

**TO: El Paso County Planning Commission
Brian Risley, Chair**

**FROM: Lindsay Darden, Planner II
Gilbert LaForce, PE Engineer II
Craig Dossey, Executive Director**

**RE: Project File #: VA-19-002
Project Name: Pete Lien & Sons, LLC.
Parcel No.: 4200000405**

OWNER:	REPRESENTATIVE:
Pete Lien & Sons, Inc. 3401 Universal Drive, P.O. Box 440 Rapid City, SD 57709-0440	Danielle Weibers Pete Lien & Sons, LLC 3401 Universal Drive, PO Box 440 Rapid City, SD 57709

Commissioner District: 2

Planning Commission Hearing Date: 6/2/2020
Board of County Commissioners Hearing Date 6/23/2020

EXECUTIVE SUMMARY

A request by Pete Lien & Sons, Inc., for approval of a variance of use for a permanent concrete batch plant. The property is zoned A-35 (Agricultural) and is located at the northeast corner of the Stapleton Road and Judge Orr Road intersection. The 92.47-acre parcel is located within Section 34, Township 12 South, Range 65 West of the 6th P.M. The subject parcel is located within the boundaries of the Falcon/Peyton Small Area Master Plan (2006).

A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION

Request: A request by Pete Lien & Sons, Inc., for approval of a variance of use for a permanent concrete batch plant.

Waiver(s)/Deviation(s): The following deviation from the standards of the El Paso County Engineering Criteria Manual (2019) have been administratively approved by the County Engineer.

1. Section 2.2.4.A.2 states, "Access is highly controlled with a limited number of full movement intersections and medians with infrequent openings, and no direct parcel access". The applicant has submitted a deviation requesting direct parcel access from Stapleton Drive due to the topographical constraints of the drainage way along the Judge Orr Road frontage. This request has been approved due to the topographic conditions imposed by the drainage way along Judge Orr Road.

Authorization to Sign: There are no documents associated with this application that require signature.

B. PLANNING COMMISSION SUMMARY

Request Heard:

Recommendation:

Waiver Recommendation:

Vote:

Vote Rationale:

Summary of Hearing:

Legal Notice:

C. APPROVAL CRITERIA

Pursuant to Section 5.3.4 of the Land Development Code (2019), the Planning Commission and Board of County Commissioners may consider the following criteria in approving a variance of use:

- The strict application of any of the provisions of this Code would result in peculiar and exceptional practical difficulties or undue hardship.
- The proposed use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the surrounding area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and County;
- The proposed use will be able to meet air, water, odor or noise standards established by County, State or federal regulations during construction and upon completion of the project;

- The proposed use will comply with all applicable requirements of this Code and all applicable County, State and federal regulations except those portions varied by this action;
- The proposed use will not adversely affect wildlife or wetlands;
- The applicant has addressed all off-site impacts;
- The site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping; and/or
- Sewer, water, storm water drainage, fire protection, police protection, and roads will be available and adequate to serve the needs of the proposed variance of use as designed and proposed.

D. LOCATION

North: A-35 (Agricultural)	Agricultural Grazing Land
South: RR-2.5 (Residential Rural)	Agricultural Grazing Land
East: A-35 (Agricultural)	Agricultural Grazing Land
West: A-35 (Agricultural)	Single Family Residential/Ag. Grazing Land

E. BACKGROUND

The 92.47-acre parcel was created on March 2, 1983 and is a legal division of land not subject to the El Paso County subdivision regulations due to the parcel being greater than 35 acres in size. The subject parcel was zoned A-35 (Agricultural) on March 25, 1999, at the time that zoning was first initiated for this portion of the County.

The applicant, Pete Lien & Sons, LLC, attended an early assistance meeting with the Planning and Community Development Department on April 17, 2018, to discuss the proposed use. During the meeting, the topic of compatibility of the use with the proposed residential uses to the south was discussed, including buffering, screening, and berms. At the time of the early assistance meeting, the applicant was under contract to purchase the land and closed on the purchase of the parcel on April 28, 2018. In May of 2018, following the early assistance meeting, staff received three letters of objection from nearby property owners for this project with concerns identified pertaining to the industrial nature of the proposed use, heavy truck traffic, and potential impacts to property values.

On February 21, 2019, the variance of use application was accepted for review by the Planning and Community Development Department. The proposed development includes a one-story office building, a one-story shop, a one-story quality control building, a concrete mixer, storage areas for concrete aggregate and pre-cast

concrete block, and parking for mixer trucks. The concrete mixer is proposed to be 72 feet 2 inches tall measured from finished grade to the tallest point of the mixer. The width of the mixer is variable, measuring approximately 76 feet wide. There are five conveyors that begin at a height of 54 feet above finished grade and extend approximately 185 feet to ground level. The applicant has provided plans proposing landscaping, stormwater management, grading and erosion control, and site lighting.

To date, staff has received nine (9) letters of support, one (1) letter of concern, seventy-seven (77) letters in opposition, and three (3) petitions with signatures opposing the project which are all attached below. Those in favor of the project have provided positive feedback regarding the jobs and revenue that will be brought to the Falcon area and the shorter driving time, safety, and distance achieved by sourcing concrete from a batch plant that is closer to the location of new development in the County. Concerns that have been expressed by those opposed to the permanent batch plant project include but are not limited to increased heavy truck traffic in the vicinity of the site, noise, dust, air quality, and negative impacts to property values.

