



COLORADO
**Division of Reclamation,
Mining and Safety**
Department of Natural Resources
1313 Sherman Street, Room 215
Denver, Colorado 80203

October 27, 2020

Ben Langenfeld
Greg Lewicki and Associates
3375 West Powers Circle
Littleton CO 80123

**Re: Preliminary Review of a 112c Construction Materials Reclamation Permit Application Package,
Kilgore Companies, LLC dba Peak Materials - Peak Ranch Resource, Permit M2020-041**

Mr. Langenfeld:

The Division of Reclamation, Mining, and Safety has completed its preliminary adequacy review of your 112 construction materials reclamation permit amendment application. The application was called complete for review on August 19, 2020. All comment and review periods began on August 19, 2020. Timely objections to the application have been received by the Division. Due to the number of objections received during the comment period, as well as logistic considerations required for holding the required public meetings while maintaining appropriate COVID protocols, the application was called complex by the Division on October 16, 2020 - thereby extending the review period by another 60 days. **The recommendation date for this application is now January 15, 2020. Please be advised that if you are unable to satisfactorily address any concerns identified in this review before the decision date, it will be your responsibility to request an extension of the review period. If there are outstanding issues that have not been adequately addressed prior to the end of the review period, and no extension has been requested, the Division will deny this application. In order to allow the Division adequate time to review your responses to any adequacy issues, please submit your adequacy responses to the Division no later than one week prior to the recommendation date (January 8, 2020).**

Please note that any changes or additions to the application on file in our office must also be reflected in the public review copy, which has been placed with the Summit County Clerk and Recorder.

The review consisted of comparing the application content with specific requirements of Rule 6.1, 6.2, 6.4 and 6.5 of the Minerals Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials. As with most applications, there are items that will require clarification of the existing information. Rule requirements are summarized under the respective exhibit heading. Any inadequacies or relevant questions are identified within, or immediately following, the exhibit requirements as necessary.

APPLICATION FORM:

Adequate as submitted.



6.2 GENERAL REQUIREMENTS OF EXHIBITS

6.2.1 General Requirements

(1) This Rule provides for the guidelines for, and information requirements of, each Exhibit required to be submitted with the permit application, as specified according to Section 6.1.

(2) Maps and Exhibits Maps, except the index map, must conform to the following criteria:

- (a) show name of Applicant;
- (b) must be prepared and signed by a registered land surveyor, professional engineer, or other qualified person;
- (c) give date prepared;
- (d) identify and outline the area which corresponds with the application;
- (e) with the exception of the map of the affected lands required in Section 34-32.5-112(2)(d), C.R.S. 1984, as amended, shall be prepared at a scale that is appropriate to clearly show all elements that are required to be delineated by the Act and these Rules. The acceptable range of map scales shall not be larger than 1 inch = 50 feet nor smaller than 1 inch = 660 feet. Also, that a map scale, appropriate legend, map title, date and a north arrow shall be included.

EXHIBIT A - Legal Description (Rule 6.4.1): The legal description must identify all affected land and be wholly adequate for field location of the property. It can be in the form of metes and bounds survey or a description by reference to township, range and section to at least the nearest quarter/quarter section. Where applicable, the street address or lot numbers may be used.

Adequate as submitted.

EXHIBIT B - Index Map (Rule 6.4.2): An index map showing the regional location of all affected land and all roads and other access to the area. A standard U.S. Geological Survey topographic quadrangle or equivalent is acceptable. Scale criteria need not be followed for this map.

Adequate as submitted.

EXHIBIT C - Pre-mining and Mining Plan Map(s) of Affected Lands (Rule 6.4.3): One or more maps may be necessary to legibly portray the following information:

- (a) all immediately adjacent surface owners of record;
- (b) the name and location of all creeks, roads, buildings, oil and gas wells and lines, and power and communication lines on the area of affected land and within two hundred (200) feet of all boundaries of such area
- (c) the existing topography of the area with contour lines of sufficient detail to portray the direction and rate of slope of the affected land;

Please properly label and identify the Green Mountain ditch/canal located near the northwest corner of the property even though it is just over 200 feet from the mining boundary.

Although contour lines are present on the map in appropriate intervals, they are faint, and the labels are very difficult to read. It may be useful to separate this information onto another map so that legibility may be improved without obscuring the other required information presented.

- (d) the total area to be involved in the operation, including the area to be mined and the area of affected lands (see definition of "Affected Land");
- (e) the type of present vegetation covering the affected lands; and
- (f) in conjunction with Exhibit G - Water Information, Subsection 6.4.7, if required by the Office, further water resources information will be presented on a map in this section.
- (g) Show the owner's name, type of structures, and location of all permanent or man-made structures contained on the area of affected land and within two hundred (200) feet of the affected land.
- (h) In conjunction with Exhibit I - Soils Information, Subsection 6.4.9, soils information may be presented on a map in this section;
- (i) Aerial photos, if available, may be included in this section.

Figure C-2A depicts several groundwater monitoring wells within topsoil/overburden berms, and the labels for well GW1 and GW5 appear to be misplaced. Please correct these items on all figures as needed.

EXHIBIT D - Mining Plan (Rule 6.4.4): The mining plan shall supply the following information, correlated with the affected lands, map(s) and timetables:

- (a) description of the method(s) of mining to be employed in each stage of the operation as related to any surface disturbance on affected lands;
- (b) earthmoving;
- (c) all water diversions and impoundments; and
- (d) the size of area(s) to be worked at any one time.
- (e) An approximate timetable to describe the mining operation. The timetable is for the purpose of establishing the relationship between mining and reclamation during the different phases of a mining operation. You will not be required to meet specific dates for initiation, or completion of mining in a phase as may be identified in the timetable. This does not exempt you from complying with the performance standards of Section 3.1. Such timetable should include:
 - (i) an estimate of the periods of time which will be required for the various stages or phases of the operation;
 - (ii) a description of the size and location of each area to be worked during each phase; and
 - (iii) outlining the sequence in which each stage or phase of the operation will be carried out.(Timetables need not be separate and distinct from the mining plan, but may be incorporated therein.)

(f) A map (in Exhibit C - Pre-Mining and Mining Plan Maps(s) of Affected Lands, Subsection 6.4.3) may be used along with a narrative to present the following information:

- (i) nature, depth and thickness of the ore body or deposit to be mined and the thickness and type of overburden to be removed (may be marked "CONFIDENTIAL," as per Paragraph 1.3(3)); and
- (ii) nature of the stratum immediately beneath the material to be mined in sedimentary deposits.

(g) Identify the primary and secondary commodities to be mined/extracted and describe the intended use; and

(h) name and describe the intended use of all expected incidental products to be mined/extracted by the proposed operation.

The plan as presented states in section 1.1 that CDOT approved improvements to Hwy 9 will be completed prior to commencing operations. Please state what type of improvements are proposed and where, and if they will be completed prior to any activity on this site, or completed prior only to off-site transport of mined materials.

As noted in the pre-operation inspection, the applicant has stated that they are working with the Town of Breckenridge to return the Town's drainage easement to a functional condition as required by the Town's decree. What is the proposed timeline for the realignment of flow from the culverts under Hwy 9, and the re-establishment of the Town of Breckenridge return flow drainage easement across the property? The "wet meadow"/wetlands area in the northeast part of the site as it currently exists is, at least in part, due to the failure of this easement to function properly in the past. Therefore, restoring proper function of the drainage easement may have adverse effects on the existing wet meadow/wetland areas. The permittee will need to engage and work with the US Army Corps of Engineers (COE) to determine what the COE permitting implications of this may be and what, if any, mitigation measures will be required. The applicant must also commit to obtaining, as necessary, an approved wetlands delineation and appropriate permit from US Army Corps of Engineers (COE) prior to any mining or mining related disturbance of any potential wetland areas on site.

