

PLEASE NOTE THAT THE APPLICATION AND EXHIBITS 1 – 44 HAVE PREVIOUSLY BEEN PROVIDED. IF COMMISSIONERS NEED ADDITIONAL ACCESS TO THE APPLICATION OR EXHIBITS PLEASE UTILIZE THE LINK ON THE AGENDA AT THE COMMUNITY DEVELOPMENT WEBSITE OR CONTACT COMMUNITY DEVELOPMENT STAFF

Garfield County Planning Commission Public Hearing

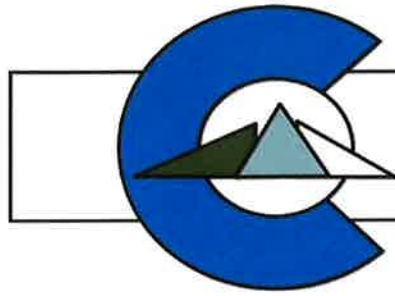
Scott Contracting Gravel Operation Major Impact Land Use Change Permit (MIPA-05-20-8788)

Applicant: Scott Contracting Inc.

June 9, 2021, Continued to July 28, 2021 and September 8, 2021
(New Exhibits #45 - #47 highlighted in yellow)

Exhibit Number	Exhibit Description
1	Public Hearing Notice Information Form & Attachments
2	Garfield County Land Use and Development Code, as amended
3	Garfield County Comprehensive Plan of 2030
4	Application
5	Staff Report and Staff Presentation
6	Referral Comments from County Consulting Engineer, Mountain Cross Engineering, Chris Hale
7	Referral Comments from County Consulting Engineer, Michael Erion, LRE Water
8	Referral Comments from Garfield County Chief Building Official
9	Referral Comments from CDOT
10	Referral Comments from City of Rifle
11	Referral Comments from Town of Silt
12	Referral Comments from Colorado River Fire Rescue
13	Referral Comments from CDPHE
14	Referral Comments from Garfield County Environmental Health
15	Referral Comments from CPW
16	Referral Comments from Army Corp. Engineers, Travis Morse
17	Referral Comments from County Vegetation Manager
18	Referral Comments from County Road and Bridge Department
19	Referral Comments from West Divide Water Conservancy District
20	Referral Comments from Colorado Division of Natural Resources, Amy Yeldell
21	Email from Doug Grant with attachment from Colorado Division of Natural Resources, Lucas West
22	Public Comment from Karp, Neu, Hanlon, Michael Sawyer 1/27/21
23	Public Comment from Karp, Neu, Hanlon, Michael Sawyer 8/25/20
24	Public Comment from Karp, Neu, Hanlon, Michael Sawyer 8/14/20

25	Public Comment from Douglas Grant, 1/27/21
26	Public Comment from Douglas Grant, 1/12/21
27	Public Comment from Douglas Grant, 9/4/20
28	Comment Letter from Aspen Valley Land Trust
29	Supplemental Comment Letter from Karp, Neu, Hanlon, Michael Sawyer 6/3/21 and attachments including letter from LRE Water
30	Public Comment (email) from James Robinson, Manager of the Rex Robinson Ranch
31	Supplemental Staff Memo
32	Supplemental Referral Comments from County Consulting Engineer, Chris Hale, Mountain Cross Engineering
33	Additional Email Correspondence from Travis Morse, Army Corp of Engineers
34	Correspondence from Chris Hurley, Attorney for the Applicant, dated 7/8/21
35	Correspondence from Scott Balcomb through Karp, Nue, Hanlon
36	Hahn Water Resources Report, dated 7/16/21
37	Email Correspondence between Michael Sawyer and Travis Morse, Army Corp of Engineers
38	Correspondence from Kent Holsinger, Holsinger Law LLC, dated 7/19/21
39	Correspondence from Michael Sawyer, Karp, Neu, Hanlon, dated 7/21/21
40	Revised LREWater Letter from Angela Schenk, dated 7/21/21
41	Aspen Valley Land Trust Letter, dated 7/21/21
42	Email and Correspondence from Bill Fronczak, LREWater, dated 7/21/21
43	Additional LREWater Letter from Scott Fifer, dated 7/21/21
44	Scott Contracting Email on July 28, 2021 Continuation
45	Updated Staff Memo and Recommendation, dated 9/8/21
46	Updated Referral Comments from Chris Hale, County Consulting Engineer, dated 8/20/21
47	Additional correspondence from Karp, Neu, Hanlon, Michael Sawyer, dated 8/31/21
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Garfield County

Community Development Department

MEMORANDUM

TO: Garfield County Planning Commission

FROM: Glenn Hartmann, Principal Planner

DATE: September 8, 2021

SUBJECT: Scott Contracting Major Impact Review for Gravel Facility
Updated Staff Report – Memorandum - Recommendation

I. Updated Exhibits – Additional Submittals – Additional Public Comments

A. All previous exhibits have been distributed to the Commission, however, if you need additional access they are available at the link on the Commission's Agenda page at the County's website. Please contact Community Development Staff if you need assistance in accessing any of the previous exhibits and Staff Reports.

