAL ARGUMENTS

Plaintiffs argue that there is no competent evidence that the proposed applications for specific development are consistent with the Master Plan, no competent evidence that the proposed applications would not adversely impact neighboring property values, no competent evidence that there is sufficient management control, and that the process utilized by the County violated the due process rights of the Opposers.

Delta County argues that the County has carefully considered the concerns and comments as evidenced by the commitments of the Applicants coupled with the conditions imposed by the County, with an express finding that upon compliance with such conditions, the use will be:

- a) Compatible,
- b) Property values will not be impacted,
- c) Compliant with the Master Plan,
- d) That there is no prejudice or harm by the communication of one of the commissioners with a representative of the Applicant and the Applicant during site visits, and
- e) That the issue with respect to the setback required in other states is not material.

For their Reply, Plaintiffs argue that conditions do not constitute evidence; such that the record is devoid of support for the conclusions reached, thus subject to a finding that the decision is arbitrary and capricious.

The Court finds, concludes, and orders as follows:

STANDARD OF REVIEW

- 1) The Parties have not materially disputed the applicable standard of review. As the Colorado Supreme Court stated more than 30 years ago in *Sundance Hills Homeowners Associations v. Board of County Commissioners of Arapahoe County*, 534 P.2d 1212 (Colo. 1975), at page 1216:

Our role is not and should not be to sit as a zoning board of appeals. Garrett v. City of Littleton, 177 Colo.167, 493 P.2d 370 (1972); Baum v. Denver, 147 Colo.104, 363 P.2d 688 (1961).

In a more recent case, *Board of County Commissioners of Routt County v. O'Dell*, 920 P.2d 48 (Colo. 1996), that Court, citing *Sundance, supra*, stated that the question is essentially whether there is competent evidence to support the Board's conclusions when reviewing a Rule 106 proceeding.

- 2) The Court should defer to the County with respect to interpretation of its land use code and related legislative proceedings. See generally *Canyon Area Residents v. Board of County Commissioners of Jefferson County*, 172 P.3d 905 (Colo. App. 2006).

In perhaps the most recent case discussing the standard of review, *Lieb v. Trimble*, 183 P.3d 702 (Colo. App. 2008), the Court states at page 704 as follows:

Review of a governmental body's decision pursuant to C.R.C.P. 106(a)(4) calls into question the decision of the body itself, not the district court's determination on review. City & County of Denver v. Bd. of Adjustment, 55 P.3d 252, 254 (Colo. App. 2002) (citing *City of Colorado Springs v. Securcare Self Storage, Inc.*, 10 P.3d 1244 (Colo. 2000)). Our review is based solely on the record that was before the board, and the decision must be affirmed unless there is no competent evidence in the record to support it such that it was arbitrary and capricious. *Id.* Such review is limited to a determination of whether the board exceeded its jurisdiction or abused its discretion, "as well as whether an erroneous legal standard was applied by the agency." *Quaker Court Ltd. Liab. Co. v. Bd. of County Comm'rs*, 109 P.3d 1027, 1030 (Colo. App. 2004) (quoting *Puckett v. City & County of Denver*, 12 P.3d 313, 314 (Colo. App. 2000)). In a C.R.C.P. 106(a)(4) review, an agency's legal conclusions are not reviewed de novo, and will be affirmed if supported by a reasonable basis. *Id.*

Administrative proceedings are accorded a presumption of validity and regularity, and all reasonable doubts as to the correctness of administrative rulings must be resolved in favor of the agency. *City & County of Denver v. Bd. of Adjustment*, 55 P.3d at 254; see *Quaker*, 109 P.3d at 1030. The burden is on the party challenging an administrative agency's action to overcome the presumption that the agency's acts were proper. *City & County of Denver v. Bd. of Adjustment*, 55 P.3d at 254.

3) The Court has examined cases suggesting that a quasi-judicial decision by a governmental entity was susceptible to challenge for a lack of impartiality. In *Scott v. City Englewood*, 672 P.2d 225 (Colo. App. 1983), at least two members of the City Council had actively been involved in petitions on a matter before the City. That Court stated at page 227 as follows:

There is a presumption of integrity, honesty, and impartiality in favor of those serving in quasi-judicial capacities. Withrow v. Larkin, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). And, the challenger of a quasi-judicial decision has the burden of rebutting this presumption of impartiality. Schweiker v. McClure 456 U.S. 188, 102 S.Ct. 1665, 72 L.Ed.2d 1 (1982). See also Hortonville Joint School District No. 1 v. Hortonville Education Ass'n, 426 U.S. 482, 96 S. Ct. 2308, 49 L.Ed.2d 1 (1976). Thus, a quasi-judicial proceeding violates due process only if this presumption of integrity and honesty is overcome by a showing that there is a conflict of interest on the part of a participating decision-maker. Hortonville, supra.