Please verify and demonstrate that there is sufficient material available on-site to construct the berms as proposed and shown while still segregating topsoil from overburden material as required by rule. The amount of topsoil proposed to be salvaged and utilized for berms and reclamation appears to exceed the amount of topsoil shown in the boring logs and soil survey for the site. If the applicant is proposing to salvage additional material beyond topsoil as specified in Rule 3.1.9(6), please specify what, if any, testing/amendments will be needed prior to or during reclamation to ensure that the material will be suitable for reclamation and re-vegetation.

The applicant must commit to not exposing groundwater anywhere on the site prior to obtaining an approved permanent augmentation plan from the State Engineer's Office. The other potential options for exposing groundwater for the proposed Phase II mining (bonding for and backfilling the final excavation to 2 feet above static water level, or bonding for and lining the pit with a compacted clay liner or slurry wall meeting SEO standards) have not been presented or discussed as part of this application. Please also make this correction in Exhibit G, section 8.1.

How will the operator be able to document that excavation will be maintained at a minimum of two feet above the Pierre Shale underlying the site, or the 2:1 slopes as specified in the mining plan for Phase II?

Why is the 2.9 acre lined augmentation pond required for Phase II? How will this pond to be lined, and how will it be reclaimed?

Will an SPCC plan be required for fuels stored on site?

Although it is not part of the Peak Ranch permit, please note that a technical revision to the existing permit for the Peak Materials, Maryland Creek Ranch site will need to be submitted and approved prior to importation of any off-site materials to that location.

EXHIBIT E - Reclamation Plan (Rule 6.4.5):

(1) In preparing the Reclamation Plan, you should be specific in terms of addressing such items as final grading (including drainage), seeding, fertilizing, revegetation (trees, shrubs, etc.), and topsoiling. You are encouraged to allow flexibility in your plans by committing to ranges of numbers (e.g., 6"-12" of topsoil) rather than specific figures.

(2) The Reclamation Plan shall include provisions for, or satisfactory explanation of, all general requirements for the type of reclamation proposed to be implemented by you. Reclamation shall be required on all the affected land. The Reclamation Plans shall include:

(a) A description of the type(s) of reclamation you propose to achieve in the reclamation of the affected land, why each was chosen, the amount of acreage accorded to each, and a general discussion of methods of reclamation as related to the mechanics of earthmoving;

(b) A comparison of the proposed post-mining land use to other land uses in the vicinity and to adopted state and local land use plans and programs. In those instances where the post-mining land use is for industrial, residential, or commercial purposes and such use is not reasonably assured, a plan for revegetation shall be submitted. Appropriate evidence supporting such reasonable assurance shall be submitted;

(c) A description of how the Reclamation Plan will be implemented to meet each applicable requirement of Section 3.1;

(d) Where applicable, plans for topsoil segregation, preservation, and replacement; for stabilization, compaction, and grading of spoil; and for revegetation. The revegetation plan shall contain a list of the preferred species of grass, legumes, forbs, shrubs or trees to be planted, the method and rates of seeding and planting, the estimated availability of viable seeds in sufficient quantities of the species proposed to be used, and the proposed time of seeding and planting;

(e) A plan or schedule indicating how and when reclamation will be implemented. Such plan or schedule shall not be tied to any specific date but shall be tied to implementation or completion of different stages of the mining operation as described in Subparagraph 6.4.4(1)(e). The plan or schedule shall include:

(i) An estimate of the periods of time which will be required for the various stages or phases of reclamation;

(ii) A description of the size and location of each area to be reclaimed during each phase; and

(iii) An outline of the sequence in which each stage or phase of reclamation will be carried out. (The schedule need not be separate and distinct from the Reclamation Plan, but may be incorporated therein.)

(f) A description of each of the following:

- (i) Final grading - specify maximum anticipated slope gradient or expected ranges thereof;
- (ii) Seeding - specify types, mixtures, quantities, and expected time(s) of seeding and planting;
- (iii) Fertilization - if applicable, specify types, mixtures, quantities and time of application;
- (iv) Revegetation - specify types of trees, shrubs, etc., quantities, size and location; and
- (v) Topsoiling - specify anticipated minimum depth or range of depths for those areas where topsoil will be replaced.

CPW noted that "The property currently provides limited value to big game species due to forage conditions..." Rule 3.1.8(2) states that "Habitat management and creation, if part of the Reclamation Plan, shall be directed toward encouraging the diversity of both game and non-game species, and shall provide protection, rehabilitation or improvement of wildlife habitat." CPW has offered to provide a modified or alternative seed mix for the reclamation that would improve the suitability of the reclaimed site for forage and wildlife. DRMS recommends the applicant consult with CPW to determine the best reclamation seed mix for the site, and to emphasize the use of native species as stated in Rule 3.1.10(1).

The seed mix presented in Table E-3 doesn't match the seed mix presented on Figure F-1, please address as necessary. You may want to also include the seed mix on Figure F-2 for consistency.

The reclamation plan doesn't adequately specify the numbers or types of trees to be planted, or where they will be planted, please address as necessary.

How will the 2.9 acre lined augmentation pond be reclaimed?

Will the existing monitoring wells/piezometers be abandoned or retained for future use? If they will be abandoned how and when will this be done?

EXHIBIT F - Reclamation Plan Map (Rule 6.4.6): The map(s) of the proposed affected land, by all phases of the total scope of the mining operation, shall indicate the following:

- (a) The expected physical appearance of the area of the affected land, correlated to the proposed mining and reclamation timetables. The map must show proposed topography of the area with contour lines of sufficient detail to portray the direction and rate of slope of all reclaimed lands; and
- (b) Portrayal of the proposed final land use for each portion of the affected lands.

Figure F-1- Please identify 3:1 vs. 2:1 slopes in Phase II lake area. There also appear to be existing structures partially shown on the north shoreline of Figure F-1, please remove.

Figure F-2 – The 2:1 contours shown on the interior of the south cell should be removed. Also please remove the text for lake elevation and acreage in the south cell.

EXHIBIT G - Water Information (Rule 6.4.7):

- (1) If the operation is not expected to directly affect surface or groundwater systems, a statement of that expectation shall be submitted.
- (2) If the operation is expected to directly affect surface or groundwater systems, you shall:
 - (a) Locate on the map (in Exhibit C) tributary water courses, wells, springs, stock water ponds, reservoirs, and ditches on the affected land and on adjacent lands where such structures may be affected by the proposed mining operations;
 - (b) Identify all known aquifers; and
 - (c) Submit a brief statement or plan showing how water from dewatering operations or from runoff from disturbed areas, piled material and operating surfaces will be managed to protect against pollution of either surface or groundwater (and, where applicable, control pollution in a manner that is consistent with water quality discharge permits), both during and after the operation.
- (3) You must provide an estimate of the project water requirements including flow rates and annual volumes for the development, mining and reclamation phases of the project.
- (4) You must indicate the projected amount from each of the sources of water to supply the project water requirements for the mining operation and reclamation.
- (5) You must affirmatively state that the Operator/Applicant has acquired (or has applied for) a National Pollutant Discharge Elimination System (NPDES) permit from the Water Quality Control Division at the Colorado Department of Health, if necessary.

Section 1.0 – Exhibits C and F do not show piezometers P-1 through P-6 as stated, please correct.

Please update the analytical data tables provided to include all data collected for surface water and groundwater to date, including any sampling events that have taken place since the application was initially submitted. Compare existing data to the appropriate standard(s) for the site as detailed below.

According to the Water Quality Control Commission (WQCC) Regulation 41 – The Basic Standards for Groundwater, the site is subject to the Interim Narrative Standards for Groundwater. In accordance with this standard “ground-water quality shall be maintained for each parameter at whichever of the following levels is less restrictive:

(A) existing ambient quality as of January 31, 1994, or

(B) that quality which meets the most stringent criteria set forth in Tables 1 through 4 of “The Basic Standards for Ground Water.”

