



ITEM NO. (ID # 3163)

DATE: 05/31/2016

AGENDA REQUEST

*DECISION

MEETING GROUP: Board of County Commissioners

STAFF RESOURCE: Daniel Murray,

REQUESTING DEPT: Planning Department

TYPE: Class II

SUBJECT: PROJECT #2012-0089, GCC ENERGY KING II COAL MINE CLASS II

BACKGROUND:

Owner/Applicant: GCC Energy, LLC / Trent Peterson

Agent: Brian Kimmel, Southwest Land Services

As continued from the March 3, 2016 Planning Commission hearing, consideration of the GCC Energy Class II land use permit for an existing coal mine operation comprised of surface facilities, underground mining, and coal hauling. Address is 6473 CR 120 located on APN 5653-362-00-077.

Staff: Daniel Murray, Victoria Schmitt, Damian Peduto

FISCAL IMPACT:

RECOMMENDED ACTION:

Approve project number 2012-0089, GCC Energy King II Coal Mine Class II Land Use Permit, with the following findings and conditions:

Findings:

1. The project application meets the submittal requirements for a class II land use permit (LPLUC Sec. 82-1, 82-71, and 82-82).
2. Upon compliance with the conditions below, proof of adequate water, sewer, and access has been satisfied (LPLUC Sec. 82-183, 82-186, 82-179, 82-161, 82-76, and 74-91).
3. Upon compliance with the conditions below, including execution of the *Road Improvement Agreement Pertaining to La Plata County Road 120 - GCC Energy* that includes a schedule of road improvements, the project will meet the following standards applicable to a road classified as *local, 10 plus units*: minimum 24-foot wide paved road

plus 3-foot shoulders, 60-foot right-of-way, safe road alignment, and appropriate sight distance (LPLUC Sec. 74-91 and 82-161).

4. Upon compliance with the conditions below, including execution of a *Road Improvement Agreement Pertaining to La Plata County Road 120 - GCC Energy* that includes a schedule of road improvements with specific dates by which to complete construction, the project will achieve compatibility with existing, adjoining land uses (LPLUC Sec. 82-191 to 193).

5. Upon compliance with the conditions below, including execution of a *Road Improvement Agreement Pertaining to La Plata County Road 120 - GCC Energy* that includes a phased maximum truck hauling traffic limitation (80 monthly average / 96 daily maximum; 100 monthly average / 120 daily maximum; 120 monthly average / 144 daily maximum) corresponding to the phased road improvements, the project will achieve compatibility with existing, adjoining land uses (LPLUC Sec. 82-191 to 193).

6. Upon compliance with the conditions below, the project will provide adequate buffering to reduce noise, glare, traffic, dust, and unsightly views, and thereby will achieve compatibility with adjoining land uses along north County Road 120 between State Highway 140 and the King II Coal Mine (LPLUC Sec. 82-165).

7. This class II land use permit for the King II Coal Mine specifically does not consider or include any land uses associated with the King I Coal Mine on parcel numbers 565731200127, 565732200031, or 565731100026 (LPLUC Sec. 82-1 and 82-71).

8. This class II land use permit for the King II Coal Mine specifically does not consider or include a vehicle turn-off (a.k.a. truck pull-off or truck chain up area) within La Plata County (LPLUC Sec. 82-1 and 82-71).

9. This class II land use permit for the King II Coal Mine specifically does not consider or include the permittee intentionally staging and/or batching multiple trucks to or from the King II Coal Mine in a convoy (LPLUC Sec. 82-1 and 82-71).

Conditions:

Prior to permit issuance:

1. Prior to issuance of this class II land use permit, the permittee shall record the executed *Road Improvement Agreement Pertaining to La Plata County Road 120 - GCC Energy* in the La Plata County real property records (LPLUC Sec. 82-21, 82-28, 82-161, 82-191 to 193, and 82-29).
2. Prior to issuance of this class II land use permit, the permittee shall provide a report to La Plata County detailing all past disposal activities of material from the King II Coal Mine at locations other than the King II Coal Mine; the report shall include a characterization of the frequency, quantity, and characterization of the material taken from the King II Coal Mine as well as the disposal locations (LPLUC Sec. 82-171, 82-181, and 82-191 to 193).
3. Prior to permit issuance, the permittee shall coordinate with the County Weed Technician to conduct a weed survey on parcel 5653-362-00-077 and shall implement all necessary weed mitigation as determined by the County Weed Technician (LPLUC Sec. 82-174).

Operating Conditions:

4. Prior to September 30, 2016 , the permittee shall install automated, flashing warning lights and safety signage at two locations to be identified by La Plata County along north County Road 120 between State Highway 140 and the project site; automated, flashing warning lights and safety signage shall be as specified by the La Plata County Public Works Director and may include mobile devices; upon acceptance of the installed equipment and inspection by the La Plata County Public Works Director, the automated, flashing warning lights and safety signage shall be turned over to La Plata County for its operation and use, and shall remain in place at the discretion of the La Plata County Public Works Director (LPLUC Sec. 82-191 to 193).
5. Prior to September 30, 2016, the permittee shall provide documentation from the permittee's engineer that the upper parking lot improvements have been completed per approved plans (LPLUC Sec. 82-71 and 82-175).
6. Prior to September 30, 2016, the permittee shall install all water infrastructure and ensure that the water treatment plant is operational; no hauling of water shall be permitted after September 30, 2016 (LPLUC Sec. 82-183 and 82-186).
7. Prior to September 30, 2016, the permittee shall install speed radar signs at two locations to be identified by La Plata County along north County Road 120 between State Highway 140 and the King II Coal Mine; speed radar signs shall be as specified by the La Plata County Public Works Director and may include mobile devices; upon acceptance of the installed equipment and inspection by the La Plata County Public Works Director, the speed radar signs and associated equipment shall be turned over to the La Plata County for its operation and use (LPLUC Sec. 82-191 to 193).
8. Prior to February 26, 2020, the permittee shall obtain an adjudicated water right in

Water Court Division No. 7 case number 2015CW3029 that aligns with the temporary substitute water supply plan approved by the Division of Water Resources / State Engineer's Office on February 26, 2016; the permittee shall renew the substitute water supply plan until such time the adjudicated water right in Water Court Division No. 7 case number 2015CW3029 is secured (LPLUC Sec. 82-183 and 82-186).

9. Prior to November 30, 2016, the permittee shall provide to La Plata County verification from the Colorado Department of Public Health and Environment that water treatment plant as-built plans for Permit Number CO0234301 have been received and accepted (LPLUC Sec. 82-71, 82-183, and 82-186).

10. Prior to November 30, 2016 the permittee shall receive approval from the Colorado Division of Reclamation Mining and Safety of Technical Revision 26 regarding additional ground water quality monitoring (LPLUC Sec. 82-191 to 193).

11. At all times the King II Coal Mine is operated pursuant to this class II land use permit, the permittee shall only utilize as its water source the Huntington dry-up or La Plata River diversions pursuant to Water Right Case No. 2007CW100 and No. 2015CW3059 (pending) delivered via a storage reservoir located at 8796 CR 120, parcel ID 565731100026 (LPLUC Sec. 82-1, 82-71, 82-183, and 82-186).

12. At all times the King II Coal Mine is operated pursuant to this class II land use permit, at least once per month the permittee shall conduct at random locations speed checks of trucks hauling coal from the King II Coal Mine using a speed gun, and the permittee shall by the fifth day of each month post the results from the previous month on a publicly-accessible website maintained by the permittee, specifically the number of coal trucks checks and the number of coal trucks exceeding the established speed applicable to trucks hauling coal (LPLUC Sec. 82-191 to 193).

13. Prior to the commencement of Phase 2 road improvements, the permittee shall ensure that the new alignment of north County Road 120 at the intersection with Robert's Ridge Drive in the vicinity of mile post 2.5 is no closer to the existing residence on the north side of road and is moved to the south to the maximum extent practicable to improve the line of sight at the intersection of Robert's Ridge Drive and north County Road 120 (LPLUC Sec. 82-191 to 193).

14. At all times the King II Coal Mine is operated pursuant to this class II land use permit, if the San Juan Basin Health Department determines that wastewater demands associated with the project exceed their regulatory authority, the permittee shall apply for the necessary permits from the Colorado Department of Public Health and Environment and shall provide a copy of said permit to La Plata County within ten business days of its issuance (LPLUC Sec. 82-179).

15. At all times the King II Coal Mine is operated pursuant to this class II land use permit, the permittee shall perform or ensure the following actions regarding traffic limitations are taken; for purposes of this condition, the time a truck leaves the King II Coal mine shall be considered to be the time a final truck ticket is created by the permittee (LPLUC Sec. 82-191 to 193):

- a. The permittee shall ensure that the monthly average (excluding Sundays), the daily maximum, and the nighttime maximum of trucks hauling coal from the King II Coal Mine do not exceed the following:

Applicable Period	Time	Average. # Outgoing Trucks/Daily/month (Sundays excluded)	Maximum # Outgoing Trucks/Single Day	Monday Morning Maximum # of Outgoing Trucks (12:01 am to 6:00 am)	Monday Night - Friday Morning Maximum # of Outgoing Trucks (10:00 pm - 6:00 am)	Saturday Night Maximum # of Outgoing Trucks (10:00 pm to 11:59 pm)
Project approval to and including date of Preliminary Acceptance of Phase 1, 2 and Phase 3		80	96	14	19	5
Commencement of Phase 4 up to and including date of Preliminary Acceptance of Phase 5		100	120	18	24	6
Subsequent to Preliminary Acceptance of Phase 5		120	144	22	29	7

- b. The permittee shall utilize the following formula to calculate the monthly average pursuant to condition 15(a) above:

$$A = \left(\frac{T}{D - S} \right)$$

Where:

- A = the average number of trucks hauling coal from the King

- II Coal Mine per day that shall not exceed the limits imposed pursuant to condition 15(a) above.
- T = the total number of trucks hauling coal from the King II Coal Mine in a calendar month.
 - D = the total number of days in a calendar month.
 - S = the total number of Sundays in a calendar month.
- c. The permittee shall ensure that no trucks hauling coal leave the King II Coal Mine from Saturday evening at 11:59 pm to Monday morning at 12:01 am.
- d. The permittee shall ensure that all trucks hauling coal from the King II Coal Mine drive no faster than 25 mph on gravel surfaces and 35 mph on paved surfaces, or 5 mph less than posted speed limit, whichever speed is lower; additionally, the permittee shall also ensure that all trucks hauling coal from the King II Coal Mine drive no faster than 10 mph within 200 feet on either side of any residence within 200 feet of a gravel section of north County Road 120 unless the La Plata County Public Works Director authorizes a faster speed in writing.
- e. The permittee shall ensure that no trucks hauling coal from the King II Coal Mine stop or park within the right-of-way along any county road to install or remove chains or for any other reasons except in unforeseen circumstances or cases of emergency.
- f. The permittee shall ensure that no trucks haul coal from the King II Coal Mine anytime the permittee or the La Plata County Public Works Director, or his/her designee, determines that road conditions are, or will be in the near future, substandard for any reason such that continued coal hauling could create an unsafe condition for the traveling public; the permittee may resume allowing trucks to haul coal from the King II Coal Mine only after the La Plata County Public Works Director, or his/her designee, verifies orally or in writing that it is safe to resume hauling operations.
- g. The permittee shall ensure that all trucks hauling coal from the King II Coal Mine display easily identifiable vehicle numbers to aid in reporting truck issues; the permittee shall maintain a direct-dial phone number (currently 970-247-7934) for the public to relay information to the permittee regarding driving behavior of trucks hauling coal from the King II Coal Mine; and the permittee shall, upon receipt of a complaint, investigate and take action to remedy any unsafe driving behavior.
- h. The permittee shall keep a log of all trucks hauling coal from the King II Coal Mine including the date and time each truck hauling coal leaves the King II Coal Mine, and the permittee shall by the fifth day of each month post on a publicly-accessible website maintained by the permittee the following information from the previous month: the number of trucks hauling coal that left the King II Coal Mine on each calendar day; the number of trucks hauling coal that left the King II Coal Mine between 10:00 pm and 11:59 pm each

calendar day; and the number of trucks hauling coal that left the King II Coal Mine between 12:01 am and 6:00 am on each calendar day.

