

CITY PLANNING COMMISSION AGENDA

ITEM NO:

STAFF: MICHAEL SCHULTZ

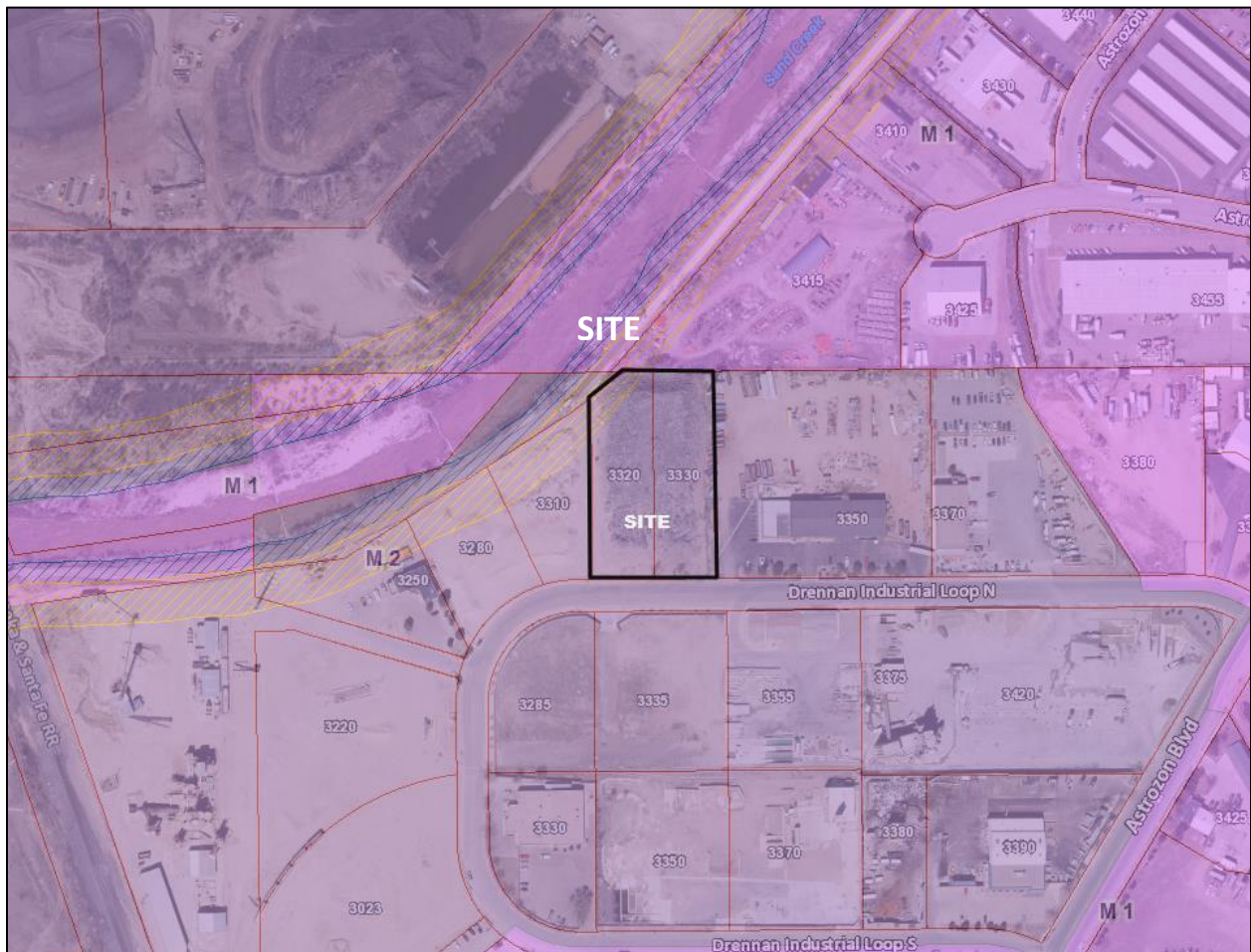
FILE NO:

