



**COLORADO**  
Division of Reclamation,  
Mining and Safety  
Department of Natural Resources

1313 Sherman Street, Room 215  
Denver, CO 80203

October 11, 2021

Tony Roberts  
IHC Scott Inc., dba Scott Contacting, Inc.  
9200 E. Mineral Ave, Suite 400  
Centennial, CO 80112

***RE: Rifle Pit #1, File No. M-2021-052, Objection to a Regular 112c Construction Materials  
Operation Reclamation Permit***

Dear Mr. Roberts:

On October 7, 2021, the Division received a timely objection to the above referenced permit application from the Karp Neu Hanlon, P.C., dated October 7, 2021. This objection was submitted on behalf of Colorado River Ranch, LLC and Island Park LLC. A copy of the objection is enclosed for your records.

Please inform the Division how the Applicant will resolve the jurisdictional issues raised by the objecting party. Please ensure the Division has received the Applicant's response by Monday, November 15, 2021.

If you require additional information, or have questions or concerns, please contact Amy Yeldell at the Division of Reclamation, Mining and Safety, 1313 Sherman St., Room 215, Denver, CO 80203, phone 970-254-8511, or via email at amy.yeldell@state.co.us

Sincerely,

**Amy Yeldell**  
Environmental Protection Specialist

Cc:  
Travis Marshall, Senior EPS, Grand Junction DRMS



## **DRMS Comment OR Objection Intake Tool**



**COLORADO**  
Division of Reclamation,  
Mining and Safety  
Department of Natural Resources

By submitting this form, you are providing a comment or objection to the public record of a permitting action currently under review by the Division of Reclamation, Mining and Safety.

### **CONTACT INFORMATION**

#### **Date of Comment or Objection**

10/07/2021

**\* Indicates a Required Field**

#### **Comment or Objection \***

- ☒ Objection
- ☐ Support
- ☐ General Comment
- ☐ Agency Comment

#### **Contact Type \***

- ☐ Individual
- ☐ Group
- ☐ Agency
- ☒ Attorney

Please select the appropriate option above to identify who you represent.

#### **Firm Name \***

Karp Neu Hanlon, P.C.

Please specify how you would like to provide the list of names of the individuals you are representing.

#### **I prefer \***

- ☒ to type in the names.
- ☐ upload a PDF of the names.

#### **List of persons represented**

Colorado River Ranch, LLC, a Colorado limited liability company and Island Park LLC, a Colorado limited liability company.

#### **Your First Name \***

Danielle

#### **Your Last Name \***

Skinner

#### **Your Address \***

201 14th St

#### **Your Address 2**

Suite 200

**Your City \***

Glenwood Springs

**Your State**

CO

**Your Zip Code \***

Maximum of 10 digits. (Example) 80202

81601

**Email Address \***

Enter a valid email address in this field to receive a confirmation e-mail.

dts@mountainlawfirm.com

**Your Phone Number \***

Used only to follow up.

9709282123

**Extension****Alternate Phone Number**

Used only to follow up.

9709452261

**Alternate Phone Extension**

106

**Connection to Operation \***

Select all that apply

- ☐ Land Owner of affected land
- ☐ Mineral Owner
- ☒ Adjacent Land Owner
- ☐ Government Agency

- ☐ Structure Owner within 200' of affected land
- ☐ Nearby Resident
- ☐ Concerned Citizen
- ☐ Other

**DESCRIPTION OF COMMENT OR OBJECTION**

(Please be as specific as possible)

**Comment/Objection Narrative \***

This firm represents Island Park LLC ("Island Park") and Colorado River Ranch, LLC ("River Ranch"). We have reviewed the Construction Materials Regular (112) Operation Reclamation Permit Application submitted by IHC Scott, Inc. ("Scott") for the Rifle Pit #1 (the "Project") and object to the proposed Project. Island Park owns property to the west of the Scott property and River Ranch owns property to the north. We understand that Scott will be completely revising its mining plan as it indicated during the Garfield County Planning Commission meeting on September 8, 2021. As you know, that would constitute an amendment to the Application and would require Scott to re-publish public notice, re-starting the comment period.

If Scott does not amend its application, development of the Project as it is currently postured will result in injurious impacts to the Island Park and River Ranch properties and will run afoul of the U.S. Army Corps of Engineers' processes. See Exhibits A and B. In light of the material deficiencies in the Application, granting a permit to Scott would be arbitrary, capricious and an abuse of discretion by DRMS. As such, DRMS must deny the permit Application. Please notify me of the time and place of any hearing on this Application as our clients will be represented.

**Permit Number \***

Enter valid letter and then numbers, for example M2021208 or C1981201.

M2021052

**Permitting Action Type**

Select revision type or leave blank if comment pertains to a new permit application or NOI

**Permit Type**

Construction Materials Regular (112) Operation Reclamation  
Permit

**County \***

Garfield County  
Enter one county only

**Site Name**

Rifle Pit #1

**Permittee/Operator Name**

IHC Scott, Inc.

**ADDITIONAL INFORMATION****Are there supporting photos, maps, or documents you wish to upload? \***

☒ Yes ☐ No

**Upload Supporting Documents**

Maximum of 5 files can be uploaded and each file size must be 10mb and under. PDF, JPG, and PNG formats only.

20211007 Exh A.pdf	248.98KB
20211007 Exh B.pdf	633.07KB
20211007 MJS Objection Ltr to Yeldell.pdf	162.8KB

By submitting this form electronically you agree to receive any/all follow up correspondence from the Division of Reclamation, Mining, and Safety at the email address you have provided.