16. At all times the King II Coal Mine is operated pursuant to this class II land use permit, the permittee shall perform or ensure the following actions regarding vibration and subsidence are taken (LPLUC Sec. 82-191 to 193):

- a. The permittee shall not conduct mining activity within 600 feet of a dwelling, measured horizontally, without an expressed waiver in writing executed by the dwelling owner.
- b. If mining activities occur or are anticipated to occur within 1,000 feet of a dwelling, measured horizontally, the permittee shall include in its subsidence monitoring program prepared and undertaken pursuant to Rule 2.05.06(6)(c) of the *Regulations of the Colorado Mined Land Reclamation Board for Coal Mining* at a minimum all dwellings within 1,000 feet of the mining activities, measured horizontally.
- c. The permittee shall, on a quarterly basis pursuant to Colorado Division of Reclamation and Mining Safety requirements and as agreed upon by La Plata County, measure the static groundwater level in the wells identified within Technical Revision-26 or as amended, and the permittee shall within ten days of measuring the static groundwater post the results on a publicly-accessible website maintained by the permittee.

17. At all times the King II Coal Mine is operated pursuant to this class II land use permit, the permittee shall, on a quarterly basis pursuant to Colorado Division of Reclamation and Mining Safety requirements and as agreed upon by La Plata County, conduct water quality monitoring as required by the Colorado Division of Reclamation Mining and Safety, including any additional monitoring that may be required by Technical Revision - 26 or as amended, and the permittee shall within ten days of conducting water quality monitoring post the results on a publicly-accessible website maintained by the permittee (LPLUC Sec. 82-191 to 193).

18. At all times the King II Coal Mine is operated pursuant to this class II land use permit, the permittee shall perform or ensure the following actions regarding noise mitigation are taken (LPLUC Sec. 82-191 to 193):

- a. The permittee shall ensure that sound measurements at 50 feet from the edge of north County Road 120 between State Highway 140 and King II Coal Mine attributed to trucks hauling coal from the King II Coal Mine shall not exceed 86 A-weighted decibels (dba) at any time.
 - b. The permittee shall ensure that all trucks hauling coal from the King II Coal Mine are equipped with exhaust silencers/mufflers in good working condition.
 - c. The permittee shall not install rumble strips on any newly paved sections of north County Road 120 between State Highway 140 and King II Coal Mine.
19. At all times the King II Coal Mine is operated pursuant to this class II land use

permit, the permittee shall perform or ensure the following actions regarding dust mitigation are taken (LPLUC Sec. 82-191 to 193):

- a. Until such time the entirety of north County Road 120 between State Highway 140 and the King II Coal Mine is paved, the permittee shall treat un-paved sections of north County Road 120 between State Highway 140 and the King II Coal Mine with dust retardant such as magnesium chloride or water as determined by the La Plata County Public Works Director.
 - b. Until such time that the entirety of north County Road 120 between State Highway 140 and the King II Coal Mine is paved, the permittee shall treat un-paved section of North County Road 120 between State Highway 140 and the King II Coal Mine as frequently as necessary to ensure trucks hauling coal from King II Coal Mine do not cause dust that rises any higher than a coal truck's wheels to be visually observed by the permittee, La Plata County, or the public.
 - c. The permittee shall ensure that all coal trucks hauling coal from the King II Coal Mine cover their loads prior to leaving the King II Coal mine.
20. At all times the King II Coal Mine is operated pursuant to this class II land use permit, the permittee shall ensure that all lighting at the King II Coal Mine is screened, shielded, and directed so as not to adversely trespass onto adjacent properties/structures (LPLUC Sec. 82-191 to 193).
21. At any time prior to the completion of Phase 5 road improvements, the permittee shall, at the permittee's expense and the property owners' consent, install buffering improvements in the vicinity of the dwelling units located on parcels # 565728400074 and 565728300145 pursuant to a buffering plan approved by the La Plata County Community Development Director and signed and sealed by either a professional engineer and/or landscape architect; buffering improvements constructed by the permittee shall be bonded prior to construction through La Plata County's standardized development improvement agreement; the permittee shall warrant any landscaped improvements through the development improvement agreement to ensure establishment of vegetation (LPLUC Sec. 82-191 to 193, 82-21 to 25, and 82-165).
22. At any time prior to the completion of Phase 5 road improvements, the permittee shall reimburse La Plata County up to \$5,000 for expenses incurred hiring a consultant to determine the adequacy and efficacy of any buffering plan and/or installation required as part of this class II land use permit (LPLUC Sec. 82-191 to 193, 82-21 to 25, 82-165, and 82-196 to 198).
23. At all times the King II Coal Mine is operated pursuant to this class II land use permit, the permittee shall ensure that all trucks hauling coal from the King II Coal Mine only utilize north County Road 120 from the King II Coal Mine to State Highway 140 unless, during extenuating circumstances, written authorization of an alternative route is approved by the La Plata County Manager and La Plata County Public Works Director; the La Plata County Manager and La Plata County Public Works Director will only authorize alternative routes for a specified duration and a specified number of trucks

hauling coal, and will not authorize alternative routes for reasons such as adverse weather events, or when north County Road 120 is closed or subject to traffic restrictions (LPLUC Sec. 82-161, 82-191 to 193).

24. At all times the King II Coal Mine is operated pursuant to this class II land use permit, the permittee shall provide to the La Plata County Public Works Director for his/her approval traffic control plans commensurate with each roadway improvement project in order to ensure roadway safety during construction; all traffic control plans shall ensure that during construction activities, all employees other than those actively hauling coal to and from the King II Coal Mine utilize routes other than north County Road 120 between State Highway 140 and the King II Coal Mine to access the King II Coal Mine (LPLUC Sec. 74-41, 74-61, 74-76, and 82-191 to 193).

25. At all times the King II Coal Mine is operated pursuant to this class II land use permit, the permittee shall pay annual road maintenance fees of at least \$0.12 per ton of coal removed from the King II Coal Mine; annual road maintenance fees exceeding \$0.12 per ton of coal shall be as specified in the *Road Improvements Agreement Pertaining to La Plata County Road 120 - GCC Energy, LLC* (LPLUC Sec. 82-28, 82-161, and 82-29).

26. At all times the King II Coal Mine is operated pursuant to this class II land use permit, the permittee shall apply for a major amendment to this class II land use permit in accordance with the standards and process dictated by the applicable provisions of the La Plata County Code if the permittee increases the numbers of trucks hauling coal from the King II Coal Mine (LPLUC Sec. 82-1 and 82-15).

27. At all times the King II Coal Mine is operated pursuant to this class II land use permit, the permittee shall apply for a major amendment to this class II land use permit in accordance with the standards and process dictated by the applicable provisions of the La Plata County Code if the *Road Improvements Agreement Pertaining to La Plata County Road 120 - GCC Energy, LLC* is materially amended either through consent of the parties or by court action; the La Plata County Community Development Director shall, in his/her discretion, determine if an amendment to the *Road Improvements Agreement Pertaining to La Plata County Road 120 - GCC Energy, LLC* is material or minor (LPLUC Sec. 82-1, 82-15, 82-29, 82-71, 82-21, 82-28, 82-161, and 82-191 to 193).

28. At all times the King II Coal Mine is operated pursuant to this class II land use permit, the permittee shall apply for a major amendment to this class II land use permit in accordance with the standards and process dictated by the applicable provisions of the La Plata County Code if expansion of surface or hauling operations occurs beyond the operations described in the narrative and site plan dated April 28, 2016 (LPLUC Sec. 82-1 and 82-15).

MEETING NARATIVE:

Chairman Blake clarified the process and rules of the hearing.

La Plata County Attorney Sheryl Rogers clarified what was being admitted to the record including: the staff's report, background material and recommendation, and the five power point presentations. She described three water documents that were submitted to be added to the record and asked the interested parties if they had objections to the documents being admitted. La Plata County

Attorney, Adam Smith, said the county does not have objections to their admission but noted for the record that the Harris Water Engineering letter to CDPHE references hauling of water which is in conflict with staff's Condition #6 which prohibits water hauling. Luke Danielson, attorney for Cross Creek Ranch, said they object to the documents being admitted to the record because they have not had time to review or respond.Carolynne White, land use counsel for the applicant, said the documents were submitted because they were not attachments to the staff report and GCC would like them to be available if the issue arose during the hearing. She said they are not part of the record for the hearing but they are already part of the record for the application. Ms. Rogers recommended the Board discuss and decide on these items before moving forward.

Commissioner Westendorff asked if the documents are among the 77 original exhibits. Ms. White said no. Mr. Smith clarified that the documents are part of the Planning Department file. Commissioner Lachelt asked Ms. White to clarify the relevance of the documents. Ms. White said the applicant believes the opponent will raise questions of water quality and availability, they believe it is appropriate so they can be referred to if the question arises. Ms. Rogers told the Board they can choose to enter the documents on the record right now or later if the question is brought up. Commissioner Westendorff said she is not inclined to accept these documents to the record because it is not appropriate to submit documents the day before the hearing. Commissioner Lachelt asked how much time the applicant had to submit the documents. Ms. Rogers said the staff report was released to the public two weeks ago. Commissioner Westendorff said the opponents have not had enough time to review the documents. Chairman Blake said the documents are older and he is willing to accept them on the record. There was no motion to admit the documents and they were not admitted.