The applicant has received approval of a deviation from the El Paso County Engineering Criteria Manual (2019) standards that prohibit access from principal arterial roadways. The approved deviation allows access from Stapleton Drive, which is designated as a principal arterial roadway. The deviation was approved based on the topographic constraints of the drainage way along Judge Orr Road and to avoid disturbance to existing wetlands and burrowing owl habitat that would be required to provide an access on Judge Orr Road. If the variance of use is approved, a full site development plan meeting the requirements of the Land Development Code, including but not limited to the General Development standards outlined in Chapter 6, shall be required to establish the use. Specific conditions of approval have been included with this application due to concerns regarding the impacts to the El Paso County public roadways from the heavy truck traffic associated with the concrete batch plant use.

F. ANALYSIS

1. Land Development Code Analysis

Zoning:

The El Paso County Land Development Code (2019) does not identify permanent Batch Plants either as an allowed use or as a special use in the A-35 (Agricultural) zoning district. Therefore, the only option for authorizing the permanent batch plant in the A-35 (Agricultural) zoning district is via approval of a variance of use. For reference, the Code only permits permanent Batch Plants as a special use in the I-3 (Industrial) and M (Industrial Obsolete) zoning districts, both of which generally include heavy industrial uses. A variance of use would be required in all other zoning

districts, including all other agricultural zoning districts, all residential zoning districts, all commercial zoning districts, all obsolete zoning districts other than M (Industrial), and the I-2 (Limited Industrial) zoning district.

The properties surrounding the subject parcel are zoned A-35 (Agricultural) to the west, north, and east and RR-5 (Residential Rural) and RR-2.5 (Residential Rural) to the south and southwest. There are currently 23 areas within El Paso County that have I-3 (Heavy Industrial) zoning and 20 areas of M (Industrial Obsolete) zoning. These are typically located in areas of the County that are surrounded by the City of Colorado Springs and/or are located just outside the incorporated boundaries of the City. Some of the I-3 zoned areas are also located near the City of Fountain and even further south near the El Paso County/Pueblo County line.

Pete Lien & Sons currently operates other permanent batch plant sites in El Paso County; however, because most of the new development is occurring in the eastern part of the County, the existing batch plants are too far away to efficiently serve the emerging new development without extended hauling distances. The nearest heavy industrial zoning district is zoned M (Industrial Obsolete) and includes four parcels that are located approximately 1.45 miles west of the subject parcel, at the southwest corner of the Highway 24 and Judge Orr Road intersection. Three of the parcels are a subdivision known as Falcon Industrial Park (SF-77-003). Of those three parcels, Lot 1 is a 5-acre parcel that is developed with an existing mobile home and several commercial buildings while the other two parcels, Lots 2 and 3 are vacant and total 41.44 acres. The fourth parcel included in the industrial zoning area is a vacant 49.68-acre tract that directly adjoins (west property line) the Woodmen Hills subdivision. There are no additional vacant industrial parcels that would allow a permanent batch plant with special use approval within five (5) miles of the subject parcel.

The nearest non-residential or non-agricultural development is Meadow Lake Airport, located approximately one mile west of the subject parcel. Meadow Lake Airport includes a variety of supporting uses to the primary airport use including aviation related commercial and residential uses. Approximately two (2) miles west of the subject site, on the west side of Eastonville Road, the Woodmen Hills neighborhood consists of urban density with many lots being approximately one-half (1/2) acre in size. East of Eastonville Road, the average residential lot sizes increase to predominantly 5-acre lot sizes, except for the new residential development proposed directly to south of the subject parcel that will be developed at a residential density of 2.5 acre lots with two hundred and seventy-three detached single-family residential units proposed.

Hardship:

The applicant purchased the subject parcel on April 28, 2018, after attending the early assistance meeting and learning of the processes that would be involved in obtaining approval of a permanent concrete batch plant on a A-35 zoned property and the potential compatibility issues associated with siting the use in this location. Because purchase of a property is not considered a hardship, the strict application of any of the provisions of the Code would not result in peculiar and exceptional practical difficulties or undue hardship. Siting the permanent batch plant on a property that is already zoned for heavy industrial use, such as property zoned I-3 (Industrial) or M (Industrial Obsolete), would require approval of a special use, rather than a variance of use, and the permanent batch plant would customarily be considered more compatible with the other allowed and special uses in those locations.

Use Compatibility:

There are some significant challenges in ensuring that the proposed industrial use is consistent or harmonious with the existing and emerging detached single-family residential land uses and vacant agricultural land that is adjacent to and near the subject parcel due to the more intense industrial nature of a permanent batch plant. The scale and overall massing of the proposed concrete mixer and conveyors may result in offsite visual impacts to the surrounding properties and to other properties in the vicinity. Landscaping and additional buffer widths in excess of the requirements of the Code are being proposed with this request in order to help mitigate those impacts; however, the combination of the 72 foot 2 inch concrete mixer and the flatness of the terrain in the area will make screening and buffering of the visual impact difficult, if not totally impractical. The applicant has provided a graphic simulation of the proposed batch plant viewed from Stapleton Road (see attached) that demonstrates this. The proposed development may create an inadequate visual transition from low density residential and agricultural uses to the more intense and visually intrusive batch plant use and may be of an incompatible scale with the existing adjacent development and in the general area of the site.

