



# Staff Report to the Weber County Commission

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action on three appeals from the Ogden Valley Planning Commission's decision regarding CUP 2012-01 for a heliport located in an F-40 Zone east of Green Hill Country Estates and approximately two-thirds of a mile from the Maple Street cul-de-sac

**Agenda Date:** Tuesday, April 10, 2012

**Applicant:** Timothy Charlowood, Tom and Roxanne Taylor, Donald and Dawn Kelly

**File Number:** CUP 2012-01

### Property Information

**Approximate Address:** 1600 North Maple Street (two-thirds of a mile east of the Maple Street cul-de-sac)

**Project Area:** Approximately 78 acres

**Zoning:** Forest 40 Zone (F-40)

**Existing Land Use:** Forest/Recreation

**Proposed Land Use:** Heliport

**Parcel ID:** 21-001-0010

**Township, Range, Section:** T6N, R2E, Section 3

### Adjacent Land Use

<b>North:</b>	Forest/Recreation	<b>South:</b>	Forest/Recreation
<b>East:</b>	Forest/Recreation	<b>West:</b>	Forest/Recreation

### Staff Information

**Report Presenter:** Sean Wilkinson  
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**Report Reviewer:** JG

## Applicable Ordinances

- Weber County Zoning Ordinance Chapter 8 (Forest Zones F-5, F-10, and F-40)
- Weber County Zoning Ordinance Chapter 22-C (Conditional Uses)

## Background

The following information was presented to the Ogden Valley Planning Commission on January 24, 2012 and February 28, 2012 respectively:

### January 24<sup>th</sup> Information

On January 3, 2012 the Weber County Commission adopted several amendments to the Weber County Zoning Ordinance regarding heliports in the Ogden Valley. On the same day, the applicant submitted a conditional use application for a heliport located in an F-40 Zone east of Green Hill Country Estates and approximately two-thirds of a mile from the Maple Street cul-de-sac. The proposed heliport location and an additional 446 acres owned by the applicant currently have final Planning Commission approval as a six-lot subdivision known as The Sanctuary. The application originally showed three sites on the applicant's property that were proposed for this use, however, it was discovered that two of the sites were located in an F-5 Zone which does not allow heliports. Only the location in the F-40 Zone is now being proposed for the heliport site.

The applicant is proposing to operate the heliport on a seasonal basis as a pick-up and drop-off site for heli-skiing operations. This site will be used for a maximum of three days per week, only during daylight hours, with no more than ten operations (take-off and landing combined) per day due to FAA regulations as described below. The proposed heliport has no permanent structures or facilities. No signage or lighting is proposed. The landing area is on an existing rock surface which is free from trees and other obstructions. Refueling on site will not occur. A portable latrine will be used at the site as necessary and may be removed when flights will not occur for several days.

Access to the proposed heliport is through Green Hill Country Estates, which has private roads. The applicant has provided staff with an agreement between the Green Hill HOA and the former owner of the property, which grants access on the Green Hill private roads to the applicant's property. The applicant has represented that the agreement allows those invited to his property to also use the private roads. However, this is a private matter between the applicant and the Green Hill HOA over which the County has no authority.

As part of the recent zoning ordinance amendments, the F-40 Zone now allows heliports as a conditional use subject to the following standards:

1. A heliport must be located on a single parcel of record which is not less than 40 acres in area.
2. A heliport must be located at an elevation of at least 6,200 feet above sea level.
3. A heliport must be located at least 200 feet from any property line. The Planning Commission may grant exceptions to the setback requirement if it can be demonstrated that locating the heliport closer than 200 feet to the property line provides a more beneficial situation for purposes of safety, noise abatement, access, or other valid reasons as determined by the Planning Commission.
4. The heliport landing surface must be dust-proof and free from obstructions.
5. Prior to issuance of a conditional use permit for a heliport, written approval from the Federal Aviation Administration (FAA) is required, if necessary.

