

# ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS

## AGENDA COMMUNICATION FORM

<b>ITEM DATE:</b> December 18, 2018	<b>ITEM TIME:</b> 11:40 am
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<b>FROM:</b>	Alan Goldich, Planning
<b>TODAY'S DATE:</b>	December 12, 2018
<b>AGENDA TITLE:</b>	Twentymile Stoker Coal Haul SUP Renewal; PL-18-198

<b>CHECK ONE THAT APPLIES TO YOUR ITEM:</b>	
<input checked="" type="checkbox"/> <b>ACTION ITEM</b>	
<input type="checkbox"/> <b>DIRECTION</b>	
<input type="checkbox"/> <b>INFORMATION</b>	

### **I. DESCRIBE THE REQUEST OR ISSUE:**

Twentymile is requesting the renewal of their Stoker Coal Haul permit.

### **II. OPTIONS:**

Approve, deny, or table the request

### **III. IMPACTS OF A REGIONAL NATURE OR ON OTHER JURISDICTIONS (IDENTIFY ANY COMMUNICATIONS ON THIS ITEM):**

N/A

### **IV. BACKGROUND INFORMATION:**

Twentymile Coal, LLC is requesting a renewal of their Special Use Permit for the Stoker Coal Haul. Planning Commission heard this item at their December 6, 2018 hearing. It was recommended for approval unanimously with an 8-0 vote.

Although the application was specifically for a renewal, at the Planning Commission hearing the applicant requested several changes to the conditions of approval. The application was only for a renewal with the existing conditions and was advertised as such. Because of this, the applicant should not have requested any changes to the conditions of approval once the renewal notices were sent. The minutes reflect the Planning Commission's discussion on the changes that were requested. It is the Planning Director's stance that such amendments were not noticed properly and should not have been discussed at the Planning Commission meeting. Staff suggests that the Board disregard the Planning Commission's recommendations that deal with amendments and only focus on the renewal of the existing permit conditions. The change to COA 19 could be considered a clarification of the existing condition and the recommended change is in compliance with the existing approval and permit condition. Staff has spoken with the applicant regarding the improper request at the Planning Commission meeting based on non-compliance with notice requirements. The applicant has requested to move forward to the Board under the original renewal application without the amendments presented at the Planning Commission meeting.

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The requested changes fall into three categories. The following are the requests along with which category they fall into.

- Changes accepted by Planning Commission:
  - COA #9 (from staff packet) The permittee shall prevent the spread of weeds to surrounding lands and comply with the Colorado Noxious Weeds Act as amended in 2013 and Routt County Noxious Weed Management Plan.  
**Staff comment: The applicant requested that this condition be removed. Planning Commission agreed and did not include this condition in the motion.**
- Changes not accepted by Planning Commission:
  - COA #10 (from minutes) The Special Use Permit is valid until December 31, 2023 provided it is acted upon within one year of approval.  
**Staff comment: The applicant requested that the permit period be 10 years. Planning Commission did not agree to this change.**
  - COA #16 (from minutes) Hauling is limited to the use of up to 35 ton capacity trucks. Permittee shall obtain any required over-length and overweight permits from the Routt County Road and Bridge Department prior to hauling.  
**Staff comment: The applicant requested that the use of 38 ton trucks be allowed. Planning Commission did not agree to this change.**
  - COA #25 (from minutes) Routt County roads affected by this SUP will be inspected by the Routt County Road and Bridge Department at intervals determined by same. Any road damage repair or maintenance needs above and beyond typical maintenance, attributable to this use, shall be made by the County, or a third-party contractor as selected by the Routt County Road and Bridge Department and on a schedule determined by same. Road and Bridge shall inform Permittee of such maintenance or repair activities prior to work being performed. Permittee shall solely bear the costs of repairs.  
**Staff comment: The applicant asked that this condition be removed since it was redundant with condition #21 and the cost sharing agreement. Planning Commission did not accept this change. Staff discussed this with Public Works and they want it included. It is staff's opinion that it is not redundant with #21 and that the agreement does not cover damage that is not attributable to normal wear and tear.**
- Changes staff does not consider an amendment but a clarification of condition language:
  - COA # 19 (from minutes) Permittee shall be required to pay for ongoing road maintenance and repair, including semi-annual striping of the road, and will share in the cost of road maintenance based on the previous year's actual truck usage and tonnage hauled of all outstanding Special Use Permits for hauling on County Road 27. Routt County Road and Bridge Director shall determine requirements for timing and method of payment.  
**Staff comment: The applicant requested that the wording be more clear and change**