Health, Safety, and Welfare:

One of the review criteria identifies that the variance of use is not detrimental to the health, safety, or welfare of the inhabitants of the area and County. In regard to air quality, the Code, specifically Section 6.3.1, does not require air quality management plans with variance of use applications; however, the applicant submitted a plan for review. Additionally, all development applications shall comply with any County,

state, and federal air quality standards and shall reduce potential emissions where feasible. The air quality management plan listed potential environmental impacts as dust, odor, and hazardous air pollutants (HAPs). Particulate matter has the potential to be generated on a temporary basis from material transfers, mixing operations, and on a continuous basis from vehicle traffic. The HAPs and particulate matter could also be generated on a temporary basis by the water heater. For the various identified sources of dust on the site, controls were specified to mitigate the dust and there are procedures outlined for handling complaints for the site, inspecting the site, monitoring the site, and follow up actions for when complaints are received. El Paso County Public Health reviewed the plan and indicated that the Colorado Department of Public Health and Environment (CDPHE), Air Pollution Control Division (APCD), will require an Air Pollutant Emissions Notice (APEN) as noted in the "Draft Air Quality Management Plan" submitted for review. All aspects of the APEN must be complied with including dust control, emissions from equipment, and odor control and response. A condition of approval has been included below specifying that an APEN shall be required prior to approval of a subsequent site development plan.

Transportation:

A traffic study was submitted with the variance of use application, which identified roadway improvements (described in the Transportation section below) that will be required in association with this project in order to accommodate the anticipated increase in traffic in the area due to the proposed batch plant. The traffic study was reviewed by the El Paso County Public Works Department, Engineering Division, and the Colorado Department of Transportation (CDOT). In addition to the roadway improvements referenced above, the potential for accelerated degradation to the adjacent roadways with the heavy truck traffic has been identified. In an effort to mitigate these traffic impacts, staff has recommended a condition of approval that requires the applicant to enter into an agreement with El Paso County prior to approval of the site development plan in order to adequately address the potential impacts to the pavement and road structure of County roads in the area that are proposed to be used by the applicant for hauling.

Environment:

The El Paso County Community Services Department, Environmental Division, reviewed the variance of use application and responded by identifying wetlands and evidence of prairie dog habitat on the site. Additional information was provided to the applicant regarding wetland jurisdiction, requirements for the applicant to provide the County with U.S Fish and Wildlife Service documentation prior to land disturbance, and a recommendation for a burrowing owl study due to evidence of prairie dog habitat on the site. The applicant submitted a burrowing owl study that documented

the presence of burrowing owls on the southern portion of the subject site and recommended a minimum avoidance buffer of 150 feet from the occupied nest burrows to the area of human encroachment during the times of year when the burrowing owls are active in Colorado (March 15-October 31). The survey technician who performed the study indicated in the report that extra time was taken to obtain a more precise estimate of the distance from the south edge of the proposed limits of disturbance for the batch plant to the mound where the burrowing owls were located. At the time of study, the burrowing owl mound was located beyond the 150-foot buffer prescribed in the Colorado Parks and Wildlife (CPW)'s recommended buffer distances; however, it was noted in the study that if additional burrowing owls arrive on site after construction activities commence, a qualified biologist should reassess the risk to owls from construction activities.

A deviation request was approved to allow access onto Stapleton Road rather than onto Judge Orr Road to avoid impacts to the wetlands and burrowing owl habitat, which as mentioned above are located on the southern portion of the site adjacent to Judge Orr Road. Based on this, a finding can be made that the variance of use application for the proposed batch plant use, if approved, will not adversely affect wildlife or wetlands.

Site Plan Requirements:

As part of the variance use request, the applicant has provided documentation, including a site plan exhibit, that demonstrates that the proposed variance of use will provide for adequate parking, traffic circulation, and open space. As mentioned in the analysis above, landscaping has been provided to meet the requirements of the Code, however, fully screening the concrete mixer and conveyors from view is not practicable due to the scale of the structures. In regard to open space, there is not a Code requirement to set aside a certain percentage of a site for open space; however, the current proposal submitted by the applicant would develop approximately 22.6 acres (25%) of the 91.86-acre site leaving the remainder undeveloped. Some of the land is constrained by wetlands, floodplain, and wildlife habitat which offers additional buffer width between the proposed batch plant and adjacent properties and roadways. Any future request to expand of the variance of use for the batch plant would require prior approval by the El Paso County Board of County Commissioners.

2. Zoning Compliance

All of the structures on the property are proposed to meet the dimensional standards within the A-35 (Agricultural) zoning district, which are as follows:

Front yard setback:	25 feet
Rear yard setback:	25 feet
Side yard setback:	25 feet
Height maximum:	30 feet
Lot coverage maximum:	none
Minimum lot size:	35 acres

The property is zoned A-35 (Agricultural), which does not include a permanent batch plant as an allowed use. Only if the variance of use and a site development plan are approved would the proposed use be in compliance with the existing A-35 zoning. The concrete mixer is proposed to be 72 feet 2 inches in high at its tallest point, which exceeds the standard maximum height of 30 feet allowed in the A-35 (Agricultural) zoning district; however, footnote 10 of Table 5-4 in the Code specifies:

“One additional foot of height is allowed for each foot of additional setback provided above the required minimums up to a maximum of 100 feet.”

The minimum setback requirement for structures in the A-35 (Agricultural) zoning district is 25 feet on all sides. The concrete mixer is proposed to be located approximately 500 feet from the nearest property line.

Applying footnote 10, the maximum height based on the additional setbacks provided would be: 500 feet (proposed setback for the concrete mixer) - 25 feet (standard setback requirement for A-35 zoning district) = 475 feet additional setback provided. 475 feet + 30 feet (maximum height allowed in A-35 zoning district) = 505 feet. The above calculation would allow for a maximum height of 505 feet. However, footnote 10 further limits the maximum height to 100 feet, which would apply in this case.

Locating the concrete mixer further from the property lines provides for additional buffers from surrounding property and allows for a greatly increased height allowance in comparison to the standard maximum height of 30 feet permitted in the A-35 (Agricultural) zoning district. The concrete mixer is proposed to be 72 feet 2 inches tall, which is approximately 28 feet less than the 100-foot maximum height allowed by the Land Development Code. The proposed height of the concrete mixer is in compliance with the maximum height allowance of the A-35 zoning district.

