# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**AgendaTitle:**
Planning Commission Recommendation; Tomichi Pit Sand and Gravel Operation; Tomichi Materials, LLC / Gunnison Valley Partners, LLC; Amendment to LUC #2012-10; Resolution Approving an Amendment to Land Use Change Permit No. 2012-10, Tomichi Pit Sand and Gravel Operation, Gunnison Valley Properties, LLC

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:** **Term Ends:** **Grant Contract #:**

**Summary:**
Request for amendment to Permit for changes to berming/landscaping.

**Fiscal Impact:**

**Submitted by:** Neal Starkebaum **Submitter's Email Address:** nstarkebaum@gunnisoncounty.org

**Finance Review:** ○ Required ● Not Required

Comments:

Reviewed by: Discharge Date:

**County Attorney Review:** ● Required ○ Not Required

Comments:

Reviewed by: GUNCOUNTY1\atrezise Discharge Date: 3/11/2015 Certificate of Insurance Required Yes ○ No ●

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 3/12/2015

○ Consent Agenda ● Regular Agenda ○ Worksession Time Allotted: 10 minutes

Agenda Date: 3/17/2015 Follow Up Agenda Date:

*Revised April 2013*

Gunnison County Community
Development Department
Offices of Planning, Building and Environmental Health
221 N. Wisconsin St., Ste. D
Gunnison, CO 81230
Phone: (970) 641-0360 Fax: (970)641-8585

March 9, 2015

**TO:** **Board of County Commissioners**
**Matthew Birnie, County Manager**
**David Baumgarten, County Attorney**

**FROM:** **Neal Starkebaum**
**Assistant Director**

**SUBJECT:** **Tomichi Pit Sand and Gravel Operation– Gunnison Valley Properties, LLC**
**LUC #2012-10 Permit**
**2015 Amendment Request**

Attached, please find the March 6, 2015 Planning Commission Recommendation and the Board of County Commissioners draft Resolution.

**BOARD OF COUNTY COMMISSIONERS**
**OF THE COUNTY OF GUNNISON, COLORADO**

**RESOLUTION NO. 2015-___**

**A RESOLUTION APPROVING AN AMENDMENT TO**
**LAND USE CHANGE PERMIT NO. 2012-10**
**TOMICHI PIT SAND AND GRAVEL OPERATION**
**GUNNISON VALLEY PROPERTIES, LLC**

**WHEREAS,** Gunnison Valley Properties, LLC, represented by Ben Langenfeld, Project Engineer, Greg Lewicki and Associates, requested an amendment to the land use change permit approved by the Board of County Commissioners, Board Resolution No. 2014-3, January 7, 2014, recorded with the Gunnison County Clerk and Recorder, Reception No. 625105, January 9, 2014, for the Tomichi Pit Sand and Gravel Operation, to be used for the production of construction materials such as sand, gravel, concrete, and asphalt. This includes the mining pit, internal roads, berms, sediment ponds, processing area, office area, fuel storage, stockpiles, and all other operation related development.

As part of the County approval, berms to provide visual screening of the processing plant area were incorporated into the overall berming/landscaping visual mitigation plan for the project.

This amendment includes the alteration of the berm for the processing plant. In the approved permit, the processing plant berm is 30 feet tall and vegetated with shrubs and a dryland seed mix. The applicant requests to change the details of the berm as follows: reduce the height of the earthen berm to 10 feet tall, and add pine or other conifer trees, of at least 15 feet in height and add aspen trees, of at least 10 feet in height, to the berm. The new berm/landscaping plan will provide a functional equivalent to the previously approved berm/landscaping. Additionally, the trees incorporated into the Signal Peak berm will be moved to the top of the berm to increase the berm's effectiveness. Maps showing the proposed changes were submitted by the applicant.

