

# ROUTT COUNTY PLANNING COMMISSION

## FINAL MINUTES

July 5, 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 Geoff Petis, Paul Hebert, Roberta Marshall, Karl Koehler and John Merrill. Commissioners Bill Norris, Brian Arel, Andrew Benjamin, Peter Flint and Troy Brookshire were absent. Planning Director Chad Phillips, staff planner Alan Goldich and Environmental Health Director Steve Cowman also attended. Sarah Katherman recorded the meeting and prepared the minutes.

### **PUBLIC COMMENT**

There was no public comment.

**ACTIVITY: PL-18-133**

**PETITIONER: Jason Cobb**

**PETITION: Conditional Use Permit for a Recreational Facility Outdoor-Rural for a zipline Tour Operation**

**LOCATION: Approximately 4.5 miles south of Steamboat Springs on the west side of US 40**

Mr. Cobb reviewed the petition and apologized for his past mistakes.

Mr. Phillips stated that he would be filling in for Ms. Brookshire on this item. He reviewed the history of the project, including the original approval by Planning Commission, the appeal to the Board of County Commissioners by the adjacent property owners, the issuance of the permit and its subsequent revocation due to violation of the conditions of approval (COAs). He stated that the COAs included in the staff report are based on the original conditions. He said that he had visited the site. Mr. Phillips presented photos of the zipline from various points on the property. He noted that the neighbors had expressed concern regarding the potential visual impact of the facilities and noise from the participants when the operation had originally been proposed, but that no complaints had been received regarding these issues while the zipline was in operation. He noted that the zipline towers do not extend much above the surrounding vegetation. Mr. Phillips stated that the only complaint about the operation had been from CDOT, and was related to the direct access to the site.

Mr. Phillips presented a site plan and indicated the boundaries of the property. He stated that a great deal of equipment related to Mr. Cobb's snowmobile tour operation is being stored on the property, which constitutes a non-conformity. He said that one of the issues that Planning Commission must address if it decides to approve the Conditional Use Permit (CUP) for the zipline is how to handle this

non-conformity. He stated that that the options include tabling the current petition until the site has been cleaned up, issuing the CUP with a condition that requires removal of the non-conformity by a certain date, or approving the CUP with a condition that the permit will not be issued until the site is brought into conformance.

In response to a question from Chairman Warnke, Mr. Phillips reviewed the timeline between the original CUP approval and the revocation of the permit. The zipline was in operation for one full summer and a few additional months.

Commissioner Hebert asked about the non-conformity. Mr. Phillips described the equipment that is being stored on the site. He stated that if Mr. Cobb wants to store these items on this property, he may be able to apply for a permit to use this area as the staging area for the snowmobile tours, which take place on national forest (USFS) land. He said that it has not yet been determined if this would be allowed under the regulations, as the staging area is generally on the same property as the tours.

In response to a question from Commissioner Koehler, Mr. Cobb indicated the access points to the property on a site plan. He stated that the approved CDOT access would be paved when the rest of the pass is re-paved this summer. Commissioner Koehler asked about the rationale for dates of operation included in the permit. Mr. Cobb stated that the reason for the limitation is the presence of elk on the site during winter. He said that when there is no snow, like during the fall of 2017, the elk are not present. He said that he would like to be allowed to continue operating the zipline later in the fall when there is not sufficient snow to conduct his other tour operation in order to keep his employees working.

Commissioner Koehler asked about the discrepancy in the number of vehicles allowed to access the site in the County permit and the CDOT access permit. Mr. Phillips clarified that the CDOT permit allows five vehicles per hour. CDOT is fine with the use of vans.

Commissioner Marshall asked about the problem with parking and signage. Mr. Phillips noted that the problem with direct access to the site began when an "enter here" sign was posted. Regarding the use of private vans to transport groups, Mr. Cobb said that he did not know how frequently this would occur. Regarding signage, Mr. Phillips noted that the first sentence of suggested COA #26 is the most important.

Commissioner Merrill asked about hours of operation. Mr. Cobb stated that staff arrives at 8:30, the first tours arrive at 9:00 with zipline operation beginning about 9:30. He estimated that 4000 individual zipline tours were conducted during the only full summer season.

There was no public comment.

Chairman Warnke noted Mr. Cobb's prior comment that the business plan originally proposed did not work. Mr. Cobb stated that he would continue discussions with CDOT for the future, but that he would use shuttles if required to do so. He described how the process would work if a group with its own van wanted to bring its group. He noted the prior reservations would be needed, and that this requirement will be stated on the website through which most people learn about the operation and make their reservations. Commissioner Koehler expressed concern with people coming down the pass and turning left into the site. Mr. Cobb stated that this was very unlikely to occur. There was consensus by Planning Commission that the use of private vans to transport groups would not be a problem, provided that advance reservations were required. Mr. Phillips suggested an amendment to COA #21, adding "or by pre-arranged shuttle with reservation." He also recommended amendments to suggested COA #26. Following discussion, Mr. Phillips suggested that if the CDOT access permit is amended to allow direct access by customers, the County may or may not agree that this is appropriate. He stated that in this case, the permittee would need to request an amendment.

In response to a question from Commissioner Marshall, Mr. Cobb clarified how people are shuttled to the site and returned to the vans for return transport. Mr. Phillips noted that there is no clear delineation between the CDOT pull-off and the access to the zipline operation. He noted that under the original proposal and the operation currently being requested, no private vehicles (other than the occasional group van) would be parking at the site.

Planning Commission discussed the proposed hours of operation and agreed that a provision for an administrative extension of the season was acceptable.