The proposed application meets each of these standards in the following ways:

1. The proposed heliport is located in an F-40 Zone on a 78 acre parcel.
2. The proposed heliport has an elevation of approximately 6,300 feet above sea level.
3. The proposed heliport is located slightly over 200 feet from the parcel's east boundary line and much more than 200 feet from the other boundary lines.
4. The heliport landing surface is proposed to be on an existing rock surface which is free from dirt. There are no trees or other obstructions in the vicinity of the proposed landing area.
5. The heliport meets the definition of "intermittent use" under the Code of Federal Regulations (CFR) Title 14 Part 157.1.c and, therefore, does not require notification to or inspections from the FAA. Staff recently spoke with the FAA Salt Lake City Flight Standards District Office about this issue and it was confirmed that this heliport would require no inspections because it is seasonal, nothing is being constructed, and it meets the definition of "intermittent use." A similar response was given for the heliport that was proposed at the Red Moose Lodge in 2010.

## Summary of Planning Commission Considerations

- Does the proposed use meet the requirements of applicable County Ordinances?
- Are there any potentially detrimental effects that need to be mitigated by imposing conditions of approval, and if so, what are the appropriate conditions?

In order for a conditional use permit to be approved it must meet the requirements listed under "Criteria for Issuance of Conditional Use Permit." The Planning Commission needs to determine if the proposed heliport meets these requirements.

### **22C-4. Criteria for Issuance of Conditional Use Permit**

Conditional uses shall be approved on a case-by-case basis. The Planning Commission shall not authorize a Conditional Use Permit unless evidence is presented to establish:

1. Reasonably anticipated detrimental effects of a proposed conditional use can be substantially mitigated by the proposal or by the imposition of reasonable conditions to achieve compliance with applicable standards. Examples of potential negative impacts are odor, vibration, light, dust, smoke, or noise.
2. That the proposed use will comply with the regulations and conditions specified in the Zoning Ordinance and other applicable agency standards for such use.

After reviewing this conditional use request staff has determined that the criteria listed above have been met in the following ways:

1. The reasonably anticipated detrimental effects for this heliport include safety, noise, dust, and impacts to wildlife. Each of these issues is addressed below:

- **Safety:** This heliport will operate under visual flight rules (VFR) and flights will occur only during daylight hours and good weather conditions. In addition, the number of flights per day and the number of operating days per week are already restricted as mentioned previously. The heliport is located approximately two-thirds of a mile from the nearest residence and the anticipated approach and take-off paths, as described by the applicant, are over his own property, not over the Green Hill Subdivision or other residential areas. Refueling will not occur at the heliport. The heliport does not require FAA inspection as explained previously, but all applicable FAA regulations must be complied with.
- **Noise:** Impacts from the noise generated by helicopters using this site are minimized because the site is located two-thirds of a mile from the nearest dwelling and the number of operating days and flights per day are limited. The heliport site is surrounded by the applicant's property and other vacant mountain properties.
- **Dust:** The heliport landing area is on an exposed rock surface which the applicant has stated is free from dirt and other debris. The landing area must be maintained with a dust-proof surface as a standard of approval in the F-40 Zone. Any dust or debris that is generated by this use will remain on the applicant's property due to the setback regulations in place.
- **Wildlife Impacts:** The Ogden Valley Sensitive Lands Ordinance has already been applied for the Sanctuary Subdivision on this property. While the ordinance is applicable for the heliport as well, nothing is being constructed, no new roads are being created, no fencing will be built, and no additional vegetation is being disturbed. Therefore, the heliport complies with the Important Wildlife Habitat Areas section of the Ogden Valley Sensitive Lands Ordinance. Once the helicopter leaves the heliport, its flight path is regulated by the FAA. Impacts to wildlife that may occur during the helicopter flight cannot be regulated by the Planning Division or the Planning Commission.

2. The proposed heliport complies with the regulations and conditions specified in the F-40 Zone including parcel area, elevation, setbacks, landing surface, and FAA regulations (all as mentioned previously). The heliport must comply with all other reviewing agency provisions.

### **Conformance to the General Plan**

One of the goals of the Ogden Valley General Plan is to enhance quality recreational opportunities in the Valley. Resolution 3-97 (Ogden Valley General Plan Commercial Zone Map) states that the County continues to support the development of resort-related commercial areas. The General Plan also seeks to clarify the difference between commercial structures and commercial operations, with operations being allowed as conditional uses in appropriate zones. In addition, the heliport is another option for increased emergency medical service in the Valley. However, these goals must be balanced with the goal to make sure that development is compatible with the Valley's rural character and natural setting.

