

**ARCHULETA COUNTY PROCEEDINGS  
BOARD OF COUNTY COMMISSIONERS**

The Board of County Commissioners held a Special Meeting on June 28, 2016 noting County Commissioner Michael Whiting, Clifford Lucero and Steve Wadley, County Administrator Bentley Henderson, County Attorney Todd Starr and Tonya McCann, Paralegal present. The meeting was being held at the Extension Building at the County Fair Grounds.

Chairman Whiting called the Special Meeting to order at 1:32 p.m.

**New Business**

**A. Resolution 2016-40 Implementing Stage One Fire Ban**

Thad McKain, Director of the Emergency Management Archuleta County Sheriff's Office submitted a resolution to implement a fire ban in Archuleta County effective 12:01 a.m. Wednesday, June 29, 2016 for the areas south of US Highway 160 and west of US Highway 84 until such time as conditions are safe to lift the ban. **Commissioner Wadley moved to approve Resolution 2016-40 implementing a Stage I Fire Ban Effective Wednesday, June 29, 2016 at 12:01 a.m. for the acres south of US Highway 160 and west of US Highway 84 until such time as conditions are safe to lift the ban. Commissioner Lucero seconded the motion.** Chairman Whiting asked for public comment. Commissioner Lucero commented on how important it is to the community to have fireworks. He asked Mr. McKain how and when the fire ban could be lifted. He also stated that it was important to know the Board of Commissioners was very aware of safety of the community. They take the advice of the EOC Director. **The motion carried unanimously.**

Chairman Whiting recessed the Special Meeting and convened the Land Use Regulation Hearing at 1:38 p.m.

**Land Use Regulation Hearing**

**A. Two Rivers Gravel Pit Major Sand & Gravel Permit**

**Section 11, T33N, R2W**

Chairman Whiting set out the agenda to be followed for the Hearing.

Staff Report

- Applicant Presentation
- Commissioner Questions
- Break
- Public Comment
- Close Public Hearing
- Applicants' response
- Commissioners' Deliberation
- Decision

Chairman Whiting then read the process he would follow for those wishing to make comments. Each person must sign in, give their name and address and hold their comments to 3 minutes.



County Attorney Starr asked the Board if each Commissioner would take the time to acknowledge whether or not they had previously talked to anyone in the community about this project and if they felt their decision here today would be altered due to that conversation/s.

- Commissioner Lucero said he had talked to about 10 people but when they brought up the gravel pit he explained that he could not talk about it. He felt that did not affect his decision today.
- Commissioner Wadley said since this issue was made available to the public, the Board sits in a Quasi-Judicial position on this issue. He has told people he could not talk about it and felt he could make an unbiased decision today.
- Chairman Whiting said that people who did try and talk to him were stopped and told that he was unable to discuss this. He too thought he could make an unbiased decision.

Chairman Whiting asked County Attorney Starr for directions to the Board. He wanted to state that the Board was pre-empted from making their decisions regarding water, wildlife or transportation as these were regulated by the State of Colorado.

### **County's Presentation**

Chairman Whiting swore in Planning Manager John Shepard for testimony.

Chairman Whiting asked Planning Manager Shepard to present his staff report.

Planning Manager Shepard submitted the request for the Two Rivers Gravel Pit Major Sand & Gravel Permit. C&J Gravel Products, Inc. of Durango, CO represented by Nathan Barton, Wasteline, Inc. applied for a Major Sand & Gravel Permit for the proposed Two Rivers Pit to be located on property owned by the James A. Constant Jr. Revocable Trust and Leila B. Constant Revocable Trust to be located in Sections 10 & 11, T33N, R2W at 12500 County Road 500. The applicant proposed to construct and operate a sand and gravel mining and processing facility on approximately 62.6 acres of the 100 acres of the property east of the San Juan River. This property was at the junction of the San Juan and Rio Blanco Rivers approximately 12.5 miles south of the Town of Pagosa Springs. Colorado Division of Reclamation, Mining & Safety had approved a permit area limited to 102.6 acres east of County Road 500 of which 62.6 acres may be disturbed, primarily east of the river. Given the area to be permitted, operations are anticipated to extend 25-30 years at which time it could be extended.

