



# STAFF REPORT

## Planning Commission

### CASE #CU-121-19-21

<b>PC Date:</b>	March 2, 2021	<b>Case Planner:</b>	Domenic Martinelli	<b>Phone:</b>	303-289-3670
<b>CC Date:</b>	April 6, 2021				
<b>Location:</b>	9109 Monaco Street Henderson, CO 80640				
<b>Applicant:</b>	A-1 Organics	<b>Owner:</b>	New DUX LLC and DUX LP		
<b>Address:</b>	16350 WCR 76 Eaton, CO 80615	<b>Address:</b>	288 Clayton St Suite 204 Denver, CO 80206		

### Case Summary

<b>Request:</b>	The applicant is requesting the renewal of a conditional use permit for outdoor storage of flammable materials of up to 25 feet in height
<b>Project Description:</b>	The applicant is requesting the renewal of a conditional use permit to allow the storage of mulch piles up to 25 feet in height
<b>Issues/Concerns:</b>	<ul style="list-style-type: none"><li>- Fire Access</li><li>- Visual impact to adjacent areas</li><li>- Safe internal navigation of the property.</li><li>-Dust mitigation</li></ul>
<b>Key Approval Criteria:</b>	Conditional Use Permit Approval Criteria (LDC Section 21-3230) Outdoor Storage Supplemental Regulations (LDC Section 21-5254) Performance Standards (LDC Section 21-5120)

<b>Staff Recommendation:</b>	Approval with Conditions
<b>Current Zone District:</b>	I-2 (Medium Intensity Industrial District)
<b>Comp Plan Designation:</b>	Industrial/Distribution

#### Attachments for Review: *Checked if applicable to case.*

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Applicant's Narrative Summary          | <input checked="" type="checkbox"/> Vicinity Map               |
| <input checked="" type="checkbox"/> Development Review Team Recommendation | <input checked="" type="checkbox"/> Neighborhood Meeting Notes |
| <input checked="" type="checkbox"/> Site Plan                              | <input checked="" type="checkbox"/> Dust Mitigation Plan       |
| <input type="checkbox"/>   | <input type="checkbox"/>                                       |

## Background Information

### Site Information

<b>Site Size:</b>	31 acres
<b>Current Conditions:</b>	The property is currently developed as a trucking facility and mulch recycling facility
<b>Existing Right-of-Way:</b>	Monaco Street (East)
<b>Neighborhood:</b>	South Platte
<b>Existing Buildings:</b>	two buildings are currently on site
<b>Buildings to Remain?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Site in Floodplain?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No *Part of the west portion of the site was previously in the floodplain, and a floodplain development permit was approved by the city. FEMA issued a Letter of Map Revision for the property as well.

### Surrounding Properties

	<u>Existing Land Use</u>	<u>Occupant</u>	<u>Zoning</u>
<b>North</b>	Residential	Single Family Detached	ADCO
<b>South</b>	Industrial	Albert Frei & Sons - Aggregate Mining & Inert Fill	ADCO
<b>East</b>	Industrial	Werner Enterprises Trucking	ADCO
<b>West</b>	Open Space	South Platte River	ADCO

### Case History

<u>Case</u>	<u>Date</u>	<u>Request</u>	<u>Action</u>
A-1228-95-96	March 1995	Use-By-Permit for Gravel Mining	<b>Approval with Conditions</b>
A-1549-02	April 2003	Use-By-Permit for Inert Material Landfill	<b>Approval with Conditions</b>
LF-21-02	April 2003	Landfill case for Inert Material	<b>Approval with Conditions</b>
MM-35-14	September 2014	Minor Modification for FAR Reduction	<b>Approval with Conditions</b>
FP-58-14	December 2014	Floodplain Permit for the west portion of site	<b>Approval</b>
Z-914-14	February 2015	Zone Change from AG to I-2	<b>Approval</b>
S-628-15	March 2015	Subdivision to Consolidate property into one lot	<b>Approval</b>
D-255-14	January 2015	Development Plan for RV / Boat Storage Facility	<b>Approval</b>
D-255-14-15	November 2015	Development Plan Amendment for Brown Brothers & A-1 Organics	<b>Approval</b>
D-255-14-15-16	December 2016	Development Plan Amendment (see below for further detail).	<b>Approval with Conditions</b>
D-255-14-15-16-19	June 2019	Development Plan Amendment (reflecting current conditions on the property today)	<b>Approval</b>
AH-1742-17	July 2017	Height Exception for mulch pile storage up to 35' in height	<b>Denied</b>
Z-914-14-18	September 2017	Zone change from I-2 to PUD to allow for mulch pile storage up to 25' in height	<b>Withdrawn</b>
CU-121-19	June 2019	Conditional Use Permit allowing storage of combustible materials up to 25' in height	<b>Approval with Conditions</b>

*There are several cases associated with the history of the subject site. The property was zoned AG, based upon city records, throughout all of the case history. A use-by-permit (A-1228-95-96) was granted to the Cooley Gravel Company for gravel mining in 1995. This use-by-permit extended beyond the subject property, however, the entire subject property was part of the approval for the use-by-permit. In 2002, a use-by-permit (A-1549-02) was granted to Patrick Broda for an Inert*

