

Letter of Intent

**Application for Approval of
Site Development Plan
Asphalt/Concrete Recycling Facility**

**February 10, 2020
rev. May 28, 2020**

**Asphalt Concrete Recycling LLC
235 S. Franceville Coal Mine Road
Colorado Springs Colorado 80929**

I. Owners, Applicant and Consultants.

This application is for development of an asphalt and concrete recycling facility on two adjoining parcels of vacant land located at 2210 Janitell Road, known as Tract 10 and Tract 6 respectively. Tract 10 is owned by 2104 LLC and Equity Funding LLC, and Tract 6 is owned by United Land Holdings LLC. The Applicant, Asphalt Concrete Recycling LLC ("ACR"), is leasing both parcels for its recycling business. The Owners', Applicant and Consultants' contact information is as follows:

Applicant:

Asphalt Concrete Recycling LLC
235 S. Franceville Coal Mine Road
Colorado Springs, Colorado 80929
(602) 558-0846 (Mr. Perry Hastings, Manager)
ACRrecycling@gmail.com

Owners of Tract 10:

2104 LLC
235 S. Franceville Coal Mine Road
Colorado Springs, Colorado 80929
(602) 558-0846 (Mr. Perry Hastings, Manager)
gatewaytrucking@gmail.com

Equity Funding LLC
5040 Acoma Street
Denver, Colorado 80216
(303) 918-1215 (Mr. Fred Orr, Manager)
Fred@5040group.com

Owner of Tract 6:

United Land Holdings LLC
P.O. Box 340
Sharon Springs, Kansas 67758
(785) 821-1490 (Mr. David Janitell, Manager)
janitell@fairpoint.net

Consultants:

Debra Eiland, Esq.
Law Offices of Debra Eiland, P.C.
24 S. Weber Street, Suite 300
Colorado Springs, Colorado 80903
(719) 471-1545
edebra@qwest.net

Mike Bramlett, PE
JR Engineering, LLC
5475 Tech Center Drive, Suite 235
Colorado Springs, Colorado 80919
(719) 659-7679
mbramlett@jrengineering.com

II. Site Location, Size and Zoning.

The subject property, located at 2210 Janitell Road, Colorado Springs, Colorado, consists of two adjoining tracts of vacant land (the "Property"). Pursuant to the El Paso County Assessor's records, Tract 10, Assessor's Parcel # 6429101011, consists of 8.06 acres of vacant land. Tract 6, Assessor's Parcel # 6428201008, consists of 4.81 acres of vacant land. Both parcels are zoned M - Industrial. A parcel map showing the location of the Property is included as Appendix A hereto.

III. Request and Justification.

2104 LLC and Equity Funding LLC purchased Tract 10 from United Land Holdings LLC on September 3, 2019. ACR entered into land lease agreements with United Land Holdings LLC for Tract 6, and with 2104 LLC and Equity Funding LLC for Tract 10. ACR intends to use the parcels to operate an asphalt and concrete recycling business.¹ An asphalt and concrete recycling facility is a permitted use in the M-Industrial zone district. This application is to obtain approval of the Site Development Plan for that use.

IV. Existing and Proposed Facilities, Structures, Roads, etc.

Access to the Property is provided from Janitell Road, which is a 60' paved public right-of-way that intersects Las Vegas Street, which also is a 60' paved public right-of-way. Vehicles will enter from Janitell Road via a paved driveway, which will continue onto a 30' wide service road that circles the outer perimeter of the Property. The service road will accommodate two way traffic around the Property perimeter. Vehicles will exit the Property at the same location as they enter. The speed limit on the service road will be 15 mph. The driveway entrance and the road to the mobile office and scales will be paved with asphalt, and the service road continuing from the scales and around the perimeter of the Property will be installed and maintained with a gravel surface to prevent erosion and provide dust control.

The Property will be surrounded by a 6' high chain link fence, which will comply with any applicable flood plain requirements. The driveway will be gated and locked when the business is closed to prevent unauthorized entry.

A mobile office and a set of commercial truck scales are located on the southeast side of the Property. The Applicant will obtain a permit from the Regional Building Department to set the office trailer. There are no other buildings on the

¹The Owners of Tract 6 and Tract 10 will enter into a Mutual Easement Deed and Agreement substantially in the form of Appendix B to provide reciprocal access over and across the parcels.

Property. A mobile crusher will be placed near the center of the property. No permanent structures will be built on the Property.

The Applicant does not intend to install any signs at this time, with the exception of internal traffic signs.² The Applicant will submit a sign plan and an application for a sign permit separately if it plans to install signs in the future.

Raw material ready for processing will be stored on the northern half of the Property above and within the central material storage and crushing area. Waste concrete and asphalt stockpiles will also be located on the northern half of the Property. Trucks delivering raw materials for processing will deposit their loads on these stockpiles.

Processed material will be stored along the southern half of the Property below the crushing area. Trucks picking up processed material will load processed material from this area. A traffic memo discussing the expected vehicle trips to and from the site and any associated impacts is included with this application.

The business will be open from 6:00 a.m. to 6:00 p.m. Monday through Friday and may receive deliveries of raw materials outside those hours when commercial or government construction projects are scheduled in the evening and overnight. Two full-time employees will be on site from 7:00 am to 5:00 pm Monday through Friday. The Applicant's contractor, Colorado Crushing, Inc., will conduct crushing activities from 7:00 am to 5:00 pm Monday through Friday. No sales will be conducted on the Property. Customers will be invoiced for processed material and mail their payments to a separate business office.

ACR will process a quantity of material annually that is within the limits of its State of Colorado air emission approval as may be amended from time to time (currently 350,000 tons per year). Raw material, consisting of large pieces of concrete or asphalt, and finished product will be stored on site. An earthen berm will be constructed along portions of the perimeter of the Property between the outside edge of the service road and the Property boundary for erosion and storm water control.

The Property is bordered to the north by Spring Creek, and to the west by Fountain Creek. A retention pond will be located on the southwest side of the Property to hold and disperse any storm water and to prevent runoff into Fountain Creek. A portion of the Property along the Spring Creek boundary is partially within the limits of the 100 year flood plain. A drainage report, a Storm Water Management Plan ("SWMP"), a grading and erosion control plan, and an Erosion and Stormwater Quality Control Permit ("ESQCP") application are filed with this Site Development Plan

²Internal traffic signs are exempt from the sign permit requirements pursuant to LDC Section 6.2.10(A)(3)(c). The Applicant acknowledges that such traffic signs must comply with the Manual on Uniform Traffic Control Devices for Streets and Highways.

application. The Applicant has also filed an industrial stormwater permit application and an Industrial Material Recycling Facility Initial Registration and Operations Plan with the Colorado Department of Public Health and Environment ("CDPHE"), copies of which are included as Appendix C and Appendix D respectively.

The Applicant has obtained a jurisdictional determination from the Army Corps of Engineers that there are no waters of the United States on the project site and, therefore, no permit is required. See, Appendix E. The applicant has also obtained a Migratory Bird Survey and a Threatened and Endangered Species Habitat Assessment from Ronald Beane, Senior Wildlife Biologist with ERO Resources Corporation, which conclude the property contains no migratory bird nesting sites and no suitable habitat for threatened or endangered species and would likely have no effect on such species. The U.S. Fish and Wildlife Service has also provided its certification that it has "No Concerns" about wildlife impacts from the project. See, Appendix F.

The mobile office is ADA accessible, and contains an ADA accessible bathroom. Four marked parking spaces, to include 1 ADA accessible parking space, will be provided outside the office. The office driveway and parking area and the sidewalk from the parking area to the wheelchair ramp will be paved.

An underground cistern will be installed outside the office to hold non-potable water, and will be filled as needed by the Applicant. Bottled water for drinking will be provided inside the mobile office. An Onsite Wastewater Treatment System ("OWTS") will be installed, for which the Applicant is seeking permit approval from the El Paso County Health Department. The Applicant will use a professional service company to provide septic service for the Property. The Applicant has retained TCS Septic Pumping for this purpose. A commitment letter from Mr. Terrell Cobb of TCS Septic Pumping is included with this application.

V. Waiver Request.

The Applicant requests approval of an alternative landscape design. The Property does not have a well or municipal water supply, and is surrounded by industrially zoned properties used for industrial commercial purposes. In lieu of the landscaping normally required, the Applicant proposes an alternative landscaping plan that includes planting drought resistant shrubs such as choke cherry and some trees along the Janitell Road frontage to provide screening and minimize the visual impact of the operation. The Applicant also proposes drought resistant shrubs bordering the driveway near the office to provide additional screening and minimize visual impact. An entrance feature at the driveway off Janitell Road is impractical because it will pose a safety hazard to trucks entering and exiting the Property resulting in liability to the Applicant. Additionally, such a feature would be prone to damage requiring constant repair.

VI. Criteria for Approval of the Site Development Plan.

A. Landscape Requirements

1. Roadway Landscape Requirements. Janitell Road is classified as a “collector” or non-arterial road in the Major Transportation Corridor Plan (“MTCP”). The landscaping requirement for this roadway classification is 1 tree per 30 linear foot of roadway frontage. The Property does not have a well or municipal water supply, and the Applicant will have to haul water to the site for dust control and to serve the mobile office. As such, the Applicant proposes an alternative landscaping plan that includes planting drought resistant shrubs such as choke cherry along the Janitell Road frontage to provide screening and minimize the visual impact of the operation.