Regulation 41 also states that “Data generated subsequent to January 31, 1994, shall be presumed to be representative of existing quality as of January 31, 1994, if the available information indicates that there have been no new or increased sources of groundwater contamination initiated in the area in question subsequent to that date.” At this time, due to the consistent history and use of this site and the surrounding area as ranchland or similar, DRMS feels that existing groundwater conditions are representative of water quality as of January 31, 1994.

Therefore DRMS will require that all existing groundwater data for the site to-date be compared to the standard values in Tables 1-4 of Regulation 41 and that any exceedances of those values at this time be highlighted and noted as “existing ambient quality”.

DRMS notes that GW-1 has been selected as the point of compliance for GW monitoring and agrees with this determination as it is the most downgradient well on the site from the proposed activity.

DRMS will compare subsequent water quality data from the point of compliance to Table Value Standards, or pre-activity ambient quality as appropriate, to determine compliance. Comparing data from the point of compliance to drinking water standards in an unclassified area, as is currently proposed in Exhibit G, is not appropriate at this time. Please modify Exhibit G to remove references to comparisons to drinking water standards for determining compliance (section 8.2).

All existing surface water data to-date should be compared to the aquatic life standards for the appropriate reach of the Blue River. If existing, pre-mining, background levels of any reported analytes exceed the applicable standards, these should be clearly identified. It may be useful to utilize the CDPHE Section 303(d) Listing Methodology, 2022 Listing Cycle guidelines when collecting and reporting surface water data which can be viewed at the following link: <https://drive.google.com/file/d/1jlgq37fgFV5MpUC3HPA5misOmvhKeMrZ/view>

DRMS believes that if Phase II of the operation is initiated (dredge mining in unlined, exposed groundwater lake), monitoring of the water quality in the unlined pit may provide useful information with respect to potential groundwater or surface water quality impacts. Therefore, DRMS will require the operator to commit to quarterly monitoring of the water in the unlined/exposed groundwater pond in addition to the quarterly monitoring of the groundwater wells, and surface water.

DRMS will also require, for review, a copy of the Sampling and Analysis plan that will govern the field data and sample collection, sample analysis, and data reporting for surface and groundwater monitoring, as well as monitoring of water quality in the Phase II unlined pond.

DRMS notes that the sampling event scheduled for spring of 2020 was not conducted. Please be advised that DRMS will expect that ALL quarterly monitoring events of surface and groundwater will be completed in the future. Weather conditions, etc, will not be acceptable reasons for skipping quarterly data collection, and failure to comply with the approved groundwater monitoring plan may lead to enforcement action by the Division.

DRMS notes that water level data and analytical data collection will occur quarterly, what reporting schedule does the applicant propose? DRMS suggests that all monitoring data be submitted with the annual report for the site. Please note that any exceedances of groundwater standards still requires notice to DRMS in accordance with Rule 3.1.7(9).

It may also be useful to obtain background water quality data from adjacent residential wells if access can be obtained.

EXHIBIT H - Wildlife Information (Rule 6.4.8):

(1) In developing the wildlife information, you may wish to contact the local wildlife conservation officer. You must include in this Exhibit, a description of the game and non-game resources on and in the vicinity of the application area, including:

- (a) a description of the significant wildlife resources on the affected land;
- (b) seasonal use of the area;
- (c) the presence and estimated population of threatened or endangered species from either federal or state lists; and
- (d) a description of the general effect during and after the proposed operation on the existing wildlife of the area, including but not limited to temporary and permanent loss of food and habitat, interference with migratory routes, and the general effect on the wildlife from increased human activity, including noise.

DRMS has reviewed the provided Wildlife Impact and Mitigation Report and noted that there are several recommendations and mitigation measures included. Does the applicant intend to implement all the recommendations provided, and if not, why not.

C.P.W. provided comments on this application as well which have been provided for your review - please address as appropriate.

EXHIBIT I - Soils Information (Rule 6.4.9): In consultation with the Soil Conservation Service or other qualified person, you must indicate on a map (in Exhibit C) or by a statement, the general type, thickness and distribution of soil over the affected land. Such description will address suitability of topsoil (or other material) for establishment and maintenance of plant growth. The above information shall satisfy "completeness" requirements for purposes of determination of date of filing.

Adequate as submitted

EXHIBIT J - Vegetation Information (Rule 6.4.10):

- (1) You must include in this Exhibit a narrative of the following items:
 - (a) descriptions of present vegetation types, which include quantitative estimates of cover and height for the principal species in each life-form represented (i.e., trees, tall shrubs, low shrubs, grasses, forbs);
 - (b) the relationship of present vegetation types to soil types, or alternatively, the information may be presented on a map; and
 - (c) estimates of average annual production for hay meadows and croplands, and carrying capacity for range lands on or in the vicinity of the affected land, if the choice of reclamation is for range or agriculture.

- (2) You must show the relation of the types of vegetation to existing topography on a map in Exhibit C. In providing such information, you may want to contact the local Soil Conservation District.

DRMS has reviewed the Aquatic Resources Delineation Report prepared by ERC and provided in this exhibit. It appears that the Wetland Determination Data Forms provided in Appendix B are multiple copies of one form for location DP-A1a? Please address and provide the data forms for all data points utilized in the report. Please also review the application for accuracy and consistency with regard to the information provided for location and extents of "wetlands"

What is the status of the site with respect to the required US ACOE permitting? Has the ERC delineation report been provided to ACOE for review and determination of jurisdictional wetland status?

Please provide the Weed Control Plan for the site to be implemented by the operator during operation and reclamation

EXHIBIT K - Climate (Rule 6.4.11): Provide a description of the significant climatological factors for the locality.

Adequate as submitted

EXHIBIT L - Reclamation Costs (Rule 6.4.12): All information necessary to calculate the costs of reclamation must be submitted and broken down into the various major phases of reclamation. You must provide sufficient information to calculate the cost of reclamation that would be incurred by the state.

DRMS will calculate the required reclamation bond for the site when all identified adequacy issues have been addressed.

EXHIBIT M - Other Permits and Licenses (Rule 6.4.13): A statement identifying which of the following permits, licenses and approvals the Operator/Applicant holds or will be seeking in order to conduct the proposed mining and reclamation operations: effluent discharge permits, air quality emissions permits, radioactive source material licenses, the State Historic Preservation Office clearance, disposal of dredge and fill material (404) permits, permit to construct a dam, well permits, highway access permits, U.S. Forest Service permits, Bureau of Land Management permits, county zoning and land use permits, and city zoning and land use permits.

Please verify that no additional floodplain related permitting will be required from Summit County for this operation which is outside of the 100 year floodplain as proposed.

EXHIBIT N - Source of Legal Right to Enter (Rule 6.4.14): You must provide the source of your legal right to enter and initiate a mining operation on the affected land.

Adequate as submitted

EXHIBIT O - Owner(s) of Record of Affected Land (Surface Area) and Owners of Substance to be Mined (Rule 6.4.15): Please submit a complete list of all owners or show the owners on your map in Exhibit C.

Adequate as submitted

EXHIBIT P - Municipalities Within Two Miles (Rule 6.4.16): Please list any municipality(s) within two miles of the proposed mining operation and address of the general office of each municipality.

Adequate as submitted

EXHIBIT Q - Proof of Mailing of Notices to County Commissioners and Soil Conservation District (Rule 6.4.17): Please submit proof of actual delivery or proof of mailing by Certified Mail, return receipt requested, of Notice of the Application to the local Board of County Commissioners and, if the mining operation is within the boundaries of a Soil Conservation District, to the Board of Supervisors of the Soil Conservation District.

Adequate as submitted

EXHIBIT R - Proof of Filing with County Clerk and Recorder (Rule 6.4.18): You must submit an affidavit or receipt indicating the date on which the application was placed with the local County Clerk and Recorder.

Adequate as submitted

EXHIBIT S - Permanent Man-Made Structures (Rule 6.4.19): Please note that roadways and above-ground or underground utilities (if present) within 200 feet of the proposed affected area are considered permanent man-made structures. In accordance with Rule 6.4.19, when mining operations will adversely affect the stability of any significant, valuable and permanent man-made structure located within 200 feet of the affected area, the applicant may either:

- (a) Provide a notarized agreement between the applicant and the person(s) having an interest in the structure, that the applicant is to provide compensation for any damage to the structure;
- or
- (b) Where such an agreement cannot be reached, the applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation.

