

## Memorandum

**To:** Planning Commission

**From:** Alan Goldich

**Date:** September 14, 2023

**Subject:** Permit Enforcement of SUP PL20220003 for D&D Enterprises

**Attachments:**

- Detailed timeline
- Special Use Permit PL20220003
- Notice of Violation dated August 2, 2023
- Cease and Desist dated August 2, 2023

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### **HISTORY:**

This site has been used as a scrap metal recycle yard since 2006, however the proper permits and approvals were never obtained for the use. In the summer of 2022, the owners applied for, and received, a Special Use Permit for a Recycling Station.

There were several conditions requiring certain improvements. Those conditions also included deadlines for when the improvements needed to be completed by. The conditions are below.

21. Any required permits from the Routt County Environmental Health, Public Works, or Building Department shall be obtained and any inspections completed by August 1, 2023.
22. The proposed stormwater controls shall be installed by August 1, 2023.
23. A Floodplain Development Permit for the storage of materials in the floodplain shall be obtained by December 31, 2022.
24. A screening plan shall be developed by the Permittee to mitigate the visual impacts of the operation. Such screening plan shall be approved by the Planning Director and be implemented by August 1, 2023.

None of these items were accomplished by the deadline dates.

### **STAFF RECOMMENDATION:**

Violations of the identified conditions of approval exist. Staff recommends that the Special Use Permit be revoked based on the findings of fact below.

### **STAFF COMMENTS:**

- There is also a condition requiring the permittee to enter into a Reclamation Agreement to ensure the site is cleaned up once the site is no longer used for a

recycling operation. Staff has had numerous conversations with the permittee's attorney about this but have not been able to come to an agreement on the amount of the bond. The condition requiring this has no deadline associated with it. Technically, there is no violation of this condition, but is something that still needs to be addressed by the permittee.

- This hearing is to consider the Special Use Permit PL20220003 and the violations of the conditions of approval of that permit. This hearing is not to discuss any amendments or how the permittee desires to use the site. If the permittee would like to amend their permit, an application to do so must be submitted and go through the proper review process.
- A detailed timeline of the events that have occurred is included as an attachment. This timeline is included to show the actions that staff has taken to inform the permittee about the deadlines contained within the conditions of approval and to help the permittee come into compliance with the Special Use Permit. Staff scheduled this permit for review because of the non-compliance with the conditions of approval. The History section outlines the conditions of approval that the permittee is not in compliance with. These also show the actions that staff has taken
- Section 3.2.13 lays out the process for amendment or revocation of an approval. Amendment or revocation of an approval may be made by the Approval Authority (the Board of County Commissioners) following the same procedure as required for the original approval (after review and recommendation by Planning Commission) and only after a determination by the applicable Approval Authority that one of the following conditions exists:
  - A. There has been a violation of a condition of Approval; or
  - B. There has been a violation of any of the applicable requirements of these Zoning Regulations; or
  - C. Operation of the permitted use has created significant negative impacts inconsistent with representations made by the applicant during the original approval process.
- Staff's position is that violations to the conditions of approval are present based on the findings of fact listed later in this report.

**PLANNING COMMISSION / BOARD OF COUNTY COMMISSIONERS OPTIONS:**

1. **No violation(s) exist(s)** and the permittee has complied with the condition of approval.
2. **Violations exist** and revoke Special Use Permit PL20220003.
3. **Violations exist** and the permittee shall submit an application to amend the permit to allow for more time to accomplish the required improvements by November 10, 2023.

4. **Table this review** if additional information is required to fully evaluate whether permittee has complied with the conditions of approval. Give specific direction to the petitioner and staff.

#### **RECOMMENDED MOTION**

I move to recommend that **Special Use Permit PL20220003 be revoked** with the findings of fact that:

1. The permittee's operation is not in compliance with the following conditions of approval of Special Use Permit PL20220003:
  - #21 – Acquisition and compliance with all permits – The permittee has failed to obtain a building permit for the office structure that was placed on site, the septic system that is required to serve the office, and a Grading and Excavating permit to install the required stormwater controls by the August 1, 2023 deadline.
  - #22 – Failure to install the required stormwater controls by the August 1, 2023 deadline.
  - #23 – Failure to obtain a Floodplain Development Permit by the December 31, 2022 deadline.
  - #24 – Failure to develop, and install, a screening plan by the August 1, 2023 deadline.
2. The Planning Department has had multiple conversations and email correspondences with the permittee's attorney attempting to get the permittee into compliance with their permit. These meetings have been unsuccessful in obtaining compliance.
3. The County approved Special Use Permit PL20220003 on September 27, 2022 with the identified conditions of approval. This provided the applicant with nearly a year to accomplish the required improvements.