*Materials Landfill. A landfill case (LF-21-02) was also associated with the property for the Broda Landfill. On February 11, 2013, the city received a letter from the Colorado Department of Public Health and Environment (CDPHE) stating that the landfill operated by Patrick Broda had completed all of the Post-Closure Care Plan for the Inert Materials Landfill. Approval by CDPHE released the operator, Patrick Broda, from post-closure obligations.*

*From September 2014 - March 2015, five land use cases were approved for redevelopment of the site into primarily an RV & boat storage site, which was never developed. Case Z-914-14 rezoned the property from AG to I-2, FP-58-14 was a floodplain permit that coincided with the Letter of Map Revision (LOMR) approved by FEMA in 2014, MM-35-14 reduced the FAR from 0.05 to 0.01, S-628-15 was a subdivision to consolidate the property into one lot, and D-255-14 was the development plan for the site. In 2015, the applicant requested a development plan amendment to accommodate A1 Organics, a composting and mulching site, which was approved in late 2015. This development plan amendment did not specify the location of mulching materials, interior fire access & site navigation, or specify the height of mulching materials.*

*Upon requesting a final Certificate of Occupancy for the property in late 2016, staff conducted a final planning inspection of the property. At this time, it was discovered that the site was out of compliance with the approved development plan D-255-14-15. In order to allow for a Certificate of Occupancy for the Brown Brothers, the company that occupies the main building, a Development Plan Amendment was approved in December 2016 that focused on only that section of the property. In July of 2017, the Board of Adjustment denied case AH-1742-17 for a height exception to allow mulch pile storage up to 35', finding that the use did not comply with approval criteria for a height exception including rights of privacy, light and air, and that the use was being evaluated under criteria meant for a structure, which would not apply to mulch piles.*

*On June 3, 2019, Commerce City Council approved CU-121-19, authorizing the storage of dyed mulch chips, inbound recyclable wood product, soil, mulching material stackers, and raw wood chips at a height of no greater than 25'. The Conditional Use Permit was approved for an initial term of 18 months. Development Plan case D-255-14-15-16-19 was approved shortly thereafter to make the property conform with city codes and requirements. The mulching facility use (with outdoor storage up to 8' in height) is currently a use by-right within an I-2 zone district.*

## **Applicant's Request**

The applicant is requesting the renewal of a conditional use permit to allow the storage of mulch piles on the property of up to 25', when a maximum of 8' in height is allowed in the I-2 zone district. The applicant states that "A1 Organics needs this provision in order to efficiently, effectively, and safely conduct business. The request for a pile height of 25 feet derives from the specific equipment used in the process which stacks the material at the given height. By stacking in larger piles, the material stays moist and compact, and is less sensitive to weather, wind, and erosion, and reduces the impacts of fugitive dust. Increased pile heights also allow more efficient use of space. Shorter piles create a greater need for land area and greater exposure of the materials to the environment, making them more likely to dry out, erode and blow away."

The applicant has indicated that the size of the outdoor storage area along with a 25 foot height limit for mulch piles will represent maximum inventory at any given time. January - March is peak inventory

time, where the mulch pile heights will be the highest, and the inventory low point occurs during the summer. As different mulch colors are more popular than others, certain mulch piles will cycle in variation more frequently than others. To the south is an active gravel mining operation located within unincorporated Adams County. The uses to the west and north are located in unincorporated Adams County and utilized for water storage and generally inaccessible to the public. As the plan is currently proposed, there is a significant grade change between the property entrance along Monaco on the east of the property to the back side of the property where the material storage takes place. "



Figure 1: Mulching equipment

Since the approval of the Conditional Use Permit, the applicant has indicated that they have fully complied with all Conditions of the Conditional Use Permit since the initial issuance, and have gone above and beyond by providing additional capital investments and site improvements to mitigate any potential impacts. This includes installation of an electronic load measurement system to measure truck loads in place of using heavy equipment to haul and dump each load for measurement. This system reduces noise pollution from idling trucks, reduces greenhouse gas emissions from front loaders typically required for measurement, and reduces blowing mulch materials during transfer from front loader to truck bed. The system is more accurate than traditional methods, reducing waste for customers, A1 Organics, and the environment.

## Development Review Team Analysis

The applicant has requested renewal of their existing Conditional Use Permit to allow for the storage of mulch piles on the subject property up to 25' in height. The Development Review Team (DRT)

reviewed the circumstances of the subject property and applicable sections of articles III, IV, V, and VIII of the Land Development Code (LDC) as they relate to this case.

### **The Applicant**

A1 Organics is a waste recycling company, which converts organic materials into mulch, composts, soils, and mulches for sale to the public, and has been in business since 1974. A1 operates four locations in Colorado (Eaton, Keenesburg, Englewood and Commerce City), and diverts around 350,000 tons of waste per year from landfills.

### **Background**

In December 2018, City Council adopted Ordinance 2194, which established material pile storage over 8' in height as an allowed use in an I-2 or I-3 zone district with a Conditional Use Permit. Prior to the adoption of this ordinance, since this use specifically was not contemplated as a permitted use in the Land Development Code, there were limited options to address this specific type of use, and a process that had directly relatable approval criteria that the impacts could be evaluated under. The applicant had previously filed for a zone change to PUD (case Z-914-18) to allow for mulch pile storage after the denial of case AH-1742-17, but withdrew this application at the beginning of January 2019 in order to have the case evaluated under the process of a Conditional Use Permit, which is now contemplated by the LDC. On June 3, 2019, Commerce City Council approved CU-121-19, authorizing the storage of dyed mulch chips, inbound recyclable wood product, soil, mulching material stackers, and raw wood chips at a height of no greater than 25' at this facility.