Please provide evidence (certified letter to structure owners) that a notarized agreement between the structure owners and the applicant was pursued. If an agreement is unable to be reached a geotechnical assessment may be provided to demonstrate that the structures shall not be damaged.

You must provide information sufficient to demonstrate that the stability of any structures located within two hundred (200) feet of the operation or affected land will not be adversely affected.

DRMS notes that damage waiver agreements have been provided to all listed structure owners. As it is unlikely that all the agreements will be executed and returned, DRMS has reviewed the provided geotechnical stability report for the site. Comments on the report have been provided with this letter and will need to be addressed prior to DRMS acceptance of the geotechnical stability assessment.

Additional Topics: You will also need to provide the Division with proof of notice publication as well as proof of notice to surrounding property owners within 200' of the permit.

DRMS notes that this information has already been provided

DRMS has received a significant number of objections to this application as submitted, and PDF copies of all objections have been provided to the applicant for review. Although DRMS has not specifically addressed all

concerns put forth in the objections at this time, DRMS would encourage the applicant to review these objections closely and to address issues and recommendations presented as appropriate for this application process.

Any letters from other commenting agencies/entities received by the Division for this permit to date are available for review through the imaged document data link provided below, or through the DRMS website.

<https://www.colorado.gov/pacific/drms/data-search>

This concludes the Division's preliminary adequacy review of this application. This letter shall not be construed to mean that there are no other technical deficiencies in your application. Other issues may arise as additional information is supplied. Please remember that the current recommendation date for this amendment application is January 15, 2020. As previously mentioned, if you are unable to provide satisfactory responses to any inadequacies prior to this date, it will be your responsibility to request an extension of time to allow for continued review of this application. If there are still unresolved issues when the decision date arrives and no extension has been requested, the application will be denied. If you have any questions, please contact me at (303) 229-9414.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric Scott".

Eric Scott – Environmental Protection Specialist

ECC: Michael Cunningham, DRMS

Enclosures: DRMS Comments on Geotechnical Stability Analysis
CPW Comment Letter
SEO Comment Letter
USFS Comment Letter
US Army COE Comment Letter
Summit County Comment Letter
Town of Breckenridge Comment Letter
History Colorado Comment Letter



COLORADO
**Division of Reclamation,
Mining and Safety**
Department of Natural Resources
1313 Sherman Street, Room 215
Denver, CO 80203

MEMORANDUM

Date: October 15, 2020

To: Eric Scott; Division of Reclamation, Mining & Safety

From: Peter Hays; Division of Reclamation, Mining & Safety

Re: **Adequacy Review of Exhibit 6.5 – Geotechnical Stability
Kilgore Companies, LLC dba Peak Materials; Peak Ranch Resource; File No. M-2020-041**

The Division of Reclamation, Mining and Safety (Division/DRMS) reviewed the Geotechnical Stability Exhibit submitted by Greg Lewicki and Associates, PLLC dated July 2020 for the Peak Ranch Resource 112c permit application.

The following list describes the information used by the Division as presented in the permit application to evaluate slope stability for the proposed site:

- Geotechnical boring and sampling data is not available for the site.
- Mining Areas North and South will be dry mined during Phase 1 with excavation stopping two feet above the typical seasonal high-water table.
- Mining Area South will be wet mined during Phase 2 by a dragline to a nominal maximum depth of 55 feet below grade.
- Bedrock was encountered in three (3) exploration borings at depths of 62, 47 and 58 feet below grade.
- The typical soil profile consists of 0 to 6 inches of topsoil, 12 to 15 inches of overburden and bedrock at approximately 50 to 60 feet below grade.
- The soil strength parameters were derived from Table 2.5 in the SME Mining Reference Handbook
- The Applicant used the following soil parameters for the anticipated soil types;
 - Alluvial Material - 110 pcf, 45° friction angle, 0 psf cohesion
 - Overburden - 99 pcf, 34° friction angle, 0 psf cohesion
- A minimum 100 foot setback will be maintained from the top of excavation slope to the north and south property boundaries.
- A minimum 50 foot setback will be maintained from the top of excavation slope to the east and west property boundaries.



- A minimum 200 foot setback will be maintained from the top of excavation slope to the Blue River.
- The depth to groundwater ranged from 5.5 feet to 28.8 feet below grade in the five (5) groundwater wells (GW-1 through GW-5) install around the perimeter of the site.
- Groundwater is expected a seven (7) feet below grade.
- The final reclamation slopes will be created during mining at a 3H:1V slope. No backfilling will occur to create the final reclamation slopes.
- No dewatering will occur during the mining operation.
- No blasting will occur during the mining operation.

In accordance with Table 1 - Recommended Factors of Safety for Slope Stability Analysis for Operations and Reclamation within Section 30.4 of the Policies of the Mined Land Reclamation Board (MLRB) effective May 16, 2018, the Division will require the Applicant to comply with the factor of safety (FOS) of 1.5 for critical structures in static conditions since the Applicant utilized generalized strength measurements in the analysis.

The following information is required by the Division to complete the stability analysis review.

1. The proposed Mining Plan states groundwater is anticipated at seven (7) feet below grade. The Applicant modeled the depth to groundwater at depths greater than (7) feet below grade. Please explain these discrepancies and update the Mining Plan and/or Stability Analysis Models accordingly.
2. On Page GS-1 of the Geotechnical Stability Analysis, the Applicant states the sand and gravel will be mined to a 3H:1V slope with a loader and dozer. The proposed Mining Plan states the South Mining Area will be mined during Phase 2 utilizing a dragline. Please explain this discrepancy and update the Mining Plan and/or Stability Analysis Models accordingly.
3. On Page GS-1 of the Geotechnical Stability Analysis, the Applicant states the sand and gravel will be mined to a 3H:1V slope with a loader and dozer. Therefore, one slope model was developed and analyzed: full mining at the end of Phase 2 with a 3H:1V slope extending down into the groundwater lake. The proposed Mining Plan Map -Phase 2, Exhibit C-2B, indicates the South Mining Area will be mined during Phase 2 at a 3H:1V slope above groundwater and a 2H:1V slope ten (10) feet below groundwater. Please explain this discrepancy and update the Mining Plan Map and/or Stability Analysis Models accordingly.
4. On Page GS-1 of the Geotechnical Stability Analysis, the Applicant states the sand and gravel will be mined to a 3H:1V slope with a loader and dozer. Therefore, one slope model was developed and analyzed: full mining at the end of Phase 2 with a 3H:1V slope extending down into the groundwater lake. The Galena models provided for Profiles 2 and 4 through 7 indicate a slope combination of a 3H:1V and 2H:1V slope. Please explain this discrepancy and update the Mining Plan Map and/or Stability Analysis Models accordingly.

5. Please update the Galena models to indicate the Property Line, Edge of Wetlands and structures as depicted in the Slope Stability Analysis cross-sections provided to the structure owners with the structure agreements.
6. Please update the Galena models to indicate the offset from the nearest structure or property line as depicted in the Mining Plan Map - Exhibit C-2B.

If you have any questions regarding these adequacy items, please contact me at peter.hays@state.co.us or (303) 866-3567, Ext. 8124.



COLORADO

Parks and Wildlife

Department of Natural Resources

Northwest Regional Office

711 Independent Ave.

Grand Junction, CO 81505

P 970-255-6100 | F 970-255-6111

Eric Scott

Division of Reclamation, Mining and Safety

1313 Sherman Street

Denver, CO 80203

RE: Peak Ranch Resource Project

Dear Mr. Scott,

Thank you for the opportunity to comment on the proposed project at the Peak Ranch resource site in Summit County. Colorado Parks and Wildlife (CPW) has a statutory responsibility to manage all wildlife species in Colorado; this responsibility is embraced and fulfilled through CPW's mission to protect, preserve, enhance, and manage the wildlife of Colorado for the use, benefit, and enjoyment of the people of the State and its visitors. CPW encourages Peak Materials to afford the highest protection for Colorado's wildlife species and habitats.