Scott is cited in the dissent by Justice Rice in *Widder v. Durango School District*, 85 P.3d 518 (Colo. 2004) at page 532:

A quasi-judicial proceeding must be conducted in accordance with procedural due process. Soon Yee Scott v. City of Englewood, 672 P.2d 225, 227 (Colo. App. 1983); see also, e.g., Douglas County Bd. of Com'rs v. Public Utilities Com'n of State of Colo., 829 P.2d 1303, 1310 (Colo. 1992) ("When an agency acts in a quasi-judicial capacity, procedural due process requires that the agency give notice and afford a hearing to affected individuals."). Crucial to the notion of due process is that a hearing be conducted by an impartial officer, who is held to the same standards as a judge. See, e.g., In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process."); Wells v. Del Norte Sch. Dist., C-7, 753 P.2d 770, 772 (Colo. App. 1987) ("When administrative proceedings are quasi-judicial in nature, agency officials should be

treated as the equivalent of judges.”). Although there exists a presumption of integrity, honesty, and impartiality in favor of those serving in quasi-judicial capacities, a party who demonstrates a personal, financial, or official stake in the decision on the part of the decision-maker overcomes that presumption. See First Bank v. Dep't of Regulatory Agencies, 852 P.2d 1345, 1353 (Colo. App. 1993).

In that instance, the Supreme Court was interpreting a statute which gave the school district the ability to evaluate as a threshold matter whether or not conduct of an employee was or was not within the scope of school district policy for discipline. The dissent, written by Justice Rice, argued that in a wrongful discharge suit, placing that discretion with the District was not before a fair and impartial tribunal. The majority disagreed.

- 4) While there need not be an express discussion or finding with respect to each of the issues asserted by Plaintiffs, the question is whether there is competent evidence in the record supporting the findings. Express factual findings are not required where the necessary findings may reasonably be implied from the actions taken. *Canyon Area Residents, supra*, citing *Sundance Hills, supra*. In *Sundance, supra*, that Court stated at page 1216:

The issues argued were fairly debatable. Radice v. New York, 264 U.S. 292, 44 S.Ct. 325, 68 L.Ed. 690 (1923); Board of County Commissioners v. Simmons, 177 Colo.347, 494 P.2d 85 (1972). It cannot be said that the zoning decision of the Board was not supported by competent evidence. Therefore there was no abuse of discretion. The district court erred in substituting its judgment for that of the Board. Ford Leasing Development Co. v. Board of County Commissioners, Colo., 528 P.2d 237; Simmons, supra; Marker v. Colorado Springs, 138 Colo.485, 336 P.2d 305 (1959).

CONCLUSIONS OF LAW

- 1) The Delta County Regulations for Specific Development apply to these applications, Article II Section 4(A)2. The Regulations for Specific Development are found in the Record at pages 1039-1088.
- 2) The Court concludes that in this instance, there is a requirement for compliance with the Master Plan. *See generally Canyon Area Residents v. Board of County Commissioners*, 170 2P.3d 905 (Colo. 2006), citing *Board of County Commissioners v. Conder*, 927 P.2d 1339 (Colo. 1996). The Court's reading of the Delta County regulations for specific development requires compliance with the compatibility component of the Master Plan. Article VI Section 2(A) in relevant part provides that "The specific development must be consistent with the Delta County Master Plan..." (Record at p. 1055.)
- 3) The Applicants have undertaken various commitments identified in Exhibit A to each of the proposals in the record at pages 1031-1032 and 1037-1038. The County has imposed a number of conditions set forth in the Record at pages 1028-1029, and 1034-1035. Those documents are part of the Exhibits attached to this Order. While it is not the intent of the Court to substitute its judgment for that of Delta County, the Court concludes that there is, however, no evidence in the Record that those commitments or conditions will:
 - a. Make the proposed agricultural uses compatible with the existing uses,
 - b. Not adversely impact the surrounding properties values, or
 - c. Not physically damage the surrounding properties

- 4) As to some of the matters, the Record reflects a statement by one of the Applicants that "mitigation is compatability" and there are statements as to the absence of concerns identified by neighbors to similar operations in Iowa and Illinois, and an appraiser's comments on the lack of property value decline in Illinois for property near the operations, however, these all seem to be either in the category of opinion, not evidence or pose a concern as to whether the Iowa and Illinois operations and perhaps more particularly the neighborhoods are truly comparable given different climate, proximity to neighboring farms and residences, character of the area and the like. While the Court further appreciates that the commitments of the Applicant and the conditions imposed by Delta County are to address the concerns, the Court's review of the record does not demonstrate record support or other evidence finding that these conditions resolve the concerns detailed above. Similarly, there is nothing in the Record which demonstrates that the County has the capacity to conduct the oversight contemplated by some of these conditions.
- 5) The Court concludes that the omissions in this instance are not susceptible to reasonably implicit findings. The Court, in particular, notes the following :
- a) The correspondence from Attorney Steven Harper (pages 918 through 927 of the Record) noting particularly the necessity to comply with the Master Plan and the appraiser's discussion of the "incurable external obsolescence" created by these egg-laying operations making mitigation impossible;
 - b) Dr. Lazear's comments with respect to public health and groundwater contamination (page 943);

