



COMMUNITY AND ECONOMIC DEVELOPMENT  
DEPARTMENT

CASE NO.: EXG2020-00001  
CASE NAME: TUCSON SOUTH

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**COMMUNITY AND ECONOMIC DEVELOPMENT  
DEPARTMENT STAFF REPORT**

**Planning Commission**

**February 11, 2021**

<b>CASE No.: EXG2020-00001</b>	<b>CASE NAME: Tucson South</b>
Owner's Name:	City of Aurora and Aggregate Industries-WCR, Inc.
Applicant's Name:	Aggregate Industries-WCR, Inc.
Applicant's Address:	1687 Cole Blvd., Ste. 300, Golden, CO 80401
Location of Requests:	Eastern and Western sides of Tucson Street between East 168 <sup>th</sup> Avenue and State Highway 7.
Nature of Requests:	Conditional use permit for extraction and disposal use in the Agricultural-1 (A-1) zone district.
Zone Districts:	Agricultural-1 (A-1)
Comprehensive Plan:	Agriculture
Site Size:	Approximately 285 acres
Proposed Uses:	Extraction and Disposal
Existing Use:	Vacant
Hearing Date(s):	<b>PC: February 11, 2021 / 6:00 p.m.</b> <b>BOCC: March 9, 2021 /9:30 a.m.</b>
Report Date:	February 2, 2021
Case Manager:	Greg Barnes <i>JB</i>
Staff Recommendation:	APPROVAL with 8 Findings-of-Fact, 7 Conditions Precedent, 32 Conditions, and 1 Note

**SUMMARY OF APPLICATION**

**Background**

Aggregate Industries-WCR, Incorporated is requesting a conditional use permit for an extraction and disposal use, which will include a sand and gravel mine in the A-1 zone district. After the mining operations, the site is proposed to be water storage reservoirs for the City of Aurora. The proposed site is approximately 1.5 miles south of the Wattenberg Lakes Mine in southern Weld County. Excavated product would be transferred from the various mine phases north to the Wattenberg Lakes Mine.

The proposed mine operation has been divided into two phases (See Exhibit 3.2).

- Phase I is located to the west of Tucson Street and north of State Highway 7. This phase extends from that intersection to approximately a half-mile north of State Highway 7 and a half-mile west of Tucson Street. The entirety of Phase I is located south of East 168<sup>th</sup> Avenue. A slurry wall will be installed and subsequently the site will be dewatered, which will allow the site to be dry mined.
- Phase II is located to the east of Tucson Street and north of State Highway 7. This phase extends from the intersection to approximately 3,000 feet north of State Highway 7 and a half-mile east of Tucson Street. The South Platte River forms a portion of the eastern boundary of Phase II. The entirety of Phase II is located south of East 168<sup>th</sup> Avenue. A slurry wall will be installed and subsequently the site will be dewatered, which will allow the site to be dry mined.

The proposed mining activities are anticipated to take place for approximately eight years once a notice to proceed is granted by the County. Pre-mining activities are expected to last for one year. Each phase of the operation thereafter is anticipated to last four years. Reclamation activity will be concurrent from west to east.

The operator is proposing a conveyor system, which is anticipated to be operational within one year after approval of the conditional use permit and would convey material from the site to the Wattenberg site in Weld County. The material is proposed to be transported under East 168<sup>th</sup> Avenue into Weld County. If the conditional use permit is approved, a condition of the approval is proposed to require both County approval of the conveyor design and the construction of the conveyor system be completed prior to the issuance of a Notice to Proceed.

According to the materials submitted by the applicant, the operator shall fence gravel pit operations with a 72-inch-tall chain link fence topped with three strands of barbed wire. Where the operation is adjacent to subdivided or developed commercial, residential, or industrial property (except those zoned I-3), a solid screen fence will be erected to prevent the visibility of the mining operation. The operator may fence the entire area immediately, or fence only areas of excavation; however, no fence shall be removed until reclamation has been completed.

Setbacks from the mining operations to the adjoining properties along the perimeter of the conditional use permit boundary will be at least twenty-five (25) feet. According to materials submitted by the applicant, the pit depth is expected to be 30 feet. No blasting is being proposed.