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“outstanding” to “Peabody”. Planning Commission agreed with this change and added a phrase stating that the permittee shall “share with Routt County” in the cost of road maintenance. Staff discussed this change with Public Works and they suggested that instead of mentioning Peabody specifically, to include “permittee” so that the language would not have to be changed if the permit was transferred.

The condition is suggested to read, *“Permittee shall be required to pay for ongoing road maintenance and repair, including semi-annual striping of the road, and will share with Routt County in the cost of road maintenance based on the previous year’s actual truck usage and tonnage hauled by the permittee on County Road 27. Routt County Road and Bridge Director shall determine requirements for timing and method of payment.”*

Other items that were discussed were the speed of the trucks traveling on CR 27, noise associated with the trucks, and accidents. Staff got in touch with CPW and they stated that animal/coal truck conflicts were minimal. Staff also reached out to State Patrol to get accident data. They responded that in 2018 there have zero accidents involving coal trucks.

<b>V. LEGAL ISSUES:</b>
N/A
<b>VI. CONFLICTS OR ENVIRONMENTAL ISSUES:</b>
N/A
<b>VII. SUMMARY:</b>
N/A
<b>VIII. ATTACHMENTS:</b>
<ul style="list-style-type: none"><li>• DRAFT Planning Commission minutes from 12/6/18</li></ul>

## ROUTT COUNTY PLANNING COMMISSION

### DRAFT MINUTES

December 6, 2018

The regular meeting of the Routt County Planning Commission was called to order at 6:00 p.m. with the following members present: Chairman Steve Warnke and Commissioners Troy Brookshire, Karl Koehler, Andrew Benjamin, John Merrill, Brian Arel, Peter Flint and Roberta Marshall. Commissioner Bill Norris and Geoff Petis were absent. Assistant Planning Director Kristy Winsor and staff planners Alan Goldich and Chris Brookshire also attended. Sarah Katherman recorded the meeting and prepared the minutes.

#### MINUTES – September 20, 2018

Commissioner Koehler noted a typo on page 6. Commissioner Benjamin moved to approve the minutes, as amended. Commissioner Arel seconded the motion. **The motion carried 8 – 0, with the Chair voting yes.**

#### MINUTES – October 4, 2018

Commissioner Arel moved to approve the minutes, as written. Commissioner Benjamin seconded the motion. **The motion carried 8 – 0, with the Chair voting yes.**

#### PUBLIC COMMENT

There was no public comment.

**ACTIVITY:** PL-18-198

**PETITIONER:** Twentymile Coal, LLC

**PETITION:** Renewal of Special Use Permit PL-16-62 for the Stoker Coal Haul

**LOCATION:** CR 27 from the Foidel Creek Mine to US Highway 40

Mr. Jerry Nettleton, representing the petitioner, stated that the request was for a renewal of the existing haul permit with no major changes. He said that there have been some changes to the suggested conditions of approval (COAs). His comments regarding the COAs are as follows:

#9: Mr. Nettleton stated that this condition does not apply, but that he was okay with leaving it in if it is simply "boilerplate."

#11: Mr. Nettleton stated that although the Stoker Coal haul permit has been valid for five years in the past, the current mining permit was issued for ten years. He suggested that it might make sense for this permit to be issued for a ten-year term as well.

#12: Mr. Nettleton stated that this condition was included at the suggestion of staff, and that he supports it.

#18: Mr. Nettleton said that the hauling contractor uses primarily 35-ton trucks, but does have some 38-ton trucks. He requested that this condition be amended to allow the use of 38-ton trucks

without changing the total amount of coal to be hauled or trips to be made, as specified in COAs #13 and #14.

