



## COLORADO

Division of Reclamation,  
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215  
Denver, CO 80203

October 8, 2014

John Avery  
Luke the Duke LLC  
989 County Road 120  
Hesperus, CO 81326

**RE: Revised Comments and Objections, Luke the Duke Gravel Pit, Permit No. M-2013-036**

Dear Mr. Avery:

This notice supersedes the Division's correspondences dated September 23 and 29, 2014.

The public comment period for the Luke the Duke application closed on August 28, 2014.  
During the comment period the Division received the following comments and objections:

**Timely Agency Comments:**

1. State Historic Preservation Officer, dated July 24, 2014, received July 31, 2014;
2. Division of Water Resources, dated July 28, 2014;
3. La Plata County Attorney, dated August 8, 2014, received August 8, 2014;

**Timely Objections:**

4. Gary D. Grantham, dated August 26, 2014, received August 26, 2014;
5. Gregg and Kathy Darling, not dated, received August 26, 2014;
6. Thomas Jeffrey Layne, dated August 26, 2014, received August 27, 2014;
7. Chuck Eckenrode and Gail Lovell, dated August 27, 2014; and
8. Michael A. Goldman, Esq., on behalf of Clifford and Carolyn Attkisson, and Jeff and Claire Bradshaw, dated August 26, 2014, received August 27, 2014.

Sincerely,

Wallace H. Erickson

Environmental Protection Specialist

Enclosure: Items 1 through 8, as listed above

ec w/enclosure: John Avery, Luke the Duke, LLC  
Sandi Cunningham, Preliminary to Final, Inc.  
Julie Murphy, Esq., AGO for DRMS  
Russ Means, DRMS GJFO



KAP



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JUL 31 2014

DIVISION OF RECLAMATION  
MINING AND SAFETY

July 24, 2014

Kate Pickford  
Environmental Protection Specialist  
Division of Reclamation, Mining and Safety  
1313 Sherman Street, Room 215  
Denver, CO 80203

Re: Notice of 110 Construction Materials Reclamation Permit Application Consideration Luke the Duke, LLC Cross Creek, File M-2013-036 (SHPO Project #66331)

Dear Kate Pickford:

Thank you for your correspondence dated July 22, 2014 (received by our office on July 24, 2014) regarding the subject project.

A search of the Colorado Cultural Resource Inventory database indicated that no cultural resource inventories have taken place in the vicinity of the proposed project area and no historic properties have been recorded within the subject property. However, our files contain incomplete information for this area, as most of Colorado has not been inventoried for cultural resources. As a result, there is the possibility that as yet unidentified cultural resources exist within the proposed project area.

Should human remains be discovered during the proposed project activities, the requirements under State law C.R.S. 24-80 (part 13) apply and must be followed.

Thank you for the opportunity to comment. If we may be of further assistance, please contact Todd McMahon, Staff Archaeologist at (303) 866-4607/ [todd.mcmahon@state.co.us](mailto:todd.mcmahon@state.co.us) or Dan Corson, Intergovernmental Services Director at (303) 866-2673/ [dan.corson@state.co.us](mailto:dan.corson@state.co.us).

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward C. Nichols'.

*for* Edward C. Nichols  
State Historic Preservation Officer  
ECN/TCM



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

John W. Hickenlooper  
Governor

Mike King  
Executive Director

Dick Wolfe, P.E.  
Director/State Engineer

Response to Reclamation Permit Application Consideration

DATE: July 28, 2014  
TO: Kate A. Pickford, Environmental Protection Specialist  
CC: Division 7 Office; District 33 Water Commissioner  
FROM: Caleb Foy, E.I.T. *CF*  
RE: Luke the Duke Gravel Pit, File No. M-2013-036  
Operator: Luke the Duke, LLC  
Contact: John Avery, (970) 759-9977  
Sec. 26, Twp. 35N, Rng. 11W, N.M.P.M., La Plata County

CONDITIONS FOR APPROVAL

- ☒ The proposed operation does not anticipate exposing groundwater. Therefore, exposure of ground water must not occur during or after mining operations. If stormwater is contained on-site, it must infiltrate into the ground or be released to the natural stream system within 72 hours, or all work must cease until a substitute water supply plan, or augmentation plan approved by water court, is obtained. Reclamation plans must ensure water will not be retained onsite for more than 72 hours unless an augmentation plan approved by water court is obtained.

**COMMENTS:** According to the application, no water is being used in conjunction with the operation and no ground water has been evident during previous excavations at the site.