CPC UV 14-00126 – QUASI-JUDICIAL
CPC UV 14-00126-CD – QUASI-JUDICIAL

PROJECT: 3320/3330 DRENNAN INDUSTRIAL LOOP

APPLICANT: NEIL OLESKY

OWNER: NEIL OLESKY



PROJECT SUMMARY:

1. **Project Description:** This project is a use variance to allow a landfill on an approximately 2 acre property zoned M2/SS (Heavy Industrial with Streamside Overlay), accompanied by a request to approve a Certificate of Designation permitting a solid waste site and facility for asphalt shingles located at 3320 and 3330 Drennan Industrial Loop. City Planning Commission's review and approval of a Certificate of Designation is required by City Code Section 6.3.105. The requirement for a Certificate of Designation for landfills is set forth in Colorado Revised Statutes Title 30, Article 20, Part 1 and structured by the Colorado Code of Regulations 6 CCR 1007-2, Part 1.

The Use Variance Development Plan for this proposal demonstrates the existing shingle stockpile located on the north half of the site, the finished grade after burial of the shingles, a cross section of the excavated depth and the proposed revegetation of the site.

2. **Applicant's Project Statement:** **(FIGURE 1).**
3. **Planning and Development Department's Recommendation:** Approve the use variance and accompanying development plan **(FIGURE 2)** and approve the Certificate of Designation regarding the closure and post-closure plan related to the landfilling of the asphalt shingles.

BACKGROUND:

1. **Site Address:** 3320 & 3330 Drennan Industrial Loop
2. **Existing Zoning/Land Use:** M-2/SS (Heavy Industrial with Streamside Overlay)/Large Recycling Collection Center (Recycled Shingles)
3. **Surrounding Zoning/Land Use:**
North: M-1 (Light Industrial)/Contractor's Yard
South: M-2/Large Recycling Center and Concrete Batch Plant
East: M-2/Contractor's Yard (same owner as applicant)
West: M-2/Mining (Sand Storage)
4. **Comprehensive Plan/Designated 2020 Land Use:** Employment Center & Candidate Open Space
5. **Annexation:** Cormack's Addition #2, November 1974
6. **Master Plan/Designated Master Plan Land Use:** Drennan Industrial Park
7. **Subdivision:** Drennan Industrial Center Filing No. 12
8. **Zoning Enforcement Action:** Yes, for the illegal conversion of the property and recycling use within the streamside overlay. The enforcement action will remain open until the property owner complies with the Closure Plan which is part of the acceptance of the Certificate of Designation.
9. **Physical Characteristics:** The site is relatively flat but generally slopes toward Sand Creek. Large overhead transmission lines cross through the northern portion of the property.

STAKEHOLDER PROCESS AND INVOLVEMENT:

The public notification process for the Certificate of Designation is set by State Statute and requires additional notification above the City's notification process. State requires notification thirty (30) days in advance of the City Planning Commission meeting; this notification was originally conducted in 2015 when the proposal was first heard by City Planning Commission.

At the time of the initial notification in 2015 Staff eleven (11) notifications were mailed out to property owners located within 500 feet of the property (at that time the typical notification

distance); Staff received only one (1) comment indicating that the proposed stockpiling of the shingles would be unsightly and would negatively impact

Staff has reached out to that property owner in advance of the public hearing to determine if they have any opposition to burying the shingles on the site; as of the writing of this staff report staff has not received a response.

Staff sent out notification to property owners located within 1,000 feet of the property were notified in addition to the site being posted regarding this request.

The site will be posted and postcards mailed prior to the Planning Commission's public hearing.

ANALYSIS OF REVIEW CRITERIA / MAJOR ISSUES / COMPREHENSIVE PLAN AND MASTER PLAN CONFORMANCE:

1. Background:

The proposal is to allow a landfill for the burial of household asphalt shingles on a site located 3320 and 3330 Drennan Industrial Loop. The request requires approval of a use variance to allow a landfill involving a site with streamside overlay and as well as acceptance of the Closure Plan and ultimately the issuance of a Certificate of Designation as required by the State. The proposed landfill will bury only the shingles on site, no additional shingles can be accepted by the property owner.