Ultimately, this facility is proposed to become a water reservoir used for water storage for the City of Aurora. The reservoir area is proposed to include a pedestrian trail along the perimeter. The trail will be composed of crusher fine material and will include landscaping. According to materials submitted by the applicant, the width of the proposed trail would allow for walking and running, with a stroller or wagon, while users enjoy the unobstructed view of the water storage facility. Although the City of Aurora has attempted to provide recreational activities around the perimeter of the pond, the reservoir will be fenced and public access to the reservoir itself will not be allowed.

**Site Characteristics:**

The subject properties currently consist of vacant lands, dryland agriculture, and water utility infrastructure. In addition, there are two plugged and abandoned oil and gas wells located on the properties. The westernmost well, which is within the boundary of disturbance, has been plugged and capped below the lowest excavation elevation and casing has been removed up to ground elevation. The setback for this well will not impact mining operations in that area.

Extensive portions of both phases are located within the floodway and 100-year floodplain of the South Platte River. The site, in its current capacity, is highly visible from State Highway 7. Berms have been proposed along the southern edge of the site to help mitigate the views from Highway 7.

**Development Standards and Regulations Requirements:**

Per Section 3-07-01 of the Adams County Development Standards and Regulations, a conditional use permit is required for extraction and disposal uses in the Agriculture-1 (A-1) zone district. Section 4-10-02-03-01 of the County's Development Standards and Regulations outlines performance standards for the use and are discussed in detail below. Compliance with the requirements for the Colorado Department of Natural Resources Division of Mining, Reclamation, and Safety (DRMS) is required, and a reclamation contract shall be signed and approved by the owner and the DRMS.

**Future Land Use Designation/Goals of the Comp-Plan for the Area**

The Future Land Use Designation on the property is Agriculture. Per Chapter 5 of the County's Comprehensive Plan, the purpose of the Agriculture Land Use is to preserve areas for long-term farming, conserve environmentally sensitive areas, separate and define urban areas, prevent urban nuisance complaints, limit the extension of services where they are costly and difficult to provide, and conserve environmentally sensitive areas. The subject request is temporary. Once the extraction use has been completed, the property is expected to be reclaimed into usable land. Reclamation of the site will include placement and seeding of cover material over fill areas.

The Comprehensive Plan also discusses the importance of mineral extraction to the local economy, providing both employment to residents and tax income to the County. Mining locally allows for lower shipping costs for construction materials. Once the mining operation is complete, the proposed water storage use is supported by *Strategy 7.5.d. Multipurpose Uses for Reclaimed Land*.

The South Platte River Heritage Plan encourages mining operations to reclaim lands in a way that creates habitat, restores vegetation, contributes to flood retention, and/or provides recreational opportunities. After the sand and gravel are extracted at the proposed Tucson South Mine, it is anticipated to become water storage reservoirs for the City of Aurora, which will provide for migratory bird habitat. Ultimately, this facility becomes a water reservoir used for water storage.

The Adams County Mineral Extraction Plan identifies regions of the County where controls for conservation and utilization of natural resources. The plan intends to provide more detailed

guidance on post-mining reclamation and to ensure a high quality of life for residents near mining activities. These regions are defined as the Mineral Conservation Overlay (MCO) District. The subject proposal is not located within the MCO District, and therefore does not have additional provisions for conservation controls.

**Surrounding Zoning Designations and Existing Use Activity:**

<b>Northwest A-1 Agriculture / Vacant</b>	<b>North A-1 Water Storage Reservoir</b>	<b>Northeast I-3 Vacant / South Platte River</b>
<b>West PUD/RE Vacant/S-F Residential</b>	<b>Subject Property A-1 Vacant / Agriculture</b>	<b>East City of Brighton Vacant / South Platte River</b>
<b>Southwest A-1 S-F Residential</b>	<b>South A-1 Agriculture / Vacant</b>	<b>Southeast A-1/City of Brighton S-F Residential</b>

**Compatibility with the Surrounding Land Uses:**

Most of the area surrounding the site is undeveloped. The site is located within a floodway and floodplain. As a result of the floodway, the applicant is proposing a wood and wire fence since certain fencing types are restricted in this area. The nearest residential development is located west of the site. Although many of the nearby homes are rural residential, the site is directly adjacent to the Bartley Subdivision on the western side. In addition, Highway 7 is a gateway into Downtown Brighton. Staff has presented concerns that the use may have some compatibility conflicts with the surrounding area and has attempted to mitigate them through conditions of approval.

