



LAND USE APPLICATION SUMMARY SHEET

Planner: C. Gathman Hearing Date: November 3, 2015

Case Number: USR15-0040

Applicant: W3 Legacy, LLC

Address: P.O. Box 1449, Fort Morgan, CO 80701

Representative: Tim Naylor – AGPROfessionals, 3050 67th Avenue, Suite 200, Greeley, CO. 80634

Request: A Site Specific Development Plan and Use by Special Review Permit for any use permitted as a Use by Right, an Accessory Use, or a Use by Special Review in the Commercial or Industrial Zone Districts (parking and staging area for a trucking and construction business) provided that the property is not a Lot in an approved or recorded subdivision plat or lots parts of a map or plan filed prior to adoption of any regulations controlling subdivisions and Mineral resource development facilities including Transloading (transloading of flyash) in the A(Agricultural) Zone District.

Legal Description: Lot A of Recorded Exemption RE-1247; Being part of the E2 and part of the NW4 of Section 19, T5N, R67W of the 6th P.M., Weld County, CO

Location: Approximately 370 feet south of County Road 56 and approximately 1/2 mile east of County Road 13.

Size of Parcel: +/- 23.03 acres Parcel No. 0957-19-0-00-049

The criteria for review of this Special Review Permit is listed in Section 23-2-220 of the Weld County Code.

The Department of Planning Services' staff has received referral responses with comments from the following agencies:

- Front Range Fire Rescue, referral dated August 20, 2015
- Weld County Department of Planning Services - Engineer, referral dated August 27, 2015
- Weld County Department of Public Health and Environment, referral dated August 5, 2015
- West Greeley Soil Conservation District, referral dated September 15, 2015

The Department of Planning Services' staff has received referral responses without comments from the following agencies:

- Weld County Zoning Compliance, referral dated July 28, 2015
- Weld County Public Works – Access, referral dated July 29, 2015
- Weld County Sheriff's Office, referral dated July 31, 2015
- Town of Windsor, referral dated July 31, 2015
- City of Greeley, referral dated July 30, 2015
- Colorado Division of Parks and Wildlife, referral dated July 29, 2015

The Department of Planning Services' staff has not received responses from the following agencies:

- Weld County Office of Emergency Management
- Colorado Department of Public Health and Environment
- Colorado Department of Transportation
- Town of Johnstown
- Larimer County
- Great Western Railroad
- Union Pacific Railroad



**SPECIAL REVIEW PERMIT
ADMINISTRATIVE REVIEW**

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Case Summary:

The applicant is proposing to allow parking for parking for heavy construction equipment when not mobilized for offsite projects. Additionally, the applicant is proposing to construct a rail spur to receive flyash by rail and then ship by truck to construction sites. The railroad spur would be located within the Omnitrax (Great Western) easement at the request of the rail company. An office and shop is proposed along with a fueling station for work vehicles. The application indicates approximately 20 semi-trucks and trailers will be used to haul flyash. Approximately 20 drivers would use the site (arrive in the morning and return in the evening). Two to six (2-6) office personnel will be located on the site). The application indicates that normal operation hours are from 6 AM to 8 PM Monday-Saturday – but trucks may arrive and depart 24 hours per day (if necessary).

DEPARTMENT OF PLANNING SERVICES' STAFF RECOMMENDS THAT THIS REQUEST BE APPROVED FOR THE FOLLOWING REASONS:

1. The submitted materials are in compliance with the application requirements of Section 23-2-260 of the Weld County Code.
2. It is the opinion of the Department of Planning Services' staff that the applicant has shown compliance with Section 23-2-220 of the Weld County Code as follows:
 - A. Section 23-2-220.A.1 -- The proposed use is consistent with Chapter 22 and any other applicable code provisions or ordinance in effect.

Section 22-2-A.Policy 7.2. states: "Conversion of agricultural land to nonurban residential, commercial and industrial uses should be accommodated when the subject site is in an area that can support such development, and should attempt to be compatible with the region." The proposed facility is located on an old feedlot facility site (SUP-154 – feedlot for up to 2,850 head of cattle). Development standards are proposed to mitigate impacts of the operation including limiting truck numbers to what is called out in the application, along with noise limits and lighting standards.