## **TIMELINE OF EVENTS RELATED TO THE ENFORCEMENT ACTION:**

- July 21, 2022 – Planning Commission recommends approval of the SUP. This recommendation had a deadline of October 31, 2022 to have all required improvements completed.
- August 2, 2022 – Board of County Commissioners tables the hearing to provide staff time to research bonding requirements.
- August 23, 2022 – Application again tabled to provide staff more time to conduct research on bonding requirements.
- September 27, 2022 – Board of County Commissioners approves the SUP with a different deadline of August 1, 2023 to have all required improvements completed. This deadline was pushed back since the original deadline would only give the applicant one month to complete the improvements.
- October - January – Multiple correspondence with the applicant's attorney about items that need to be accomplished, including notification that the Floodplain Development Permit needed to be obtained by December 31, 2022.
- December 19, 2022
  - Septic permit applied for.
  - Building permit for office structure applied for.
- December 27, 2022 – Notice of Incomplete Application issued for building permit.
- January 5, 2023
  - Results of soil test submitted showing no soil contamination.
  - Notice of Incomplete Application issued for septic permit.
- January 24, 2023 – Email sent to applicant's attorney detailing the outstanding items that needed to be accomplished. Another reminder about the Floodplain Development Permit provided.
- February 6, 2023 – Email sent to applicant's attorney requesting additional information on the soil tests. Another reminder about the Floodplain Development Permit provided.
- March 8, 2023 – Phone conversation with applicant's attorney to discuss outstanding items.
- April 3, 2023 – Email sent to applicant's attorney requesting an update on items following the March 8 meeting.
- April 11, 2023 – Additional information provided on the soil test following request on February 6.
- May 10, 2023 – Building permit canceled due to lack of response from applicant.
- May 23, 2023 – Detailed list of outstanding items provided by email to the applicant and his attorney. A deadline of June 20<sup>th</sup> was given to have the following information submitted:
  - Design for stormwater controls

- Screening plan
  - Floodplain Development Permit application
  - Information to be used to come up with surety amount for the reclamation bond.
- May 31, 2023 – Screening plan submitted. Staff met with Four Points Engineering and Surveying to discuss the stormwater retention pond.
- June 5, 2023 – Comments on the screening plan were provided back to the applicant's attorney.
- June 15, 2023 – The SUP is issued.
- June 20, 2023 – Deadline to have information detailed in the May 23<sup>rd</sup> letter.
- June 28, 2023 - Email sent to applicant's attorney stating the required information had not been submitted and the deadline was extended to July 7, 2023.
- July 3, 2023 – Staff spoke to the applicant's attorney on the phone. It was expressed to him that at this point it does not appear that the applicant can come into compliance with the conditions of approval and that a Cease and Desist will most likely be issued on August 1, 2023.
- July 12, 2023 - that the deadlines in the SUP needed to be amended and that the amendment application would have to go to Planning Commission and the Board of County Commissioners. A submittal checklist was provided.
- July 24, 2023 – Four Points Engineering and Surveying submits plans for the stormwater retention pond for review and approval. An easement from the neighboring landowner is required to be able to complete the designed improvements.
- July 26, 2023 – Revised drawings for the septic permit submitted.
- Month of July – Ongoing conversations between staff and the applicant's attorney concerning the screening plan.
- August 2, 2023 – A Cease and Desist was issued. This was posted at the site in several locations as well as e-mailed and mailed. A Notice of Violation was also issued. This Notice had a deadline of August 15, 2023 to submit an application to amend the SUP.
- August 22, 2023 – Septic permit issued.
- August 24, 2023 - Email sent to applicant's attorney providing information on the screening plan, floodplain permitting, and bonding. This email also informed them that enforcement hearings had been scheduled with Planning Commission and the Board of County Commissioners.
- September 5, 2023 – Building permit for office structure submitted. Planning is not able to sign off on the building permit due to the current enforcement action.
- September 11, 2023 – Follow up email sent to the applicant's attorney asking for an update on the outstanding issues.



136 6<sup>th</sup> St., Suite 200  
Steamboat Springs, CO 80487  
970-879-2704  
[www.co.routt.co.us/Planning](http://www.co.routt.co.us/Planning)

## Special Use Permit

**Permit No.** PL20220003

**Project Name:** D&D Recycling Operation

**Permittee:** DUKSA FAMILY, LLC

**Property Owner:** DUKSA FAMILY, LLC

**Type of Use:** Special Use Permit - General

**Property Address:** 40025 BAKER WAY, ROUTT, CO 80487

**Legal Description:** TR IN SE4SE4 SEC 4-6-85 TR IN NE4NE4 SEC 9-6-85 TOTAL 3A

**Expiration Date:** September 27, 2032

### Conditions of Approval:

#### 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 8.
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 that 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. Permits will be assessed an Annual Fee in accordance with the Fee Schedule in Appendix B of the Routt County Zoning Regulations.
6. 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.