2. Parking Lot Landscape Requirements. The parking lot landscape requirements are not applicable to the Applicant’s business because it does not have any large parking lots. The only parking area will be next to the office, and will be screened from the adjoining property to the east by the office. There are no residentially zoned properties adjoining the Applicant’s Property. The Applicant proposes alternative landscaping to include planting drought resistant shrubs bordering the driveway near the office to provide additional screening and minimize visual impact.

3. Buffer and Screen Areas Between Non-Residential and Residential Districts. The buffer and screening landscape requirements are not applicable to the Applicant’s business because all properties adjoining or surrounding the Applicant’s Property are zoned for industrial use. There are no residentially zoned properties adjoining the Applicant’s Property.

4. Internal Landscaping. The north Spring Creek and west Fountain Creek boundaries are bordered by mature trees and native vegetation. The LDC requires that a minimum of 5% of the lot or parcel be landscaped. This requirement is met by the existing mature trees and native vegetation that borders the north Spring Creek and west Fountain Creek boundaries of the Property. Additionally, the open areas between the office and scales, and between the perimeter service road and Property boundaries, which include the earthen berm, will be covered in either grass, native vegetation, wood chips, rock, or other natural landscape materials.

No hardscapes or permanent structures will be located within the Property. Trees and shrubs are not a viable method of internal landscaping due to the nature of the business (e.g., stockpiles of recyclable materials that will be regularly increasing and decreasing in size as they are received, processed, and sold). The Applicant proposes an alternative landscaping plan that includes planting drought resistant shrubs such as choke cherry along the Janitell Road frontage and bordering the office driveway to provide additional screening and minimize the visual impact of the operation.

5. Refuse Areas Screened. All trash receptacles will be screened with an opaque fence enclosure.

B. Lighting. The business will use limited lighting for early morning and winter operations and at night for security purposes around the crusher and the mobile office and scales. Night/security lighting will be sensor activated at dusk and deactivated at dawn, and will be directed downward to prevent spillover onto adjoining properties. A lighting plan is included in the Site Development Plan filed with this application.

C. Parking. Four marked parking spaces, to include 1 ADA accessible parking space, will be provided outside the office for employees. Customers will be dropping off and picking up material, so no additional onsite parking is needed. The mobile office driveway and parking area will be paved. A paved walkway will be provided from the parking area to a wheelchair accessible ramp that leads to the main entrance of the mobile office.

The perimeter service road will be sufficiently wide to allow trucks picking up or dropping off materials to pass one another. No turnaround area is needed because the perimeter road will circle the perimeter of the Property allowing all vehicles to pass through without the need to turn around.

D. Access and Maintenance. Access to the business is provided by a driveway from Janitell Road. A driveway access permit application is filed with this application. The driveway and perimeter service road will be sufficiently wide and configured to safely accommodate trucks hauling material to and from the Property, and to provide safe access for emergency vehicles. The Applicant will perform routine road maintenance that includes grading and re-surfacing as needed. Such routine maintenance will not result in any adverse impacts.

E. Dust and Debris Control. The service road will be paved from the driveway entry to the south end of the scales to prevent dust and track-out of material onto Janitell Road. The perimeter service road will be installed and maintained with a gravel surface to prevent erosion and provide dust control. Prevention of blowing sand, dirt, or debris from crushing raw material will be accomplished by spraying water in the area around the crusher. These measures are outlined in greater detail in the Air Quality Management Plan.

F. Air Quality Control. An Air Quality Management Plan is included with this application.

G. Fire Protection and Wildfire Mitigation. The Applicant has entered into Agreements effective November 20, 2019, with the Stratmoor Hills Fire Protection District to provide fire protection services for both parcels comprising the Property. Fully executed copies of the District's Agreements for both parcels are included with this application. The crusher meets all U.S. Department of Labor Mine Safety & Health Administration requirements for safety and fire prevention.

VII. Criteria Applicable to a Recycling Facility.

The perimeter of the entire Property will be fenced with a 6' chain link fence. An Operations Plan, a Closure Plan, and a Recycling Plan are included with this application.

APPENDIX A

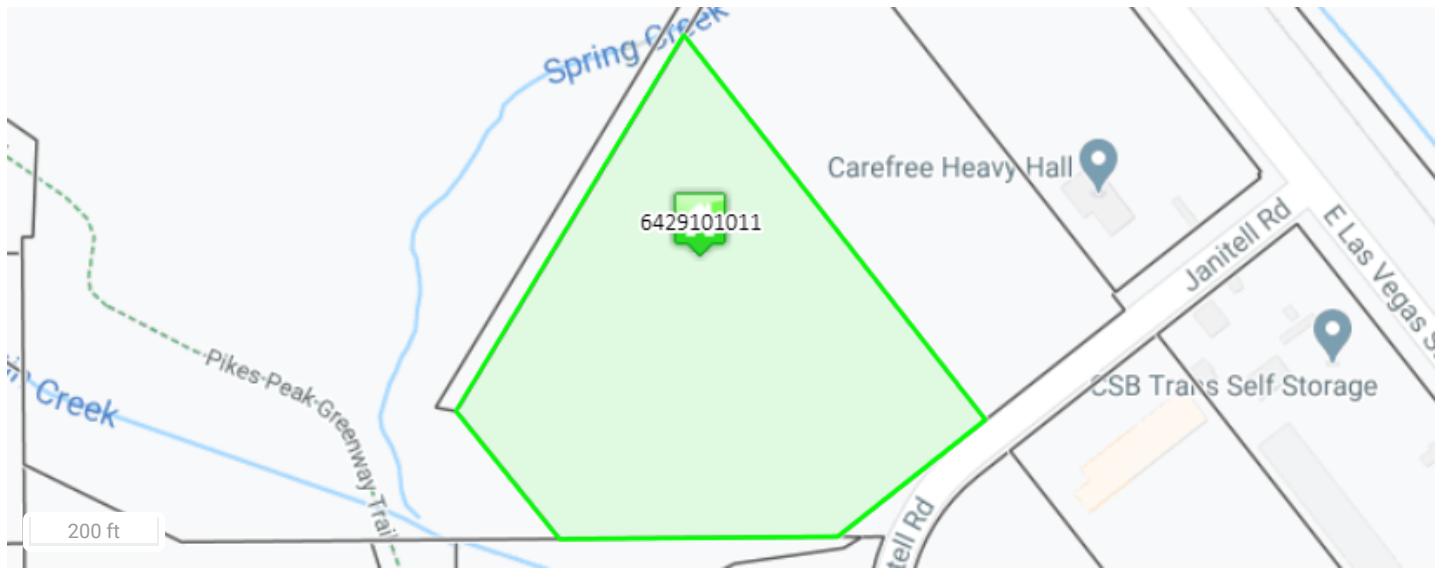
PARCEL MAP

EL PASO COUNTY - COLORADO

6429101011
JANITELL RD

No buildings to show.

Total Market Value
\$35,545



Disclaimer

We have made a good-faith effort to provide you with the most recent and most accurate information available. However, if you need to use this information in any legal or official venue, you will need to obtain official copies from the Assessor's Office. Do be aware that this data is subject to change on a daily basis. If you believe that any of this information is incorrect, please call us at (719) 520-6600.

EL PASO COUNTY - COLORADO

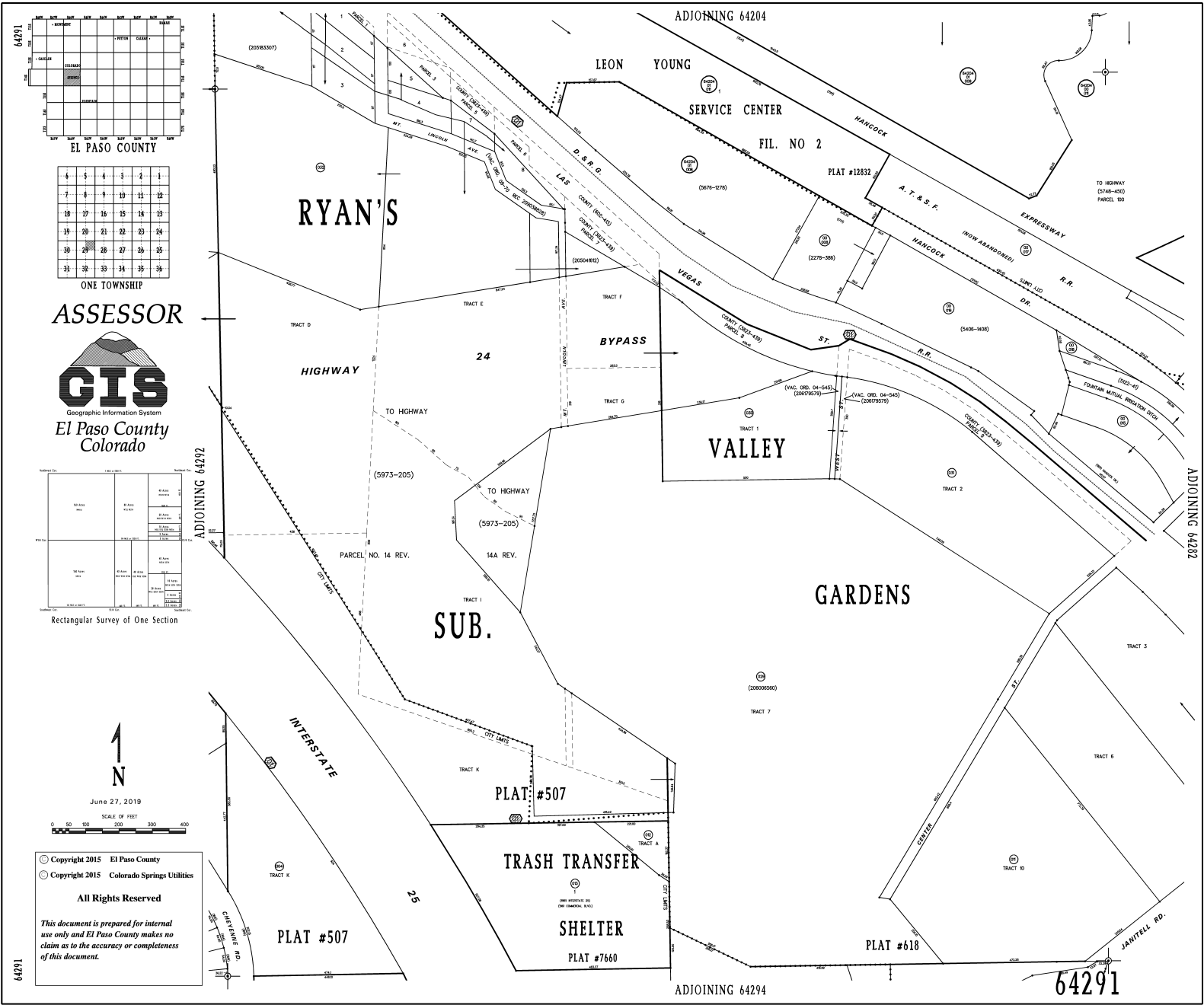
6428201008
JANITELL RD
No buildings to show.