*Glenwood Springs – Main Office*  
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Glenwood Springs, CO 81602

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*\*Direct Mail to Glenwood Springs*

October 7, 2021

Amy Yeldell  
Environmental Protection Specialist  
Colorado Division of Reclamation, Mining and Safety  
[Amy.yeldell@state.co.us](mailto:Amy.yeldell@state.co.us)

**RE: IHC Scott, Inc. Application No. M-2021-052 for Rifle Pit #1**

Dear Amy:

This firm represents Island Park LLC (“Island Park”) and Colorado River Ranch, LLC (“River Ranch”). We have reviewed the Construction Materials Regular (112) Operation Reclamation Permit Application submitted by IHC Scott, Inc. (“Scott”) for the Rifle Pit #1 (the “Project”) and object to the proposed Project. Island Park owns property to the west of the Scott property and River Ranch owns property to the north. We understand that Scott will be completely revising its mining plan as it indicated during the Garfield County Planning Commission meeting on September 8, 2021. As you know, that would constitute an amendment to the Application and would require Scott to re-publish public notice, re-starting the comment period.

If Scott does not amend its application, development of the Project as it is currently postured will result in injurious impacts to the Island Park and River Ranch properties and will run afoul of the U.S. Army Corps of Engineers’ processes. *See Exhibits A and B.* In light of the material deficiencies in the Application, granting a permit to Scott would be arbitrary, capricious and an abuse of discretion by DRMS. As such, DRMS must deny the permit Application. Please notify me of the time and place of any hearing on this Application as our clients will be represented.

Very truly yours,

KARP NEU HANLON, P.C.



Michael J. Sawyer

MJS:ds

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June 3, 2021

Garfield County Planning Division  
Attn: Glenn Hartmann, Senior Planner  
108 8<sup>th</sup> St., Suite 401  
Glenwood Springs, CO 81601  
*Sent via email to [ghartmann@garfield-county.com](mailto:ghartmann@garfield-county.com)*

**RE: IHC Scott, Inc. Land Use Change Permit for a Gravel Operation on Parcel No. 217908300103 – Garfield County File Number MIPA-05-20-8788.**

Dear Glenn:

This firm represents Island Park LLC (“Island Park”) and Colorado River Ranch, LLC (“River Ranch”). We have reviewed the Land Use Change Permit Application submitted by IHC Scott, Inc. (“Scott”) for the Rife Pit #1 (the “Project”). Island Park owns property to the west of the Scott property and River Ranch owns property to the north. Portions of both these properties are protected under two conservation easements held by Aspen Valley Land Trust (“AVLT”). A map showing the locations of the Scott property, the Island Park property, and the River Ranch property is attached as **Exhibit A**.

It is clear after reviewing the Scott submittal that Scott does not meet the strict requirements for the issuance of a land use change permit for the proposed industrial use. As Scott’s own application materials demonstrate, the only way Scott can implement the gravel pit use for which it seeks approval is to cause significant, irreparable damage to both the Island Park and River Ranch properties. This includes destroying many of the conservation values protected under the AVLT Conservation Easements. Because Scott fails to meet requirements of the Garfield County Land Use and Development Code (LUDC) (the “Code”) its request for a land use change permit must be denied.

The materials reviewed for this letter include the application dated March 30, 2021 and Appendices A through G (collectively, the “Application”). The Application is subject to a Major Impact Review by Garfield County. Applications subject to a Major Impact Review must comply with (a) *all applicable standards* of the LUDC, (b) the Comprehensive Plan, and (c) must not alter the basic relationship of the development to adjacent property. See LUDC 4-105(C), 4-106(C) and 4-203(G). Further, a waiver of standards may be approved *only if* the Applicant demonstrates that the proposed alternative (a) achieves the intent of the subject standard to the same or better degree than the subject standard, *and* (b) *imposes no greater impacts on adjacent properties* than would occur through compliance with the specific requirements of the Code. See LUDC 4-118(C). If the Application fails to satisfy any one of the applicable requirements and compliance cannot be

achieved through conditions of approval, the Planning Commission must recommend, and the Board of County Commissioners must ultimately deny the application. See LUDC 4-101(F)(2).

After considerate review of the Application, both Island Park and River Ranch have significant concerns about the Rifle Pit #1, impacts that the proposed Project will have on the economic use and environmental conditions of adjoining properties, impacts that will be imposed upon private property rights, and non-compliance with the LUDC requirements. An articulation of these concerns follows.

- I. The Scott Application must be denied because Scott has not obtained or submitted to Garfield County the applicable local, State, and Federal permits that are required to operate its gravel pit.

As a threshold matter, the LUDC precludes the issuance of a Land Use Change Permit until all required local, State, and Federal permits have been obtained and submitted to Garfield County including, but not limited to, approvals for the municipal watershed permit, CDPHE, USACE, NPDES, Division of Water Resources, etc. See LUDC 7-1002(I). According to the Application, Scott has neither obtained, and in all but one case has not yet even applied for, the applicable local, State and Federal permits. For example, Scott states that it “*will apply* for coverage under Permit No. COR400000, CDPS General Permit (for) Stormwater Discharges Associated with Construction Activity at least 10 days prior to the commencement of construction activities disturbing greater than or equal to 1 acre.” See Application 1-7, (emphasis added). Second, Scott states that it “*will also apply* for coverage under Permit No. COG603000 (Discharges Associated with Subterranean Dewatering or Well Development) *or* Permit No. COG608000 (Discharges to Surface Water from Well Development and Pumping Test Activities) to manage dewatered water.” See Application 1-7, (emphasis added). Next, Scott states “[a]n aquatic resources report and wetland delineation *will be submitted* to the Army Corps of Engineers (ACOE) in support of a nationwide permit application 39 (NWP 39) for Commercial and Institutional Developments. See Application 1-7, (emphasis added). Further, “[c]overage under a Nationwide Permit No. 7 *will also be obtained* for the outfall to the Colorado River.” See Application 1-8, (emphasis added). Neither has Scott obtained a Watershed Permit from the City of Rifle to address the dewatering discharge (which will include runoff from a crusher, concrete truck washout and likely flocculants that will be dumped into the Colorado River) within its Watershed Protection Area. See Application 1-8. Finally, Scott has not obtained decreed water rights or a plan for augmentation and merely states that it is “preparing a water court application for this project.” See Application 2-4 and 2-7.