Regarding the non-conforming use, Mr. Phillips reviewed the snowmobile tour equipment being stored on site. He said that the only possibility for bringing this use into conformance would be if the operator applied for a permit to use this site as a staging area for the snowmobile tours. He reviewed the options available to Planning Commission for dealing with the non-conformity. Mr. Phillips clarified that unless the current petition is tabled, the COA requiring the permittee to address this problem must be included in the COAs of the current permit because it relates to the intensity of use on the property and it provides a means of ensuring that the use will be brought into conformance, one way or another.

Commissioner Merrill suggested that a shorter term for the permit might be appropriate, given the prior violations. Chairman Warnke noted that the system that led to the revocation had functioned properly.

## **MOTION**

Commissioner Marshall moved to approve the CUP for a zipline operation with the findings of fact that 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 fill in references to applicable regulations of the Routt County Zoning Regulations. This approval is subject to the following conditions:

**General Conditions:**

1. The CUP is contingent upon compliance with the applicable provisions of the Routt County Zoning Regulations including but not limited to Sections 5 and 6.
2. The CUP 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 CUP, 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 CUP, the substantially prevailing party shall be entitled to recover its costs in such action including, without limitation, attorney fees.
5. No junk, trash, or inoperative vehicles shall be stored on the property.
6. This approval is contingent upon any required federal, state, and local permits being obtained and complied with; the operation shall comply with all federal, state, and local laws. Copies of permits or letters of approval shall be submitted to the Routt County Planning Department prior to operations.
7. Fuel, flammable materials, or hazardous materials shall be kept in a safe area and shall be stored in accordance with state and local environmental requirements.
8. All exterior lighting shall be downcast and opaquely shielded.
9. Prior to the issuance of the permit, the permittee shall provide evidence of liability insurance in the amount of no less than \$1,000,000 per occurrence with either unlimited aggregate or a policy endorsement requiring notice to Routt County of all claims made. Routt County shall be named as an additional insured on the policy. Activity number must be listed on policy.
10. Permits/Approvals shall not be issued until all fees have been paid. Failure to pay fees may result in revocation of this permit. Permits/Approvals that require an ongoing review will be assessed an Annual Fee. Additional fees for mitigation monitoring will be charged on an hourly basis for staff time required to review and/or implement conditions of approval. This CUP will not be issued until all fees have been paid in full. Failure to pay fees may result in revocation of this CUP.
11. Revegetation of disturbed areas with a seed mix that avoids the use of aggressive grass seed mixes shall occur within one growing season. See the Colorado State University Extension Office for appropriate grass seed mixes.
12. The applicant shall furnish a bond, certified check, or bank commitment of credit in favor of Routt County in an amount of 150% of the cost of restoration of the site to guarantee site restoration. Such commitment, bond, or check shall be payable to and held by the Board of County

- Commission or its agent. An engineered cost estimate shall be provided for basis of the estimate.
13. Transfer of this permit may occur only after a statement has been filed with the Planning Director by the transferee guaranteeing that the coperator will comply with the terms and conditions of the CUP. Bond, insurance certificates, or other security required by the CUP shall also be filed with the Planning Director by the transferee prior to transfer to assure Operations will be conducted as specified. Any proposal to change the terms and conditions of this CUP upon transfer request shall require a new permit.
  14. Accessory structures/uses associated with this permit can be administratively approved by the Planning Director with no notice given to adjacent property owners.
  15. Neither the issuance of this permit nor any action taken pursuant to this permit shall create a liability on the part of or be the basis for a cause of action against the County or any officer, employee, or technical advisor thereof. The issuance of the permit does not imply that the land uses permitted will be free from danger as a result of natural hazards, human error, mechanical problems, or animals.
  16. Any necessary permits from the Routt County Road and Bridge Department or Building Department shall be obtained and any inspections completed before operations commence. Erosion mitigation measures should be placed on application for a G&E.  
Specific Conditions
  17. The Conditional Use Permit (CUP) is valid for ten (10) years provided it is acted upon within one year of approval. The CUP shall be deemed to have automatically lapsed if the seasonal summer use is discontinued for one year.
  18. Operations shall be conducted as follows:
    - First tour begins at 9:30 a.m. Last tour begins no later than 5:00 p.m.
    - Operations shall be conducted seven days per week including holidays.
    - Operations are May 15<sup>th</sup> through October 31<sup>st</sup>. Operator can request one Administrative extension of up to 30 days per year.
    - Tours will be limited to eight per day with a maximum of 12 clients per tour.
  19. All employees shall be first aid and CPR certified and be trained in emergency procedures. An AED shall be available on site. Radios or cell phones shall be provided to guides in case of emergency.
  20. Any accidents requiring emergency services shall be reported to the Planning Department.
  21. All clients will be transported to the site by tour employees or by pre-arranged shuttle with reservation. Parking on-site shall be for employees only with the exception of ADA vehicles.

22. Any wildlife encountered along or near the lines shall not be disturbed and given time to move away from any tours. No pets or firearms shall be allowed.
23. Port-a-lets and bear proof garbage containers shall be installed and maintained at the beginning and middle of the tour.
24. There shall be no parking on US 40 right of way.
25. Fire extinguishers shall be placed in the office.
26. Signage, if needed, shall be worded and located to reduce/eliminate access by non-registered guests or inquiries. The signage shall comply with the Routt County Sign Code.
27. Group transportation of clients to the operation by the permittee is required. If more than 15 passengers are transported in one vehicle, the driver is required to have a Commercial License based on gross vehicle weight rating, pursuant to Federal law. Direct access to the operation by the public is prohibited.
28. Permittee will need to obtain a grading and excavation permit for any earthwork that involves more than an acre of disturbance or 300 or more cubic yards of cut or 300 or more cubic yards of fill.
29. All structures shall be painted a neutral non-reflective color to blend with existing land or vegetation.
30. No earthwork requiring a County Grading & Excavation Permit to widen or improve the existing or new roads or trails to return customers to the start after the zipline tour shall be permitted until an amended CUP for such work is approved by the Planning Commission.
31. The side by sides (UTVs) will be equipped with factory or better muffler systems.
32. Prior to operation, permittee shall submit to Routt County proof of a Sales Tax Account /License.
33. Any non-conforming use will be resolved by December 31, 2018.