The applicant originally received approval from the City Planning Commission in September of 2015, see record of decision (**FIGURE 3**). The original plan demonstrated moving the shingle pile away from Sand Creek and piling them on the southern half of the site; the pile would have been covered with clean soil and vegetated with native grass seed. The shingle pile would have been approximately 28 feet in height with a portion of the site excavated down slightly.

The applicant did not follow through with the technical revisions outlined for final approval to that plan which required additional coordination with Colorado Springs Utilities regarding the proposed encroachment of the shingle stockpile into an existing 100 foot electric easement as well as avoiding impacts to a utility vault near the proposed stockpile area.

The owner later determined that burial of the shingle pile would still allow some use of the subject property, but primarily only for open storage; the site cannot be used for the place of a building or structure as prohibited by Colorado Department of Public Health and Environment.

By State law, the proposed land use requires a Certificate of Designation. Under City Code Sections 6.3.104 and 6.3.105, review of a Certificate of Designation for any operation processing solid waste within the City limits falls under the authority of the City Planning Commission. The property is encumbered by the City streamside overlay, which prohibits "Landfills"; therefore, the use variance is required to be approved along with the Certificate of Designation. Because the proposed plan has changed from the 2015 proposal, staff is recommending City Planning Commission take action on both the use variance and the Certificate of Designation.

The subject property is surrounded by both M-1 and M-2 zone districts with Sand Creek skirting the northwest corner of the property. The Drennan Industrial Park is considered one of the heavier industrial areas within the City. Uses include several metal recycling operations, a concrete batch plant, and a pre-cast concrete manufacturer.

2. Use Variance

The property is zoned M-2/SS (Heavy Industrial with Streamside Overlay), City Zoning normally would allow a "Landfill" use within the M-2 zone, however the streamside overlay prohibits landfill as a use when streamside is present. The streamside overlay is located on the northerly extent of the property and is encumbered with only the outer streamside buffer. The applicant is proposing to move and bury the existing shingle stockpile to the south end of the site, away from Sand Creek.

The original operation intended for the site was for a large recycling center accepting asphalt shingles primarily from roofing contractors. The applicant's tenant planned to accept asphalt shingles, shred the shingles on-site, and sell the material for reuse. However, the tenant abandoned the operation and left the property owner with the existing stockpile of shingle materials. The original operation as a "Recycling Processing Center" was also a prohibited use within the streamside overlay; so that operation was also operating illegally until it was abandoned.

The applicant has explored alternatives to rectifying the stockpile including hauling the 32,000 tons of shingles to an existing designated landfill; however he cites the high costs of hauling stockpile to a local landfill and paying the disposal fees. The applicant also explored the possibility of selling the asphalt shingles to a third party for recycling or reuse; however the Colorado Department of Transportation (along with many other States) recently determined that mixing asphalt shingles with asphalt road mix do not pass minimum paving standards. Thus the applicant is seeking approval of the use variance and allowance to bury and landfill onsite until a viable market for the reuse of the shingles becomes available.

The following criteria must be met in order for a use variance to be granted:

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to the property or class of uses in the same zone so that a denial of the petition would result in undue property loss; and
2. That such variance is necessary for the preservation and enjoyment of a property right of the petitioner; and also
3. That such variance will not be detrimental to the public welfare or convenience nor injurious to the property or improvements of other owners of property.

Staff supports the proposed Use Variance to allow a landfill within an M-2/SS (Heavy Industrial with Streamside Overlay) zone citing that the applicant has exceptional and unique circumstances relating to the site. The site is encumbered by the streamside overlay, which forces the streamside requirements, including certain prohibited land uses that would normally be allowed within the M-2 zone district. The overlay encumbers approximately the northerly 40 feet of the site of the subject lots which are 388 feet in depth; creating an extraordinary condition on the site that does not apply to a majority of the other properties within the Drennan Industrial Park.

The granting of the Use Variance would give the property owner the opportunity the ability to utilize the site, even for minimal uses since the State prohibits the construction of buildings over the landfill area.

Staff believes the proposal will not be detrimental to the public welfare or injurious to other property owners citing that CDPHE has reviewed the Closure Plan, along with the requested waivers, and supports the proposal pending local approval of the Certificate of Designation.