Ms. Rogers presented a letter between staff and GCC considering the Wild Earth Guardians complaint to be considered for the record, she noted that the complaint by Wild Earth Guardians is not part of the record and admission of this letter would require the complaint to be admitted as well. She asked the parties to state any objections they have to the document being on the record. Ms. Smith said staff does not have objections but questioned its relevance. Mr. Danielson said he does not believe the document is relevant and would not suggest putting it on the record. Ms. White said they considered it necessary because they believed the opponents would bring it up during the hearing. Commissioner Lachelt asked her counsel to clarify the contents of the letter for the public. Ms. Rogers said it is a citizens complaint about the Bureau of Land Management lease to GCC. Commissioner Westendorff said she does not believe it is appropriate to submit the letter to the record. Commissioner Lachelt supported Commissioner Westendorff's suggestion.

Ms. Rogers presented a letter between Trent Peterson, Vice President GCC, and Daniel Murray, La Plata County Senior Planner, to be considered to the record, she noted that there is a response letter that would need to be submitted with the admission of this letter. Mr. Smith said the county staff objects to the inclusion because it contradicts finding seven which states that this permit does not consider land uses at King I coal mine. Mr. Danielson said they do not object to the letter being part of the record as long as the response is also part of the record. Ms. White agreed with county staff that the letter is a separate land use, but if the opponents are going to mention the issue in argument GCC would like to have the letters available for reference. The letters were not admitted to the record at this time.

La Plata County Senior Planner Daniel Murray introduced the county staff: Damian Peduto, Community Development Director; Adam Smith, Deputy County Attorney; and Jim Davis, Public Works Director.

Mr. Murray presented the location of the GCC Coal Mine and its relation to surrounding county roads. He gave a historical overview of the application and presented the supplementary information of the hearing. He said the Road Improvement Agreement (RIA) is a tool to bring an existing land use into compliance with the land use code. He said while it is a flexible tool in terms of timing, it is upholding the road standards of the land use code.

Mr. Murray presented all of the different regulating agencies that surround the mine to demonstrate that while the County does not regulate all of the operations of the mine they cooperate with the regulating agencies. He said the focus of this hearing is the impact on the surface and the road.

Mr. Murray said GCC's application has proposed a demand for 40 acre feet of water. He presented the 3 sources of water that GCC has submitted which total 51 acre feet of approved water supply. He said delivery and storage is currently through the Hay Gulch Ditch and the Huntington Lateral but they are currently constructing a reservoir. He said there are concerns about agricultural dry up of water, there are 2 alternate options for water which include water hauling, which is not an acceptable long term source, or well water, which has been the subject of public concern.

Mr. Murray said because GCC has a significant impact on the road they are required to bring the road up to county standards. He said until the road is complete, mitigation measures include watering of the road to suppress dust and reduced speed. He presented the county standards that will apply to the road which include two 12 foot travel lanes, 3 foot shoulders on either side, 60 foot rights of way and horizontal and vertical alignment.

Mr. Murray presented the road improvement schedule and corresponding truck limits. He said phase one is temporary pavement of a one mile stretch adjacent to two residences, with continued dust mitigation. He clarified that the county is focused on controlling dust rather than monitoring it because by the time the monitoring equipment is installed the road will be paved. He said the second part of phase one is the availability of buffering to two private properties along this section of the road. He said during phase one GCC is limited to 80 trucks per day. He presented phase two which is the construction of the first 2 mile section of the dirt road, this phase will improve the road adjacent to 2 residences, provide better alignment, improve line of sight, and widen the Narrows area. He said phase three will include the reconstruction of the 90 degree corner. He said with the completion of these two phases, 7 out of 10 of the problem areas on the road will be improved to county standards. He said at this point GCC would be allowed to increase to 100 tucks per day. He presented phase four which includes the full depth reconstruction for the first 2.3 miles of the road. He said the 5th phase includes the widening and repaving of the last two miles. He said upon completion GCC will be able to run 120 trucks per day.

Mr. Murray presented the 6 criteria of compatibility and the mitigation measures that are put in place to ensure the land use permit is compatible.

Mr. Murray said the county defers the monitoring of ground water, as required by criterion D, to the State of Colorado. He said there are currently 4 ground water monitoring stations, which have demonstrated that there is no link between this mining activity and groundwater pollution.

Mr. Murray presented the truck limits, which are based on a monthly average with a 20% daily limit, staff's analysis of the proposed truck numbers, and the process staff used to determine truck limits. He said the road will be engineered to be able to handle the 120 trucks upon completion. He said the number 80, which was the number of trucks run in 2014, is significant because it is when the scales of compatibility tipped. He said the truck limit of 80 is also supported by the safety analysis of the Public Works Director. He said the county and the opposition are using the same data for their recommendations. He said to keep in mind GCC controls the timing of the road improvements and if they want to run more trucks they can complete the road improvements more quickly.

Mr. Murray said the staff is concerned that while the county engineer has determined the road is feasible, there is not a final road design. He said the county is also concerned with the use of condemnation of right of way, but these concerns are addressed by the knowledge that condemnation is a last resort, the RIA requires the application of the Uniform act, and the county does not take condemnation lightly. He said the county is also concerned about the application of buffering designs, but this is mitigated by GCC's commitment to work with property owners for the application and Condition #22 which allows the county to provide a 3rd party consultant to analyze the efficacy of the buffering. He said the county is concerned with the suggestion of directing traffic to the south because the southern route has been determined to be disadvantageous. He said the planning staff has applied the planning principle of concentration of impacts to allow for the concentration of mitigation. He said the county is concerned with impacts of road construction on traffic flow involving coal trucks, the concerned parties are working on the management of the issue. He said the county is concerned with the disposal of waste rock at King I; land use permits are specific to a location and therefore this permit cannot speak to the land use at King I. He said finally the county is concerned with the emergency response plan but there is a condition that requires a meeting between all of the concerned parties for the development of the plan.

Mr. Murray said compliance with the land use code is both quantitative and qualitative, he said this application is compliant with the county code in both ways. He said the planning staff recommends the Board approve the project based on the findings and conditions in the staff report.

Commissioner Westendorff asked the extent of GCC's commitment to monitoring subsidence. Mr. Murray said there are two monitoring techniques, ground water levels and compliance with Colorado Division of Reclamation Mining and Safety regulation for surveyed monuments. Commissioner Westendorff asked where the 1000 foot distance comes from. Mr. Murray said the 1000 feet is put forth by the Vista del Oro subdivision which GCC has agreed to honor.

Commissioner Westendorff said she would like to make sure the 1000 feet is tied to compatibility and is not being done voluntarily. Mr. Smith said the 1000 foot distance is applicable because of compatibility standards.

Commissioner Westendorff asked if 86 decibels, 50 feet from the road, is the standard the county is applying. Mr. Murray affirmed. She expressed concern with the decibel rate and said she does not believe that 86 decibels is compatible.

Commissioner Westendorff asked how accurate the modeling that informed the buffering plans is. Community Development Director Damian Peduto said the county hired a professional to perform an analysis of the Wave Engineering report who concurred with the analysis.

Commissioner Westendorff asked if GCC has completed all the tasks they were assigned for the period between the Planning Commission hearing and this hearing.

Mr. Murray said yes they have been reviewed and determined to be compliant, and three conditions are carrying over.

Commissioner Westendorff asked if there is a general condition that requires GCC to be compliant with permits from other regulatory bodies. Mr. Smith said this is not a condition, the county trusts other agencies will enforce their permits. Commissioner Westendorff said that may be a point of discussion for later.

Commissioner Westendorff asked if the Board will hear from the Fort Lewis Mesa Fire District. Mr. Murray said there will be an opportunity for the Fire Department to speak during public comment but as he understands GCC has consulted with the concerned parties, he added that the public did not feel the revised emergency response plan document was satisfactory.

Commissioner Westendorff asked if the county will be actively monitoring compliance. Mr. Murray said speed and traffic will be monitored through the web page and the county can lay counters on the road. He said water quality will also be posted. He said dust is not required but can be monitored and enforced. Finally he said there is no way to monitor or post noise levels but could be a topic of discussion later.

Commissioner Westendorff asked how the tracking of mud will be mitigated for the Hunzeker residence. Public Works Director Jim Davis said it is inevitable that there will be some tracking of mud from the gravel portion of the road. Commissioner Westendorff said she would like to see the road go far enough from the Huntzeker house that the track-on of mud is minimized.

Commissioner Westendorff asked how the county determined the 12 cents/ton maintenance fee. Mr. Davis said it is based on the current and long term cost of maintaining the road. Commissioner Westendorff asked if there is an escalator built in. Mr. Davis confirmed.

Commissioner Lachelt asked if there is discussion of further limiting the time frame of running trucks and if the trucks are currently running 24 hours a day. Mr. Murray said trucks are running 24 hours a day except Sundays.

Commissioner Lachelt asked if there is discussion of avoiding school bus drop off times in the morning and afternoon. Mr. Murray said there is a school bus stop but this is not a school bus route.

Commissioner Lachelt asked if there are any documented incidences of subsidence in the area. Mr. Murray deferred to GCC.

Commissioner Lachelt asked if there are any coal mine operations under private surface. Mr. Murray said it is all BLM lease.

Commissioner Lachelt asked what condemnation proceeding would be necessary. Mr. Davis said the proceedings are regulated by the Uniform Act and said it is a fairly extensive process. Commissioner Lachelt asked how many parcels could potentially be condemned for this project. Mr. Murray said there are roughly 20 parcels along the corridor. Ms. Rogers said there is a ditch and Ute Mountain Ute Tribe that could be impacted by the expansion of the road. Mr. Smith said the county is not required to follow the Uniform Act but they are choosing to in order to respect the rights of the property owners. He said the intent is to avoid condemnation.

Commissioner Lachelt asked how the county will ensure compliance with the permit. Mr. Smith said code enforcement is a complaint driven process in the county. He said the conditions are numerous and have been drafted in a manner that allows them to be used by the public and the county. He said it is the county's intent to bring contract enforcement action if the RIA is not complied with.

Chairman Blake asked how many water monitoring wells are proposed. Mr. Murray deferred to GCC.

Ms. Rogers revisited Commissioner Westendorff's question about noise standards. She said there are industrial and residential standards for the allowed noise levels as well as state statutes that regulate how much noise a vehicle can make on a road. Mr. Smith clarified that the statute is informing the county's recommendation but the county derives its authority from compatibility standards.