The County cannot condition approval of the Application upon obtaining these permits in the future because the regulatory analysis associated with the permits and approvals is essential to determining whether Scott meets the applicable Code requirements. For example, before the County can affirmatively determine that Scott meets the requirements of LUDC 7-203 (concerning the protection of waterbodies), the County must, at a minimum, consider the expert input of the various regulatory agencies, including the CDPHE, ACOE, EPA and Division of Water Resources, from whom such permits and approvals are sought. River Ranch and Island Park have decreed water rights, including the Bernudy ditch, Island Ranch Lake Nos. 1, 2 and 3, Park Lake,



Centennial Lake, and Weller Lake. Scott misrepresents its compliance with LUDC 7-104 by this false statement: “The project has a legal and adequate water supply plan.” See Application 2-7. Scott has not filed a water court application. Water Court approvals and the consultations with the Division of Water Resources will demonstrate the extent that the Rifle Pit #1 will injure vested water rights, including those held by River Ranch and Island Park. Further, Scott’s dewatering plan predicts the pit will drawdown groundwater on the River Ranch property by over 8 feet, which will create impacts to wetlands, water features and sub-irrigated meadows on River Ranch property. As a result, the County cannot evaluate Scott’s request for various waivers of County standards until all impacts on adjacent lands are fully known and fleshed out by the applicable regulatory agencies. The Application cannot inform the County of the full extent of such impacts and the County cannot evaluate whether the Project complies with the Code until Scott obtains the requisite permits and approvals. Accordingly, the Application must be denied.

II. Scott’s Application fails to meet its burden with respect to its requests for waiver of standards.

Scott seeks a waiver from the standards found in both LUDC 7-203 and 7-1001. First, LUDC 7-203 requires the protection of waterbodies. The Code defines a “waterbody” as an accumulation of water and includes lakes, ponds, wetlands, rivers, streams, and other geological features where water moves from one place to another at least 10 months per year. See Application 15-38. LUDC 7-203 requires a minimum setback of 35 feet from the typical and ordinary high water mark on each side of a waterbody and prohibits certain structures and activity in the setback, including the disturbance of existing natural surface drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics by any means. See LUDC 7-203. Though the Code requires the Applicant to achieve the same intent of the subject standard *to the same or better degree* than the subject standard, Scott provides no evidence that its proposal can meet this threshold. In fact, the information presented by Scott demonstrates that its gravel pit will destroy private water features and wetlands and injure decreed water rights on the River Ranch property.

As identified by LRE Water Engineers (**Exhibit B**), the dramatic draw down of the aquifer on the River Ranch and to a lesser degree the Island Park properties caused by the Rifle Pit #1 will lower or dry up wetlands and water features on these properties. These are wetlands and water features that River Ranch and Island park have invested in and cultivated to promote wildlife habitat and hunting opportunities. Scott concedes that the Rifle Pit will substantially depress groundwater tables in the area. See Application 2-3 (“Dewatering operations are expected to drop the water level such that a well would not be able to operate”); Application 2-7 (“Mining of an aggregate deposit like the Rifle Pit will involve affecting local groundwater”); Application 1-4 (“The nature of development and dewatering of the gravel pit does not facilitate the drilling of a well for potable water use.”). In fact, the Hahn Water Report goes on to conclude “to the extent that the on-site wetlands are dependent on the underlying groundwater system, it is likely that these wetlands will disappear in a relatively short period of time (months to years) following the onset of dewatering.” As such, the Scott application does the opposite of what is required by the Code. Scott’s proposed land use change would literally *impose greater impacts on adjacent properties* as opposed to proposing ways to reduce and eliminate such impacts. See LUDC 4-118(C).



Scott seeks a waiver from setback standards associated with industrial uses. LUDC 7-1001 requires a 100-foot setback from an adjacent property line for all activity associated with an industrial use, unless the use is on an industrially zoned property, or located within a building. The Scott property is not zoned for industrial use and the proposed activity will not occur in a building. The 100-foot setback is required to protect neighboring properties from harm by industrial activities. With every foot that the proposed Rifle Pit #1 is located closer to the Island Park and River Ranch properties, the more egregious its impacts are on these adjoining lands. It appears that the Scott property is not appropriately sized to accommodate the proposed large-scale gravel mining operation without harming adjoining lands. It is not the role of the County to accommodate an industrial use to the detriment of adjacent property owners. As such, the Code does not permit a waiver from the 100-foot industrial setback for Scott's operations.

III. Scott's proposal generates numerous off-site impacts to wildlife, agricultural lands, water rights and wetlands that harm private property rights and injure the values protected by the conservation easements.

