

## ISSUES REGARDING M1985-001 (J&J Pit, Glacier Gravel Products, 100c permit)

This report is submitted on behalf of Glacier Gravel Products, the operator of M1985001, and Jim & Sharon Helmericks, landowners, and was prepared by Nathan A. Barton, CE, PE, DEE.

This report discusses the original permit boundaries and size, and the location of the power lines along the north edge of the permit.

### 1. Permit boundaries and size of permit and affected area.

#### a. Boundary descriptions.

The original application identifies the location as the E ½, W ½, SW ¼, Sec 33 T34.5S, R9W, NMPM, but this is the parcel on which it is located: an addition to the application (PERMFILE118997) clearly identifies it as the N ¼ of the above: which would be described in a more standard manner as the NE ¼ of the NE ¼ of the SW ¼ of Sec 33, using the Public Land Surveying System (PLSS). This is shown on the map (Attachment 1).

#### b. Parcels.

The Helmericks own two parcels. The 9.9-acre reclamation permit is on the E ½, W ½, SW ¼, Sec 33 T34.5S, R9W, NMPM, which is parcel number 566733300021, and 39.46 acres in County records. They also own the parcel immediately to the west, parcel number 566733300105, 17.58 acres. Because this is a "correction" section, the ¼-¼-¼ which is permit M1985-001 is not precisely 10 acres, but somewhat less (as discussed below), estimated as 9.865 acres (rounded to 9.9).

#### b. Permit size (27 June 1985 permit)

The original application for 110 (Limited Impact Permit) item 12 identified the amount as "9 acres" (no decimal places), which matched the area listed in Item 10 of the Wildlife Questionnaire. The Wildlife Questionnaire specified that this did NOT include roads (and did not specify if those were new or existing roads). The application form cautioned against "rounding up" to 10 acres in any part of the application. However, this was clarified in discussions between the Division and Board and the owner/applicant, and 9.9 acres was indicated in the actual permit as issued. Existing roads and parking areas were not intended to be included in the 9.9 acres, and it was to be located entirely in the NE ¼ of the NE ¼ of the SW ¼ (all within Parcel 566733300021), and per records is 9.9 acres in size.

#### c. Disturbances and Affected Land.

Prior to doing any mining or obtaining the reclamation permit, there were areas disturbed on both parcels. These areas were used for access roads and parking/storage of equipment and materials imported to this site for use on-site

or recycling. These areas are located both in the N  $\frac{1}{4}$  of Parcel 566733300021 (the area later designated as the 9.9-acre permit area), and the rest of that parcel and the adjacent parcel. These were in use before mining and continue to be in use during mining.

Some of these areas were actually filled and leveled using material imported to the parcels or excavated on the parcels. The owner/operator do not consider areas disturbed by (or for) these other activities to be "affected land" since they are not directly related to the mining of construction materials. They were NOT used for storage of extracted construction materials (pit-run), nor for processing (screening, crushing, washing), but used for other purposes such as recycling of materials imported to the site. Therefore, the land, though located in the 9.9 acres, is not included in the 6.1 acres currently affected, as measured on the ground. The owner also understood that any processed or unprocessed material hauled to stockpiles for his use or sale, on any other part of his property, after having been stockpiled on the affected area of the permitted 9.9 acres, was not considered mining, any more than if that material had been hauled to an entirely different parcel of land, some distance away. Therefore, he does not believe that land used for stockpiles of material for his own use, or for use on other projects, should be considered "affected land," in accordance with the interpretation of the regulations in 1985.

d. Future affected land

The landowner understands that the maximum affected land cannot exceed 9.9 acres. At present, extraction of construction materials has been done or is on-going on 5.1 acres, and an additional 1.0 acre is being used for stockpiles. Therefore, an additional 3.8 acres may be affected by mining (including 4.8 acres which can have construction material extracted), provided that extraction is done in a way which does not cause land outside the 9.9 acre maximum to be impacted and complies with Division rules.

