

February 18, 2021

Mathew Welte
Summit Brick & Tile Co.
P.O. Box 533
601 East 13th Street
Pueblo, CO 81001

**RE: Recommendation to Approve Conversion Application (CN-01) Over Objection,
Summit Brick & Tile Co., Native/Pierre Mine, File No. M-1977-321**

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (Division) hereby issues its recommendation for approval of the conversion application for the Native/Pierre Mine, File No. M-1977-321, submitted by Summit Brick & Tile Co. A copy of the Division's rationale for its recommendation is enclosed for your review. The Division's recommendation is to the Colorado Mined Land Reclamation Board (Board). The formal Board hearing for consideration of this matter is scheduled to occur during the March 24 and 25, 2021 Board meeting, beginning at 9:00 a.m., or as soon thereafter as the issue may be considered. Pursuant to Rule 2.8.1(1) of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the Rules), any party who does not attend the Board hearing forfeits its party status and all associated rights and privileges. A live audio broadcast of the formal hearing can be found at the Division's website at <https://www.colorado.gov/drms>.

Pursuant to Rule 2.7.3(4), any party who does not attend the Pre-hearing Conference forfeits its party status and all associated rights and privileges, unless such party provides a fully executed proxy authorization form to the Pre-hearing Conference Officer and the party's authorized representative is present. The Pre-hearing Conference is scheduled to occur on March 1, 2021, beginning at 10:00 a.m. and terminating at or before 11:30 a.m. The Pre-hearing Conference will held online via Zoom and attendees will also have the option of joining the meeting via telephone. The meeting details are enclosed with this letter.



If you need additional information or have any questions, please contact me at Division of Reclamation, Mining and Safety, 1313 Sherman Street, Room 215, Denver, CO 80203, by telephone at **303-866-3567 x8114**, or by email at patrick.lennberg@state.co.us.

Sincerely,



Patrick Lennberg
Environmental Protection Specialist

Enclosure: Rationale for Recommendation; Dated February 18, 2021
Pre-Hearing Conference - Zoom Meeting Details

cc Jared Ebert, Division

ec: Matt Welte, Summit Brick, mrwelte@summitbrick.com
Julie Welte, Summit Brick, julie.welte@summitbrick.com
Steve O'Brian, Environment Inc., Environment-inc@outdrs.net



DATE: February 18, 2021

RE: **Rationale for Recommendation for Approval of Conversion Application (CN-01) with Public Objection, Summit Brick & Tile Co., Native/Pierre Mine, File No. M-1977-321**

Introduction

Herein, all references to the Act and Rules refer to the Colorado Land Reclamation Act for the Extraction of Construction Materials, 34-32.5-101 et seq., C.R.S. (the Act), and to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the Rules or Rule). Copy of the Act and Rules are available through the Division's web site at <https://www.colorado.gov/drms>.

On February 18, 2021, the Division of Reclamation, Mining and Safety (DRMS/Division or Office) issued its recommendation to approve the permit conversion application (CN-01) for the Native/Pierre Mine, File No. M-1977-321, over a public objection. This document is intended to explain the process by which the Division arrived at its recommendation for approval over the objection, and respond to the issue raised by the objecting party. The Division reserves the right to further supplement, amend, modify, or clarify this document and recommendation with additional details as necessary.

Permit History

On February 17, 1978, a 110c permit was issued for the Native and Pierre Mine, permit No. M-1977-321 to Summit Brick & Tile Co. The permit approved the mining and reclamation on 9.9 acres of land in two distinct areas for clay used to manufacture bricks. The brick manufacturing facility was, and still is located across the street from the permit location. Mining at the site has been reported to have occurred since 1915. Summit Brick & Tile Co. has owned the land where the permit is located since at least 1915.

