

## RESOLUTION

**RE: APPROVE SITE SPECIFIC DEVELOPMENT PLAN AND USE BY SPECIAL REVIEW PERMIT, USR19-0001, FOR A USE PERMITTED AS A USE BY RIGHT, ACCESSORY USE OR USE BY SPECIAL REVIEW IN THE COMMERCIAL OR INDUSTRIAL ZONE DISTRICTS (LAND REMEDIATION BUSINESS INCLUDING A SHOP, OFFICE TRAILER, TRUCK AND EQUIPMENT STORAGE), PROVIDED THAT THE PROPERTY IS NOT A LOT IN AN APPROVED OR RECORDED SUBDIVISION PLAT OR PART OF A MAP OR PLAN FILED PRIOR TO ADOPTION OF ANY REGULATIONS CONTROLLING SUBDIVISIONS IN THE A (AGRICULTURAL) ZONE DISTRICT – QUOKKA INVESTMENTS COLORADO, LLC**

**WHEREAS**, the Board of County Commissioners of Weld County, Colorado, pursuant to Colorado statute and the Weld County Home Rule Charter, is vested with the authority of administering the affairs of Weld County, Colorado, and

**WHEREAS**, the Board of County Commissioners held a public hearing on the 24th day of April, 2019, at the hour of 10:00 a.m., in the Chambers of the Board, for the purpose of hearing the application of Quokka Investments Colorado, LLC, 9202 Minsmere Circle, Spring, Texas 77379, for a Site Specific Development Plan and Use by Special Review Permit, USR19-0001, for a Use permitted as a Use by Right, Accessory Use or Use by Special Review in the Commercial or Industrial Zone Districts (land remediation business including a shop, office trailer, truck and equipment storage), provided that the property is not a lot in an approved or recorded subdivision plat or part of a map or plan filed prior to adoption of any regulations controlling subdivisions in the A (Agricultural) Zone District, on the following described real estate, being more particularly described as follows:

Lot B of Recorded Exemption, RECX17-0154; being  
part of the S1/2 of Section 22, Township 6 North,  
Range 64 West of the 6th P.M., Weld County,  
Colorado

**WHEREAS**, at said hearing, the applicant was present, and

**WHEREAS**, Section 23-2-230 of the Weld County Code provides standards for review of said Use by Special Review Permit, and

**WHEREAS**, the Board of County Commissioners heard all of the testimony and statements of those present, studied the request of the applicant and the recommendation of the Weld County Planning Commission and all of the exhibits and evidence presented in this matter and, having been fully informed, finds that this request shall be approved for the following reasons:

1. The submitted materials are in compliance with the application requirements of Section 23-2-260 of the Weld County Code.
2. It is the opinion of the Board of County Commissioners that the applicant has shown compliance with Section 23-2-230.B of the Weld County Code as follows:

CC:PL(AS/TP),PW(mm/TJJ),ZH(LL),  
CA(BC),APPL  
06/03/19

2019-1474  
PL2652

- A. Section 23-2-230.B.1 -- The proposed use is consistent with Chapter 22 and any other applicable code provisions or ordinance in effect.
- 1) Section 22-2-20.G.2 (A.Policy 7.2) states: *"Conversion of agricultural land to nonurban residential, commercial and industrial uses should be accommodated when the subject site is in an area that can support such development and should attempt to be compatible with the region."* The proposed use is limited to 1.5 acres of the property, with agricultural uses expected to continue on the remaining forty-six (46) acres.
  - 2) Section 22-2-20.I.3 (A.Policy 9.3) states: *"Consider mitigation techniques to address incompatibility issues. Encourage techniques and incentives, such as but not limited to clustered development and building envelopes, to minimize impacts on surrounding agricultural land."* The access is onto a local, dirt road, but a Road Maintenance Agreement and limits on daily traffic can mitigate damage to infrastructure. Gravel for dust suppression, adequate screening, and limiting noise levels will also help to limit impacts to neighbors. These and other Development Standards and the Conditions of Approval will assist in mitigating the impacts of the facility on the adjacent properties and ensure compatibility with surrounding land uses and the region.
- B. Section 23-2-230.B.2 -- The proposed use is consistent with the intent of the A (Agricultural) Zone District. Section 23-3-10, Intent of the A (Agricultural) Zone District states, in part *"The A (Agricultural) Zone District is also intended to provide areas for the conduct of USES by Special Review which have been determined to be more intense or to have a potentially greater impact than USES Allowed by Right. This allows the applicant to apply for a Use by Special Review permit."*
- 1) Section 23-3-40.S states: *"Any use permitted as a Use by Right, an ACCESSORY USE, or a Use by Special Review in the COMMERCIAL or industrial zone districts, provided that the property is not a Lot in an approved or recorded subdivision plat or lots parts of a map or plan filed prior to adoption of any regulations controlling subdivisions. PUD development proposals shall not be permitted to use the special review permit process to develop."* This allows the applicant to apply for a commercial use. The request is for a use that is permitted as a Use by Right in the C-3 (Business Commercial) Zone District under Section 23-3-230.B.13 COMMERCIAL or private PARKING LOTS.
- C. Section 23-2-230.B.3 -- The uses which will be permitted will be compatible with the existing surrounding land uses. The surrounding area includes rural residential homes, agriculture, cattle grazing, oil and gas production, and hog farms. Current USRs in the immediate area include tractor trailer parking and maintenance (USR12-0067), hog farm (SUP-391), dairy (USR-1340 and AMUSR-820), mineral reserve development

- (MUSR12-0016), and auto/farm equipment repair (USR-1491). Six (6) letters in opposition of this project were received from surrounding property owners. Neighbors cited disruption of a quiet, rural lifestyle, decrease in property values, increase in traffic and noise, disruption of local wildlife, incompatibility with the residential character of the neighborhood, commercial use of prime agricultural land, not wide enough access to turn in a semi-truck without swinging wide, dust bothering cattle, and loss of mountain views replaced by commercial parking. These concerns have been taken into consideration in the creation of appropriate mitigation.
- D. Section 23-2-230.B.4 -- The uses which will be permitted will be compatible with future development of the surrounding area, as permitted by the existing zoning, and with the future development as projected by Chapter 22 of the Weld County Code and any other applicable code provisions or ordinances in effect, or the adopted Master Plans of affected municipalities. The site is not located within a three (3) mile referral area of any municipality, nor is it located within any existing Intergovernmental Agreement Area (IGA) of a municipality.
- E. Section 23-2-230.B.5 -- The application complies with Chapter 23, Articles V and XI, of the Weld County Code. The site is not located in a floodplain, geohazard area, MS4 district, or airport overlay district. Building Permits issued on the lot will be required to adhere to the fee structure of the County-Wide Road Impact Fee, County Facility Fee and Drainage Impact Fee Programs.
- F. Section 23-2-230.B.6 -- The applicant has demonstrated a diligent effort to conserve prime agricultural land in the locational decision for the proposed use. The proposed facility is located on approximately one (1) acre of Prime (Irrigated) soil, per the 1979 Soil Conservation Service Important Farmlands of Weld County Map. The applicant intends to continue farming the remaining forty-six (46) acres of the property.
- G. Section 23-2-230.B.7 -- There is adequate provisions for the protection of the health, safety, and welfare of the inhabitants of the neighborhood and County. An adequate Landscape and Screening Plan, limits on number of trucks, limited commercial development envelope, Design Standards (Section 23-2-240, Weld County Code), Operation Standards (Section 23-2-250, Weld County Code), Conditions of Approval and Development Standards can ensure that there are adequate provisions for the protection of health, safety, and welfare of the inhabitants of the neighborhood and County. This recommendation is based, in part, upon a review of the application materials submitted by the applicant, other relevant information regarding the request, and responses from referral entities.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Weld County, Colorado, that the application of Quokka Investments Colorado, LLC, for a Site Specific Development Plan and Use by Special Review Permit, USR19-0001, for a Use permitted as a Use by Right, Accessory Use or Use by Special Review in the Commercial or Industrial Zone Districts (land remediation business including a shop, office trailer, truck and equipment storage), provided that the property is not a lot in an approved or recorded subdivision plat or part of a map or plan filed prior to adoption of any regulations controlling subdivisions in the A (Agricultural) Zone District, on the parcel of land described above be, and hereby is, granted subject to the following conditions:

1. The Planning Commission recommendation for approval is conditional upon the following:
  - A. An Improvements Agreement for road maintenance and future improvement triggers is required for off-site improvements at this location. Road maintenance includes, but is not limited to, dust control and damage repair to specified haul routes. The Agreement shall include provisions addressing engineering requirements, submission of collateral, and testing and approval of completed improvements.
  - B. Submit a Landscape and Screening Plan, including a plan for irrigation of landscape materials.
  - C. The map shall be amended to delineate the following:
    - 1) All sheets of the map shall be labeled USR19-0001.
    - 2) The attached Development Standards.
    - 3) The map shall be prepared in accordance with Section 23-2-260.D of the Weld County Code.
    - 4) Delineate the trash collection areas. Section 23-3-350.H of the Weld County Code addresses the issue of trash collection areas.
    - 5) Delineate the existing and proposed landscaping and screening from existing residential properties and right-of-way in accordance with Section 23-2-240.A.10.
    - 6) Delineate the site lighting in accordance with Section 23-3-50.G and Section 23-2-160.U.6 of the Weld County Code.
    - 7) All signs shall be shown on the map and shall adhere to Chapter 23, Article IV, Division 2 and Appendices 23-C, 23-D and 23-E of the Weld County Code.

- 8) The map shall delineate the parking area for the vendors, customers, and employees in accordance with Appendix 23-A and Appendix 23-B of the Weld County Code.
  - 9) The applicant shall show and label all recorded easements on the map by book and page number or reception number and date on the site plan.
  - 10) County Road 66 is a gravel road and is designated on the Weld County Functional Classification Map as a local road which requires 60 feet of right-of-way at full buildout. The applicant shall delineate and label on the site map or plat the future and existing right-of-way (along with the documents creating the existing right-of-way) and the physical location of the road. All setbacks shall be measured from the edge of right-of-way. This road is maintained by Weld County.
  - 11) The applicant shall show and label the approved tracking control on the site plan (recycled asphalt or road base on all driving/parking surfaces).
  - 12) The applicant shall show and label the entrance gate, if applicable. An access approach that is gated shall be designed so that the longest vehicle (including trailers) using the access can completely clear the traveled way when the gate is closed. In no event shall the distance from the gate to the edge of the traveled surface be less than 35 feet.
  - 13) The applicant shall show and label a 30-foot minimum access, a minimum turning radii of 60 feet, and utility easement to provide legal access to the parcel on the site plan, if applicable.
  - 14) The applicant shall show and label the drainage flow arrows.
  - 15) The applicant shall show and label the parking and traffic circulation flow arrows showing how the traffic moves around the property.
2. Upon completion of Condition of Approval #1 above, the applicant shall submit one (1) paper copy and one (1) electronic copy (.pdf) of the map for preliminary approval to the Weld County Department of Planning Services. Upon approval of the plat the applicant shall submit a Mylar map along with all other documentation required as Conditions of Approval. The Mylar map shall be recorded in the office of the Weld County Clerk and Recorder by the Department of Planning Services. The map shall be prepared in accordance with the requirements of Section 23-2-260.D of the Weld County Code. The Mylar map and additional requirements shall be submitted within one hundred twenty (120) days from the date of the Board of County Commissioners Resolution. The applicant shall be responsible for paying the recording fee.

SPECIAL REVIEW PERMIT (USR19-0001) - QUOKKA INVESTMENTS COLORADO, LLC  
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3. In accordance with Weld County Code Ordinance #2012-3, approved April 30, 2012, should the plat not be recorded within the required one hundred twenty (120) days from the date of the Board of County Commissioners Resolution, a \$50.00 recording continuance charge shall be added for each additional three (3) month period.
4. The Department of Planning Services respectfully requests a digital copy of this Use by Special Review, as appropriate. Acceptable format is a projected ESRI shapefile (.shp, .shx, .dbf, .prj) with a defined coordinate system (i.e., NAD 1983 UTM Zone 13N, WGS 1984, NAD 1983 HARN StatePlane Colorado North FIPS 0501 (US Feet)...etc.). This digital file may be sent to maps@co.weld.co.us.
5. Prior to Construction:
  - A. The approved access and tracking control shall be constructed prior to on-site construction. This site requires road base or recycled asphalt on all driving surfaces for tracking control
  - B. If more than one (1) acre is to be disturbed, a Weld County Grading Permit will be required.
6. The Use by Special Review Permit is not perfected until the Conditions of Approval are completed and the map is recorded. Activity shall not occur, nor shall any building or electrical permits be issued on the property, until the Use by Special Review map is ready to be recorded in the office of the Weld County Clerk and Recorder or the applicant has been approved for an early release agreement.