Total Market Value
\$51,948



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APPENDIX B

MUTUAL EASEMENT DEED AND AGREEMENT

MUTUAL EASEMENT DEED AND AGREEMENT

This Mutual Easement Deed and Agreement (the "Agreement"), dated and delivered this _____ day of _____, 2020, is made by and between United Land Holdings LLC, a Colorado limited liability company whose address is P.O. Box 340, Sharon Springs, Kansas 67758 ("ULH"), and 2104 LLC, a Colorado limited liability company whose address is 235 S. Franceville Coal Mine Road, Colorado Springs, Colorado 80929 ("2104") and Equity Funding LLC, a Colorado limited liability company whose address is 5040 Acoma Street, Denver, Colorado 80216 ("EF") (together "2104/EF").

For good and valuable consideration, the receipt and sufficiency of which are hereby confessed and acknowledged, ULH, 2104, and EF hereby make the following grants, agreements and covenants:

1. Grant of Access - ULH to 2104/EF. Subject to the terms and conditions set forth herein, ULH hereby sells and conveys to 2104/EF and to their successors and assigns, an exclusive access easement (the "Tract 6 Easement") for access over and across ULH's real property located in the County of El Paso, State of Colorado described as follows:

TRACT 6, EXCEPT THE NORTHEASTERLY 10 FEET THEREOF, VALLEY GARDENS, A PART OF THE EAST HALF, NORTHEAST QUARTER, SECTION 29, AND A PART OF THE WEST HALF, SECTION 28, TOWNSHIP 14 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, EXCEPTING THEREFROM ANY PORTIONS THEREOF AS CONVEYED TO EL PASO COUNTY, COLORADO BY DEEDS RECORDED MARCH 22, 1984 IN BOOK 3848 AT PAGE 1063 AND RECORDED AUGUST 9, 1989 IN BOOK 5657 AT PAGES 229 AND 231.

2. Grant of Access - 2104/EF to ULH. Subject to the terms and conditions set forth herein, 2104/EF hereby sells and conveys to ULH and to its successors and assigns, an exclusive access easement (the "Tract 10 Easement") for access over and across 2104/EF's real property located in the County of El Paso, State of Colorado described as follows:

TRACT 10, VALLEY GARDENS, A PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 29, AND A PART OF THE WEST HALF OF SECTION 28, TOWNSHIP 14 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, EXCEPTING THEREFROM ANY PORTIONS THEREOF AS CONVEYED TO EL PASO COUNTY, COLORADO BY DEEDS RECORDED MARCH 22, 1984 IN BOOK 3848 AT PAGE 1063 AND RECORDED ON AUGUST 9, 1989 IN BOOK 5657 AT PAGES 229 AND 231.

The locations of Tract 6 and Tract 10 are as shown on the parcel map attached hereto as Exhibit A and incorporated herein by this reference.

3. Purpose. These mutual Easements shall benefit ULH's and 2104/EF's mutual Lessee, Asphalt Concrete Recycling LLC, a Colorado limited liability company ("ACR"), by providing

ACR access across, over, and to and from Tract 6 and Tract 10, or any part thereof, for the purpose of operating an asphalt and concrete recycling business.

4. Parties' Rights. ACR's use of the Tract 6 and Tract 10 Easements shall be exclusive pursuant to its respective lease agreements with ULH and 2104/EF, without interference of either ULH or 2104/EF with ACR's use thereof. The Easements shall transfer and inure to the benefit of ACR's transferees, successors, or assigns under the ULH and 2104/EF lease agreements. In the event either Tract 6 or Tract 10 is sold, transferred or otherwise conveyed to a new owner and such sale or transfer is subject to ACR's lease, the subject Easement shall transfer and continue in effect so long ACR's lease or that of its transferees, successors, or assigns remains in effect.

5. Improvements and Maintenance. All costs associated with the Tract 6 and Tract 10 Easements including improvements and/or maintenance of the Easements or any segment thereof, if any, shall be paid by 2104/EF.

6. ULH's Use. ULH's Lessee ACR, and its owners, managers, members, guests, invitees, employees, agents, tenants and contractors shall be permitted to use the Tract 10 Easement to operate an asphalt and concrete recycling business, which includes the right to access across, over, to and from Tract 10 and business operations and storage of equipment and material thereon for so long as ACR continues to operate its asphalt and concrete recycling business and it has an effective lease with ULH.

7. 2104/EF's. 2104/EF's Lessee ACR, and its owners, managers, members, guests, invitees, employees, agents, tenants and contractors shall be permitted to use the Tract 6 Easement to operate an asphalt and concrete recycling business, which includes the right to access across, over, to and from Tract 6 and business operations and storage of equipment and material thereon for so long as ACR continues to operate its asphalt and concrete recycling business and it has an effective lease with 2104/EF.

8. Indemnity. 2104/EF shall indemnify and save ULH harmless from all claims for damages or liens arising from ACR's business operations, use, construction, repair, and maintenance on or over the Tract 10 Easement.

9. Easement in Gross. The Tract 10 Easement shall be an easement in gross for the benefit of ULH's lessee (ACR), and shall terminate at such time as ACR's asphalt and concrete recycling operation ceases or its lease with ULH terminates. The Tract 10 Easement shall inure to the benefit of ULH's heirs, successors, assigns, and personal representatives, subject to the conditions set forth herein.

The Tract 6 Easement shall be an easement in gross for the benefit of 2104/EF's lessee (ACR), and shall terminate at such time as ACR's asphalt and concrete recycling operation ceases or its lease with 2104/EF terminates. The Tract 6 Easement shall inure to the benefit of 2104/EF's heirs, successors, assigns, and personal representatives, subject to the conditions set forth herein.

10. Gates. Neither ULH nor 2104/EF shall erect gates across the Easements.

11. Enforcement. This Agreement and the terms, conditions and provisions hereof may be enforced by any party hereto or by their heirs, successors and assigns; and in the event legal or administrative suits or proceedings are brought against any party (whether a party to this instrument or not) for the purpose of such enforcement, the prevailing party or parties shall recover from the non-prevailing party or parties all costs associated therewith including, but not limited to, reasonable attorneys' fees.

12. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the heirs, assigns, successors and personal representatives of the parties hereto.

13. Parties' Disclaimer. Neither ULH nor 2104/EF makes any representations or warranties of any kind whatsoever, either express or implied, regarding the condition of the Easements. This Mutual Easement grant is subject to all prior liens, encumbrances, easements, restrictions, reservations, and rights of way affecting the parties' respective properties.

14. Merger. Notwithstanding the acquisition (if same should occur) by the same party of the title and interests of both ULH and 2104/EF under this Mutual Easement Agreement, there shall never be a merger of the estates of ULH and 2104/EF under this Mutual Easement Agreement, but instead the separate estates, rights, duties, and obligations of ULH and 2104/EF, as existing hereunder, shall remain unextinguished and continue, separately, in full force and effect unless or until this Mutual Easement Agreement terminates by agreement of the parties or court order.

15. Recording. This Agreement shall be recorded in the real estate records in the office of the Clerk and Recorder of El Paso County, Colorado.

[Signature page follows.]

IN WITNESS WHEREOF, United Land Holdings LLC, 2104 LLC, and Equity Funding LLC have executed this Agreement as of the day and year first written above.