#21: Mr. Nettleton stated that at this point Twentymile is the only operation hauling coal on CR 27, but that if another operator began using that route under an SUP, the language of this condition might be confusing. He suggested that COA #21 name Peabody specifically.

#27: Mr. Nettleton offered that this COA was duplicative of COA #21. He suggested that it could be deleted.

Mr. Goldich reviewed the petition, which allows for coal to be hauled on CR 27 from the Foidel Creek mine to US 40. The permit allows for 500,000 tons of coal to be hauled annually. He stated that Peabody also holds a permit for hauling coal on CR 27 from the Sage Creek Mine, but that this permit is not being utilized.

Mr. Nettleton stated that he expects mining at Twentymile to continue for another ten years. He said that as the mining winds down at Twentymile, it will be ramping up at Sage Creek.

Mr. Goldich stated that the Public Works Department (formerly Road & Bridge) has no concerns regarding the petition with the proposed COAs, as written. He said that it would be appropriate to consult with Public Works prior to making any changes to the road-related conditions. Mr. Goldich said that there would be time to consult with Public Works prior to the Board of County Commissioners' hearing, scheduled for December 18<sup>th</sup>. Mr. Goldich said that the Hayden School District is fine with the current COA regarding bussing (COA #17).

Commissioner Brookshire asked about incidents involving wildlife or other motorists on CR 27. Mr. Goldich said that he had consulted with Colorado Parks and Wildlife (CPW), who said that surprisingly few vehicle/wildlife conflicts occur on this stretch of CR 27. He said that he had also contacted the State Patrol, who had no concerns with the petition. He said that he could follow-up to obtain incident data, if needed. He added that no issues have been reported to the County, other than a few small coal spills that had been addressed by Public Works. Mr. Goldich reiterated that he would like to consult with the Public Works Department prior to making changes to the COAs that concern the road. He said that COA #9 is boilerplate, and agreed that it is not applicable to this petition.

Mr. Goldich said that the Stoker Coal haul permit had always been issued for five years. He noted that as a straight renewal, the applicant was charged 50% (\$400) of the regular application fee. As a straight renewal, changes to the conditions or term of the permit were not allowed. He offered that this proposal could be presented to the Board of County Commissioners.

Commissioner Brookshire asked about speed monitoring on the haul trucks. Mr. Nettleton stated that Peabody contracts with an independent hauler. He said that the trucks are equipped with governors that do not allow them to exceed a certain speed, and are also equipped with recording devices that can be checked in the event of an accident or complaint. He said that there have been no violations or incidents under the existing permit. Commissioner Brookshire asked about the stopping distance of a 35-ton truck going 45 mph. Mr. Nettleton said that he did not know, but stated that a trucking study had been submitted with the initial permit application.

Commissioner Brookshire stated that he had witnessed haul trucks on that road going what seemed very fast. He suggested that a reduced speed for trucks might be appropriate. Mr. Nettleton said that Peabody had rebuilt CR 27 and had installed passing lanes to accommodate the trucks being used. He offered that reduced speed for trucks might mess up the traffic flow for other motorists. In response to a question from Commissioner Merrill, Mr. Nettleton stated that he did not know if speed monitoring on an ongoing basis was possible. Commissioner Merrill asked about noise and whether Colorado Noise Standard 9.2.D was addressed in the COAs. Mr. Goldich cited COA #25, which addresses noise in general, but does not specifically cite 9.2.D. He said that COA #5 covers compliance with all state, local and federal laws.

Commissioner Brookshire asked about the cost sharing of road maintenance cited in COA #21. Mr. Nettleton explained that Peabody shares the cost of road maintenance with Routt County. He said that there is a separate agreement between Peabody and the Road & Bridge Department. The cost sharing agreement is based on a 21-year cycle and maintenance schedule, in addition to annual maintenance such as filling cracks and striping. Mr. Nettleton said that each year Routt County conducts a traffic study to determine the percentage of road use that can be attributed to haul trucks. The funds are paid into a dedicated accrual account that is then used for repairs and maintenance by the County.

Commissioner Marshall offered that COA #9 may refer to the revegetation of areas that are graded in the course of road repair.