In addition, the applicant proposes to relocate Air/Noise Monitor #1 from the north side of Highway 50 to the south side of the highway, and relocate Air/Noise Monitor #3 from the current location, onto the applicant's property. This will eliminate any issues with access to the monitoring sites. Maps showing the proposed change of locations were submitted by the applicant; and

**WHEREAS**, after a review of the application and all information, documentation and testimony related to it, the Gunnison County Planning Commission did, on March 6, 2015 forward a Recommendation of unanimous approval of the requested amendment to the Board of County Commissioners with certain Findings and Conditions:

**FINDINGS:**

**1.** The proposed changes to the berm/landscaping for the processing plant area provides a functional equivalent from the original approved berm/landscaping, in providing visual screening/buffering of the processing plant area, as submitted by the applicant, February 27, 2015.

**2.** Relocation of Air/Noise Monitors #1 and #3 will appropriately place the monitors on the applicant's property, as shown on Map 4.1 – Initial Mining Tomichi Pit, submitted February 27,

2015, prepared by Ben Langenfeld, P.E., Greg Lewicki and Associates.

**3.** The approval shall be memorialized by Board Resolution. Approval shall not be effective until the Resolution is recorded with the Gunnison County Clerk and Recorder.

**4.** This review and Recommendation incorporates, but is not limited to, all the documentation submitted to the County and included within the Planning Office file relative to this application, including all exhibits, references and documents, as included therein.

**CONDITIONS:**

**1.** This permit is limited to activities described within this application, and as depicted on the site plans submitted as part of this application. Expansion or change of this use will require either an application for amendment of this permit, or submittal of an application for a new permit, in compliance with applicable requirements of the *Gunnison County Land Use Resolution.*

**2.** A Development Improvement Agreement, subject to approval by the Gunnison County Attorney, shall be executed by the Board of County Commissioners, addressing the change in berming and landscaping, identified on the modified berm/landscaping plans: *Map 5.2 - Berm Designs, Landscape Plan – Tomichi Pit, and Landscape Plan 2 – Tomichi Pit,* submitted February 27, 2015, prepared by Ben Langenfeld, P.E., Greg Lewicki and Associates.

**~~3.~~** A performance bond, letter of credit or other means of surety, acceptable to the Board of County Commissioners, shall be required to cover the cost of the berming/landscaping, as identified on the modified berm/landscaping plans: *Map 5.2 - Berm Designs, Landscape Plan – Tomichi Pit, and Landscape Plan 2 – Tomichi Pit,* submitted February 27, 2015, prepared by Ben Langenfeld, P.E., Greg Lewicki and Associates, prepared by Ben Langenfeld, P.E., Greg Lewicki and Associates; such costs as detailed by the applicant's engineer, and that said surety is retained by Gunnison County.

**~~4.~~** The applicant shall maintain all landscaping at the Tomichi Pit over the life of the operation, including, but not limited to: replanting of dead vegetation (consistent with existing species - height/dbh at time of replacement) and irrigation system maintenance and repairs. And, any other regular maintenance required to ensure the viability of the landscaping, including noxious weed control.

**5.** No construction of the berms/landscaping shall be permitted until the Development Improvements Agreement is executed.

**6.** This approval is founded on each individual requirement. Should the applicant successfully challenge any such finding or requirement, this approval is null and void.

**7.** These permits may be revoked or suspended if Gunnison County determines that any material fact set forth herein or represented by the applicant was false or misleading, or that the applicant failed to disclose facts necessary to make any such fact not misleading.

**8.** The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.

**9.** Approval of this Plan is based upon the facts presented and implies no approval of similar use in the same or different location and/or with different impacts on the environment and community. Any such future application shall be reviewed and evaluated, subject to its compliance with current regulations, and its impact to the County.

**AND WHEREAS**, the Board of County Commissioners did receive and review the information within the Planning Commission's Recommendation, and considered it in evaluating this application;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Gunnison County, Colorado, that the amendment to Land Use Change Permit No. 2012-10, Tomichi Pit Sand and Gravel Operation, is hereby approved, subject to the conditions, as imposed by the Planning Commission;

**THIS APPROVAL** is affected noting that decision documentation includes, but is not limited to, the application and the entire Community Development Department Land Use Change Permit file relative to this application.