3. Policy Plan Analysis

Consistency with the El Paso County Policy Plan (1998) is not a required review criterion for a variance of use request. However, the following analysis is being

provided for background purposes. The El Paso County Policy Plan (1998) has a dual purpose; it serves as a guiding document concerning broader land use planning issues and provides a framework to tie together the more detailed sub-area elements of the County Master Plan. Relevant policies are as follows:

Policy 2.2.5: Encourage mitigation of all adverse impacts to wetlands and riparian habitat.

Policy 2.2.8: Encourage the protection and preservation of state listed endangered and threatened species, species of special concern, and species with immediate conservation needs.

Policy 6.1.10: Ensure that new development will not create a disproportionate high demand on public services and facilities by virtue of its location, design, or timing.

Policy 6.1.11: Plan and implement land development so that it will be functionally and aesthetically integrated within the context of adjoining properties and uses

Policy 6.2.12: Ensure that proposed zone changes and or use variances in established neighborhoods are compatible in scale and physical character.

Policy 6.3.4: Commercial, office, industrial and, residential development should be compatible with surrounding land uses in terms of scale, intensity and potential impacts.

Policy 6.3.8: Recognize the need and allow for the reasonable accommodation of adequate amounts of land with sufficient infrastructure for land uses of a heavy industrial nature and/or considered to be "locally undesirable" within all sub areas of the County provided that adequate facilities and services will be available. Consider the environmental, visual and land use compatibility impacts and incorporate, where possible, buffering and screening techniques to address compatibility with surrounding uses.

Goal 7.1: Reasonably accommodate unique and special uses which provide value to the greater community and which can be made consistent with surrounding uses.

The surrounding adjacent land uses consist of agricultural grazing land and/or single-family residential. Directly to the south of the subject parcel is the Saddlehorn Ranch Subdivision which proposes 273 detached single-family residential units with 2.5-acre lot sizes served by the Saddlehorn Ranch Metropolitan District for water and onsite wastewater treatment systems for each lot. The nearest non-residential use is Meadow Lake Airport located approximately one mile west of the subject parcel. In addition to the primary airport use, the Meadow Lake Airport also includes supporting uses such as aviation related commercial businesses and residential uses. The other nearby and adjacent residential development is typically 5-acre lot sizes; however, approximately two miles west the density increases with many smaller (approximately 0.5-acre) residential lots within the Woodmen Hills development located east of Eastonville Road.

During their review of the project, the El Paso County Community Services Department, Environmental Division, reported wetlands and evidence of prairie dog habitat on the site. Additional information was provided to the applicant regarding wetland jurisdiction, requirements for the applicant to provide the County with U.S Fish and Wildlife Service documentation prior to land disturbance, and a recommendation for a burrowing owl study due to evidence of prairie dog habitat on the site. The applicant submitted a burrowing owl study that documented the presence of burrowing owls on the southern portion of the subject site and recommended a minimum avoidance buffer of 150 feet from the occupied nest burrows to the area of human encroachment during the times of year when the burrowing owls are active in Colorado (March 15-October 31). The survey technician who performed the study indicated in the report that extra time was taken to obtain a more precise estimate of the distance from the south edge of the proposed limits of disturbance for the batch plant to the mound where the burrowing owls were located. At the time of study, the burrowing owl mound was located beyond the 150-foot buffer prescribed in the Colorado Parks and Wildlife (CPW)'s recommended buffer distances; however, it was noted in the study that if additional burrowing owls arrive on site after construction activities commence, a qualified biologist should reassess the risk to owls from construction activities.

A deviation request was approved to allow access onto Stapleton Road rather than onto Judge Orr Road to avoid impacts to the wetlands and burrowing owl habitat, which as mentioned above are located on the southern portion of the site adjacent to Judge Orr Road. Based on this, a finding can be made that the variance of use application for the proposed batch plant use, if approved, will not adversely affect wildlife or wetlands.

The scale of the proposed concrete mixer and conveyors is likely to cause visual impacts to the surrounding properties and other properties in the general vicinity. Although additional buffer widths and landscaping are proposed to help mitigate some of those impacts, the combination of the 72 foot 2 inch high concrete mixer and the relatively flat terrain of the area will make screening and buffering the visual impact impractical since the mixer will extend well above the height of any potential vegetative screening that could be provided. The proposed use may create an inadequate visual transition from low density residential and agricultural uses to the more intense and visually intrusive batch plant use and may be of an incompatible scale with the existing adjacent development and in the general area of the site.

The proposed industrial use for the batch plant is not consistent with the existing and proposed adjacent and nearby uses which are predominately residential, agricultural, airport and aviation-supporting uses; however, a concrete batch plant could be considered a necessary use in order to support the current and future growth of the County, particularly in the northeastern and eastern portions. Additionally, the proposed site layout locates the taller structures near the center of the property, further from the property lines in an effort to help reduce the visual impact.

El Paso County Policy 6.3.8 anticipates inclusion of heavy industrial and “locally undesirable” uses within all sub areas of the County where adequate facilities and services are available and where buffering and screening can aid in compatibility. Goal 7.1 also addresses reasonably accommodating unique and special uses which provide value to the greater community. A concrete batch plant, like many other industrial land uses, is a necessary use for a community the size of El Paso County. Such uses are often locally undesirable but typically serve the needs of the greater community. The geographic siting of industrial uses, particularly heavy industrial uses, is usually a contentious land use issue, as is the case with this application. It is also recommended, however, that the continued loss of available industrially zoned land is also an ever-pressing issue for the greater community. As properties that have been historically zoned for industrial uses are rezoned for residential and commercial uses in response to the growing population of the region the available inventory of community accepted industrial land is depleted, causing such uses to migrate into the more rural, less developed areas of the County. The sourcing and associated costs for such services and materials can often be directly impacted by the proximity of the industrial provider, which in turn can impact the bottom-line cost to the consumer.

