

STATE OF
COLORADO

Ebert - DNR, Jared <jared.ebert@state.co.us>

AFS - Bennett Pit, File No. M-2001-038, AM01, Draft Pre-hearing Order

Musick - DNR, Jason <jason.musick@state.co.us>

Fri, Aug 9, 2019 at 8:59 AM

To: bfrei@albertfreinandsons.com, vkatchen@yahoo.com, environment-inc@outdrs.net, jenspeedracer@hotmail.com, magnu079@regis.edu, oreo0314@hughes.net, sanfran1227@hughes.net

Cc: "Ebert - DNR, Jared" <jared.ebert@state.co.us>, "Cunningham - DNR, Michael" <michaela.cunningham@state.co.us>, Scott Schultz <Scott.Schultz@coag.gov>, Charles Kooyman <Charles.Kooyman@coag.gov>, "Mojar - DNR, Camille (camille.mojar@state.co.us)" <camille.mojar@state.co.us>, Russ Means - DNR <russ.means@state.co.us>

Dear Party and/or Interested Person,

Attached is the draft Pre-hearing Order for the formal hearing regarding consideration of the AFS - Bennett Pit, Amendment Application No. 1 associated with DRMS permit No. M-2001-038. The formal Board hearing for consideration of this matter is scheduled to occur during the August 21 and 22, 2019 Board meeting, at [1313 Sherman Street, Room 318, Denver Colorado](#), beginning at 9:00 a.m., or as soon thereafter as the issue may be considered.

Sincerely,

Jason Musick
Senior Environmental Protection Specialist
Coal Regulatory Program



COLORADO
Division of Reclamation,
Mining and Safety
Department of Natural Resources

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BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

DRAFT PREHEARING ORDER

IN THE MATTER OF THE 112c AMENDMENT APPLICATION NO. 1 OF
ALBERT FREI & SONS, INC., AFS – BENNETT PIT; FILE NO. M-2001-038

The Mined Land Reclamation Board (“Board”), through prehearing officer Jason Musick (“PHC Musick”) and pursuant to Rule 2.7 of the Minerals Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (“Rules”), conducted a prehearing conference on August 5, 2019 in Bennett, Colorado. The Board, having considered this order, as proposed by the PHO Musick, and having considered any subsequent objections or comments from the parties, hereby enters the following Prehearing Order for the captioned proceeding:

I. BACKGROUND

Albert Frei & Sons, Inc. (“Applicant”) filed a 112c amendment application with the Division of Reclamation, Mining and Safety (“Division”) on February 13, 2019 file number M-2001-038, AM01 (“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 three (3) adequacy review letters. The Applicant addressed all adequacy issues to the Division’s satisfaction. On July 26, 2019, 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.

II. FORMAL PUBLIC HEARING

The Formal Public Hearing on this matter will occur on August 21-22, 2019 at the Centennial Building, 1313 Sherman Street, Room 318, Denver, Colorado 80203, during the Board’s monthly August 2019 meeting. The Board’s meeting on August 21 and 22, 2019 (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 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:

Albert Frei & Sons, Inc.
32825 County Road 39
P.O. Box 56
Lucerne, CO 80646

Objectors:

Victoria Katchen
Jennifer Curtis
Kelsey Magnuson
Nancy Donaldson
Elva Munoz

Four (4) objectors forfeited party status by failing to attend the prehearing conference in accordance with Rule 2.7.3:

Mark Faber
Alethea Copeland
Kimberly Chainhalt
Joe Munoz

The five 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 Objector, 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. Mining Plan. Whether the Application adequately addresses concerns of whether a new mining plan has been submitted, if explosives will be used during the operation, and if processing will occur on the site.
2. Geotechnical Stability. Whether the Application adequately addresses concerns regarding whether a geotechnical stability exhibit exists.

3. Reclamation Plan. Whether the Application adequately addresses concerns that the reclamation plan does not restore the land to pre-mining conditions, the nature and use of imported fill used to back-fill the pit excavation, and the stability of the backfill material.
4. Hydrology. Whether the Application adequately addresses concerns regarding the impact to the ground water quantity and any negative impacts to adjacent well levels and groundwater flow; concerns regarding impacts to water quality; concerns regarding impacts to wetlands; and concerns regarding the use of water for processing the mined material.
5. Wildlife. Whether the Application adequately addresses concerns regarding the impact the operation will have on area wildlife.

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 agreed to provide witness lists, exhibit lists, and exhibits that are not in the Division's file by August 6, 2019 by 9:00 a.m. and is provided as follows:

Witnesses

For the Applicant: Albert Frei & Sons, Inc.:

- Ben Frei – Secretary, Albert Frei & Sons, Inc.
- Steve O'Brian – Consultant, Environment, Inc.
- Steve Butler – Wildlife/Endangered Species, ERO Resources
- Mark Molen – Inert Fill, Molen & Associates

For the Objector:

- No Witness List was provided by the Objectors

For the Division:

- Russ Means – Minerals Program Supervisor
- Michael Cunningham – Senior Environmental Protection Specialist
- Jared Ebert – Environmental Protection Specialist III

Exhibits

For the Applicant: Albert Frei & Sons, Inc.

- Public Record for DRMS File No. M-2001-038, AM01

For the Objectors:

- Elva Munoz – Sand and Gravel Mining in Colorado Riparian Habitats discussion and twelve photographs of mule deer.

For the Division:

- Public Record for Division File No. M-2001-038, AM01, available on Laserfiche at <http://mining.state.co.us>

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 witness 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 Musick 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 that 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 – Albert Frei & Sons, Inc.:

The Applicant shall have twenty (20) minutes in which to make a presentation to the Board regarding all issues outlined above.

D. Presentation – Objectors

The Objectors shall have seventy-five (75) minutes in which to make a presentation to the Board regarding all issues outlined above.

E. Presentation – Division:

The Division shall have thirty (30) minutes in which to make a presentation to the Board regarding all issues outlined above.

F. Rebuttal Statement – Applicant

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.

G. Rebuttal Statement – Objectors

The Objectors shall have seventy-five (75) minutes to make a rebuttal statement, and shall be limited to responding to issues addressed in the presentations of the parties or the Division.

H. Rebuttal Statement – Division

The Division shall have twenty (20) minutes to make a rebuttal statement, and shall be limited to responding to issues addressed in the presentations of the parties.

I. Closing Statement – Division

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

J. Closing Statement – Objector

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

K. Closing Statement – Applicant

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

Dated this _____ day of August 2019

BY: _____, Chairperson
Mined Land Reclamation Board

CERTIFICATE OF SERVICE

I, Jason Musick, hereby certify that on this 9 day of August, 2019, I deposited a copy of the foregoing Draft Prehearing Order via email, addressed to the following:

Ben Frei
Albert Frei & Sons, Inc.
bfrei@albertfreiandsons.com

Victoria Katchen
vkatchen@yahoo.com

Steve O'Brian
Environment, Inc.
environment-inc.@outdrs.net

Jennifer Curtis
jenspeedracer@hotmail.com

Kelsey Magnuson
magnu079@regis.edu

Nancy Donaldson
oreo0314@hughes.net

Elva Munoz
sanfran1227@hughes.net



August 9, 2019