Commissioner Hebert seconded the motion.

**The motion carried 6 - 0, with the Chair voting yes.**

**ACTIVITY: PL-18-142**

**PETITIONER: Jeffery Sears**

**PETITION: Zone Change from Mountain Residential Estates (MRE) to  
Agricultural/Forestry (A/F)**

**LOCATION: Approximately 10 - 12 miles south of Steamboat Springs on CR  
43A**

Mr. Jeff Sears reviewed the request to rezone a 48.74-acre parcel from MRE to A/F. He presented a site plan of the area and indicated the zoning on the surrounding parcels. He noted that prior applications to subdivide some of the properties in the area had been denied. Since then, many of the parcels in the area have been rezoned to A/F.

Mr. Goldich indicated which properties have been rezoned. He noted that there was a great deal of neighborhood opposition to the prior proposals to subdivide some of the MRE parcels. He said that when those petitions were denied, the Board of County Commissioners recommended that the landowners re-zone their properties to A/F. Some, but not all, have done so.

Commissioner Petis asked what the petitioner intends to do with the property. Mr. Sears stated that he intends to build a house, and perhaps engage in agricultural operations in the future. In response to a question from Commissioner Koehler regarding why the petitioner is requesting the zone change, given the housing shortage in Routt County, Mr. Sears noted the opposition to prior subdivision requests. Chairman Warnke stated that subdividing this property would be in clear violation of the Master Plan. Mr. Goldich stated that the Beaver Ridge and Whitewood subdivisions were created prior to the adoption of zoning. He also pointed out that the recently approved Trankquility Bed & Breakfast is located on an adjacent parcel, and noted the discussion of the condition of CR 43A at the review hearing for the B & B. Mr. Goldich stated that the Master Plan supports A/F zoning in this area. In response to a question regarding how this land was zoned MRE in the first place, Mr. Phillips explained that a subdivision of this area (which was never platted) was underway when the County adopted its Zoning Regulations. The zoning that had been put in place to accommodate that subdivision remains, despite the failure of the plat to be recorded.

#### **MOTION**

Commissioner Petis moved to recommend approval of the zone change from MRE to A/F with the findings of fact that the proposal with the following conditions meets the applicable guidelines of the Routt County Master Plan and is in compliance with the applicable provisions of Sections 4 and 8 of the Routt County Zoning Regulations. This approval is subject to the following condition:

1. The change of zone from Mountain Residential Estate to Agriculture/Forestry shall become effective upon signing of a resolution amending the Official Zoning Map by the Board of County Commissioners. Said resolution shall be recorded in the Routt County Clerk and Records Office.

Commissioner Merrill seconded the motion.

**The motion carried 6 - 0 with the Chair voting yes.**

**ACTIVITY: PL-17-174**

**PETITIONER: Twin Landfill Corp.**

**PETITION: Phase 1 of Permit enforcement focusing on the solidification basin**

**LOCATION: 20650 CR 205, Steamboat Springs**

Chairman Warnke explained that because this enforcement hearing was initiated by the County, staff would make its presentation first.

Mr. Goldich stated that landfills fall under dual jurisdiction of counties and the state. He said that the state's role is to review the Engineered Design and Operation Plan (EDOP) and ensure it complies with state standards. The County's role is to issue the Certificate of Designation which outlines the specific uses allowed and the boundary of operation. In addition, Routt County also issues a Special Use Permit (SUP) to address any potential impacts of the operation. Mr. Goldich stated that the state has identified some areas of Twin Enviro's operation that need to be addressed. In response, Twin Enviro has submitted a new EDOP. Mr. Goldich stated that the current hearing is to address the solidification basin. After the state has reviewed and approved the revised EDOP, an application for an amendment to the SUP and Certificate of Designation will be reviewed to bring those documents into alignment with the new EDOP.

Mr. Goldich reviewed that the landfill was approved to accept liquid waste in 2004. In 2010, the state recommended that the County approve the landfill to accept exploration and production (EP) waste from oil and gas development. Subsequently, the state determined that the solidification basin was not operating in compliance with the EDOP. Mr. Goldich noted that staff has retracted the comment in the staff report stating that there is an immediate high risk of contamination to downstream drinking water. He stated that there was a misunderstanding that was corrected by Curtis Stovall of the Solid Waste and Materials Management Program within the Colorado Department of Public Health and the Environment (CDPHE). The email submitted by Mr. Stovall dated July 3, 2018 was received after the staff report was distributed. He stated that Planning Commission and Board of County Commissioners' approval is required to add conditions of approval to the SUP for the landfill to bring it into alignment with the requirements and timelines listed in the May 1, 2018 letter from the CDPHE included in the meeting materials.

Mr. Scott Cowman, the Routt County Environmental Health Director, provided a detailed review of how the solidification basin works. He reviewed the history of the landfill, which was formerly the site of an underground and then a surface coal mine. He reviewed the roles of the state and the County in the regulation and oversight of the landfill and stated that while the landfill must meet the minimum standards of the state, the County can be more stringent in its own permit conditions. Mr. Cowman reviewed the permitting, inspection and compliance timeline of the Twin Enviro operation. He also noted the most recent inspections took place in the 2016 and 2017, with compliance advisories issued following both of those inspections. In 2017 a compliance order was issued. In response to a question from Commissioner Petis, Mr. Brian Long, of the Solid Waste Compliance Assurance Unit of CDPHE, stated that the advisory is the initial informal documentation of findings following an inspection event. An order is a more formal action that is taken following consultation with the operator. He noted that compliance orders can be either unilateral on the part of CDPHE or "on consent" - which means that the operator signs off on the order and agrees to comply with the order. In this case, Twin Enviro has agreed to comply, and the

order is on consent. Mr. Long said that inspections are generally conducted annually or biannually.