A traffic study was submitted with the variance of use application which identified roadway improvements (described in the Transportation section below) that will be required in association with this project in order to accommodate the anticipated increase in traffic in the area due to the proposed batch plant. The traffic study was reviewed by the El Paso County Public Works Department, Engineering Division, and the Colorado Department of Transportation (CDOT). In addition to the roadway improvements referenced above the potential for accelerated degradation to the adjacent roadways with the heavy truck traffic has been identified. In an effort to mitigate these traffic impacts, staff has recommended a condition of approval that requires the applicant to enter into an agreement with El Paso County prior to approval of the site development plan in order to adequately address the potential impacts to the pavement and road structure of County roads in the area that are proposed to be used by the applicant for hauling.

Water is to be provided by a large capacity commercial well (permit 83325-F). The well permit allows up to 32.2-acre feet per year to be withdrawn solely from the Arapahoe aquifer to be utilized for industrial, commercial, and irrigation uses. The applicant has indicated that proposed annual water usage will vary based on the amount of concrete sold and is predicted to range from 15 to 28 acre-feet per year, which includes water used for concrete production, all domestic purposes, and dust mitigation. Sanitation is to be provided by an onsite wastewater treatment system (OWTS) and electrical service will be provided by Mountain View Electric Association.

4. Small Area Plan Analysis

The subject parcel is located within the Falcon/Peyton Small Area Masterplan (2006) and the land use recommendation for that area is shown as proposed urban density development, which specifies lot sizes between one acre and 2.5 acres and should include open space and provide transition zones between higher and lower densities. Future urban areas would add to the existing urbanized development in the Falcon vicinity. The Plan envisions that areas of future urban density be served by urban-level infrastructure including roadways, water distribution, and wastewater treatment.

The subject parcel is also located within an area that is designated as a potential growth corridor (Stapleton-Curtis Corridor on the west side of the parcel; Judge Orr Road Corridor for the remainder of parcel). Per the Plan, growth corridors connect the potential growth nodes but do not signify that dense residential or commercial growth beyond the recommended urban density is encouraged along the corridors.

The corridor displays the connections between nodes and identifies possible routes for efficient infrastructure development.

The Stapleton-Curtis corridor includes areas located within one-quarter (1/4) mile of the roadway and other areas influenced by road noise, traffic impacts, or access controls. Policies listed in the Plan that apply specifically to the Stapleton-Curtis corridor are as follow:

Policy 4.5.5.1: Recognize the importance of the Woodmen Road, Meridian Road and Stapleton/Curtis corridors as critically important non-State transportation corridors serving the area. Maintain options for a high level of access control, adequate right-of-way preservation and adjacent uses which will complement these higher speed, higher traffic major arterial corridors.

The Judge Orr Road Corridor is referenced in the following policy:

Policy 4.5.5.2: Also recognize the importance of other key corridors in the planning area as identified on the Major Transportation Corridors Plan as it may be amended in response to development activities and plans. These corridors include but are not limited to Judge Orr Road, Elbert Highway and Peyton Highway.

In summary, the Falcon/Peyton Plan identifies a network of growth nodes that are connected by major transportation corridors. Industrial development is generally limited to areas specified as growth nodes in conjunction with other uses, such as dense housing, primary employment, traditional/main street style commercial services, and public spaces. While the subject parcel is located within an area that is specified for future urban development in the Falcon/Payton Plan, the site is not specifically located within an identified growth node. The proposed use is not consistent with the land use recommendations specified in the Falcon/Peyton Plan. The Plan stresses the importance of maintaining the efficiency of the corridors that connect potential growth nodes and permitting adjacent uses which complement the higher speed and higher traffic arterial corridors. Per the traffic study included with this request, the proposed site access would be within the Stapleton/Curtis Corridor and the haul route would run predominately north and south along that corridor, which may negatively impact the efficiency of that corridor if larger trucks are pulling in and out of the batch plant site.

Other applicable general policies from the Falcon/Peyton Small Area Master Plan (2006) are as follow:

Goal 3.2.1: Establish a variety of Primary Employers that will provide stable, diverse, well-paying employment opportunities for current and future residents of the planning area.

Goal 3.5.7: Ensure the coordination of land use and transportation planning.

The current proposal for a concrete batch plant could enhance the variety of employment opportunities for current and future residents of the planning area as there are no industrial uses near to the subject parcel and the nearest non-residential use is within Meadow Lake Airport, where commercial uses that support the airport use are permitted. During the review process for the variance of use application, staff coordinated with El Paso County Public Works Department, Engineering Division, as well as the Colorado Department of Transportation (CDOT) to determine the anticipated traffic impacts of the proposed batch plant. This resulted in requirements for road improvements and a requirement of a haul route agreement to mitigate roadway impacts due to heavy truck loads (see the Recommended Conditions of Approval below).

5. Water Master Plan Analysis

Consistency with the El Paso County Water Master Plan (2018) is not a required review criterion for a variance of use request. The following analysis is being provided for informational purposes. The Water Master Plan has three main purposes; to better understand present conditions of water supply and demand; identify efficiencies that can be achieved; and encourage best practices for water demand management through the comprehensive planning and development review processes.

Goal 4.3: Collaborate with the State and other stakeholders to extend the economic life of the Denver Basin aquifers.