Section 3-38-06 outlines the performance standards for mining operations, including setbacks, hours of operation, and haul routes within the Mineral Conservation Overlay District. Although the site is not located within the Mineral Conservation Overlay District, many of these standards are intended to guide minimum requirements to mitigate off-site impacts but may be strengthened on a site-specific basis through Conditions of Approval to ensure better compatibility of the proposed operation with the surrounding land uses. The property boundary setback for excavation and stockpiling is twenty-five (25) feet. The closest residential dwelling to any mining operation will be at least 300 feet from mining operations. Hours of operation of the proposed mining operation include all uses on the site and are proposed to be limited to the hours of 7:00 am to 7:00 pm, Monday-Saturday. These are consistent with those outlined in the Development Standards due to the urban setting of the proposed operation.

Air emissions and water quality impacts have been addressed through several Conditions of Approval, which will require the operator to follow CDPHE air quality regulations, shut down operations at times of high winds, and monitor the ground water wells in the surrounding area.

Per Section 3-37-07-07-12 of the Development Standards and Regulations, the extraction, excavation, and hauling of sand and gravel resources shall meet specific performance standards and guidelines that protect rivers and streams from erosion and degradation, which may result

from such operations. In addition, the operations shall not impact the flow of floodwaters from reaching the South Platte River. A Floodplain Use Permit has been obtained by the applicant, which ensures that the proposed operations comply with the Federal, State, and Local regulations.

**Staff Recommendations:**

Based upon the application, the criteria for approval of a conditional use permit, and a recent site visit, staff recommends approval of the request with 8 findings-of-fact, 7 conditions precedent, 32 conditions, and 1 note.

**RECOMMENDED FINDINGS-OF-FACT:**

1. The conditional use is permitted in the applicable zone district.
2. The conditional use is consistent with the purposes of these standards and regulations.
3. The conditional use will comply with the requirements of these standards and regulations, including but not limited to, all applicable performance standards.
4. The conditional use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the immediate 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 the County.
5. The conditional use permit has addressed all off-site impacts.
6. The site is suitable for the proposed conditional use including adequate usable space, adequate access, and absence of environmental constraints.
7. The site plan for the proposed conditional use will provide the most convenient and functional use of the lot including the parking scheme, traffic circulation, open space, fencing, screening, landscaping, signage, and lighting.
8. Sewer, water, storm water drainage, fire protection, police protection, and roads are to be available and adequate to serve the needs of the conditional use as designed and proposed.

**RECOMMENDED CONDITIONS OF APPROVAL:**

Conditions Precedent to Approval

1. Evidence shall be provided to the Adams County Environmental Programs Manager that the State of Colorado has approved the groundwater monitoring and mitigation plan for the site that specifically addresses impacts to owners of affected, adjacent, and permitted groundwater wells.
2. Evidence shall be provided to the Adams County Environmental Programs Manager that a Colorado Discharge Permitting System here permit, has been obtained from the Colorado Department of Health & Environment (CDPHE) prior to any site preparation activities.
3. A raptor and bald eagle surveys shall be conducted by a qualified biologist prior to site disturbance, if any grading or construction activity is planned to occur between October 15th and July 31<sup>st</sup>. The survey reports shall be provided to both Colorado Parks and Wildlife (CPW) and the Adams County Community & Economic Development Department. In the event that a raptor survey identifies additional nests or documents changes in nest activity status, a site plan detailing raptor nest