Scott's application imposes numerous off-site impacts on surrounding properties, including harm to areas that have been protected by conservation easements. AVL T holds the two conservation easements on the Island Park and Colorado River Ranch parcels. The first conservation easement, dated December 11, 2003, encumbers a portion of the Colorado River Ranch property (the "2003 CE"). **Exhibit C.** The second conservation easement, dated December 30, 2005, encumbers a portion of the Island Park property (the "2005 CE"). **Exhibit D.** Under Colorado law C.R.S. § 38-30.5-101 *et seq.*, conservation easements represent bona fide real property interests in land and water. Both properties comprise a significant stretch of the Colorado River associated ecology that provides superior riparian and wetland habitat for a wide range of resident wildlife and migrating waterfowl. As confirmed in the Scott Application, these lands serve as critical habitat for Native Threatened and Endangered Species. See Application 2-9. Wetlands are abundant on both properties. Further, both properties host harmonious agricultural activities that occur in conjunction with the wildlife and environmental uses. The high-value environmental and agricultural conditions on both properties were cause for them to be protected with conservation easements to ensure that the unique natural conditions are preserved for future generations.

Pursuant to both conservation easements, Island Park and River Ranch have affirmative obligations to protect and preserve the conservation values identified in the easement documents in perpetuity. The 2003 CE strictly prohibits "[t]he degradation, pollution, or drainage of any surface or sub-surface water." 2003 CE at 4. Under the 2005 CE, activities may not "manipulate, divert, dam, pollute, drain, dredge or otherwise alter the naturally-occurring streams, wetlands, springs, lakes, ponds, or other surface or subsurface water features on the Property in a manner that degrades or destabilizes their natural banks or shorelines, or otherwise is inconsistent with the preservation and protection of the Conservation Values of the Property." 2005 CE at 7. As discussed in both the LRE Water Engineers letter (**Exhibit B**) and in Scott's own Hahn Water Report, the Rifle Pit #1 will devastate the wetlands and water bodies protected by the conservation easements.

The protected conservation values under both conservation easements also include agricultural soils and ranch land. The agricultural productivity of the Island Park and River Ranch properties are significantly implicated by the Scott proposal. Both the Island Park and the River Ranch properties are the site of on-going agricultural operations, including irrigated and sub-irrigated pastures and grazing. LUDC 7-201 and LUDC 1-301 prohibit land use changes if the new land use activity will harm or otherwise limit the viability of existing agricultural operations. As such, the Applicant must avoid contributing to a loss of agricultural land and minimize impacts to irrigation water, water delivery systems, and irrigation schedules. The Scott Application threatens agricultural operations on the Island Park and River Ranch properties by dewatering sub-irrigated “wet” meadows that will harm grazing and forage production. Garfield County is obligated to minimize the impacts of development on existing agricultural operations and maintain the opportunity for continued agricultural production.

An integral part of Scott’s dewatering plan requires burying a pipeline on its neighbor’s land to convey water to the Colorado River. Scott cites to a temporary license agreement it negotiated with Shidelerosa LLLP (“Shideler”), which Scott claims will enable dewatering of the pit. The license agreement, however, is insufficient to permit Scott to implement its proposed activities through the duration of the mining and reclamation operations because the license is temporary and is revocable by either party at any time upon 60 days’ notice. The Application, however, does not address the potential termination of the license and that fact that without it Scott has no legal means of dewatering its Project.

The Application also fails to address impacts to the Bernudy ditch that crosses the Shideler and River Ranch properties. The Bernudy ditch, including First and Second Enlargements, is decreed for 7 c.f.s. and is owned by River Ranch. The proposed dewatering pipeline intersects with the Bernudy ditch as depicted by Photo Point 16 in the Scott application. Pursuant to LUDC 7-201(E), land use changes shall not interfere with ditch rights-of-way. Where irrigation ditches cross or adjoin the land proposed to be developed, as is the case here, the developer shall insure that the use of those ditches can continue uninterrupted. See LUDC 7-201(E)(4). No structures, such as a pipeline, shall be placed within the right-of-way without written permission from the appropriate ditch owner. See LUDC 7-201(E)(5). Further, ditch crossings, such as the one proposed by the Application, shall respect the rights of the ditch owner to operate and maintain their ditch without increased maintenance or liability. See LUDC 7-201(E)(6). *At a minimum*, all irrigation ditch crossings shall require the crossing be sized to not interfere with ditch operations or change existing hydraulic flow characteristics. See LUDC 7-201(E)(6)(a). *Prior to permit application*, the Applicant shall provide a letter from the ditch company regarding agreement with standards contained in the proposed crossing. See LUDC 7-201(E)(96)(c). Scott did not reach out to River Ranch regarding the proposed ditch crossing. Pursuant to LUDC 7-201(E)(7), applications that may affect or impact any ditch right-of-way shall include the name and mailing address of the ditch owner. Scott’s Application did not identify River Ranch as the owner of the Bernudy ditch. The Code correctly directs applicants to obtain information related to ditch ownership from the Division of Water Resources. See LUDC 7-201(E)(7). Notably, the Application does not identify the Bernudy ditch as a ditch but rather as an intermittent stream. This is inaccurate and intentional by Scott in attempt to avoid complying with the Code. River Ranch has not granted any consent for Scott to interfere with its ditch easement right. Further, applications that include any

improvements located adjacent to or below grade of an irrigation ditch shall address and mitigate potential impacts to the irrigation ditch in a drainage plan. See LUDC 7-201(E)(8). The drainage plan shall demonstrate that the drainage will not impair operation of the ditch. See LUDC 7-201(E)(8). The Application does not consider the Bernudy ditch in its drainage plan. Under LUDC 7-201(E), the County cannot approve the Scott application utilizing the pipeline without consent from River Ranch.