Policy 4.5.5.1: Incentivize the use of deeper Arapahoe and Laramie-Fox Hills aquifers by central water providers, leaving or deferring the use of the shallower aquifers for the more dispersed domestic well users.

Policy 4.3.6: Encourage well monitoring throughout the County, with an emphasis on the Denver Basin aquifer fringe areas.

Policy 5.2.2: Recognize the water supply challenges and limitations inherent in each of the regional planning areas, with particular emphasis placed on Regional Planning Area 3 (Falcon), as a result of current reliance on non-renewable

Denver Basin wells and the renewable, but limited and over appropriated, Upper Black Squirrel Creek alluvium.

Policy 5.2.4 – Encourage the locating of new development where it can take advantage of existing or proposed water supply projects that would allow shared infrastructure costs.

Policy 6.0.11 – Continue to limit urban level development to those areas served by centralized utilities.

As discussed above, the applicant has indicated that the estimated water usage per year for the concrete batch plant will range from 15 to 28 acre-feet per year. The well permit issued by the State (Permit # 83325-F) allows up to 32.2 acre-feet to be withdrawn annually from the Arapahoe aquifer. The well is required to be constructed to prevent diversion of water from other aquifers and movement of water between aquifers. The well permit also requires that a flow meter be installed on the well and permanent records of all diversions be kept and submitted upon request to the Upper Black Squirrel Creek Ground Water Management District and the Colorado Groundwater Commission. The water findings permit additional withdrawals from the Denver (31.4 acre-feet per year) and the Laramie-Fox Hills (28.4 acre-feet per year) aquifers and, while there is no approved well permit for withdrawals from those aquifers currently proposed, the water findings would potentially allow for a new well permit applications to be submitted for withdrawal from those aquifers in the future.

The water findings and the well permit that were submitted with the variance of use application indicate that the batch plant is permitted to withdraw up to 92 acre-feet per year from the Arapahoe, Denver, and Laramie-Fox aquifers for industrial, irrigation, and commercial use. Based on the well permit, the applicant is proposing to utilize approximately one-third (1/3) of the total water that was allocated to the parcel and to withdraw water solely from the Arapahoe aquifer. Variance of use applications do not require a finding of water sufficiency by the El Paso County Board of County Commissioners.

Based on the presumptive water use values in the Code, the estimated usage of 15-28 acre feet per year for the permanent batch plant is equivalent to the annual usage of approximately 22 – 42 rural households, which are estimated to use an average of 0.67 acre feet per year, depending on the number of livestock. The proposed Saddlehorn development to the south will be served by the Saddlehorn Ranch Metropolitan District, which will provide central water service with water withdrawn from the Arapahoe and Laramie-Fox aquifers. The parcel that wraps around the

subject parcel on the north and east sides is vacant and does not have an existing well permit. The parcel to the west of the site has a well permit allowing for water to be drawn out of Denver aquifer for domestic use only. The parcel to the southwest also has a well permit that allows for withdrawal from the Denver aquifer. It is typical for the more dispersed and economical domestic wells that serve individual parcels for household use and livestock to withdraw from the more shallow aquifers, such as the Denver aquifer, and for the more water-intense uses to pump water from the deeper aquifers such as the Arapahoe and the Laramie-Fox Hills. The Saddlehorn development to the south has formed a metropolitan district to provide central water to the proposed subdivision due to the number of lots and more dense development. It is unknown whether the applicant has approached the Saddlehorn Metropolitan District to determine if inclusion into the District or extraterritorial service by the District is possible.

As currently submitted, the proposed well permit suggest the plan for water supply to the proposed use is consistent with the Water Master Plan policy of withdrawing from the deeper aquifers (Arapahoe and Laramie-Fox) and reserving the shallower aquifers, such as the Denver aquifer, for domestic well usage. Although the batch plant is not a central water provider, it is a more intense use than a rural household and the Water Master Plan encourages more intense users to pull from the deeper aquifers. Additionally, the project will not utilize the alluvium from the Upper Black Squirrel Creek and will provide a flow meter to monitor the usage for the project.

6. Other Master Plan Elements

The El Paso County Wildlife Habitat Descriptors (1996) identifies the site as having a low wildlife impact potential; however, a referral was sent to the El Paso County Community Services Department, Environmental Division, who reported wetlands and evidence of prairie dog habitat on the site. Additional information regarding this is provided in the Wildlife section below.

The Master Plan for Mineral Extraction (1996) identifies upland deposits in the area of the subject parcels. Upland deposits include sand, gravel with silt and clay and remnants of older streams deposited on topographic highs or bench like features. A mineral rights certification was prepared by the applicant indicating that, upon researching the records of El Paso County, no severed mineral rights exist.

Please see the Transportation Section below for information regarding conformance with the 2016 Major Transportation Corridor Plan (MTCP).

Please see the Parks Section below for information regarding conformance with the El Paso County Parks Master Plan (2013).

G. PHYSICAL SITE CHARACTERISTICS

1. Hazards

Reports regarding existence of geologic or noise hazards are not required, and have not been provided, in conjunction with this variance of use request. FEMA Flood Insurance Rate Map No 08041C0558G, which has an effective date of December 7, 2018, shows the 100-year floodplain (Zone AE) of Haegler Ranch Tributary 2 flowing through the property and along the southern property line as depicted on the site plan exhibit. The 100-year floodplain shall be shown on the subsequent site development plan with a restriction prohibiting structures and storage of materials within the floodplain area.