B. Additional referral comments from Chris Hale, County Consulting Engineer have been received and provided to the Applicant. The referral comments outline the need for additional information on three key points: a wetland delineation that is approved by the Corp of Engineers, address potential changes to plans and/or phases of gravel extraction, and the need to address if mining processes will endanger neighboring property's wetlands. No formal responses or updated reports from the Applicant have been received.

C. Only one additional public comment has been received and is included as an Exhibit.

II. Updated Staff Analysis

A. The Supplemental Said memo (July, 2021) included a revision to Condition #1 to include additional details associated with the Army Corp of Engineers permitting and

review authority and to address referral comments from the County Consulting Engineer, Chris Hale. The reformatted condition was utilized as a guide for additional information the Applicant needs to address for the Planning Commission hearing. The wording is as follows for a Condition 1.A.:

1.A. That prior to issuance of the Land Use Change Permit and in association with permit review by the Army Corp of Engineers, the Applicant shall provide the following additional analysis:

- a. Formal determination of the appropriate Army Corp of Engineers permitting required as reflected in the Army Corp of Engineers referral comments that indicate a jurisdictional wetland determination and more formal specific permit process is most likely.*
- b. The timetable for irrigation dry-up versus dewatering efforts.*
- c. Confirmation that no dewatering efforts shall be initiated until such time as the Army Corp of Engineers Permitting is complete.*
- d. Confirmation that the Army Corp of Engineers permitting will include plans for how the applicant will mitigate impacts of a lowered groundwater table due to dewatering, on neighboring properties.*
- e. Formal wetlands determinations by the Army Corp of Engineers with off-site impacts on wetlands addressed as part of the Corp review.*

B. Staff has met several times with Travis Morse, Corp of Engineers. Information and clear direction were provided by Travis on a number of key topics, as summarized below:

- The Army Corp did not approve the Applicants Wetland Delineations.
- The Army Corp is requiring the Applicant to redo their Wetlands Analysis and go through the appropriate Army Corp process for approval. This is anticipated to result in a formal Jurisdictional Wetlands Delineation.
- The Army Corp anticipates that the final approved Wetlands Delineation will likely result in a significant change to and increase in the area of the Applicant's site included as wetlands.
- It is anticipated that the Applicant may need to modify their mining plans and areas of disturbance based on the approved Wetland Delineation.
- If the Applicant's revised mining plans result in Direct (Primary) impacts to wetlands areas then the Corp Review of Permits may include consideration of off-site impacts to wetlands including surrounding properties.

Staff's clear understanding from the meetings with Travis Morse, was that with the additional wetland delineation being required, the current submittals were not complete

enough to make a final decision or recommendation and significant modifications to the plans may be necessary.

III. Updated Staff Recommendation for Denial & Planning Commission Options

A. Revised Staff Recommendation for Denial:

Based on additional Staff Analysis with the Army Corp. of Engineers and the County Consulting Engineer, Staff is revising our recommendation and can no longer recommend approval with conditions. The Staff Recommendation is for Denial with the following suggested findings.

1. That proper public notice was provided as required for the hearing before the Planning Commission.
2. The hearing before the Planning Commission was extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested parties were heard at that meeting.
3. That for the above stated and other reasons the proposed Land Use Change Permit for Scott Contracting Gravel Operation Rifle Pit #1 is not in the best interest of the health, safety, convenience, order, prosperity, and welfare of the citizens of Garfield County.
4. That the application is not in general conformance with the 2030 Comprehensive Plan, as amended.
5. That the application has not demonstrated conformance with the Garfield County Land Use and Development Code, including but not limited to Article 7, Standards.
6. That the County has been advised that the Army Corp of Engineers has not approved the Applicant's Wetland Delineation and that the Applicant is considering major revisions to the mining plans that will render the current submittals, referral comments, and required studies obsolete.

A motion by the Planning Commission to recommend denial should include reference to the above findings subject to any additions or revisions by the County Attorney's Office.

B. Withdrawal Option:

Staff has discussed extensively with the Applicant how a withdrawal and resubmittal of the Application would benefit the entire process and allow for the Applicant to complete

the formal Wetlands Delineations with the Army Corp and allow the Applicant to make revisions to their mining plans and mining techniques.

This option was endorsed by both the Community Development Department and the County Attorney's Office.

The Withdrawal option is strongly supported by the fact that the current application is changing in scope and character. Referral comments will no longer be applicable and technical analysis on issues such as traffic generation and noise may no longer be applicable. Revised mining plans may require different type of equipment and different types of impacts. We understand the Applicant is considering shifting to a wet mining process and thereby reducing potential for impacts to ground water on neighboring properties.

C. Continuation Option:

Should the Commission wish to continue the public hearing, a motion to continue the public hearing to a date certain would be required. Extended continuations call into question the effectiveness of the public notice. Based on the already granted two months of continuations, staff would recommend requiring re-noticing for any continuation of longer than an additional two months.

