



## Huerfano County Board of County Commissioners Staff Report – Permit #23-015 CUP Bongiovanni BOCC Public Meeting

Meeting Date: June 13, 2023

### **Request Summary**

With this Application Ray Bongiovanni (the Applicant) requests the following:

A Conditional Use Permit pursuant to LUR Section §1.06 to operate a wood burial operation as part of a carbon credit offset program. Untreated wood would be buried on a roughly 17-acre portion of the parcel in phases, with each phase containing roughly two-acres on which pits of up to 20’ in depth would be dug and in which wood would be buried. Buried wood would be monitored for carbon or methane emissions. The site is addressed at County Rd. 351 #01940 (Parcel Number 41244).

Wood burial will be considered a landfill, and is also regulated through a State of Colorado Certificate of Designation and a State of Colorado Environmental Covenant.

The subject property is zoned Agricultural and contains approximately 60 acres. Zoning standards for this district are set forth in LUR Section §1.03.

### **Planning Commission Action:**

On 6/08/23, the Planning Commission reviewed this application and made the following recommendation to be heard at a public meeting by the BOCC:

*Recommend provisional approval for application 22-015 for the purpose of allowing applicant to pursue permitting with the State authority. At such time that applicant and State agency(ies) agree upon language, final versions of the easement, surety/performance bond provisions, and environmental covenant be submitted to the County for final review and approval.*

At the Planning Commission meeting on 6/08/23, Commissioners made the following requests:

1. Provide final language on the easement described.
2. Provide clarity on whether the bond will be a surety or performance bond and include the County is included as a beneficiary.
3. Provide final language on the environmental covenant. Ensure that covenant runs to the County as well as to the Operator as a condition of approval.

The following questions or issues were brought up by the Planning Commission:

1. Revegetation of sites may take longer than one year to re-establish cover crop. The Commission asked whether the crop would be irrigated and for how long. Applicant responded that minimal irrigation for to establish the crop in the first year was planned; Commission suggested that applicant may need to plan to irrigate for up to five years to re-establish a cover crop. Applicant stated that NRCS-approved seed mix

would be used, and that NRCS would be part of partnership in restoration of topsoil. Commission requested that documentation of seed mix be forwarded to Planning Department.

Furthermore, the Planning Commission raised the question whether this project should be considered a use by right or if it should be considered a landfill for non-hazardous substances as described in 1.05.25 in the Land Use Code.

### **Background**

On 5/05/2023, an Application for a Conditional Use Permit along with Application Fees were received by the County. The Application was determined to be complete upon a pre-application meeting with the applicant on 5/8/2023.

This applicant previously applied for a Conditional Use Permit for a similar project (Application 22-50). Because that project only involved wood to be cut from the premises, the Planning Commission determined that it would constitute a use by right, similar to the burial of other agricultural wastes. Because this proposal is to bury material from off-site, it is considered a landfill to contain non-hazardous substances in the Use Table.

In addition to a Conditional Use Permit from the county, this project also requires a State of Colorado Certificate of Designation, and a State of Colorado Environmental Covenant to permanently identify the site as a limited-use site subject to State inspection.

The property was sold to the applicant in March of 2023. The deed to the property is dated March 9, 2023.