Mr. Cowman reviewed the list of compliance items included in the advisories and orders that do not concern the solidification basin. He reviewed the compliance issues related to the solidification basin and subject to a consent order, including recordkeeping, operation logs, ash storage area monitoring and the testing of coupons. Mr. Cowman explained that coupons are extra bits of the basin liner that are periodically removed and tested to ensure that the liner is maintaining its structural integrity.

Chairman Warnke asked about the County's role in inspection and enforcement, given the highly technical nature of the operations and testing. Mr. Cowman stated that although the County relies heavily on CDPHE for expertise, he has the technical background to understand these types of operations and feels that it is his responsibility to be actively involved in monitoring and regulating them. The Environmental Health Director is designated as the County Regulator in the existing SUP.

Commissioner Marshall asked about the fly ash issue. Mr. Cowman stated that while there could be an air quality concern, the primary issue is material containment to avoid contamination of the surface water during run-off conditions. In response to a question from Chairman Warnke, Mr. Cowman described the water well monitoring of the site.

Mr. Cowman described the process through which liquid wastes are processed, solidified and disposed of in the landfill. He reviewed how hazardous wastes are regulated, described EP waste and noted that EP waste has an exemption from the EPA which allows it to be regulated under a less stringent set of requirements. He noted that some substances are incompatible with the PPE solidification basin liner used at Twin Enviro and must be closely monitored. Because EP waste is exempt, additional benzene monitoring is required. Mr. Curtis Stovall of CDPHE outlined the Twin Enviro benzene testing requirements. The volume of a substance the landfill can accept depends on the concentration of benzene within the substance. Mr. Stovall also reviewed technologically enhanced naturally occurring radioactive materials (TENORM) and how they are monitored and regulated in the disposal process. The revised EDOP to be submitted by Twin Enviro will include testing for TENORM.

In response to a question of Chairman Warnke, Mr. Stovall stated that about 10 of the 70 landfill facilities in Colorado are allowed to accept EP waste. He described how the materials are transported to the landfill, processed, solidified and disposed of. He emphasized that the key aspect of solidification is that the materials not linger in the solidification basin for long. The time element is why recordkeeping is so important.

Mr. Cowman described the history of the solidification basin at Twin Enviro, noting that in 2010 when the facility was granted permission to accept EP waste, coupon testing was required. He stated that a recently tested coupon failed, which is why an upgrade to the liner is being required. Mr. Cowman presented a slide showing a robust EP waste collection system. The system described exceeds state requirements.

Mr. Cowman summarized the conclusions stated in the staff report as follows: the state has determined that the solidification basin's leak detection system is ineffective and must be upgraded, the existing liner is incompatible with some of the accepted wastes including EP waste, the permittee has agreed to comply with the requirements of the compliance order and to submit a revised EDOP. A revised EDOP specifically for the solidification basin is forthcoming depending on how the permittee chooses to operate in the long term and what types of substances will be accepted.

Mr. Cowman stated that the issue is about risk. He stated that there is some indication that contamination is occurring, although the operator disagrees. He offered that if the permittee continues to accept EP waste, they will need to upgrade the liner of the solidification basin and the leak detection system. He stated that he has reviewed and approves of the suggested COAs, which were taken directly out of the letter submitted by the CDPHE.

In response to a question from Commissioner Petis regarding the risk of contamination, Mr. Stovall described the slightly elevated chlorides in a recent downstream well test. He stated that when elevated levels are detected, an expanded list of assessments are required. He stated the results of the expanded assessment monitoring have not yet been received. Mr. Stovall noted that the elevated chloride levels were still below the state drinking water limits. He added that in this particular case, the elevation in chloride could be attributed to a naturally occurring constituent or it could have been caused by the solidification basin. He also stated that the monitoring system would provide very advanced warning of any contamination. At the time any groundwater contamination is detected, it would be confined to the property, and modifications would be made to the landfill to mitigate any off-site impacts. Mr. Stovall noted that the coupon that failed, failed at the seam but that there was no indication that the liner is leaking. The loss of strength means that there is a potential for a leak in the future, which is why an upgrade is required.

In response to question from Commissioner Koehler, Mr. Stovall said that the landfill and the groundwater are separated by about 50 ft. A leak would require many years to reach groundwater. Mr. Stovall stated that the liner was installed before any acceptance of EP waste was contemplated. He stated that in recognition of the substandard liner for EP waste that exists at Twin Enviro, a very conservative coupon testing plan was developed. He noted that the Twin Enviro engineer of record does not agree that the liner is degraded.

Commissioner Petis asked about the cost of an upgrade. Mr. Stovall stated that the cost of reclamation would be many times greater than the cost of replacement.

### **Public Comment**

Mr. Jeremy Beiling, the owner of three local automotive repair shops, stated that the solidification basin is a key component of his operations. He stated that he takes the disposal of the waste from his businesses very seriously, and that the transportation and disposal of those substances is very expensive. Mr. Beiling offered that the ability of Twin Enviro to accept these materials is an important resource for the community. He stated that he wants to ensure that the facility is safe and effective, but he does not want it to go away. He asked the County to work with the operator to ensure that the solidification basin is safe and that it can continue to operate.