### **Site Characteristics**

The subject property is currently zoned I-2 (medium intensity industrial district). The eastern portion of the property is currently developed as Brown Brothers Trucking, with a 19,000 square foot primary structure, and landscaping along the Monaco Street right of way. The remaining western half of the site is where A1 Organics operations are currently occurring. As shown in figures 1 & 2 below, there is a significant dropoff between the eastern half of the site and the western half of the site of around 30'-35', with the eastern portion of the site having the highest elevation near Monaco Street, and the property decreasing in elevation as it reaches the west portion of the site, and the South Platte River. This portion of the site (and the existing mulch piles that are currently in place) are not visible from the majority of surrounding areas due to this significant drop in elevation.





Figure 2: Site Topography

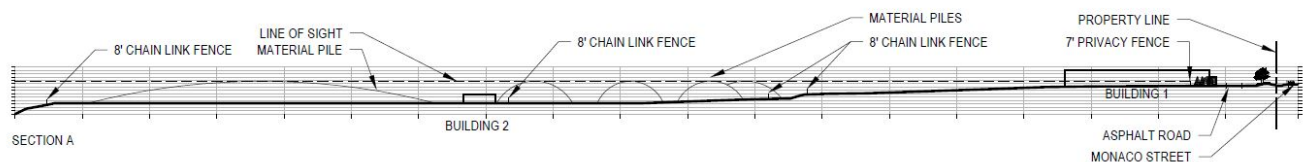
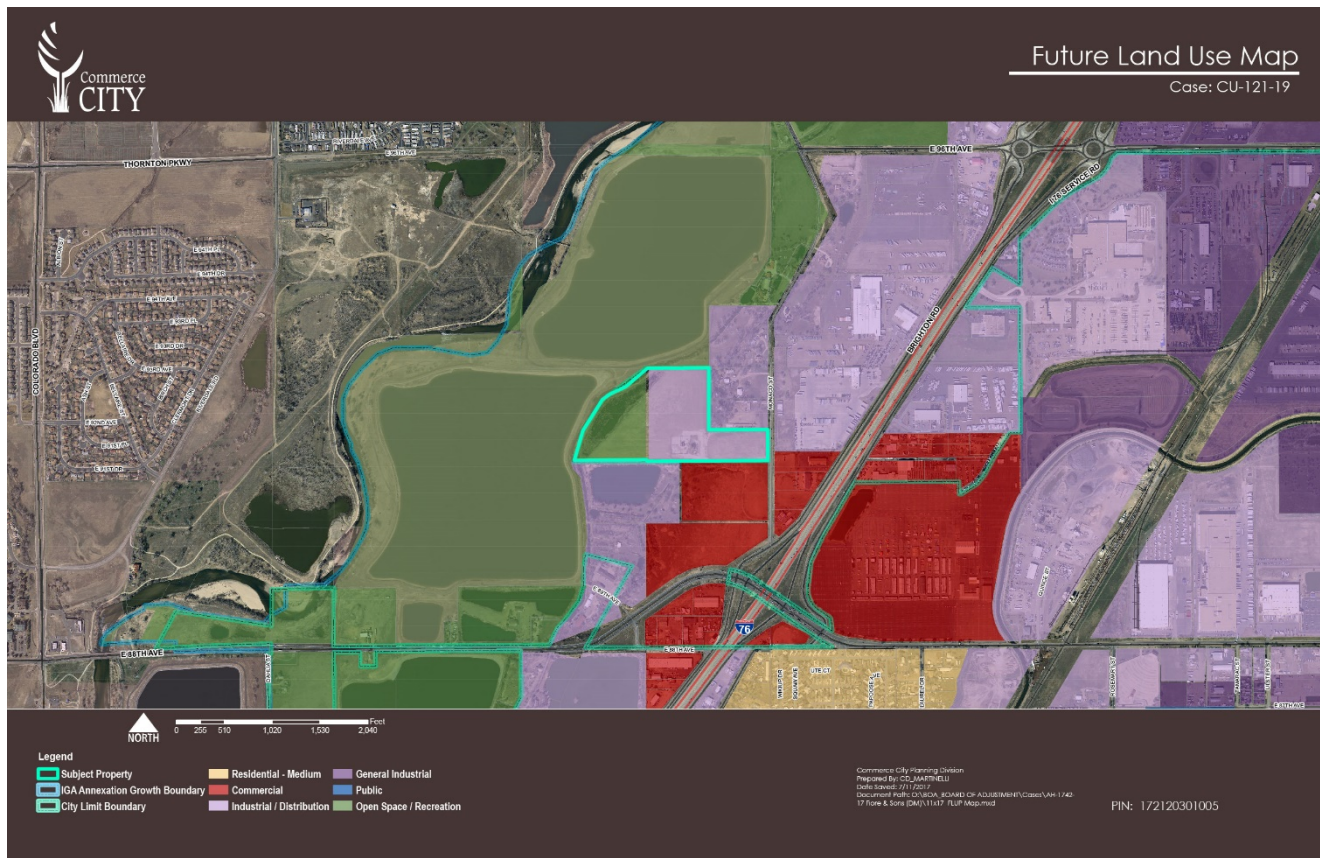


Figure 3: Site Topography Cross Section

Additionally, the site sits on a former landfill which operated from 2002, until notification of post-closure work being completed in 2013. Former landfill sites present a technical challenge in terms of constructing any form of major structure due to poor soil quality, which puts a significant limit on the types of uses and businesses that can operate on such a site.

