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**Via email: [scott.schultz@coa.gov](mailto:scott.schultz@coa.gov)**

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**Re: April Board Hearing – Amendment No. 4 (AM-04) Application for the Pikeview Quarry, File No. M-1977-211**

Scott, Jeff, and Charles:

I am writing on behalf of Continental Materials Corporation (“CMC”) regarding the upcoming hearing before the Mined Land Reclamation Board (the “Board”) addressing CMC’s application for Amendment No. 4 to its Section 112 Reclamation Permit (File No. M-1977-211).

As you are aware, the hearing regarding CMC’s application was originally scheduled to occur during the Board’s meeting on March 25-26, 2020. Due to the unprecedented circumstances surrounding the spread of COVID-19, the Board elected to continue all contested matters that were scheduled to be addressed at its March meeting to instead be heard at its meeting on April 22-23, 2020. We understand that the Board was able to convene its March meeting to address certain uncontested agenda items using telephonic or video conferencing systems.

Continued efforts to mitigate the spread of COVID-19 create a risk that the Board may again be forced to hold its April 2020 meeting on a virtual, rather than in-person, basis. Acknowledging this potential outcome, CMC strongly urges that the Board and the Division of Reclamation, Mining and Safety (the “Division”) work together with CMC, Mr. Warren Dean (the objector to CMC’s application), and counsel for all interested persons to prepare for a substantive hearing regarding CMC’s application to be held via the same telephonic or video conferencing systems that the Board used for its March 2020 meeting.

There is no statutory or regulatory requirement that the Board’s hearing of CMC’s application must be conducted in person; rather, the rules governing the Board’s hearing specifically contemplate that parties may participate telephonically.<sup>1</sup> Any logistical hurdles raised by a telephonic or video conference hearing could be overcome quite easily with advance planning and coordination among those involved. For example, concerns regarding the ease of reference to exhibits by remote parties could be addressed by utilizing an agreed-upon bates-numbering system that would allow each presenter or witness to clearly refer to a specific numbered page when referencing a document during their presentation or testimony.

Further, holding the Board’s upcoming hearing on CMC’s application via telephonic or video conferencing is consistent with how other Colorado state regulatory agencies are addressing the challenges of the COVID-19 pandemic. For example, the Colorado Oil and Gas Conservation Commission (“COGCC”) is holding its next monthly meeting tomorrow, March 25, using Zoom videoconferencing. At this meeting, the COGCC will be conducting a substantive regulatory hearing on an operator’s request for an order establishing and approving a Comprehensive Drilling Plan.<sup>2</sup> Both the Air Quality Control Commission and the Water Quality Control Commission are implementing similar procedures, each pledging to conduct all relevant “meetings, prehearing conferences, and status conferences as remote meetings only” while ensuring that “[o]pportunity will be made available for parties to rulemaking hearings and interested members of the public to participate remotely in the meeting and provide testimony and public comment.”<sup>3</sup>

CMC understands that the current circumstances are unprecedented, and that it may ultimately be determined that the Board must hold its April meeting via virtual means rather than in person. In light of this possibility, CMC urges that the Board and the Division work together with CMC and Mr. Dean now to utilize the extra time created by the continuance from March to April to discuss,

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<sup>1</sup> See Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials [the “Rules”], Rule 2.2.1(b) (stating the Board hearings “shall be conducted pursuant to these Rules and the provisions of Section 24-4-105, C.R.S.”); C.R.S. § 24-4-105(4)(a) (granting regulatory agencies conducting hearings (such as the Board) the authority to “regulate the course of the hearing”); see *also* Rule 2.8.1(1) (contemplating that parties to a Board hearing may participate telephonically).

<sup>2</sup> See [https://cogcc.state.co.us/documents/reg/hearings/schedules/agendas/2020/202003HearingAgendaAbbreviated\\_20200320.pdf](https://cogcc.state.co.us/documents/reg/hearings/schedules/agendas/2020/202003HearingAgendaAbbreviated_20200320.pdf).

<sup>3</sup> See <https://www.colorado.gov/pacific/cdphe/aqcc> (Air Quality Control Commission); <https://www.colorado.gov/pacific/cdphe/wqcc-meetings> (Water Quality Control Commission).

develop, and implement any necessary procedures to allow the hearing of CMC's application to occur as part of the Board's April meeting, whether in person, telephonically, or via video conference.

We look forward to working together with you to prepare for the possibility of a telephonic or video conference hearing in April on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scot Anderson", with a stylized flourish at the end.

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cc: Steven K. Mulliken, Mulliken Weiner Berg & Jolivet P.C. ([mulliken@mullikenlaw.com](mailto:mulliken@mullikenlaw.com))