Mr. Cowman noted that although only 10 facilities in the state accept EP waste, many more are able to accept the wastes generated by automotive repair and cleaning. He stated that the facility in Craig accepts industrial waste, but requires additional analytics.

Ms. Sarah Jones described her background in consulting on the cleaning and reclamation of Superfund sites. She noted that the costs associated with compliance are high, but that the costs of clean-up are huge. She agreed that the facility is important to the community, but offered that compliance, oversight and monitoring are even more important. Ms. Jones noted that while EP waste is exempt, if it enters the groundwater, it is no longer exempt.

Seeing no further comment, Chairman Warnke closed public comment.

Mr. Les Liman, the owner of Twin Enviro, reviewed his background in trash disposal, which began in Steamboat Springs in 1969. He reviewed the history of trash dumps in our area, noting that 1971 Routt County closed several of the dispersed dumps around the County. He stated that before purchasing the property, he leased the current Twin Enviro site from Mel Hitchens. The property had been an underground coal mine, then a strip mine before it was used as a garbage dump. In 1983 gates and fences were installed, hours of operation were implemented and fees were charged for the first time. In 1990 the first EDOP was submitted. Test wells and a liner were installed. In 2004 a new EDOP was submitted and permission was granted for the acceptance of liquid waste under the new regulations. Mr. Liman noted that prior to this time, liquid waste from automotive shops and other generators was dumped in open fields in Routt County. In 2009 regulations requiring leak detection were implemented. Mr. Liman stated that leak detection was installed at Twin Enviro in the form of an angled well below the solidification basin. He stated that it was noticed that liquid tended to accumulate under the site during spring run-off. This material was tested and was found to contain barium, but barium was present in all of the surrounding soils. No organic compounds or benzene was detected. Mr. Liman

stated that this information was submitted to the CDPHE, and Twin Enviro thought they were okay.

Mr. Liman stated that in 2011 or 2012 Twin Enviro had contracted with Winn Cowman, Mr. Cowman's wife, to serve as a part-time compliance officer for the landfill operation. When Ms. Cowman left the position there was a financial dispute between Twin Enviro and Ms. Cowman over payment for records storage. Mr. Liman stated that due to this unresolved issue, he believes Mr. Cowman has a conflict of interest. He offered that the usual role of a county environmental officer in relation to landfill operations is with regard to siting, roads, nuisance conditions, etc. The state generally handles the monitoring of groundwater, and other technical issues. He suggested that Mr. Cowman was biased against Twin Enviro.

Mr. Liman said that after a tear in the landfill liner was repaired with CDPHE approval in 2015, operations continued. The landfill was informed by CDPHE in 2017 that an upgraded leak detection system would need to be installed. Twin Enviro agreed. Mr. Liman reviewed the language regarding "immediate and high risk" that Mr. Cowman had included in the staff report and that had subsequently been retracted. Mr. Liman suggested that the inclusion of this language is further evidence of bias by Mr. Cowman. Mr. Liman read a portion of the email submitted by Mr. Stovall stating that the risk was low and not immediate. He stated the due to bias, Mr. Cowman should not be allowed to regulate the Twin Enviro landfill.

Mr. Liman stated that several disposal sites in nearby counties have been closed due to the high cost of compliance. He added that Twin Enviro takes in a tiny percentage of the amount of waste taken in by the landfills on the Front Range. He noted that one way that landfills are often shut down is by the imposition of extraordinarily expensive monitoring systems. Mr. Liman said that the Twin Enviro operation accepts 30,000 gallons of liquid waste at \$0.50/gallon annually (\$15,000/year). The upgrade to facility will cost \$100,000.

Mr. Liman stated that the Twin Enviro Milner site has accepted no EP waste in the past three years, in part because the process of oil & gas development has changed: flocculants are used to remove the solids and the liquids are reinjected underground. Mr. Liman said that he does not expect the liquid element of EP waste business to return.

Mr. Liman stated that Twin Enviro agrees to the suggested COAs, but suggested that there was no need for this hearing because the amended conditions could have been approved administratively. He stated that having an inspection and agreeing to upgrades is not a violation, nor is addressing a compliance issue regarding record-keeping. He said there was never discussion of ceasing operations or closing the facility when the hearing with the Board of County Commissioners was scheduled. Mr. Liman reviewed the services the Twin Enviro site provides to the community, including many they provide at a financial loss.

He invited Planning Commission to tour the site during the summer when all the operations can be seen.

Mr. Liman noted that Mr. Cowman had mentioned the lack of an extra confining layer at the solidification basin. He stated, however, that when materials enter this area, they are mixed, solidified, tested and removed the same day they arrive. This is different than an impoundment or evaporation basin where liquid sits for a long period of time. Mr. Liman reviewed the technical specifications of the liner and the current tear strength of the seam, but noted that there is no tear strength pressure on the liner, which lays flat. He said that there is also a clay liner in addition to the PPE liner. Mr. Liman stated that he is fine with the suggested COAs and is willing to make the necessary improvements, but objects to being characterized as irresponsible. He said that while the PPE liner is not considered compatible with benzene, the testing of liner materials uses very large amounts of benzene for extended periods of time. He said that this is not what happens in practice when the material is removed very quickly. He said that back when benzene was disposed of at the site, it was in very small and controlled quantities. Mr. Liman stated that barium is naturally occurring and chloride levels have gone up and down.

In response to a question from Commissioner Petis, Mr. Liman said that while Twin Enviro accepts all of CDPHE's recommendations, they object strongly to any recommendation that the liquid disposal facility be shut down. He confirmed that the new COAs (39 - 44) reproduce the state requirements and that Twin Enviro is working to bring the operation into compliance as quickly as possible.