**THIS RESOLUTION AND THE APPROVAL GRANTED HEREBY** shall not be effective unless and until a copy is recorded in the Office of the Clerk and Recorder of Gunnison County.

**INTRODUCED** by Commissioner _____, seconded by Commissioner _____, and passed on this ___day of March, 2015.

**BOARD OF COUNTY COMMISSIONERS**
**OF THE COUNTY OF GUNNISON, COLORADO**

**By:** _____
Paula Swenson, Chairperson

**By:** _____
Phil Chamberland, Commissioner

**By:** _____
Jonathan Houck, Commissioner

**ATTEST:**

_____
Deputy County Clerk

| | |
|---|---|
| **TO:** | **Board of County Commissioners** |
| **FROM:** | **Planning Commission** |
| **SUBJECT:** | **Planning Commission Recommendation<br>Amendment to LUC #2012-10<br>Tomichi Pit Sand and Gravel Operation<br>Gunnison Valley Properties, LLC** |
| **PREPARED BY:** | **Neal Starkebaum, Assistant Director<br>Community Development Department** |
| **PLANNING COMMISSION MEETING DATE:** | **March 6, 2015** |
| **APPLICANT:** | **Gunnison Valley Properties, LLC<br>Tomichi Materials, LLC/Gunnison Valley Partners LLC<br>864 W. South Boulder Road, Suite 200<br>Louisville, CO 80027** |
| **REPRESENTED BY:** | **Ben Langenfeld, Project Engineer<br>Greg Lewicki and Associates<br>11541 Warrington Court<br>Parker, CO 80138** |

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At its regular meeting on March 6, 2015, the Planning Commission unanimously approved the following Recommendation, as amended, moved by Jeremy Rubingh and seconded by Tom Venard:

**PROJECT BACKGROUND/REQUEST:**
Gunnison Valley Properties, LLC, represented by Ben Langenfeld, Project Engineer, Greg Lewicki and Associates, is requesting an amendment to the land use change permit approved by the Board of County Commissioners, Board Resolution No. 2014-3, January 7, 2014, recorded with the Gunnison County Clerk and Recorder, Reception No. 625105, January 9, 2014, for the Tomichi Gravel Pit, to be used for the production of construction materials such as sand, gravel, concrete, and asphalt. This includes the mining pit, internal roads, berms, sediment ponds, processing area, office area, fuel storage, stockpiles, and all other operation related development.

As part of the County approval, a berm to provide visual screening of the processing plant area was incorporated into the overall berming/landscaping visual mitigation plan for the project.

This amendment includes the alteration of the berm for the processing plant. In the approved permit, the processing plant berm is 30 feet tall and vegetated with shrubs and a dryland seed mix from the reclamation plan. The applicant requests to change the details of the berm as follows: reduce the height of the earth berm to 10 feet tall, and add pine or other conifer trees, at least 15 feet in height and aspen trees, at least 10 feet in height, to the berm. The new berm/landscaping plan will provide a functional equivalent to the previously approved berm/landscaping. Additionally, the trees incorporated into the Signal Peak berm will be moved to the top of the berm to increase the berm's effectiveness. Maps showing the proposed change were submitted by the applicant.

In addition, the applicant proposes to relocate Air/Noise Monitor #1 from the north side of Highway 50 to the south side of the highway, and relocate Air/Noise Monitor #3 from the current location, onto the applicant's property. This will eliminate any issues with access to the monitoring sites. Maps showing the proposed changes of locations were submitted by the applicant.

**DOCUMENTS INFORMING THIS REVIEW AND ACTION:**
This review and recommendation incorporates, but is not limited to, all the documentation submitted to the County and included within the Planning Office file relative to this application, including all exhibits, maps, references and documents.

**WORK SESSIONS:**
The Planning Commission conducted work sessions on the Preliminary/Final plan on:
January 23, 2015.
March 6, 2015.