Section 22-2-80 G.2 A. I.Goal 1. of the Weld County Code states: "Promote the location of industrial uses within municipalities, County Urban Growth Boundary areas, Intergovernmental Agreement urban growth areas, growth management areas as defined in municipalities' comprehensive plans, the Regional Urbanization Areas, Urban Development Nodes, along railroad infrastructure or where adequate services are currently available or reasonably obtainable."

The site is bordered by both the Great Western and Union Pacific Railroads.

- B. Section 23-2-220.A.2 -- The proposed use is consistent with the intent of the A (Agricultural) Zone District. Section 23-3-40.S of the Weld County code allows any use permitted as a Use by Right, an Accessory Use, or a Use by Special Review in the Commercial or industrial zone districts (Parking and Staging area for a trucking and construction business) provided that the property is not a Lot in an approved or recorded subdivision plat or lots parts of a map or plan filed prior to adoption of any regulations controlling subdivisions and Section 23-3-40.A.7 allows Mineral resource development facilities including Transloading (transloading of flyash) as a Use by Special Review in the A (Agricultural) Zone District.
- C. Section 23-2-220.A.3 -- The uses which will be permitted will be compatible with the existing surrounding land uses. The property borders the Union Pacific Railroad on the north and the Great Western Railroad on the south. The site is bordered by cropland on all sides. The nearest residences are approximately 1,100 feet to the north and northwest and approximately 1,600 feet to the east of the site.

An e-mail on behalf of the CLR-34 Neighborhood Association was received 10/7/2015. This e-mail had several questions and requested additional information re: the offloading of fly ash (how will fly ash be stored? how many and when will railcars arrive? Will loading be occurring outside of daytime hours...).

A letter of opposition dated October 23, 2015 was received from a surrounding property owner. The letter indicates that the application does not address all issues associated with the transloading of flyash re: the health, safety and welfare of the neighborhood. There are concerns that large quantities of flyash will affect and possibly kill vegetation and crops. The letter requests additional details as to how the transloading operation will be conducted, where the flyash will be stored, how it will be transferred from railcars to trucks and what preventative action will be taken to reduce flyash fugitive dust from the site and from trucks arriving and departing from the site. If approved the letter requests a number of conditions:

1. Pave WCR 56.
2. Operate only between 7:00 am to 5:00 pm, Monday through Friday.
3. Unloading of flyash be restricted to days where wind is less than 2 mph and only during the above operation times.
4. Restrict noise to 50 dB or less.
5. Place a 10-15 ft berm around the entire site with appropriate vegetation to hide the facility.
6. Limit the number of all types of trucks and light to heavy equipment to less than 20.

7. Lighting be downward facing and not noticeable from a distance.

A number of development standards and conditions of approval are attached to address impacts and concerns associated with this application. Development standards are attached per the Weld County Department of Environmental Health requiring the applicant to adhere to Air Pollution Emission Notice (APEN) and Emissions permit requirements, requiring flyash to be handled and stored securely, on an impervious surface, in a safe manner and in a manner that minimizes dust, the release of hazardous air pollutants, and minimizes spills. Additionally a noise standard is attached along with a lighting standard requiring lighting to be downcast.

Tracking control is required to prevent tracking of dirt and debris onto County Road 56. There is a development standard limiting truck traffic to 20 (twenty) trips per day.

- D. Section 23-2-220.A.4 -- The uses which will be permitted will be compatible with future development of the surrounding area as permitted by the existing zoning and with the future development as projected by Chapter 22 of the Weld County Code and any other applicable code provisions or ordinances in effect, or the adopted Master Plans of affected municipalities.

The site is located within the three (3) mile referral areas of City of Greeley, Town of Johnstown, Town of Windsor and Larimer County. The City of Greeley and Town of Windsor indicated no conflicts with their interest in their referral comments dated July 30, 2015 and July 31, 2015. No referral comments have been received from the Town of Johnstown or Larimer County.

- E. Section 23-2-220.A.5 -- The application complies with Chapter 23, Article V, of the Weld County Code. The existing site is within the County-Wide Road Impact Fee Area and the Capital Expansion Impact Fee area.

Building Permits issued on the lot will be required to adhere to the fee structure of the County-Wide Road Impact Fee Program.

