

From: **Chris Mochulsky** <chris@gunnisonlaw.net>

Date: Thu, Mar 11, 2021 at 3:00 PM

Subject: UPDATED Objection and Petition for Hearing - Blue Creek Staging Area Mine

To: dmg_web@state.co.us <dmg_web@state.co.us>

Hello,

I just sent a copy of my client's Objection to Blue Creek Staging Area Mine and Petition for Hearing Pursuant to C.R.S. 34-32.5-114, and noticed afterwards that the address for George and Christina Sterner was stated wrong in that Objection. The attached Objection is updated to reflect their correct address – 11231 US highway 50, Gunnison, CO 81230.

I have also re-attached the notice received by one of my clients.

A copy of our Objection has been sent via certified mail to 1313 Sherman St., Room 215, Denver, CO 80203 as well (the objection sent via certified mail contains the wrong address for the Sterner's – their correct address is reflected in the Objection attached to this email).

May you please confirm the receipt of this email?

Thanks,

Chris Mochulsky
Attorney
Schumacher & O'Loughlin, LLC
970-641-4900
Chris@gunnisonlaw.net
www.gunnisonlaw.net

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Schumacher & O'Loughlin, LLC

~ Attorneys at Law ~

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CHRIS@GUNNISONLAW.NET

TO: COLORADO DIVISION OF RECLAMATION, MINING AND SAFETY
1313 SHERMAN STREET, ROOM 215
DENVER, CO 80203

FROM: CHRIS MOCHULSKY

OBJECTION TO BLUE CREEK STAGING AREA MINE AND PETITION FOR HEARING PURSUANT TO C.R.S. § 34-32.5-114

March 11, 2021

George and Christina Sterner, David and Teresa Yaklin, and Matt Delany (the "Aggrieved Parties") formally submit this written objection to the B&L Land Company, LLC, Cornerstone Materials, LLC, and Gunnison Materials, LLC's (together, the "Applicants") "Blue Creek Staging Area Mine" Special 111 Operation Application ("Blue Creek Project" or "Application") to be located on US Highway 50, Parcel # 3985-000-00-055 adjacent to the Colorado Department of Transportation Blue Mesa Yard lot located at 10201 US Highway 50, Gunnison, CO 81230.

George and Christina Sterner live at 11231 US Highway 50, Gunnison, CO 81230 – less than a quarter mile (1/4 mile) to the east of the Blue Creek Project. The Sterner's are aggrieved persons pursuant to C.R.S. § 34-32.5-103(1.5) as they will suffer actual loss or injury to their aesthetic interests, potential loss or injury to their economic interests, as well as adverse health impacts from dust.

David and Teresa Yaklin live at 10265 US Highway 50, Gunnison, CO 81230 – less than a quarter mile (1/4 mile) to the west of the Blue Creek Project. The Yaklin's are aggrieved persons pursuant to C.R.S. § 34-32.5-103(1.5) as they will suffer actual loss or injury to their aesthetic interests, potential loss or injury to their economic interests, as well as adverse health impacts from dust.

Matt Delany lives at 11322 US Highway 50, Gunnison, CO 81230 – less than a quarter mile (1/4 mile) to the south of the Blue Creek Project. Mr. Delany is an aggrieved person pursuant to C.R.S. § 34-32.5-103(1.5) as they will suffer actual loss or injury to their aesthetic interests, potential loss or injury to their economic interests, as well as adverse health impacts from dust.

Defective Notice.

Of the Aggrieved Parties, the Yaklins were the only ones to receive notice of the Blue Creek Project via certified mail. That notice is defective, and the Applicant's application should be denied on that basis. On the bottom of the Notice of Filing Application, it states:

"Note to applicant/operator, you must attach a copy of the application form to this notice."

A Copy of the application was not attached to the notice sent to the Yaklins. As such, the notice is defective, and the Application must be denied as the Applicant failed to deliver proper notice to which the Yaklins are entitled.

Furthermore, neither the Sterner's nor Mr. Delany received notice of the Blue Creek Project, despite their close proximity and actual and potential loss or injury to their aesthetic and economic interest, as well as actual and potential injury to their health. The Application should be denied on that basis, as the Sterner's and Mr. Delany are entitled to receive notice of the Blue Creek Project and its actual and potential adverse impacts.

Concerns of the Aggrieved Parties and Request for Materials.

The Aggrieved Parties have specific concerns with dust, noise, lights, and truck traffic that would result from the Blue Creek Project. Each of those concerns has actual and potential loss and injury associated with it.