UNITED LAND HOLDINGS LLC,
a Colorado limited liability company:

By: David Janitell, Manager

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by David Janitell as Manager of United Land Holdings LLC, a Colorado limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public

2104 LLC,
a Colorado limited liability company

By: Perry Hastings, Manager

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Perry Hastings as Manager of 2104 LLC, a Colorado limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public

EQUITY FUNDING LLC,
a Colorado limited liability company:

By: Fred Orr, Manager

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Fred Orr as Manager of Equity Funding LLC, a Colorado limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

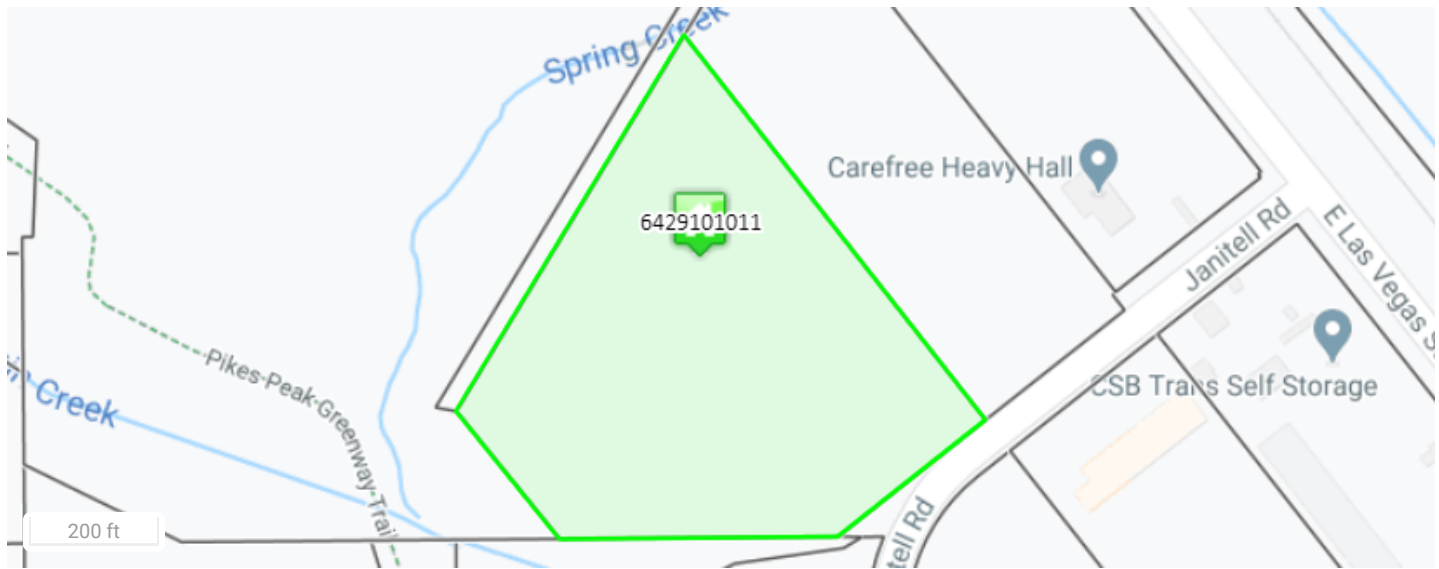
Notary Public

EL PASO COUNTY - COLORADO

6429101011
JANITELL RD

No buildings to show.

Total Market Value
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EL PASO COUNTY - COLORADO

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APPENDIX C

INDUSTRIAL STORMWATER PERMIT APPLICATION



For Agency Use Only

Permit Number Assigned

COR9 _____

Date Received ____/____/____
Month Day Year

APPLICATION FOR COR900000 STORMWATER DISCHARGES ASSOCIATED WITH NON EXTRACTIVE INDUSTRIAL ACTIVITIES

Please print or type. Original signatures are required.

PHOTO COPIES, FAXED COPIES OR PDF COPIES WILL NOT BE ACCEPTED.

This application must be considered complete by the Water Quality Control Division (the Division) before it will initiate permit processing. The Division will notify the applicant if additional information is needed to complete the application. If more space is required to answer any question, please attach additional sheets to the application form. Applications must be mailed or delivered to:

Colorado Department of Public Health and Environment
Water Quality Control Division
4300 Cherry Creek Drive South
WQCD-P-B2
Denver, Colorado 80246-1530

The applicant must be a legal entity that meets the definition of either the owner and/or operator of the industrial activities that occur at the facility for this application to legally cover the industrial activities. The applicant must have day-to-day supervision and control over activities at the facility and associated stormwater management.

Alternative Permittees: Other agents may also obtain permit coverage if they have clear contractual responsibility and operational control to address the impacts industrial activities may have on stormwater quality. Examples include consultants or property owners acting as facility managers under contract with the owner or operator of the industrial activities, as long as the contractual relationship clearly delegates responsibility for stormwater management. A property owner that is not associated with the actual industrial activities at the site or under contract to adequately perform the stormwater management responsibilities at the site, as discussed above, may not legally maintain permit coverage for industrial activities at their property

Applicant is: ☐ Property Owner ☒ Contractor/Operator

A. CONTACT INFORMATION

ORGANIZATION FORMAL NAME: Asphalt Concrete Recycling LLC

1. PERMITTEE (If more than one please add additional pages- designate the primary permitte contact.)

Permittee Contact is the person authorized to sign and certify the permit application. This person receives all permit correspondences and is the person responsible for ensuring compliance with the permit.

Responsible Position (Title): Manager

Currently Held By (Person): Perry Hastings

Telephone No: 602-558-0846 email address ACRecycling@gmail.com

Mailing Address: 235 South Franceville Coal Mine Road

City: Colorado Springs State: CO Zip: 80917

This form must be signed by the Permittee to be considered complete.

Per Regulation 61 In all cases, it shall be signed as follows:

- In the case of corporations, by a responsible corporate officer. For the purposes of this section, the responsible corporate officer is responsible for the overall operation of the facility from which the discharge described in the application originates.
- In the case of a partnership, by a general partner.
- In the case of a sole proprietorship, by the proprietor.
- In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official



2. **DMR COGNIZANT OFFICIAL** (i.e. authorized agent) the person or position authorized to sign and certify reports required by permits including Discharge Monitoring Reports [DMR's], Annual Reports, Compliance Schedule submittals, and other information requested by the Division. The Division will transmit pre-printed reports (ie. DMR's) to this person. If more than one, please add additional pages.

☐ Same As 1) Permittee

Responsible Position (Title): _____

Currently Held By (Person): _____

Telephone No: _____

email address _____

Organization: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Per Regulation 61 : All reports required by permits, and other information requested by the Division shall be signed by the permittee or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(i) The authorization is made in writing by the permittee

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a **named individual** or any individual occupying a **named position**)

(iii) Written notification submitted to the Division

3. **SITE CONTACT** local contact for questions relating to the facility & discharge authorized by this permit for the facility.

☐ Same as 1) Permittee

Responsible Position (Title): _____

Currently Held By (Person): _____

Telephone No: _____

email address _____

Organization: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

4. **BILLING CONTACT** ☐ Same as 1. Permittee Contact

Responsible Position (Title): _____

Currently Held By (Person): _____

Telephone No: _____

email address _____

Organization: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____



5) OTHER CONTACT TYPES (check below) Add pages if necessary:

Responsible Position (Title): NA

Currently Held By (Person): _____

Telephone No: _____

email address _____

Organization: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Pretreatment Coordinator

Inspection Facility Contact

Stormwater MS4 Responsible
Person

Environmental Contact

Consultant

Stormwater Authorized
Representative

Biosolids Responsible Party

Compliance Contact

Other

Property Owner

B. PERMITTED FACILITY INFORMATIONName of Facility ACR Recycle Facility

Location of Facility

Street Address (or cross streets) 2104 Janitell RoadCity (if unincorporated enter uninc) Colorado Springs, CO Zip Code 809 06County El Paso

Latitude and Longitude List the latitude and longitude of the facility. This can be entrance or centerpoint of the facility.
The preferred method is GPS and Decimal Degrees.

Latitude: 39.80450 Longitude: 104.79490 (e.g., 39.70312°, 104.93348°)
degrees (to 5 decimal places) degrees (to 5 decimal places)

Horizontal Collection Method: ☐ GPS Unspecified ☒ Aerial Photo Interpolation (Google Earth)

Reference Point: ☐ Entrance ☒ Project/Facility Center/Centroid

Horizontal Accuracy Measure (WQCD Requires use of WGS84 Datum for all references). Is the lat/long
information provided in WGS84? ☒ Yes ☐ No
(Explain _____)

C. STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE(S) FOR THIS FACILITY

(See Appendix A - for a list of SIC Codes covered by this permit.)

Primary 212321 Secondary. _____ Tertiary. _____ Other. _____

(secondary and tertiary SIC Codes are those for any co-located industrial activities conducted at the facilities
[i.e., any industrial activities, excluding the primary industrial activity(ies), located on-site that are defined by the
stormwater regulations at 5 CCR 1002-61.3(2)])



D. OUTFALL IDENTIFICATION (if more than 4, attach additional pages)

Identifier	¹ Outfall(s)	² SIC code	³ Chemical Addition	⁴ Receiving water	
	Latitude/Longitude degrees (to 5 decimal places)			Immediate	Ultimate
001	NA	NA	NA	NA	NAN
002					
003					
004					

- 1 the identification and location (by latitude and longitude) of all outfalls of industrial stormwater from the facility (outfalls are locations where stormwater exits the facility property including sheet flow). [Note: facilities that discharge stormwater via sheet flow should identify an outfall at a location along the line of flow that is representative of the facility's sheet flow discharge. This location is where such sheet flow exits the facility, and where sampling would occur, if sampling of the discharge is required.]
- 2 applicable secondary and tertiary Standard Industrial Classification (SIC) codes for any co-located industrial activities conducted at the facilities [i.e., any industrial activities, excluding the primary industrial activity(ies), located on-site that are defined by the stormwater regulations at 5 CCR 1002-61.3(2)];
- 3 the identity of all chemicals used by the permittee for those facilities that chemically treat their industrial stormwater [chemical addition in this context means chemicals (e.g., flocculent, alum, chitosan, etc.) that are added to stormwater, prior to discharge].
- 4 the identity of the immediate and ultimate receiving water of the stormwater discharges from their facilities (immediate receiving waters are those that stormwater from the facility discharges directly to; the ultimate receiving waters are those directly downgradient of the immediate waters)

E. DESCRIBE THE INDUSTRIAL ACTIVITIES WHICH TAKE PLACE ON THIS SITE

Describe the primary industrial activities at this facility (e.g., trucking firm with vehicle maintenance; computer equipment manufacturer; automobile or scrap metal recycling, etc.). If this application is for any of the following types of facilities, also provide the additional information indicated:

Airport: state the estimated volume of deicers used, and the volume of fuel sold, on an annual basis.