- c) The report from the professional engineer, Ms. Martin (starting at page 944 of the Record), concerning questions of reclamation funding, indirect costs of the County, soils analysis, sufficiency of the fly management, concerns about seepage into the soils, odor, noise, manure management, impact on other agricultural operations, access, permits, water needs and use, fire hazard, storm water and erosion control and streams setback;
 - d) The comments of the agricultural consultant, Ms. Pridgen (the record, pages 960 through 963), concerning the need for a formal nutrient management plan, plans for composting manure, specific information on plans for covering or lining waste pits, need for buffers, dead bird composting, fly control, predator control, insecticide concerns and airborne particulate issues, including bacteria, ammonia and chemicals.
- 6) It is undisputed that where there is no competent evidence, the Court may remand the matter to Delta County for further proceedings. Rule 106(a)(4)(IX) and *Canyon Area Residents, supra*.
- 7) Counsel appear to agree that the statutory right to farm does not directly apply to this matter. The Court agrees. C.R.S. § 35-3.5-101 et seq. limits circumstances where pre-existing agricultural uses may be deemed to be a nuisance to surrounding properties. The Court also agrees that the Delta County Resolution 96-R-033 Record 823-824 on the issue of right to farm, similarly, does not directly apply. Nevertheless, the Record reflects that the Commissioners were within their authority in considering the underlying policy behind those in evaluating these proposals.

- 8) Relying on *Canyon Area Residents, supra*, the County planning process is not the functional equivalent of a trial. Notwithstanding that, there is a requirement that the process be fundamentally fair. The Court disagrees that the submittal of additional comments following the close of the hearing violates that standard. Further, the Court is not persuaded that the communication of one commissioner during site visits with the Applicant or the Applicant's representative violate that standard. See *Scott, supra*.

ORDER

After giving the Board's proceedings a presumption of validity and regularity, and resolving all reasonable doubts in favor of the Board, Plaintiffs have overcome the presumption that the Board's actions were proper. See *City & County of Denver v. Bd. of Adjustment*, 55 P.3d 252 (Colo. App. 2002). The absence of record support constitutes abuse of discretion in the Board's decision. See *Quaker*, 109 P.3d at 1030.

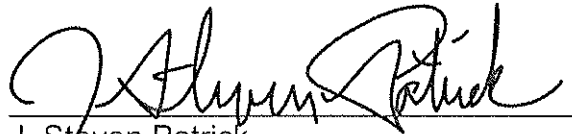
There is not record support of the findings on the following:

1. Compatibility of the proposed uses with the character of the neighborhood pursuant to the Master Plan;
2. Impact on property values of the surrounding property pursuant to the Master Plan;
3. Sufficiency of the conditions and the undertakings of the Applicants to address the concerns identified in the record; and
4. Capability of the County staff to monitor the compliance with the conditions and undertakings.

The matter is remanded to the Defendant Board of County Commissioners for further review and findings based on evidence prior to approval, conditional approval or denial of the applications.

Dated this 5th day of July, 2012.

BY THE COURT:



J. Steven Patrick
District Court Judge

RESOLUTION
OF THE
BOARD OF COUNTY COMMISSIONERS
OF THE
COUNTY OF DELTA, STATE OF COLORADO

RESOLUTION NO. 2011-R-049

**RESOLUTION TO CONDITIONALLY APPROVE SD11-004 ROCKY MOUNTAIN LAYERS
GREG AND CARMEN HOSTETLER, APPLICANTS**

WHEREAS, pursuant to Resolution 2009-R-055 (Specific Development Regulations), Greg and Carmen Hostetter, applicants, filed a Specific Development application for operation of a confined animal operation located in Delta County in the NW ¼ SE ¼ of Section 7, Township 14 South, Range 93 West, of the 6th Principal Meridian with a physical location of 28509 North Road, Hotchkiss, CO.; and

WHEREAS, the Planning Department notified all surrounding property owners within one thousand feet of the subject property and appropriate review agencies by mail; and

WHEREAS, this Board conducted a hearing on August 15, 2011, at which time the Board received staff recommendations from the Planning Department, heard testimony of the Applicants and comments from those in favor and from those opposed to the application. The Board took the application under advisement and then conducted another public meeting on August 29, 2011 at which time the Board rendered its decision. The Board has considered all of these matters in reaching its conclusions; and