**JOINT PUBLIC HEARING:**
The Planning Commission and the Board of County Commissioners conducted a joint public hearing on March 6, 2015, at that time several members of the public were present:

- Area residents Mary Kay Fry and Arron MacLennan had questions and comments regarding the changes to the berm, including the design of the berm, elements of the landscaping, and final reclamation.
- Butch Clark and Bob Gydesen noted concerns from past flash flooding in the area.

All testimony, both written and oral, is hereby incorporated as part of this record of review and evaluation.

**FINDINGS:**
The Commission finds that:

1. The proposed changes to the berm/landscaping for the processing plant area provides a functional equivalent from the original approved berm/landscaping, in providing visual screening/buffering of the processing plant area, as submitted by the applicant, February 27, 2015.

2. Relocation of Air/Noise Monitors #1 and #3 will appropriately place the monitors on the applicant's property, as shown on Map 4.1 – Initial Mining Tomichi Pit, submitted February 27, 2015, prepared by Ben Langenfeld, P.E., Greg Lewicki and Associates.

3. The approval shall be memorialized by Board Resolution. Approval shall not be effective until the Resolution is recorded with the Gunnison County Clerk and Recorder.

4. This review and Recommendation incorporates, but is not limited to, all the documentation submitted to the County and included within the Planning Office file relative to this application, including all exhibits, references and documents, as included therein.

**RECOMMENDATION:**
The Gunnison County Planning Commission, having reviewed all the documentation submitted to the County and included within the Planning Office file relative to this Preliminary/Final Plan application, site observations and public testimony and having reached the above cited Findings, recommends to the Board of County Commissioners that LUC #2012-10, Gunnison Valley Properties, LLC, Tomichi Pit - 2015 Amendment be approved with the following conditions:

**CONDITIONS:**

1. This permit is limited to activities described within this application, and as depicted on the site plans submitted as part of this application. Expansion or change of this use will require either an application for amendment of this permit, or submittal of an application for a new permit, in compliance with applicable requirements of the *Gunnison County Land Use Resolution.*

2. A Development Improvement Agreement, subject to approval by the Gunnison County Attorney, shall be executed by the Board of County Commissioners, addressing the change in berming and landscaping, identified on the modified berm/landscaping plans: *Map 5.2 - Berm Designs, Landscape Plan – Tomichi Pit, and Landscape Plan 2 – Tomichi Pit,* submitted February 27, 2015, prepared by Ben Langenfeld, P.E., Greg Lewicki and Associates.

3. A performance bond, letter of credit or other means of surety, acceptable to the Board of County Commissioners, shall be required to cover the cost of the berming/landscaping, as identified on the modified berm/landscaping plans: *Map 5.2 - Berm Designs, Landscape Plan – Tomichi Pit, and Landscape Plan 2 – Tomichi Pit,* submitted February 27, 2015, prepared by Ben Langenfeld, P.E., Greg Lewicki and Associates, prepared by Ben Langenfeld, P.E., Greg Lewicki and Associates; such costs as detailed by the applicant's engineer, and that said surety is retained by Gunnison County.

4. The applicant shall maintain all landscaping at the Tomichi Pit over the life of the operation, including, but not limited to: replanting of dead vegetation (consistent with existing species - height/dbh at time of replacement) and irrigation system maintenance and repairs. And, any other regular maintenance required to ensure the viability of the landscaping, including noxious weed control.

5. No construction of the berms/landscaping shall be permitted until the Development Improvements Agreement is executed.

6. This approval is founded on each individual requirement. Should the applicant successfully challenge any such finding or requirement, this approval is null and void.

7. These permits may be revoked or suspended if Gunnison County determines that any material fact set forth herein or represented by the applicant was false or misleading, or that the applicant failed to disclose facts necessary to make any such fact not misleading.

8. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.

9. Approval of this Plan is based upon the facts presented and implies no approval of similar use in the same or different location and/or with different impacts on the environment and community. Any such future application shall be reviewed and evaluated, subject to its compliance with current regulations, and its impact to the County.