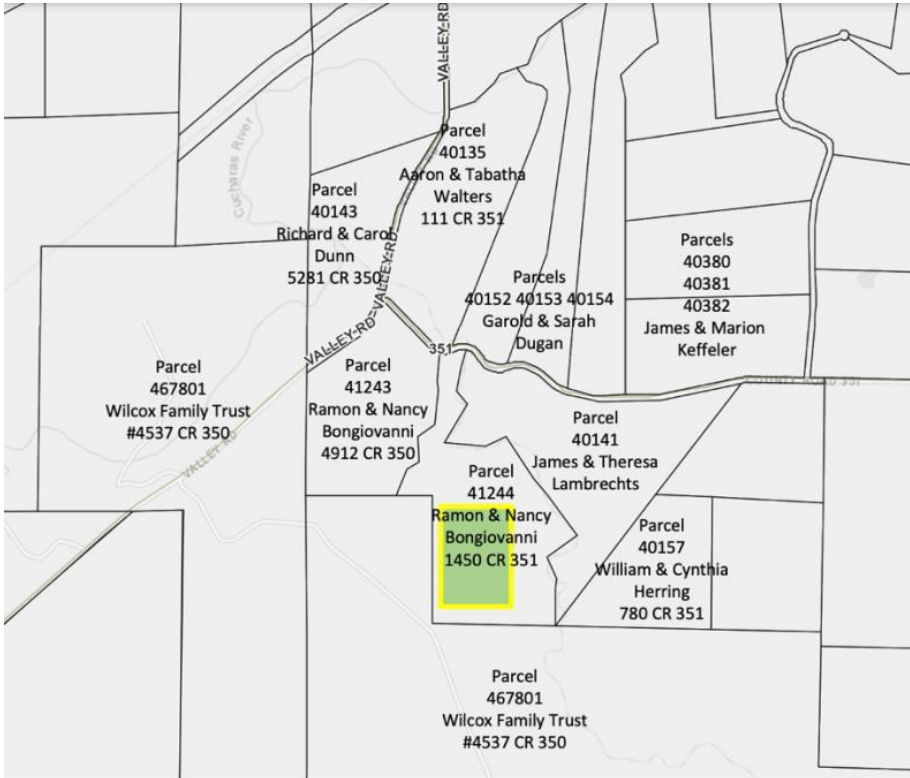
### **Code References**

The following Code Sections are applicable to this application and may be referenced by the in the evaluation of this request:

§1.06 Conditional Use Permits

§1.05.25 Use Table Reference: Sewage disposal areas, sludge, septage, landfills for non-hazardous substances and waste water treatment plants

Staff proposes that this proposed use falls under §1.05.25 in the Use Table, and is a conditional use in the Agricultural zone.



**Site Map/Vicinity Map**  
(see image)

**Site Description and Context**

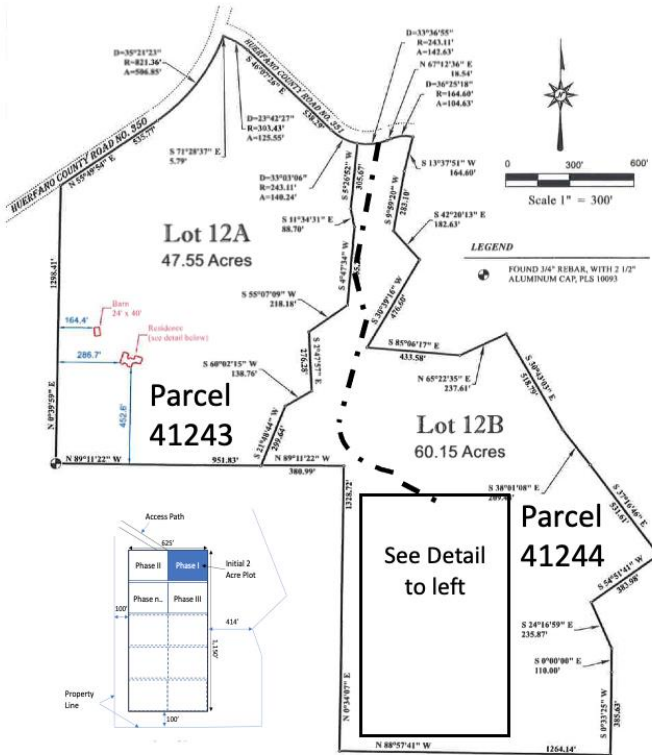
The land is located in the Cucharas River Estates subdivision, roughly five miles northeast of La Veta, near the intersection of County Road 350 and 351. The land is currently being used for cattle grazing. The affected area within the property is tree-less grazing land. All surrounding, adjacent properties are zoned Agricultural.

There are 2 nearby homes (in addition to one owned by the applicant), one more than a half-mile away, and the other out of sight. The home on parcel 40157 is approximately 1,500 ft from the proposed burial site; the home on parcel 41243 (4912 CR 350) is approximately 1,300 ft from the proposed burial site and owned by the applicant. There are three other homes within ½ mile on parcels 467801 to

the west, 40156 to the east and 40143 to the north.

All cleared land on adjoining properties is used for cattle grazing and fire-wood cutting and distribution. There is a fire-wood business located on Parcel 467801.

## Preliminary Site Plan (Subject to Engineering Change)



### Proposal Details

The proposed project involves the burial of wood products for the purpose of collecting carbon tax credits. Wood is to be buried in chambers where it will receive minimal moisture and oxygen. Buried wood will be monitored for gasses associated with decomposition; should decomposition begin or reach a certain rate, the problem would be addressed or the wood would be moved.

The project offers a potential use for unmerchantable wood that could reduce fuel in the forest or from other locations.

No utilities are required for the operation. Monitoring equipment will be housed in a small shed and powered by solar panels or batteries.

This proposal involves 17 acres on a 60-acre parcel. Burial would take place in approximately 10 phases involving roughly 2-acres each (see preliminary site plan). Each ~2-acre phase would include the pit to be dug as well as the space to stockpile dirt and material to be buried. While pits are open, a fence would be put up to keep cattle out, and after closing each pit, disturbed earth will be re-planted and the fence removed to allow cattle to graze on all but a currently-disturbed area.

The management plan in Appendix 1 of the Letter of Intent describes monitoring and mitigation strategies

for various types of problems.