The proposed 75.6-acre project site is located west of Highway 9 in the Blue River Valley, approximately 11 miles north of I-70. The Blue River borders the west edge of the property. The property has most recently been utilized as a livestock pasture and is currently cross-fenced with multiple vacant structures. A small wetland exists on the northeast portion of the property. The proposed project includes the following:

- 1) Construction of access road and internal access roads
- 2) Strip topsoil and overburden and create 8-10 foot tall privacy berms
- 3) Construction of new fencing along western perimeter of project boundary, and around perimeter of wetlands
- 4) Mine approximately 45.8 acres of the Peak Ranch resource site for aggregate materials
- 5) Truck aggregate material from Peak Ranch resource site to Maryland Creek facility
- 6) Reclaim Peak Ranch resource site to fenced rangeland with a groundwater lake, and a permanent gravel access road

CPW has reviewed the proposed projects, visited the site, and would like to offer specific comments on impacts to wildlife.



Wildlife Habitat

The project area occurs within summer range for moose, elk and mule deer. Additionally, it occurs within mule deer and elk winter range, and along the edge of an elk winter concentration area and a mule deer migration corridor. The Blue River riparian corridor is a mule deer concentration area as well as an important movement corridor for other big game species, small mammals and bird species. The property currently provides limited value to big game species due to forage conditions; however, animals move through the property regularly to access the river and adjacent habitats. This movement occurs year round, with higher activity during the winter months and during spring and fall migrations. Black bears also inhabit the area, and the property is directly adjacent to black bear summer concentration habitat across the river to the west.

Raptors, including Bald Eagle and Osprey, have been observed on the west end of the property along the Blue River. A Bald Eagle nest previously existed on the property, and the entire stretch of the Blue River from Silverthorne Town Limits north to Green Mountain Reservoir provides summer and winter forage and winter concentration habitat for Bald Eagles. CPW requests that prior to any construction or mining activity on the property, valid raptor nest surveys (before July 31) and migratory bird nest surveys (before July 15) be performed by a certified biologist. CPW requests that trees with active nests be retained, and no disturbance be allowed within a 0.25 mile radius of active raptor nests until fledging has occurred.

Traffic

Peak Resources plans to truck aggregate from the property to Maryland Creek Ranch, approximately 7 miles south on State Highway 9 (SH9). This stretch of highway between mileposts 107-114 (approximately) has been identified in the Summit County Safe Passages County-wide Connectivity Plan as a high priority area for mitigating wildlife-vehicle collisions, which occur year round. Traffic volumes along SH9 through this area have been increasing steadily in recent years, and CPW is concerned that heavy truck traffic between the property and Maryland Creek Ranch may increase wildlife-vehicle collisions.

Peak Resources has agreed to implement modified hours for trucking operations, based on CPW recommendations, to minimize the potential for wildlife-vehicle collisions during the times of day when deer, elk and moose are most active, and specifically during the winter months when wildlife is concentrated at lower elevations closer to the highway. CPW supports the operator's proposed hours for limiting truck traffic to within the daily time period of 9 am to 4 pm from May 1st - Nov 30th, and within the daily time period of 10 am to 3 pm from Dec. 1st - April 30th.

Blue River Fishery

The reach of the Blue River between Silverthorne Town Limits and Green Mountain Reservoir previously held Gold Medal status and was delisted in 2016. The quality of this fishery had been in decline due a variety of impacts including unnatural stream flows, sparse aquatic invertebrate populations, low nutrient content and degraded habitat. The Blue River Enhancement Working Group (BREW) has been working cooperatively to monitor the river condition and identify what is causing the decline in quality.

Macroinvertebrates may be sensitive to changes in water quality from the proposed mining activity, and impacts may further degrade this fishery. Possible impacts to macroinvertebrate health was not addressed in the application. CPW suggests for macroinvertebrate impacts be addressed in one of two ways, if not both. Peak Materials could design and implement a robust macroinvertebrate monitoring program on the Blue River; for which, Peak Materials could explore a partnership with the BREW group. Furthermore, Peak Materials could bolster its water quality monitoring to include sites in the Blue River downstream of the mine, as well as the “wet cell” mining pit itself. If water quality impacts are detected in the Blue River or nearby ground water, or if a decline in macroinvertebrate populations is observed in the Blue River, and determined to be associated with the mining operations, CPW requests that the operator address and resolve them immediately.

CPW’s Water Quality staff has reviewed the application and noted that the bedrock under the proposed gravel mine is Pierre Shale, which contains contaminants including selenium, sulfate, salts, nitrate, and a variety of radionuclides that can be released if crushed by gravel mining operations. Of those, selenium is the biggest concern for aquatic life and birds as it is bioaccumulates and causes deformities in the offspring of all egg-laying organisms, including fish and birds. Exposure of the shale bedrock layer could result in significant impacts to the downstream fishery in the Blue River, as well as riparian bird species. Exhibit D of the application states that the proposed mining will stop at least two feet above the bedrock to prevent its exposure. CPW is concerned that the 2-foot buffer is too narrow to reasonably avoid potential exposure of the bedrock, and recommends a minimum buffer of 4 feet above the bedrock to prevent accidental puncture or exposure of the bedrock and subsequent contamination of the Blue River.

Riparian Area & Wetlands

The western boundary of the project area borders the Blue River, and the proposed mining plan includes a 200 foot buffer between the mining extent and the river. A majority of the wildlife use of this property occurs along the river corridor. CPW recommends increasing the buffer to a minimum of 300 feet to protect this riparian zone from disturbance. Scientific literature supports a minimum buffer of 300 feet from the river, which is consistent with CPW’s recommendations for other land use disturbances as well as several Federal resource management plans in Colorado (Appendix A).

A 16-acre delineated wetland exists at the northeast corner of the property along Highway 9. This area is a wet meadow dominated by grasses and sedges. Wetlands provide many functions including flood control, groundwater recharge and discharge, water quality improvement, shoreline stabilization and wildlife habitat, serving as seclusion, nesting, feeding, and movement areas for migratory birds and mammal species. No mining is planned in the wetland or within a 50-foot buffer; however, CPW is concerned about the potential draining as a result of the mining. CPW recommends that the wetland is monitored frequently for signs of draining or other degradation and if impacted, CPW recommends that Peak Materials perform wetland mitigation by enhancing or creating comparable wetlands elsewhere in the Lower Blue Valley prior to completion of the mining project.

Reclamation

Exhibit E of the proposal states that the property will be restored to rangeland with a groundwater lake for the benefit of local wildlife. The proposed 26-acre lake with max 3:1 slopes is relatively

steep and not ideal for wildlife. CPW recommends grading the shoreline of the lake with a diversity of slopes from of 3:1 (minimum) to 5:1, which will balance creating optimal habitat for wildlife and minimizing weed growth. An ideal pond for wildlife would be composed of approximately 20-30% shoal area (4-8 ft deep), which is shallow enough for rooted vegetation, provides for invertebrate production and creates physical habitat complexity. This will allow wildlife to better utilize the lake as habitat and will accommodate fluctuations in water level.

Additionally, CPW is concerned that the current proposed depth of the reclamation lake will cause stratification of the water layers. This may lead to formation an anoxic hypolimnion concentrated with heavy metals from the mining operations, which could then leach into the groundwater that will be feeding the lake. CPW recommends that Peak Materials modify their reclamation plan to include a pond design that will avoid potential water quality issues, and contour the surrounding area to enhance the existing wetlands on the property. Additionally, CPW recommends using a native vegetation seed mix in the topsoil to enhance winter forage for wildlife.