The Aggrieved Parties request all technical reports and supporting materials for the application so that they can be fully informed on the adverse impacts that will result from their concerns. Furthermore, the Aggrieved Parties request the Application itself, including:

- (I) The name and address of the general office and the local address or addresses of the operator;
- (II) The name and address of the owner of the surface of the affected land;
- (III) The name and address of the owner of the subsurface rights of the affected land;
- (IV) The approximate size of the affected land;
- (V) Information sufficient to describe or identify the type of operation proposed and how it will be conducted;
- (VI) The measures to be taken to comply with applicable provisions of section 34-32.5-116;
- (VII) The terms of the governmental contract that make a special permit necessary or a clear description of the one-time excavation project described in subsection (1)(b) of this section;
- (VIII) Evidence of any financial warranty required under the governmental contract; and
- (IX) A statement that the operator has applied for necessary local government approval.

All of that information was required to be sent to the Yaklins in the notice, but it was not. The Aggrieved Parties request that information at this time.

Request for Denial of Application.

The Aggrieved Parties request that Colorado Mined Land Reclamation Board (the "Board") deny the Application based on the defective notice and/or the actual and potential adverse impacts. C.R.S. § 34-32.5-111(5) specifically states that "approval shall depend on the application, map, fee, performance warranty, and financial warranty being in compliance with this section." The aggrieved parties are concerned that **none of those materials were submitted by the Applicants** as they have not received

copies of those materials which is evidence that the Application is not appropriately completed. The Mineral Rules and Regulations for Construction Materials gives the Board discretion to deny an application if all application materials required by C.R.S. § 34-32.5-111(2)(b)(I)-(IX) are not provided. See Mineral Rules and Regulations for Construction Materials at 1.4(8).

Additionally, the Aggrieved Parties are concerned that the proposed reclamation of the Blue Creek Project does not meet the standards of the Colorado Land Reclamation Act for the Extraction of Construction Materials.

Request for the Board to not Consider the Application at this Time.

The Mineral Rules and Regulations for Construction Materials 1.4(4) requires proof of the required notice before the Board can consider an application. As noted above, Notice *was not* complete as required because it was missing the entire application. As such, the Board cannot consider the Application at this time.

Request for Inspection of Documents.

If the Board does not deny the Application at this time and continues in its consideration of the Application, the Aggrieved Parties request inspection of all applications, public notices, inspection reports, documents, maps, exhibits, correspondence, tests, analyses, records of actions or findings of the Board or Office pursuant to the Mineral Rules and Regulations for Construction Materials Rule 1.3(1).

