



January 4, 2022

Karl Nyquist  
Prowers Aggregate Operators, LLC  
7991 Shaffer Parkway, Suite 200  
Littleton, CO 80127

J. Curtis Marvel, Jr.  
Brannan Sand and Gravel Company, L.L.C.  
2500 East Brannan Way  
Denver, CO 80229

**RE: West Farm Pit, Permit No. M-2008-078, Incomplete Application for Transfer of Mineral Permit and Succession of Operators (Revision No. SO-04)**

Dear Mr. Nyquist and Mr. Marvel:

On December 28, 2021, the Division of Reclamation, Mining and Safety (Division) received your Request for Transfer of Mineral Permit and Succession of Operators (SO-04) from Prowers Aggregate Operators, LLC to Brannan Sand and Gravel Company, L.L.C. for the West Farm Pit, Permit No. M-2008-078. The Division has determined the following items are required in order for the application to be considered complete:

- 1) Your submittal did not include a page 5 – Application Form for Transfer of Mineral Permit and Succession of Operators – Administrative Information. Please provide a page 5 (see enclosed) with the required Permit Information, Permittee Information, and Prospective Successor Information.
- 2) On page 6, under Designation of Review Timeline, the Prospective Successor initialed Option 1, to waive the right to a decision on the application within 30 days. However, both the Permittee and Prospective Successor must initial one of the two options. Please provide a page 6 with one of the options initialed by both the Permittee and Prospective Successor.
- 3) On page 8 – Applicant’s Agreement to Request Transfer of Mineral Permit and Succession of Operators, it states “Whereas, on June 16, 2021 Permit number M-2008-078, AM-2 (“Permit”) was granted to Prowers Aggregate Operators, LLC (“Permittee”)...” Please provide a revised page 8 with the date corrected to “August 16, 2016” (the date the permit was transferred to the current Permittee through the Division’s issuance of Succession of Operators No. 3), and with “AM-2” removed from the Permit Number field, as this field should only include the permit number.
- 4) On page 9, a date was not provided (above the signature sections). This invalidates both the Permittee and Prospective Successor’s signatures and notaries. Please provide new pages 9 and 10



which are properly executed by both the Permittee and Prospective Successor. In executing this document, please be sure the company name for each party is written exactly the same way it is registered with the state.

- 5) The following items pertain to the Performance Warranty submitted with the application:
  - a. On page 11, the Permit Number field includes “M-2008-078, AM-2”. This field should only include the permit number (and not list out revisions approved under the permit). Please remove “AM-2” from the Permit Number field.
  - b. On page 13, the Operator field (at the top of the page) includes a signature. However, this field should include the Prospective Successor’s company name (Brannan Sand and Gravel Company, L.L.C.). Please correct this page accordingly.
  - c. If the Prospective Successor has a company seal, it should be added at the top of page 13 in the location marked by “(SEAL)”.
  - d. On page 13, under Notarization of Operator’s Acknowledgement, the company name is written as “Brannan Sand & Gravel”. Please write the company name exactly as it is registered with the state (Brannan Sand and Gravel Company, L.L.C.).
- 6) The Prospective Successor must provide notarized structure agreements (see enclosed form) for any significant, valuable, and permanent man-made structures located within 200 feet of the affected lands (e.g., fences, roads, bridges, culverts, wells, above ground or below ground utilities). Where such structure is a utility, the Prospective Successor may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have “no negative effect” on their utility. The documentation submitted with the application for demonstration of the Prospective Successor’s legal right to enter the site to conduct mining and reclamation covers the structures owned by GP Aggregates, LLC. However, notarized structure agreements must be provided for all structures located on or within 200 feet of the affected lands which are not owned by GP Aggregates, LLC or the Prospective Successor. The Division recommends the Prospective Successor refer to the recently approved Amendment No. 2 application for an updated structure list.

**Additional Information:**

- 7) If (on page 6), the Permittee and Prospective Successor both choose to waive the right to a decision on the application within 30 days, the Division will inspect the site (within 60 days of calling the application complete) and calculate the required Financial Warranty for the operation. Notice of the calculated Financial Warranty amount will then be provided to both the Permittee and Prospective Successor, giving the Prospective Successor 60 days to post the required Financial Warranty for SO-04 approval. At that time, the Prospective Successor will need to provide a properly executed

Financial Warranty and an Affidavit of Authority to Execute Financial Warranty Documents (form enclosed). All Financial Warranty forms are available on our website at <https://drms.colorado.gov/forms/minerals-program-forms>.