Wildlife habitat on the Island Park and River Ranch properties is similarly protected by the conservation easements and must also be protected under the Code. See LUDC 7-202. Despite these requirements under the Code, Scott continues to refuse to address the impact of its activities on the private property rights and conservation values associated with impacted wetlands and wildlife habitat on neighboring properties. Accordingly, the Application fails to meet the threshold requirement that the application contain “an explanation of all functional aspects of the proposed facility such as the processes, activities, function operations and maintenance that will occur as part of the project.” LUDC 4-203(B)(5). The wetlands on the Island Park and River Ranch properties are recharged and maintained not only by surface water but also by groundwater. See the LRE Water Engineers Letter, **Exhibit B**. Scott’s activities degrade the wetlands on adjoining properties. This not only harms the wildlife that rely on the wetlands, but it potentially creates legal liability for Island Park and River Ranch under the conservation easements.

The burden of proof is on Scott to prove that wetlands are either: (a) supported entirely by irrigation water and therefore non-jurisdictional, or (b) no longer meet the regulatory definition of wetlands. This includes impacts to all wetlands, not just those on its property. Under the Code, “[a]ny development impacting a Waterbody shall comply with all applicable state and federal laws, including, but not limited to, CDPHE water quality control division regulations and the Army Corp of Engineers regulations and permitting for waters of the U.S.” See LUDC 7-203(D). In its January 26, 2021 Referral Comment, the ACOE determined that “all on-site wetlands are assumed jurisdictional until proven otherwise.” The ACOE requires that every effort be made to avoid project features that harm wetlands. Until Scott submits a single proposal that considers all of its impacts, including alternatives that avoid impacts to wetlands or mitigation plans to compensate for unavoidable losses, the County cannot evaluate the impacts to wetlands under the LUDC.

Scott’s “Impact Analysis” glosses over these destructive impacts and simply states that the Rifle Pit #1 is somehow compatible with the use of adjoining properties. The Code requires that the nature, scale, and intensity of a proposed gravel operation be compatible with surrounding land uses. LUDC 7-1002(F). The Island Park and River Ranch properties are used for agricultural, conservation and hunting purposes. The owners of these properties have invested in conservation improvements to promote aquatic and riverine wildlife enhancements that critically include ponds and wetlands. The Scott Application hides and obscures the detrimental impacts of Rifle Pit #1 on neighboring properties. The Hahn Water Report concedes that Scott’s Application utterly fails to address impacts to water features and water rights on the Island Park and the River Ranch properties. The wildlife habitat, ponds, wetland enhancements and decreed water rights promote both the personal use of theses properties and the economic value of the land as an investment. The Scott Application will be devastating to the private property rights of its neighbors and the perpetual conservation values protected by the conservation easements.

IV. The Scott Application fails the following additional criteria required to approve a land use change permit.

Applications subject to major impact review must be consistent with the Comprehensive Plan. The Application is inconsistent with the Comprehensive Plan and Scott, as expected, supplies only this brief remark in support: “The property is designated in the County Comprehensive Plan as within the Residential Medium High Density and Silt Urban Growth Area.” See Application at 1-5. Pursuant to Policy #5 of the Comprehensive Plan, the County must direct industrial development to locations which possess the appropriate physical features and community facilities and services. See Plan at 42. A strategy to implement this policy directs the County to ensure that industrial developments are compatible with adjacent land use. Consideration should be given to all potential negative impacts including water quality and wildlife habitat. See Plan at 42. An additional strategy includes ensuring that industrial development preserves the natural environment of the County. The Comprehensive Plan acknowledges that gravel operations can have significant impacts on communities, including impacts to environmental health. See Plan at 57. The Comprehensive Plan affirms that water is essential to all life in the watershed and potential threats to the water supply include industrial uses. See Plan at 49. The Scott Application as currently constituted is not consistent with the Comprehensive Plan.

In several places, the Application perpetuates the inaccurate statement that a tailwater ditch of the Last Chance Ditch runs across the Scott property from east to west and ultimately discharges into the Colorado River. See Application 1-7, 2-8 and 2-11. SMG’s own survey data confirms that this channel ends on the Scott property and does not discharge into the Colorado River – especially across the Island Park property. See Figure 3. Scott continues to rely on this statement to purport compliance with LUDC 7-201 (General Resource Protection Standards – Agricultural Lands) and 7-203 (Protection of Waterbodies). Scott’s repetition of falsehoods contradicted by its own consultant calls into question the veracity of Scott’s other Application statements.

The Rifle Pit #1 is not compatible with adjacent wildlife, conservation, and agricultural uses from a noise standpoint. By its own Application, Scott concedes non-compliance with noise standards set forth in LUDC 7-1002 and § 25-12-103, C.R.S. Pursuant to Table 7-1002, the noise threshold for the Rifle Pit #1 from 7 a.m. to 7 p.m. would be 55 dB(A). Scott collected ambient noise levels on September 30, 2020, between 12:38 p.m. and 12:45 p.m. See Application 2-16. The projected noise level at the property boundary, according to the Application, would be 85.7 dB(A). See Application 2-19. At a point 200 feet from the property boundary, the projected noise levels would still be 70.8 dB(A). These noise levels far exceed state and local limits. The Application purports that “[v]isual and sound impacts will be mitigated with Garfield County Conditions of Approval and DRMS Standards.” See Application 2-6. No sound mitigation has been designed and the Application fails to meet this Code requirement.

Scott has failed to properly notice all nearby property owners as required by the LUDC. Grant Brothers owns property within the mandatory notice distance of the Scott Property. Appendix A to the Scott Application indicates that the Grant Brothers did not receive notice of this application.