Summary of the Review Process for the Conversion Application

Summit Brick & Tile Co. (Operator) filed the conversion application with the Division on June 26, 2020. The application was deemed complete for the purposes of filing and review on July 27, 2020. The application describes a construction materials mining operation for clay with no on-site processing of mined materials. The CN-01 application seeks to increase the permit acreage from 9.9 acres to 35.23 acres, an increase of 25.33 acres. Of the total proposed permit area, the mining operation is anticipated to affect the majority of the area with the exception of some areas where the proposed mining set-backs are shown on the Exhibit C-1, Mining Plan Map. Specifically, along the north side of the proposed permit boundary there is a 70 foot set-back that includes an alley way and a safety berm that is approximately 3 feet tall. Affected lands will be reclaimed to support a residential development as a post-mining land use. The Operator published the required public notice, in



accordance with Rule 1.6.2(1)(d), once a week for four consecutive weeks beginning on July 31, 2020 with the last date of publication on August 21, 2020. The public comment period closed on September 10, 2020. The public notice was run in the Pueblo Chieftain, a publication in general circulation in the vicinity of the mine.

During the public comment period the Division received written comments from the following individual and agencies:

Timely Letters of Objection:

Person or Entity	Date Objection Received
Barbara Britton	September 1, 2020

Timely Commenting Agency:

Agency	Date Comment Received
Colorado Division of Water Resources	August 10, 2020
City of Pueblo Planning Department	August 19, 2020
History Colorado, Office of Archaeology and Historic Preservation	September 3, 2020

The Division received the following comment after the close of the public comment period:

Un-timely Commenting Agency:

Agency	Date Comment Received
Colorado Parks and Wildlife	October 8, 2020

The Division forwarded copies of all comments to the Operator and scheduled the application for a hearing before the Colorado Mined Land Reclamation Board (Board) and a Pre-hearing Conference. The Division provided notice of the scheduled Board hearing and Pre-hearing Conference to all parties and interested persons. Due to the timely objection, on the decision date the Division cannot not make a decision on the application, but rather a recommendation to the Board.

During the review period the Division generated two adequacy letters. The Operator addressed all adequacy issues to the Division's satisfaction. Therefore, on February 18, 2020, the Division determined the application satisfied the requirements of Section 34-32.5-115(4) C.R.S. and issued its recommendation to approve the conversion application over the objection.

Issue Raised by the Objecting Party

The timely objection received by the Division has been categorized as an issue pertaining to geotechnical stability.

Geotechnical Stability

Damages Resulting from Mining

Barbara Britton (Objector) maintains that damages to their residence is a result of mining activities, specifically recent mining activities approximately 225 feet from the southwestern corner of their property. The reported damages are characterized by cracks in walls and ceilings, and a picture being knocked off the wall.

After the Objector signed a Structure Agreement she contacted the Operator regarding the claimed damages. The Operator contracted a third party, Kidd Engineering, to inspect the property on July 8, 2020. Kidd Engineering issued a report of their findings on August 8, 2020. The report concluded the damages were the result of differential settlement of the house, constructed in 1952 and remodeled in 1968, built on clay deposits, normal expansion and contraction of the wall and ceiling framing and finish, and a possible undersized header over an archway. The Objector was provided a copy of the report soon after it was issued.

The Operator has proposed a minimum 25-foot mining setback around the permit boundary. Along the northern boundary, where an alley is located, the setback is 70 feet and the Objectors residence is located at the east end of the alley. The closest land affected by mining is approximately 150 feet from the Objectors garage. Given the uniform nature of the deposit and the conventional nature of the mining methods used at the site, the Division has determined there are no geologic hazards that have the potential to affect any proposed slopes, embankments, highwalls or stockpiles within the affected area. The Operator was able to obtain some of structure damage agreements as required by Rule 6.4.19 for some structures within 200 feet of the proposed affected land, including an agreement with the Objector. To address the requirements of Rule 6.4.19(b) for the structures where agreements were not obtained, the Operator conducted a geotechnical stability analysis demonstrating structures will not be impacted by the proposed mining and reclamation operation. Factors of Safety (FOS) were calculated using the computer program SLOPE/W (2016) by GeoStudio and FOS values ranged from 1.54 to 4.56. During review of the geotechnical analysis the Division was able to verify the calculations and findings of the analysis using Clover Technologies Galena Slope Stability Analysis System, Version 7.2. The Division calculated FOS values ranged from 2.62 to 5.13. 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 effective May 16, 2018, the Division requires an Operator to comply with the factor of safety of 1.5 for critical structures in static conditions if the Operator utilized generalized strength measurements in the analysis. The geotechnical analysis provided by the Operator and verified by the Division demonstrates the mining and reclaimed slopes adjacent to the Objector’s residence will meet or exceed the minimum Factors of Safety approved by the Board.