The above and foregoing Resolution was, on motion duly made and seconded, adopted by the following vote on the 24th day of April, A.D., 2019.

BOARD OF COUNTY COMMISSIONERS  
WELD COUNTY, COLORADO

ATTEST: Cather G. Meick  
Weld County Clerk to the Board

Barbara Kirkmeyer (NAY)  
Barbara Kirkmeyer, Chair

Mike Freeman (AYE)  
Mike Freeman, Pro-Tem

BY: Bethany Ford  
Deputy Clerk to the Board

Sean P. Conway (AYE)  
Sean P. Conway

APPROVED AS TO FORM:

Scott K. James (AYE)  
Scott K. James

County Attorney  
County Attorney

Steve Moreno (AYE)  
Steve Moreno

Date of signature: 6/3/19

**SITE SPECIFIC DEVELOPMENT PLAN  
USE BY SPECIAL REVIEW PERMIT  
DEVELOPMENT STANDARDS  
QUOKKA INVESTMENTS COLORADO, LLC  
USR19-0001**

1. A Site Specific Development Plan and Use by Special Review Permit, USR19-0001, is for a Use Permitted as a Use by Right, Accessory Use, or Use by Special Review in the Commercial or Industrial Zone Districts (land remediation business including a shop, office trailer, truck and equipment storage) provided that the property is not a lot in an approved or recorded subdivision plat or part of a map or plan filed prior to adoption of any regulations controlling subdivisions in the A (Agricultural) Zone District.
2. Approval of this plan may create a vested property right pursuant to Section 23-8-10 of the Weld County Code.
3. The hours of operation are 7:00 a.m. – 5:00 p.m., Monday – Friday.
4. The commercial operation shall be limited to 1.5 acres of the property.
5. The number of on-site, full-time employees shall be no more than two (2), as stated by the applicant.
6. The number of drivers accessing the site shall be no more than ten (10) per day, as stated by the applicant.
7. The number of commercial trucks parking on the site shall be limited to ten (10), as stated by the applicant.
8. The parking area on the site shall be maintained.
9. There shall be no outdoor storage of materials or equipment.
10. There shall be no fuel storage on the site related to the USR activity.
11. There shall be no Jake brakes used on the property.
12. All signs shall adhere to Chapter 23, Article IV, Division 2 and Appendices 23-C, 23-D and 23-E of the Weld County Code.
13. The landscaping and screening on the site shall be maintained in accordance with the approved Landscape and Screening Plan and Section 23-2-240.A.10 of the Weld County Code.
14. Sources of light shall be shielded so that light rays will not shine directly onto adjacent properties where such would cause a nuisance or interfere with the use on the adjacent properties in accordance with the plan. Neither the direct, nor reflected, light from any light source may create a traffic hazard to operators of motor vehicles on public or private streets. No colored lights may be used which may be confused with, or construed as, traffic control devices.