Finally, Scott asserts in its Application that “[i]f the wetlands are determined to be non-jurisdictional, Scott intends to submit a minor amendment to the Garfield County Land Use Change Permit to allow for expanded mining in the future.” See Application 1-9. Due to the magnitude of potential impacts to be caused by an expansion, such amendment to the Permit would be a major amendment and not a minor one.

V. Conclusion

Scott’s Application fails because its property is simply too small for the large-scale industrial use that is proposed. The Rifle Pit #1 can only be implemented by imposing devastating, irreparable harm on neighboring property owners. Scott essentially requests County permission to use its property while at the same time destroying private property rights, economic use, personal enjoyment, and environment. A land use change permit cannot be granted under the Code when the proposed use creates such destructive off-site impacts.

Between Garfield County and Colorado DRMS this is now the *fourth* application filed by Scott for the Project. At great cost and expense, Island Park and River Ranch have been required to point out the numerous deficiencies in the Scott Applications four separate times. Scott simply refuses to address the serious concerns articulated by Island Park and River Ranch. The reason should be obvious – Scott can only implement the Rifle Pit #1 by harming its neighbors. This harm extends to property rights protected by conservation easements. The Code simply prohibits such impacts and does not allow the County to grant an approval until all the issues identified in this letter have been properly vetted and mitigated. To that end, the Planning and Zoning Commission and the Board of County Commissioners have no choice but to deny the request for land use approvals.

Very truly yours,

KARP NEU HANLON, P.C.



Michael J. Sawyer

MJS:



PLEASE NOTE THAT THE APPLICATION AND EXHIBITS 1 – 44 HAVE PREVIOUSLY BEEN PROVIDED. IF COMMISSIONERS NEED ADDITIONAL ACCESS TO THE APPLICATION OR EXHIBITS PLEASE UTILIZE THE LINK ON THE AGENDA AT THE COMMUNITY DEVELOPMENT WEBSITE OR CONTACT COMMUNITY DEVELOPMENT STAFF

## Garfield County Planning Commission Public Hearing

### Scott Contracting Gravel Operation Major Impact Land Use Change Permit (MIPA-05-20-8788)

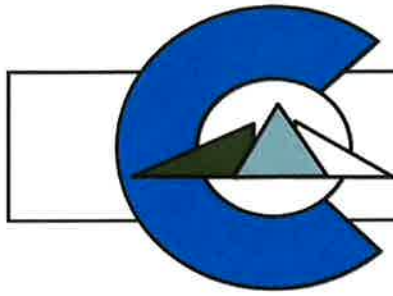
Applicant: Scott Contracting Inc.

June 9, 2021, Continued to July 28, 2021 and September 8, 2021  
(New Exhibits #45 - #47 highlighted in yellow)

Exhibit Number	Exhibit Description
1	Public Hearing Notice Information Form & Attachments
2	Garfield County Land Use and Development Code, as amended
3	Garfield County Comprehensive Plan of 2030
4	Application
5	Staff Report and Staff Presentation
6	Referral Comments from County Consulting Engineer, Mountain Cross Engineering, Chris Hale
7	Referral Comments from County Consulting Engineer, Michael Erion, LRE Water
8	Referral Comments from Garfield County Chief Building Official
9	Referral Comments from CDOT
10	Referral Comments from City of Rifle
11	Referral Comments from Town of Silt
12	Referral Comments from Colorado River Fire Rescue
13	Referral Comments from CDPHE
14	Referral Comments from Garfield County Environmental Health
15	Referral Comments from CPW
16	Referral Comments from Army Corp. Engineers, Travis Morse
17	Referral Comments from County Vegetation Manager
18	Referral Comments from County Road and Bridge Department
19	Referral Comments from West Divide Water Conservancy District
20	Referral Comments from Colorado Division of Natural Resources, Amy Yeldell
21	Email from Doug Grant with attachment from Colorado Division of Natural Resources, Lucas West
22	Public Comment from Karp, Neu, Hanlon, Michael Sawyer 1/27/21
23	Public Comment from Karp, Neu, Hanlon, Michael Sawyer 8/25/20
24	Public Comment from Karp, Neu, Hanlon, Michael Sawyer 8/14/20

25	Public Comment from Douglas Grant, 1/27/21
26	Public Comment from Douglas Grant, 1/12/21
27	Public Comment from Douglas Grant, 9/4/20
28	Comment Letter from Aspen Valley Land Trust
29	Supplemental Comment Letter from Karp, Neu, Hanlon, Michael Sawyer 6/3/21 and attachments including letter from LRE Water
30	Public Comment (email) from James Robinson, Manager of the Rex Robinson Ranch
31	Supplemental Staff Memo
32	Supplemental Referral Comments from County Consulting Engineer, Chris Hale, Mountain Cross Engineering
33	Additional Email Correspondence from Travis Morse, Army Corp of Engineers
34	Correspondence from Chris Hurley, Attorney for the Applicant, dated 7/8/21
35	Correspondence from Scott Balcomb through Karp, Nue, Hanlon
36	Hahn Water Resources Report, dated 7/16/21
37	Email Correspondence between Michael Sawyer and Travis Morse, Army Corp of Engineers
38	Correspondence from Kent Holsinger, Holsinger Law LLC, dated 7/19/21
39	Correspondence from Michael Sawyer, Karp, Neu, Hanlon, dated 7/21/21
40	Revised LREWater Letter from Angela Schenk, dated 7/21/21
41	Aspen Valley Land Trust Letter, dated 7/21/21
42	Email and Correspondence from Bill Fronczak, LREWater, dated 7/21/21
43	Additional LREWater Letter from Scott Fifer, dated 7/21/21
44	Scott Contracting Email on July 28, 2021 Continuation
45	Updated Staff Memo and Recommendation, dated 9/8/21
46	Updated Referral Comments from Chris Hale, County Consulting Engineer, dated 8/20/21
47	Additional correspondence from Karp, Neu, Hanlon, Michael Sawyer, dated 8/31/21
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# Garfield County

Community Development Department

## MEMORANDUM

TO: Garfield County Planning Commission

FROM: Glenn Hartmann, Principal Planner

DATE: September 8, 2021

SUBJECT: Scott Contracting Major Impact Review for Gravel Facility  
Updated Staff Report – Memorandum - Recommendation

### I. Updated Exhibits – Additional Submittals – Additional Public Comments

A. All previous exhibits have been distributed to the Commission, however, if you need additional access they are available at the link on the Commission's Agenda page at the County's website. Please contact Community Development Staff if you need assistance in accessing any of the previous exhibits and Staff Reports.