- buffer zones and seasonal restrictions (as provided in the most recent CPW guidance document) shall be provided to the Adams County Community & Economic Development Department.
4. A neighborhood meeting shall be held intended to introduce and distribute contact information for those responsible for mining activities on the site. Notification of the neighborhood meeting will be required for all property owners and residents within 1,000 feet of the subject parcels. Documentation of the meeting (including a meeting summary and a copy of the notification letter) shall be provided to the Adams County Community & Economic Development Department.
  5. A conveyor system shall be approved by the County and constructed by the applicant/operator for the transport of materials.
  6. A site landscape plan shall be approved by the Adams County Community & Economic Development Department to address the visual impact of the site along public roadways and adjacent residential uses, as well as the site conditions after reclamation has occurred. Adams County will coordinate with the City of Brighton's Community Development Department during the review of these landscape plans to ensure that conformance is met with both jurisdictions are satisfied with the result.
  7. All pre-mining construction tasks and conditions precedent shall be completed by March 9, 2022, unless extended by the Director of Community and Economic Development. Only one extension may be granted for no more than 180 days based upon a hardship statement that will be provided by the applicant or operator. The conditional use permit will expire on September 8, 2022 if a Notice to Proceed has not been issued.

#### Conditions of Approval

1. The extraction use being granted by this conditional use permit shall not commence until a "Notice to Proceed" is issued by the Adams County Community and Economic Development Department. A Notice to Proceed will only be issued after all conditions precedent of approval are complete.
2. Any operations on the site shall occur from 7:00 a.m. to 7:00 p.m., on Mondays to Saturdays. No operations are permitted on Sundays or within 7:00 p.m. and 7:00 a.m.
3. The operator shall fence gravel pit operations with a fence composed of wood and wire. Where the operation is adjacent to subdivided or developed commercial, residential, or industrial property (except those zoned I-3), a solid screen fence constructed of wood will be erected to prevent the visibility of the mining operation. The operator may fence the entire area immediately, or fence only areas of excavation; however, no fence shall be removed until reclamation has been completed.
4. Landscape installation will occur between March 1<sup>st</sup> and May 15<sup>th</sup> or September 1<sup>st</sup> through October 15<sup>th</sup> after the Notice to proceed is issued. Prior to installing the landscaping, the operator shall work with Adams County staff and City of Brighton staff to determine the location of a future trail along the State Highway 7 corridor. The operator shall install landscaping in a location that will ensure that a trail can be installed in the future, without disturbing the trees and shrubs and other

- landscaping. The operator shall install an irrigation system to ensure that the plantings are established and maintain the plantings during the mining and reclamation process.
5. All landscape berms and mining operations shall be setback at least fifty (50) feet from the right-of-way along Tucson Street and State Highway 7.
  6. Wind gauges with data-logging capabilities shall be installed and located adjacent to the particulate matter monitors.
  7. Two (2) continuous, real-time Particulate Matter (PM) monitors must be installed along the southwest and northeast boundary areas of this conditional use permit to provide real-time emissions data for PM-2.5, PM-10 and Total-PM to monitor fugitive dust during all project phases including site preparation and active mining.
  8. Radar-activated white noise backup alarms shall be installed for equipment.
  9. Aboveground petroleum storage tanks used for equipment fueling must be placed within secondary containment.
  10. The mosquito control plan submitted with this application shall be implemented to ensure full compliance.
  11. The applicant shall comply with all the requirements specified by the Colorado Department of Natural Resources' Division of Parks & Wildlife provided in their letter dated September 3, 2020.
  12. The applicant shall comply with all the requirements specified by the Tri-County Health Department provided in their letter dated October 9, 2020.
  13. The applicant shall comply with all the requirements specified by the Colorado Division of Water Resources provided in their letter dated August 25, 2020.
  14. All complaints received by the applicant or operator from a well owner within 600 feet from the site boundary shall be provided to the Adams County Environmental Programs Manager. In addition, it shall be provided what the necessary actions taken to address these impacts. The information shall be provided to the County within 30 days of filing such reports with the Division of Mining & Reclamation Safety (DRMS). For subject wells put to beneficial use prior to commencement of mining activities, the applicant or operator will begin to implement one or more mitigation measures if mining and reclamation activity is determined to be a significant contributing factor to groundwater changes requiring mitigation.
  15. All complaints pertaining to off-site impacts shall be provided to the Adams County Environmental Program Manager including a summary of the complaints and resolution methods of such complaints. These documents shall be provided as part of the monthly air monitoring report, as applicable.
  16. Fugitive dust control measures must always be functioning to ensure onsite visible emissions do not exceed limits specified within the Air Pollution Control District Construction Permit issued to Aggregate Industries for the Tucson South Pit.
  17. Copies of Clean Waters Act 404 Permit (CWA 404) and 401 Water Quality Certification (as required for operations affecting the South Platte River and adjacent riparian wetlands) shall be provided to the Adams County Environmental Programs Manager.
  18. Records of high wind speed shutdowns and a summary of shutdown periods shall be provided within each monthly air monitoring report that is submitted to the Adams County Environmental Programs Manager, as applicable.