Building Permits issued on the proposed lot will be required to adhere to the fee structure of the County Facility Fee and Drainage Impact Fee Programs.

- F. Section 23-2-220.A.6 -- The applicant has demonstrated a diligent effort to conserve prime agricultural land in the locational decision for the proposed use.

The proposed facility is located on approximately 23.03 acres delineated as "(Prime) Irrigated per the 1979 Soil Conservation Service Important Farmlands of Weld County Map. The site is completely covered with improvements associated with a former feedlot facility.

- G. Section 23-2-220.A.7 -- There is adequate provisions for the protection of the health, safety, and welfare of the inhabitants of the neighborhood and County.

The Design Standards (Section 23-2-240, Weld County Code), Operation Standards (Section 23-2-250, Weld County Code), Conditions of Approval and Development Standards can ensure that there are adequate provisions for the protection of health, safety, and welfare of the inhabitants of the neighborhood and County.

This recommendation is based, in part, upon a review of the application materials submitted by the applicant, other relevant information regarding the request, and responses from referral entities.

The Department of Planning Services' staff recommendation for approval is conditional upon the following:

1. Prior to recording the map:
 - A. Revise, sign, and stamp the drainage narrative to include the reference to the new Drainage Code - Chapter 23, Article 12. (Department of Planning Services-Engineer)
 - B. The applicant shall attempt to address the requirements of the Front Range Fire Rescue Authority, as stated in the referral response dated August 20, 2015. Written evidence of such shall be submitted to the Weld County Department of Planning Services. (Department of Planning Services)
 - C. The map shall be amended to delineate the following:
 1. All sheets of the map shall be labeled USR15-0040 (Department of Planning Services)
 2. The attached Development Standards. (Department of Planning Services)
 3. The map shall be prepared in accordance with Section 23-2-260.D of the Weld County Code. (Department of Planning Services)
 4. The map shall delineate the landscaping and/or screening. (Department of Planning Services)
 5. The map shall delineate the parking for customers and/or employees. (Department of Planning Services)
 6. Show the approved access on the map and label with the approved access permit number (will be provided AP15-00293). (Department of Planning Services - Engineer)
 7. Show and label all recorded easements on the map by book and page number or reception number and date on the site plan. (Department of Planning Services - Engineer)
 8. The applicant shall indicate specifically on the map the type of right-of-way/easement and indicate whether it is dedicated, private, or deeded to provide adequate access to the parcel. Show and label a 30 ft minimum access easement to provide adequate access to the parcel. (Department of Planning Services - Engineer)
 9. Clearly identify on the map the employee and employee vehicle parking area. (Department of Planning Services)
 10. Show location of proposed modular office. (Department of Planning Services)
 11. Two building locations (building envelopes) are indicated on the plat – label as “building envelope alternative 1” and “building envelope alternative 2”. (Department of Planning Services)
2. Upon completion of Condition of Approval #1 above, the applicant shall submit one (1) paper copies or one (1) electronic copy (.pdf) of the map for preliminary approval to the Weld County Department of Planning Services. Upon approval of the map the applicant shall submit a Mylar map along with all other documentation required as Conditions of Approval. The Mylar map shall be recorded in the office of the Weld County Clerk and Recorder by the Department of Planning Services. The map shall be prepared in accordance with the requirements of Section 23-2-260.D of the Weld County Code. The Mylar map and additional requirements shall be submitted within one hundred twenty (120) days from the date of the Board of County Commissioners Resolution. The applicant shall be responsible for paying the recording fee. (Department of Planning

Services)