### Comprehensive Plan & Surrounding Land Uses

The subject property is designated as Industrial / Distribution in the city's comprehensive plan, which allows for light to medium intensity industrial uses, warehousing, and manufacturing (I-1 and I-2 uses). The surrounding properties to the west and north are water storage facilities owned by the City of Thornton, that are generally not accessible to the public. To the northeast and east of A1's operations are three residential properties currently zoned A1 (agricultural) in Adams County. To the east is Werner Trucking, a trucking facility currently in unincorporated Adams County. All of these properties (aside from the water storage facilities) are designated as Industrial / Distribution in the City's comprehensive plan, meaning that if these properties were to annex and develop in the city, they would develop as a light-to-medium industrial use that would coincide with the general character of the neighborhood.



<u>Section</u>	<u>Goal</u>	<u>Description</u>
		comprehensive plan (noted on the Future Land Use Map in figure 3) that is designated in the comprehensive plan. The proposed facility aligns with the standards and identified for the comprehensive plan designation, and complies with the character of the surrounding area in general.
<u>Section</u>	<u>Goal</u>	<u>Description</u>
Redevelopment and Reinvestment	LU 2.1	<u>Infill Development Promoted</u> - Promote infill development and redevelopment to use utilities and services efficiency, to support multi-modal transportation, to revitalize neighborhoods, and to maintain prosperous businesses. Infill means development on vacant unplatted parcels scattered throughout the city, or in county enclave areas.
<u>Analysis:</u>		The subject property has a history of varied uses in the city, and was vacant and underutilized from 2002-2015. Additionally, it's history as a former landfill site significantly limits the types of uses the property can reasonably be used for, since soil quality is not stable enough to support the construction of any significant structure. By granting a conditional use permit to allow A1 organics to operate efficiently and safely, it will promote the redevelopment and reuse of an extremely challenging and limited site. The development history shows that redevelopment of the property had not occurred prior to this use, suggesting that development options for this site are limited. Therefore LU2.1 would not be met without the approval of this Conditional Use Permit.

### **Compliance with Existing Conditional Use Permit**

On June 3, 2019, Commerce City Council approved CU-121-19, authorizing the storage of dyed mulch chips, inbound recyclable wood product, soil, mulching material stackers, and raw wood chips at a height of no greater than 25' at this facility. This approval was subject to 12 conditions which remain unchanged as part of the recommended conditions for case CU-121-19-21, with the exception of conditions G and H, which have been updated to remove the language "shall construct" from the demarcation pole and fence, since those improvements have been constructed at this time.

The applicant has adequately demonstrated ongoing compliance with the conditions placed upon the Conditional Use Permit granted in 2019, and no formal enforcement actions have been exercised by the City, the Colorado Department of Public Health & Environment, or the EPA. No formal complaints have been submitted to the City during the initial 18 month Conditional Use Permit term. Below is an assessment and analysis of conditions related to operational impacts and nuisance mitigation, and how the applicant has been able to comply with each:

- B. The conditional use permit is granted only for the storage of dyed mulch chips, inbound recyclable wood product, soil, mulching material stackers, and raw wood chips at a height of no greater than 25'. All other outdoor storage on the property must comply with all outdoor storage requirements that apply to a property zoned I-2, as currently adopted or amended by the city. Any deviations from this condition will require an amendment to this application – The applicant has not stored any additional materials on site not authorized under condition B, verified through site visits by staff, and review of aerial imagery conducted over the initial 18 month term.*
- C. All mulch piles shall be a minimum of 100' from adjacent residential properties at any given time, measured from the property line. Storage of mulch piles has not occurred closer than 100 feet, as confirmed through site visits by staff, and review of aerial imagery.*
- D. A minimum setback of 500' for grinding and screening operations shall apply from adjacent residential properties, measured from the property line. Grinding and screening operations have not occurred closer than 500 feet, as confirmed through site visits by staff, and review of aerial*



imagery. The 25 foot demarcation pile required in Exhibit G was also placed exactly 500' from the east property line to assist with enforcement of the 500' setback requirement.