2. Powerlines (LaPlata Electric Association).

a. Boundary errors. The original survey of the north boundary of Parcel 566733300021 (the E  $\frac{1}{2}$  of W  $\frac{1}{2}$  of NW  $\frac{1}{4}$  of Sec 33) incorrectly located the boundary line as being 16 feet SOUTH of the true boundary. When LPEA obtained a 15-foot easement for the powerline, including the two poles and built about 1991, that easement was obtained from the person(s) owning the property to the north. The poles were placed not in the center of the easement granted but near the south edge of the 15-foot easement (approximately 1 foot inside what was then thought to be the property line). With the correction to the survey, the powerline and its poles are now correctly identified as being on property belonging to the Helmericks. The centerline of the poles is located approximately 1 foot inside the easement and 15 feet

south of the property boundary. They are therefore located approximately 1 foot outside what was believed to be the original permit boundary.

Although LPEA does not have an easement agreement with them, the Helmericks believe that LPEA was acting in good faith, and therefore the Helmericks will abide by the conditions of the easement, even though that easement was granted by the person(s) who did not actually own the property. The Helmericks also recognize an obligation under the common law to NOT damage the LPEA property (the poles and powerline), or if their activities do damage that property, to make that damage good. (LPEA is also stating that another easement, which did not specify an actual alignment would cover obligations of the landowner and LPEA. This is clearly a matter outside my expertise and may require judicial action.)

b. The correct property line has been surveyed and staked, and permanent markings are being put in place, showing both the correct and the incorrect lines, and the permit boundary, as described above. Photos are provided in the attachments.

c. Timeline.

1985. Permit application made and 110 Permit issued by Division on 27 June 1985.

1990. LPEA obtains easement agreement with landowner to north for 15-foot easement; builds powerline north of what was believed to be the property line (and permit boundary).

1991. LPEA obtains a general easement agreement with Helmericks to provide power to Helmerick's property.

2015. Property line correctly surveyed.

2015 NOV. Permanent prominent markers installed. The locations were determined by surveying on 29 October 2015 and the markers (painted PVC posts) installed on 02-03 November 2015.

d. Areas

The correct property line is 16 feet N of what was thought to be the original property line, and the permit boundary line in 1985.

The current highwall, at its nearest point, is at least 15 feet south of the powerline poles, and therefore at least 14 feet S of what was originally believed to be the property line, which is 30 feet south of the correct property line.

The Helmericks will NOT make the top of the highwall any closer than 7.5 feet to power poles (unless the Division approves an engineering evaluation that determines doing so will not impact the lines). The 7.5 feet is the distance stated by LPEA. The highwall and affected area will also be kept at least 16

feet from the property line (that is, following what was thought to be the original boundary of the affected land (per permit and application), to ensure that LPEA will be able to access both the poles and the actual powerline. This will be a buffer zone between the 110 permit affected area and the nearest neighbor. Helmericks will keep LPEA informed.

Summary:

At present, of the 9.9 acres permitted to be the maximum land affected, located in the north quarter of Parcel 566733300021, only 6.1 acres has actually been affected by mining activities, as determined by surveying and inspection by Nathan A. Barton, PE, in October-November of 2015.

By keeping the north boundary of affected land at the original 1985 location, this creates a 16-foot buffer zone on the north side of the permit area in which the LPEA power line, which was built AFTER the permit was issued, is located.