3. In accordance with Weld County Code Ordinance #2012-3, approved April 30, 2012, should the map not be recorded within the required one hundred twenty (120) days from the date of the Board of County Commissioners Resolution, a \$50.00 recording continuance charge shall added for each additional three (3) month period. (Department of Planning Services)
4. The Department of Planning Services respectfully requests a digital copy of this Use by Special Review, as appropriate. Acceptable CAD formats are .dwg, .dxf, and .dgn (Microstation); acceptable GIS formats are ArcView shapefiles or ArcGIS Personal GeoDataBase (MDB).. The preferred format for Images is .tif (Group 4). (Group 6 is not acceptable). This digital file may be sent to maps@co.weld.co.us. (Department of Planning Services)
5. Prior to Construction:
 - A. If more than 1 acre is to be disturbed, a Weld County grading permit will be required. (Department of Planning Services - Engineer)
 - B. The approved access and tracking control shall be constructed prior to on-site construction. (Department of Planning Services – Engineer)
6. Prior to the issuance of the Certificate of Occupancy:
 - A. An onsite wastewater treatment system is required for the proposed facility and shall be installed according to the Weld County Onsite Wastewater Treatment System Regulations. The septic system is required to be designed by a Colorado Registered Professional Engineer according to the Weld County Onsite Wastewater Treatment System Regulations. (Department of Public Health and Environment)
7. The Use by Special Review activity shall not occur, nor shall any building or electrical permits be issued on the property, until the Use by Special Review map is ready to be recorded in the office of the Weld County Clerk and Recorder or the applicant has been approved for an early release agreement. (Department of Planning Services)

**SITE SPECIFIC DEVELOPMENT PLAN
USE BY SPECIAL REVIEW PERMIT
DEVELOPMENT STANDARDS**

W3 Legacy, LLC

USR15-0040

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2. Approval of this plan may create a vested property right pursuant to Section 23-8-10 of the Weld County Code. (Department of Planning Services)
3. Per the application materials, posted hours of operation are from 6:00 AM to 8:00 PM Monday through Saturday. Access to the site (including work vehicles entering and leaving the site) shall be allowed, as necessary, 24 hours a day Monday through Saturday. (Department of Planning Services)
4. A maximum of twenty (20) semi-trucks and trailers will access the site per day, per the application materials. (Department of Planning Services)
5. The parking on the site shall be maintained. (Department of Planning Services)
6. All signs shall adhere to Chapter 23, Article IV, Division 2 and Appendices 23-C, 23-D and 23-E of the Weld County Code. (Department of Planning Services)
7. The landscaping/screening on the site shall be maintained. (Department of Planning Services)
8. All liquid and solid wastes (as defined in the Solid Wastes Disposal Sites and Facilities Act, Section 30-20-100.5, C.R.S.) shall be stored and removed for final disposal in a manner that protects against surface and groundwater contamination. (Department of Public Health and Environment)
9. No permanent disposal of wastes shall be permitted at this site. This is not meant to include those wastes specifically excluded from the definition of a solid waste in the Solid Wastes Disposal Sites and Facilities Act, 30-20-100.5, C.R.S., as amended. This facility shall not operate as a transfer facility, as outlined in the Solid Wastes Disposal Sites and Facilities Act, 30-20-100.5, C.R.S., as amended. (Department of Public Health and Environment)
10. Waste materials shall be handled, stored, and disposed in a manner that controls fugitive dust, fugitive particulate emissions, blowing debris, and other potential nuisance conditions. The facility shall operate in accordance with Chapter 14, Article 1 of the Weld County Code. (Department of Public Health and Environment)
11. The facility shall comply with the Air Pollution Emission Notice (APEN) and Emissions permit requirements as stipulated by the Air Pollution Control Division, Colorado Department of Public Health and Environment, as applicable. (Department of Public Health and Environment)
12. Fugitive dust and fugitive particulate emissions should attempt to be confined on the property. Uses on the property should comply with the Colorado Air Quality Commission's air quality regulations (Department of Public Health and Environment)
13. This facility shall adhere to the maximum permissible noise levels allowed in the non-specified Zone District, as delineated in Section 14-9-30 of the Weld County Code. (Department of Public Health and Environment)