WHEREAS, Planning Staff has reviewed the Specific Development application for completeness. Based on that review, the application appears to meet the intent of the Delta County Specific Development Regulations and Staff finds that:

1. This application is for approval of a confined animal operation under Article II Section 4 A (12) of the Specific Development Regulations.
2. The parcel is located on Redlands Mesa, is 40 acres in size and currently has a residence on it.
3. Water to the parcel is from a well and an Upper Surface Creek Domestic Water tap.
4. Access to the parcel from North Road is via an easement through an adjoining property.
5. Surrounding land uses include residences and agricultural land.
6. There are currently no other large scale chicken house operations in the area.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Delta County as follows:

- A. The findings of Planning Staff, as set forth above, are adopted as the findings of the Board.
- B. The Board further finds:
 1. That the development proposed by the Applicant is a reasonable use of its property and upon compliance with the conditions listed below will be compatible with the use and occupancy of the neighborhood.

2. That the anticipated impacts of the development can be mitigated by compliance with the performance standards of the regulations and the conditions set forth below.

- C. SD11-004 Rocky Mountain Layers shall be and hereby is approved subject to compliance with the following conditions:

Conditions of Approval:

1. All conditions of this agreement must be completed and approved prior to the commencement of operations. For the purposes of this agreement, commencement of operations shall be defined as the construction of the chicken house.
2. Obtain an Access Permit from Delta County for the change of use of the parcel. All conditions of the access permit shall be adhered to.
3. A site plan shall be provided and recorded with this development agreement that shows the location of all structures, improvement and utilities on the property.
4. Enter into an Access Road Maintenance Agreement with the other users of the access road that shall be signed by all parties and recorded at the Delta County Clerk and Records office and a copy provided to the Delta County Planning Department. The agreement shall include a provision for repair of any damage to any existing utilities that exist within the access easement. In the event that no agreement can be reached, the developer shall be responsible for all maintenance of the access road.
5. Obtain an address permit for the office located within the chicken house.
6. Provide proof that Upper Surface Creek Domestic Water Users Association will allow the use of the water tap in the chicken house. Provide a back-up water supply plan in the event the water tap is not adequate or is not serviceable. If a well is utilized for a back-up water supply, provide proof of water quantity, quality and dependability and State approval of the well for commercial use.
7. Provide the name, address and phone numbers of the State Veterinarian to contact in the event of a disease outbreak.
8. Provide copies of all required Colorado State Health Department permits.
9. Best management practices shall be adhered to in the operation of the chicken house.
10. The following plans are required including but not limited to:
 - A. Water quality control- a management plan must be developed to: divert clean surface water away from the poultry operations; decrease water volume; decrease the potential for poultry operation runoff to enter waters of the state; The plan shall also address percolation and potential groundwater contamination.
 - B. Manure and litter handling- a management plan must be developed to: haul and apply manure and chicken litter to crop land according to recognized agronomic rates on a regular basis or to be hauled to a certified compost facility; for regular chicken house cleaning; for minimizing the stockpiling of manure waste; for regular manure removal from outdoor confinement areas. In addition, land application of manure and litter may not harm or impact the bio-security plans of existing commercial poultry businesses in Delta County.
 - C. Fly control- a management plan must be developed to: monitor fly production on a regular basis; abate any fly production; a plan to eliminate a run-away adult fly hatch and larval

- hatch.
- D. Noise-a plan to reduce noise to the acceptable levels for a residential area according to 25 - 12 - 100 et. seq. C.R.S. as amended.
 - E. Air quality-a management plan must be developed to control the amount of dust and odors produced from the facilities.
 - F. Solid waste-a management plan must be developed to dispose of deads, eggs, waste packaging, and other solid waste materials.
 - G. Eggs -a management plan must be developed for handling the produced eggs.
 - H. At a minimum the following plans shall be provided to address the above conditions: a drainage study including stormwater, geotechnical and erosion control completed and signed by a registered professional engineer is required showing management of drainage at the facility, specifically in the areas of manure storage, composting areas and open pens. The study should include drainage management from a twenty five year twenty four hour storm event.
 - I. Include in the management plan the maximum number of chickens that will be allowed in the chicken house at any one time.
 - J. A monitoring plan shall be provided that allows for inspection of the facility and current management plans at any time by representatives of Delta County or another regulatory agency. Develop an inspection schedule for one full cycle of approximately fourteen months, plus one cycle of disposal of manure.
 - K. All of the above required plans shall be prepared professionally and shall not be considered complete until approved and accepted by Delta County staff.
- 11. Provide a bio-security plan indicating the distribution of the feed and routes that will be used to get to the location including the size of all trucks that will be used for any phase of the operation including a management plan for manure during transport.
 - 12. All outside lighting shall be hooded and/or directed downward so as to not pollute the night sky or allow glare onto adjacent properties.
 - 13. There shall be no egg washing conducted at the facility with the exception of hand washing of any eggs prior to packaging that fall to the floor.
 - 14. Rocky Mountain Layers shall comply with all of the conditions submitted by and agreed to by the applicant to Delta County as outlined in Exhibit C attached hereto.
 - 15. All terms and conditions of this development agreement shall be completed, approved and accepted by Delta County within two (2) years of the recording of this document. Failure to complete the required conditions within the two (2) year timeframe shall constitute dismissal of the agreement and forfeiture of the development.
 - 16. Any changes/alterations to this development shall be submitted to the Delta County Planning Department for approval. If the impacts for any changes/alterations are significant, a new application shall be submitted and full review with approval from the Delta County Board of County Commissioners and a new Development Agreement will be required prior to any construction or expansion of the operation.
- D. The Development Agreement is approved herein for the items requested in the application as revised through the review process. No expansion of the operation beyond this will be permitted at this location without a new application and a full review process.
 - E. Any violation of the foregoing conditions may be grounds for the revocation of this approval and the Development Agreement approved by the County. Complaints alleging violations shall be reviewed by the Delta County Planning Department and if determined valid, the