La Plata County  
Colorado

La Plata County Attorney

Sherri Rogers  
Todd Weaver  
Paul Kosnik  
Adam Smith

1099 Main Street, Suite 313  
Crossroads Building  
Durango, CO 81301  
(970) 382-6006

August 8, 2014

Mined Land Reclamation Board  
1313 Sherman St., #215  
Denver, CO 80203  
DMG\_web@state.co.us

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AUG 08 2014

Re: File No. M-2013-06, Luke the Duke LLC

Dear Members of the Board:

Durango  
Division of Reclamation  
Mining and Safety

Please accept this letter as comment from La Plata County in regards to the enforcement hearing held on Wednesday, July 30, 2014, in File No. M-2013-06, Luke the Duke LLC, which concerned an unpermitted sand and gravel operation in the Cross Creek Ranch subdivision, located in La Plata County. The County understands the Mined Land Reclamation Board made a determination at the end of the hearing that Luke the Duke LLC had conducted mining operations without a permit and is requiring Luke the Duke LLC to obtain a mining permit for its operations within 90 days of the Board's order.

Under La Plata County's land use code, gravel mining or mineral extraction operations require a Class II land use permit. In situations where the Colorado Division of Reclamation, Mining and Safety gets involved, La Plata County defers to the Division's determination on if certain activities qualify as gravel mining or mineral extraction operations. Once the Division (or the Board) makes such a determination, La Plata County moves forward (or not) depending on the Division's determination.

In the present case, now that the Board has determined Luke the Duke LLC has conducted mining operations, Luke the Duke LLC must now also obtain a Class II land use permit from La Plata County prior to performing any additional activities at the Cross Creek Ranch subdivision. As such, La Plata County respectfully requests that the Board add a condition to its order in this matter or within the reclamation permit requiring Luke the Duke LLC to apply for and obtain a Class II land use permit from La Plata County prior to performing any additional activities related to its mining operations in the Cross Creek Ranch subdivision.

Thank you for your time and consideration.

Sincerely,  
La Plata County Attorney's Office

A handwritten signature in black ink, appearing to read "Todd A. Weaver". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Todd A. Weaver  
Deputy County Attorney

Cc: Damian Peduto, La Plata County Planning Department Director  
Marianna Spishock, Code Enforcement Officer  
Butch Knowlton, La Plata County Building Department Director  
Sheryl Rogers, La Plata County Attorney  
Kate Pickford, Colorado Division of Reclamation, Mining and Safety, Durango Office  
Julie Murphy, Colorado Attorney General's Office

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AUG 26 2014

Durango Field Office  
Division of Reclamation,  
Mining and Safety

Gary D. Grantham, Ph.D.  
1124 County Road 120  
Hesperus, CO 81326  
[gdgrantham@hughes.net](mailto:gdgrantham@hughes.net)  
(970)749-1092

August 26, 2014

Virginia Brannon  
Division Director  
Division of Reclamation Mining and Safety  
Department of Natural Resources  
State of Colorado

Dear Ms Brannon:

I am writing to comment on the application for a Construction Materials Limited Impact (110) Reclamation Permit filed by Luke the Duke, LLC.

I have lived at 1124 County Road 120, Hesperus CO 81326 ( Section 26, Township 35 N, Range 11 W, NM Prime Meridian) since 1998.

Any past or future agricultural use for this land is largely imaginary. Prior to the operations begun by Luke the Duke, LLC (John Avery), the land may have had marginal utility for limited grazing. Now, all the topsoil has been removed from the property. Mr. Avery has no access to water, so his assertion that he is creating ponds is totally chimerical. Even if they were created, what agricultural utility would they have on a property devoid of topsoil and surrounded by other 35+ acre properties that Mr. Avery and a local developer created expressly to sell for home sites?

Furthermore, there is no local demand for the material he is creating. He does not own any of the roads or subdivisions that he claims to be maintaining.

County Road 120 is already heavily impacted by the mining activities at the King Coal Mine: 100-120 semi loads of coal are transported down this road to State Highway 140 every day. Mr. Avery proposes to mine 60,000-70,000 tons of material or 4500-5000 dump truck loads over a period of 3 years. This amount of additional truck traffic on County Road 120 will create a safety hazard for both the truck drivers and the neighbors who use the road in an increasingly residential area.

Finally, I doubt that Mr. Avery has the financial resources to make good on any of his plans. In fact, what he is doing is more about vindictiveness over his bankruptcy than it is about a viable mining operation.

Gary D. Grantham

To whom it may concern;

I would like to add a comment from a concerned neighbor for the application of a 110 reclamation permit for "luke the duke" gravel pit.

1-----Operator is in default by starting a "gravel pit" years ago without applying for permit and only now is allowed to do things in reverse to save himself a monetary fine.