14. Any vehicle or equipment washing areas shall capture all effluent and prevent discharges in accordance with the Rules and Regulations of the Water Quality Control Commission, and the Environmental Protection Agency. (Department of Public Health and Environment)
15. All pesticides, fertilizer, and other potentially hazardous chemicals must be handled in a safe manner, in accordance with product labeling, and in a manner that minimizes the release of hazardous air pollutants (HAP's) and volatile organic compounds (VOC's). All chemicals must be stored secure, on an impervious surface, and in accordance with manufacturer's recommendations. (Department of Public Health and Environment)
16. Adequate drinking, hand washing and toilet facilities shall be provided for employees and patrons of the facility, at all times. As employees or contractors are on site for less than 2 consecutive hours a day portable toilets and bottled water are acceptable. Records of maintenance and proper disposal for portable toilets shall be retained on a quarterly basis and available for review by the Weld County Department of Public Health and Environment. Portable toilets shall be serviced by a cleaner licensed in Weld County and shall contain hand sanitizers (Department of Public Health and Environment)
17. Adequate drinking, hand washing and toilet facilities shall be provided for employees and patrons of the facility, at all times. (Department of Public Health and Environment)
18. Sewage disposal for the facility shall be by septic system. Any septic system located on the property must comply with all provisions of the Weld County Code, pertaining to On-site Waste-water Treatment Systems. (Department of Public Health and Environment)
19. A permanent, adequate water supply shall be provided for drinking and sanitary purposes. The facility shall utilize the existing public water supply. (Department of Public Health and Environment)
20. All potentially hazardous chemicals must be handled in a safe manner in accordance with product labeling and in a manner that minimizes the release of hazardous air pollutants and volatile organic compounds. All chemicals must be stored securely, on an impervious surface, and in accordance with manufacturer's recommendations. Fly ash must be handled and stored securely, in a safe manner, and in a manner that minimizes dust, the release of hazardous air pollutants, and minimizes spills. (Department of Public Health and Environment)
21. The facility shall comply with all provisions of the Colorado Department of Labor and Employment Division of Oil and Public Safety Underground and Above Ground Storage Tank Regulations, as applicable. (Department of Public Health and Environment)
22. A Spill Prevention, Control and Countermeasure Plan, prepared in accordance with the applicable provisions of 40 CFR, Part 112, shall be available on site, as applicable. (Department of Public Health and Environment)
23. The operation shall comply with all applicable rules and regulations of State and Federal agencies and the Weld County Code. (Department of Public Health and Environment)
24. Sources of light shall be shielded so that light rays will not shine directly onto adjacent properties where such would cause a nuisance or interfere with the use on the adjacent properties in accordance with the plan. Neither the direct, nor reflected, light from any light source may create a traffic hazard to operators of motor vehicles on public or private streets. No colored lights may be used which may be confused with, or construed as, traffic control devices. (Department of Planning Services)
25. Should noxious weeds exist on the property, or become established as a result of the proposed development, the applicant/landowner shall be responsible for controlling the noxious weeds,

pursuant to Chapter 15, Articles I and II, of the Weld County Code. (Department of Planning Services – Engineer)

26. The historical flow patterns and runoff amounts will be maintained on the site. (Department of Planning Services - Engineer)
27. There shall be no parking or staging of vehicles on County roads. On-site parking shall be utilized. (Department of Planning Services - Engineer)
28. The right-of-way or easement shall be graded and drained to provide an all-weather access. (Department of Planning Services - Engineer)
29. The site shall be maintained to mitigate any impacts to the public road including damages and/or offsite tracking. (Department of Planning Services-Engineer)
30. Building permits may be required, per Section 29-3-10 of the Weld County Code. Currently, the following have been adopted by Weld County: 2012 International Codes, 2006 International Energy Code, and 2011 National Electrical Code. A Building Permit Application must be completed and two (2) complete sets of engineered plans bearing the wet stamp of a Colorado registered architect or engineer must be submitted for review. A Geotechnical Engineering Report performed by a Colorado registered engineer shall be required or an Open Hole Inspection. (Department of Building Inspection)
31. The property owner or operator shall be responsible for complying with the Design and Operation Standards of Chapter 23 of the Weld County Code.
32. Necessary personnel from the Weld County Departments of Planning Services, Public Works, and Public Health and Environment shall be granted access onto the property at any reasonable time in order to ensure the activities carried out on the property comply with the Conditions of Approval and Development Standards stated herein and all applicable Weld County regulations.
33. The Use by Special Review area shall be limited to the plans shown hereon and governed by the foregoing standards and all applicable Weld County regulations. Substantial changes from the plans or Development Standards, as shown or stated, shall require the approval of an amendment of the Permit by the Weld County Board of County Commissioners before such changes from the plans or Development Standards are permitted. Any other changes shall be filed in the office of the Department of Planning Services.
34. The property owner or operator shall be responsible for complying with all of the foregoing Development Standards. Noncompliance with any of the foregoing Development Standards may be reason for revocation of the Permit by the Board of County Commissioners.
35. **RIGHT TO EXTRACT MINERAL RESOURCES STATEMENT:** Weld County has some of the most abundant mineral resources, including, but not limited to, sand and gravel, oil, natural gas, and coal. Under title 34 of the Colorado Revised Statutes, minerals are vital resources because (a) the state's commercial mineral deposits are essential to the state's economy; (b) the populous counties of the state face a critical shortage of such deposits; and (c) such deposits should be extracted according to a rational plan, calculated to avoid waste of such deposits and cause the least practicable disruption of the ecology and quality of life of the citizens of the populous counties of the state.