### **Conditions of Approval**

- Requirements of the Weber County Engineering Division
- Requirements of the Weber-Morgan Health Department
- Requirements of the Weber Fire District
- Requirements of the Federal Aviation Administration
- Other conditions deemed necessary by the Planning Commission to mitigate potential detrimental effects

### **Staff Recommendation**

Staff recommends approval of the proposed heliport, subject to agency review requirements, based on its compliance with applicable ordinance requirements as described in this staff report.

After considering this information, the Ogden Valley Planning Commission heard public comment, discussed the Zoning Ordinance criteria, and eventually tabled the conditional use application until February 28, 2012 for the following reasons:

1. To allow time for the Utah Division of Wildlife Resources (DWR) to review a conservation easement on adjacent property and provide comments regarding the heliport application.

2. To allow time for Planning Commission members to visit the site.
3. To allow time for Zone 2 Drinking Water Source Protection issues to be thoroughly addressed.
4. To allow time for test flights recorded by decibel meters to occur.
5. To allow time for the Weber-Morgan Health Department and the Weber Fire District to provide review comments.
6. To determine if the application constitutes a commercial business and if a business license is required.

### **February 28<sup>th</sup> Information**

Staff provided the following status report for each of the six issues at the February 28, 2012 Ogden Valley Planning Commission meeting:

1. Staff has provided the Utah Resource Development Coordinating Committee (RDCC) with the information that was presented to the Planning Commission on January 24<sup>th</sup>. The RDCC comment period closes on February 22<sup>nd</sup> but staff has not received any comments as of February 21<sup>st</sup>. Staff has spoken with Pam Kramer from the DWR and anticipates receiving comments prior to the deadline. More information will be provided to the Planning Commission as it becomes available.
2. A Planning Commission field trip to the proposed heliport site was held on February 4, 2012. Five of the seven Planning Commissioners, staff, and members of the public attended. The field trip consisted of a drive from the Maple Street cul-de-sac to the heliport site, a short question and answer session at the site with the applicant, followed by a return trip to the Maple Street cul-de-sac and more discussion. Unfortunately, a helicopter did not land at the site, so no decibel readings were obtained. No decisions were made at this meeting.
3. The major issue with the Drinking Water Source Protection at the January 24<sup>th</sup> meeting had to do with onsite helicopter refueling within a Zone 2. The applicant has now withdrawn the request for onsite refueling, which should adequately resolve this issue. The Green Hills Water District has recently provided staff with a copy of its Drinking Water Source Protection Plan, but staff has yet to receive a review from the Weber-Morgan Health Department.
4. Test flights were not conducted at the site, so there are no decibel readings available for the Planning Commission to consider. However, three decibel charts and one calculation have been provided to give a general understanding of the noise levels that can be expected. Based on these charts and the calculation, the heliport will generate a maximum of 70 decibels at 3,500 feet or two-thirds of a mile. The charts list various comparisons for 70 decibels including radio/television audio, a vacuum cleaner, normal conversation at 3-5 feet, and an automobile. Based on the expected noise levels and the limited heliport operations, it appears that potential issues with noise are adequately mitigated.
5. The Weber Fire District responded with no concerns after the refueling operation was withdrawn by the applicant. Staff has yet to receive a review from the Weber-Morgan Health Department. More information will be provided to the Planning Commission as it becomes available.
6. The definition of heliport in the Zoning Ordinance clearly allows commercial operations. If this site is determined to be a commercial heliport that needs a business license, then a business license will be required. However, if the use that takes place does not require a business license, or if a license has been obtained in another area where the business transactions actually occur, then a business license may not be necessary. Regardless of the type of use – private or commercial – the applicant is requesting a conditional use permit for a heliport which has very specific criteria. The criteria, rather than the private or commercial use should be the Planning Commission's focus.