Mr. Goldich stated that staff believes that violations of the existing SUP do exist. He reviewed the suggested findings of fact listed on pages 3 & 4 of the staff report, some of which come directly from the May 1<sup>st</sup> letter submitted by the CDPHE. He stated that the landfill at the time of inspection was not operating in accordance with the existing EDOP. He said that although the County is allowed to do so, it is not requesting anything above and beyond what is being required by the state. Mr. Phillips added that to be consistent with enforcement actions of the past, the Planning Department must enforce the COAs included in the permit issued by the County, and doing so involves the Planning Commission and the Board of County Commissioners.

In response to a question from Commissioner Merrill, Mr. Liman confirmed that the landfill still receives asbestos from time to time.

Commissioner Koehler asked about the difference between the advisory and the consent order. Mr. Goldich stated that the order is the result of the issues identified in the advisory. Mr. Liman clarified that both the 2016 and 2017 inspections occurred during early May. He said that many of the problems identified were associated with surface water accumulation, which occurs during mud season snow melt and run-off. He offered that if inspections would occur later in year, the results would be much better.

In response to a question from Commissioner Koehler regarding ash storage, Mr. Liman stated that some of the ash was being tracked outside the designated area by trucks. He noted the large amount of ash being disposed of in an unlined facility at Hayden Station.

Commissioner Hebert asked about EP disposal and the new proposed conditions. Mr. Liman stated that low levels of benzene could be present in the waste from car washes and other industrial uses, but these are generally within hazardous waste designation thresholds. He stated that the change in oil and gas exploration and production procedures has meant that no EP wastes have been received, not that they wouldn't have been accepted. He said that if very poor quality waste is brought to the site (with high levels of hazardous materials such as benzene), the facility will accept only a very small amount of it. Commissioner Hebert asked if the cost of replacing the liner would be prohibitively expensive. Mr. Liman said that this decision has not yet been made.

Recognizing that the operator had not made his comments prior to the public comment period, Chairman Warnke reopened public comment. There was no additional public comment.

Mr. Stovall noted that while many jurisdictions do not have experts on staff to address technical issues and so leave the monitoring and regulation up to the state, the CDPHE does welcome local expertise when it is available, particularly because the state has limited resources. He reiterated that landfills are under dual jurisdiction. Mr. Liman noted that as a result of dual jurisdiction, it has become very difficult to obtain permits for new landfills due to "not in my backyard" attitudes toward waste disposal.

In response to a question from Commissioner Hebert regarding the retracted statement in the staff report regarding the risk of contamination, Mr. Goldich stated that the retraction of this comment does not affect any of the suggested findings of fact. Commissioner Hebert asked if any contaminants other than chlorides have been identified in the monitoring. Mr. Cowman stated that the results of the assessment monitoring will determine if any substances other than chlorides will be identified.

Commissioner Petis asked about the additional COAs that have been suggested. Mr. Cowman confirmed that these mirror the requirements that the CDPHE has submitted to Twin Enviro.

Mr. Liman reviewed that the monitoring well installed in 1983 was sited where it is because this is the area that the County had previously directed generators of waste to dump septic and other uncontrolled liquid wastes. He said that because the well was already there, Twin Enviro decided to locate the solidification basin slightly up-gradient from it to avoid having to install another well. He added that the former coal mines at the site also have an impact on the wells. Mr. Liman

added that the Milner site has more monitoring wells than many much larger sites elsewhere in the state.

Chairman Warnke noted that waste disposal is a heavily monitored industry and that while Routt County is fortunate to have local expertise, the County must rely on the state to monitor this operation.

Commissioner Petis said that suggested finding of fact #5 represents a scientific conclusion arrived at by the state, not by the County. He offered that as such it was not appropriate to include it.

### **MOTION**

Commissioner Petis moved to recommend approval of PL-17-174, with the determination that violations exist and the permittee can continue operation of the solidification basin, based the following findings of fact:

1. The operation of the solidification basin is not in compliance with Sections 6.1.3 (Local, State, and Federal Regulations and Standards), 6.1.5 (Industry Standards), 6.1.7.E (Water Quality and Quantity), 6.7 (Mitigation Techniques to Reduce Water Quality and Quantity Impacts) of the Zoning Regulations.
2. The permittee has not operated the solidification basin in compliance with the conditions of approval #3, #6, and #15 of permit PL-15-1016.
  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.
  6. This approval is contingent upon any required federal, state and local permits being obtained and complied with; the operation shall comply with all federal, state and local laws. Copies of permits or letters of approval shall be submitted to the Routt County Planning Department prior to operations.
  15. All applicable standards set forth by the Colorado Department of Health and the Routt County Department of Environmental Health shall be complied with. The operation shall comply with all federal, state, and local laws. All applicable conditions of the Regulations Pertaining to Solid Waste Disposal Sites and Facilities by the Colorado Department of Health shall be complied with. Biannual or more frequent inspections will be conducted by the Routt County Department of Environmental Health.
3. The permittee has not operated the solidification basin in compliance with CDPHE HMWMD regulations, as evidenced by the Compliance Advisories, Consent Order, and the May 1, 2018 letter regarding updated requirements for continued operations of the solidification basin.

4. The HMWMD has determined that the solidification basin's liner and leak detection system must be upgraded.
5. The permittee is working with HMWMD to remedy the violations outlined in the Compliance Advisories and Consent Order, and has submitted a revised EDOP currently under review by the HMWMD. A revised EDOP for the solidification basin is forthcoming depending on how Twin chooses to operate in the long-term and what type of wastes they will accept. The County should allow this process to take its course.

