

## RESOLUTION

**RE: APPROVE SITE SPECIFIC DEVELOPMENT PLAN AND USE BY SPECIAL REVIEW PERMIT, USR15-0040, FOR ANY USE PERMITTED AS A USE BY RIGHT, ACCESSORY USE, OR USE BY SPECIAL REVIEW IN THE COMMERCIAL OR INDUSTRIAL ZONE DISTRICTS (PARKING AND STAGING AREA FOR A TRUCKING AND CONSTRUCTION BUSINESS, ALONG WITH TRANSLOADING OF FLYASH), PROVIDED THAT THE PROPERTY IS NOT A LOT IN AN APPROVED OR RECORDED SUBDIVISION PLAT OR PART OF A MAP OR PLAN FILED PRIOR TO ADOPTION OF ANY REGULATIONS CONTROLLING SUBDIVISIONS IN THE A (AGRICULTURAL) ZONE DISTRICT – W3 LEGACY, LLC**

**WHEREAS**, the Board of County Commissioners of Weld County, Colorado, pursuant to Colorado statute and the Weld County Home Rule Charter, is vested with the authority of administering the affairs of Weld County, Colorado, and

**WHEREAS**, the Board of County Commissioners held a public hearing on the 25th day of November 2015, at the hour of 10:00 a.m., in the Chambers of the Board, for the purpose of hearing the application of W3 Legacy, LLC, P.O. Box 1449, Fort Morgan, CO 80701, for a Site Specific Development Plan and Use by Special Review Permit, USR15-0040, for any Use permitted as a Use by Right, Accessory Use, or Use by Special Review in the Commercial or Industrial Zone Districts (parking and staging area for a trucking and construction business, along with transloading of flyash), provided that the property is not a lot in an approved or recorded subdivision plat or part of a map or plan filed prior to adoption of any regulations controlling subdivisions in the A (Agricultural) Zone District, on the following described real estate, being more particularly described as follows:

Lot A of Recorded Exemption, RE-1247; being part of the E1/2 and part of the NW1/4 of Section 19, Township 5 North, Range 67 West of the 6th P.M., Weld County, Colorado

**WHEREAS**, at said hearing, the applicant was present and represented by Tim Naylor, AGPROfessionals, 3050 67th Avenue, Suite 200, Greeley, CO 80634, and

**WHEREAS**, Section 23-2-230 of the Weld County Code provides standards for review of said Use by Special Review Permit, and

**WHEREAS**, the Board of County Commissioners heard all of the testimony and statements of those present, studied the request of the applicant and the recommendation of the Weld County Planning Commission and all of the exhibits and evidence presented in this matter and, having been fully informed, finds that this request shall 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 Board of County Commissioners that the applicant has shown compliance with Section 23-2-230.B of the Weld County Code as follows:

*CC: Ca, PL, HL, Applicant 12/18*

2015-3646  
PL2380

- A. Section 23-2-230.B.1 -- The proposed use is consistent with Chapter 22 and any other applicable code provisions or ordinance in effect.
- 1) Section 22-2-20.G (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, which is a 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.
  - 2) Section 22-2-80.A (I.Goal 1) 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 23-2-230.B.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, Accessory Use, or 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 part 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 23-2-230.B.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. Per the Department of Planning Services, a number of Conditions of Approval and Development Standards 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 the Air Pollution Emission Notice (APEN) and Emissions Permit requirements which require the flyash to be handled and stored securely on an impervious surface in a safe manner and in a manner that minimizes dust and the release of Hazardous Air Pollutants (HAPs) 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 23-2-230.B.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 area of the City of Greeley, the Towns of Johnstown and Windsor, and Larimer County. The City of Greeley and Town of Windsor indicated no conflicts. No referral comments have been received from the Town of Johnstown or Larimer County.
- E. Section 23-2-230.B.5 -- The application complies with Chapter 23, Article V, of the Weld County Code. Building Permits issued on the lot will be required to adhere to the fee structure of the County-Wide Road Impact Fee, County Facility Fee and Drainage Impact Fee Programs.
- F. Section 23-2-230.B.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 23-2-230.B.7 -- 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 the health, safety, and welfare of the inhabitants of the neighborhood and County.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Weld County, Colorado, that the application of W3 Legacy, LLC, for a Site Specific Development Plan and Use by Special Review Permit, USR15-0040, for any Use permitted as a Use by Right, Accessory Use, or Use by Special Review in the Commercial or Industrial Zone Districts (parking and staging area for a trucking and construction business, along with transloading of flyash), provided that the property is not a lot in an approved or recorded subdivision plat or part of a map or plan filed prior to adoption of any regulations controlling subdivisions in the A (Agricultural) Zone District, on the parcel of land described above be, and hereby is, granted subject to the following conditions:

- 1. Prior to recording the map:
  - A. Revise, sign, and stamp the drainage narrative to include the reference to the new Drainage Code in Chapter 23, Article 12.