After considering this status report, the Ogden Valley Planning Commission again heard public comment, discussed the Zoning Ordinance criteria, and eventually voted 5-2 in favor of approving the heliport for six months (until the August Planning Commission meeting) to allow an opportunity for the flight operations anticipated by Tim Charlwood to be conducted with whatever variables may occur, with the following conditions:

- Flights (landings and take-offs) shall be measured by decibel meters and the findings shall be presented to the Planning Commission.
- An official review from the Utah Division of Wildlife Resources shall be obtained during the 6 month approval period for review by the Planning Commission.

### **Appeal Information**

Chapter 22C of the Weber County Zoning Ordinance allows the decision of the Planning Commission to be appealed to the County Commission within 15 days after the written decision of the Planning Commission. Three appeals were filed. The first appeal was submitted by Tim Charlwood, the heliport applicant. The other two appeals were filed by Tom and Roxanne Taylor, and Donald and Dawn Kelly who are residents of Green Hill Country Estates.

**Tim Charlwood Appeal:** Mr. Charlwood is appealing the Planning Commission's requirement for another review in August based on his application meeting the requirements of the Zoning Ordinance and appropriately mitigating potential negative impacts. Regarding the Utah Division of Wildlife Resources (DWR letter), he has stated that he intends to work with the DWR on how and where helicopters approach and depart from his land. Mr. Charlwood has also stated that on March 4<sup>th</sup> he was able to measure the sound produced by a helicopter at the heliport location. He reported that the decibel level average was 58 with a high of 70. Staff was not present for this flight, but the reported decibel levels are in conformance with the decibel charts and calculations provided to the Planning Commission.

**Staff Comments:** The Weber County Planning Division has determined that Mr. Charlwood's application was complete and meets the applicable Zoning ordinance requirements of Chapter 8 (F-40 Zone) and Chapter 22C (Conditional Uses) as mentioned in the January 24<sup>th</sup> and February 28<sup>th</sup> information above. Noise impacts were addressed in the drafting of the Zoning Ordinance amendments for heliports. A setback of 200 feet was deemed sufficient to address this concern due to the restrictive elevation, property area, and zoning requirements. The proposed heliport is located approximately two-thirds of a mile from the nearest residence, but the Planning Commission still requested sound measurements to be performed. The County Commission must determine if the heliport location provides adequate mitigation or if the Planning Commission was correct in requiring additional tests. Regarding the DWR letter, four of the five recommendations have to do with flight paths and activities conducted while in the air, which cannot be regulated by the County. The other recommendation was to move the heliport further from a DWR conservation easement area, which would put the heliport closer to dwellings in Green Hill Country Estates. The County Commission should consider the validity of these recommendations in determining if they are applicable to the heliport application.

**Tom and Roxanne Taylor Appeal:** Mr. and Mrs. Taylor are appealing the Planning Commission's decision based on the decision being rushed and not addressing the issues of noise and wildlife impacts. In addition, their appeal states that three of the County's requirements were not met including:

1. The applicant has not demonstrated that the heliport would be essential to the public convenience or welfare in the area.
2. The applicant has not demonstrated that the heliport would not impair the integrity and character of the surrounding properties.
3. It has not been demonstrated that the use can be made compatible by imposing conditions.

**Staff Comments:** The Planning Commission did not rush their decision on the heliport application. The process included two regular Planning Commission meetings and a field trip to the site, not to mention months of work sessions in drafting the new heliport ordinance. Staff comments regarding noise and wildlife impacts are addressed above. Regarding the three County requirements that have not been met, it appears that numbers 1 and 2 come from the application submitted by Mr. Charlwood. Due to technical issues, Mr. Charlwood did not have access to the updated conditional use application, so he submitted the version that was available on the Planning Division website, which listed five questions under the heading "Basis for Issuance of Conditional use Permit." However, Chapter 22C was amended in 2010 and the five questions were summarized in two questions under the heading "Criteria for Issuance of Conditional Use Permit." Mr. Charlwood addressed these two questions in his application and they were also addressed in the Planning Division Staff Report. Questions 1 and 2 are no longer specifically listed in the criteria that the Planning Commission considered. In considering number 3, the Planning Commission imposed the two conditions mentioned previously, which were intended to mitigate potentially detrimental effects from noise and disturbance of wildlife.

