

BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

DRAFT PREHEARING ORDER

IN THE MATTER OF THE 112c PERMIT APPLICATION OF LOVELAND
READY-MIX CONCRETE, INC, KNOX PIT; FILE NO. M-2017-036

The Mined Land Reclamation Board (“Board”), through prehearing officer Erica Crosby (“PHO Crosby”) and pursuant to Rule 2.7 of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (“Rules”), conducted a prehearing conference on March 8, 2018 in Fort Collins, Colorado. The Board, having considered this order, as proposed by the PHO Crosby, and having considered any subsequent objections or comments from the parties, hereby enters the following Prehearing Order for the captioned proceeding:

I. BACKGROUND

Loveland Ready-Mix Concrete (“Applicant”) filed a new 112c permit application with the Division of Reclamation, Mining and Safety (“Division”) on September 7, 2017 file number M-2017-036 (“Application”). During the required period of notice of the Application filing, the Division received written comments and objections to the Application. As part of its review, the Division generated four (4) adequacy letters. The Applicant addressed all adequacy issues to the Division’s satisfaction. On March 2, 2018, the Division determined the Application to have satisfied the requirements of section 34-32.5-115(4), C.R.S. and issued its recommendation to approve the Application with conditions.

II. FORMAL PUBLIC HEARING

The Formal Public Hearing on this matter will occur on March 21-22, 2018 at the Centennial Building, 1313 Sherman Street, Room 318, Denver, Colorado 80203, during the Board’s monthly March 2018 meeting. The Board’s meeting on March 21, 2018 (unless noticed otherwise) will begin at 9:00 a.m.

The Formal Public Hearing in this matter concerns whether the Board should approve the Applicant’s application with conditions in accordance with the Colorado Land Reclamation Act for the Extraction of Construction Materials (Article 32.5 of Title 34, C.R.S.; the “Act”) and the Rules. The Board’s resolution of this matter, including findings of facts and conclusions of law, will be based on the Board’s review of the Application, testimony presented by the parties and the Division at the hearing, and exhibits the Board admits into the record at this hearing.

In this matter, the Applicant bears the burden of proving that the Application meets the requirements set forth in the Act and Rules. If the Applicant meets this burden, any denial by the Board must be based upon one of the grounds provided in section 34-32.5-115(4), C.R.S.

III. PARTIES

Applicant:

Loveland Ready-Mix Concrete, Inc.
644 N. Namaqua Road
Loveland, CO 80539

Objector(s):

Jason Allely
Mark Baker
Erin Crowgey
Erica and Piers Daniell
Craig Geenwell
Nic Koontz
Amy Maddox
Matthew and Jayme Tilley
Patty McElwaine
Jennifer Scheimann
Peter Waack
Ruth Wallick
No Laporte Gravel Corp.

The following objector withdrew their objection and no longer has party status:

Pia Jensen

The following objectors forfeited party status by failing to attend the prehearing conference in accordance with Rule 2.7.3:

Sarah Allely
John Gross
Dana Horne
Chalon Kintzley
Kelly Kintzley
Leah Kintzley
Raymond Kintzley
Mandy Kotzman
Leslie Patterson
Leah Salmans

The remaining objectors are referred to herein as “Objectors.”

The Division is advisory staff to the Board in this matter, not a party. As used herein, “party” or “parties” shall mean the Applicant and Objectors, or both, as the context indicates.

IV. ISSUES

Presentations to the Board by the parties and the Division shall be limited to the following issues:

1. Enforcement. Whether future inspecting and enforcement concerns were adequately addressed.
2. Hydrologic Balance. Whether the Application adequately demonstrates that disturbances to the prevailing hydrologic balance of the proposed affected land and surrounding area will be minimized.
3. Permitting Issues. Whether the Applicant adequately addressed concerns related to complete Exhibits in the permit application.
4. Reclamation Plan. Whether the Applicant adequately addressed concerns regarding the reclamation plan.
5. Wildlife: Whether potential impacts of operations on wildlife and wildlife habitat have been adequately addressed in the permit application.