DEVELOPMENT STANDARDS (USR19-0001) - QUOKKA INVESTMENTS COLORADO, LLC  
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15. All liquid and solid wastes (as defined in the Solid Wastes Disposal Sites and Facilities Act, C.R.S. §30-20-100.5) shall be stored and removed for final disposal in a manner that protects against surface and groundwater contamination.
16. No permanent disposal of wastes shall be permitted at this site. This is not meant to include those wastes specifically excluded from the definition of a solid waste in the Solid Wastes Disposal Sites and Facilities Act, C.R.S. §30-20-100.5.
17. Waste materials shall be handled, stored, and disposed of in a manner that controls fugitive dust, fugitive particulate emissions, blowing debris, and other potential nuisance conditions. The applicant shall operate in accordance with Chapter 14, Article I, of the Weld County Code.
18. Fugitive dust should attempt to be confined on the property. Uses on the property should comply with the Colorado Air Quality Commission's Air Quality Regulations.
19. Soils shall not be stored on the site.
20. Adequate drinking, hand washing, and toilet facilities shall be provided for employees, at all times. For employees or contractors on site for less than two (2) consecutive hours a day, and two (2) or less full-time employees on site, portable toilets and bottled water are acceptable. Records of maintenance and proper disposal for portable toilets shall be retained on a quarterly basis and available for review by the Weld County Department of Public Health and Environment. Portable toilets shall be serviced by a cleaner licensed in Weld County, contain hand sanitizers and be screened from existing residential properties and public rights-of-way.
21. Any septic system located on the property must comply with all provisions of the Weld County Code, pertaining to On-site Wastewater Treatment Systems. A permanent, adequate water supply shall be provided for drinking and sanitary purposes.
22. The operation shall comply with all applicable rules and regulations of state and federal agencies and the Weld County Code.
23. The property owner or operator shall be responsible for controlling noxious weeds on the site, pursuant to Chapter 15, Article I and II, of the Weld County Code.
24. The access to the site shall be maintained to mitigate any impacts to the public road, including damages and/or off-site tracking.
25. There shall be no parking or staging of vehicles on public roads. On-site parking shall be utilized.
26. Any work that may occupy and/or encroach upon any County rights-of-way or easement shall acquire an approved Right-of-Way Use Permit prior to commencement.
27. The property owner shall comply with all requirements provided in the executed Improvements Agreement.

28. The Improvements Agreement for this site may be reviewed on an annual basis, which may include a site visit and possible updates.
29. The historical flow patterns and runoff amounts on the site will be maintained.
30. Building permits may be required, per Section 29-3-10 of the Weld County Code. Currently, the following have been adopted by Weld County: 2018 International Codes, 2006 International Energy Code, and 2017 National Electrical Code. A Building Permit Application must be completed and two (2) complete sets of engineered plans bearing the wet stamp of a Colorado registered architect or engineer must be submitted for review. A Geotechnical Engineering Report performed by a Colorado registered engineer shall be required or an Open Hole Inspection.
31. The property owner or operator shall be responsible for complying with the Design and Operation Standards of Chapter 23 of the Weld County Code.
32. Necessary personnel from the Weld County Departments of Planning Services, Public Works, and Public Health and Environment shall be granted access onto the property at any reasonable time in order to ensure the activities carried out on the property comply with the Conditions of Approval and Development Standards stated herein and all applicable Weld County regulations.
33. The Use by Special Review area shall be limited to the plans shown hereon and governed by the foregoing standards and all applicable Weld County regulations. Substantial changes from the plans or Development Standards, as shown or stated, shall require the approval of an amendment of the Permit by the Weld County Board of County Commissioners before such changes from the plans or Development Standards are permitted. Any other changes shall be filed in the office of the Department of Planning Services.
34. The property owner or operator shall be responsible for complying with all of the foregoing Development Standards. Noncompliance with any of the foregoing Development Standards may be reason for revocation of the Permit by the Board of County Commissioners.
35. **RIGHT TO EXTRACT MINERAL RESOURCES STATEMENT:** Weld County has some of the most abundant mineral resources, including, but not limited to, sand and gravel, oil, natural gas, and coal. Under title 34 of the Colorado Revised Statutes, minerals are vital resources because (a) the state's commercial mineral deposits are essential to the state's economy; (b) the populous counties of the state face a critical shortage of such deposits; and (c) such deposits should be extracted according to a rational plan, calculated to avoid waste of such deposits and cause the least practicable disruption of the ecology and quality of life of the citizens of the populous counties of the state. Mineral resource locations are widespread throughout the County and person moving into these areas must recognize the various impacts associated with this development. Often times, mineral resource sites are fixed to their geographical and geophysical locations. Moreover, these resources are protected property rights and mineral owners should be afforded the opportunity to extract the mineral resource.

36. The Weld County Right to Farm Statement, as it appears in Section 22-2-20.J.2 of the Weld County Code, shall be placed on the map and recognized at all times.

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