2. Wildlife

The El Paso County Wildlife Habitat Descriptors (1996) identifies the site as having a low wildlife impact potential. A referral was sent to the El Paso County Community Services Department, Environmental Division, who responded by identifying that there are wetlands and evidence of prairie dog habitat on the site. Additional information was provided to the applicant regarding wetland jurisdiction, requirements for the applicant to provide the County with U.S Fish and Wildlife Service documentation prior to land disturbance, and a recommendation for a burrowing owl study due to evidence of prairie dog habitat on the site. The applicant submitted a burrowing owl study that documented the presence of burrowing owls on the southern portion of the subject site and recommended a minimum avoidance buffer of 150 feet from the occupied nest burrows to the area of human encroachment during the times of year when the burrowing owls are active in Colorado (March 15-October 31). The survey technician who performed the study indicated in the report that extra time was taken to obtain a more precise estimate of the distance from the south edge of the proposed limits of disturbance for the batch plan to the mound where the burrowing owls were located. At the time of study, the burrowing owl mound was located beyond the 150-foot buffer prescribed in the Colorado Parks and Wildlife (CPW)'s recommended buffer distances; however, it was noted in the study that if additional burrowing owls arrive on site after construction activities commence, a qualified biologist should reassess the risk to owls from construction activities.

A deviation request was approved to allow access onto Stapleton Road rather than onto Judge Orr Road to avoid impacts to the wetlands and burrowing owl habitat, which as mentioned above are located on the southern portion of the site adjacent to Judge Orr Road. Based on this, a finding can be made that the variance of use application for the proposed batch plant use, if approved, will not adversely affect wildlife or wetlands.

3. Floodplain

FEMA Flood Insurance Rate Map No 08041C0558G, which has an effective date of December 7, 2018, shows the 100-year floodplain (Zone AE) of Haegler Ranch Tributary 2 flowing through the property and along the southern property line. The 100-year floodplain shall be shown on the subsequent site development plan with a restriction prohibiting structures and storage of materials within the floodplain area.

4. Drainage and Erosion

The property is located within the Geick Ranch drainage basin (CHMS0400). The Geick Ranch drainage basin has no associated drainage or bridge fees.

A drainage report will be required with the subsequent site development plan application. The drainage report will provide hydrologic and hydraulic analysis to identify and mitigate drainage impacts to the surrounding properties that may otherwise be caused by the proposed use.

A grading and erosion control plan (GEC) and an Erosion and Stormwater Quality Control Permit (ESQCP) will be required with the subsequent site development plan application. The GEC identifies construction and permanent best management practices (BMPs) to prevent sediment and debris from affecting adjoining properties and the public stormwater system before, during, and after grading activities.

5. Transportation

Access is proposed via Stapleton Drive based on the approved deviation request described in Section A above. Stapleton Road is identified in the 2016 Major Transportation Corridors Plan Update (MTCP) as a 2040 Roadway Improvement Project to convert the road from a 2-lane principal arterial to a 4-lane principal arterial. The proposed use, if approved and developed, is not anticipated to trigger the need to upgrade Stapleton Road to a 4-lane principal arterial.

The associated traffic impact study recommends an auxiliary left turn lane on Stapleton Drive at the proposed access point. This offsite improvement is not reimbursable under the Road Impact Fee Program. The Judge Orr Road and Stapleton Drive intersection is expected to operate an acceptable level of service (LOS B). The State Highway 24 and Stapleton Drive intersection is currently operating with peak hour delays under existing traffic volumes (LOS E). Based on the traffic impact study, four of the signal warrant analysis are met under existing condition (8-hour volume, 4-hour volume, peak hour volume and roadway network volume). Colorado Department of Transportation (CDOT) access permits will be

required for the intersections of State Highway 24 and Stapleton Drive, and State Highway 24 and Judge Orr Drive. An escrow for the future signal at State Highway 24 and Stapleton Drive in the amount of \$70,833 is required as part of the access permit.

The variance of use request is subject to the El Paso County Road Impact Fee Program (Resolution 19-471), as amended.

H. SERVICES

1. Water

Water is proposed to be provided by a new well that is specified for industrial, commercial, and irrigation usage (Colorado Well Permit 83325-F). The property is located within the Upper Black Squirrel Ground Water Management District. The District was sent a referral including the associated well permit and water findings and had no objection to the proposal. As mentioned above, a finding of sufficiency for water is not required with a variance of use application. Any additional comments or concerns from other review entities, including but not limited to the County Attorney's Office, regarding the decreed water supply and water use demands for the proposed batch plant will be presented at the public hearing.

2. Sanitation

Wastewater service is proposed to be provided by an onsite wastewater treatment system. An on-site wastewater treatment system (OWTS) permit shall be obtained from El Paso County Public Health.

3. Emergency Services

The property is within the Peyton Fire Protection District. A referral was provided to the fire protection district; however, no response has been received as of the date of this report. Any responses received will be provided as part of the official record at the public hearing.

4. Utilities

Mountain View Electric Association (MVEA) has committed to providing electrical service to the property. The subject property is located within the service area for Colorado Springs Utilities (CSU) for natural gas. A commitment letter from CSU will be required with the associated site development plan.

5. Metropolitan Districts

The subject parcel is not located within a metropolitan district.

6. Parks/Trails

Land dedication and fees in lieu of park land dedication are not required for a variance of use application. The El Paso County Parks Master Plan (2013) does not identify any parks or open space in the vicinity of the subject parcel. The Rock Island Trail runs adjacent to Highway 24, approximately 1.08 miles north of the site. The proposed batch plant use, if approved, is not anticipated to have a negative impact on the use or the physical condition of the trail.

7. Schools

Land dedication or fees in lieu of school land dedication is not required for a variance of use application.

