



August 17, 2021

Dear Custer County Commissioners:

We are writing in regard to the Planning and Zoning Commission's approval of Michael and Amanda Boren's Application for a Conditional Use Permit (CUP) designating pasture on the Hell Roaring Ranch as an airstrip.

As the Commission is aware, Applicant's property is subject to a Forest Service Scenic Easement Pursuant to 36 CFR § 292.16(c)(1). The use of the property in question must be in conformance with applicable Federal, State, and Local laws, regulations, and ordinances. Additionally, the County Ordinances are considered to be minimum standards, and any law or regulation that is most restrictive shall govern. See Ordinance No. 2007 – 09, Article I § D. Therefore, these go hand in hand, and both require compliance with PL 92-400 which regulates the use and development of land within the boundaries of the Sawtooth National Recreation Area.

It is our understanding the Forest Service is investigating whether the Applicant's use was in compliance with PL 92-400. It is also our understanding that the Planning and Zoning Commission requested input from the Forest Service or at least believed it to be relevant—as they should have. Certainly, this information should have been taken into consideration by the Commission. If the Forest Service investigation findings are adverse to Mr. Boren's interests, the granted CUP would be in violation of both the easement and Custer County's ordinances.

Additionally, the Sawtooth Society, and concerned citizens alike, will find the information from the investigation to be relevant and wish to provide comments on it.

Although not entirely analogous, this case draws some parallels to *Fischer v. City of Ketchum*, 141 Idaho 349, 109 P.3d 1091 (2005). In the decision, the Court stated "[w]ithout the certification of the licensed engineer at the public hearings leading to the issuance of the conditional use permit, the interested public has no meaningful chance to comment on the CUP's impact on community or other facts affecting surrounding property." *Id.* at 1097.

**Without the findings of the Forest Service's investigation, the Sawtooth Society and all other concerned citizens in Custer County are placed in the same position as *Fischer*. The Sawtooth Society or any other interested party is denied the ability to use or cite that information at a public hearing. For these reasons, we believe that the Commission's approval is at least premature, if not improper.**

Finally, as stated in our letter to the Planning and Zoning Commission opposing the Boren's application for a Conditional Use Permit (submitted herewith as "Exhibit A") the Commission is essentially rewarding wrongful behavior.

According to Mr. Boren's testimony, the Forest Service contacted the County regarding his use of his airstrip, so the county contacted him and advised him to apply for a conditional use permit for what he was doing. Although Mr. Boren repeatedly asserted that he didn't need a CUP for his private use, it appears that at least the County believed he did. We believe that this point bears repeating and merits further discussion because it appears that the Commission is giving Mr. Boren preferential treatment.

Respectfully submitted,

Board President

PO BOX 820, HAILEY, ID 83333 · WWW.SAWTOOTHSOCIETY.ORG

*Preserving, Protecting, and Enhancing the Sawtooth National Recreation Area*



## Exhibit A

Custer County Planning and Zoning  
801 E. Main Ave  
Challis, ID 83226

March 25, 2021

Dear Commissioners:

We submit this letter to the Custer County Planning and Zoning Commission as comment to Michael and Amanda Boren's application for a Conditional Use Permit for a private airstrip. As an initial matter, we recognize Boren's right to have an airstrip on his land under the Custer County Zoning Ordinances so long as he has a Conditional Use Permit. However, we believe that the past and present operation of the airstrip is not in accordance with the Custer County Zoning Ordinances or the regulations under Public Law 92-400, and the Borens should not be rewarded for failure to abide by said ordinances and regulations. Therefore, for the reasons discussed herein, we respectfully request the Commission deny the Borens' Conditional Use Permit.

