

October 7, 2021

Via E-Mail

Peter Hays, Environmental Protection Specialist
Division of Reclamation, Mining and Safety 1313
Sherman Street, Room 215
Denver, CO 80203
peter.hays@state.co.us

Re: Comment on Application for Amendment, Walstrum Quarry, M1983033

Dear Mr. Hays:

I represent Young Ranch East, LLC ("Young Ranch"), the owner of a 40-acre parcel (the "Young Parcel") immediately adjacent to the proposed expansion of the Walstrum Quarry. Based on the limited information we have received from Albert Frei and Sons, Inc. ("AFSI"), it appears the proposed expansion would violate Colorado law and Young Ranch's property rights. Young Ranch objects to approval of the Application unless approval is contingent on AFSI's compliance with Colorado law, including provisions that will protect Young Ranch's property rights.

Notably, AFSI has not provided sufficient information regarding its proposed changes to Young Ranch's access or excavation adjacent to the Young Parcel. Based on the limited, unspecific information provided in the AFSI Application, it appears that the proposed expansion will interfere with the Young Parcel Young Ranch's access and utility easements.

AFSI represents in its Application that Young Ranch's access and utilities easements may be relocated. See Sheet C-5 of the Frei Permit Application: (Map C-5, Note 4), "Existing utility and access easements may be relocated as a result of ongoing Quarry operations. Final locations to be determined in the future however utilities and access to utilities structures and property as granted in each respective easement will be maintained at all times. Some utility and access easements are shared among multiple entities and may overlap each other.")

Young Ranch's easements are described by metes and bounds and Colorado law mandates that the owner of property burdened by such an easement cannot move or alter it unless the owner has the consent of the easement holder or the owner first obtains a court order confirming that the proposed changes will not significantly lessen the utility of the easement, increase the burdens on the owner of the easement, or frustrate the purpose for which the easement was created. *Roaring Fork Club, L.P. v. St. Jude's Co.*, 36 P.3d 1229, 1236 (Colo. 2001). In this case, AFSI has not met either alternative form of approval.

AFSI's declaration that the locations of access and utilities easements may be relocated implies they may be relocated without the consent of the easement holder, Young Ranch, or a prior court order. Approval of the

Application must be subject to express recognition and preservation of Young Ranch's property rights and the requirement that the easements may not be relocated without Young Ranch's consent or a prior court order as required under Colorado law.

More specifically, Young Ranch objects to AFSI's proposal to combine the access point off of HWY 6 for the Young Ranch easements with the existing Frei Quarry entrance. AFSI's unspecific representation that Young Ranch access will be made available during the mining operation has not been supported by any studies/analysis/engineering or surveys. In any case, the mere availability of access, no matter how restricted, is a limitation on Young Ranch's easement rights and unacceptable to Young Ranch.

We understand the existing Frei Quarry entrance currently has 300 -600 truck trips per day and is permitted for up to 1,200 truck trips per day. This heavy use of the Frei CDOT Access point to HWY 6 is not compatible with the current use of the Young access easement and potential future uses. Even at the current traffic levels, Frei Truck traffic often backs up onto HWY 6 and causes a very congested and dangerous situation. As a matter of safety and utility, Young Ranch requires that its access point remain separate from the Frei access point and asks that this be a condition of the permit. Also, it appears AFSI proposes removing Young Ranch's easement and relocating it to a route traversing a very steep quarry highwall. This is not acceptable to Young Ranch or permitted under Colorado law absent consent or judicial order, neither of which have been requested or obtained.

AFSI previously, and without Young Ranch consent or a prior court order, significantly altered the location and nature of Young Ranch's easements. AFSI altered the nature and location of Young Ranch's access/utility easements. The access easement was relocated to AFSI's mining road, exposing Young Ranch users to dangerous mining equipment—a substantial change to the original jeep road used for recreation and access by Young Ranch and its invitees. The access easement was changed from the natural mountain jeep road to a course made of crusher fines that are prone to erosion if not maintained daily. These materials are a source of heavy dust when dry and very muddy when wet. The remaining existing easements on unimproved mountain jeep roads are not prone to dust and heavy mud. AFSI has not provided any information that might support a conclusion that its proposed changes will not significantly lessen the utility of Young Ranch's easements, increase the burdens on Young Ranch, or frustrate the purpose for which the easements were created.

Moreover, Young Ranch's access road is a "valuable, permanent man-made structure" as that term is used in the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Extraction of Construction Materials (the "Rules"). See Rule 1(52) ("Structure, Significant, Valuable and Permanent Man-made" defined as "a non-portable improvement to real property which has defined, current and recognizable value of an economic nature; generally including but not limited to: buildings, houses, barns, fences, above or below ground utilities, irrigation ditches, maintained or public roads, bridges, railroad tracks, cemeteries, communication antennas, pipelines, water wells, water storage structures, discharge and conveyance structures, etc."). (Emphasis added.) The Rules require an applicant whose operations may expose a valuable structure located within 200 feet of the affected land to damage to:

- (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. . . .

Rule 6.4.19. *See also*, C.R.S. § 34-32.5-115(4)(e) (“(4) In the determination of whether the board or the office shall grant a permit to an operator, the applicant must comply with the requirements of this article and section 24-4-105(7), C.R.S. The board or office shall not deny a permit except on one or more of the following grounds. .

. . (e) The mining operation will adversely affect the stability of any significant, valuable, and permanent manmade structures located within two hundred feet of the affected land; except that the permit shall not be denied on this basis where there is an agreement between the operator and the persons having an interest in the structure that damage to the structure is to be compensated for by the operator or, where such an agreement cannot be reached, the applicant provides an appropriate engineering evaluation that demonstrates that such structures shall not be damaged by proposed construction materials excavation operations.”).

AFSI has not agreed to provide compensation for damage the expansion will cause. And, in fact, the expansion will cause significant damage. The Application cannot be approved unless AFSI complies with Rule 6.4.19 and C.R.S. § 34-32.5-115.

Young would consider modification to the existing access road location provided the grade, length, starting and ending points, materials and structural stability of the road is as good or better than the existing conditions.

As Mr. Young stated in his June 28, 2021 letter to the DRMS, there are several additional concerns that need to be addressed. One of these concerns is slope stability. Another is the handling of waste material. Frei is currently responding to questions from DRMS regarding slope stability and once these answers are provided to DRMS, Young can evaluate the adequacy of the Frei responses and will inform the DRMS if additional concerns still remain.

Please feel free to contact me if you have any questions or would like to discuss this matter. Thank you for your consideration.

Sincerely,



Thomas C.
Bell Partner
for

cc: Robert L. Young, Jr.

Jared Ebert via E-Mail (jared.ebert@state.co.us)

Russ Means via E-Mail (russ.means@state.co.us)