Chairman Warnke stated that he agrees that no changes in the road-related COAs should be approved without consultation with Public Works. He asked if it would be appropriate to defer a decision. Mr. Nettleton noted that the permit expires at the end of December. Mr. Goldich suggested that Planning Commission could make a recommendation of approval, as written, and that staff would follow-up with Public Works prior to the Board hearing regarding the proposed changes, including the allowing 38-ton trucks. Commissioner Brookshire asked that the comments regarding speed and monitoring also be passed on the Board. Commissioners Benjamin and Arel stated that they would be fine with allowing a permit term of 10 years.

There was no public comment.

#### **MOTION**

Commissioner Brookshire moved to recommend approval of the Stoker Coal haul permit with the following findings of fact:

1. The proposal with the following conditions meets the applicable guidelines of the Routt County Master Plan and is in compliance with Sections 4, 5, 6 and 9 of the Routt County Zoning Regulations.
2. No complaints or concerns have been identified through review of this permit.

This approval is subject to the following findings of fact:

#### **General Conditions:**

1. The SUP is contingent upon compliance with the applicable provisions of the Routt County Zoning Regulations including but not limited to Sections 4, 5, 6 and 9.
2. The SUP is limited to uses and facilities presented in the approved project plan. Any additional uses or facilities must be applied for in a new or amended application.
3. Any complaints or concerns which may arise from this operation may be cause for review of the SUP, at any time, and amendment or addition of conditions, or revocation of the permit if necessary.
4. In the event that Routt County commences an action to enforce or interpret this SUP, the substantially prevailing party shall be entitled to recover its costs in such action including, without limitation, attorney fees.
5. This permit is contingent upon any required federal, state, and local permits being obtained and complied with. Copies of permits or letters of approval shall be submitted to the Routt County Planning Department prior to operations. The operation shall comply with all Federal, State and local laws.
6. Prior to issuance of the permit, Permittee shall provide evidence of liability insurance in the amount of no less than \$1,000,000 per occurrence. Routt County shall be named as an additional insured on the policy. Permittee shall notify Routt County Planning Department of any claims made against the policy. Certificate of liability insurance shall include all permit numbers associated with the activity.
7. Accessory structures/uses associated with this permit may be administratively approved by the Planning Director, without notice.
8. Transfer of this SUP may occur only after a statement has been filed with the Planning Director by the transferee guaranteeing that they will comply with the terms and conditions of the permit. If transferee is not the landowner of the permitted area, Transferee shall submit written consent to the transfer by the landowner. Failure to receive approval for the transfer shall constitute sufficient cause for revocation of the permit if the subject property is transferred. Bonds, insurance certificates or other security required in the permit shall also be filed with the Planning Director by the transferee to assure the work will be completed as specified. Any proposal to change the terms and conditions of a permit shall require a new permit.

#### **Specific Conditions:**

9. This permit is intended to replace SUP No. PL-16-62. Until such time as this permit has been issued that permit shall remain in full force and effect. SUP No.-PL-16-62 shall expire at such time this permit is issued.
10. The Special Use Permit is valid until December 31, 2023 provided it is acted upon within one year of approval.
11. If no complaints or concerns are identified, this permit may be renewed administratively.
12. This SUP allows for the hauling of up to a maximum average of 500,000 tons of coal annually from Twentymile Coal to US Highway 40. This permit does not cover hauling to the Hayden Power Plant and, if such is desired, another SUP will be required.

13. The total trips per day, averaged monthly, shall not exceed a maximum of fifty-five (55). If the number of round trips exceed sixty (60) in any 24-hour period, Twentymile Coal Company shall contact the Routt County Planning Director for administrative approval.
14. Permittee shall submit to the Planning Department a report of tonnage hauled under this permit annually.