Chairman Blake asked Fire Chief Anderson to speak to the emergency response times. Chris Anderson, Fire Chief, Fort Lewis Mesa Fire Protection District said he consulted with GCC at their request on the emergency response plan.

Chairman Blake announced a 5 minute recess.

Counsel for the applicant Carolyn White presented the application for GCC. She said the application took so much time because GCC and the county wanted to ensure that the agreement was done right. She said throughout the process GCC has had to analyze and change their business practices. She said there are still concerns from the residents but GCC and the county have reached a successful compromise and GCC will be in compliance with the county's requirements. She introduced GCC's representatives: Gina Nance - Vice President Energy and Environment at GCC, Trent Peterson – Vice President of GCC Energy, Wade Wymore – Plant Superintendent at GCC, Mike Olson – Road Runner Engineering, Steve Harris – Harris Water Engineering, Landon Beck – Resource Hydrogeologic Services, Vineet Masuraha – Trinity Consultants, Jeff Kwoikoski WAVE Engineering, Rob Johnston – Johnston Land Company, and Joe Bowden – CDS Environmental Services.

Trent Peterson, Vice President of GCC Energy. Mr. Peterson thanked the county staff for the work they put into the application and the Commissioners for their visit to the mine last week. He presented the layout of the mining operation. He said this is a dry mine because as the water table is below the coal seam, no water is encountered in the mining operation. He said the coal is primarily used for the fabrication of cement, railroads, and for heating of about 1,500 households. He said the mine is regulated by a number of different agencies and they have an excellent safety record.

Mr. Peterson presented the major milestones in the history of the application. He said in 2011 the county determined there was a need for a land use permit and GCC submitted a land use application. Over the next 6 months GCC worked to complete the application and do the studies that were required by the permit application. He spoke about the various neighborhood compatibility meetings, Planning Commission meetings, and professional studies. He said the process has taken a significant amount of time but ultimately they believe GCC and the county have reached a better result.

Ms. White said if this permit is approved GCC will not be able to change their operation and will have to decrease production. She presented the road improvements and mitigation measures GCC has committed to with this application. She said in pursuing this permit GCC had to fundamentally restructure the business model for the mine. She said approval will put both GCC and the neighbors in a better position.

Ms. White presented the phases of the road improvement schedule. She said until all of the Phase 1 improvements that are adjacent to neighbor's homes are finished there will only be 80 trucks allowed. She said the paving ends 500 feet past the last residence which addresses the issue of tracking mud on properties. She said the total trucks are distributed over a shorter amount of time because GCC has stopped running trucks on Sundays.

Ms. White said there is a provision of the RIA that requires GCC to provide financial security to the county at 120% of the estimated cost of the road improvements which provides further assurance that the road will be completed. She said it is exceedingly rare for an applicant to agree to additional contractual enforcement.

Ms. White said as a result of all of these aspects the application meets all of the requirements of the county for a land use permit. She said there can be differences of opinion in compatibility because it is measured quantitatively. She said compatibility does not mean the same as, it means ability to live together without conflict through mitigation. She said GCC is in alignment with the recommendation of staff and the conditions of approval.

Mike Olson, County resident. Mr. Olson said he is going to focus on the county code requirement that requires development to mitigate impacts. He presented safety data that demonstrates the effectiveness of GCC's mitigation measures. He presented the estimated cost of the road improvements.

Mr. Olson presented the 6 options that he explored while deciding what route to use for hauling GCC's coal. He said GCC has concluded that using 120 South presents too many incidences, such as the school bus route for Fort Lewis Mesa School. He presented the criteria that were used to make the decision including: population, roadway geometry, accident records, and permitting time. He said the State is not supportive of using the southern route. He said the assessment of the Fort Lewis Mesa Fire District also concludes that the use of 120 South is more dangerous to the public.

Mr. Olson returned to the road improvement schedule and addressed issues around the interim paving to mitigate dust issues and the implementation of flashing warning signs.

Ms. White gave an overview of the approval criteria and how the various studies address each criterion. She presented the studies that relate to noise, dust, and vibration at the mine and on the road. She said the dust issue will be immediately mitigated by the paving which is scheduled to begin in June if the permit is approved.

Ms. White presented the buffering options and said the buffering will only be installed at the property owner's request. She said GCC is willing to accept the county's new condition that would allow the county to retain further expert input regarding the efficacy of the buffering walls at GCC's expense.

Ms. White presented a summary of the hours of operation for GCC that ensure GCC is not disturbing the neighbors. She said neighbors who feel their view is affected by truck traffic can also elect to have buffering walls installed. She presented the monitoring efforts GCC has in place to ensure the ground water will not be affected.

Ms. White said the mine does not adversely affect the character of the neighborhood because it has been a part of the area for a very long time and is compatible with farming. She said the area has changed by the influx of residential development.

Ms. White said all of the criteria have been met for the approval of the land use permit and the mitigation measures that have already been, and will continue to be implemented, also allow for compatibility.

Mr. Peterson presented the numerous mitigation measures GCC has taken in response to the concerns of the community. He said GCC has committed to not developing ground water wells, reducing truck speeds, prohibiting jack brakes, prohibiting hauling on Sundays, installation of a fan silencing device, widening of pavement at the 90 degree corner, watering of the road, removal of foliage, and various other vehicle policies.

Mr. Peterson said GCC is a committed member of the community and presented statistics that demonstrate their relevance. He said for every truck reduced the community loses 3 jobs.

Ms. White concluded GCC's presentation by saying the application meets all of the county's requirements for a Class II Land Use permit and asked for the favorable approval from the Board. She also requested that GCC has the opportunity to address any additional conditions of approval that the Board wishes to implement.

Commissioner Westendorff asked if GCC has met the requirement to give CDOT designs for the 140 intersection. Ms. White said yes all of the requirements have been met. Mr. Olson said GCC is working with CDOT through the month of June to get the access permit which has a termination date of July 4th.

Commissioner Westendorff asked how the final design will affect the right of way. Mr. Olson said the county road requires a 60-foot right of way, currently the road is set up for prescriptive use which means it does not have a designated right of way. He said a significant portion has 60-foot right of ways and so only small slivers of the parcel will need to be acquired.

Commissioner Westendorff asked if there is any room for expansion where the road is close to the residences and if there is anything that would allow for the road to be moved away from the homes. Mr. Olson said the alignment will not be any closer than currently exists and alternative alignment will be evaluated. He said it is difficult to expand in some places because the road is along the hill on the opposite side.

Commissioner Westendorff asked if 86 decibels is an average or an instant measurement. **Jeff Kwoikoski, Denver, Colorado.** He said 86 is an instantaneous measurement taken 50 feet from the center line of the road. He clarified that the 86 decibels is far from the level that would create hearing damage. He said they measured many passing trucks and they did not measure any trucks over 80 decibels. Commissioner Westendorff asked what speed the trucks were traveling when they took the measurement. Mr. Kwoikoski said they measured under a variety of conditions. Commissioner Westendorff asked if they measured any vehicles that are not coal trucks. Mr. Kwoikoski said yes, the non-coal truck traffic is often the same as, or louder than, the trucks.

Commissioner Westendorff asked Mr. Masuraha to explain the differences in the submitted air quality reports. **Vineet Masuraha, Crescent Way, California.** Mr. Masuraha said the differences stem from differing inputs in the air quality modeling method used by both of the experts which gave the other expert dust levels far higher than anything he has ever seen before for a short length of road. He said the EPA standard is based on a 24 hour average; the level of dust that is kicked up by the trucks would have to remain for 24-hours for there to be health effects.

Commissioner Lachelt asked for details about GCC. Mr. Peterson said GCC is an acronym for Grupo Cementos de Chihuahua, founded in Chihuahua, Mexico in 1941, first in business in the United States in 1994. The US headquarters for operations is in 600 South Cherry Street, Glendale, Colorado. He said locally GCC was formed in 2004 when GCC bought the Nation King Coal Mine,

their address is 6473 County Road 120, Hesperus, Colorado 81326.

Commissioner Lachelt asked if the local division has authority to act on the company's behalf or if the decisions come from the Denver or the Mexico office. Mr. Peterson said the local officials have the authority to make decisions on the company's behalf.

Commissioner Lachelt asked if the truck drivers are GCC employees. Mr. Peterson said GCC does not employ truck drivers, they are contracted out.

Commissioner Lachelt asked Mr. Peterson to describe how GCC enforces the trucking policies. Mr. Peterson said they enforce the rules by establishment of policies that govern the trucks on GCC's property and the highway.

Commissioner Lachelt asked how traffic would be rerouted in the event of an accident on the road. Mr. Peterson said there is a condition of approval that requires rerouting of truck traffic to go through the County Public Works Department. Ms. White said there is also an emergency response plan that addresses alternative routing and can be found at exhibit #50 in the packet.

Commissioner Lachelt asked if GCC operates any other coal mines. Mr. Peterson said "no". Commissioner Lachelt asked if there are other coal mines in Colorado that pay impact fees. Mr. Peterson said he is not aware. Commissioner Lachelt asked the staff if they are aware of other counties that charge impact fees for coal mines. Mr. Murray said they had conversations with Routt County about the Peabody Mine but their program is completely different than La Plata County's.

Chairman Blake asked about the nature and number of the water monitoring wells in the area. **Landon Beck, Resource Hydrogeologic Services.** Mr. Beck said there are 4 additionally proposed clusters of 3 ground water monitoring wells which are strategically placed to provide accurate results. Commissioner Blake asked if there are any existing water monitoring wells. Mr. Beck said "yes", there are compliance wells with records that go back to the 1980's and are monitored on monthly and quarterly bases. Commissioner Blake asked about the depth of the wells. Mr. Beck said the existing wells are between 20 to 65 feet. The proposed wells are bed rock wells that are around 300 feet.

The Board recessed for lunch. The meeting was reconvened at 1:20 p.m.

Chairman Blake noted that public comment was scheduled to start at 1:00 p.m. and asked for any public comment that would like to go before the neighbors come forward.

John Wilson, County resident. Mr. Tucker said he is a veteran and he is here to protect the county from domestic aggressors who want to close down the mine. He said he is in favor of keeping the mine open because it has some of the best coal there is, they don't have serious environmental effects, and they support the people of the community.

Chairman Blake read the comment on the pink slip for Denise Baca who was not able to stay. Comment slips are Exhibit #96. Ms. Baca left a comment stating she would be presenting on the effects of trucks on real estate in the area.

Chairman Blake restated the rules for making public comment and said the commission values and respects every comment and they expect the same from the audience.