Wastewater treatment plant: include the design flow and pretreatment program status.

Steam electric power plant: indicate the primary and backup fuel sources.

Paving and roofing materials manufacturing: indicate whether or not the facility manufactures asphalt emulsion.

Asphalt or concrete batch plant: indicate whether or not the plant is portable.

Sand & Gravel - activities included at the sand & gravel mining or processing facility

This is a concrete and asphalt recycling facility, that crushes construction tearout and sells the recycled materials.

This facility will be graded so that all water that contacts the disturbed area will be directed into an infiltration basin that is sized to retain any stormwater from the site. There is no discharge from this basin except to soak into the ground. The perimeter of the area that does not slope into the facility is revegetated so no industrial stormwater discharges can happen. For this reason no outfall points are listed.



F. OTHER ENVIRONMENTAL PERMITS

Does this facility currently have any environmental permits, or is it subject to regulation, under either of the following programs?

Permit Name	Yes	No	Application Date	Permit No.
a. Colorado Division of Reclamation, Mining and Safety—permit anniversary:	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
b. Clean Water Act (CWA) Section 404 (Army Corps of Engineers)	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
c. Colorado Discharge Permit System	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
d. Colorado State Air Pollution Emission	<input checked="" type="checkbox"/>	<input type="checkbox"/>	September 20, 2019	unknown
e. Other El Paso County Stormwater permit	<input checked="" type="checkbox"/>		November 2019	

G. MAP (Provide as an attachment to the application)

Map: Attach a map that indicates the site location and that CLEARLY shows the boundaries of the area subject to the application and clearly shows each stormwater outfall identified in Part D Above. Maps must be no larger than 11 x 17 inches.

Map attached? ☒ YES Application cannot be processed without a map.

Does the map clearly identify each stormwater outfall? ☒ YES Failure to identify outfalls on the map will delay processing of the applications.

See note in Section E regarding outfall points



H. REQUIRED SIGNATURES (Both parts i. and ii. must be signed)

Signature of Applicant: The applicant must be either the owner and/or operator of the construction site. Refer to Part B of the instructions for additional information. The application must be signed by the applicant to be considered complete. In all cases, it shall be signed as follows: (Regulation 61.4 (1e))

- a) In the case of corporations, by the responsible corporate officer is responsible for the overall operation of the facility from which the discharge described in the form originates
- b) In the case of a partnership, by a general partner.
- c) In the case of a sole proprietorship, by the proprietor.
- d) In the case of a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, (a principal executive officer has responsibility for the overall operation of the facility from which the discharge originates).

STOP! A Stormwater Management Plan must be completed prior to signing the following certifications!

This item applies to all facilities. A Stormwater Management Plan (SWMP) shall be prepared prior to applying for coverage under the general permit, and the following certification signed.

i. Stormwater Management Plan Certification

"I certify under penalty of law that a complete Stormwater Management Plan has been prepared for my activity. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the Stormwater Management Plan is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for falsely certifying the completion of said SWMP, including the possibility of fine and imprisonment for knowing violations."


Signature of Legally Responsible Person or Authorized Agent

11-6-19
Date Signed

Perry Hastings
Name (printed)

Manager
Title

ii. Signature of Permit Legal Contact

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."


Signature of Legally Responsible Person (submission must include original ink signature)

11-6-19
Date Signed

Perry Hastings
Name (printed)

Manager
Title

DO NOT INCLUDE A COPY OF THE STORMWATER MANAGEMENT PLAN

DO NOT INCLUDE PAYMENT - AN INVOICE WILL BE SENT AFTER THE CERTIFICATION IS ISSUED.



APPENDIX D

INDUSTRIAL MATERIAL RECYCLING FACILITY INITIAL REGISTRATION AND OPERATIONS PLAN



COLORADO

Department of Public
Health & Environment

INDUSTRIAL MATERIAL RECYCLING FACILITY INITIAL REGISTRATION AND OPERATIONS PLAN

Section I. Facility Contact Information:

Facility Name: Asphalt Concrete Recycling Facility

Business/ Corporate Name (if different than above): Asphalt Concrete Recycling LLC

Facility Street Address: 2210 Janitell Road County: El Paso

City or Town: Colorado Springs State: CO Zip Code: 80906

Mailing Address: 235 S. Franceville Coal Mine Road County: El Paso

City or Town: Colorado Springs State: CO Zip Code: 80929

Facility Operator Name: Perry Hastings

Telephone: 602-558-0846

Email: ACRrecycling@gmail.com

Facility Owner Name: Asphalt Concrete Recycling LLC

Telephone: 602-558-0846

Email: ACRrecycling@gmail.com

Section II. Property Owner Information (Complete if different than above):

Owner's Name: 2104 LLC

Owner Address: 235 S. Franceville Coal Mine Road

City or Town: Colorado Springs State: CO Zip Code: 80929

Telephone: 602-558-0846 Email: ACRrecycling@gmail.com

Section III. 24-Hour Facility Emergency Contact Information:

Name: Perry Hastings

Telephone: 602-558-0846

Email Address: ACRrecycling@gmail.com

Section IV. Recyclable Materials to Be Imported and Recycled

List the specific types of recyclable materials accepted at the facility: (ex. metal, wood/lumber, soil, concrete)
Additional information may be sent as an attachment.

Aged concrete and asphalt and dirt

Section V. Facility Description and Activities

Provide a physical description of the facility, the recycling operations, and how recyclable materials will be managed. Additional information including site maps may be sent as an attachment.

This is an existing industrial zoned area that has been used in the past so it is disturbed and has been used as a large parking and materials stockpile area. The area is a flat parcel suitable for this use. Isolation berms will be built around the perimeter to prevent any storm water from entering or leaving the processing/stockpile area. Storm water will be directed to a temporary pond on the west side of the property. (see attached page)

Section VI. Methods to Prevent Unauthorized Vehicle and Illegal Dumping

Provide details of security measures used by the facility to prevent unauthorized access and illegal dumping. Additional information may be sent as an attachment.

The site is surrounded by chain link fencing and a locked gate at the entrance limits access to the facility during normal business hours. An office and scale will be on site and the facility will be staffed during operation hours. All loads entering the site must check in with the office personnel that have been trained in what can be delivered prior to dumping. The gate is kept locked all other times.

Section VII. Methods to Safely Manage the Disposal of Unwanted Wastes

Describe how the operators will prevent receiving unauthorized wastes and properly dispose of unwanted waste. Additional information may be sent as an attachment.

Loads are weighed and inspected as they arrive at the facility. If anything is found that is not authorized at this facility after dumping, it is loaded back in the delivery vehicle for proper disposal. If the vehicle has left the site after dumping but before the unauthorized material is found, that material will be segregated and held until the delivery truck returns and it is then reloaded for proper disposal. If the offending driver does not return, the material will be hauled to a disposal facility that can properly handle the unauthorized waste.

Section VIII. Initial Material Accumulation Plan

Provide a plan detailing the maximum quantity of material to be imported and a timeframe for the various materials to be processed and sent offsite for recycling within the first 365 days. Additional information may be sent as an attachment.

For the first year approximately 100,000 tons of raw material will be delivered to the site for processing over the year. Processing will progress in stages to build stockpiles of finished material that will be sold as the market demands. This intent is to have a constant cycling of finished materials sales keeping up or exceeding raw material deliveries. Recycling takes place on the site so sending it off site as salable material is the most desirable method of disposal.

Section IX. Closure Plan

Provide a plan for closing the facility and ensuring waste is not left onsite. Additional information may be sent as an attachment.

To close this facility all stockpiles of material will be removed from the processing area and it will be graded. This includes raw material and processed material. The scale and scale house will be removed. The paved area, fencing, gate and storm-water facilities will remain.

INSTRUCTIONS: Complete all sections of the form. This form is required for all recycling facilities subject to Section 8 of the Regulations Pertaining to Solid Waste Sites and Facilities 6 CCR 1007-2, Part 1 and §30-20-102(5) C.R.S.