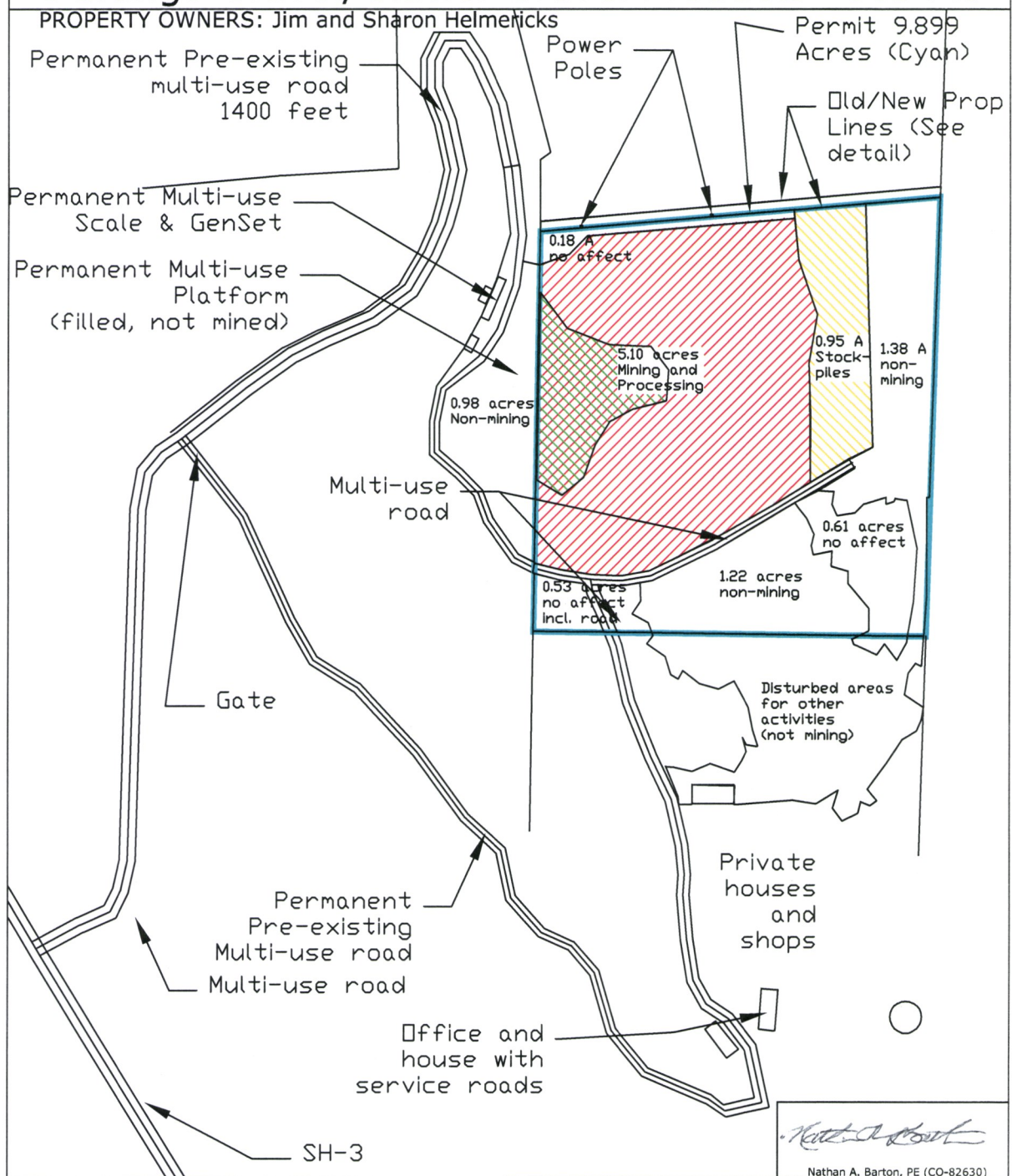
Leaving the north and south permit affected land boundaries at their original location will allow the permit to remain at 9.9 acres in size. The disturbed areas outside that area, and 3.8 acres inside the 9.9 acre area, are not affected areas (that is, areas affected by mining), but have been and are used and disturbed for other purposes. Only 5.1 acres have actually had or are having construction materials extracted at this time. The owner/operator is not in violation of the permit or statutory limits. The Helmericks will ensure that any use of those areas for mining, including excavation, stockpiles, and processing, is tracked and accurately reported.