Luke Danielson, Gunnison Colorado. Mr. Danielson represents Cross Creek Ranch, landowners along County Road 120 North. He clarified that they are not here because they oppose mining, but they are here to balance the values of the mine and the neighbors. He said the allowable production rate has been increased to 1,300,000 tons a year; indicating that the nature of the mine has changed significantly. He said the company has been in violation of the Land Use Code for years, during that time they significantly increased their production rates, at the same time GCC introduced a policy that required all trucks to use CR 120 North. He said these two factors combined have made this road unsafe, which has been verified by their traffic consultant, LSC.

Jeff Hodston, Colorado Springs, Colorado. Mr. Hodston of LSC Transportation said that they considered multiple factors in determining the roadway capacity and safety of County Road 120 North. He said this road is highly dominated by industrial truck traffic and the factors, county criteria, field observation, and other agency criteria allowed them to determine that the roadway is not adequate to run 80 coal trucks a day in its current condition. LSC recommends 55 trucks a day until all of the road improvements are complete because that is the rate before the county determined the mine to be out of compliance. He presented the options of using CR 120 South to CR 119 and said they are worthy of an analysis. He said his analysis does not demonstrate any engineering bases for the restriction from CR 120 South and one way truck traffic would be the best solution. He presented the deficiencies of CR 120 North.

Mr. Danielson said from the staff report it is clear that everyone agrees that the road is substandard and said there is no engineering or record basis for the 80 truck per day limit. He said he would like to Board to get into the differences in the results of air quality modeling studies and said that everyone agrees that long term exposure is deleterious to health.

Mr. Danielson addressed the issue of solid waste disposal at King Coal I. He said the staff report does not adequately address the need for waste disposal from the operation at King II. He said although there is a condition that requires GCC to do something about the waste disposal, there is no time line.

Mr. Danielson said there are also potential water quality monitoring issues because there are issues with the location of the monitoring wells.

Mr. Danielson said the noise study used criteria designed for urban areas that are not appropriate for rural areas. He said based on the analysis, if this was a federally funded project there would be mitigation required.

Mr. Danielson said there are 3 reasons for the recommendation of 55 trucks, it is the August 2010 levels, the tolerable level from LSC transportation specialist, and in compliance with air quality standards and therefore this limit should be considered.

Paula Mathias, County resident. She said daily traffic to the mine does not only include coal trucks but also delivery trucks, water trucks and employee vehicles. She said the noise at her home is above the Colorado standard but has not been measured. She said the various issues with compatibility that have been demonstrated to be mitigated by GCC still have serious problems that affect the neighbors. She said the residents were there before the mine was acquired by GCC. She said she is asking the Board to demonstrate that the neighbors' lives matter.

Julie MCQue, County Resident. She said she has lived there for over 32 years with her husband. She asked how a billion dollar multinational company has managed to divide the rural community. She said recently the number of trucks rumbling past their house daily has increased three fold. She said the number of trucks and related vehicles that passed while the commissioners were visiting was not representative of the amount of vehicles they deal with daily. She said her family has felt the damaging effects of the dust to their respiratory health for the past 3-4 years. She said paving of the road will not make the lives of the neighbors more bearable and having to live in the home that she built with the road situation is heartbreaking. She said she is asking for the help of the Board, and for them to send a message that they care about the health and well being of their constituents.

Karen Hunzeker, County resident. She said she moved to the ranch full time in 2005, in this time you never viewed more than 2 or 3 trucks a day. She said the route was changed to CR 120 North and the dust bowl returned to Hay Gulch. She asked where the permit is and said it is scary to have a coal truck at her shoulder while she is trying to get into her truck. She said she does not understand where the wall would go or how the road can be widened. She said to "be real" and limit GCC to 55 trucks per day.

Gary Grantham, County resident. He stated 3 issues: equal protection under the law, mitigation compatibility, and conditional overhaul. He said equal protection should be considered because GCC was told they did not need a permit when they purchased the mine, and the unequal cost that the neighbors are forced to bear. He said the probability and severity of accidents has increased significantly. He said the process has been permeated by the view that the safety, health, quality of life, and property values of CR 120 North residents are expendable for the greater good of GCC and the county. He said many of the mitigation measures just swap one adverse impact for another. He said mitigation delayed is mitigation denied.

Jeff Robbins, counsel for Southwest Colorado Advocates. Mr. Robbins said the neighbors do not want this road, even in its improved state, but they will allow it. He presented the design standards that are applicable to a county road and said the code states new development shall implement road improvements. He said the code requires that the road improvements be finished before commercial use begins, without phasing but GCC is asking for an exception to this rule. He said the only way the application can be approved is if the applicable standards are met. He said the staff cannot create additional tools out of thin air. He said reducing the limits to 55 trucks is the no lawsuit option. He said it is irrelevant to consider whether or not GCC needs to run more than 55 trucks because economics is not a criterion for compatibility. He said if they need to run more trucks, then they can run them south. He submitted to the commission an alternate RIA and staff report findings.

He said the project is not compatible with air, water, noise, dust, or traffic criteria. He said they understand the intentions of the County but it is only a win if a safe number of trucks use the road, which they submit is 55 average daily trips, without phasing until the improvements are finished.

Cynthia Roebuck, Southwest Colorado Advocates. Ms. Roebuck requested that a final member of the neighbor group have the ability to speak.

Dr. Tom Williams, County resident. He said as an otolaryngologist, doctor of the upper respiratory system, he is familiar with the effects of excess amounts of road dust on the human body. He said he has witnessed dust clouds in Hay Gulch area that are contrary to the statements of GCC. He said it has not been studied but the effects of coal dust are also detrimental to health and are linked to premature death and respiratory disease. He said the high volume intermittent noise pollution is one of the most dangerous types of noise pollution and listed the effects. He said the mitigation measures taken by GCC are ineffectual because of the volume of trucks on the road. He said he concurs with the recommendation of 55 trucks until the road is paved for the entire length.

Commissioner Lachelt asked Mr. Hodston for his rationale behind the truck limit of 55. Mr. Hodston said anything above the level that was established at the time that GCC was notified that they needed a land use permit for new development. He said there is variation in the amount of trucks that are on the road because it is an average. He said a local roadway is determined by the number of single family dwelling units but this road is not typical because it is dominated by industrial trucks.

Commissioner Lachelt asked Mr. Hodston if he would consider truck traffic going south. Mr. Hodston said this would allow GCC to increase their truck trips, above 55 without putting the strain on County Road 120 North.

Commissioner Lachelt asked what improvement would need to be done if the trucks were to run along County Road 120 South. Mr. Hodston said there would be potential improvements at Highway 140, some other improvements along CR 119, and applying the same policies that are implemented on County Road 120 North to make it a viable route.

Commissioner Westendorff asked what issues are related to the trucks entering off of Highway 140. Mr. Hodston said it would be more costly because it would require a left turn modification of a state highway but for exiting it does not seem like it would require an acceleration lane. Commissioner Westendorff said as she understands it the loaded trucks are more dangerous than the unloaded and asked if that factors in. Mr. Hodston said it is a consideration but so is the terrain on the southern route.

Ms. Rogers asked how many trucks could go that route safely. Mr. Hodston said about half or three quarters of the truck limits. He said his point is to at least look at that route to give an opportunity for more trucks.

Commissioner Lachelt asked if the county has a traffic study to support the 80 truck limit. Mr. Davis said the county does not typically prepare traffic studies; they are done by the developer.

Commissioner Lachelt asked Ms. White if the dust and noise is adequately mitigated, will they still install walls. Ms. White said the condition of approval for the buffers is available regardless but the model predicts that the noise levels will be below the state limits.

Commissioner Lachelt asked Mr. Danielson why his study is different than the study of GCC. Mr. Danielson said their expert determined that the watering of the road decreases the dust by 50% whereas the GCC study decreases the dust by 84%. He said their expert says 8.4% is silt and the GCC study says it is 1.5%. He said they got the 8.4% from GCC's permit application for the road to their site but GCC reduced that figure.

Commissioner Westendorff asked if everyone is opposed to batching. The public laughed and said yes.

Commissioner Westendorff asked staff about the noise caused by the steep grade on the variance hill. Mr. Murray said the hill was not monitored because there are no residences along the hill, but the hill has been modeled and the results are in the report. He said there are concerns with the implementation of buffering on the hill.

Mr. Danielson said his consultant, Mr. Mount, was on the line waiting for his turn to speak but is no longer available, he sent over a list of comments that they would like to see on the record. Ms. Rogers asked the applicant and the staff if they have any objections to the material be submitted to the record. Ms. White did not have any objections. Mr. Smith did not have any objections.

Commissioner Lachelt asked Mr. Danielson to summarize the nature of the comments. Mr. Danielson said it relates to the waste pile at the King Coal I site. Ms. White said she objects to the admission of this comment to the record on the same ground as the other admissions that were previously omitted regarding the King I site. She said they believe that staff's finding that it is not connected is correct and if the Board decides it should be discussed, the previous submission of GCC should also be admitted. Mr. Smith agreed with the position of the applicant and said they prefer the option where none of the material is admitted to the record because it is irrelevant to the land use being considered today.

Commissioner Westendorff said it should be set aside but be available for the discussion should the solid waste disposal discussion be commenced.

Mr. Smith said county staff has not received the documents that Mr. Danielson handed to the commission and asked for an opportunity to review them. Commissioner Lachelt asked if the document relates to truck trips and this permit. Ms. Rogers said the document deals entirely with the waste issue. Commissioner Lachelt said she supports the document being placed to the side. The commission decided to place the document to the side.

Mr. Smith requested to use 5 minutes of the remaining time allotted to staff to discuss an issue that was raised by the opposition.

Mr. Smith said it is important for staff to clarify what parts of the code are applicable to the application. He said the neighbors posit that the county's recommendation of 80 trucks does not meet the standard of the code. The staff would argue that based on their argument, the recommendation of 55 trucks does not meet the code either. He said the county would submit that both options meet the code and the only term that the county has ever negotiated with GCC is timing. He said based on staff's analysis, both limits meet the county code and therefore compatibility is what informs the argument between 80 and 55 trucks. He said it is important to recognize that compatibility is what drives the decision of how many trucks can be on the road during the first phase.

Commissioner Westendorff asked for more input from the fire chief about the appropriateness of a loop route. Chris Anderson, Fire Chief, Fort Lewis Mesa Fire Protection District, he said the fire district submitted comments that are in the packet and they have determined there are more traffic challenges on the southern route.

Commissioner Westendorff asked about the challenges of using a loop route when there is an accident on one side of the access. Mr. Anderson said it has been discussed between GCC and the land owners and he does not see it as a concern.

Chairman Blake opened public comment.

Matt Watson, County resident. Mr. Watson shared his personal story and said as the human resources manager for GCC he believes GCC is the greatest company that he has ever worked for. He said they have 150 employees working at the mine and over 200 truckers and vendors that support the operation. He said the average rate of pay is \$31.69 an hour and full-competitive benefits. He said he hopes La Plata County is grateful to have a world class company operating in their county.