Proposed haul routes on County primary roads would distribute traffic approximately 72% northbound on County Road 500 to Cascade/Buttress/South Pagosa Blvd, 18% on County Road 500 through the Town of Pagosa Springs and 10 miles southbound on County Road 500.

The Planning Commission voted unanimously against the application at a Special Meeting on June 8, 2016. At their Regular Meeting on March 1, 2016 and during the Hearing at that meeting, the Board of County Commissioners continued the noticed Public Hearing to May 17, 2016. At the May 17, 2016 meeting the item was opened as a Hearing and continued until today at this Special Meeting on June 28, 2016.

Planning Manager Shepard stated that the applicant felt the proposal complied with Section 9.1.6.1 Compatibility with Surrounding Uses because the surrounding areas are primarily agricultural, forestry or industrial. Gravel pits are a permitted use in Agricultural areas. Surrounding neighbors had been notified.



Traffic was a major concern on County Road 500, including both the adequacy of the existing road network and the sufficiency of proposed mitigation. A Traffic Impact Assessment was included in the application including an analysis of the projected traffic volumes, along with information on existing road widths, curves, intersections and surface drainage. Applicants would control dust on access roads, stripped areas and excavations per Section 9.1.6.2 Air Quality. Section 9.1.6.3 Visual Amenities and Scenic Quality were discussed. Section 9.1.6.4 Crushing, Processing, Batching and Hot Mix Operations were discussed.

**Recommendation and Findings**

Should the Board approve the Two Rivers Gravel Pit Major Sand & Gravel Permit, staff recommended the following findings:

- a. The application does meet the performance standards for a Major Sand & Gravel Permit, in Section 9.1.6 of the Archuleta County Land Use Regulations, and
- b. The application does meet the review criteria for a Conditional Use Permit, in Section 3.2.3.4 of the Archuleta County Land Use Regulations, and
- c. The application does meet the required findings for a Conditional Use Permit in Section 3.2.3.5 of the Archuleta County Land Use Regulations.

Planning Manager Shepard stated if the Board concluded today that, based on evidence provided the Applicants had not met the goals and objectives of the Land Use Regulations, then staff would recommend the Board of County Commissioners find that:

- a. The application does NOT meet the performance standards for a Major Sand & Gravel Permit, in Section 9.1.6 of the Archuleta County Land Use Regulations, and
- b. The application does NOT meet the review criteria for a Conditional Use Permit, in Section 3.2.3.4 of the Archuleta County Land Use Regulations, OR
- c. The application does NOT meet the required findings for a Conditional Use Permit in Section 3.2.3.5 of the Archuleta County Land Use Regulations.

Should the Board of County Commissioners Deny the Two Rivers Gravel Pit Major Sand & Gravel Permit, for reasons including the following considerations:

1. The Application is not compatible with surrounding non-agricultural uses, as required by Section 9.1.6.1(1).
2. Upon review by the County Engineer, mitigation for truck traffic through residential, recreational or commercial areas has not been adequately addressed, as required by Section 9.1.6.1(2).
3. Impacts of the site and processing equipment on adjacent surrounding residences is not mitigated to the extent reasonably possible, as required by Sec. 9.1.6.1(3), 9.1.6.3 and 9.1.6.4.
4. Air quality impacts of dust from the site or public and private access roads have not been adequately mitigated, as required by sec. 9.1.6.2 and 9.1.6.4.
5. The Application does not meet the Environmental Standards in Section 5.2.
6. The Application does not meet the Infrastructure Standards in Section 5.3.
7. The Application does not meet the Site Development Standards in Section 5.4.

Planning Manager Shepard stated that completed his presentation.