Send completed form to:

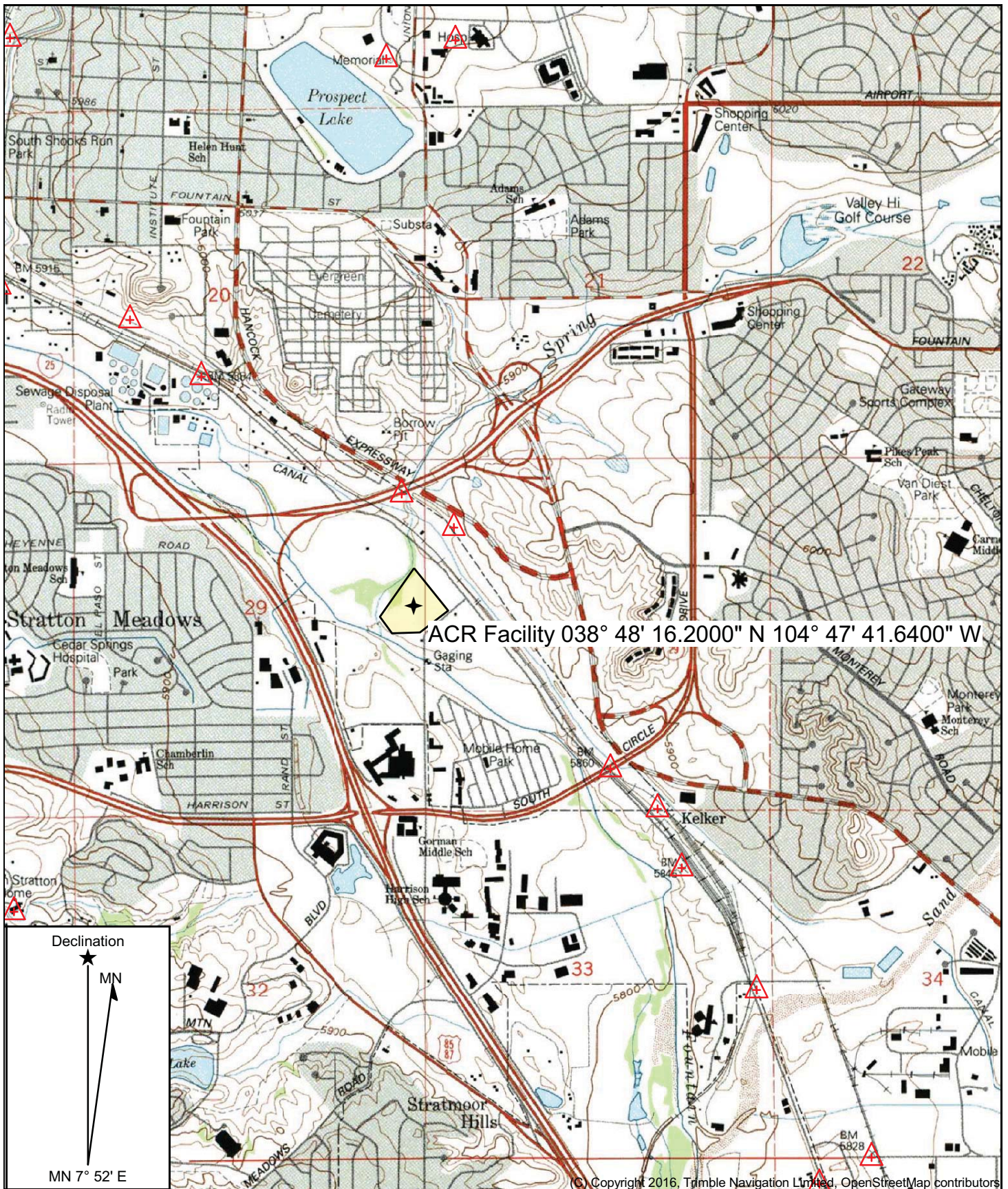
cdphe.hmrecycling@state.co.us or

Colorado Department of Public Health and Environment
Materials Management Unit
HMWMD-SW-B2
4300 Cherry Creek Dr. South
Denver, CO 80246-1530

If you have questions regarding this form, please contact the Materials Management Unit at 303-692-3337.

Section V - Facilities Description and Activities (cont)

A scale and scale house/office will be placed at the entrance to control deliveries and keep records of the amount of material that enters and leaves the site. The facility will operate as an asphalt/concrete materials recycling site. Raw material will be delivered, crushed, screened and stockpiled for resale to be used by the construction industry. We estimate that approximately 30,000 tons of raw material will be stored before processing begins. Delivery of raw materials and sales of final products will continue as the raw material stock piles are added and processing takes place. Once adequate raw materials are in place a portable processor will be moved on site and operate until 30 to 40 thousand tons of product are stockpiled. We estimate that crushing will be done 3 to 5 times per year but it will depend on the market demand for finished material. Attached is a Site Development Plan Map for your review and a vicinity map showing the location of the facility.



Name: COLORADO SPRINGS

Date: 01/29/20

Scale: 1 inch = 2,000 ft.

(C) Copyright 2016, Trimble
Navigation Limited

LOCATION: Part of the
SW1/4NW1/4 of Section 28,
and Part of the SE1/4NE1/4 Section
29, T-14-S, R-66-W, 6th P.M., EL
PASO, COUNTY, COLORADO

Asphalt Concrete Recycling LLC
Location map
ACR Recycle Faciltiy

APPENDIX E

ARMY CORPS OF ENGINEERS JURISDICTIONAL DETERMINATION



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT
201 WEST 8TH STREET, SUITE 350
PUEBLO, COLORADO 81003

January 29, 2020

Regulatory Division

SUBJECT: No Permit Required – Action No. SPA-2020-00052, 2104 Janitell Rd.
Materials Handling Facility, Colorado Springs, in El Paso County, Colorado.

Perry Hastings
2014 Janitell Rd.
Colorado Springs, CO. 80906

Mr. Hastings,

This letter responds to your request for a jurisdictional determination for the 2104 Janitell Rd. Materials Handling Facility site at approximately latitude 38.8051, longitude - 104.7941, in El Paso County, Colorado.

Based on the information discussed and our review, we have determined that the site is entirely uplands and no waters of the U.S are on the property. If your plans change such that waters of the U.S. could be impacted adjacent to the property, please contact our office for a re-evaluation of permit requirements.

We have assigned Action No. SPA-2020-00052 to this project. Please reference this number in all future correspondence concerning the project.

This decision is based on an approved jurisdictional determination (JD) (attached) that there are no waters of the United States on the project site. The basis for this JD is that the project site contains entirely uplands. A copy of this JD is also available at <http://www.spa.usace.army.mil/reg/JD>. This approved JD is valid for five years unless new information warrants revision of the determination before the expiration date.

You may accept or appeal this approved JD or provide new information in accordance with the attached Notification of Administration Appeal Options and Process and Request for Appeal (NAAOP-RFA). If you elect to appeal this approved JD, you must complete Section II of the form and return it to the Army Engineer Division, South Pacific, CESPDPDS-O, Attn: Tom Cavanaugh, Administrative Appeal Review Officer, 1455 Market Street, Room 1760, San Francisco, CA 94103-1399 within 60 days of the date of this notice. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.

If you have any questions concerning our regulatory program, please contact me at (719) 600-8641 or by e-mail at Joseph.A.Martinez@usace.army.mil. At your convenience, please complete a Customer Service Survey on-line available at http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0.

Sincerely,

A handwritten signature in black ink, appearing to read 'Van A. Truan', with a horizontal line extending to the right.

Van A. Truan,
Chief,
Southern Colorado
Regulatory Branch

DRY LAND APPROVED JURISDICTIONAL DETERMINATION FORM¹
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Albuquerque District, Grazing Yak Solar Project, SPA-2018-00326

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: CO County/parish/borough: El Paso County City: Colorado Springs

Center coordinates of site (lat/long in degree decimal format): Lat. 38.9764113279837 °, Long. -104.248424076229°

Universal Transverse Mercator: 565102.27 W, 4314427.51 N, Zone 13

Name of nearest waterbody: Horse Creek

Name of watershed or Hydrologic Unit Code (HUC): Horse 11020008

- ☒ Check if map/diagram of review area is available upon request.
- ☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- ☒ Office (Desk) Determination. Date: 29-Jan.-2020
- ☒ Field Determination. Date(s): 24-Jan-2020

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are **no** “*navigable waters of the U.S.*” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are **no** “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

SECTION III: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- ☐ Office concurs with data sheets/delineation report.
- ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ U.S. Geological Survey Hydrologic Atlas: Arkansas-White-Red Region
- ☐ USGS NHD data.
- ☐ USGS 8 and 12 digit HUC maps.
- ☐ U.S. Geological Survey map(s). Cite scale & quad name: 1:24K; Rush NW
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ National wetlands inventory map(s). Cite name: Rush NW
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☒ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date):
- ☐ or ☐ Other (Name & Date):
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

B. REQUIRED ADDITIONAL COMMENTS TO SUPPORT JD. EXPLAIN RATIONALE FOR DETERMINATION THAT THE REVIEW AREA ONLY INCLUDES DRY LAND: Property was examined and no waters of the U.S. in property boundary.

¹ This form is for use only in recording approved JDs involving dry land. It extracts the relevant elements of the longer approved JD form in use since 2007 for aquatic areas and adds no new fields.

APPENDIX F

MIGRATORY BIRD SURVEY

AND

THREATENED AND ENDANGERED SPECIES
HABITAT ASSESSMENT

January 31, 2020

To: Parry Hastings, ACR Recycling LLC
From: Julia Snieder, ERO Resources Corporation
Re: Migratory Bird Nest Surveys, ACR Recycling

On behalf of Environment, Inc., ERO Resources Corporation (ERO) conducted a migratory bird survey on January 29, 2020 (2020 field survey) for proposed development project (project) at the ACR Recycling Facility on Janitell Road in El Paso County (project area). The project consists of a former gravel pit north west of Janitell Road (Figure 1). The purpose of the survey is to avoid disturbing or “taking” active nests during construction activities

Migratory birds, as well as their nests, are protected under the Migratory Bird Treaty Act (MBTA) of 1918 (16 United States Code 703-711). The MBTA makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed in 50 Code of Federal Regulations (CFR) Part 10, or its feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations (50 CFR 21).