19. Any documented exceedance of the 24-hour ambient air quality standard for particulate matter shall be provided to the Adams County Environmental Program Manager within 24-hours of such occurrence. Concurrent Air Pollution Control Division notification may be required.
20. Monthly reports detailing particulate matter monitoring shall be provided to the Adams County Environmental Program Manager. Corresponding wind gauge data shall be included within these reports.
21. A copy of each Annual Reclamation Report, as submitted to the DRMS, shall be provided the Adams County Environmental Program Manager.
22. Stockpiles of material shall not exceed a maximum of twenty (20) feet in height. Stockpiles shall not be stored in the floodway.
23. Operations shall cease during periods of high winds as measured by anemometer or other type of wind gauge permanently stationed on-site. High winds shall be defined as when wind gusts exceed 30 mph, or a sustained wind of 20 mph is detected.
24. Mining and reclamation shall comply with the Mineral Conservation Overlay (MCO) and the section titled Extraction and Disposal Uses found within the Industrial Use Performance Standards, as adopted by Adams County found within the Adams County Development Standards and Regulations.
25. All fluid spills such as hydraulic and oil from maintenance of equipment, shall be removed and disposed of at a facility permitted for such disposal.
26. The storage or processing of materials that are buoyant, flammable, hazardous, explosive, or considered solid waste shall not be allowed within the areas designated as floodplain or floodway.
27. Any new sources of fill material, other than the ones listed within the application, shall require a "Notice to Proceed" to be issued by the Department of Community and Economic Development, after the applicant has certified the cleanliness of the new source material; any proposed haul routes must be approved through an amendment to the conditional use permit.
28. The subsequent reclamation of areas that have been mined must be initiated immediately to keep the total disturbed areas at any one time to a minimum.
29. The mining operations will conform to the phasing plan provided with the application.
30. Materials that are unnecessary for extraction or reclamation shall not be imported into the site without the permission of the Adams County Director of Community and Economic Development.
31. Since the lined water storage reservoirs are components of the post-reclamation project plans, and Tucson Street is proposed to remain a public road. A stability analysis for at least one cross-section under a saturated slope (high pore water pressure)/rapid reservoir drawdown condition across the Tucson Street embankment, shall be performed to verify that the proposed slopes below Tucson Street will be stable under all conditions, or to determine a stable slope configuration.
32. All mining operations, reclamation of sloping, grading, and initial seeding shall be completed within eight (8) years of the Notice to Proceed, but no later than March 9, 2030..

**RECOMMENDED NOTES TO THE APPLICANT:**

1. All applicable building, zoning, health, engineering, and fire codes shall be adhered to with this request.

**PUBLIC COMMENTS**

<b>Notices Sent</b>	<b>Number of Responses</b>
1,176	76

Property owners and residents within a half-mile of the site were notified of the subject request. As of writing this report, staff has received 76 responses from the public regarding the application. Of those 76 responses, 53 either opposed the application or cited specific concerns with the application. 23 letters of support for the application were received.

Public comments were provided by the City of Aurora; however, they are the property owner not considered a referral agent on this project due to the proximity of the site to the city. The City of Aurora and Aurora Water supports the application.