Commissioner Lucero asked Planning Manager Shepard to give more detail regarding when the traffic restrictions that had been lifted from that road. Planning Manager Shepard talked about primary roads being maintained twice a year and secondary roads being maintained once a year. This was an arterial road handling through traffic. Planning Manager Shepard did say that historical records were found stating that the County did accept the road with restrictions. Former Public Works Director had stated in the past that the restrictions were lifted by court order but staff could not locate the document.

### **Applicant's Presentation**

Chairman Whiting asked the Applicant for their presentation. He swore in John Gilleland, Attorney for C&J, Nathan Barton, the Engineer for Wasteline, Inc., Michael Olson and Daniel Gregory. They all spoke in favor of the gravel pit. They felt the gravel met all specifications and the quality was good. They thought the County would receive revenue from this pit being located in Archuleta County. It would save people money from driving back and forth to Durango for gravel. Mr. Olson spoke to the safety concerns and sight distances and stated their plan for that.

Chairman Whiting recessed the Hearing at 3:30 p.m. for a break and reconvened at 3:46 p.m.

### **Public Comments**

Chairman Whiting asked for public comments.

- Howard Strahlendorf of 300 Cascade Ave. said he was speaking for three families living on this road. He knows there were restrictions put on the road when it was donated to the County. There were signs for years, but the County had removed them. The road was set for a specific weight limit and no commercial trucks.
- Jean Strahlendorf of 300 Cascade Ave. was a professor and was concerned about the particulates being increased by activity on this road.
- Mary Kurt-Masson of 123 Cascade Ave. said they had purchased the property because it was on a dirt road. She too commented on the fact there was a weight restriction on the road.
- Gary Wapels of 2980 Meadows Dr. wanted to correct a couple of statements. It was said that there are already trucks coming and going several times a day in and out of the County. The mitigation would be impossible to keep up. The mitigation was based on credit for gravel purchase. How many credits are going to be needed to repair a \$3 million road?
- Jacqui Hill of 12800 County Road 500 was the Attorney for Diamond T Ranch. The ranch had been situated there for over 100 years. It too brings in revenue to the community just like the gravel pit will. They did not feel it met the environmental standards needed. This was an industrial use being allowed in an agricultural area.
- Devin Joslin an Engineer representing Diamond T Ranch also spoke against the pit. His main concern was the mitigation of the road as it deteriorates.
- Erin Lehmer a Wild Life Biologist from Fort Lewis College spoke about her concern of the impact to the wild life in the area.
- Rob Podall Attorney for the Diamond T Ranch also spoke against the pit.



- Beth Tollesen of 706 Buttress Avenue was a realtor and had already talked to people who felt it would make a difference in their buying a home in this area. They also felt it would lower the values of their homes.
- Karen Bynum of 949 Buttress Avenue said that she had heard a statement about how much money the pit would bring into Archuleta County. She was hoping that this suggestion of a \$1 million in revenue would not cloud their judgment of the Board in making a good decision.
- Barbara Kennedy of 605 Cool Pines Drive was speaking on behalf of Timber Ridge Ranch HOA. They were concerned too about the road deteriorating and no money to repair it.
- Ron Christenson of 3056 Meadows Drive was a builder and a realtor. He had done research and most people would only save about \$800 by buying local gravel if they were building a home. He did not think the benefit outweighed the problems it would cause.
- Allen Roth of 23 Poplar Court said he was speaking for the Pagosa Lakes Property Owners and they were very concerned about the maintenance of the road and the traffic in family oriented neighborhoods.
- J.R. Ford of 452 Pagosa Street reminded the Board again about the action taken in 1991 when the property owners gave the County Cascade Ave. and the scales located on Trujillo Road in exchange for maintenance of the road. There was a weight limit put on the road. He asked the Board to produce the document that lifted this weight limit. He had the proof where the limit was placed. Trujillo Road was also a prescriptive easement road and the Board should be careful about decisions regarding it. He reminded the Board too that the threats made today were not accurate, it is not an “all or nothing” project. There is more gravel in the County, this is not the only pit available.
- Bill Hudson of 268 Hermosa Street said he had been writing for the *Pagosa Daily Post* for 12 years not and he had never covered a decision this hard that this Board was going to have to make. Yes, people need building materials, but we also need, calm, quiet neighborhoods. This will impact the quality of life and roads.
- Tom Zillhaver of 203 Bradley Place wanted to talk about South Pagosa Blvd. It is a road where you see a lot of animals, people riding bikes, walking dogs and walking. This will be a major concern.
- Rod Hubbard of 634 Antero Dr. spoke about his concern of the road. It was going to leave the road in very bad shape.
- Dianne Killen of 1186 Lake Forest Circle said there was nothing she could say against the pit that hadn't already been said. She did ask if any of the Board members would be benefiting from the pit. She knew this was an election year.
- Robert Mengler of 1256 Buttress Avenue was concerned about the added traffic and damage to the road.
- Jac Constant of 12500 County Road 500 was also concerned about what would happen to the road. It would not hold up with all that heavy traffic.