2-----Ability to "reclaim" the property after the material is removed. How is this to be achieved, he admitted under oath that he does not own any water rights.

3-----Financial stability of the applicant to follow through with the whole process is in doubt after learning of his past history.

I am very concerned of the applicants ability and/or intentions to actually complete anything.

Gregg and Kathy Darling

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AUG 26 2014

Durango Field Office  
Division of Reclamation,  
Mining and Safety

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M2013-036

AUG 27 2014

DIVISION OF RECLAMATION  
MINING AND SAFETY

August 26, 2014

Division of Reclamation and Mining Safety (DRMS)  
1313 Sherman Street Room 215  
Denver CO 80203

RE: New Permit La Plata County

✓ Luke the Duke LLC - Proposed Gravel Pit

✓ Public Notice & Comment – Due August 28, 2014

Dear DRMS:

Pursuant to Public Notice regarding the above referenced proposed Gravel Pit/Surface Mining activities listed below is a list of safety and other concerns submitted for consideration and review by DRMS.

Item 1 – Child Safety

Per a review of the development plan please note the subject activities are proposed to operate within 225 feet +/- of an existing residential dwelling occupied by our neighbors (Jeff & Claire Bradshaw & their children). Said application fails to adequately address attracted nuisance issues in event children entered the construction area. The permit application fails to mention stabilization/security of pit walls, aggregate piles, heavy construction machinery, safety fencing and potential site hazards. The applicant – Luke the Duke LLC should provide a detailed safety plan prior to any permit consideration by DRMS.

Item 2 – Road Safety

The proposed permit plan references the use of Equestrian Trail for ingress/egress. An eminent and pending legal question remains whether ingress/egress noted on a 2005 residential subdivision plat entitles Luke the Duke LLC to unlimited/unconditional commercial use. The permit plan fails to reference any contingent roadway development or transport access to County Road 120 in the event commercial access to Luke the Duke LLC is denied via Equestrian Trail. The permit plan also fails to mention any road maintenance and upkeep plan resulting from said heavy-hauling/commercial activities. Lastly, the proposed permit plan and exhibits fail to adequately depict the location of the Hay Guich Irrigation Ditch and the boxed culvert crossing on Equestrian Trail. The concrete boxed culvert crossing was primarily designed to accommodate passenger vehicles and farm equipment. In the event Luke the Duke LLC is permitted legal access for commercial and heavy hauling on Equestrian Trail; then said applicant must provide a detailed Engineering analysis, proposed construction plans (subject to the approval of adjoining land owners) and maintenance plans for the heavy haul use of said roadway. Collapse of the aforementioned culvert could result in serious bodily injury and harm.

Item 3 – Water Quality and Supply

The proposed permit application is incomplete regarding water supply to accomplish the reclamation plan. Two existing pits on the Luke the Duke LLC property should be completely reclaimed immediately and prior to any further surface disturbance activities. An adequate fresh water supply will be needed



Item 3 - Continued

to avoid stagnation, toxic algae and potential mosquito infestation. Each can create hazards for humans, wildlife, livestock and pets. Additionally - portions of the proposed disturbance area are relatively flat; but the applicant's proposed development plan inadequately addresses all topography associated with storm water run-off from the site. A hydrological analysis and storm water management plan should accompany the application. Said application does not mention the proximity of the proposed excavation to the La Plata River. Again - the applicant - Luke the Duke LLC should remediate all current disturbances prior to any further gravel pit activities. These requirements do not appear to be overly burdensome based upon the applicant's estimated development costs and reclamation plan estimates.

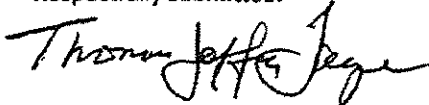
Item 4 - Wildlife and Community Impacts

The adjoining Cross Creek neighborhood attracts residents due to its scenic beauty and abundant wildlife. It is a proven summer birthing area for mule deer and nesting area for wild turkey. In late fall Cross Creek serves as a migration area for highland mule deer and elk. Eagles, cranes, grouse and many other species are also frequently observed in the area. Luke the Duke LLC should provide a detailed wildlife management plan and proposed operating plan in alignment with all neighbors and adjoining land owners. The current application is inadequate and disregards wildlife and community impacts.