The Denver Field Office of the U.S. Fish and Wildlife Service (2009) and Colorado Department of Transportation (2011) have identified the primary nesting season for migratory birds in eastern Colorado as occurring between April 1 and mid to late August. However, some birds, such as the red-tailed hawk and great horned owl, can nest as early as February or March. Because of variability in the breeding seasons of various bird species.

Methods

ERO conducted the migratory bird survey of the project area by walking transects through the project area to visually observe birds and bird nests. If a bird nest was found, it was observed to determine if it was active or not. Fledglings and adults carrying food or nest material were followed to see if they returned to a nest.

Results and Discussion

During the 2020 field survey, no active nests were found within the project area. The project area consists of bare ground and provides no nesting habitat for birds. The vegetation along Spring Creek and Fountain Creek on the edges of the project area does contain potential nesting habitat for birds. If these areas are to be disturbed, ERO recommends an additional nest survey be conducted within one week prior to work activities. The surrounding trees were visually observed with binoculars for raptor nests but none were found. A red-tailed

Denver
1842 Clarkson St.
Denver, CO 80218
303.830.1188

Durango
1015 ½ Main Avenue
Durango, CO 81301
970.422.2136

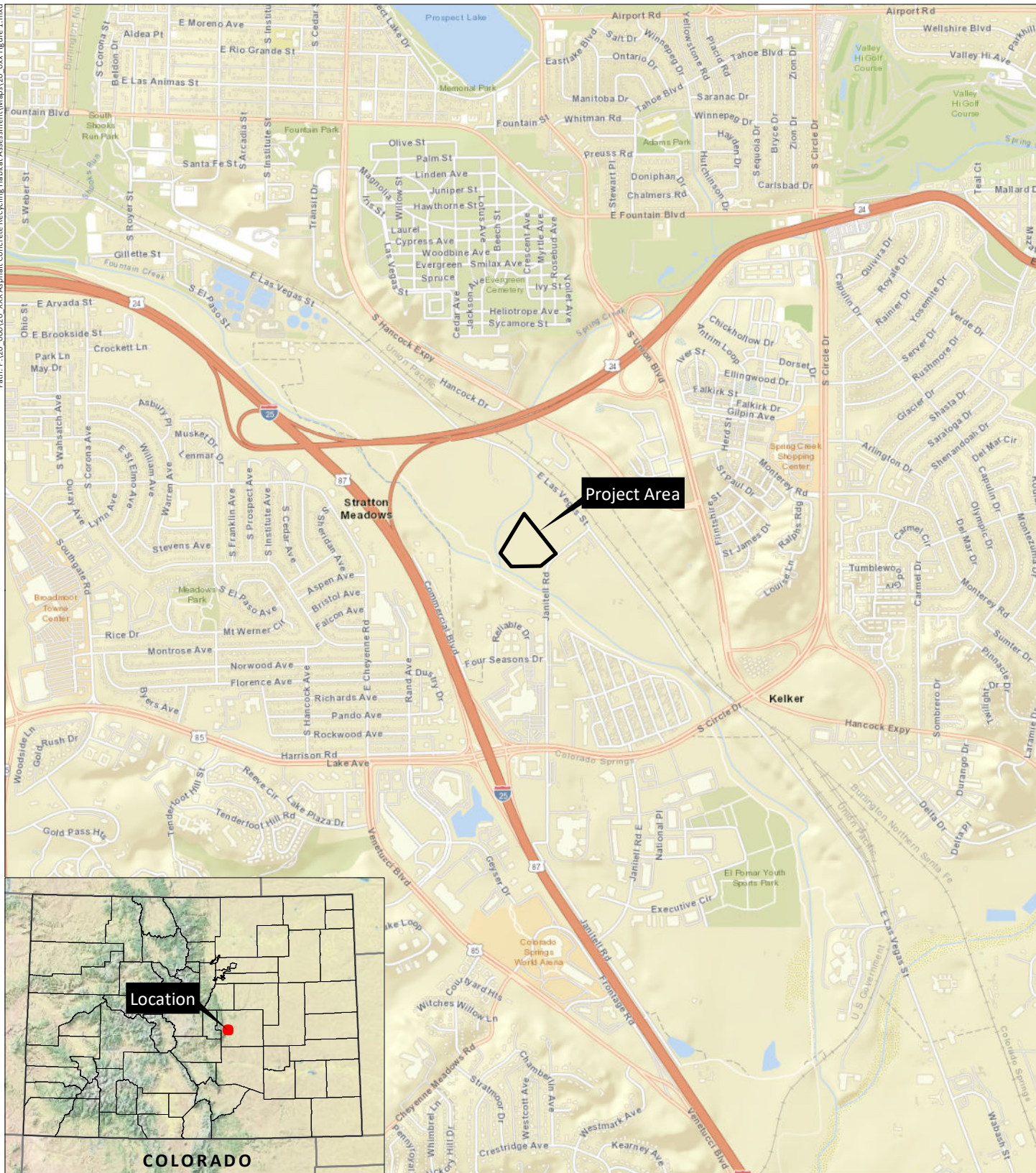
Hotchkiss
P.O. Box 932
161 South 2nd St.
Hotchkiss, CO 81419
970.872.3020

Idaho
4001 East Main Street
Emmett, ID 83617
208.365.7684

hawk was perched on a tree near the northern boundary of the project area, but no nest or potential nest structure was nearby.

References

- Colorado Department of Transportation (CDOT). 2011. Work Sheet: 240pmbcdotb dated 02-03-11. <https://www.codot.gov/programs/environmental/wildlife/guidelines/Birdspecontractorsbio.pdf/view>. Last accessed April 30, 2019.
- U.S. Fish and Wildlife Service (Service). 2009. Personal communication between Pete Plage (U.S. Fish and Wildlife Service) and ERO Resources Corporation.



Asphalt Concrete Recycling Habitat Assessment

Sections 28 and 29, T14S, R66W; 6th PM

UTM NAD 83: Zone 13N; 517769mE, 4295067mN

Longitude 104.795357°W, Latitude 38.804185°N

USGS XX, CO Quadrangle(s)

El Paso County, Colorado

Figure 1

Vicinity Map

Prepared for: Asphalt Concrete
Recycling
File: 20_0xx Figure 1.mxd (WH)
January 31, 2020

ERO
ERO Resources Corp.

0 1,000 2,000
Feet



January 31, 2020

Mr. Drue DeBerry
U.S. Fish and Wildlife Service
Colorado Field Office
Denver Federal Center (MS 65412)
PO Box 25486
Denver, Colorado 80225

RE: Threatened and Endangered Species Habitat Assessment – ACR Recycling Property, El Paso County, Colorado

Dear Mr. DeBerry,

ERO Resources Corporation (ERO), on behalf of Mr. Perry Hastings, is requesting Technical Assistance regarding threatened and endangered species for proposed development of a parcel near Colorado Springs in El Paso County, Colorado (project area). Mr. Hastings is evaluating the parcels for potential environmental concerns that would affect development opportunities.

Executive Summary

There is no suitable habitat for threatened or endangered species in the project area. Therefore, the proposed project would likely have no effect on federally listed species potentially present in El Paso County.

Federal Nexus

There is currently no federal nexus for the project because it is located on private land and no perennial streams are on the parcels; therefore, no U.S. Army Corps of Engineers permit would be needed. The Client retained ERO to assess the project area for the presence of habitat suitable for federally listed threatened, endangered, and candidate species as required by El Paso County in their review of the development.

Project Location

The project area is in Sections 28 and 29, T14S, R66W; 6th PM, El Paso County, Colorado (Figure 1). The UTM coordinates of the approximate center of the project area are NAD 83: Zone 13N; 517835mE, 4295135mN. The longitude/latitude of the project area is 104.794591°W/38.804797°N.

Project Description

Mr. Hastings is proposing to build an asphalt and concrete recycling plant on the parcel.

Denver
1842 Clarkson St.
Denver, CO 80218
303.830.1188

Durango
1015 ½ Main Avenue
Durango, CO 81301
970.422.2136

Hotchkiss
P.O. Box 932
161 South 2nd St.
Hotchkiss, CO 81419
970.872.3020

Idaho
4001 East Main Street
Emmett, ID 83617
208.365.7684

Site Description

The project area is within an existing industrial area, surrounded by other active industrial developments. The project area is bounded by Spring Creek to the west, Fountain Creek to the south, Janitell Road to the east, and East Las Vegas Street to the north (Figure 1). No perennial streams are located on the project area. The project area consists of a former aggregate mine consisting of compacted bare ground and asphalt with two large piles of fill dirt and asphalt. There is a utility building on the north side of the property.

The Natural Resources Conservation Service (NRCS) has mapped the soils within the project area, from highest to lowest percentage, as Ustic torrifluents, loamy, (55 percent); and Ellicot loamy coarse sand, 0 to 5 percent slopes (45 percent), (U.S. Department of Agriculture, NRCS 2020).