Chairman Whiting recessed the Hearing at 4:56 p.m. and reconvened the Hearing at 5:01 and closed public comments.

County Attorney Starr stated that during the recess someone from the audience had handed one of the Commissioners a letter to the editor. The note was not read and it would not be used in making a determination today since it was submitted improperly.



Commissioner Wadley asked County Engineer Robert Perry to respond and expand on the things in the packet regarding the impact on the roads.

Chairman Whiting swore in County Engineer Perry.

County Engineer Perry said that he had submitted an analysis to the Board by way of the packet for today's hearing. Commissioner Wadley asked then for him to explain whether the statement made in the analysis was true. It said that a loaded gravel truck had the same impact on a road as 2,100 cars. The answer was, yes it was true.

**Commissioner Wadley moved to deny the Two Rivers Gravel Pit Major Sand and Gravel Permit. Commissioner Lucero seconded the motion.**

Chairman Whiting asked that since there was a motion and a second on the floor that each Commissioner state their vote and reason behind their vote.

- Commissioner Wadley stated that he denied the application due to his concern of the impact on roads and he didn't believe proper evidence was given for adequate mitigation.
- Commissioner Lucero thanked everyone present for being cooperative and showing up. It was a difficult decision and since he had taken office in 2009 he had always had health, safety and welfare of the most importance. When I review the Land Use Regulations and specifically the performance standards set for in 9.1.6 I find that the applicant has failed to demonstrate compliance. For instance, in 9.1.6.1(2) concerning truck traffic and mitigation, I find the applicant has failed to demonstrate that the traffic impact will be adequately mitigated. And I could go on and on through the applicable performance standards specifically itemizing other standards which I determine are either not being met or that the proposed mitigation is not sufficient such that the standard is not satisfied. Since this project is reviewed as a Conditional Use Permit, there, if I were to vote in favor of the applicant I would have to make the necessary findings set forth in 3.2.3.5. I cannot do that. Also, 3.2.3.5(1), I believe that the use would be operated and maintained in a way that is detrimental to the public health, safety or welfare of this community and that's huge to me. I also think after considering the evidence that I could not make the finding required 3.2.3.5 as I do believe that the proposed use is not compatible with adjacent use. I know we need grave. Quality of life is important to all of us. I cannot vote for this because of health, safety and welfare of community.
- Commissioner Whiting thanked everyone for coming. He said for all the same citations as Commissioner Lucero stated, he cannot vote for this gravel pit. He is proud of all the work the Board has done and community has done. A lot of us live on dusty roads. It's one thing to make rules and another to enforce them. Finally, with any development you ask does it pencil for us, does it pay for itself? He was not prepared to subsidize any company.