Fencing

CPW notes that the proposal includes fencing of the perimeter, as well as the wetland. CPW requests that all fences on the property be designed to be permeable and friendly to wildlife. Please reference CPW's *Fencing With Wildlife in Mind* document for fence specifications:
<https://cpw.state.co.us/Documents/LandWater/PrivateLandPrograms/FencingWithWildlifeInMind.pdf>

CPW would like to thank you for the opportunity to comment on this project in Summit County. If you have any questions regarding the wildlife issues and recommendations in this letter, please contact Jacob Kay at 970-485-3081 or jacob.kay@state.co.us.

Sincerely,



JT Romatzke
Northwest Regional Manager
Colorado Parks and Wildlife

CC: Jeromy Huntington, Area Wildlife Manager, CPW
Jacob Kay, District Wildlife Manager, CPW
Elissa Slezak, Northwest Region Land Use Specialist, CPW
Lori Martin, Senior Aquatic Biologist, CPW
Jon Ewert, Aquatic Biologist, CPW

APPENDIX A: Aquatic Buffers in Colorado Resource Management Plans

Agency	Buffer Dist	Type	Applies To	Details	Location	Reference
BLM	325' +	NSO	Perennial Streams, Water Bodies, Fisheries, and Riparian Areas	Prohibit surface occupancy or use within a minimum buffer distance of 325 horizontal feet for all perennial waters.	Kremmling Field Office	Resource Management Plan, Exhibit KFO-NSO-4
BLM	328'	NSO	Perennial Streams, Water Bodies, Riparian Areas, and Aquatic Dependent Species	Prohibit surface occupancy and surface-disturbing activities within a buffer distance of 328 horizontal feet from the outer edge of riparian/wetland zones	Colorado River Valley Field Office	Resource Management Plan, CRVFO-NSO-5
BLM	328'	NSO	Streams/Springs Possessing Lotic Riparian Characteristics	Prohibit surface occupancy and surface-disturbing activities within a minimum distance of 100 meters (328 feet) from the edge of the ordinary high-water mark (bankfull-stage).	Grand Junction Field Office	Resource Management Plan, Allowable Use W-AU8, Stipulation NSO-2
BLM	0.25-mile	NSO	Perennial Water	NSO for up to 0.25 mile from perennial water sources, if necessary, depending on type and use of the water source, soil type, and slope steepness.	Little Snake Field Office	Resource Management Plan, Perennial Water LS-105 No Surface Occupancy Stipulation
USFS	350'	NSO		NSO for Gold Medal Fisheries and the recreational opportunities provided by the fisheries/	White River National Forest	Oil & Gas Leasing Final Environmental Impact Statement Record of Decision 1993
USFS	300'	NSO	Fish bearing streams	Provides 300' Riparian Habitat Conservation Areas on either side of fish bearing streams	Multiple	1995 Record of Decision for Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California



Response to Reclamation Permit Application Consideration

To: Eric C. Scott, Environmental Protection Specialist
From: Megan Sullivan, Water Resource Engineer
Date: October 22, 2020
Re: Permit No. M-2020-041
Operator: Kilgore Companies, LLC dba Peak Materials – Peak Ranch Resource site
Section 20, Twp 3 S, Rng 78 W, 6th P.M.; Summit County

CONDITIONS FOR APPROVAL

- ☒ For Phase 1, the proposed operation does not anticipate exposing groundwater. Therefore, exposure of ground water must not occur during this mining phase.
- ☒ If storm water is contained on-site, the applicant should be aware that, unless the storm water detention structures can meet the requirements of a “storm water detention and infiltration facility” as defined in section 37-92-602(8), Colorado Revised Statutes, the structure may be subject to administration by this office. The applicant should review DWR’s *Administrative Statement Regarding the Management of Storm Water Detention Facilities and Post-Wildland Fire Facilities in Colorado* (available at: <http://water.state.co.us/DWRIPub/Documents/DWR%20Storm%20Water%20Statement.pdf>) to ensure that the notification, construction and operation of the proposed structure meets statutory and administrative requirements. The applicant is encouraged to use *Colorado Stormwater Detention and Infiltration Facility Notification Portal*, located online at: <https://maperture.digitaldataservices.com/gvh/?viewer=cswdif>, to meet the notification requirements.
- ☒ For Phase 2, the proposed operation will consume ground water by: evaporation, dust control, and water removed in the mined product.

Prior to initiation of these uses or any use of ground water, the applicant will need to obtain either a gravel pit or other type of well permit, as applicable. However, prior to obtaining a permit, an approved water supply plan or decreed plan for augmentation is required.
- ☒ Prior to approving a well permit, the applicant must conduct a field inspection of the site and document the locations of all wells within 600 feet of the permit area. The applicant must then obtain a waiver of objection from all well owners with wells within 600 feet of the permit area or request a hearing before the State Engineer.

COMMENTS:

From the information provided:

In Phase 1 the pit will be dry mined and the applicant does not anticipate exposing groundwater in the gravel pit(s). The applicant stated that if groundwater is encountered, the pit will be backfilled to two feet above the discovered water table.



According to the applicant, water for dust control during Phase 1 will be supplied by water pumped from the Blue River into a lined pond.

For Phase 2, the applicant anticipates the site will be wet mined and groundwater will be exposed in an open water pond. No dewatering of the site will take place. Once mining is complete, a 26-acre pond will be left.

Applicant has indicated that prior to exposing groundwater to evaporation in Phase 2, a Water Court approved plan for augmentation will be in place.

Mined materials will not be washed or processed on site. Instead, all mined materials will be hauled to the Maryland Creek Ranch gravel operation site.

Once mining is complete, as a part of the reclamation plan, the applicant may use an existing water right, the Hawk Hill Pump and Pipeline, for irrigation to re-establish vegetation.

Based on the above:

At this location, the Blue River is over-appropriated. Any out of priority depletions associated with the diversion of surface water and groundwater must be replaced either through a Water Court approved augmentation plan or a State Engineer approved temporary substitute water supply plan. Out of priority depletions may result from out of priority diversions of surface water, evaporation of groundwater and moisture loss in mined product. In addition, any out of priority depletions resulting from the processing of materials at the Maryland Creek Ranch site must also be included in a decreed plan for augmentation or State Engineer approved temporary substitute water supply plan.

The use of any existing water rights must be in accordance with terms and conditions of the decree from the Water Court, including decreed uses, rates and place of use.



File Code: 5500
Date: October 8, 2020

Division of Mining, Reclamation, and Safety
Colorado Department of Natural Resources
1313 Sherman Street, Room 215
Denver, CO 80203

To whom it may concern,

I am writing in response to public notice my office received on September 8, 2020 regarding the Regular (112) Construction Materials Reclamation Permit application submitted to your office by Kilgore Companies, LLC dba Peak Materials (Peak Materials). After reviewing the proposed use and property location, I am submitting the following comments for your consideration.

First, the Dillon Ranger District supports this type of land use on private property. As you are aware, the U.S. Forest Service often works with mining claimants and manages mining activities that occur on National Forest System lands in accordance with 36 CFR Part 228 and the agency's multiple-use mandate. However, when possible, siting mining operations on private property can be beneficial as it maintains opportunity for other uses on public land.

Second, if this application is approved, please ensure that Peak Materials is required to maintain an accurate and clearly marked boundary between private property and National Forest. The proposed Peak Ranch Resource mine is adjacent to the northeast corner of an approximately 10-acre piece of National Forest System land. Boundary management is essential to the land stewardship and public trust responsibilities of the U.S. Forest Service. It is important that property owners understand the location of neighboring public lands in order to prevent encroachment and resource damage.

Thank you for the opportunity to review and comment on this application. I would appreciate you keeping me apprised of your decision by contacting the Dillon Ranger District office via mail at 680 Blue River Parkway; P.O. Box 620, Silverthorne, CO 80498 or phone at 970-468-5400.