The Borens' application is not an application for a "proposed use." Rather, it is an application for permission to expand a current use that has been in existence for the last two years, which to the best of our knowledge, has been ongoing absent approval from Custer County. As set forth in Article XI, "any person seeking to construct or build any structure... shall give notice to the Custer County Planning and Zoning Department prior to the start of such building or construction." See *Ordinance 2007-09, Article XI* (emphasis added). Article V adopts the Official Schedule of District Regulations set forth in Article VI. The schedule provides that "Airports, Heliports and Landing Strips"<sup>1</sup> require a conditional use permit in all districts. Therefore, the "*use is allowed upon the issuance of a Conditional Use Permit through application to the Planning and Zoning Commission.*" See *Ordinance 2007-09, Article V Section B* (emphasis added). The application admits on its face that the use of the airstrip has been ongoing. Thus, to the best of our knowledge, the Borens' use of the land has been in violation of the county ordinances for the last two years, absent any previous application. In Custer County violations are penalized, not rewarded. See *Ordinance 2007-09, Article XXII*. Granting the application after-the-fact only excuses the violation. Although the Ordinances provide that a Conditional use Permit shall not be considered as establishing a binding precedent, in reality, it sets an unfavorable precedent for the people in the County moving forward. People will only continue to seek forgiveness rather than permission.

Regardless, the provisions of the ordinances are minimum requirements. Any lawfully adopted regulations that are more restrictive shall govern. *Ordinance 2007-09, Article I Section D*. As the Commission is likely aware, the applied-for property is subject to Public Law 92-400, which calls for "(2) the conservation and development of scenic, natural, historic, pastoral, wildlife, and other values contributing to and available for public recreation and enjoyment..."

---

<sup>1</sup> Airport is defined as: "[a]ny runway, land area or other facility designed or used either publicly or privately by any person for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage and tie-down areas, hangars and other necessary buildings. See *Ordinance 2007-09, Article II Section B*.



The general standards under Public Law 92-400 are set forth in 36 CFR § 292.16, which provides that all properties are subject to the following relevant provisions:

- 1) Use and development of the property will be in conformance with applicable Federal, State, and local laws, regulations, and ordinances.
- 2) Development, improvement and use of the property *will not materially detract from the scenic, natural, historic, pastoral, and fish and wildlife values of the area.*

See 36 CFR § 292.16(c)(1)-(2). The Borens' use of their property is (1) not in conformance with the applicable ordinances, as discussed above, and (2) a use that will materially detract from the scenic, natural, and historic values of the area because there is nothing scenic, natural, or historical about an airstrip. Additionally, there are already two airstrips within 10 miles of the subject property. Permitting an additional airstrip would inevitably result in increased air traffic, undermining the specific purpose behind the Sawtooth National Recreation Area.

Furthermore, the regulations provide that "[a]ny owner of property may request in writing the Area Ranger to examine the present use of the property and issue a certification that such present use conforms to the applicable standards established in § 292.16 for the land use category in which the property is placed. 36 CFR § 292.15(d)(1). Likewise,

[a]ny owner of property who proposes to change the use or develop his property for other than agricultural use may submit to the Area Ranger a use or development plan setting forth the manner in which and the time by which the property is to be developed and the use to which the property is to be put.

36 CFR § 292.15(d)(2). Absent said certification, the Commission should abstain from granting the Borens' Permit. In the event that the Area Ranger denies the certification, the Commission must likewise deny the same.

Turning to the substance of the application itself, it is laden with assumptions, and any and all support for said assumptions is wanting. For instance, the application states that the proposal will not impact the surrounding properties because there is no change in use. Additionally, the application provides that there will be no effects on adjoining property because, again, there is no change from current usage. These statements assume that the neighboring landowners were not impacted or affected in the first place. However, we believe a number of neighboring individuals disagree with the Borens' assumption and will similarly object to the proposal. The Commission should not accept these conclusory statements without further support.

For the foregoing reasons, we request the Board deny the Borens' application for a Conditional use Permit. In the event that the Board does grant the Borens' Conditional Use Permit, we respectfully request the use is highly restricted in order to preserve scenic, natural, and historical values of the area. Preservation of the Sawtooth National Recreation Area and Custer County in its natural state should be the ultimate goal.

We appreciate your time and consideration regarding this matter.

Respectfully,

Board President