Endangered Species Act Compliance

On January 29, 2020, Julia Snieder with ERO assessed the project area (2020 site visit) for suitable habitat for federally listed threatened and endangered species protected under the Endangered Species Act (ESA) of 1973, as amended (16 United States Code 1531 et seq.). The project area does not fall within U.S. Fish and Wildlife Service (Service) habitat or survey guidelines for the majority of the species listed by the Service as potentially occurring in El Paso County (Table 1). Because the project area falls within survey guidelines for Ute ladies'-tresses orchid (*Spiranthes diluvialis* or ULTO), ERO assessed the project area for suitable habitat for these species.

Table 1. Federally threatened, endangered, and candidate species potentially found in Douglas County or potentially affected by projects in Douglas County.

Common Name	Scientific Name	Status*	Habitat	Suitable Habitat Present
Mammals				
Preble's Meadow Jumping Mouse (Preble's)	<i>Zapus hudsonius preblei</i>	T	Shrub riparian/ wet meadows associated with streams	No suitable habitat, within Colorado Springs block clearance zone
Birds				
Interior least tern**	<i>Sterna antillarum athalassos</i>	E	Sandy/pebble beaches on lakes, reservoirs, and rivers	No habitat and no depletions anticipated
Mexican spotted owl	<i>Strix occidentalis lucida</i>	T	Closed canopy forests in steep canyons	No habitat, no potential to affect
Piping plover**	<i>Charadrius melodus</i>	T	Sandy lakeshore beaches and river sandbars	No habitat and no depletions anticipated
Whooping crane**	<i>Grus americana</i>	E	Mudflats around reservoirs and in agricultural areas	No habitat and no depletions anticipated
Fish				

Common Name	Scientific Name	Status*	Habitat	Suitable Habitat Present
Mammals				
Preble's Meadow Jumping Mouse (Preble's)	<i>Zapus hudsonius preblei</i>	T	Shrub riparian/ wet meadows associated with streams	No suitable habitat, within Colorado Springs block clearance zone
Greenback cutthroat trout	<i>Oncorhynchus clarkii stomias</i>	T	Cold, clear, gravel headwater streams and mountain lakes	No habitat, No potential to affect
Pallid sturgeon**	<i>Scaphirhynchus albus</i>	E	Large, turbid, free-flowing rivers with a strong current and gravel or sandy substrate	No habitat and no depletions anticipated
Plants				
Ute ladies'-tresses orchid	<i>Spiranthes diluvialis</i>	T	Moist to wet alluvial meadows, floodplains of perennial streams, and around springs and lakes below 7,800 feet in elevation	No habitat, no potential to affect

*T = Federally Threatened Species, E = Federally Endangered Species.

**Water depletions in the South Platte River may affect the species and/or critical habitat in downstream reaches in other counties or states.

Source: Service 2020.

The proposed project would not affect the Mexican spotted owl or greenback cutthroat trout because of the lack of suitable habitat within the project area. The interior least tern, piping plover, whooping crane, and pallid sturgeon are species that are affected by continued or ongoing water depletions to the Platte River system. Based on ERO's knowledge of the project, the proposed project would not result in any depletions to the South Platte River. Because of the lack of habitat and depletions, the proposed project would not affect these species.

Rationale for Excluding the Project Area as Potential Preble's Habitat

ERO assessed the project area for potential Preble's habitat. The proposed project would not meet the criteria for Preble's habitat because:

- **Block Clearance Zone:** The project area is within the Colorado Springs Block Clearance Zone. The block clearance is a zone in which the Service has determined that Preble's no longer are likely to exist.
- **Lack of Suitable Habitat:** Within the project area, no multilayered shrub cover typically associated with known Preble's habitat occurs. The project area is dominated by bare ground. In addition, the project area does not contain any water source for Preble's, with no intermittent or perennial streams occurring within the project area. The closest known location where Preble's were captured on East Plum Creek is 1.1 miles southeast of the project area (MDG, Inc. 1999).

- **Project Area is Not Identified as Critical Habitat:** The project area contains no designated critical habitat, and the nearest Preble's critical habitat is approximately 1.75 miles southeast of the project area along Plum Creek.

Given the above information, it is extremely unlikely the project area supports a population of Preble's or that the continued existence of Preble's would be adversely affected by the proposed project. ERO recommends that the proposed project be allowed to proceed without a trapping survey.

Rationale for Excluding the Project Area as Potential ULTO Habitat

ERO determined the project area is not conducive to the establishment of ULTO and differs from the criteria of the Service's November 1992 (Service 1992) *Interim Survey Requirements for *Spiranthes diluvialis** for the following reasons:

- **Lack of Suitable Habitat:** No wetlands or perennial streams occur within the project area. The project area consists primarily of compacted bare soil where all vegetation has been stripped.
- **Lack of Associated Indicator Species:** The vegetation within the project area does not contain species usually associated with ULTO. There is now wet meadow habitat typically associated with ULTO.

Because no perennial streams occur within the project area and the project area is in El Paso County, it does not fit the Service criteria for potential ULTO habitat.

Other Sensitive Species

In addition to species listed as threatened or endangered, ERO assessed the project area for potential habitat and the presence of species protected by the Migratory Bird Treaty Act (MBTA). Migratory birds, as well as their eggs and active nests, are protected under the MBTA. Migratory bird habitat typically includes trees and shrubs, but upland grasslands also are used for nesting. No active nests were observed in the project area during the 2020 site visit, though the survey was conducted outside of the bird breeding season. In order to comply with the MBTA, Mr. Hastings would clear any vegetation outside of the breeding season (during the winter months) or complete a bird survey prior to construction.

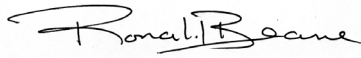
Conclusions

There is no suitable habitat for threatened or endangered species in the project area. Therefore, the proposed project would likely have no effect on federally listed species potentially present in El Paso County. Based on this habitat assessment, ERO, on behalf of Mr. Hastings, requests that the Service confirm that it has no concerns related to threatened and endangered species and that no further consultation under the ESA is required. Attached are

photos and figures of the project area. After you review this information, ERO would appreciate a written determination of this request.

Please call if you need additional information or have any questions. I look forward to hearing from you.

Sincerely,



Ronald Beane
Senior Wildlife Biologist

cc: Perry Hastings; ACRrecycling@gmail.com
Steve O'Brian; Environment-inc@outdrs.net

Attachments: Figures 1 and 2; Photo Log

References

- MDG, Inc. 1999. Trapping survey results submitted to the U.S. Fish and Wildlife Service along East Plum Creek. Reference provided by U.S. Fish and Wildlife Service (2019).
- U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS). 2020. Web Soil Survey. <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>. Last accessed January 30, 2020.
- U.S. Fish and Wildlife Service (Service). 1992. Interim Survey Requirements for *Spiranthes diluvialis*.
- U.S. Fish and Wildlife Service (Service). 2020. Information for Planning and Conservation (IPaC). <https://ecos.fws.gov/ipac/>. Last accessed January 29, 2020.

El Paso County, Colorado

ERO
ERO Resources Corp.



Asphalt Concrete Recycling Habitat Assessment


 Project Boundary

Image Source: DigitalGlobe©, August 4, 2018

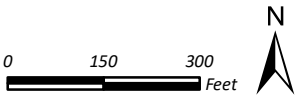


Figure 2
Existing Conditions

Prepared for: Asphalt Concrete Recycling
File: 20_00x Figure 2.mxd (WH)
January 31, 2020



PHOTO LOG
ASPHALT CONCRETE RECYCLING
EL PASO COUNTY, COLORADO
JANUARY 29, 2020



Photo 1 - Overview of the project area. View is to the west.



Photo 2 - Overview of project area. View is to the east.

Technical Assistance

Tracking Number: 2020-TA-0623

U.S. FISH AND WILDLIFE SERVICE

☒ NO CONCERNS

☐ CONCUR NOT LIKELY TO ADVERSELY AFFECT

☐ NO COMMENT



03/31/2020

Liisa Schmoele

DATE

Colorado Assistant Field Supervisor

Remarks: In PMJM Colorado Springs block
clearance zone.



ColoradoES, FW6 <coloradoes@fws.gov>

[EXTERNAL] Land Use Project - Janitell Road, Colorado Springs, Colorado

1 message

Debra Eiland <debra@eilandlawfirm.com>
To: "coloradoes@fws.gov" <coloradoes@fws.gov>
Cc: Hannah McCullough <hannah@eilandlawfirm.com>

Fri, Jan 10, 2020 at 1:10 PM

Dear Sir/Madam:

I represent a company called Concrete Asphalt Recycling LLC ("ACR"). ACR is planning to open an asphalt and concrete recycling facility on two adjoining parcels of vacant land in Colorado Springs located on Janitell Road. I have attached a copy of the Site Development Plan and ACR's letter of intent for your review.

I am writing because the El Paso County Environmental Division has indicated that the development may fall under the regulatory requirements of the Migratory Bird Act due to its proximity to Fountain Creek and Spring Creek, which run near the northern and western boundaries of the properties. I have also attached a copy of Ms. Kathy Andrew's letter in this regard. Ms. Andrew indicates that ACR must submit documentation from USFWS to the Planning Department prior to project commencement (please see paragraph 3). We need your guidance in this regard.

Would you please contact me at your earliest convenience to provide direction concerning this requirement? My contact information appears below. Thank you kindly for your attention and consideration in this regard.

Debra Eiland, Esq.
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3 attachments



2517600- Site Plan.pdf

530K



Letter of Intent - 2104 LLC Site Development Plan rev 11-21-19.pdf

6436K



Comments from Environmental Division.pdf

246K