Randy Linscott, County resident. Chairman Blake read the comment for Mr. Linscott who is located near the 90 degree corners on County Road 120 South where many cars go off the road during the winter.

Anne Markward, County resident. Chairman Blake read the comment for Ms. Markward who said this project has parallels with other cases and negligent county planning decisions.

John Lee, County resident. Mr. Lee said his property, Silver River Ranch, fronts the road. He said sending the traffic somewhere else does not make sense if there are so many issues. He said 20 years ago he looked on 120 North for property but looked elsewhere because of the traffic and mine. He said to share the pain with other people is misplaced.

Dan Huntington, County resident. Mr. Huntington said his home is 5000 feet from the entrance of the mine. He said there were only a few residences in Hay Gulch and the new residences are what changed the character of the neighborhood. He said the process has taken too long because every time they agree, something else comes up and he would appreciate the application coming to a conclusion. He said truck traffic to the south was never willy-nilly and there have been numerous accidents on that road.

He clarified that he is not represented by the Southwest Colorado Advocates.

Derek Snyder, County resident. Chairman Blake read the comment for Mr. Snyder who said he runs the road every day and the change that has happened since 2010 has been tremendous and asked the commission to limit the number of trucks to 50+ a day.

Donna Nazario, County resident. She spoke on behalf of the real estate agent that compiled some data to demonstrate the effect the truck traffic is having on real estate in the area. She said since January 2015 there are a lot of expired and withdrawn properties in the area. She said the bottom line is that their life time investment is in their home, she recently sold her home and she lost a lot of money in the sale. She said there are properties that sit out there for sale for years and it should be recognized.

Commissioner Lachelt asked her to clarify the housing price differences that the real estate values in Hay Gulch as opposed to Durango. Ms. Nazario said only two have been sold, they both sold for below market value. Commissioner Lachelt asked if they have had a statement from the Assessor for the property values. Ms. Nazario said she does not know if the assessor wants to take a stand, but the data is all real and from the assessor's office. Commissioner Westendorff said this information is from the real estate brokers report not the county assessor's office.

Jack Llewellyn, County resident. As the Executive Director of the Chamber of Commerce, Mr. Llewellyn said the jobs created by GCC create quality of life in the county. He said there are 1500 families in the county that heat their home with GCC coal. He said the extensive time the permit has taken demonstrates due diligence on the county's part. He said this approval will hold GCC accountable to their commitments and allow them to conduct business with predictability and properly prepare for their future and the future of their employees.

Roger Zalneraitis, County resident. As the Director of the Economic Alliance he said he knows it is very frustrating for both sides and it has been a very hard project for everyone. He thanked GCC for their investment in the community and said GCC is owned by a Mexican company and Mexican companies report their earnings in pesos, so this is not a billion dollar company. He said even though economics is not addressed in the code it is fundamental and you cannot impose conditions that make it impossible for the business to operate. He said if there is a condition that limits GCC to 55 trucks they cannot operate and the county loses.

Guy Stees, County resident. Mr. Stees said he was on the original Hay Gulch Citizens committee and he represents people on the south end of the road. He said there are 3 times as many people, 5 county road intersections, and twice as many driveways on the southern route. He said many of the houses are right next to the road. He said there are also bus routes on the southern route.

Conner McCue, County resident. He thanked the Board, staff and GCC. He said it is amazing how the company has been able to give themselves success through layers of legal BS.

Mike Crawford, County resident. Mr. Crawford said he is a 4th generation rancher on his property near the mine and the mine has been great to this family, they have worked with GCC many times. He said he is grateful for everything GCC has done for the community.

William T. Williams, County resident. He said the residences along highway 140 have been ignored and it is incumbent upon the Board to take them into consideration.

Chairman Blake closed public comment until 6:00 PM.

Ms. Rogers updated the list of documents that are part of the record and the remaining items that are yet to be determined. Commissioner Westendorff reminded the public that the written comments submitted via email will only be allowed until 4:00 PM. Ms. Rogers said the Board has received 23 responses so far.

Commissioner Westendorff clarified the process for the remainder of the day. Chairman Blake asked if the Board was in favor of asking questions of the parties. The Board supported.

Commissioner Westendorff asked if the construction of the water reservoir was complete. Mr. Peterson said the construction was not scheduled to be completed, but to be underway today. He said the reservoir is under construction and water hauling has stopped. Commissioner Westendorff asked how they are getting their water if they are not hauling. Mr. Peterson said from irrigation rights.

Commissioner Westendorff asked if Mr. Olson is confident in his estimate for the construction cost of the improved road. Mr. Olson said he is confident and his estimates are reflective of CDOT averages. Ms. White said the risk of increased cost is on GCC according to the Road Improvement Agreement.

Commissioner Westendorff asked if the first 90 degree turn will remain on to the north of the existing residence or will it be moved to the south. Mr. Olson said that is at mile post .3 and is the first 90 degree corner. He said it is constrained because the transmission lines are running along the road. Ms. White said this is attachment 5, sheet 7. Mr. Olson said this is a conceptual plan and the issue is there cannot be an acceptable curve with the existing alignment. He said there are options and they will be addressed. He said this is the exception to the amount of right of way that will need to be acquired for the new alignment.

Commissioner Westendorff asked Mr. Olson what consideration Ms. Hunzeker will have in the re-routing in the road around her house. Mr. Olson said she will have considerable amount of say. He said as of right now there are no plans to move the center line.

Commissioner Westendorff asked if there might be an underreporting of accidents, she asked where the numbers come from. She said trucks stuck in a ditch might not be considered an accident but it is certainly a traffic incident. Mr. Olson said his analysis is based on recorded data from the county; clearly there are instances where it is not recorded. Commissioner Westendorff asked how

that is reflected in his analysis. Mr. Olson said it is accurately reflective of the accidents on the road because if the people involved want to make a claim they have to get a report filed. Ms. White added that truck drivers must report any instance to the company.

Commissioner Westendorff expressed concern about the acquisition of the property along the first 90 degree corner, the realignment along Ms. Hunzeker's property and asked to speak to the right-of-way agent. **Rob Johnston, Johnston Land Co.** Mr. Johnston said the policy and procedure will follow the Uniform Act, he said the land agent would first express the proposal to the land owner and try and reach a voluntary consent. Chairman Blake asked if Mr. Johnston has done land acquisition in this area before. Mr. Johnston said he has done right-of-way in La Plata County for 26 years. He said he has worked primarily in the oil and gas industry and public utilities. Chairman Blake asked if he has worked in the Hay Gulch area. Mr. Johnston said his only involvement was a lease for GCC from the Ute Mountain Utes.

Commissioner Lachelt asked about the truck pull out to the north of the GCC mine and what trucks are doing at the spot. **Wade Wymore, GCC Superintendent.** Mr. Wymore said the truckers call this the Ute corrals, the truckers pull off here to tarp or un-tarp their loads.

Commissioner Lachelt asked about how many hours the truckers are on the job per day and if the majority of truckers are going to New Mexico and returning. Mr. Wymore said he cannot speak to the number of hours the truckers drive and said you might see the same truck in one day but with a different driver. Brandon Wadell of Well on Wheels said truckers are not allowed to drive more than 11 hours a day and are required to document all of their time in and out time of the seat.

Commissioner Lachelt asked GCC if they have analyzed 55 trucks north and 25 trucks south. Mr. Peterson said GCC has closely analyzed 120 south and it is not a favored route because of the number of constraints built on the road. He said every time that route was used in the past there were issues and it was problematic enough that they completely abandoned the southern route.

Commissioner Lachelt asked planning staff to identify the route the Board traveled on going to the south. Mr. Murray presented the route the commissioners took on their tour.

Commissioner Lachelt asked GCC if they were to do all four phases as one phase how long it would take and asked if it would be feasible before the winter. Ms. White said the steps have to occur sequentially and each step takes time. She said the steps that need to be taken care of immediately are already in motion. She said if all of the improvements were to be completed at once there would be considerable impact on the residents' and the mine's ability to use the road. Mr. Olson said the conceptual to the preliminary is a significant process that takes scheduling and time. He said this is an aggressive and realistic schedule.

Commissioner Lachelt asked staff if they have been able to review the recommended changes to the RIA submitted by Mr. Robbins. Mr. Smith said the staff has not had an opportunity to review the amendments extensively. He said most of the amendments are being driven by the shift to 55 trucks but that would be a significant change to the project as presented by the applicant. He said it might be impossible to do a complete analysis of the implications of a change of that magnitude. Commissioner Lachelt asked them to be prepared by tomorrow afternoon. Mr. Smith said the proposed use of County Road 120 South would be a significant undertaking and would require an analysis by Public Works and Planning.

Chairman Blake asked for clarification of how the road will change the neighborhood. Mr. Robbins said the road will change the neighborhood in the way that a road of that magnitude could support additional development in the future.

There was a public comment from Mr. Huntington (not picked up). The Commission informed him he will have to wait until public testimony in the evening.

Commissioner Westendorff asked how the county will know if truck traffic is increasing in accordance with Condition #26. Mr. Murray said Condition #26 says any increase in trucks, even one truck, will require a new permit. Commissioner Westendorff asked if that is how GCC understands the condition to read. Ms. White said GCC understands the condition and added that the county will know if there is an increase in trucks because GCC is required to do actual truck count reporting. Mr. Smith clarified that the condition applies to the truck number limits in all of the different phases.

Commissioner Westendorff asked GCC if they understand that there are limits to the grant money that is available to county. Ms. White said they are well aware of the situation and they are willing to work closely with the county to get whatever is available.

Commissioner Westendorff said there are reasons to be concerned about the enforceability of the conditions of the permit. Ms. Rogers said there are the standard county code enforcement policy and contractual requirements. She said staff paid particular attention to the enforcement section of the permit. She said county can also seek injunctive relief. She said that from a legal perspective, the staff has included every tool they have.

Commissioner Lachelt asked how the financial security functions. Ms. Rogers said GCC must put up a bond for each phase of the road improvement that the county could collect upon failure to complete. Ms. White said there are two legal mechanisms, two contractual tools, and code enforcement. She directed attention to the remedies section of the agenda packet. She said there is an additional level of enforcement in the commitment of GCC which is demonstrated in GCC's implementation of mitigation measures absent the assurance of obtaining a land use permit.

Commissioner Westendorff asked if there is any concern with the temporary pavement that will be laid this time. Mr. Davis said he has complete confidence in the application. He explained why the previous lay down of recycled asphalt was not successful. Commissioner Westendorff asked if he expects the new pavement will last three years. Mr. Davis said "yes, at a minimum it will be three years and we can expect a high level of success". Commissioner Westendorff asked when the road is anticipated to be completed. Mr. Davis said the road is anticipated to be completed in 2017.