Petition for Hearing Pursuant to C.R.S. § 34-32.5-114

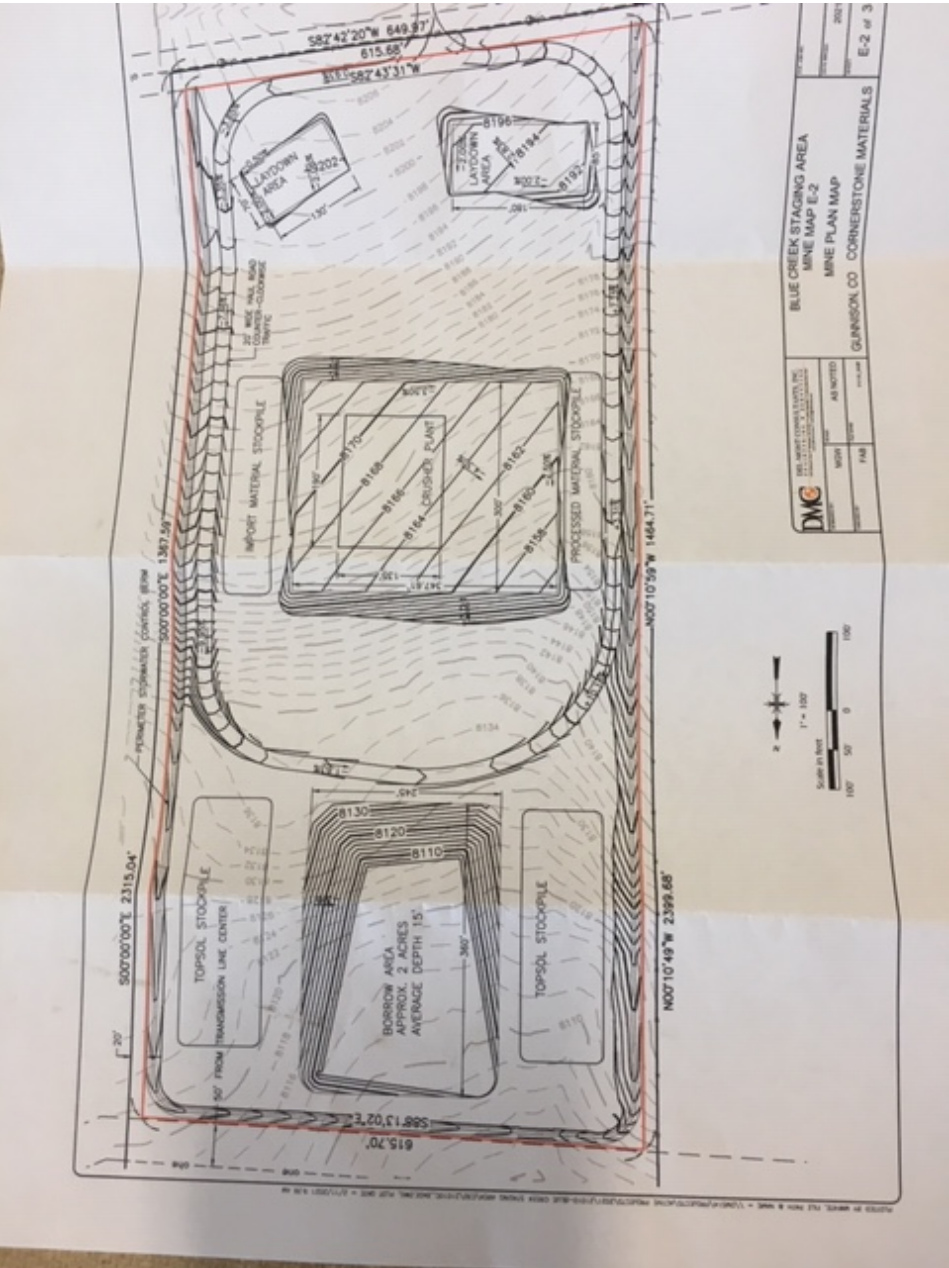
C.R.S. § 34-32.5-114 gives an aggrieved person the right to object to a project and petition for a hearing. The Aggrieved Parties are aggrieved persons within the meaning of C.R.S. § 34-32.5-103(1.5) and Rule 1.1(4) as they will suffer actual loss or injury to their aesthetic interests, potential loss or injury to their economic interests, as well as adverse health impacts from dust. As such, they object to the Blue Creek Project and submit this petition for a hearing to determine if the application should be approved or denied, if there was a complete application submitted, if the notice requirements have been met, what actual and potential injury or loss will result from the Blue Creek Project, and all supporting documents for noise, light, dust, and truck traffic, as well as economic impacts on property value. In the absence of a hearing, the Aggrieved Parties will immediately appeal the Office or Board's decision pursuant to Rule 1.4.11, and will follow that up with legal action if necessary.

Sincerely,



Chris Mochulsky

Attorney for George and Christina Sterner, David and Teresa Yaklin, and Matt Delany



NOTICE OF FILING APPLICATION
FOR COLORADO MINED LAND RECLAMATION PERMIT
FOR SPECIAL 111 OPERATION

NOTICE TO THE BOARD OF COUNTY COMMISSIONERS
Gunnison COUNTY

Cornerstone Materials LLC (the "Applicant/Operator") has applied for a Special 111 reclamation permit from the Colorado Mined Land Reclamation Board (the "Board") to conduct the extraction of construction materials in Gunnison County. The attached information is being provided to notify you of the location and nature of the proposed operation. The entire application is on file with the Division of Reclamation, Mining, and Safety (the "Division") and the local county clerk or recorder.

The Applicant/Operator proposes to reclaim the affected land to General Agriculture use. Pursuant to Section 34-32.5-116(4)(m), C.R.S., the Board may confer with the local Board of County Commissioners before approving of the post-mining land use. Accordingly, the Board would appreciate your comments on the proposed operation. Please note that, in order to preserve your right to a hearing before the Board on this application, you must submit written comments on the application within five (5) working days after the application was filed with the Division.

If you would like to discuss the proposed post-mining land use, or any other issue regarding this application, please contact the Division of Reclamation, Mining, and Safety, 1313 Sherman St., Room 215, Denver, Colorado 80203, (303) 866-3567.

NOTE TO APPLICANT/OPERATOR: You **must** attach a copy of the application form to this notice. If this is a notice of a change to a previously filed application you must either attach a copy of the changes, or attach a complete and accurate description of the changes.