Environmental concerns were the most widely cited issue in the public comments. Many letters were received identifying dust and pollution as a concern with the application. Commenters identified noise as a primary concern. One additional comment provided concern that the slurry walls being proposed may negatively affect the flow of groundwater in the area.

Another category of concern from the public comments was land use. Many of the comment letters identified that the proposed use was incompatible with the existing area. Several letters discussed that approval of the application would result in a loss of rural character in the area. More comments expressed that the land could be utilized for lower-density residential uses, and that would be more compatible to the surrounding area. Another respondent stated that the proposed hours of operation created concern, and that 7 am to 1 pm would be more appropriate. Additionally, one more respondent expressed concern about the proposed berms along Highway 7, and what the appearance of these berms may look like.

Economic factors were another key area identified in the public comments. Several respondents expressed concern that the site served as a gateway into Brighton, and that a mining operation for nearly a decade may create blight and a negative perception for the City of Brighton. Some respondents identified concerns that the proposed operation would harm property values and provide no economic impact for the residents of the area. Other respondents, in support of the application, identified that the project would create jobs, support economic growth, and provide materials necessary for development.

Other respondents identified the negative impacts from a loss of wildlife habitat. A concern was raised that the South Platte River corridor would have negative aesthetic impacts from the operation. Another respondent expressed concern that mining operations may result in wildfires in the area.

Many respondents expressed concern that the mining operation would result in a negative impact on local traffic, and that additional road widening may be needed. At least three

respondents expressed distrust in the proposed timeline and did not believe that the operation would be limited to timeline expressed by the applicant. Another respondent identified concerns with the applicant's track record on other sites in the area and identified that the subject properties typically have violations of County regulations for noxious weeds that are unkept.

A parcel located south of Highway 7, and not included in this application was also the subject of some public comments. In 2019, a similar application was denied by the Board of County Commissioners which included a "south parcel" and required trucking of materials. This south parcel was removed from the application, and the applicant has expressed a willingness to donate the south parcel to the County's Parks, Open Space, and Cultural Facilities Department. The donation of that parcel has no bearing on the subject application. The public comments expressed that there was little value or benefit in the County acquiring this parcel.

### **REFERRAL AGENCY COMMENTS**

During the referral process, the Brighton Urban Renewal Authority expressed concerns that the application may have a negative impact on commerce in Downton Brighton.

The Tri-County Health Department issued a letter addressing air pollution, fugitive dust, and air quality modeling. The letter provides best standards of practice, and these practices are included as recommended conditions of approval.

The Division of Parks & Wildlife identified concerns with contamination of the South Platte River and encroachment into burrowing owl nesting areas. The letter provided includes best standards of practice to avoid these issues, and these requirements have been included as a recommended condition of approval.

The Division of Water Resources identified concern with the retention of water on the site. The letter provided includes best standards of practice to avoid these issues, and these requirements have been included as a recommended condition of approval.

The Colorado Geological Survey provided a letter to the County recommending a slope analysis for the reservoir after reclamation. The slope analysis has been recommended as a condition of approval.

The City of Brighton provided a letter expressing concerns regarding the timing of landscaping installation, the City's ability to acquire right-of-way, and the installation of berms. Staff has included much of the requests as recommended conditions of approval.

**Responding with Concerns:**

Brighton Fire District  
City of Brighton  
Colorado Department of Natural Resources, Division of Parks & Wildlife  
Colorado Department of Public Health and Environment  
Tri-County Health Department

**Responding without Concerns:**

Colorado Department of Transportation  
Union Pacific Railroad  
Xcel Energy

**Notified but not Responding / Considered a Favorable Response:**

Brantner Extension Ditch  
Brighton Ditch Company  
Brighton School District 27J  
Century Link  
Comcast  
Colorado Division of Mining & Reclamation Safety  
Eagle Shadow Metro District  
Farmers & Gardner Ditch Company  
McCann Ditch & Reservoir  
Metro Wastewater & Reclamation  
RTD  
The Brighton Ditch Company  
Todd Creek Village Metropolitan District  
Union Pacific Railroad  
U.S. Environmental Protection Agency  
Weld County