All mined slopes will be backfilled and graded to a 3H:1V (horizontal to vertical ratio) slope or shallower during reclamation. The Division has found slopes at this angle are stable and are commensurate with the proposed post-mining land use. The Operator has obtained a signed structure damage agreement from the Objector and has provided an engineering evaluation demonstrating that such structures shall not be damaged by the activities during the mining operation. Also, the Operator stated that explosives have not and will not be used during mining. The Division finds the Operator has complied with the applicable application requirements of Rule 6.4.19 and Rule 6.5 and C.R.S. 34-32.5-115(4)(e).

Conclusion

Therefore, on February 18, 2021, the Office determined the application satisfied the requirements of C.R.S. § 34-32.5-115(4), and issued its recommendation to approve the Construction Materials 112 conversion application for the Native/Pierre Mine, M-1977-321, CN-01.



STATE OF
COLORADO

Lennberg - DNR, Patrick <patrick.lennberg@state.co.us>

Invitation: Prehearing Conference Native/Pierre Mine, M1977-321, CN-01 @ Mon Mar 1, 2021 10am - 11:30am (MST) (patrick.lennberg@state.co.us)

1 message

DNR MLRB - DNR <dnr_mlr@state.co.us>

Thu, Feb 4, 2021 at 4:03 PM

Reply-To: DNR MLRB - DNR <dnr_mlr@state.co.us>

To: patrick.lennberg@state.co.us, jeff.fugate@coag.gov, jared.ebert@state.co.us, Russ Means - DNR <russ.means@state.co.us>, jason.musick@state.co.us, mrwelte@summitbrick.com, charles.kooyman@coag.gov, environment-inc@outdrs.net, scott.schultz@coag.gov, julie.welte@summitbrick.com

You have been invited to the following event.

Prehearing Conference Native/Pierre Mine, M1977-321, CN-01

When Mon Mar 1, 2021 10am – 11:30am Mountain Time - Denver

Where <https://us02web.zoom.us/j/83745326566?pwd=L3EvN0p0UVR3MkdvN1NwRG82bXJrQT09> (map)

Calendar patrick.lennberg@state.co.us

Who

- dnr_mlr@state.co.us - organizer
- jeff.fugate@coag.gov
- jared.ebert@state.co.us
- Russ Means - DNR
- jason.musick@state.co.us
- patrick.lennberg@state.co.us
- mrwelte@summitbrick.com
- charles.kooyman@coag.gov
- environment-inc@outdrs.net
- scott.schultz@coag.gov
- julie.welte@summitbrick.com

Colorado MLRB is inviting you to a scheduled Zoom meeting.

[more details »](#)

Join Zoom Meeting

<https://us02web.zoom.us/j/83745326566?pwd=L3EvN0p0UVR3MkdvN1NwRG82bXJrQT09>

Meeting ID: 837 4532 6566

Passcode: 468uWL

Telephone Number: 1(669)900-6833

Meeting ID: 837 4532 6566

Passcode: 545360

Going (patrick.lennberg@state.co.us)? **Yes** - **Maybe** - **No** [more options »](#)

Invitation from [Google Calendar](#)

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