Appendix 2 includes additional maps showing location and context for the site.

Appendix 3 covers pit design

Appendix 4 covers soil report

Proposed language for the easement and environmental covenant is from the related trial project in River Ridge Ranch.

### Application Materials

Required Submittals for a CUP:

1. Letter of intent
  - a. Current and proposed uses
  - b. Impacts of proposed use on roads, traffic, safety, services, environment.
  - c. Comprehensive Plan compliance statement
  - d. Proof of ownership
  - e. List of other state or federal permits granted or applied for.
  - f. List of names and mailing addresses of all listed owners of adjacent property
2. Site Plan
3. Vicinity map – area within 500 ft of property, description of any plats and improvements on property within 500 ft.
4. Proof of ownership.

5. List of names and addresses of adjacent property owners.

**Criteria**

In order for an Conditional Use Permit to be issued, the criteria set forth in LUR Section 1.06 must be met. An analysis of these criteria is provided below:

Planning commission shall determine if a public hearing is required per **1.06.02**:

1. That the proposed conditional use conforms to the requirements and provisions of this zoning regulation.
2. That the proposed conditional use is consistent with the goals, objectives and policies of Huerfano County, as contained in the County comprehensive plan.
3. That the proposed conditional use is consistent with and in harmony with neighboring land uses and future intended land uses in the area.
4. That the proposed conditional land use will not result in overly intensive use of the land relative to current use of the surrounding land.
5. That the proposed conditional use will not result in unmitigated traffic congestion or hazards to vehicular or pedestrian traffic and its roads will meet the requirements of Subdivision County Road Standards and Specifications.
6. That the proposed conditional use not unnecessarily scar the land on which such use would be located and that the proposed use provide all measures necessary to mitigate negative impacts upon agricultural lands, critical wildlife habitat, seasonal wildlife migration corridors, scenic views and existing cultural and historical resources.
7. That the proposed conditional use will not be likely to prove detrimental to the public health, safety or welfare of County residents nor cause hardship for neighboring persons.

**Noticing (1.06.02):** Referral agency comment period 30 days; Notice in newspaper 10 days before public hearing; Notification to adjacent property owners 10 days before public hearing; post sign on property 10 days before public hearing.

Notices sent: To be sent after Planning Commission sets hearing date.

Notices in paper: To be set after Planning Commission sets hearing date.

**Referral agencies to be contacted:**

Huerfano County fire district: rjameson@lavetafire.org, smorningstar.huerfanofire@gmail.com

Huerfano County Emergency Management Department: bciarlo@huerfano.us

Colorado Division of Parks and Wildlife: spencer.gerk@state.co.us

Huerfano County Health Department: rsykes@la-h-health.org

Huerfano County Road and Bridge Department: dhribar@huerfano.us

CDOT: michelle.regalado@state.co.us

School District: mmoore@huerfano.k12.co.us, leslee.miller@lvk12.org

Huerfano County Sheriff's office: BRUCENEWMAN@bresnan.net

CDPHE: jerry.henderson@state.co.us, Joseph.Talbott@state.co.us, Rachel.Zancanella@state.co.us

State Engineer/Division of Water Resources: kevin.rein@state.co.us

**Referral Comments**

- Comment was received from CDOT stating that they had no comment pertaining to this submittal.
- Comment was also received from CDPHE requesting additional details on closure cost estimates from the applicant.

## Potential Conditions

1. Require preliminary and annual weed surveys while burial project is ongoing and for up to five years after final phase is complete, or until Weed Manager determines natural vegetation has been reestablished.
2. CUP not active until final approval of language for the easement, bond and environmental covenant is approved by the BOCC.
3. CUP only active if State permits are concurrently valid and active.
4. Limit material buried to untreated wood products.
5. The following statements made by the applicant in the application could be considered as conditions of the CUP:
  - Excavations will be done quickly while materials are being buried – not to exceed two weeks at a time (weather dependent).
  - Upon capping, burial site will be revegetated.

## Staff Recommendation:

Consider Planning Commission Recommendation:

*Recommend provisional approval for application 22-015 for the purpose of allowing applicant to pursue permitting with the State authority. At such time that applicant and State agency(ies) agree upon language, final versions of the easement, surety/performance bond provisions, and environmental covenant be submitted to the County for final review and approval.*

## Commission Action Options:

1. **Approval** without any special conditions.
2. **Conditional** Approval with a description of the special conditions.
3. **Denial**, indicating for the record the reason(s) for such action.
4. **Continuation** until a future date to gather more information or obtain clarification or for any other relevant cause.

## Enclosures

- Application Materials
  1. Application
  2. Letter of intent
    - Site Plan
    - Vicinity Map
  3. Supplemental information requested
    - Bonding
    - Monumenting
    - Covenant details
    - Groundwater conditions
  4. Proof of Ownership