This approval is subject to the following conditions:

**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, and 6.
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. No junk, trash, or inoperative vehicles shall be stored on the property, unless stored in approved areas.
6. This approval is contingent upon any required federal, state and local permits being obtained and complied with; the operation shall comply with all federal, state and local laws. Copies of permits or letters of approval shall be submitted to the Routt County Planning Department prior to operations.
7. Fuel, flammable materials, and hazardous materials shall be kept in a safe area and shall be stored in accordance with the state and local environmental requirements.
8. Prior to the issuance of the permit, the Permittee shall provide evidence of liability insurance in the amount of no less than \$1,000,000 per occurrence with either unlimited aggregate or a policy endorsement requiring notice to Routt County of all claims made. Routt County shall be named as an additional insured on the policy. Certificate of liability insurance shall include all permit numbers associated with the activity.
9. Accessory structures/uses associated with this permit may be administratively approved by the Planning Director, without notice.

10. The permits/approval shall not be issued until all fees have been paid in full. Failure to pay fees may result in revocation of this permit. Permits/Approvals that require an ongoing review will be assessed an Annual Fee. Additional fees for mitigation monitoring will be charged on an hourly basis for staff time required to review and/or implement conditions of approval.
11. 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.
12. The Permittee shall prevent the spread of weeds to surrounding lands, and comply with the Colorado Noxious Weed Act as amended in 2013 and Routt County noxious weed management plan.

**Specific Conditions:**

13. The Special Use Permit is valid for the life of use.
14. The operations will be reviewed annually by Planning staff to ensure compliance with permit conditions, with recommendations to Planning Commission as appropriate.
15. All applicable standards set forth by the Colorado Department of Health and the Routt County Department of Environmental Health shall be complied with. The operation shall comply with all federal, state, and local laws. All applicable conditions of the Regulations Pertaining to Solid Waste Disposal Sites and Facilities by the Colorado Department of Health shall be complied with. Biannual or more frequent inspections will be conducted by the Routt County Department of Environmental Health.
16. Permittee shall be responsible for any additional winter maintenance and other regular road maintenance above and beyond that normally conducted by the Road and Bridge Department on roads affected by this SUP during the life of the operations and shall obtain all necessary permits to do so. Routt County shall meet with the permittee periodically to assess necessary maintenance resulting from use of the road. Maintenance shall be determined by the Routt County Road and Bridge Department in its sole discretion and at permittee's expense. Maintenance may include, but is not limited to, grading and graveling of roadways, restoration of roadway crown, sweeping or cleaning access points, soft spot/damage repair and application of a dust palliative as

approve by the Routt County Road and Bridge Director and Routt County Department of Environmental Health.

17. Continued road inspections shall be conducted by the Routt County Road and Bridge and/or Planning Departments and shall occur on a bi-annual basis or with more frequency, should weather dictate. If tracking of mud onto County Road 205 is still occurring, the permittee shall work with the Routt County Road and Bridge Department to formulate preventative sediment tracking measures. The permittee shall be responsible for the installation and all costs associated with the installation of such measures. Installation shall occur within six (6) months of second written warning that the road has been impacted.
18. If preventative sediment tracking measures have not been installed, the permittee shall install such measures within six (6) months of completion of the new shop and recycle building.
19. Routt County has the authority to close any county road at its sole discretion of 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 operation to be continued in a safe and practical stopping point.
20. Permittee shall secure all necessary permits including but not limited to State of Colorado Air Quality Permit, applicable USCOE permits, Routt County Grading and Excavation Permits, Routt County access permits, and Routt County ROW permit.
21. The semi-annual Groundwater Monitoring Report submitted to the Colorado Department of Health and Environment shall also be submitted to the Department of Environmental Health. Routt County Environmental Health officials may take samples from the wells or surface water at any time to verify monitoring data.
22. All regular reports required by the Colorado Department of Health and Environment shall also be submitted to the Routt County Planning and Environmental Health Departments.
23. The operator is responsible for keeping trash covered as provided in the State statute. Trash shall only be deposited in accordance with the approved landfill plan. Twin Landfill shall be responsible for removal of trash blowing off site and shall monitor adjacent properties on a periodic basis depending on the weather conditions. In addition, the permittee shall be responsible for maintenance of 6' sheep fencing on the east side of the pit for the length of the area that is being used.
24. Landfill dumping area/working face and associated equipment shall be substantially screened from Highway 40 and will not skyline from Milner and the United States Highway 40 view sheds. Screening berms will be constructed by placing a narrow, 10-to-12 foot high refuse lift at the north end of a given waste lift and perpendicular to the line of sight being screened. Interim cover will be placed on the berm

as the berm is constructed so that the exposed refuse is minimal. The refuse lift will then be constructed behind the berm with the working face typically facing south away from visual corridors. Screening berms, interim slopes, and final slopes visible from Highway 40 shall be revegetated as soon as possible. If revegetation does not adequately mitigate visual impacts after six months, the Planning Director may require additional seeding and/or the use of temporary irrigation. This condition becomes effective June 1, 2006.