So, as of 04 November 2015, at a minimum, an additional 3.8 acres of land can be affected (mined) and remain in compliance with the permit, provided (a) it remains inside the 9.9 acre area now surveyed and marked, (b) there is no negative impact on adjacent lands outside the 9.9 acre area, and (c) requirements of the original mining and reclamation plans are met, including reclaiming highwalls to a slope no steeper than  $\frac{1}{2}H$  to 1V, as approved by the Division and Board in 1985. Mining (excavation of construction materials) can be done on the remaining 6.1 acres already affected by mining, provided the above requirements (b) and (c) are met, and in accordance with rules and regulations.

Attachments:

1. Map showing boundaries and affected areas and nearby features.
2. Table of Areas and Detail Diagram of north edge.
3. Photos of marked corners of 9.9-acre permit.

# Jim Helmericks d/b/a Helmericks Sand & Gravel Durango Gravel/Glacier Gravel Products - J&J Pit



Prepared for Helmericks by and (c) **WASTELINE, INC.**  
Date: 05 NOV 2015 By: N. Barton Rv: J. Helmericks  
Scale: 1"=250' Source: Google/USGS/County Map/Photo/Survey.  
1.5 miles SSE of Durango, LaPlata County, CO, Pertaining to APEN 01LP1021F and Permit 01LP1020.

GENERAL LOCATION AND  
FEATURES MAP  
APEN 01LP1021F  
Mining M-1985-001

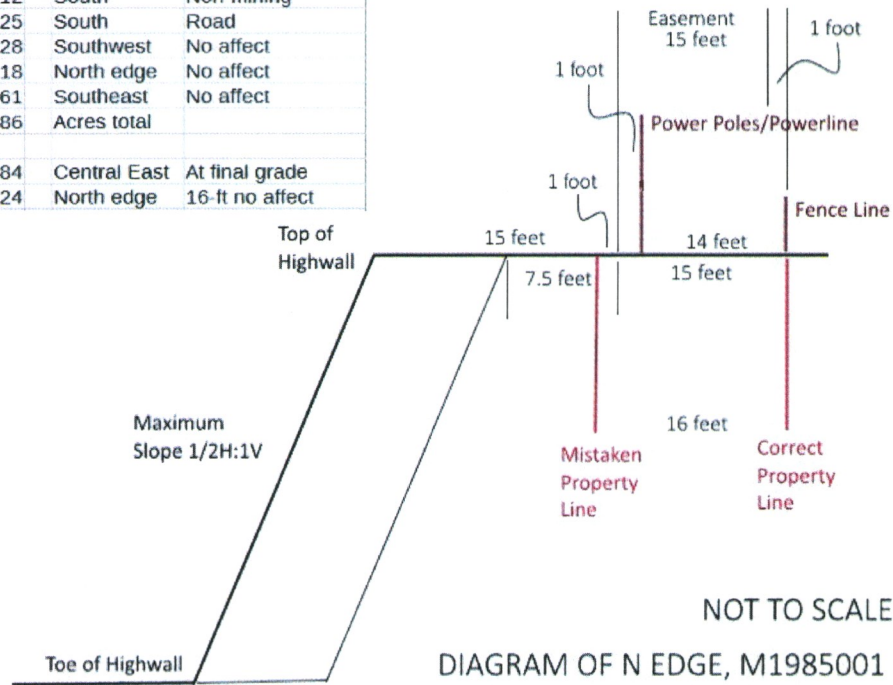
Nathan A. Barton, PE (CO-82630)

Drawing/  
Sheet No.  
**T1**



## M1985001 Table of Areas and Detail Diagram of North Edge

Sq. Ft.	Acres	Genl Area	Description
222015	5.10	Central	Mining incl hi-walls
41375	0.95	E Central	Stockpile area
60149	1.38	East	Non-mining
48891	1.12	South	Non-mining
10774	0.25	South	Road
12295	0.28	Southwest	No affect
7655	0.18	North edge	No affect
26398	0.61	Southeast	No affect
429552	9.86	Acres total	
36487	0.84	Central East	At final grade
10534	0.24	North edge	16-ft no affect



Pictures of Boundary Corner Markers

SE Corner	NE Corner (Property corner behind)
SW corner	NW Corner (in Road Ditch)