3. Factors to be considered by the City Planning Commission outlined in City Code 6.3.106

City Code Section 6.3.106 outlines four (4) factors to be considered by the City Planning Commission when reviewing the Certificate of Designation. The following list, including the justifications that the Land Use Review Division considered while reviewing the application, contains the relevant review factors:

- A. *The effect that the solid waste disposal (shingle landfill) site or facility will have on the surrounding property, taking into consideration the types of processing to be used, surrounding property uses and values, and wind and climatic conditions.*

The site is located within an industrial area and surrounded by various industrial and commercial users. The proposal is to utilize approximately 45,000 square feet of land area to landfill the shingle stock pile; a 15 to 20 foot hole will be dug burying the shingles; the pile would then be covered with three (3) feet of dirt cover and revegetated with seed mulch. The shingles are not considered putrescible, or liable to decay, and will not emit any type of odors.

- B. *The convenience and accessibility of the solid waste (shingle landfill) disposal site or facility to potential users*

The site is located in the southeast portion of the City, the reclamation plan for the property is that no additional solid waste/shingles will be accepted at the location.

- C. *The ability of the applicant to comply with the health standards and operating procedures required by this article and by the "Solid Waste Disposal Sites And Facilities Act", part 1 of article 20 of title 30, Colorado Revised Statutes, and the regulations promulgated thereunder by the Colorado Department of Public Health and Environment found at 6 CCR 1007.2.*

The Colorado Department of Public Health and Environment (CDPHE) has been provided the Closure and Post-Closure Plan for the landfill; the City notes that the health standards and operating procedures required by the State will need to be followed (see conditions from the CDPHE).

- D. *Recommendations by the various departments and divisions of the Health Department.*

Various other departments reviewed the plan including Colorado Springs Utilities, City Engineering, City Fire, El Paso County Development Services and El Paso County Public Health; all departments have generally accepted the proposal. City Fire asks that the site be fenced and/or signed notifying the presence of the landfill so as to keep Fire apparatus from driving over the buried shingles.

4. Review by Colorado Department of Public Health and Environment

The applicant has followed the processes for posting and review required by the Colorado Department of Public Health and Environment (CDPHE). The applicant has submitted for

review a Closure Plan and Post-Closure Care and Maintenance Plan (**FIGURE 4**) for review to both the City and the CDPHE, which has provided a recommendation of approval from the State with conditions (**FIGURE 5 and FIGURE 6**). The CDPHE has also provided additional clarification explaining their basis for supporting the requested waivers (**FIGURE 7**).

CDPHE lists seven conditions within the two attached letters regarding the Closure and Post Closure Plan if the application is approved; those conditions are outlined below:

Condition 1: If the CD (Closure Document) Application is approved, closure activities must be completed within 180 calendar days following the CD application approval.

Condition 2: A Construction Quality Assurance/Quality Control Plan (CQAQC Plan) must be completed and submitted to CDPHE within 60 days of completion of closure activities.

Condition 3: If the CD Application is approved, the Applicant must work with the Division in drafting, finalizing, and executing an environmental covenant.

Condition 4: The Applicant must submit a closure and post-closure finance assurance cost estimate to the Division for review and approval within thirty (30) calendar days following approval of the CD Application. If the estimate is accepted, the Applicant must execute the assurance within sixty (60) calendar days. The Applicant must also submit a new cost estimate to the Division for review and approval at least every five (5) years.

Condition 5: The Applicant must also comply with all relevant federal, state and local regulations, including, but not limited to, the requirements of the Division of Water Resources, the Water Quality Control Division, and the Air Pollution Control Division.

Condition 6: The Applicant must comply with the Closure and Post Closure Plan and any future Division approved conditions, including both Division approved amendments to the Closure and Post Closure Plan and Division approved stand-alone plans necessary to comply with the Solid Waste Act and Regulations. The Division reserves the right to make unilateral modifications to the Closure and Post Closure Plan language and conditions at any time after consultation with the City of Colorado Springs.