B. Additional referral comments from Chris Hale, County Consulting Engineer have been received and provided to the Applicant. The referral comments outline the need for additional information on three key points: a wetland delineation that is approved by the Corp of Engineers, address potential changes to plans and/or phases of gravel extraction, and the need to address if mining processes will endanger neighboring property's wetlands. No formal responses or updated reports from the Applicant have been received.

C. Only one additional public comment has been received and is included as an Exhibit.

### II. Updated Staff Analysis

A. The Supplemental Said memo (July, 2021) included a revision to Condition #1 to include additional details associated with the Army Corp of Engineers permitting and

review authority and to address referral comments from the County Consulting Engineer, Chris Hale. The reformatted condition was utilized as a guide for additional information the Applicant needs to address for the Planning Commission hearing. The wording is as follows for a Condition 1.A.:

*1.A. That prior to issuance of the Land Use Change Permit and in association with permit review by the Army Corp of Engineers, the Applicant shall provide the following additional analysis:*

- a. Formal determination of the appropriate Army Corp of Engineers permitting required as reflected in the Army Corp of Engineers referral comments that indicate a jurisdictional wetland determination and more formal specific permit process is most likely.*
- b. The timetable for irrigation dry-up versus dewatering efforts.*
- c. Confirmation that no dewatering efforts shall be initiated until such time as the Army Corp of Engineers Permitting is complete.*
- d. Confirmation that the Army Corp of Engineers permitting will include plans for how the applicant will mitigate impacts of a lowered groundwater table due to dewatering, on neighboring properties.*
- e. Formal wetlands determinations by the Army Corp of Engineers with off-site impacts on wetlands addressed as part of the Corp review.*

B. Staff has met several times with Travis Morse, Corp of Engineers. Information and clear direction were provided by Travis on a number of key topics, as summarized below:

- The Army Corp did not approve the Applicants Wetland Delineations.
- The Army Corp is requiring the Applicant to redo their Wetlands Analysis and go through the appropriate Army Corp process for approval. This is anticipated to result in a formal Jurisdictional Wetlands Delineation.
- The Army Corp anticipates that the final approved Wetlands Delineation will likely result in a significant change to and increase in the area of the Applicant's site included as wetlands.
- It is anticipated that the Applicant may need to modify their mining plans and areas of disturbance based on the approved Wetland Delineation.
- If the Applicant's revised mining plans result in Direct (Primary) impacts to wetlands areas then the Corp Review of Permits may include consideration of off-site impacts to wetlands including surrounding properties.

Staff's clear understanding from the meetings with Travis Morse, was that with the additional wetland delineation being required, the current submittals were not complete

enough to make a final decision or recommendation and significant modifications to the plans may be necessary.

### **III. Updated Staff Recommendation for Denial & Planning Commission Options**

#### **A. Revised Staff Recommendation for Denial:**

Based on additional Staff Analysis with the Army Corp. of Engineers and the County Consulting Engineer, Staff is revising our recommendation and can no longer recommend approval with conditions. The Staff Recommendation is for Denial with the following suggested findings.

1. That proper public notice was provided as required for the hearing before the Planning Commission.
2. The hearing before the Planning Commission was extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested parties were heard at that meeting.
3. That for the above stated and other reasons the proposed Land Use Change Permit for Scott Contracting Gravel Operation Rifle Pit #1 is not in the best interest of the health, safety, convenience, order, prosperity, and welfare of the citizens of Garfield County.
4. That the application is not in general conformance with the 2030 Comprehensive Plan, as amended.
5. That the application has not demonstrated conformance with the Garfield County Land Use and Development Code, including but not limited to Article 7, Standards.
6. That the County has been advised that the Army Corp of Engineers has not approved the Applicant's Wetland Delineation and that the Applicant is considering major revisions to the mining plans that will render the current submittals, referral comments, and required studies obsolete.

A motion by the Planning Commission to recommend denial should include reference to the above findings subject to any additions or revisions by the County Attorney's Office.

#### **B. Withdrawal Option:**

Staff has discussed extensively with the Applicant how a withdrawal and resubmittal of the Application would benefit the entire process and allow for the Applicant to complete

the formal Wetlands Delineations with the Army Corp and allow the Applicant to make revisions to their mining plans and mining techniques.

This option was endorsed by both the Community Development Department and the County Attorney's Office.

The Withdrawal option is strongly supported by the fact that the current application is changing in scope and character. Referral comments will no longer be applicable and technical analysis on issues such as traffic generation and noise may no longer be applicable. Revised mining plans may require different type of equipment and different types of impacts. We understand the Applicant is considering shifting to a wet mining process and thereby reducing potential for impacts to ground water on neighboring properties.