- 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.
  - C. A letter signed by the property owner shall be provided to the Department of Planning Services requesting vacation of SUP-154.
  - D. The map shall be amended to delineate the following:
    - 1) All sheets of the map shall be labeled USR15-0040.
    - 2) The attached Development Standards.
    - 3) Prepared in accordance with Section 23-2-260.D of the Weld County Code.
    - 4) The landscaping and/or screening. A combination of trees and shrubs shall be indicated along the western boundary of the site.
    - 5) The parking for customers and/or employees.
    - 6) Show the approved access and label with the approved Access Permit Number, AP#15-00293.
    - 7) Show and label all recorded easements by book and page number or reception number and date on the site plan.
    - 8) The applicant shall specifically indicate 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-foot minimum access easement to provide adequate access to the parcel.
    - 9) Clearly identify the employee and employee vehicle parking area.
    - 10) Show location of proposed modular office.
2. Upon completion of Condition of Approval #1 above, the applicant shall submit an electronic version (.pdf), or one (1) paper copy, of the plat to the Weld County Department of Planning Services for preliminary approval. The plat shall be prepared in accordance with the requirements of Section 23-2-260.D of the Weld County Code. Upon approval of the plat, the applicant shall submit a Mylar plat, along with all other documentation required as Conditions of Approval. The Mylar plat and additional requirements shall be submitted within one hundred twenty (120) days from the date of the Board of County Commissioners Resolution. The Mylar plat shall be recorded in the office of the Weld County Clerk and Recorder by the Department of Planning Services. The applicant shall be responsible for paying the recording fee.

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.
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.
5. Prior to Construction:
  - A. If more than one (1) acre is to be disturbed, a Weld County Grading Permit will be required.
  - B. The approved access and tracking control shall be constructed prior to on-site construction.
6. Prior to the issuance of the Certificate of Occupancy:
  - A. An On-site Wastewater Treatment System (O.W.T.S.) is required for the proposed facility and shall be installed according to the Weld County On-site Wastewater Treatment System Regulations. The septic system is required to be designed by a Colorado registered professional engineer according to the Weld County On-site Wastewater Treatment System Regulations.
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.

The above and foregoing Resolution was, on motion duly made and seconded, adopted by the following vote on the 25th day of November, A.D., 2015.

BOARD OF COUNTY COMMISSIONERS  
WELD COUNTY, COLORADO

ATTEST: *Adam B. Schick*  
Weld County Clerk to the Board

*Barbara Kirkmeyer*  
Barbara Kirkmeyer, Chair

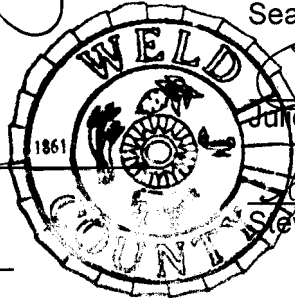
BY: *Rynda A. Harting*  
Deputy Clerk to the Board

*Mike Freeman*  
Mike Freeman, Pro-Tem

*S. P. Conway*  
Sean P. Conway

APPROVED AS TO FORM:

*[Signature]*  
County Attorney



*Julie A. Cozad*  
Julie A. Cozad

*Steve Moreno*  
Steve Moreno

Date of signature: 12/17

**SITE SPECIFIC DEVELOPMENT PLAN  
USE BY SPECIAL REVIEW PERMIT  
DEVELOPMENT STANDARDS  
W3 LEGACY, LLC  
USR15-0040**

1. The Site Specific Development Plan and Use by Special Review Permit, USR15-0040, is for any Use permitted as a Use by Right, Accessory Use, or Use by Special Review in the Commercial or Industrial Zone Districts (parking and staging area for a trucking and construction business, along with transloading of flyash), provided that the property is not a lot in an approved or recorded subdivision plat or part of a map or plan filed prior to adoption of any regulations controlling subdivisions in the A (Agricultural) Zone District, subject to the Development Standards stated hereon.
2. Approval of this plan may create a vested property right pursuant to Section 23-8-10 of the Weld County Code.
3. Per the application materials, posted hours of operation are from 6:00 a.m. to 8:00 p.m., 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.
4. A maximum of twenty (20) semi-trucks and trailers will access the site per day, per the application materials.
5. The haul route shall be from CR 56 to CR 13.
6. The parking on the site shall be maintained.
7. 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.
8. The landscaping/screening on the site shall be maintained.
9. 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.
10. 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, Section 30-20-100.5, C.R.S. This facility shall not operate as a transfer facility, as outlined in the Solid Wastes Disposal Sites and Facilities Act, Section 30-20-100.5, C.R.S.
11. Waste materials shall be handled, stored, and disposed of 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 I, of the Weld County Code.

12. 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.
13. 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.
14. 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.
15. Adequate drinking, handwashing 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 two (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.
16. 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.
17. A permanent, adequate water supply shall be provided for drinking and sanitary purposes. The facility shall utilize the existing public water supply.
18. 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.
19. 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.
20. 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.
21. The operation shall comply with all applicable rules and regulations of state and federal agencies and the Weld County Code.
22. 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.



23. 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.
24. The historical flow patterns and runoff amounts will be maintained on the site.
25. There shall be no parking or staging of vehicles on County roads. On-site parking shall be utilized.
26. The right-of-way or easement shall be graded and drained to provide an all-weather access.
27. The site shall be maintained to mitigate any impacts to the public road, including damages and/or off-site tracking.
28. 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 2014 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.
29. The property owner or operator shall be responsible for complying with the Design and Operation Standards of Chapter 23 of the Weld County Code.
30. 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.
31. 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.
32. 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.
33. 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.

34. The Weld County Right to Farm Statement, as it appears in Section 22-2-20.J.2 of the Weld County Code, shall be placed on the map and recognized at all times.

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