- E. *Grinding operations will not occur on the site when wind speeds exceed 15 miles per hour for a duration of at least 10 minutes.* - The applicant has provided daily weather logs and operational summaries, demonstrating monitoring compliance of wind speeds, and shutting down screening and grinding operations when wind speeds exceed 15 miles per hour for a duration of 10 minutes or more. In such circumstances, the applicant may also take the additional efforts of applying water on mulch piles during high wind events, apply magnesium chloride to internal access routes, and tarping stockpiles, if necessary.
- F. *The applicant shall construct and maintain a minimum of an 8' high net on the east property boundary to prevent any woodchips from blowing onto neighboring properties.* The 8' high net required of Condition F has been installed and is currently in place.
- G. *The applicant shall construct and maintain a 25' demarcation pole on the subject property, in order to assist with ongoing compliance of the 25' high pile restriction.* The 25 foot demarcation pole has been installed in compliance with Condition G. Site visits conducted by City Staff have confirmed that pile heights stay under the maximum height limit. Additionally, to ensure pile heights do not exceed this height, A1 organics has set its mulch stacking equipment to a maximum height of 25 feet when converting scrap material to raw woodchips.
- H. *Primary drive aisles of the outdoor storage area shall be paved with recycled asphalt and maintained by the applicant, as indicated in the approved development plan for case D-255-14-15-16-19.* The recycled asphalt drive aisle required of Condition H has been installed on the east side of the outdoor storage area, in between the fence and the mulch pile storage area.
- I. *Water trucks shall be kept and utilized on site during business hours for the spraying of mulch piles and drive aisles.* – Water trucks are kept on site and have been utilized by the applicant on a regular basis to assist with dust mitigation and suppression.
- J. *The property shall act in accordance with the Dust Control and Mitigation plan, included as exhibit A.* Through documentation through daily logs, the applicant has demonstrated compliance with the management practices called out in the Dust Control and Mitigation plan. This includes ensuring paved entry roads are free of tracked soil or compost, use of water / magnesium chloride on internal access aisles, spraying stockpiled materials with water for dust suppression purposes, utilizing a water spray system during grinding operations, and covering all outgoing loads.
- K. *Due to the nature of the operations, the applicant will maintain the premises to be free of garbage, trash, and excessive woodchip debris at all times.* Site visits that have been conducted by City Staff have confirmed the site is generally free of excessive garbage, trash, and excessive woodchip debris in normal conditions. The applicant has also taken the additional step of installing an electronic load measurement system to measure truck loads in place of using heavy equipment to haul and dump each load for measurement. This system assists with reduces blowing mulch materials during transfer from front loader to truck bed.

- L. *The applicant shall comply with all federal, state, and local law.* – There has been no evidence demonstrating that the applicant’s operations have been in violation of any City Ordinances, or any violations with the Colorado Department of Public Health & Environment, Tri-County Health Department or the Environmental Protection Agency. Multiple inspections have been conducted by CDPHE to ensure compliance with the Solid Waste Disposal Sites and Facilities Act, with all finding that the site was in compliance with the requirements of that act. The property did have an open case with the Colorado Department of Public Health and Environment in early 2016 regarding the leaking of mulch dyes into the detention pond on site. The applicant has indicated that this was due to an on-site repair of the mulch dying equipment. Since the incident, the applicant has purchased upgraded equipment with greater material controls, and now has standard site practice of wrapping the bottoms of piles with silt socks, to prevent any material from leaching out. Silt socks also line the boundary area between the active area of the site and the wetland portion of the site to reduce leaching into this area. All of the much dyes used on the property is made from a non-toxic iron oxide.

Because the applicant has been able to demonstrate compliance with the existing Conditional Use Permit and has not received any substantial complaints during the initial Conditional Use Permit term, the Development Review Team (DRT) is recommending renewal of the Conditional Use Permit for an additional 5 year term.

### **Environmental Sustainability**

Chapter 15 of the City’s comprehensive plan focuses on a number of different goals and policies to reduce the environmental footprint of the city, and the impact that urban development has on the environment. A1 Organic’s operations help further a number of items that are identified in this chapter, specifically reducing greenhouse gas emissions and reducing solid waste disposal. The operations at the A1 Organics facility directly address solid waste disposal, by providing a facility where businesses and the general public can recycle organic waste material, including tree limbs, logs, untreated wood, brush, grass, leaves, sod and soil. The organic material is then converted to usable product such as mulch, topsoil, etc., rather than adding additional volume to other landfills. Organic waste decomposing in landfills accounts for 37% of manmade methane worldwide, which is a greenhouse gas that traps heat at levels much higher than carbon dioxide. Providing an opportunity for Commerce City residents to dispose of organic materials within close proximity, helps further waste diversion rates for our residents, provides partnership opportunities with the city, and advances the city’s sustainability goals within the comprehensive plan.

### **Site Operations & Layout**

As seen in the site plan below (figure 4), general bounding areas are designated for the different types of materials that are stored on site. These bounding areas may vary with the volume and specific location of the materials within them, due to variations in seasonal inventory and other factors. These areas are generally separated by 25’ drive aisles containing class 6 road base, which are denoted by concrete blocks to maintain width for adequate fire access, and bound the specific materials to their fixed locations. South Adams County Fire was a referral on the case, and has provided comment to city staff stating that the proposed layout of the site provides safe and adequate fire access in case of an emergency.