Sincerely,

SHELLY GRAIL
Acting District Ranger





DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

September 30, 2020

Regulatory Division (SPK-2020-00743)

Colorado Divisions of Reclamation, Mining, and Safety
Attn: Mr. Eric Scott
1313 Sherman Street, Room 215
Denver, Colorado 80203
eric.scott@state.co.us

Dear Mr. Scott:

We are responding to your request for comment regarding the proposed Peak Meadows Ranch Surface Mining project. The Colorado Division of Reclamation, Mining, and Safety (DRMS) project identification number is M2020041. The project site is located between the Blue River and Colorado State Highway 9, approximately 11 miles north of the Town of Silverthorne, at Latitude 39.776452°, Longitude -106.154221°, Summit County, Colorado.

The Corps of Engineers' jurisdiction within the study area is under the authority of Section 404 of the Clean Water Act for the discharge of dredged or fill material into waters of the United States (WOTUS). WOTUS include, but are not limited to, rivers, perennial or intermittent streams, lakes, ponds, wetlands, marshes, wet meadows, and seeps. Project features that result in the discharge of dredged or fill material into WOTUS will require Department of the Army authorization prior to starting work.

Documents provided as part of your request for comment indicate that a delineation of aquatic resources has been conducted but a detailed report regarding this matter was not provided. The applicant should prepare a wetland delineation report, in accordance with the "Minimum Standards for Acceptance of Preliminary Wetlands Delineations" and "Final Map and Drawing Standards for the South Pacific Division Regulatory Program" under "Jurisdiction" on our website at <https://www.spk.usace.army.mil/Missions/Regulatory.aspx> and submit it to this office for verification.

Based on the information provided, the project plans include implementing a minimum 25-foot setback between surface mining activities and potential wetlands, but the construction of associated infrastructure (e.g., access road, widening of Colorado State Highway 9) may require the placement of fill material into WOTUS. A range of alternatives should be considered for all project features that will involve the discharge of dredged or fill material into WOTUS and every effort should be made to avoid project features which require the discharge of dredged or fill material into WOTUS. In the

event it can be clearly demonstrated that there are no practicable alternatives to filling WOTUS, mitigation plans should be developed to compensate for the unavoidable impacts resulting from project implementation.

We have assigned identification number SPK-2020-00743 to this proposed project. Please refer to this number in any correspondence concerning this project. If you have any questions, please contact me at the Colorado West Regulatory Section, 400 Rood Avenue, Room 224, Grand Junction, Colorado 81501, by email at Benjamin.R.Wilson@usace.army.mil, or telephone at 970-243-1199 ext. 1012.

Sincerely,

Benjamin R. Wilson
Project Manager
Colorado West Section

cc:

Ben Langenfeld, Greg Lewicki and Associates, benl@lewicki.biz

Don Reimer, Summit County Planning Director, Don.Reimer@summitcountyco.gov



PLANNING DEPARTMENT

970.668.4200
www.SummitCountyCO.gov

0037 Peak One Dr. PO Box 5660
Frisco, CO 80443

October 2, 2020

Division of Reclamation, Mining, and Safety
Attn: Eric Scott, Environmental Protection Specialist
1313 Sherman Street, Room 215
Denver, CO 80203

RE: Summit County referral comments to the Kilgore Companies, LLC dba Peak Materials, LLC Regular 112 Permit Application for the Peak Ranch Resource property.

Dear Eric Scott:

The Summit County Department of Community Development has reviewed the Peak Materials application for a Regular Operation (112) Reclamation Permit for the proposed Peak Ranch Resource gravel and sand mining operation. It is our understanding that this operation is proposed to provide feedstock for their existing Maryland Creek Ranch operation located six (6) miles south of the subject property on State Highway 9.

County staff provides these comments for your consideration and would ask the Division to strongly consider the following elements of the County's *Countywide Comprehensive Plan*, *Lower Blue Master Plan* as well as the *Land Use and Development Code* requirements noted below and the perceived deficiencies in the application more generally. Our primary concerns relate to the community driven policies found in these documents. They describe our community's expectations for the compatibility of a mining operation in the Lower Blue Basin in Summit County. Specifically, we are concerned with the impacts of converting an existing agricultural use to a more intensive mining use in a largely rural residential area as well as the corresponding increase of haul-truck traffic on Highway 9.

The area surrounding the proposed mining operation include physical features of wildlife, open agricultural and ranch lands, irrigated and non-irrigated pastures, significant view corridors into wilderness areas and river habitat as well as environmentally sensitive areas with abundant wildlife. The Blue River flows north adjacent to the site and into Green Mountain Reservoir. This river amenity provides not only wildlife habitat but supports numerous recreational uses in the area. It should also be noted that there are no existing mining or similar intensity operations operating in Summit County north of the Maryland Creek mining and production facility.

Summit County Master Plans

The County's master plans are advisory documents and contain recommendations for the most desirable use of land. However, the Development Code makes "general

conformance” with the provisions of master plans a requirement for approval of land use and development applications in the County. Therefore, the BOCC and other applicable Review Authorities are tasked with evaluating whether there is “general conformance” and compliance with the County’s master plans. The Review Authority will assign weight to master plan policies on a case-by-case basis to determine “general conformance” and, ultimately, compliance.

The Summit County, *Countywide Comprehensive Plan (Plan)*, adopted March 2, 2009, is the umbrella land use document intended to provide general policy guidance for decisions related to land use, growth, development and related issues. In conjunction with the *Plan*, the County has adopted basin and sub-basin plans that serve as the primary documents for guidance in each basin. Specific land uses and future use designations are contained expanded on and include accompanying land use maps. In this case, the *Lower Blue Master Plan (Basin Plan)*, adopted March 4, 2010, also applies to this review.

The *Countywide Comprehensive Plan*, consistent with State enabling legislation, provides a framework of ten topic areas for consideration. Generally, the *Plan* ensures that growth occurs in appropriate locations and the overall rural mountain character of the County is maintained. A key *Plan* theme is to retain the character of the rural valleys, ranchlands, river corridors, backcountry areas and mountainsides. In order to limit the impacts of development in these areas, the *Plan* focuses new development within or adjacent to existing urban areas. Accordingly, future land use decisions in rural areas should be consistent and harmonious with the rural character of the land. Specifically, rural areas should have low-residential densities that serve to minimize conflicts with traditional uses (e.g. ranching, recreation, resource extraction) and maintain compatibility with existing uses. The *Plan* recognizes the need for mineral extractive uses in the County to provide needed materials for local construction and road building. However, it should be noted, that the *Plan* defers specific land uses to the applicable basin plan. In this case, as discussed below, the *Lower Blue Master Plan* recommends a future land use designation of **Rural Residential** for the subject property.

The *Lower Blue Master Plan (Basin Plan)* applies to all unincorporated land in the Lower Blue Basin, which extends from the south face of the Dillon Dam north to the Grand County line. Historically, the Lower Blue Basin has been an agricultural and ranching community and, more recently, includes a mix of natural areas, agriculture, extractive and recreational uses, as well as low-density residential-uses. The central theme of the *Basin Plan* is to maintain and enhance the “existing rural character through protection of elements such as agricultural land uses, accessibility to public lands for dispersed recreation, open spaces, abundant wildlife and fisheries, and scenic views while protecting private property rights and promoting low-density development”. The rural character of the Lower Blue Basin, according to the *Basin Plan*, is best preserved through stewardship and tailored policies to manage the land in an ecologically sensitive, socially responsible, and economically viable manner. The *Basin Plan* relies heavily on the continuing input and participation of Lower Blue Basin residents through citizen involvement.