### **C. Continuation Option:**

Should the Commission wish to continue the public hearing, a motion to continue the public hearing to a date certain would be required. Extended continuations call into question the effectiveness of the public notice. Based on the already granted two months of continuations, staff would recommend requiring re-noticing for any continuation of longer than an additional two months.

## **IV. Consulting Engineer Conflict of Interest Issue**

The issue of LRE Water representing an opposing adjacent property owner and at the same time providing services to the County as the County's Consulting Engineer on water issues associated with the Scott Contracting Inc. application was raised at the initial public hearing date. The County Attorney's Office has been working closely with Community Development on this issue. While the Attorney's Office and County Staff requested that LRE remove itself entirely from the review process, LRE has chosen not to do so.

The County has shifted to another Consulting Engineer, Chris Hale, Mountain Cross Engineering and is no longer utilizing the LRE Referral Comments to the County in our review and recommendations. The LRE letters submitted at the request of adjoining property owners continue to be included as Exhibits. The County Attorney's Office will provide additional information on this issue at the hearing, including clarification, if needed on how the Planning Commission may wish to weigh the credibility of the LRE documentation.

**Glenn Hartmann**

**From:** Chris@mountaincross-eng.com  
**Sent:** Friday, August 20, 2021 11:52 AM  
**To:** Glenn Hartmann  
**Subject:** [External] Scott Contracting Supplemental Information

Glenn:

Thanks for the inclusion in the conference call with Mr. Travis Morse with the USACoE. The conference call raised the following questions that should be addressed by the Applicant:

- Mr. Morse sees issues with the wetlands delineation presented in the applications materials. The Applicant will need to provide a wetland delineation that the USACoE agrees with.
- Depending on the outcome of the delineation above, the Applicant may need to revise the plan, extents, and/or phasing of the gravel extraction to be congruent with the delineation as accepted by the USACoE.
- Based on what Mr. Morse says, if the lowering groundwater table by Scott has impacts on neighboring wetlands, the neighboring property Owners may be subject to actions from the USACoE. The Applicant should address if any proposed methods will endanger neighboring properties wetlands.

Feel free to call or email if you have any questions or comments.

Sincerely,  
Mountain Cross  
Engineering, Inc.  
Chris Hale, P.E.  
826 1/2 Grand Avenue  
Glenwood Springs, CO 81601  
Ph: 970.945.5544  
Fx: 970.945.5558



**Karp Neu Hanlon<sup>PC</sup>**

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August 31, 2021

Garfield County Planning Division  
Attn: Glenn Hartmann, Senior Planner  
108 8<sup>th</sup> Street, Suite 401  
Glenwood Springs, Colorado 81601  
*Sent via email to:* [ghartmann@garfield-county.com](mailto:ghartmann@garfield-county.com)

**RE: IHC Scott, Inc. Land Use Change Permit for a Gravel Operation on Parcel No. 217908300103 – Garfield County File Number MIPA-05-20-8788.**

Dear Glenn:

As you are aware, this firm represents Island Park LLC (“Island Park”) and Colorado River Ranch, LLC (“River Ranch”). Due to the injurious impacts to their properties, my clients have continued to monitor and oppose the Request for Major Impact Land Use Change Permit submitted by IHC Scott, Inc. d/b/a Scott Contracting, Inc. (“Scott”) for the Rifle Pit #1 since the Application was originally submitted on May 20, 2020 and re-submitted on March 30, 2021.

As you stated during the July 28, 2021 Planning Commission Meeting, the public hearing for consideration of Scott’s Application was continued to September 8, 2021 due to technical issues identified by the County’s consulting engineer and the need to further evaluate issues with the U.S. Army Corps of Engineers (“USACE”). Scott joined County staff in the request for a continuance. During that Meeting, you also stated that the County was requiring that Scott address the outstanding issues at least two weeks ahead of September 8, 2021 to provide adequate staff review and time to prepare the packet one week ahead of that date pursuant to the Planning Division’s normal schedule. That deadline has passed. We are now less than two weeks ahead of the hearing date and Scott has failed to address those outstanding issues or submit additional materials. This greatly prejudices neighbors whose properties will be harmed by the Scott Contracting proposal as they will have little or no time to prepare comments for the Planning Commission’s consideration. As a result of Scott’s failure to meet the deadline, the County cannot consider Scott’s Application at the September 8 meeting. As you stated during the Meeting, the issues with Scott’s Application are not minor but are considerable ones that remain outstanding and unaddressed by Scott.

Further, my office has been in contact with the USACE. We have been informed that the USACE has rejected the wetlands delineation performed by Scott. The USACE is requiring a more comprehensive wetlands delineation be undertaken which will likely show that more of the property is jurisdictional wetlands. Because Scott Contracting has failed to provide an acceptable delineation of wetlands on its property, the Planning Commission cannot make its required finding under Section 7-203 of the Code that all development is located at least 35 feet from a water body



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(including wetlands). As such, the Planning Commission cannot determine at this time whether the Scott Contracting proposal is even feasible.

USACE also indicated that Scott Contracting will likely not qualify for a nationwide permit and instead will be required to go through the individual permit process. The individual permit process can take years to reach a decision. The Scott application is incomplete and cannot be cured until Scott has obtained necessary USACE permits. The fact that Scott Contracting finds itself, yet again, with an incomplete application is testament that this matter is not ripe for Planning Commission consideration. It is unfair to the neighbors and to the Planning Commission for Scott Contracting to continue to seek review of incomplete applications. Staff needs to declare the Scott Contracting application incomplete and direct that a new application not be submitted until all USACE permits have been obtained.

Very truly yours,

KARP NEU HANLON, P.C.



Michael J. Sawyer

MJS:ds

cc: Colorado River Ranch  
Island Park