Item 5 - Financial Viability

A review of the application does not indicate a community necessity to support the proposed development. The proposed project does not appear to be supported by an adequate market analysis. A failed business venture of this magnitude could result in devastating consequences if the current and proposed reclamation plan is deemed no longer financially viable by Luke the Duke LLC; and prior to conclusion of all reclamation activities. Monetary budgets for the proposed reclamation appear to be grossly under estimated. An in-depth review by DRMS is encouraged. The applicant - Luke the Duke LLC should provide proof of financial responsibility in the form of Surety Bonds, Letters of Credit and assurances in such forms as deemed necessary to insure all subject roadway repairs and reclamation can be accomplished in a safe and timely manner. Designated and fully funded surety instrument with the State of Colorado and adjoining landowners should also accompany the subject application.

Respectfully submitted:



✓ Thomas Jeffrey Layne  
Neighbor and Adjoining Property Owner

105 TIERRA VISTA DRIVE  
Durango CO 81301

Phone 281-413-1619

*Popote Gulch Ranch  
1048 Cross Creek Road  
Aspen, CO 81326*

VIA Email

August 27, 2014

Ms. Kate A. Pickford  
Environmental Protection Specialist  
Division of Reclamation, Mining and Safety  
State of Colorado  
1313 Sherman Street, Room 21  
Denver, CO. 80203

Re: Application by Luke the Duke, LLC for the Extraction of Construction Materials

Dear Ms. Pickford:

My husband and I vigorously object to the granting of a permit to Luke the Duke, LLC for the commercial operation of mining rock. We are within one mile of his ongoing mining operation and object to the proposed expansion. Mr. John Avery has admitted that he has no water rights and provides no viable means of reclaiming the gravel pits he has already created. Now, he wants to expand this operation at the expense of the quiet enjoyment of this community. This operation is a danger to persons who live nearby, property and the environment.

This business was conducted without a permit thereby making his operation in default of the laws (34-32.5-120. *Permit refused - operator in default. The board shall not grant a permit for new mining operations to an operator who is found to be in violation of this article at the time of application.* Therefore, he should not be granted a retroactive permit to cover his illegal activity and be rewarded with a permit to expand his operations.

We understand that this state has liberal land use laws but the wholesale and illegal destruction of private property for a commercial gain should be tempered with the interests and rights of the private, non commercial landowners' use which is adjacent to this proposed mining operation.

We urge you to reconsider. This commercial operation will negatively impact the private roads that Luke the Duke, LLC will use to haul product as well as the quiet enjoyment of the Cross Creek community homeowners.

Sincerely,

Chuck Eckenrode and Gail Lovell

Cc: Mr. Damian Peduto, Director

KAP

MICHAEL A. GOLDMAN  
JEFFERY P. ROBBINS  
LINDSEY K. S. NICHOLSON  
JOSH W. MACK

GOLDMAN  
ROBBINS  
NICHOLSON P.C.  
ATTORNEYS AT LAW

679 E. 2ND AVENUE, SUITE C  
PO BOX 2270  
DURANGO, CO 81302  
970/259.8747  
FAX 970/259.8790

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August 26, 2014

AUG 27 2014

DIVISION OF RECLAMATION  
MINING AND SAFETY

**VIA FEDEX**

Division of Reclamation, Mining and Safety  
Attn: Kate Pickford  
1313 Sherman Street  
Denver, CO 80203

RE: ✓Comments concerning the 110 Application of Luke the Duke, LLC  
Permit No.: M-2013-036 ✓  
Our File: 1919.004

To Whom It May Concern – Division of Reclamation, Mining & Safety:

This firm represents Clifford and Carolyn Attkisson, Trustees of the Attkisson 1994 Revocable Trust, the owner of Lot 2, Horseman's Park, located at 224 Equestrian Trail, Hesperus, Colorado and Jeff and Claire Bradshaw, the owners of Lot 3, Horseman's Park, located at 789 County Road 120, Hesperus, Colorado. Each of my clients have received Public Notice via certified mail concerning the Luke the Duke, LLC application for a construction materials limited impact (110) reclamation permit with the Colorado Mined Land Reclamation Board (the "Application"). We have reviewed the Application and attendant exhibits. Let this letter represent my clients' comments and objections concerning the Application for reclamation permit.

As you are well aware, Luke the Duke, LLC, by and through Mr. John Avery, conducted an extensive gravel operation illegally and without a permit at the location designated under the Application and such operation grew exponentially in April to June of 2014. Subsequent to complaints filed by both my clients and this Firm, the Division appropriately sought and acquired Mr. Avery's compliance to cease and desist from any operation until he acquired the requisite permits. We appreciate the Division's attention and efforts to this point as well as the Mining Land Reclamation Board's determination of illegality and findings of violation and assessment of civil penalty at its meeting of July 30, 2014. It is noteworthy, that the applicant certifies that it does not have any "operations in the State of Colorado currently in violation of the provisions of the Colorado Land Reclamation Act" despite the Board's findings to the contrary.