**Donald and Dawn Kelly Appeal:** Mr. and Mrs. Kelly are appealing the Planning Commission's decision based on the following reasons:

1. The application was vague and failed to address concerns raised by the Planning Commission and residents.
2. The applicant provided misleading and inaccurate information regarding specifics of the use intended and failed to comply with requirements put forth by the Planning Commission to issue a permit.
3. The applicant has enjoyed extraordinary access to Weber County Planning staff, which provided prejudicial information to the Planning Commission during the first hearing in January of 2012 and erred in various instructions to the OVPC.
4. The Planning Commission made it very clear during both meetings that when crafting the ordinance they relied on to make their decision, the intention was to allow the heli-skiing operations to be based at the ski resorts or in the back country, and not to permit operations which adversely affect residential areas of the Ogden Valley. In this respect the Planning Commission failed to honor the spirit of the ordinance.

5. This proposal is lacking in every way a previous proposal in Eden lacked.
6. This conditional use permit for a commercial heliport utterly fails to meet the requirements of Section 22C in the Weber County Ordinances.

**Staff Comments:** Staff’s responses are listed below:

1. The application included Mr. Charlwood’s responses to the criteria listed under Chapter 22C-4 “Criteria for Issuance of Conditional Use Permit.” The initial application could not address concerns raised by residents or the Planning Commission because it was submitted well before the first Planning Commission meeting.
2. The minutes of the Planning Commission meetings are attached for the County Commission to review. The only conditions required by the Planning Commission are the two mentioned previously which are under appeal.
3. The Planning Division’s recommendation for approval of the heliport is based on a review of the applicable Zoning Ordinance criteria. The Planning Division provided information relating to the conditional use criteria for a heliport. The meeting minutes are provided for the County Commission to review.
4. The ordinance requirements are very clear and objective. Heliports are conditional uses which allow the Planning Commission to attach conditions intended to mitigate potential detrimental impacts.
5. This application is specific to Mr. Charlwood’s property and stands on its own.
6. Mr. Charlwood’s responses to Chapter 22C-4 “Criteria for Issuance of a Conditional Use Permit” are attached.

### Summary of County Commission Considerations

Chapter 22C states “In considering the appeals, the County Commission may uphold or reverse the decision of the Planning Commission and impose any additional conditions that it may deem necessary in granting an appeal. The decision of the County Commission is final.” The County Commission should determine if the Planning Commission correctly applied the Zoning Ordinance criteria in making their decision. The following three options are available:

- **Reverse the Planning Commission decision and approve the use as requested by the Charlwood appeal:** If the County Commission finds that the Planning Commission decision was incorrect and the use should be approved without further review by the Planning Commission, then the Charlwood appeal should be approved and the Taylor and Kelly appeals should be denied. The conditional use application would be approved. However, the County Commission has the authority to place conditions on the approval. Conditions that the Commission may consider include restrictions on seasonal use, hours of operation, obtaining a business license for commercial operations, and any others that may be deemed necessary.
- **Reverse the Planning Commission decision and deny the use as requested by the Taylor and Kelly appeals:** If the County Commission finds that the Planning Commission decision was incorrect and the use does not meet the applicable Zoning Ordinance criteria, then the Taylor and Kelly appeals should be granted and the Charlwood appeal should be denied. The conditional use application would be denied.
- **Uphold the Planning Commission decision and deny all three appeals:** If the County Commission finds that the Planning Commission decision was correct, then all three appeals should be denied. The Planning Commission’s decision will stand as the County’s final decision.

### Exhibits

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| <ul style="list-style-type: none"> <li>A. Applicant’s application and narrative</li> <li>B. Site plans</li> <li>C. Aerial views of heliport location</li> <li>D. Heliport operations guide</li> <li>E. Decibel charts and calculation</li> <li>F. FAA e-mail and CFR 14-157.1</li> <li>G. Agency review responses</li> <li>H. Public comments</li> </ul> | <ul style="list-style-type: none"> <li>I. Tim Charlwood appeal letter</li> <li>J. Tom and Roxanne Taylor appeal letter</li> <li>K. Donald and Dawn Kelly appeal letter</li> <li>L. Planning Commission minutes from January 24th and February 28<sup>th</sup> 2012</li> <li>M. Notice of Decision</li> </ul> |
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Map 1