Commissioner Lachelt asked Mr. Robbins to be prepared to discuss the differences in his proposed conditions and RIA and the county's conditions and RIA. Ms. Rogers suggested the Board allow each of the parties 10 minutes to discuss the proposed RIA. Chairman Blake agreed.

Mr. Murray asked for direction from the Board about what conditions the staff should be prepared to submit.

Commissioner Lachelt requested the staff be prepared to discuss the use of the southern route because it has been requested repeatedly. Mr. Smith said there is a mechanism in the code that would require the applicant to produce a study that the staff could then evaluate but an additional 25 trucks going south would require a compatibility assessment and would be very difficult to address in a couple of hours of time. Commissioner Lachelt requested that GCC and Cross Creek Ranch be prepared to discuss and provide analysis of the use of the southern route after the recess.

Commissioner Westendorff asked for an opportunity to have discussion, in executive session with council, before addressing issues discussed today. Ms. Rogers asked Commissioner Westendorff if she is asking about the enforcement of federal and state permits. Commissioner Westendorff said she would like to know if the county would be able to enforce other agencies permits if GCC is out of compliance. Ms. Rogers said she would also like to discuss this issue and the modifications to the RIA. The Board discussed possible times to have executive session with their legal counsel before making a decision. The Board agreed that they would hold executive session in the morning. Ms. Rogers asked when the board would like to hear rebuttal. The Board discussed and decided they would like to hear rebuttal this evening.

Luke Danielson asked if the Board will want to talk to or question one of their experts who are planning on leaving this evening. Ms. White asked the Board if they are intending on continuing the meeting to tomorrow afternoon and if she should advise her experts if they should stay or leave. Commissioner Westendorff said the parties can anticipate having a hearing tomorrow but she is not anticipating having more questions. The Board discussed if they will need the experts.

Ms. White clarified that rebuttal by definition is the conclusion of public testimony and so there should be no need for expert testimony after the rebuttal.

Chairman Blake continued the meeting to 6:00 PM.

The meeting was reconvened at 6:07 PM.

Brandon Waddell, County resident. Mr. Waddell said as the owner of Well on Wheels he drives on 90% of the county roads and he believes County Road 120 North is in alright shape. He requested the Board put in place a more aggressive mag-chloride schedule until GCC completes the road construction. He said he believes the southern route is viable. He said he supports the permit and hopes everyone can find a way to make it work.

Dave Peters, County resident. He said as a former executive for a major energy company he has dealt with permitting in Colorado, Utah and Wyoming and the La Plata County permitting process is the most extensive he has ever seen. He presented a list of things that he believes the Board should take into account. He said the length of the permit packet is a good indicator that there is a problem in the permit process. He said there should be a review of the department from an outside party.

Kayla Patterson, County resident. She said that local government and business can work together to come to an agreement. She reiterated the importance of coal to families who use it to heat their homes. She said this should be a simple decision because of the strong work done by planning staff. She said a denial of the permit would be a vote of no confidence in the Planning Commission and the Planning Department.

Wade Wymore, County resident. He said his comments are his personal opinions not the views of GCC. He expressed frustration with the continuing mention of GCC's foreign ownership. He said Durango came about via a coal train company in 1880 supporting the mines in Silverton and so GCC does not change the character of the county. He said property values have decreased throughout the county because of the state of the oil and gas industry.

Milo Gonzales, County resident. He said the community is lucky to have a company of this caliber. He thanked the parties for all the work they have done for the permit. He said the road is better today than when he started. He said the miners also recommend the approval of the Class II permit.

Chris Dorencamp, County resident. Mr. Dorencamp said as the underground mine superintendent he recognizes that noise and dust are the biggest sticking points and said the best way to deal with them is through paving the road. He said the mine operates with behavioral safety that runs through all facets of their life. He said they have first responders, EMTs and a former paramedic employed at the mine and they all attend weekly safety training.

Allen Crawford, County resident. He said Hay Gulch has always had a coal mine, it is coal mining country. He said there are several hundred people out of work if they shut the mine down. He said GCC has done more than their fair share to maintain the road.

Allen Harper, County resident. As the owner of the Durango Silverton Narrow Gauge Railroad Mr. Harper is proud of the negotiations the parties have made. He said if he has to go out of the state for coal it would affect ticket prices and ridership which would ultimately cost the community about \$17 million. He said many jobs would be directly and indirectly affected by the loss of the coal mine. He said the community is a family, what affects one will affect all and it is critical that the mine remains in operation and the community does what they can to help those who are negatively affected.

Travis Oliger, County resident. He said his house is the closest house to the mine. He gave examples of the ways GCC has

mitigated the complaints of the neighbors. He said they have done everything they can for the neighbors and the county and he is in support of the permit.

Ginny Chambers, County resident. She said she is in support of the tourist industry in Durango and Silverton. If the mine goes out of business it will affect thousands and thousands of people. She said there are people in the town that need the coal to heat their home.

Tim Gallagher, County resident. He said he served on the Citizens Advisory Council and his mission was to gather as much information as they could about the mine and the way it affects the neighbors. He said he brought reasonable recommendations to the county for mitigation but they never intended to get involved in the details between GCC and staff. He said it is disconcerting to several members that the newest neighbor has brought a legal team to try and change what the council has worked for. Commissioner Westendorff asked Mr. Gallagher if he was referring to GCC. Mr. Gallagher said no.

Charles Page, County resident. He said he wanted to address the issue that a lot of people who work at and for the mine do not live in La Plata County. They live out of town but it is important to realize that the mine supports the whole region.

Kathleen Adams, County resident. Ms. Adams said she sat on the McCues' porch for an hour and she was speechless because of the amount of traffic. She said no one is asking that the mine be shut down but the mine needs to be in compliance. She said compliance is enormous and so is empathy.

Huck Morris, Farmington, New Mexico. Mr. Morris said, as the terminal manager for one of the trucking companies, he recognizes GCC has made every effort to abide by the rules that have been laid down by the county. The company has improved their fleet that drives on the road. He said GCC is in contact with the trucking companies on a daily basis. He said 80% of the staff works hauling coal and if GCC does not get their permit they will be out of the job.

Commissioner Lachelt asked how many hours a day the drivers are on shift. He said drivers are allowed to work 14 hours, 11 hours driving. He said all of the trucks are equipped with electronic logs and cameras that monitor the driver and the road. Commissioner Lachelt asked if the new trucks and trailers are quieter. He said just this year they purchased 30 new trucks and the company is continually updating their fleet.

Ms. Rogers said there are 22 comments submitted on-line that will be made part of the record.

Chairman Blake closed public comment.

Commissioner Westendorff asked for more clarification about the measure of continuity of sound, background noise, and the HUD standard. She asked if staff has ever considered anything other than the 86 decibels. Mr. Murray said staff has pulled from state statute to inform the compatibility standard and it is within the Board's discretion if they would like to entertain a different number based on an average. He recommended the Board keep 86 for instantaneous level but implement a standard for an average noise level. Mr. Peduto said the applicant's professional will be able to speak to the average but he believes the 86 decibels is more of a strict standard. Commissioner Westendorff said she would like a better understanding of the cumulative impact of sound rather than an instant. Mr. Kwoikoski said the 86 decibels is easy to enforce which makes it a good reference. He said they use the day night average sound level which is used by HUD to assess impact on residence. He said below 65 is acceptable and 65-75 is a normally unacceptable range where mitigation is considered. He said it is not easy to measure the average. Commissioner Lachelt asked what mitigation measures could be implemented to get below 65. Mr. Kwoikoski said there are a number of mitigation measures such as paving the road, traffic levels, truck speeds, and barriers. Chairman Blake asked what the average might be. Mr. Kwoikoski said they have measured and averaged the noise levels but it varies. Commissioner Westendorff asked if it would be worth looking at the report again, she asked what exhibit it is in the staff report. Mr. Kwoikoski said Attachment 13 is the most comprehensive report that explains the averages and has graphic representations of the noise levels. Mr. Kwoikoski described attachment 68 figure 2 for the commissioner's understanding. He said everything is below 65; the only thing that gets above 65 is the house at the first 90 degree corner. Commissioner Lachelt asked how the mitigation numbers were determined. Mr. Kwoikoski gave an explanation for the adjusted numbers and said barriers help more for the homes that are closer to the road.

Commissioner Westendorff asked what ongoing cost and time will be required of staff if the permit is approved. Mr. Peduto asked if she is asking what would be required of staff for the implementation of the barriers and said staff will be required to facilitate meetings between the neighbors and GCC as well as many other aspects of implementation. He said there will be significant staff time required in implementation of the conditions. Mr. Kerby said in many ways the journey has just begun.

Commissioner Westendorff asked what good does it do to have the goal of preventing dry up if we continue to approve projects that use agricultural water. Mr. Smith said there are competing issues that have to do with water rights and the role of the planning guidance documents.

Commissioner Westendorff asked about the management of traffic during the construction of the road. He said all the county roads are built under live traffic, using universal traffic control standards, the Public Works Department will work with the applicant to ensure best practices.

Commissioner Lachelt asked why the county has not applied mag-chloride to the road this season. Mr. Davis said he does not know for sure but it might be wasted dollars if they apply the mag-chloride and then the road is constructed.

The commissioners and counsel discussed the remaining process for the evening.

Mr. Smith said he worked with staff through the dinner hour to analyze 25 trucks going south. He said staff is compelled to say that option would not comply with the code and they cannot support that decision. He said just one truck going to the south would trigger

the same road improvements, even if it only utilized for a short period of time. He said it is highly unlikely that the applicant would be willing to improve the road for the interim. He added that permanent use of the southern route would require an entire new application. Mr. Davis said routing trucks south involves a longer stretch of road and the issues have not been vetted. Mr. Peduto said the southern route also has very steep slopes which would require variance applications. He said there would be an entire review of a revised application if they proposed the use of the southern route. He reiterated the principle of concentration of impacts in land use planning. Commissioner Lachelt explained the reasoning behind the current discussion for the members of the public who were not in attendance for the previous conversation.

Chairman Blake closed public comment portion of the meeting and asked the Board for further questions.

Chairman Blake said they will do closing comments tomorrow. He said there will be an executive session at 10:15 AM. Ms. Rogers suggested the Board make a motion to hold executive session and a motion to continue the meeting until 12:30 PM June 1, 2016.

Commissioner Westendorff asked if the Board was going to close public testimony.

Ms. White said the parties were to have two 10 minute periods, the first focused on the proposed documents from Mr. Robbins and the second for final rebuttal. Ms. Rogers said each party will have both opportunities. Commissioner Westendorff asked if the parties will expect to give any testimony in regard to Mr. Robbins' proposals. Ms. White said they expect to deliver argument not testimony.