As it concerns my clients' comments and objections to any further mining, excavation and hauling of construction materials from the adjacent property, I attach and incorporate by reference this Firm's letter to Mr. Avery, dated June 6, 2014, outlining my clients' overall and general concerns as Exhibit 1. That letter summarizes my clients' objection (amongst other things) to Mr. Avery's/Luke the Duke, LLC's continued trespass on private property over the course of months while initially conducting his illegal operation. We respectfully request that any permit address access/egress to and from the site and which addresses the prohibition of any continued trespass.

Additionally, and of further relevance to this Board's jurisdiction, is the overburden and use put to the Equestrian Trail roadway easement. This road is shared and maintained by private residences along the road and the recent heavy and numerous trucks travelling over the road gives rise to significant concerns for degradation beyond that of normal wear and tear. The commercial and/or industrial use of the Equestrian Trail road is not contemplated in any easement document that created the Equestrian Trail and unreasonably overburdens the Attkisson's property and will increase the road's maintenance and repair costs to a tremendous degree.

Moreover, the affected properties (both Lots 2 and 3 of the Horseman's Park subdivision owned by my clients) and the adjacent property for which Luke the Duke LLC is conducting its operation is restricted for use to private residential purposes only as set forth in the Declaration of Protective and Restrictive Covenants for Hesperus Land and Cattle Company dated August 1, 1974 filed in the Records of the La Plata County Clerk and Recorder Office at Reception No. 386404, attached hereto as Exhibit 2. See also, the Plat for Horseman's Park subdivision Project 2005-0200, Plat Note No. 3, which states that such subdivision is "subject to the protective covenants Recorded under Reception 386404" attached herein as Exhibit 3. The Declaration of Protective and Restrictive Covenants for Hesperus Land and Cattle Company attached hereto as Exhibit 2, also covers the property subject to the Luke the Duke, LLC operation. As such, it appears to be limited by the same covenant restricting the use of the land applicant wishes to mine, to residential purposes only.

With regard to the Application itself, a number of facts are misrepresented. The property owners within 200 feet of the mining site were not given notification within ten (10) days of the Application, such notification actually having been sent on August 18, 2014, the same date that the Application and other documents were filed with the La Plata County Clerk and Recorder. The Application incorrectly and inaccurately designates distances from my clients' respective properties and the Bradshaw's residence. Importantly, the Application's "safety plan" does not label the Bradshaw's house as a residence.

The Application states at Exhibit C, that the purpose of the gravel pit is to supply gravel for the maintenance of subdivision roads within Avery Ranch, Horseman's Park, Cross Creek Ranch, the Highlands at Cross Creek and the Preserve. My clients', in conversation with other property owners in the above mentioned subdivisions, are unaware of any request for gravel to those

respective roads. Also, it is not possible that the subdivision roads would need the amount of gravel to be produced under the Application.

Last, and of great significance, as part of Luke the Duke, LLC's Application, the applicant certified on July 10, 2014 that "all necessary approvals from local government have been applied for (Section 34-32.5-110(1)(a)(VIII))." The applicant states that it "is currently awaiting a determination by the La Plata County Code Enforcement Division to see if a Class II Land Use Application is required." The Code itself clearly requires a Class II permit for gravel operations (See La Plata County Land Use Code "LPLUC", Section 82-4 (a)(10)) and the County has indicated that it will require such permit for applicant's operation here. On August 8, 2014, undersigned received the following message from Marianna Spishock, La Plata County's Code Enforcement Officer:

"I spoke with the County Attorney's Office this morning regarding Mr. Avery - and the mining permit required by DRMS. The County Attorney's Office sent a letter to DRMS today requesting that DRMS include a condition in its Order that Mr. Avery must obtain a County land use permit prior to continuing mining related activities on the site. Regardless of whether or not the DRMS Order includes the County's requested condition, the County will require Mr. Avery to obtain a land use permit for mining related activities on the site."

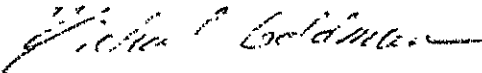
As of August 22, 2014, a call was placed to the La Plata County Planning Office, and it was determined that no application had been made for the requisite Class II Permit as provided for in the La Plata County Land Use Code.

Therefore, Luke the Duke, LLC's Application is incomplete, nor is a reclamation permit warranted or appropriate pursuant to law under these circumstances in that it fails to protect the health, safety and general welfare of the adjacent landowners as set forth in C.R.S. § 34-32-102, as amended.

Thank you very much for your attention to these matters. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

GOLDMAN, ROBBINS & NICHOLSON, P.C.