7. All exterior lighting shall be downcast and opaquely shielded.
8. Prior to the issuance of the permit, the permittee shall provide evidence of liability insurance in compliance with the County's Insurance and Surety Requirements policy then in effect. The certificate of insurance shall include all permit numbers associated with the activity and Routt County shall be named as an additional insured. Permittee shall notify the Routt County Planning Department of any claims made against the policy.
9. Accessory structures/uses associated with this permit may be administratively approved by the Planning Director, without notice.
10. 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 for 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.
11. The Permittee shall prevent the establishment and spread of weeds to surrounding lands, and comply with the most current version of the Colorado Noxious Weed Act and Routt County regulations for noxious weeds.

**Specific Conditions:**

12. The Special Use Permit (SUP) is valid for ten years provided it is acted upon within one year of approval. If no issues have been identified, the permit may be renewed administratively for an additional 10 years. The SUP shall be deemed to have automatically lapsed if the uses permitted herein are discontinued for a period of one (1) year.
13. The SUP is limited to uses and facilities presented in the approved project plan, including the uses and structures listed below. Accessory structures/uses associated with this permit may be administratively approved by the Planning Director, without notice.

Recycling Uses:

- Scrap metal
- Tires
- Batteries
- Used oil and other fluids

Structures

- One office buildings
  - 8' x 4.3' detached sign
14. Any additional uses or facilities that are not considered accessory to a recycling operation, including those listed below will be reviewed by Routt County Environmental Health and Planning Department staff to determine if a formal review will be required. If a formal review is required, such amendment shall be applied for in a new or amended application.

- Food waste collection for composting
  - General recycling of nonmetal household items
  - Other green processes
15. The operation shall meet or exceed accepted industry standards and Best Management Practices.
  16. Hours of operations shall be 7:00 a.m. to 7:00 p.m., 7 days per week.
  17. This permit is contingent upon the acquisition of and compliance with all applicable permits. The operation shall comply with all federal, state, and local laws. Copies of required permits or registrations shall be submitted to the Routt County Planning Department. Such permits and approvals include but are not limited to:
    - CDPHE Industrial Stormwater Permit
    - State Recycler registration (if required in the future based on current operations)
    - CDOT Access permit
  18. All annual submittals, as listed in #19 and #20 shall be submitted to the Routt County designee at [annualreports@co.routt.co.us](mailto:annualreports@co.routt.co.us).
  19. All regular reports required by any permitting agency shall be submitted to the Routt County designee, including but not limited to the annual stormwater permit report.
  20. The permittee shall provide quarterly reporting on types and volumes of diverted waste
  21. Any required permits from the Routt County Environmental Health, Public Works, or Building Department shall be obtained and any inspections completed by August 1, 2023.
  22. The proposed stormwater controls shall be installed by August 1, 2023.
  23. A Floodplain Development Permit for the storage of materials in the floodplain shall be obtained by December 31, 2022.
  24. A screening plan shall be developed by the Permittee to mitigate the visual impacts of the operation. Such screening plan shall be approved by the Planning Director and be implemented by August 1, 2023.
  25. Prior to issuance, the six flags will need to be removed from the site.
  26. If, after inspection by the Weed Supervisor, weeds are determined to be present on-site, the following conditions will take effect. If it is determined that these conditions will take effect, a technical correction to the permit shall take place indicating that these conditions are valid.
    - Permittee shall submit an annual report prior to December 31<sup>st</sup> of each year to document all weed control measures undertaken, including herbicides used, rates of application, and total gallons of mixed herbicide solution applied.
    - Permittee shall conduct an annual inventory of weeds on site each spring including but not limited to species identification and map locations. Inventory shall be submitted to Routt County Weed Program (RCWP) supervisor within 30 days of conducting the survey.
  27. The soil type shall be taken into consideration in the design of the retention pond to ensure



that stormwater does not exfiltrate directly to the groundwater and river.