owner and/or operator shall be given a reasonable time to mitigate the violation, unless the public health or safety is immediately jeopardized, in which case the Development Agreement may be suspended by the Board of County Commissioners. The Development Agreement may not be revoked without notice to the Applicant and an opportunity to be heard by this Board.

Adopted this 3rd day of Oct, 2011.



BOARD OF COUNTY COMMISSIONERS
OF DELTA COUNTY, COLORADO
By: [Signature]
C. Bruce Hovde, Chair

ATTEST:

[Signature] Deputy
Ann B. Eddins
Delta County Clerk and Recorder

[Signature]
R. Olen Lund, Vice Chair

[Signature]
C. Douglas Atchley, Commissioner

Exhibit A

Salmonella Enteritidis Prevention Plan will be prepared for both 15,000 laying hen locations.

Humane Farm Animal Care (HFAC) Guidelines -- Greg and Edwin Hostetler's barns and operation will be built and operated in compliance with all the HFAC Regulations. Each operation shall meet the standards of (HFAC) for Laying Hens, Humane Farm Animal Care grants a certification of Certified Humane Raised and Handled to each operation, and is authorized by HFAC to use the MARK, an exact copy of which appears at the top of this Certificate. A Certificate of Certification - Certified Humane Raised & Handled by Humane Farm Animal Care will be issued to each 15,000 laying hen operation

The Chicken Barn shall meet the following:

- 1.2 sq. ft per bird floor space
- Perch space for all the birds of which 20% needs to be elevated a minimum of 16" above the adjacent floor at 6" per bird.
- 1.5" per bird circular feed pan space
- One nipple water for every 10 birds
- Computerized Chicken Barns:
 - The 15000 bird chicken barns we are purposing to build will be equipped with the latest in computerized technology. This allows us to provide for the comfort and safety of the birds and also allow us to control the environment inside the barn to mitigate the issues of flies and odor. The barns will be equipped with a senso-phone that will call the operator if any of the perimeters on temperature, feeder run time, water usage, lighting, humidity (moisture), etc. fall outside the designated range. For example if there would be a water leak or if the water system failed it would immediately call the operator and notify the owner of the problem. It will also notify the operator in the event of a power outage. They will have emergency equipment (generator) in place in case of a power outage so there will be no lapse in power.
 - The buildings shall be constructed of metal and concrete and painted in earth tone colors and screened to greatest extent possible by natural landscaping and solid fencing if necessary.
 - The barns are equipped as well with emergency backup thermostats in the event that the computer would malfunction.
 - Ventilation: The computerized controller will control a four (4) stage ventilation system using measurements of temperature, static pressure inside and out, and humidity. This is called tunnel ventilation. The air is pulled the length of the barn. As the air leaves the building, slow it down to reduce sound and the dust particles will drop out when it hits the angled wall.
 - The computer will control the operation of the fans, curtains, heating/cooling (cooling fans on the end of the building - no water used) systems based on the above monitoring data to create an optimum environment for the hens. The ventilation system is totally automatic and maybe controlled/monitored by a ventilation company 24/7 through the computer miles from the barn.
 - The computer keeps a very detailed history that is available at all times on everything it controls, for example I could see exactly how often and for how long and at what time every individual fan was running.
 - The inside of the barn contains 75-100 - 26 watt CFL bulbs (100 watts incandescent equivalent). 100 bulbs x 100 watts = 10,000 watts / 18500 sq. ft = .54 watts/sq ft. The curtains will shield lights in the winter. The lights inside the building are run by computer and may be set to come on and shut off to maximize production. The curtains will keep the light from leaking out at night. The barns are located so the light inside the building will not impact neighbors and will be shielded by trees, fences, etc.
 - Water - the water system is managed by computer. If you fill a 5 gallon bucket, the alarm will come on and your phone will ring. The alarm will go off anytime the water system either shuts down or develops a leak and uses more water. The amount of water is measured each day. Therefore the 800 gallons/day average is based on the amount of water 15,000 chickens have used in similar barns. It is not a guess/estimate.