Michael A. Goldman  
Direct e-mail: goldman@gm-law.com

MAG/le

Division of Reclamation, Mining and Safety  
August 26, 2014  
Page 4 of 4

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Enclosures: Exhibit 1 – Letter of June 6, 2014  
Exhibit 2 - Declaration of Protective and Restrictive Covenants for Hesperus Land  
and Cattle Company  
Exhibit 3 - Plat Horseman's Park

cc: Applicant, Luke the Duke, LLC  
Clients

GRN Law:Word Documents:1919:04 - Luke the Duke:Correspondence:140825 MG letter to DRMS.doc

MICHAEL A. GOLDMAN  
JEFFERY P. ROBBINS  
LINDSEY K. S. NICHOLSON  
JOSH W. MACK

**GOLDMAN  
ROBBINS  
NICHOLSON P.C.**  
ATTORNEYS AT LAW

679 E. 2ND AVENUE, SUITE C  
PO BOX 2270  
DURANGO, CO 81302  
970/259 8747  
FAX 970/259 8790

June 6, 2014

*VIA HAND DELIVERY / VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, NO. 7010  
3090 0002 9923 5206 / VIA REGULAR MAIL*

John Avery  
787 CR 120  
Hesperus CO 81326

**Re: DEMAND TO CEASE AND DESIST: TRESPASS & NUISANCE  
Our File No. 1919.004**

Dear Mr. Avery:

This firm represents Clifford and Carolyn Attkisson, trustees of the Attkisson 1994 Revocable Trust, the owner of Lot 2 Horseman's Park, located at 244 Equestrian Trail, Hesperus, Colorado, and Jeff and Claire Bradshaw, the owners of Lot 3, Horseman's Park, located at 789 CR 120, Hesperus, Colorado. Your entity, Luke the Duke, LLC, owns the property adjacent to and east of my clients' properties, located at 787 CR 120, Hesperus, Colorado.

Trespass.

My clients advise that you have been using the private driveway that is located on my clients' properties, which connects the Bradshaws' property to County Road 120 and to the Attkissons' property, for the hauling of construction materials from your property. This letter is sent to **DEMAND THAT YOU IMMEDIATELY CEASE AND DESIST USING THIS PRIVATE DRIVEWAY** for the hauling of construction materials or for any other purpose and that you direct all of your agents, contractors, and subcontractors to also cease using such road.

You have trespassed on my clients' properties at least three times that my clients have witnessed, commencing on May 16, 2014. You have no legal easement, license or other permission from my clients to use their private driveway. You have no legal easement on any portion of their properties other than as shown on the plat for Horseman's Park subdivision. Your illegal use of the private driveway is evident from the tracks from the mining operation on your property (discussed below) to the driveway.

If you do not immediately discontinue the trespass on my clients' properties and direct all agents to discontinue their trespasses, this firm is directed to institute legal action against you to obtain monetary damages and injunctive relief restraining you from further trespasses.



John Avery  
June 6, 2014  
Page 2 of 3

Nuisance.

Additionally, it is my clients' understanding that your mining operation on your property is illegal, in that the operation requires a mining permit from the Colorado Division of Reclamation, Mining and Safety and from the La Plata County Planning Department and that no such permits exist. Your operation unreasonably and substantially interferes with my clients' use and enjoyment of their properties, due to the noise, dust, and safety issues it presents, and therefore constitutes a nuisance. Further, although you have advised Mr. Bradshaw that you intend to reclaim your property with a pond, it is my clients' understanding that you currently own no water rights with which to fill any such pond. My clients question whether your property will be appropriately reclaimed and are concerned about the resulting negative impact on their property values.

My clients demand that you **CEASE AND DESIST ALL MINING ACTIVITIES ON YOUR PROPERTY** until such time as you have obtained all required state and county permits and have posted all required bonds.

Overuse of Equestrian Trail Easement.

In connection with your unpermitted mining operation, numerous dumptrucks and other heavy equipment have been using and are continuing to use Equestrian Trail for access to and from your property from Cross Creek Road on a consistent basis. This commercial and/or industrial use of Equestrian Trail is not contemplated in the easement documents that created Equestrian Trail and is unreasonably overburdening the Attkissons' property.

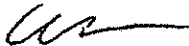
Trailer.

Finally, my clients object to the presence of the blue trailer that you have placed at the boundary line between your property and the Bradshaws' property, near the entrance to County Road 120, which has been spray-painted with the statement "I Love Obama, Muslims [sic] and Lawyers" and "BJ Construction" (an inversion of the name of Mr. Bradshaw's company, JB Construction). Your installation of this trailer at this location is perceived as intending to harass and intimidate my clients, and has upset the Bradshaws' children, and my clients demand that it be removed.