Commissioner Westendorff moved to close evidence. Ms. Rogers gave a list of the documents that are accepted to the record.

Commissioner Westendorff said the exhibits containing irrelevant material are not appropriate for the record.

Mr. Danielson said the Board has to take on the issue of waste disposal. He said the letter from Carl Mount should be admitted to the record because the Board allowed the comments left on pink sheets to be submitted after the individual had left the hearing. Commissioner Westendorff said she would consider him a consultant not a member of the public because his work is contained in the packet. Commissioner Lachelt said she would support admitting the letter to the record. Chairman Blake said he is fine with admitting it but he does not think it is relevant. Ms. Rogers said if the letter from Mr. Mount is admitted the rest of the material regarding the waste at King I will have to be admitted as well.

Ms. White said GCC does object to allowing the evidence on the record and submitted that if the material from Mr. Mount is admitted they would request that GCCs material regarding the issues is allowed as well.

Ms. Rogers said the relevancy of the waste at King I will have to be considered. Mr. Smith said Condition #2 requires a report to be submitted to the county about the disposal of waste rock. He said Condition #7 is the condition that states the current application does not consider King I. Commissioner Lachelt asked if material from King II coal mine is being taken to King I coal mine utilizing County Road 120. Mr. Smith said the county does not consider or permit the disposal of waste and if the other location does not have the correct permit they are in violation of the code. Commissioner Westendorff requested legal counsel. Ms. Rogers said the waste rock is a separate issue. Ms. White said the traffic counts do include the trucks disposing of rock. Commissioner Westendorff asked if it is part of the 80 truck trips per day. Ms. White said "no", the waste rock disposal trucks were included in the traffic study, but not in the truck limits. Commissioner Westendorff asked GCC what other exhibits they would want to allow. Ms. White said they agree with Finding #7 but if it is the inclination of the Board to include the opposition's documents they would want their documents included as well. Mr. Danielson said they have no objection to put in 5 through 7 on the record. Ms. White said they would just like item #5 as well. Commissioner Westendorff moved to accept items 5 through 7 on the record. Ms. Rogers said based on the motion the May 27 letter from Trent Peterson will become Exhibit #85, the May 30 Letter from Luke Danielson will become Exhibit #86, and the written statement from Carl Mount will become Exhibit #87. The Board affirmed. Commissioner Westendorff moved to close evidence and evidence was closed.

Ms. Rogers said the motion for an executive session on June 1st, 2016 at 10:15 AM will be for the purposes of the Board receiving legal advice on specific legal questions pursuant to Colorado Revised Statue 24-6-402(4)(b) for the purpose of discussing GCC compliance with state and federal permits and the La Plata County Code and for determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators, pursuant to Colorado Revised Statute 24-6-402(4)(e) regarding the Road Improvement Agreement with GCC. Commissioner Lachelt moved to hold executive session and the question was called. All the commissioners were in favor.

Commissioner Westendorff motioned to continue the meeting to June 1, 2016 at 12:30 PM. The motion was called and the meeting was continued to June 1, 2016 at 12:30 PM.

BOARD ACTION:

RESULT:	CONTINUED TO DATE CERTAIN BY CONSENT VOTE [UNANIMOUS]	Next: 6/1/2016 12:30 PM
MOVER:	Julie Westendorff, Vice Chair	
AYES:	Brad P. Blake, Gwen A. Lachelt, Julie Westendorff	

REVIEWED BY:

Daniel Murray

Daniel Murray

5/18/2016

ATTACHMENTS:

- 0 - 2016_0513_GCC Staff Report CLII_BOCC May 31 2016_4837-1431-7873(1) (2)_final (PDF)
- 1 - 2015-10-08 Planning Commission - Minutes Re GCC_ (PDF)
- 2 - GCC Narrative Revised 1-29-16(PDF)
- 3 - GCC site plan 7-29-15 (PDF)
- 4 - GCC TIA -Final 151119__ (PDF)
- 5 - CR 120 - CONCEPTUAL PLANS 11X17_151117_reduced file size (PDF)
- 6- Parcels-Road-Fence_Gibbons-Model_24X36 (PDF)
- 7 - Mike Olson Ltr_County CLII Review response_150911 (PDF)
- 8 - Mike Olson Roadrunner Ltr_LSC TIA Response_160129 (PDF)
- 9 - Ltr_County Water Truck response_ 141114 (PDF)
- 10 - 2015_1202_GCC Road Improvement Agreement_GCC clean 4840-9585-6171 v.9... (PDF)
- 11 - GCC List of outside permits_May 2015 (PDF)
- 12 - Noise and Vibration Report GCC King Coal Mine II permit Aimone-Martin REVISIONS 090715 (PDF)
- 13 - Wave_1365_20160104_REPORT_resaved (PDF)
- 14 - Wave_1365_20160104_Appendices A-F (PDF)
- 15- AMA review of Wave Truck Noise Study 011516 (PDF)
- 16 - preliminary hydro July 30, 2015 (PDF)
- 17 - Trinity_Vineet Masuraha_Preliminary Responses on MMA Impact Analysis 01292016 (PDF)
- 18 - Mike Olson Roadrunner Ltr_LSC TIA Response_160129 (PDF)
- 19 - Resource Hydrogeologic_King I & II Coal Mine Area Hydrology Study Report 31JAN2016__ (PDF)
- 20 - GCC Energy King Coal II NCM # 1 & 2 Summary of Concerns (PDF)
- 21 - GCC Letter to LPC_Noise Mitigation McQ & Hunz_2016 01 29... (PDF)
- 22 - CDS Annual Hydrology Report 2014 12 22 (PDF)
- 23 - GCC SLO list_buffer of CR 120, 119, 116 plus those who requested notice_July 2015 (PDF)
- 24 - GCC Mine Public comment letters_to date Feb 16 2016 (PDF)
- 25 - Concerned Citizens of Hay Gulch recommendations_April 8, 2015_original (PDF)
- 26 - HGCAP report July 8 2015__ (PDF)
- 27 - CR 120 Group_Response to GCC Compatibility Assessment Final_Grantham doc(PDF)
- 28 - CR120 group_Alt Approach #2 provided at Oct 8 2015 PC (PDF)
- 29 - 15 12 15 CROSSCREEK Ltr to Daniel Murray_Traffic_with Strid report (PDF)
- 30 - 15 12 16 CROSSCREEK Ltr from Danielson to Murray_Air Quality_with McVehil report (PDF)
- 31 - Fischer Opinion Letter, 12-19-15 with CV (PDF)
- 32 - 15 12 28 CROSSCREEK Ltr Re Noise Monitor (PDF)
- 33 - 16 01 07 CROSSCREEK Final letter Daniel Murray_request for info (PDF)
- 34 - King II Coal Mine LSC Technical Memo-FINAL (PDF)
- 35 - 16 01 19 CROSSCREEK email Carl Mount GCC prod rates_with attach (PDF)
- 36 - 16 01 25 CROSSCREEK Ltr re sharing of information (PDF)
- 37 - 16 01 29 CROSSCREEK Ltr re Air Quality with McVehil report (PDF)
- 38 - 16 02 08 CROSSCREEK Comment Letter with Exhibits A-K (PDF)
- 39 - 160208 FINAL ltr 120N_Daniel (PDF)
- 40 - CGS_Revised GCC Energy Class II Application - King Coal II_August 2015 (PDF)
- 41 - DOWR Comments (PDF)
- 42 - FLMFPD_GCC permit comments Jan 2016 (PDF)

- 43 - FLMPG comments Sept 9 2015_La Plata County Planning GCC (PDF)
- 44 - Public Works-Class II-Dec 10 2015_AND 8-20-14 AND 7-14-14 (PDF)
- 45 - SJBH comments_ GCC Energy OSWS Permit #2007-344 and OSWS Permit #2007-345 (PDF)
- 46 - PC February 25 2016 Minutes_Draft (PDF)
- 47 - PC March 2 2016 - Minutes (PDF)
- 48 - PC March 3 2016 minutes (PDF)
- 49 - Traffic Control Process_160316 (tp markup) (PDF)
- 50 - GCCE Emergency Procedure Manual Section 11_ (PDF)
- 51 - RIA La Plata County & GCC Final_with Exhibit A_signed by GCC (PDF)
- 52 - McVehil-Monnett March 14, 2016 response to Trinity (PDF)
- 53 - GCC Energy C-1981-035 TR-26 AR #1 Response 2016 03 25_ (PDF)
- 54 - GCC Mine Public comment letters_Feb 16 2016 to March 31, 2016 (PDF)
- 55 - Compatibility Assessment and Mitigation July 31, 2015 (PDF)
- 56 - Compatibility Analysis of CAP Recommendations - Table version_Dec 11, 2015 (PDF)
- 57 - Compatibility Analysis of CR120N Recommendations - Table vesrion_Dec 11, 2015 (PDF)
- 58 - LPC-Public Works-Interim Measures_CR 120_32516 (PDF)
- 59 - Flashing Warning lights_Signs March 17, 2016_ (PDF)
- 60 - Trucks in Small Batches (PDF)
- 61 - Buffer Concepts_combined with Sound Barrier package (PDF)
- 62 - GCC RIA CR120N mitigation requirements, Mark Schultz - v2(PDF)
- 63 - 16 03 11 CROSS CREEK Ltr to Sheryl Rogers re Comments on Road Improvement Agreement (PDF)
- 64 - SWCO Adv 160314 Comments for 160414 PC (PDF)
- 65 - 160330 SWCOA request to PC with ATTACH JK ltr(PDF)
- 66 - PC Minutes April 14, 2016_ (PDF)
- 67 - Roadrunner Ltr- GCC _LSC TIA Response _160513 (PDF)
- 68 - Wave_1365_20160513_SuppRpt1&Figs (PDF)
- 69 - Vineet Masuraha_Supplemental Expert Responses 05132015_CR 120 Air Quality Impacts (PDF)
- 70 - GCC site visit May 18 2016_itinerary v2_with all attachments (PDF)
- 71 - Public comments April 13, 2016 x4 (PDF)
- 72 - 16 04 08 Cross Creek Ltr_LSC Report_and all other attachments (PDF)
- 73 - 16 05 10 CROSS CREEK Ltr to La Plata County re Noise Study_Braslau Report attached (PDF)
- 74 - 16 05 11 CROSS CREEK Ltr to La Plata County re Solid Waste pollution_with all attachments (PDF)
- 75 - 160513 SITE VISIT Itinerary FINAL (PDF)
- 76 - GCC April 28, 2016 submittal_all attachments__ (PDF)
- 77 - 16012 May letter_with all attachments re septic (PDF)