Mineral resource locations are widespread throughout the County and person moving into these areas must recognize the various impacts associated with this development. Often times, mineral resource sites are fixed to their geographical and geophysical locations. Moreover, these resources are protected property rights and mineral owners should be afforded the opportunity to extract the mineral resource.

36. **WELD COUNTY'S RIGHT TO FARM:** Weld County is one of the most productive agricultural counties in the United States, typically ranking in the top ten counties in the country in total market value of

agricultural products sold. The rural areas of Weld County may be open and spacious, but they are intensively used for agriculture. Persons moving into a rural area must recognize and accept there are drawbacks, including conflicts with long-standing agricultural practices and a lower level of services than in town. Along with the drawbacks come the incentives which attract urban dwellers to relocate to rural areas: open views, spaciousness, wildlife, lack of city noise and congestion, and the rural atmosphere and way of life. Without neighboring farms, those features which attract urban dwellers to rural Weld County would quickly be gone forever.

Agricultural users of the land should not be expected to change their long-established agricultural practices to accommodate the intrusions of urban users into a rural area. Well-run agricultural activities will generate off-site impacts, including noise from tractors and equipment; slow-moving farm vehicles on rural roads; dust from animal pens, field work, harvest and gravel roads; odor from animal confinement, silage and manure; smoke from ditch burning; flies and mosquitoes; hunting and trapping activities; shooting sports, legal hazing of nuisance wildlife; and the use of pesticides and fertilizers in the fields, including the use of aerial spraying. It is common practice for agricultural producers to utilize an accumulation of agricultural machinery and supplies to assist in their agricultural operations. A concentration of miscellaneous agricultural materials often produces a visual disparity between rural and urban areas of the County. Section 35-3.5-102, C.R.S., provides that an agricultural operation shall not be found to be a public or private nuisance if the agricultural operation alleged to be a nuisance employs methods or practices that are commonly or reasonably associated with agricultural production.

Water has been, and continues to be, the lifeline for the agricultural community. It is unrealistic to assume that ditches and reservoirs may simply be moved "out of the way" of residential development. When moving to the County, property owners and residents must realize they cannot take water from irrigation ditches, lakes, or other structures, unless they have an adjudicated right to the water.

Weld County covers a land area of approximately four thousand (4,000) square miles in size (twice the size of the State of Delaware) with more than three thousand seven hundred (3,700) miles of state and county roads outside of municipalities. The sheer magnitude of the area to be served stretches available resources. Law enforcement is based on responses to complaints more than on patrols of the County, and the distances which must be traveled may delay all emergency responses, including law enforcement, ambulance, and fire. Fire protection is usually provided by volunteers who must leave their jobs and families to respond to emergencies. County gravel roads, no matter how often they are bladed, will not provide the same kind of surface expected from a paved road. Snow removal priorities mean that roads from subdivisions to arterials may not be cleared for several days after a major snowstorm. Services in rural areas, in many cases, will not be equivalent to municipal services. Rural dwellers must, by necessity, be more self-sufficient than urban dwellers.

People are exposed to different hazards in the County than in an urban or suburban setting. Farm equipment and oil field equipment, ponds and irrigation ditches, electrical power for pumps and center pivot operations, high speed traffic, sandburs, puncture vines, territorial farm dogs and livestock, and open burning present real threats. Controlling children's activities is important, not only for their safety, but also for the protection of the farmer's livelihood.