V. WITNESSES AND EXHIBITS

Pursuant to Rule 2.6(2), all parties and the Division must exchange witness and exhibits at the prehearing conference. During the prehearing conference, the Applicant, Objectors, and the Division provided witness lists, exhibit lists, and exhibits that are not in the Division’s file, as follows:

Witnesses

For Applicant: Loveland Ready-Mix Concrete, Inc.:

- William Katz – Telesto Solutions, Inc.- General Project/ Hydrogeology
- Walt Niccoli – Telesto Solutions, Inc. – Groundwater, Mining and Reclamation
- Kent Bruxvoort – Telesto Solutions, Inc. – Mining and Reclamation
- Peggy Carter – Telesto Solutions, Inc. – Mining and Noise
- Dr. Fred Charles – Telesto Solutions, Inc. – Soils, Surface Water
- Stephanie Fancher-English – Loveland Ready-Mix Concrete, Inc. – Plant Operator
- Brad Fancher – Loveland Ready-Mix Concrete, Inc. – Plant Operator

For Objectors:

- Matthew and Jane Tilley
 - Matt Machado- Attorney Lyons and Gaddis
 - Rick Zier- Attorney
 - Warren Dean- Neighbor to Hitch Rack Mine
 - Dr. Barry Noon- Professor, College of Natural Resources
 - Calvin Miller, PE, PhD- Miller Groundwater Engineering, LLC.
 - Scott Zurn, PE- Level Engineering and Inspection
- No Laporte Gravel Corp. –(Representing the following by Proxy- Amy Maddox, Peter Waack, Erica and Piers Daniell, Erin Crowgey, Ruth Wallick, Patty McElwaine, Jason Alley):
 - Robert N. Havis, PhD, PE- Havis Engineering
 - Quinn Robinson, B.A. Environmental Science, M.S. Wildlife Science
 - Peter Waack, J.D.
 - Erica and Piers Daniell
 - Ruth Wallick
 - Patty McElwaine
 - Mark Baker, Esq.
 - Robert and Karen Pierdzioch
 - Amy Maddox
 - Erin Crowgey
 - Jason Alley

For the Division:

- Tony Waldron; Minerals Program Supervisor
- Wally Erickson; Senior Environmental Protection Specialist
- Jared Ebert; Environmental Protection Specialist III
- Eric Scott; Environmental Protection Specialist II
- Peter Hays; Environmental Protection Specialist III

Exhibits

For Loveland Ready-Mix Concrete, Inc.:

- M-2017-036 112c Permit Application and public file.
- Loveland Ready-Mix Concrete's Knox Pit-DRMS Permit Application No. M-2017-036, Mined Land Reclamation Board, March 21st and 22nd, 2018 Presentation.

For Objectors:

- Patty McElwaine- Results of 11 Surveys (out of 22) of Well Owners in the Proposed Loveland Ready Mix 123-acre site. Delivered at Pre-Hearing Conference on 3/8/2018.
- Matthew and Jayme Tilley:
 - Construction Materials 112 Rule (3.1.6(1)) Hydrologic Balance, 3.1.8(1) Safety and Protection of Wildlife, 6.4.19 Permanent Man Made Structures, 6.5 Geotechnical Stability.
 - Mining Application Knox Pit Permit File Permit M2017036: Section 7.2 Post Mining Land Use Comparison, Section 7.4.2 Revegetation, Section 9.1 Effects to Groundwater and Surface Water, Section 10.2.4 and 10.4.
 - First Response to Adequacy Comments: Comment 2 and Responses 31, 33, 36, 37, 38.
 - DRMS Comments Letter to DWR: Part of first response to adequacy comments, Page 2.
 - Second Submittal Groundwater Study: Section 5.3.2 Mounding.
 - Third Response to Adequacy Comments: Comment and Response 3, Comment and Response 12, Page 176-179.
 - Fourth Response to Adequacy Comments: Page 9, Section 5.3.2 Mounding.
 - R Havis, Engineer Comment Letter to DRMS: 3/1/2018.
 - Hawkeye Ranch/Donaldson Pit DRMS File Permit M-2003-069.
 - LaPorte Area Plan:
http://www.larimer.org/sites/default/files/uploads/2017/laporte_plan.pdf.
 - Watrous, Ansel *History of Larimer County Colorado*. 1911, reprint 1976. P 44-45, 66-72.
- No LaPorte Gravel:
 - Joint Pre-Hearing Statement of No LaPorte Gravel and Amy Maddox, Peter Waack, Erica and Piers Daniell, Quinn Robinson, Erin Crowgey, Robert and Karen Piedzioch, Ruth Wallick, Mark Baker, Patty McElwaine, Jason Alley, dated March 8, 2018.
 - Dr. Havis reports dated November 8, 2017, February 21, 2018 and March 1, 2018 and expert reports filed with the Division.
 - Terry Waters letter dated November 8, 2017 and subsequent filings from Ms. Waters or others pertaining to wildlife.
 - No LaPorte Comment Letters dated November 8, 2017, February 21, 2018 and March 1, 2018.