IV. Consulting Engineer Conflict of Interest Issue

The issue of LRE Water representing an opposing adjacent property owner and at the same time providing services to the County as the County's Consulting Engineer on water issues associated with the Scott Contracting Inc. application was raised at the initial public hearing date. The County Attorney's Office has been working closely with Community Development on this issue. While the Attorney's Office and County Staff requested that LRE remove itself entirely from the review process, LRE has chosen not to do so.

The County has shifted to another Consulting Engineer, Chris Hale, Mountain Cross Engineering and is no longer utilizing the LRE Referral Comments to the County in our review and recommendations. The LRE letters submitted at the request of adjoining property owners continue to be included as Exhibits. The County Attorney's Office will provide additional information on this issue at the hearing, including clarification, if needed on how the Planning Commission may wish to weigh the credibility of the LRE documentation.

Glenn Hartmann

EXHIBIT

46

From: Chris@mountaincross-eng.com
Sent: Friday, August 20, 2021 11:52 AM
To: Glenn Hartmann
Subject: [External] Scott Contracting Supplemental Information

Glenn:

Thanks for the inclusion in the conference call with Mr. Travis Morse with the USACoE. The conference call raised the following questions that should be addressed by the Applicant:

- Mr. Morse sees issues with the wetlands delineation presented in the applications materials. The Applicant will need to provide a wetland delineation that the USACoE agrees with.
- Depending on the outcome of the delineation above, the Applicant may need to revise the plan, extents, and/or phasing of the gravel extraction to be congruent with the delineation as accepted by the USACoE.
- Based on what Mr. Morse says, if the lowering groundwater table by Scott has impacts on neighboring wetlands, the neighboring property Owners may be subject to actions from the USACoE. The Applicant should address if any proposed methods will endanger neighboring properties wetlands.

Feel free to call or email if you have any questions or comments.

Sincerely,
Mountain Cross
Engineering, Inc.
Chris Hale, P.E.
826 1/2 Grand Avenue
Glenwood Springs, CO 81601
Ph: 970.945.5544
Fx: 970.945.5558

Karp Neu Hanlon^{PC}

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August 31, 2021

Garfield County Planning Division
Attn: Glenn Hartmann, Senior Planner
108 8th Street, Suite 401
Glenwood Springs, Colorado 81601
Sent via email to: ghartmann@garfield-county.com

RE: IHC Scott, Inc. Land Use Change Permit for a Gravel Operation on Parcel No. 217908300103 – Garfield County File Number MIPA-05-20-8788.

Dear Glenn:

As you are aware, this firm represents Island Park LLC (“Island Park”) and Colorado River Ranch, LLC (“River Ranch”). Due to the injurious impacts to their properties, my clients have continued to monitor and oppose the Request for Major Impact Land Use Change Permit submitted by IHC Scott, Inc. d/b/a Scott Contracting, Inc. (“Scott”) for the Rifle Pit #1 since the Application was originally submitted on May 20, 2020 and re-submitted on March 30, 2021.

As you stated during the July 28, 2021 Planning Commission Meeting, the public hearing for consideration of Scott’s Application was continued to September 8, 2021 due to technical issues identified by the County’s consulting engineer and the need to further evaluate issues with the U.S. Army Corps of Engineers (“USACE”). Scott joined County staff in the request for a continuance. During that Meeting, you also stated that the County was requiring that Scott address the outstanding issues at least two weeks ahead of September 8, 2021 to provide adequate staff review and time to prepare the packet one week ahead of that date pursuant to the Planning Division’s normal schedule. That deadline has passed. We are now less than two weeks ahead of the hearing date and Scott has failed to address those outstanding issues or submit additional materials. This greatly prejudices neighbors whose properties will be harmed by the Scott Contracting proposal as they will have little or no time to prepare comments for the Planning Commission’s consideration. As a result of Scott’s failure to meet the deadline, the County cannot consider Scott’s Application at the September 8 meeting. As you stated during the Meeting, the issues with Scott’s Application are not minor but are considerable ones that remain outstanding and unaddressed by Scott.

Further, my office has been in contact with the USACE. We have been informed that the USACE has rejected the wetlands delineation performed by Scott. The USACE is requiring a more comprehensive wetlands delineation be undertaken which will likely show that more of the property is jurisdictional wetlands. Because Scott Contracting has failed to provide an acceptable delineation of wetlands on its property, the Planning Commission cannot make its required finding under Section 7-203 of the Code that all development is located at least 35 feet from a water body

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(including wetlands). As such, the Planning Commission cannot determine at this time whether the Scott Contracting proposal is even feasible.

USACE also indicated that Scott Contracting will likely not qualify for a nationwide permit and instead will be required to go through the individual permit process. The individual permit process can take years to reach a decision. The Scott application is incomplete and cannot be cured until Scott has obtained necessary USACE permits. The fact that Scott Contracting finds itself, yet again, with an incomplete application is testament that this matter is not ripe for Planning Commission consideration. It is unfair to the neighbors and to the Planning Commission for Scott Contracting to continue to seek review of incomplete applications. Staff needs to declare the Scott Contracting application incomplete and direct that a new application not be submitted until all USACE permits have been obtained.

Very truly yours,

KARP NEU HANLON, P.C.



Michael J. Sawyer

MJS:ds

cc: Colorado River Ranch
Island Park