The *Basin Plan* designates the subject property for a future land use designation or **Rural Residential**. The future land use designation assigned to each property are intended to provide guidance for future land use decisions. The future land use

designations further describe appropriate uses for a property to ensure that growth and development occur in appropriate locations and that the rural mountain character is maintained. Land designated as *Rural Residential* on the Land Use Map should provide for single-family residential development and density. Policy and Action items from the *Basin Plan* related to the property under consideration are outlined below:

- The *Rural Residential* designation is intended for parcels zoned A-1 containing more than 20-acres of land.
- Emphasize protection of the existing rural ranchlands and associated open space by minimizing and reducing pressure to convert lands zoned for agricultural uses to more intensive uses.
- Limited to uses allowed by zoning and consistent with valued features such as wildlife, open space, forestlands, wilderness areas, environmentally sensitive areas, and significant view corridors.
- Future development is required to minimize impacts to natural features. Important features identified in the *Basin Plan* include air quality, wildlife, water quality/quantity, and forest health, management and wildfire protection.
- Transportation systems should be designed to be efficient, safe, multi-modal and consistent with the rural character of the Basin. Improvements to Highway 9 should be to increase safety and not to increase capacity.
- Mining and developed recreational uses require a conditional use permit to ensure impacts of such uses are appropriately addressed. According to the *Basin Plan*, "if adequate mitigation is not possible such uses should be denied."

Land Use and Development Code

As per Section 3812: Mining/Milling, it is the intent of the BOCC to allow mining operations in Summit County provided that the specific and cumulative impacts of the proposed operation will have no significant adverse impacts on the health, safety, and welfare of the community and environment. The requirement to avoid or adequately mitigate adverse impacts is particularly pertinent as to those properties in the vicinity of, or along transportation routes to, the mining/milling operation. A conditional use permit is required in order to operate a mining or milling operation on the subject property. There are specific criteria set forth in the Land Use and Development Code that a mining/milling operation must comply with, including but not limited to, demonstrating that the proposed operation will have no significant adverse impact on the environment, including air quality, surface and ground water quality, visual and scenic quality, noise, terrestrial and aquatic animal life or plant life, wetlands and riparian areas.

At this time, the applicant's submission to the DRMS does not provide any detail about how the applicant proposes to mitigate the impacts to traffic on State Highway 9; leaving open the question of whether such mitigation can or will be sufficient to meet the intent of County regulations.

General Comments

Applications for mining permits from DRMS are required to demonstrate compliance with all applicable Federal, State, and local regulatory requirements, including those for air and water quality. The proposed Peak Ranch Resource property-mining plan notes that they will comply with all applicable Federal and State requirements. However, there is no information on which standards or what monitoring protocols are necessary to determine compliance.

The application states they will need to acquire additional water supplies to replace out-of-priority evaporative losses and other depletions, like dust control. The applicant should demonstrate that the Colorado Water Court has approved and decreed the necessary augmentation rights prior to approval of a mining permit, as this is a key component of their overall operations.

Staff has identified a potential geologic hazard in the form of a ground fault running parallel to the Blue River near the proposed project. The Code also requires that the proposed operation not be subject to or will not subject others to significant risk from geologic hazards. This geologic hazard warrants further investigation with mitigation measures, if necessary, put in place prior to approval.

The application indicates that “rangeland” with a groundwater lake will be the final post-mining land use. However, in Exhibit H-Wildlife Info_2020-08-05 the affected land is in an area used by bald eagles and black bear as well as having elk, moose and mule deer present on the site with lynx habitat on the west side of the adjacent Blue River.

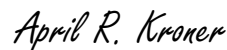
While it would seem that “rangeland” is a potentially appropriate post-mining land use within the permit boundary, staff would want to ensure that the land would be unavailable for any more intense development or activities inconsistent with open vista and wildlife habitat. Staff believes that a potentially more appropriate post-mining land use could be “wildlife habitat” which would also be consistent with the County’s masterplan policies. The reclamation cost estimate should also be adjusted to ensure adequate funds to establish and monitor suitable habitat for wildlife.

Summit County staff offers these comments for consideration by the DRMS. We look forward to hearing back and would ask that we be made aware of next steps in the Peak Ranch Resources DRMS application process. If you have any questions, or would like to discuss these concerns in more detail, please do not hesitate to contact me at 970.668.4068.

Sincerely,



Dan Osborn
Senior Planner



April R. Kroner, AICP
Director of Planning

Cc: April Kroner, Planning Director
Jim Curnutte, Community Development Director
Keely Ambrose, Assistant County Attorney
Bentley Henderson, Assistant County Manager



TOWN OF BRECKENRIDGE

September 14, 2020

Division of Reclamation, Mining and Safety
1313 Sherman Street, R-215
Denver, Colorado 80203

RECEIVED

SEP 16 2020

**DIVISION OF RECLAMATION
MINING AND SAFETY**

Subject: Proposed Mine known as Peak Ranch Resource – Reclamation Permit

To Whom It May Concern:

The Town of Breckenridge submits the attached letter as its comment to the proposed mining plan.

Thank You,

Shannon Haynes
Assistant Town Manager

Cc: James Phelps, Public Works Director
Glen E. Porzak, Porzak Browning & Bushong LLP
Thomas Williamsen, Helton & Williamsen, PC

Enclosure: Letter dated August 25, 2020

Porzak Browning & Bushong LLP
A t t o r n e y s • a t • L a w
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August 25, 2020

Via email: russ.larsen@kilgorecompanies.com

Russell A. Larsen
Colorado Companies COO
Kilgore Companies, LLC, dba Peak Materials
556 Struthers Avenue
Grand Junction, CO 81501

Dear Mr. Larsen:

I am water counsel for the Town of Breckenridge ("Town") and I am in receipt of your August 3, 2020 letter to the Town's Public Works concerning the Structure Agreement and Certification for the proposed gravel mining operation on the former Hillyard property north of Silverthorne. As you are aware, the Town owns an easement for a drainage facility that is located on the property Peak Materials proposes to mine.

By decree of the District Court in and for Water Division No. 5 ("Water Court") in Consolidated Case Nos. 80CW444, 81CW107, 81CW487 and 81CW488, this drainage facility insures that certain property is not being re-irrigated and is an element of the adjudication of senior water rights that are used to fill the Town's municipal storage facility. These water rights are also a source of water to repay Denver for the Dillon Reservoir water it provides to the Town. In turn, that Dillon Reservoir water augments the diversions at the Town's North Treatment Plant pursuant to the decree of the Water Court in Case No. 13CW3094. In short, the drainage facility is as important component in assuring that the Town's municipal water supply sources are not interrupted.

Given the foregoing, if the mining operations of Peak Materials adversely impacts the Town's drainage facility, it will not be sufficient to compensate the Town for the damage to the physical structure. The financial impact to the Town will be the loss of an important municipal water supply which has an enormous financial impact.

Therefore, the Town is not in a position to execute the documents you submitted. On the other hand, the Town is willing to discuss means by which the proposed mining operations can protect the Town's drainage facility located on its easement. Please do not hesitate to contact me if you have any questions regarding this matter.

Russell A. Larsen
August 25, 2020
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Very truly yours,

PORZAK BROWNING & BUSHONG LLP



Glenn E. Porzak

cc: James Phelps, Public Works Director
Rick Holman, Town Manager
Thomas Williamsen, Town water resource engineer



HISTORY *Colorado*

Eric C. Scott
Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, Colorado 80203

Re: Peak Ranch Resource, File No. M-2020-041 (HC#78441)

Dear Mr. Scott:

We received your correspondence dated August 19, 2020 on August 24, 2020 initiating consultation with our office in accordance with the Colorado State Register Act (Colorado Revised Statute (CRS) 24-80.1).

A search of the Colorado Cultural Resource Inventory database indicates that two cultural resource inventories were conducted in or near the proposed permit area, and one cultural resource was recorded in the area of proposed action. Site 5ST.745.2, a segment of the Blue River to Summit Transmission Line was given a field determination of “not eligible” in 2009. Please keep in mind that our files contain incomplete information for this area, as most of Colorado has not yet been inventoried for cultural resources. As a result, there is the possibility that as yet unidentified cultural resources exist within the proposed permit area. Should human remains be discovered during mining activities, the requirements under State law CRS 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 Holly McKee-Huth, Cultural Resource Information/106 Compliance at (303) 866-4670/
holly.mckee@state.co.us.

Sincerely,

Steve Turner, AIA
State Historic Preservation Officer