- Fan noise will be mitigated with the addition of shrouds, a solid angled wall in front of the fan to defuse the noise and control the dust. The fans are run by computer and the speed may be set to reduce the amount of noise depending on the climatic conditions. I contacted the manufacturer and no one has complained about fan noise and they have no data on the amount of decibels the fans produce. The Hypermax 54" fan made by Vaico, will be used. Vegetation existing and planted will also be used to control fan noise.
- Upgrade the access road at the applicant's expense capable of withstanding the anticipated truck traffic to a width of no less than 20 feet. Construction design plans shall be submitted to the Delta County Engineering Department for approval prior to construction.

Outside Pen Test:

We have heard and received comments concerned with an increase in odor and flies when hens use the outside pen. We do not know where the commenters are receiving their documentation (facts) that there will be an increase in flies and odor when the hens are let out of the building. If there are no flies on the inside there should be no flies on the outside. The existing hen barns located in Iowa and Illinois have shown no increase in odor or flies (if any) when the hens are permitted to use the pen.

The program allows for a lot of flexibility in how often the pen will be used. Hens will be placed in the pen in the afternoons after laying their eggs when the weather is nice. The pen will not be used on cold days below 54 degrees or days with a temperature greater than 82 degrees. The chickens have to be trained and growers have said only about 30% will actually go out.

We are agreeable to keep the hens in the building the first 60 days so the amount of odor and flies (if any) in the neighborhood may be determined. On the 61st day or when the climatic conditions are right, we will turn the hens out in the afternoons. We will daily visit the neighboring area to see if there is any increase in the number of flies or odor (if any). We need to complete this test to determine if letting the hens use the pen will increase the impact (if any) on the neighborhood. If there is an increase, we will make the needed changes to the operation to insure to our neighbors letting the hens use the pen will not increase flies and odor.

Rodents: Rodents will be monitored on a continual basis. Tin Cats will be placed at 50' intervals around the exterior of the building. A map and capture log will be maintained. Tamper proof bait stations will be maintained around the facility. A rodent control plan will be prepared and filed with Delta County as a condition of approval of the specific development application.

RESOLUTION
OF THE
BOARD OF COUNTY COMMISSIONERS
OF THE
COUNTY OF DELTA, STATE OF COLORADO

RESOLUTION NO. 2011-R-050

RESOLUTION TO CONDITIONALLY APPROVE SD11-006 WESTERN SLOPE LAYERS
EDWIN AND EILEEN HOSTETLER, APPLICANTS

WHEREAS, pursuant to Resolution 2009-R-055 (Specific Development Regulations), Edwin and Eileen Hostetter, applicants, filed a Specific Development application for operation of a confined animal operation located in Delta County in the NW ¼ SE ¼ and SW ¼ SE ¼ of Section 19, Township 14 South, Range 92 West, of the 6th Principal Meridian with a physical location of 34637 Powell Mesa Road, Hotchkiss, CO.; and

WHEREAS, the Planning Department notified all surrounding property owners within one thousand feet of the subject property and appropriate review agencies by mail; and

WHEREAS, this Board conducted a hearing on August 15, 2011, at which time the Board received staff recommendations from the Planning Department, heard testimony of the Applicants and comments from those in favor and from those opposed to the application. The Board took the application under advisement and then conducted another public meeting on August 29, 2011 at which time the Board rendered its decision. The Board has considered all of these matters in reaching its conclusions; and

WHEREAS, Planning Staff has reviewed the Specific Development application for completeness. Based on that review, the application appears to meet the intent of the Delta County Specific Development Regulations and Staff finds that:

1. This application is for approval of a confined animal operation under Article II Section 4 A (12) of the Specific Development Regulations.
2. The parcel is located on Powell Mesa, is 96 acres in size and currently has a residence on it. There are also irrigated fields and livestock is raised on the property.
3. Water to the operation will be provided by the Blide Spring.
4. Access to the parcel is from Powell Mesa Road.
5. Surrounding land uses include residences and agricultural land.
6. There are currently no other large scale chicken house operations in the area.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Delta County as follows:

- A. The findings of Planning Staff, as set forth above, are adopted as the findings of the Board.
- B. The Board further finds:
 1. That the development proposed by the Applicant is a reasonable use of its property and upon compliance with the conditions listed below will be compatible with the use and occupancy of the neighborhood.