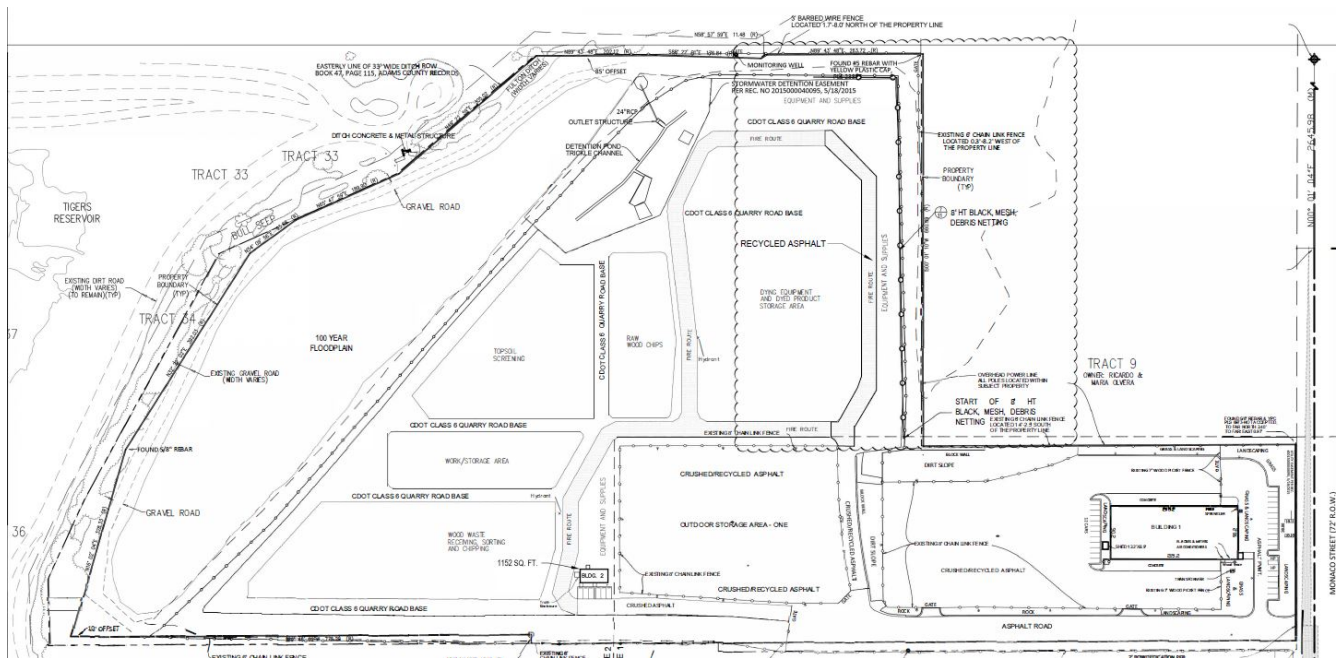


Figure 5: Current Site Plan

In-bound traffic to the site consists of either an individual customer bringing scrap wood materials, or bulk loads of high-side trailers that bring anywhere from 30-100 cubic yards of material. Drop-offs are allowed Monday-Friday, and the applicant has stated that the site sees an average of 4 inbound and outbound trucks per day.

In-bound materials are received for intake on the southeast portion of the site where the material is then sorted and converted into raw woodchips through the grinding process. These raw woodchips are then transported to the central portion of the site where they are stored until the dying process occurs. The actual dying of woodchips, storage of dying equipment, and storage of final dyed product occurs on the eastern portion of A1 Organic's leased area. The final product is then transferred to other facilities for sale. Outbound material shipment of finished mulch product usually occurs in less frequent trips than inbound trips, with trucks carrying at least 100 cubic yards of materials.

No composting of organic materials occurs on the site. In terms of waste removal, A1 Organics contracts with Alpine Waste and Recycling to remove all waste generated on site as part of normal business functions, and any waste that is accidentally left on inbound trips from material drop-offs. Additionally, the applicant has constructed an 8' high net along the eastern boundary of the property, to reduce the blowing of woodchips and other debris during high wind events. As part of the conditions from CU-121-19, the applicant has also installed a 25' demarcation pole, providing a visual improvement to assist in providing a visual marker for pile heights, and providing a delineator for the 500' screening setback from residential uses to grinding and screening operations.





Figure 6: Aerial Imagery – September 13, 2020



Figure 7: Existing Mulch Piles & Jersey Barriers





Figure 8: Recycled asphalt road base & 8' high net

### Visual Impact

Due to the topography of the site, A1 Organics operations are not visible from the majority of surrounding areas. The property is not visible from the adjacent Monaco Street right-of-way, or East 88<sup>th</sup> Avenue traveling towards the subject property. Heavy vegetation (at least 30' high trees) exists between the subject property and the residential properties to the north in unincorporated Adams County, which provides some visual screening of the mulch piles. Some locations where the mulch piles are at the 88<sup>th</sup> Avenue bridge crossing Interstate 76, and a couple locations along the South Platte River trail where vegetation is not present, which is at a similar elevation as the A1 Organics site.

### Dust Mitigation

Section 21-5120(5) of the Land Development Code regulates dust impacts for all properties in the city, stating that “no dust or particulate matter shall be emitted that is detectable by a reasonable person without instruments.” While portions of the A1 operations on site do generate varying dust to some degree, the applicant is proposing a number of mitigation techniques to reduce this impact to the highest reasonable extent.