**Chairman Whiting said the motion carried unanimously.**

**Chairman Whiting stated that for clarification he was calling for the vote again. The motion carried unanimously with all three Commissioners voting "Aye".**

Planning Manager Shepard asked that the Board ask staff to come back at the earliest time possible with a resolution memorializing what happened here today. The Board agreed.



Chairman Whiting closed the Land Use Hearing at 5:35 p.m. and with no further business coming before the Board, the Special Meeting was adjourned at 5:35 p.m.



Tonya McCann  
County Clerk and Recorder, Deputy

Approved this <sup>16<sup>th</sup></sup> ~~19<sup>th</sup>~~ day of <sup>August</sup> ~~July~~, 2016.

  
Michael Whiting, Chairman



**ADJOURNMENT OF THE SPECIAL BOCC MEETING**

**This Special Meeting at CSU Extension Building at the Archuleta County  
Fairgrounds, 344 US Highway 84, Pagosa Springs**  
All Regular and Special Meetings are Recorded





3

**RESOLUTION NO. 2016 - 40**

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, COLORADO, IMPLEMENTING FIRE RESTRICTIONS, AUTHORIZING THE SHERIFF TO ALLOW EXCEPTIONS, AND AUTHORIZING THE SHERIFF OR THE BOARD OF COUNTY COMMISSIONER TO IMMEDIATELY AMEND, RESCIND, OR ENACT FIRE RESTRICTIONS FOR THE YEAR 2016**

**WHEREAS**, the Board of County Commissioners of Archuleta County is empowered under C.R.S. §30-11-107(e) to provide for the management of the business and concerns of the County; and

**WHEREAS**, pursuant to C.R.S. §30-15-401(1)(n.5), the Board of County Commissioners of Archuleta County has the power to adopt an ordinance to ban open fires to a degree and in a manner that is deemed necessary to reduce the danger of wildfires; and

**WHEREAS**, the Board adopted Ordinance 2003-8 on June 5, 2003 entitled “An Ordinance of the Board of County Commissioners of Archuleta County, Colorado, Providing for the Enforcement of Fire Bans Within the Unincorporated Areas of Archuleta County, Colorado”; and

**WHEREAS**, the criteria for a Stage 1 Fire Restriction is set forth in the “2016 Southwest Annual Operating Plan” and the “Southwest Colorado Fire Danger Operating Plan”; and

**WHEREAS**, the Board of County Commissioners of Archuleta County has received competent evidence that there exists a high danger of forest, grass or other wildland fires within the unincorporated areas of Archuleta County; and

**WHEREAS**, the Archuleta County Sheriff and the Fire Chiefs of the County’s Fire Protection Districts have requested that the Board impose Stage 1 Fire Restrictions for all private lands in unincorporated areas of Archuleta County, south of Highway 160 and west of Highway 84; and

**WHEREAS**, the Town of Pagosa Springs, the Southern Ute Indian Tribe, San Juan National Forest, are also in the process of instituting Stage 1 restrictions within the same boundaries; and

**WHEREAS**, the enactment of this Resolution is necessary for the preservation of public health, safety, and welfare throughout Archuleta County.





**NOW, THEREFORE, BASED UPON THE EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC MEETING HELD THIS 28<sup>th</sup> DAY OF JUNE 2016, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, COLORADO THAT:**