2. That the anticipated impacts of the development can be mitigated by compliance with the performance standards of the regulations and the conditions set forth below.

- C. SD11-006 Western Slope Layers shall be and hereby is approved subject to compliance with the following conditions:

Conditions of Approval:

1. All conditions of this agreement must be completed and approved prior to the commencement of operations. For the purpose of this agreement, commencement of operations shall be defined as the construction of the chicken house.
2. Obtain an Access Permit from Delta County for the change of use of the parcel. All conditions of the access permit shall be adhered to.
3. A site plan shall be provided and recorded with this development agreement that shows the location of all structures, improvement and utilities on the property.
4. Acquire a new water right for use of the spring and provide a copy of the augmentation plan for commercial use of the spring. Additionally, provide a plan for backup water supply in the event a call is placed on the Gunnison River and water must be diverted from the spring.
5. Obtain an address permit for the office located within the chicken house.
6. Provide the name, address and phone numbers of the State Veterinarian to contact in the event of a disease outbreak.
7. Provide copies of all required Colorado State Health Department permits.
8. Best management practices shall be adhered to in the operation of the chicken house.
9. The following plans are required including but not limited to:
 - A. Water quality control- a management plan must be developed to: divert clean surface water away from the poultry operations; decrease water volume; decrease the potential for poultry operation runoff to enter waters of the state; The plan shall also address percolation and potential groundwater contamination.
 - B. Manure and litter handling-a management plan must be developed to: haul and apply manure and chicken litter to crop land according to recognized agronomic rates on a regular basis or to be hauled to a certified compost facility; for regular chicken house cleaning; for minimizing the stockpiling of manure waste; for regular manure removal from outdoor confinement areas. In addition, land application of manure and litter may not harm or impact the bio-security plans of existing commercial poultry businesses in Delta County.
 - C. Fly control-a management plan must be developed to: monitor fly production on a regular basis; abate any fly production; a plan to eliminate a run-away adult fly hatch and larval hatch.
 - D. Noise-a plan to reduce noise to the acceptable levels for a residential area according to 25 - 12 - 100 et. seq. C.R.S. as amended.
 - E. Air quality-a management plan must be developed to control the amount of dust and odors produced from the facilities.
 - F. Solid waste-a management plan must be developed to dispose of deads, eggs, waste packaging, and other solid waste materials.
 - G. Eggs -a management plan must be developed for handling the produced eggs.
 - H. At a minimum the following plans shall be provided to address the above conditions:

- a drainage study including stormwater, geotechnical and erosion control completed and signed by a registered professional engineer is required showing management of drainage at the facility, specifically in the areas of manure storage, composting areas and open pens. The study should include drainage management from a twenty five year twenty four hour storm event.
- I. Include in the management plan the maximum number of chickens that will be allowed in the chicken house at any one time.
 - J. A monitoring plan shall be provided that allows for inspection of the facility and current management plans at any time by representatives of Delta County or another regulatory agency. Develop an inspection schedule for one full cycle of approximately fourteen months, plus one cycle of disposal of manure.
 - K. All of the above required plans shall be prepared professionally and shall not be considered complete until approved and accepted by Delta County staff.
10. Provide a bio-security plan indicating the distribution of the feed and routes that will be used to get to the location including the size of all trucks that will be used for any phase of the operation including a management plan for manure during transport.
 11. All outside lighting shall be hooded and/or directed downward so as to not pollute the night sky or allow glare onto adjacent properties.
 12. There shall be no egg washing conducted at the facility with the exception of hand washing of any eggs prior to packaging that fall to the floor.
 13. Western Slope Layers shall comply with all of the conditions submitted by and agreed to by the applicant to Delta County as outlined in Exhibit C attached hereto.
 14. All terms and conditions of this development agreement shall be completed, approved and accepted by Delta County within two (2) years of the recording of this document. Failure to complete the required conditions within the two (2) year timeframe shall constitute dismissal of the agreement and forfeiture of the development.
 15. Any changes/alterations to this development shall be submitted to the Delta County Planning Department for approval. If the impacts for any changes/alterations are significant, a new application shall be submitted and full review with approval from the Delta County Board of County Commissioners and a new Development Agreement will be required prior to any construction or expansion of the operation.
- D. The Development Agreement is approved herein for the items requested in the application as revised through the review process. No expansion of the operation beyond this will be permitted at this location without a new application and a full review process.
- E. Any violation of the foregoing conditions may be grounds for the revocation of this approval and the Development Agreement approved by the County. Complaints alleging violations shall be reviewed by the Delta County Planning Department and if determined valid, the owner and/or operator shall be given a reasonable time to mitigate the violation, unless the public health or safety is immediately jeopardized, in which case the Development Agreement may be suspended by the Board of County Commissioners. The Development Agreement may not be revoked without notice to the Applicant and an opportunity to be heard by this Board.