Grinding operations, which have the highest dust impacts, occur on the southwest quadrant on the site, which is the farthest from the existing residential properties in the county, at a distance of over 500'. Due to these impacts, conditions were placed on the original CUP that all woodchip piles are no less than 100' from the eastern boundary from the site, and that all grinding equipment and operations (which has the highest fugitive dust impacts) is no less than 500' from the eastern boundary. The applicant has also acted in accordance with its supplemental dust control and mitigation plan, which details other mitigation methods and practices that are conducted on site to reduce dust impacts. These include halting grinding operations on site when wind speeds exceed 15mph for a sustained period of 10 minutes or more, reduction of traffic speed, water spraying and suppression of mulch piles and drive aisles, and implementation of dust control training program for staff. The applicant will also be paving the eastern drive aisle on the site with recycled asphalt, to reduce dust impacts from truck traffic on the drive aisles closest to existing residences. The applicant has a water truck on site that is utilized during grinding inbound wood materials into mulch. In order to prevent particle matter from spreading, the material is sprayed down as the mulch is being crushed.

In terms of dust impacts, the Conditional Use Permit to allow mulch piles of 25' in height would constitute an improvement over a scenario where the applicant operated a mulching facility with piles

up to 8' in height. Larger pile heights are generally denser and moister than smaller piles, and have less debris and fugitive dust that is released from the piles during wind events. Smaller, more frequent mulch piles have more surface area that are exposed to wind and sun, leaving them more prone to dry out and be blown away during wind storms.

### **Summary**

Overall, the DRT believes that the specific circumstances surrounding the site and business operations warrants a recommendation to renew the existing Conditional Use Permit, subject to proposed conditions A-M. The subject property is a former landfill site that has significant limitations on the type of uses that can occur, due to significant hardships in building construction due to the soil quality. As part of the review of the Conditional Use Permit renewal application, the applicant has demonstrated adequate compliance with the previously issued conditions, and has received no local or state complaints or formal enforcement actions against their current operation. Compared to other potential uses that could be allowed on the site, the A1 Organics site provides a viable use with an environmental benefit to the city, in terms of reduction of organic waste diversion from landfills.

The property is also situated in a significant depression compared to adjacent properties, which reduces the visual impact that the mulch piles have on surrounding properties. In terms of dust impacts, the applicant is demonstrating a number of different mitigation methods to reduce impacts, and by allowing higher mulch piles (compared to 8' high piles which currently are allowed on the site as a by-right use), mulch piles are more compact and dense compared to shortened piles, and have less dust impacts as a result.

Criteria Met?	Sec. 21-3230. Conditional Use Permits	Rationale
<input type="checkbox"/>	The proposed use will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they are envisioned to exist in any adopted City plan, program or ordinance;	As indicated in the "surrounding neighborhood" section of the DRT Analysis, the character of the neighborhood is primarily industrial / agricultural in nature. The property to the south is an aggregate mining facility, and properties to the west and north are water storage facilities along the south platte river. The properties to the east are zoned agricultural in the county. While existing residences are on the subject properties, the applicant has taken a number of significant measures to reduce any dust impacts that might arise from their proposed operations, as shown in the "dust mitigation" section of the DRT Analysis. There is additionally enough of a degree of separation between the most dust intensive processes on site and the location of residential homes to eliminate significant impacts.
<input type="checkbox"/>	Any adverse effect has been or will be mitigated to the maximum extent feasible, including but not limited to sufficient landscaping and screening to ensure harmony for adjoining uses;	The applicant has demonstrated a number of measures to reduce impacts, including the construction of a net on the eastern boundary of the property to catch any woodchips that may be blown away, surfacing of the eastern-most drive aisle adjacent to residential property, and many other items that are indicated in "Exhibit A", the applicant's proposed dust mitigation. The use doesn't generate significant other externalities from sound, vibration, etc. Proposed conditions A-M are necessary in order to satisfy this approval criteria.
<input type="checkbox"/>	The characteristics of the site are suitable for the proposed use;	The use is suitable for the subject property based on a number of different constraints that exist on the site. As indicated in the "site characteristics" section of the DRT analysis, it's history as a former landfill site significantly limits the types of uses the property can reasonably be used for, since soil quality is not stable enough to support the construction of any significant structure. The topography and configuration of the site places A1's pile storage in a location that significantly reduces visual impact from the surrounding area. The aggregate mining pit to the south of the property also provides an additional layer of screening and buffering from the south. The future land use designation the city has for the unincorporated areas, and the majority of existing uses are compatible with the use. For adjacent properties with existing residences, the applicant has demonstrated a number of dust mitigation methods and site improvements to reduce the impact from

Criteria Met?	Sec. 21-3230. Conditional Use Permits	Rationale
		fugitive dust on these properties, which can be found in the "dust mitigation" section of the DRT analysis.
<input type="checkbox"/>	The proposed use will be adequately served by and will not impose an undue burden on any of the existing improvements, facilities, and services of the city or its residents or the applicant has committed to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use;	The use will be adequately served and not specifically cause any inability for the city to provide public services to the site.
<input type="checkbox"/>	The applicant has provided adequate assurances of continuing maintenance;	The applicant has demonstrated continued maintenance of the site since issuance of the conditional use permit, through specifications detailed in their dust mitigation plan, contracts with allied waste for trash removal, and has staff on site for debris removal.
<input type="checkbox"/>	No evidence suggests that the use violates any federal, state, or local requirements.	The site does not appear to conflict with federal, state, or local requirements. Tri-County Health Department and CDPHE have conducted numerous site visits, and have found no violations. No additional violations have been opened since Conditional Use Permit issuance in 2019. The previous open case with CDPHE regarding dyes leaking into nearby wetlands has been closed out and remediated.
<input type="checkbox"/>	The use complies with the general purposes, goals, objectives, policies, and standards of the comprehensive plan and all other plans or programs adopted by the City.]	The site meets a number of goals and objectives within the city's comprehensive plan, specifically in chapter 15 regarding environmental conservation and stewardship, and conformance with the comprehensive plan designation of industrial / distribution. The site is currently conforming to all LDC regulations and the currently approved development plan for the site.