Condition 7: If the CD Application is approved, a revised waiver request shall be submitted outlining the following: 1) name and company of the Certified Asbestos Building Inspector (CABI) that will provide the required training to the Qualified Project Monitor (QPM); 2) a resume detailing the asbestos contaminated soil management experience of the CABI; and 3) the curriculum for the QPM training by the CABI.

a. Waiver Requests

The applicant requests four (4) waivers, outlined in Appendix C of the closure document. The requests include a waiver to install a groundwater monitoring system, another for maintenance and operation of a leachate collection system, a waiver for the installation of a gas monitoring system and lastly a waiver for the direct experience for a QPM (Qualified Project Monitor). The Colorado Department of Public Health and Environment supports the requested waivers (see **FIGURES 5, 6 & 7**), however the CDPHE defers these matters to the local municipality regarding the final determination to accept the waivers through the support of Certificate of Designation.

The Closure and Post Closure Plan demonstrates the groundwater tests that have been conducted on the site using four (4) piezometers; the results of those tests are outlined

within the Plan. It generally shows the highest groundwater reading occurred at 5855 feet and the lowest at 5843; the excavated area will stay a minimum of five (5) feet from the average water table (see Sheet 3 of the plans).

b. Utility Comments

Colorado Springs Utilities has reviewed the modified plan and is satisfied that it will not impact the electric transmission line that runs along the norther 1/3 of the property. The prior plan to stockpile the shingles had some concerns and issues to not encroach into the 100 foot electric easement for the transmission line, this plan shows the burial of the shingles to be entirely outside of the easement.

Additionally the Environmental Services division of Colorado Springs Utilities has also reviewed the Closure Plan and generally supports the proposal along with CDPHE's position and required oversight of the landfill.

5. Conformance with the City Comprehensive Plan:

The 2020 Land Use Plan within the Comprehensive Plan indicates the site is within an Employment Center. The proposed landfill use is consistent with the Employment Center designation; landfills again are permitted use within M-2 zone district. The project is consistent with and conforms to the Comprehensive Plan.

Policy LU 801: Locate New Employment Activities within Mixed-use Centers

Locate concentrated employment activities within designated mixed-use centers whenever possible. Employment centers will be designed for basic employment uses including light manufacturing, offices, corporate headquarters, as well as other uses of similar character. Include a variety of complementary uses, such as business services, lodging for business travelers, convenience retail, childcare, restaurants, and multifamily housing. Employment activities that cannot be located within mixed-use centers due to large, single employer campuses, or environmental, industrial, and operational constraints, should be planned within the context of complimentary mixed uses in nearby activity centers.

6. Conformance with the Area's Master Plan:

This property is part of the Drennan Industrial master plan, the plan is considered implemented. The use would be in conformance of the master plan for heavy industrial land uses.

7. Conditions of Approval and Options Regarding the Waivers

The Commissioners may add additional conditions to either the requested Use Variance or place conditions of approval as part of the Certificate of Designation. The applicant is required to commence and complete the Closure Plan within 180 days of the Certificate of Designation (CD). The State will also require the applicant to post a financial assurance in amount to complete the landfilling of the shingles as well as requiring post-closure reporting of the landfill.

Additionally the Planning Commission may accept, deny or accept with conditions any of the four (4) requested waivers within the Closure Plan and outlined within this report. If the Commission denies any or all four (4) of the waivers, the Closure Plan will need to be updated and brought back before City Planning Commission for review.

STAFF RECOMMENDATION:

ITEM: CPC UV 14-00126: USE VARIANCE

Approve the use variance and the development plan for the proposed landfill in the M-2/SS zone district based on the finding the request complies with the review criteria in City Code Section 7.5.803.B (Criteria for Granting a Use Variance) and Section 7.5.502.E (Development Plan Review Criteria) pending the following technical and informational modifications:

Conditions of Approval

1. Show/note fencing and/or place signage around the landfill area notifying the presence of the landfill (to ensure emergency vehicles are aware the area may not be suitable for heavy apparatus).

ITEM: CPC UV 14-00126-CD: CERTIFICATE OF DESIGNATION

Approve the Closure Document as presented allowing the City to issue a Certificate of Designation for an asphalt shingle landfill located at 3320 and 3330 Drennan Industrial Loop based upon the finding that the request complies with the factors outlined in City Code Section 6.3.106; approval is subject to the conditions of approval outlined by the Colorado Department of Public Health and Environment (CDPHE).