Adopted this 3rd day of October, 2011.



BOARD OF COUNTY COMMISSIONERS
OF DELTA COUNTY, COLORADO

By: _____

C. Bruce Howde, Chair

R. Olen Lund

R. Olen Lund, Vice Chair

Ann B. Eddins
Ann B. Eddins
Delta County Clerk and Recorder

C. Douglas Atchley

C. Douglas Atchley, Commissioner

Exhibit A

Salmonella Enteritidis Prevention Plan will be prepared for both 15,000 laying hen locations.

Humane Farm Animal Care (HFAC) Guidelines – Greg and Edwin Hosteller's barns and operation will be built and operated in compliance with all the HFAC Regulations. Each operation shall meet the standards of (HFAC) for Laying Hens. Humane Farm Animal Care grants a certification of Certified Humane Raised and Handled to each operation, and is authorized by HFAC to use the MARK, an exact copy of which appears at the top of this Certificate. A Certificate of Certification – Certified Humane Raised & Handled by Humane Farm Animal Care will be issued to each 15,000 laying hen operation.

The Chicken Barn shall meet the following:

- 1.2 sq. ft per bird floor space
- Perch space for all the birds of which 20% needs to be elevated a minimum of 16" above the adjacent floor at 6" per bird.
- 1.5" per bird circular feed pan space
- One nipple water for every 10 birds
- Computerized Chicken Barns:
 - The 15000 bird chicken barns we are purposing to build will be equipped with the latest in computerized technology. This allows us to provide for the comfort and safety of the birds and also allow us to control the environment inside the barn to mitigate the issues of flies and odor. The barns will be equipped with a senso-phone that will call the operator if any of the parameters on temperature, feeder run time, water usage, lighting, humidity (moisture), etc. fall outside the designated range. For example if there would be a water leak or if the water system failed it would immediately call the operator and notify the owner of the problem. It will also notify the operator in the event of a power outage. They will have emergency equipment (generator) in place in case of a power outage so there will be no lapse in power.
 - The buildings shall be constructed of metal and concrete and painted in earth tone colors and screened to greatest extent possible by natural landscaping and solid fencing if necessary.
 - The barns are equipped as well with emergency backup thermostats in the event that the computer would malfunction.
 - Ventilation: The computerized controller will control a four (4) stage ventilation system using measurements of temperature, static pressure inside and out, and humidity. This is called tunnel ventilation. The air is pulled the length of the barn. As the air leaves the building, slow it down to reduce sound and the dust particles will drop out when it hits the angled wall.
 - The computer will control the operation of the fans, curtains, heating/cooling (cooling fans on the end of the building – no water used) systems based on the above monitoring data to create an optimum environment for the hens. The ventilation system is totally automatic and maybe controlled/monitored by a ventilation company 24/7 through the computer miles from the barn.
 - The computer keeps a very detailed history that is available at all times on everything it controls, for example I could see exactly how often and for how long and at what time every individual fan was running.
 - The inside of the barn contains 75-100 – 26 watt CFL bulbs (100 watts incandescent equivalent). 100 bulbs x 100 watts = 10,000 watts / 18500 sq. ft = .54 watts/sq ft. The curtains will shield lights in the winter. The lights inside the building are run by computer and may be set to come on and shut off to maximize production. The curtains will keep the light from leaking out at night. The barns are located so the light inside the building will not impact neighbors and will be shielded by trees, fences, etc.
 - Water – the water system is managed by computer. If you fill a 5 gallon bucket, the alarm will come on and your phone will ring. The alarm will go off anytime the water system either shuts down or develops a leak and uses more water. The amount of water is measured each day. Therefore the 900 gallons/day average is based on the amount of water 15,000 chickens have used in similar barns. It is not a guess/estimate.

- Fan noise will be mitigated with the addition of shrouds, a solid angled wall in front of the fan to defuse the noise and control the dust. The fans are run by computer and the speed may be set to reduce the amount of noise depending on the climatic conditions. I contacted the manufacturer and no one has complained about fan noise and they have no data on the amount of decibels the fans produce. The Hypermax 54" fan made by Valco, will be used. Vegetation existing and planted will also be used to control fan noise.

Outside Pen Test:

We have heard and received comments concerned with an increase in odor and flies when hens use the outside pen. We do not know where the commenters are receiving their documentation (facts) that there will be an increase in flies and odor when the hens are let out of the building. If there are no flies on the inside there should be no flies on the outside. The existing hen barns located in Iowa and Illinois have shown no increase in odor or flies (if any) when the hens are permitted to use the pen.

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