25. If at any time proper coverage of the trash cannot be achieved, the operator shall immediately contact the Routt County Department of Environmental Health by telephone with a plan of action to remedy the situation.
26. Lighting shall be downcast and opaquely shielded. All exterior lighting shall be turned off between 8:00 p.m., or when the maintenance building is not in use, whichever is earlier, and 7:00 a.m. Necessary motion-sensitive, safety, and/or security lighting is excluded. Exterior lighting shall be limited to two exterior lights and one motion sensor light.
27. There shall be no exterior lighting at the above ground leachate holding tank except necessary, motion-sensitive, safety and/or security lighting.
28. No maintenance or repair of vehicles and equipment shall be allowed in the new equipment storage structure.
29. Hours of operation for general public access shall be limited to daylight hours for the Home Resource Center. This should not be construed as a limitation for commercial haulers, special projects, or operators of the landfill.
30. The permittee shall not allow any member of the public into a structure in the Home Resource Center until that structure has received its final inspection.
31. Approval is contingent upon Building Department verification that all existing structures used in conjunction with this SUP have received any necessary building permits and final inspection. Permittee shall obtain all necessary building and grading and excavation permits as required for the structures in the Home Resource Center by.
32. All new structures shall be painted a neutral color.
33. All loose materials salvaged for recycling shall be contained within the new recycling building. There shall be no outdoor storage of loose recyclables. All baled recyclables shall be stored in a holding area or recycling area properly screened or fenced.
34. Disturbed areas associated with gravel mining shall not exceed 4.0 acres at any time. Disturbed areas are those not covered by water or substantially noxious weed free vegetation.

35. Gravel stockpile sizes and heights shall be maintained in conformance with the Mining and Reclamation Plan (Plate 3) submitted with the application. Planning Director may require reductions in stockpile size or height if necessary to limit visual impacts from Highway 40. Gravel crushing operations shall be limited to 8:00 a.m. through 5:00 p.m.
36. Prior to any excavation of Mine Area 2, Knoll 1, Permittee shall obtain approval of the Planning Director. Approval will be contingent on completion of reclamation of Mine Area 1 and substantial progress in the reclamation of Mine Area 2, Knoll 2.
37. Revegetation of disturbed areas shall occur within one growing season with a seed mix which avoids the use of aggressive grasses. See the Colorado State University Extension Office for appropriate grass seed mixes.
38. Permittee shall implement the following bulleted items as listed in the Conclusions and Recommendations on Page 9 of the July 11, 2005 Sun Terra, Inc. 'Milner Landfill Subsidence Evaluation':
  - a. We recommend that geogrid be considered for subgrade soil reinforcement either during subgrade preparation or immediately prior to placing the first layer of the 3-foot-thick moisture conditioned clay liner in the sump areas of the Expansion Area.
  - b. We recommend that a qualified Geotechnical Engineer be on-site to observe soil and ground conditions related to subsidence potential during subgrade inspection.
39. The Certificate of Designation shall be amended to include acceptance of EP waste.
40. The permittee may operate the solidification basin under the existing State approved Solidification Basin Engineered Design and Operation Plan (SPEDOP) until October 31, 2018. The existing SBEDOP is no longer valid after October 31, 2018. The permittee shall not operate the solidification basin without an approved SBEDOP.
41. If the permittee wishes to continue to accept EP waste, and other waste that contains petroleum products and organic solvents, construction of improvements to the solidification basin liner in accordance with a revised State-approved SBEDOP, including construction completion reporting and post-construction State approval must be completed by October 31, 2018.
42. If the permittee wishes to continue operating the solidification basin with a reduced list of approved liquid waste streams, a revised SBEDOP must be submitted to the State and County for review and approval by August 31, 2018. Under this option, the revised SBEDOP, with a reduced list of liquid waste streams, would become effective upon State and County approval and would expire on October 31, 2019.

43. If the permittee wishes to continue operation of the solidification basin for any liquid waste streams after October 31, 2019, solidification basin liner improvements conducted in accordance with a revised, State-approved SBEDOP, including construction completion reporting and post-construction State approval, must be completed by October 31, 2019.
44. The permittee shall submit a report detailing solidification basin operations every quarter. The reports shall be submitted on April 1, July 31, October 31, and January 31. Such reports shall include the following information:
  - a. Total volume of each liquid waste stream received during the quarter.
  - b. Total volume of sorbent material (coal ash) received during the quarter.
  - c. Total volume of sorbent material (coal ash) used during the quarter.
  - d. Total volume of solidified waste removed, transported, and disposed of at the landfill.
  - e. Copies of all laboratory analytical tests performed during the quarter, including analyses performed on random waste samples, and analyses performed on solidification basin leachate.
  - f. Copies of all liquid waste profile forms, including corresponding completed waste manifests for wastes received during the quarter.
  - g. Copies of all solidification basin operation logs completed during the quarter.
  - h. Copies of all paint filter test data sheets for tests performed during the quarter.
  - i. Copies of all reactivity test data sheets for tests performed during the quarter.
  - j. A summary of all pH test results performed during the quarter.
  - k. A summary of weekly leachate measurements taken during the quarter. More frequent measurements may be required depending upon whether leachate was removed.
  - l. A summary of leachate removal volume and frequency performed during the quarter.
  - m. A summary of quarterly ash storage area monitoring and maintenance, including stormwater management and Posi-Shell applications pursuant to Section 3.0 of the approved SBEDOP revision dated May 29, 2015.

- n. A summary of housekeeping activities performed during the quarter to remove any ash or other sorbent material that gets tracked onto the ground surface outside of the solidification basin.

Commissioner Koehler seconded the motion.

#### **Discussion and Friendly Amendments**

Referring to COA #44, Commissioner Koehler offered that it was overly burdensome for the operator to have to file identical reports to the CDPHE and to the County. Chairman Warnke noted the previously discussed dual jurisdiction and Mr. Goldich noted that the reports are filed electronically. It was determined that it was appropriate for the County to receive the required reports.

**The motion carried 6 - 0, with the Chair voting yes.**

#### **ADMINISTRATOR 'S REPORT**

Mr. Phillips reported that the Board of County Commissioners had supported Planning Commission's approval of the CUP for the Trankquility B & B, which had been appealed by some of the neighbors, on a 2 -1 vote.

Mr. Phillips reviewed the upcoming Planning Commission agendas, noting that there would be not meeting on July19th.

**The meeting was adjourned at 9 p.m.**