## Development Review Team Recommendation

Based upon the analysis above, the Development Review Team believes that the application meets the criteria for a Conditional Use Permit set forth in the Land Development Code and previously recommended that the Planning Commission forward the Conditional Use Permit request to the City Council with a favorable recommendation, subject to the following condition(s):

### **CONDITIONS:**

- M. This approval applies to the Development Plan dated 7/1/2019 associated with this Conditional Use Permit.
- N. This conditional use permit shall expire 5 years after the date of approval. The applicant shall be required to renew the conditional use permit prior to the expiration date in order to continue utilizing the site.
- O. The conditional use permit is granted only for the storage of dyed mulch chips, inbound recyclable wood product, soil, mulching material stackers, and raw wood chips at a height of no greater than 25'. All other outdoor storage on the property must comply with all outdoor storage requirements that apply to a property zoned I-2, as currently adopted or amended by the city. Any deviations from this condition will require an amendment to this application.
- P. All mulch piles shall be a minimum of 100' from adjacent residential properties at any given time, measured from the property line.
- Q. A minimum setback of 500' for grinding and screening operations shall apply from adjacent residential properties, measured from the property line.
- R. Grinding operations will not occur on the site when wind speeds exceed 15 miles per hour for a duration of at least 10 minutes.
- S. The applicant shall maintain a minimum of an 8' high net on the east property boundary to prevent any woodchips from blowing onto neighboring properties.
- T. The applicant shall maintain a 25' demarcation pole on the subject property, in order to assist with ongoing compliance of the 25' high pile restriction.
- U. Primary drive aisles of the outdoor storage area shall be paved with recycled asphalt and maintained by the applicant, as indicated in the approved development plan for case D-255-14-15-16-19.
- V. Water trucks shall be kept and utilized on site during business hours for the spraying of mulch piles and drive aisles.
- W. The property shall act in accordance with the Dust Control and Mitigation plan, included as exhibit A.
- X. Due to the nature of the operations, the applicant will maintain the premises to be free of garbage, trash, and excessive woodchip debris at all times.
- Y. The applicant shall comply with all federal, state, and local law.

## Recommended Motion

### ***To recommend approval subject to Conditions:***

I move that the Planning Commission enter a finding that, subject to certain conditions, the requested Conditional Use Permit and associated development plan for the property located at 9109 Monaco Street contained in case CU-121-19-21 meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the Conditional Use Permit subject to the following conditions:

- A. This approval applies to the Development Plan dated 7/1/2019 associated with this Conditional Use Permit.
- B. This conditional use permit shall expire 5 years after the date of approval. The applicant shall be required to renew the conditional use permit prior to the expiration date in order to continue utilizing the site.
- C. The conditional use permit is granted only for the storage of dyed mulch chips, inbound recyclable wood product, soil, mulching material stackers, and raw wood chips at a height of no greater than 25'. All other outdoor storage on the property must comply with all outdoor storage requirements that apply to a property zoned I-2, as currently adopted or amended by the city. Any deviations from this condition will require an amendment to this application.
- D. All mulch piles shall be a minimum of 100' from adjacent residential properties at any given time, measured from the property line.
- E. A minimum setback of 500' for grinding and screening operations shall apply from adjacent residential properties, measured from the property line.
- F. Grinding operations will not occur on the site when wind speeds exceed 15 miles per hour for a duration of at least 10 minutes.
- G. The applicant shall maintain a minimum of an 8' high net on the east property boundary to prevent any woodchips from blowing onto neighboring properties.
- H. The applicant shall maintain a 25' demarcation pole on the subject property, in order to assist with ongoing compliance of the 25' high pile restriction.
- I. Primary drive aisles of the outdoor storage area shall be paved with recycled asphalt and maintained by the applicant, as indicated in the approved development plan for case D-255-14-15-16-19.
- J. Water trucks shall be kept and utilized on site during business hours for the spraying of mulch piles and drive aisles.
- K. The property shall act in accordance with the Dust Control and Mitigation plan, included as exhibit A.
- L. Due to the nature of the operations, the applicant will maintain the premises to be free of garbage, trash, and excessive woodchip debris at all times.
- M. The applicant shall comply with all federal, state, and local law.

## Alternative Motions

*To recommend approval:*

I move that the Planning Commission enter a finding that the requested Conditional Use Permit and associated development plan for the property located at **9109 Monaco Street** contained in case **CU-121-19-21** meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the Conditional Use Permit.

***To recommend denial:***

I move that the Planning Commission enter a finding that the requested Conditional Use Permit and associated Development Plan for the property located at 9109 Monaco Street, contained in case CU-121-19-21, fails to meet the following criteria of the Land Development Code:

\*list criteria not met\*

***To continue the case:***

I move that the Planning Commission continue the requested Conditional Use Permit f for the property located at 9109 Monaco Street contained in case CU-121-19-21 to a future Planning Commission agenda.