Please contact me or have your attorney contact me at your earliest opportunity.

Very truly yours,

GOLDMAN, ROBBINS & NICHOLSON, PC



Lindsey K.S. Nicholson  
[nicholson@gm-law.com](mailto:nicholson@gm-law.com)

LN



John Avery  
June 6, 2014  
Page 3 of 3

cc: Cliff and Carolyn Attkisson (via email only)  
Jeff and Claire Bradshaw (via email only)  
Monte Albrecht, La Plata County Sheriff's office (via email only)

MICROFILM # 386404

RECORDED Aug 1974 157  
INDEXED 386404  
HESPERUS LAND & CATTLE COMPANY, INC.

DECLARATION OF PROTECTIVE AND RESTRICTIVE COVENANTS

FOR

HESPERUS LAND AND CATTLE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, HESPERUS LAND & CATTLE COMPANY, is the owner of the following described property situate in the County of La Plata, State of Colorado, to-wit:

See EXHIBIT "A" Attached hereto and made a part hereof.

Grantor hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and as binding upon Grantor and upon all persons claiming under Grantor and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

(1) No tract shall be used except for private residential purposes. Such garages and outbuildings as are usual and customary may accompany such residential use.

(2) No structures shall be erected, altered, placed or permitted nearer than twenty-five feet to any lot line easement. Basements and rights-of-way are hereby reserved unto the Owners for construction, installation and maintenance of any and all utilities such as electric light, gas line, drains, sewers, roads, water supply lines, telephone and telegraph or the like, necessary or desirable for public health and welfare. Such easements and rights-of-way shall be confined to a ten (10) foot width along the rear and sides of every building plot.

(3) No house trailer, bus, tent, camper, mobile home or any temporary building of any nature shall be built, erected, placed or maintained on any tract.

(4) All vehicles, parked upon lots must be currently licensed and operable on public roads.

(5) No signs, billboards or advertising structures of any kind shall be erected or maintained on any tract, other than small "For Sale" signs.

(6) Natural trees and vegetation shall be reasonably preserved, and shall not be removed except to the extent reasonably necessary in the construction of buildings and access routes and landscaping.

(7) All sewage shall be handled in compliance with the "Regulation of San Juan Basin Health Unit; Non Municipal Sewage Disposal". All trash and garbage shall be kept in covered containers. The tract shall not be permitted to become cluttered, littered, or unsightly.

(8) After completion of construction of the access roads, continued and further maintenance of said roads shall be the responsibility of and provided by the Hesperus Land and Cattle Company property owners. They may if they wish, form an association for this purpose.

(9) No outdoor toilets shall be erected or maintained upon the property at any time.

(10) No noxious or offensive activity shall be carried on, on any tract, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

(11) Invalidation of any one of these covenants by judgement, Court Order, or for any other reason, shall in no way affect any of the other provisions, which shall remain in full force and effect.

EXHIBIT

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MICROFILM # 386404

(12) All of the reservation, restrictions, easements and conditions contained herein shall be deemed covenants running with the land and shall be binding upon all successive owners thereof.

(13) If the owner or owners of any lot or lots, or their heirs or assigns, shall violate or attempt to violate any of these restrictive and protective covenants, it shall be lawful for any other person or persons owning real property bounded by these covenants, to prosecute any proceeding at law or in equity against any person violating these covenants, and either to prevent him or them from so doing or to recover damages for such violation.

IN WITNESS WHEREOF, this Declaration of Protective and Restrictive Covenants is made and executed this 31st day of July, 1974.

HESPERUS LAND AND CATTLE CO., a Limited Partnership

By

John M. Craig

General Partner

STATE OF COLORADO }  
COUNTY OF LA PLATA }

The foregoing instrument was acknowledged before me this 31st day of July, 1974, by John M. Craig, a general partner of HESPERUS LAND AND CATTLE CO., a Limited Partnership.

WITNESS my hand and official seal.