28. A soil test shall be conducted by an independent third party to determine if there has been any hydro carbon contamination, with particular focus on the southern portion of the site. Test results shall be submitted to the Planning Department. If contamination has been determined to exist, the applicant shall be required to develop a remediation plan approved by Routt County to address any contamination and ongoing testing.
29. The permittee shall enter into a Reclamation Agreement for cleanup and reclamation of the site as appropriate for the site's continued use as an industrially zoned property. Such agreement shall require surety in the amount of 150% of the cost of cleanup and reclamation of the site. Surety shall be in compliance with the Routt County Insurance and Surety policy and shall be in favor of Routt County. Items covered under this requirement include, soil testing, soil remediation, tire and trailer removal, and miscellaneous items.

**Permit Issued by the Routt County Board of Commissioners:**

*Tim Redmond* 6/13/2023  
Tim Redmond, Chair Date

ATTEST:

*Jenny L. Thomas*  
Jenny L. Thomas, Routt County Clerk and Recorder

ACCEPTED:

*JR* 5/31/23  
Joe Duksa, Permittee Date



## NOTICE OF VIOLATION

**Sent via Certified Mail Return Receipt Requested, email, and hand delivered**

August 2, 2023

Duksa Family, LLC  
PO Box 771048  
Steamboat Springs, CO 80477-1048  
[joe.ddenterprises@gmail.com](mailto:joe.ddenterprises@gmail.com)

Subject: **PL20220003 – 40025 BAKER WAY, ROUTT, CO 80487**

Dear Mr. Duksa,

This letter is an official Notice of Violation for the permit and property referenced above. The Planning Department has determined that the uses and activities on the above described property constitute a violation of the conditions of approval of PL20220003 and the Routt County Zoning Regulations as noted below. A copy of your permit is attached and the Routt County Zoning Regulations are available on the Planning Department section of the Routt County website, available [here](#).

This notice is to inform you that the permit and property listed above is in violation of the approved conditions and adopted regulations. The noted violations are as follows:

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**Condition**

21. Any required permits from the Routt County Environmental Health, Public Works, or Building Department shall be obtained and any inspections completed by August 1, 2023.
  22. The proposed stormwater controls shall be installed by August 1, 2023.
  23. A Floodplain Development Permit for the storage of materials in the floodplain shall be obtained by December 31, 2022.
  24. A screening plan shall be developed by the Permittee to mitigate the visual impacts of the operation. Such screening plan shall be approved by the Planning Director and be implemented by August 1, 2023.
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A Cease and Desist has been posted at the site and is attached for your review. You must stop all work and operations at the site. An application to amend your Special Use Permit to bring your operation and property into compliance with the Zoning Regulations must be submitted by August 15, 2023. No work is to take place until an amended Special Use Permit with new deadlines to complete the required improvements is approved and issued by the Board of County Commissioners.

Planning Department staff will work with you on the plan for compliance; however, the Planning Department has no discretion in this matter if you fail to correct the identified violations.

If you fail to submit an application to amend your permit by the above deadline, this office will schedule the matter before the Planning Commission and the Board of County Commissioners for possible revocation of your permit. Pursuant to Section 1.6 of the Routt County Zoning Regulations and Colorado law, the County is authorized to enforce its Zoning Regulations through declaratory and injunctive relief or civil penalties under C.R.S. § 30-28-124 and § 30-28-124.5. Beginning with the date of this notice (or an earlier date when the violation first occurred), each day that the violation continues shall be deemed a separate offense.

Please notify the Planning Department of your intent to comply or if you bring your property into compliance before the deadline established in this notice. Feel free to contact me directly at (970) 879-2704 or our office with any questions about this notice.

Thank you for your co-operation in this matter.

Sincerely,



Alan Goldich  
Senior Planner  
[agoldich@co.routt.co.us](mailto:agoldich@co.routt.co.us)

Encl: Special Use Permit PL20220003  
Cease and Desist

CC: Brent Starnes, Hoskin, Farina & Kampf, P.C, [ateske@hfak.com](mailto:ateske@hfak.com)  
Andrew Teske, Hoskin, Farina & Kampf, P.C, [bstarnes@hfak.com](mailto:bstarnes@hfak.com)  
Kristy Winser, Routt County Planning Director

## NOTICE TO CEASE AND DESIST

To: **Duksa Family, LLC**

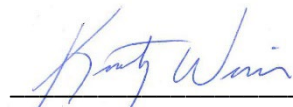
Address: **40025 Baker Way**

PIN: **937044003**

You are undertaking certain operations on the above identified property in violation of Special Use Permit PL20220003.

You are to cease all work and operations at the site until you have amended your Special Use Permit to allow for additional time to construct and permit the improvements required by your Special Use Permit. No work is to take place until an amended Special Use Permit with new deadlines to complete the required improvements is approved and issued by the Board of County Commissioners.

Dated: **August 2, 2023**



By: Kristy Winser

Routt County Planning Director