1. Fire restrictions are necessary on all private lands in unincorporated areas of Archuleta County south of US Highway 160 and west of US Highway 84 to the New Mexico State line and **will go into effect at 12:01 a.m. on Wednesday, June 29, 2016.**
2. Fire restrictions prohibiting open burning, burn barrels, and agricultural burning in the unincorporated areas of Archuleta County south of Highway 160 and west of Highway 84, are hereby enacted. Provided, further, this resolution is not intended to have and force or effect on land owned by the United States Forest Service, or the Southern Ute Indian Tribe.
3. The following acts are prohibited until further notice:
  - (a) Building, maintaining, attending, or using a fire, campfire, coal or wood burning stove, any type of charcoal fueled broiler, or open fire of any type in undeveloped areas. The fire restrictions do not include charcoal fires in suitable containers or gas grills for barbecues at private residences or fires within designated campground pits with protective grates; however, such fires should not be left unattended and should be fully extinguished after use. The fire restriction also does not include camp stoves, grills, or lights fueled by bottled gas, or pressurized liquid fuel, specifically designed for the purpose of camp cooking or illumination which shall not be left unattended and shall be fully extinguished after use.
  - (b) Smoking, except within an enclosed vehicle or building, in a developed recreation site, or while stopped in an area at least 3 feet in diameter that is barren or cleared of all flammable vegetation.
  - (c) Using explosive material (i.e., fireworks, blasting caps, or any incendiary device which may result in the ignition of flammable material). The fire restrictions do not include local community fireworks displays that have been, or may be, approved and permitted by the Archuleta Country Sheriff.
  - (d) Operating or using any internal combustion engine is prohibited unless it is equipped with a working spark-arresting device. The device must be properly installed, maintained and must meet either:
    - i. Dept. of Agriculture, Forest Service Standard 5100-1a; or
    - ii. Appropriate Society of Automotive Engineers (SAE) recommended practice J355(b) and J350(a)



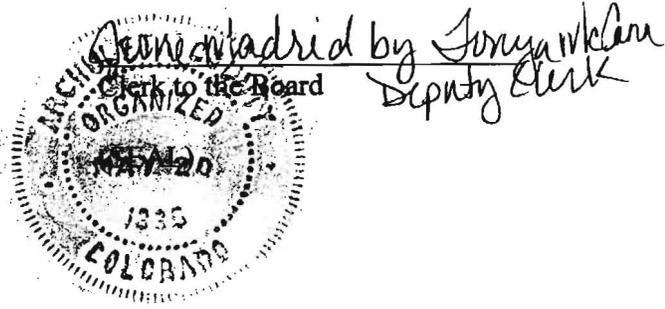


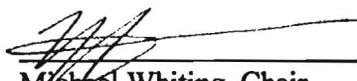
- (e) The following requirements apply to all welding and cutting operations. Firefighting hand tools shall be readily available. During welding, a combination of fire extinguishers with a combined capacity of 40 lbs or a pressurized water supply shall be immediately accessible. When welding or cutting in an area that a fire may ignite, a person shall be designated as a fire watch. The area surrounding the work shall be inspected at least one (1) hour after the hot work is completed.
  - (f) Oil and gas operations are required to comply with the requirements of the Colorado Oil and Gas Conservation Commission Rules for Fire Prevention and Protection, Rule 606A.
  - (g) Any gas escaping from a well during drilling operations shall be, so far as practical, conducted to a safe distance from the well site and flammable vegetation, and burned. Operators are also required to notify Archuleta County Combined Dispatch at 970-731-2160 in advance of any flaring when it is anticipated, and in all other cases as soon as possible, but no more than two hours after the flaring has occurred.
5. The fire restrictions hereby proclaimed are effective June 29, 2016 at 12:01 a.m. and shall remain in effect until amended or rescinded by the Archuleta County Sheriff or the Archuleta Board of County Commissioners.
  6. The Sheriff may grant written permission to allow open fires upon request, provided that it is proven to their satisfaction that such exception to the fire restrictions does not constitute a high danger of forest, grass, or other wildland fire; or
  7. For the year 2016, the Archuleta Board of County Commissioners or the Archuleta County Sheriff may immediately amend, rescind, or instate any fire restrictions within unincorporated Archuleta County with a public statement as to the parameters of the fire restriction. The fire restriction can be immediately effective. A discussion of the fire restriction will be promptly scheduled for a regular Board of County Commissioners meeting, at which time; the Board shall either confirm or rescind the said restriction.

**APPROVED AND ADOPTED this 28th day of June, 2016.**

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
ARCHULETA COUNTY, COLORADO



  
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Michael Whiting, Chair