My commission expires: May 6, 1978



Betty Clark  
Notary Public

LEGAL DESCRIPTION

MICROFILM #386404

All of Lots 1, 2, 6, 7 and 8, N $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15; the E $\frac{1}{2}$ , E $\frac{1}{2}$ W $\frac{1}{2}$  of Section 22; the W $\frac{1}{2}$  of Section 23; the NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 26; and that part of the W $\frac{1}{2}$ SE $\frac{1}{4}$  and of the SW $\frac{1}{4}$  of Section 26, and that part of the SW $\frac{1}{4}$  and of the E $\frac{1}{2}$ W $\frac{1}{2}$  of Section 27 lying Northwesterly of the Hay Gulch County Road, and a portion of the NE $\frac{1}{4}$  of Section 27. All in Township 35 North, Range 11 West, N. M. P. M., La Plata County, Colorado, and all of the foregoing being more particularly described as follows, to-wit:

Beginning at the S $\frac{1}{2}$  Corner of Section 22, T35N, R11W, N. M. P. M.;  
Thence South 89° 05' 22" West, a distance of 1311.48 feet, along the South line of said Section 22, to the SW Corner of the E $\frac{1}{2}$ W $\frac{1}{2}$  of said Section 22;  
" North 0° 36' 13" West, a distance of 6128.95 feet, along the West line of the E $\frac{1}{2}$ W $\frac{1}{2}$  of said Section 22 and the West line of Lot 6, Section 15, T35N, R11W, N. M. P. M., to the NW Corner of said Lot 6;  
" South 88° 27' 01" East, a distance of 1285.19 feet, along the North line of said Lot 6 to the NE Corner of said Lot 6;  
" North 0° 51' 35" West, a distance of 1898.46 feet, along the West line of Lot 2 and the N $\frac{1}{2}$ SE $\frac{1}{4}$  of said Section 15, to the center of said Section 15;  
" South 89° 05' 48" East, a distance of 1314.90 feet, along the North line of the N $\frac{1}{2}$ SE $\frac{1}{4}$  of said Section 15 to the SW Corner of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 15;  
" North 0° 12' 27" West, a distance of 1277.79 feet, along the West line of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 15, to the NW Corner of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 15;  
" North 89° 10' 47" East, a distance of 1289.63 feet, along the North line of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 15 to the NE Corner of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 15;  
" South 01° 17' 56" East, a distance of 3931.96 feet, along the East line of said Section 15 to the SE Corner of said Section 15;  
" North 89° 12' 19" East, a distance of 2634.62 feet, along the North line of Section 23, T35N, R11W, N. M. P. M., to the NE Corner of the W $\frac{1}{2}$  of said Section 23;  
" South 01° 04' 03" East, a distance of 6627.25 feet, along the East line of the W $\frac{1}{2}$  of said Section 23 and the East line of the NW $\frac{1}{4}$  of Section 26, T35N, R11W, N. M. P. M., to the NW Corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 26;  
" North 89° 20' 39" East, a distance of 1320.16 feet, along the North line of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 26 to the NE Corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 26;  
" South 01° 05' 36" East, a distance of 3936.59 feet, along the East line of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and the W $\frac{1}{2}$ SE $\frac{1}{4}$  of said Section 26, to the North right of way line of the Hay Gulch Road;  
" North 87° 42' 52" West, a distance of 459.14 feet, along the North right of way line of the Hay Gulch Road;  
" North 75° 01' 45" West, a distance of 337.21 feet, along the North right of way line of the Hay Gulch Road;  
Thence North 59° 16' 58" West, a distance of 1377.10 feet, along the North right of way line of the Hay Gulch Road;  
" North 70° 38' 29" West, a distance of 1306.39 feet, along the North right of way line of the Hay Gulch Road;  
" North 89° 52' 40" West, a distance of 3538.82 feet, along the North right of way line of the Hay Gulch Road;  
" South 64° 43' 20" West, a distance of 458.21 feet, along the North right of way line of the Hay Gulch Road to a fence line;  
" North 17° 56' 11" East, a distance of 488.41 feet, along a fence line;  
" North 11° 22' 22" East, a distance of 551.86 feet, along a fence line;  
" North 11° 56' 43" East, a distance of 190.51 feet, along a fence line;  
" North 13° 33' 36" East, a distance of 625.77 feet;  
" East, a distance of 146.00 feet;  
" North 1° 30' 41" East, a distance of 1031.54 feet, to the South line of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 27, Township 35 North, Range 11 West, N. M. P. M., along the said South line, West, a distance of 140.00 feet to the SW Corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 27;  
" North 2° 01' 18" West, a distance of 1329.97 feet, along the West line of said NW $\frac{1}{4}$ NE $\frac{1}{4}$  to the S $\frac{1}{2}$  Corner of Section 22, T35N, R11W, the point of beginning.

EXHIBIT "A"

STATE OF COLORADO  
LA PLATA COUNTY

ss. Filing No. \_\_\_\_\_

I hereby certify that this instrument was  
filed for record at \_\_\_\_\_  
\_\_\_\_\_ 1924 and duly recorded  
as instrument No. 78444 of the 6th  
by \_\_\_\_\_ Recorder

600  
C. L. Land & Cattle  
De 499