I. APPLICABLE RESOLUTIONS

Approval	Page 51
Disapproval	Page 52

J. STATUS OF MAJOR ISSUES

One major issue is the impact the permanent concrete batch plan is expected to have along the haul route. Section 5.10.3 of the Engineering Criteria Manual states a haul route agreement may be required for activities that are anticipated to cause extraordinary damage or accelerated deterioration to County roads. At this time the County does not have a standardized method for quantifying the impacts that the heavier vehicles used by the batch plant will have on paved roadways. In the interim, Recommended Conditions of Approval Nos. 7 and 8 have been included to enable the variance of use request to proceed to the Planning Commission and Board of County Commissioners hearings and to provide a temporary method to calculate and assess a haul route impact fee based on actual traffic counts for this site until such time as the County adopts a standardized countywide haul route fee.

K. RECOMMENDED CONDITIONS AND NOTATIONS

Should the Planning Commission and Board of County Commissioners find that the request meets the criteria for approval outlined in Section 5.3.4 of the El Paso County Land Development Code (2019), staff recommends the following conditions and notations:

CONDITIONS

1. Approval of a site development plan by the Planning and Community Development Department shall be required to establish the proposed use on the subject parcel.

2. Screening and landscaping shall be installed prior to the initiation of the use and be in general conformance with the landscape plan submitted with the variance of use request.
3. Prior to approval of the site development plan, documentation shall be submitted identifying that an Air Pollution Emissions Notice (APEN) has been reviewed and approved by the Colorado Department of Public Health and Environment Air Pollution Control Division.
4. Prior to approval of a site development plan proposing any land disturbing activities, documentation from the United States Fish and Wildlife Services (USFWS) authorizing such activity shall be received.
5. An on-site wastewater treatment (OWTS) is required for this project and shall be obtained from El Paso County Public Health.
6. The project is subject to the El Paso County Road Impact Fee Program (Resolution 19-471), as amended. Traffic impact fees shall be paid in full at the time of site development plan
7. Prior to the approval of the site development plan, the applicant shall enter into a haul route agreement with the El Paso County for the variance of use. The Board of County Commissioners has authorized that the haul route agreement be approved administratively by the ECM Administrator. The haul route agreement shall identify the impacts on the County roads for this variance of use that will cause extraordinary damage or accelerated deterioration to County roads in accordance with the EPC ECM. The haul route agreement shall include requirements to address pavement/structure impacts to County Roads, provide for an annual fee to be paid to the El Paso County Road and Bridge Fund, provide for annual adjustments for applicable construction costs, provide for a fee structure that is based upon actual annual site traffic counts, include provisions for payment requirements, and include an allowance for the required annual fee to be administratively adjusted by the County Engineer upon the adoption of a (countywide) haul route fee by the El Paso County Board of County Commissioners.
8. The submitted Traffic Impact Study assumes an average vehicle trip and related trip distribution that will be generated by each land use for the proposed variance of use. The applicant shall install a traffic counter at its access/driveway to Stapleton Road which shall at a minimum record the actual trip distribution, daily

trips and peak hour volumes by vehicle type. The traffic counts shall be provided annually as outlined in the proposed haul route agreement or within 15 business days when requested by El Paso County. The actual traffic counts will be utilized to determine: the annual haul route fee, required amendments to the County driveway/access permit in accordance with the EPC ECM, any obligations to the El Paso County Road Impact Fee Program as a result of amendments to the El Paso County driveway/access permit, and required to amendments by the applicant to the County access permits with CDOT. Note that amendments to the County and CDOT driveway/access permits could trigger the need for updated traffic impact studies and related roadway improvements in accordance with the EPC ECM and/or CDOT driveway/access permit criteria.

9. Developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Division of Wildlife, Colorado Department of Transportation, U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service regarding the Endangered Species Act, particularly as it relates to the Preble's Meadow Jumping Mouse as a listed species.
10. The applicant shall complete two Colorado Department of Transportation access permits for the intersections of State Highway 24 and Stapleton Drive, and State Highway 24 and Judge Orr prior to site development plan approval.
11. The applicant shall complete an escrow agreement with the Colorado Department of Transportation in the amount of \$70,833.00 to be applied towards the construction of a traffic signal at State Highway 24 and Stapleton Drive prior to site development plan approval.
12. Vertical structures greater than 35 feet in height shall require Federal Aviation Administration (FAA) Form 7460-1 Notice of Proposed Construction for Obstruction Evaluation.

NOTATIONS

1. Variance of Use approval includes conditions of approval and the accompanying site plan and elevation drawings. No substantial expansion, enlargement, intensification or modification shall be allowed except upon reevaluation and public hearing as specified in the El Paso County Land Development Code.
2. The applicant shall coordinate with CDOT to determine the fair share contribution and/or construction necessary to bring the intersection of Highway 24 and

Stapleton Road to a satisfactory level of service with the site development plan application.

3. The Board of County Commissioners may consider revocation and/or suspension if zoning regulations and/or Variance of Use conditions/standards are being violated, preceded by notice and public hearing.
4. If the Variance of Use is discontinued or abandoned for two (2) years or longer, the Variance of Use shall be deemed abandoned and of no further force and effect.

L. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified three (3) adjoining property owners on May 13, 2020, for the Planning Commission meeting. Responses will be provided at the hearing.

M. ATTACHMENTS

Vicinity Map
Letter of Intent
Site Plan
Landscape Plan
Elevations
Stapleton Road Photo Simulation
Well Permit
Approved Deviation Request
Petitions in Opposition (3)
Letters of Support (5)
Letters of Concern (1)
Letters of Opposition received at early assistance stage (3)
Letters of Opposition received to date (62)