For the Division:

- Public Record for Division File No. M-2017-036, available on Laserfiche at <http://mining.state.co.us>.

All documents and other materials admitted into evidence by the Board at the Formal Public Hearing will become part of the administrative record. Upon request, a party may recover any evidence introduced by that party.

VI. PROCEDURE

The Division, parties, and members of the public shall make presentations in the following order. The time limits set out below are maximum limits; however the Board, in its discretion, may allow additional time. The Board has the right to limit any duplicative or irrelevant testimony.

All parties and the Division will be afforded an opportunity to conduct cross-examination of any witnesses that testifies during each presentation. Time used for cross-examination of a witness shall count against the time limit of the cross-examining party or the Division. Time used to respond to questions by members of the Board shall not count against the time limit of the responding party or the Division.

PHO Crosby solicited and considered input from the parties and the Division at the prehearing conference regarding the time requested to make presentations at the hearing, and recommends the following procedure for approval by the Board:

A. Board Consideration and Adoption of the Prehearing Order

The Board shall consider this draft Prehearing Order for adoption. The Board, in its discretion, will hear any objections to the proposed Prehearing Order at that time and make any necessary amendments prior to adopting the Prehearing Order.

B. Introduction- Division:

The Division shall have ten (10) minutes in which to present an overview of the Application.

C. Presentation- Applicant – Loveland Ready-Mix Concrete, Inc.:

The Applicant shall have one (1) hour in which to make a presentation to the Board regarding all issues outlined above.

D. Presentation – Objectors:

The Objectors shall have three (3) hours and thirty (30) minutes in which to make a presentation to the Board regarding all issues outlined above.

E. Division Presentation:

The Division shall have forty-five (45) minutes in which to make a presentation to the Board regarding all issues outlined above.

F. Non-Party Public Comment Period:

Non-parties shall have twenty (20) minutes, five (5) minutes per person, in which to address the Board regarding all issues outlined above.

G. Applicant Rebuttal Statement – Loveland Ready-Mix Concrete, Inc.:

The Applicant shall have thirty (30) minutes to make a rebuttal statement, and shall be limited to responding to issues addressed in the presentations of the other parties or the Division.

H. Objectors Rebuttal Statement:

The Objectors shall have forty-five (45) minutes to make a rebuttal statement, and shall be limited to responding to issues addressed in the presentation of the other parties or the Division.

I. Division Rebuttal Statement:

The Division shall have thirty (30) minutes to make a rebuttal statement, and shall be limited to responding to issues addressed in the presentations of the parties.

J. Division Closing Statement:

The Division shall have five (5) minutes to make a closing statement.

K. Objectors Closing Statement:

The Objectors shall have fifteen (15) minutes to make a closing statement.

L. Applicant Closing Statement – Loveland Ready-Mix Concrete, Inc.:

The Applicant shall have ten (10) minutes to make a closing statement.

Dated this _____ day of March 2018.

BY: _____
_____, Chairperson
Mined Land Reclamation Board

CERTIFICATE OF SERVICE

I, Jared Ebert, hereby certify that on this 12 day of March, 2018, I deposited a true copy of the foregoing Draft Prehearing Order in the United States Mail, postage paid, addressed to the following:

Loveland Ready-Mix Concrete, Inc.
PO Box 299
Loveland, CO 80539

Matthew and Jayme Tilley
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LaPorte, CO 80535

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Amy Maddox
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Interested Non-Parties:

Bob Stabo 7221 W. Montview Littleton, CO 80125	Amy Greenwell 2722 McConnell Drive La Porte, CO 80535
Markley Schlegel 1601 Wewatta St., Suite 900 Denver, CO 80202	William Katz Telesto Solutions, Inc. 3801 Automation Way, Ste. 201 Fort Collins, CO 80525
Robert Hans PO Box 1437 LaPorte, CO 80535	Linda Sawyer PO Box 369 LaPorte, CO 80535
Pedro Reyes 2805 Farview Dr. Fort Collins, CO 80524	Milt Lesser PO Box 522 LaPorte, CO 80535
Jayme Patrick PO Box 657 LaPorte, CO 80535	Tess Reyes 2805 Farview Drive Fort Collins, CO 80524
Jennifer Scheimann PO Box 1351 LaPorte, CO 80535	Brad Fancher PO Box 299 Loveland, CO 80539
Walt Niccoli Telesto Solutions, Inc. 3801 Automation Way, Ste. 201 Fort Collins, CO 80525	



March 12, 2018