Road Conditions:

15. When bussing of students on regularly scheduled routes on County Road 27 becomes necessary, the hauling of coal during school bus hours shall not occur until negotiated and agreed upon by the permittee and the Hayden School District, and approved by the Planning Director, as to safety measures to be taken.
16. Hauling is limited to the use of up to 35 ton capacity trucks. Permittee shall obtain any required over-length and over-weight permits from the Routt County Road and Bridge Department prior to hauling.
17. Routt County has the authority to close any county road at its sole discretion if damage to the road may occur by its use. To the extent that a road closure may affect permittee's operations, Routt County will cooperate with permittee to allow operations to be continued in a safe and practicable stopping point, and/or to jointly develop a solution that will address continuation of operations and any associated issues related to the road.
18. All trucks will be covered and follow posted speed limits. All trucks shall be equipped with speed-monitoring technology to ensure that posted speed limits are followed. Violations of the covered load and speed limit requirements by trucks subject to this permit will be reported to the County by the permittee, which may cause the review and amendment or revocation of the SUP for this use.
19. Permittee shall be required to pay for ongoing road maintenance and repair, including semi-annual striping of the road, and will share with Routt County in the cost of road maintenance based on the previous year's actual truck usage and tonnage hauled by Peabody on County Road 27. Routt County Road and Bridge Director shall determine requirements for timing and method of payment.
20. Permittee shall be responsible for any additional winter maintenance and other regular road maintenance desired by the County, and shall obtain all necessary permits and agreements to do so. At a minimum, this will include responsibility for road maintenance between 6 p.m. and 6 a.m. The permittee may be required to enter into a supplemental road maintenance agreement with the County to satisfy this condition.
21. Permittee shall communicate and resolve issues with the repair and clean-up of any spill or damage in a timely manner in agreement with affected parties. Any spill or road damage shall be reported to the Routt County Road and Bridge Department within three days of occurrence.
22. Any accidents or citations involving trucks covered by this permit shall be reported to the Routt County Planning Department within 3 days.
23. All trucks shall be equipped with Best Available Technologies for muffling of noise from engine brakes. All such equipment shall be maintained in good working order.



24. All tractors and trailers will be clearly numbered for easy identification. At a minimum, the tractors shall be numbered on both sides, and the trailers shall be numbered on both sides and the back.
25. Routt County roads affected by this SUP will be inspected by the Routt County Road and Bridge Department at intervals determined by same. Any road damage repair or maintenance needs above and beyond typical maintenance, attributable to this use, shall be made by the County, or a third-party contractor as selected by the Routt County Road and Bridge Department and on a schedule determined by same. Road and Bridge shall inform Permittee of such maintenance or repair activities prior to work being performed. Permittee shall solely bear the costs of repairs.
26. Permittee shall maintain access roads affected by this SUP during the life of the Operations. Maintenance may include grading and graveling or paving roadways, sweeping or cleaning access points, and application of a dust palliative as approved by the Routt County Road and Bridge Director and RCDEH.
27. Routt County roads shall not be completely blocked at any time. If traffic regulation is deemed necessary, the Permittee shall notify the Routt County Road and Bridge Director, or designee thereof, in advance (if possible), who may then require:
  - a. The Permittee or Permittee's contractor/sub-contractor to place traffic control signage along access routes and at intersections as specified by the Routt County Road and Bridge Director and at Permittee's expense; and types and placement of signs shall be in conformance with the MUTCD.

Commissioner Arel seconded the motion.

#### Discussion

Under discussion, Commissioner Koehler offered that COA #21 concerns routine maintenance and COA #27 concerns more significant repairs, but that the Board could decide if the two conditions were duplicative. Mr. Nettleton noted that the cost sharing agreement also cites incidents in which mining operations have undermined the CR 27 and addresses Peabody's responsibilities for repair. He suggested that the permit should with the Public Works Department prior to the Board hearing.

The motion carried 8 – 0, with the Chair voting yes.

**ACTIVITY:** PL-18-183

**PETITIONER:** William T. Lollar & Vanessa Loggins

**PETITION:** 1) Consolidation of Lots 172 – 179, Steamboat Lakes Subdivision Filing 2  
2) Rezone from Low Density Residential (LDR) to Mountain Residential Estates (MRE)  
3) Vacation of Utility Easements

**LOCATION:** 58095 Columbian Place

Commissioner Brookshire disclosed that the staff planner for this item is his wife. He stated that he had not discussed the petition with her and had only the information included in the staff report. Neither Planning Commission nor the petitioner had any objection to his participation.