Please be advised, the Financial Warranty amount cannot be reduced through the Succession of Operators process. This can only be done through the Division's review and approval of a Surety Reduction request (which cannot be reviewed at the same time a Succession of Operators application is under review). Therefore, if the primary intent of choosing Option 1 on page 6 is for consideration of a reduced Financial Warranty amount, the Division recommends the Permittee and Prospective Successor choose Option 2 instead. Given that the required Financial Warranty amount for this site was just recently assessed through the Division's issuance of Amendment No. 2 on December 29, 2021, the Division does not expect this amount will change for SO-04 approval. Therefore, choosing Option 2 on page 6 would help expedite the Division's review of SO-04. If Option 2 is chosen in the revised application, the Prospective Successor must provide a properly executed Financial Warranty for the existing required amount of \$8,310,769.00 (along with the Affidavit of Authority mentioned above) for SO-04 approval.

Your application will not be considered complete until all deficiencies identified above have been addressed. All required completeness items must be submitted to our office within 30 days of the date of this letter, by **February 3, 2022**. If, by that date, the Division has not received all items necessary to call the application complete, the application may be denied.

If you have any questions, you may contact me by telephone at (303) 866-3567, ext. 8129, or by email at [amy.eschberger@state.co.us](mailto:amy.eschberger@state.co.us).

Sincerely,



Amy Eschberger  
Environmental Protection Specialist

Encls: Application Form for Transfer of Mineral Permit and Succession of Operators – Administrative Information – Page 5  
Affidavit of Authority to Execute Financial Warranty Documents  
Structure Agreement Form

Cc: Joshua Oliver, Brannan Sand and Gravel Company, L.L.C.  
Sara Stevenson-Benn, DRMS  
Michael Cunningham, DRMS

# STATE OF COLORADO

## DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

Phone: (303) 866-3567

FAX: (303) 832-8106



## APPLICATION FORM FOR TRANSFER OF MINERAL PERMIT AND SUCCESSION OF OPERATORS

### ADMINISTRATIVE INFORMATION

#### Permit Information

Permit Number: \_\_\_\_\_

Operation Name: \_\_\_\_\_

#### Permittee Information

Contact Person: \_\_\_\_\_

Company Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (        ) \_\_\_\_\_

Email (optional): \_\_\_\_\_

#### Prospective Successor Information

Contact Person: \_\_\_\_\_

Company Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (        ) \_\_\_\_\_

Email (optional): \_\_\_\_\_



# COLORADO

## Division of Reclamation, Mining and Safety

Department of Natural Resources

### **Documentation of Legal Authority to Execute Financial Warranty Documents**

*The Colorado Mined Land Reclamation Board (“Board”) has adopted the attached Affidavit of Authority to Execute Financial Warranty Documents pursuant to the Mined Land Reclamation Act (C.R.S. § 34-32-101 et. seq.) and the Land Reclamation Act for the Extraction of Construction Materials (C.R.S. § 34-32.5-101 et. seq.). The Board and the Division of Reclamation Mining and Safety (“Division”) have determined that, in order to carry out the financial warranty requirements set forth in C.R.S. §§ 34-32-117 and 34-32.5-117 with reasonable diligence, it is prudent to verify the legal authority of the individual signing all necessary documents.*

*Accordingly, you must provide confirmation of the legal authority of the individual signing all Financial Warranty Documents to the Division. You may do so either by submitting a resolution of the decision-making body of your company that authorizes an individual to sign the Financial Warranty Documents on the company’s behalf, or by completing and notarizing the attached affidavit. The Division reserves the right to require the attached affidavit in all circumstances. Please note that if you are a sole proprietor who is executing documents on your own behalf, documentation of legal authority is unnecessary.*



### Affidavit of Authority to Execute Financial Warranty Documents

Before me this day, the undersigned \_\_\_\_\_ [name of authorized person], in his/her capacity as \_\_\_\_\_ [title of authorized person] ("Affiant"), personally appeared and, being first duly sworn upon oath said:

1. This affidavit is being executed and submitted on behalf of \_\_\_\_\_ [name of business organization], a(n) \_\_\_\_\_ [legal form of business organization, *e.g.*, corporation, partnership, limited liability company, etc.], in good standing in the State of Colorado (the "Company").
2. It is in the interest of the Company to execute certain financial warranty documents associated with file number \_\_\_\_\_ (DRMS file number), which are required by the Colorado Mined Land Reclamation Board and Division of Reclamation Mining and Safety pursuant to Colorado law ("Financial Warranty Documents").
3. Affiant is duly authorized to sign such Financial Warranty Documents on behalf of the Company and to bind the Company to the same.
4. Affiant is not prohibited or limited by the Company's governing documents or by any applicable law from executing the Financial Warranty Documents.
5. Affiant will inform the Division of Reclamation Mining and Safety within thirty (30) days in the event that his/her authorization to execute Financial Warranty Documents on the Company's behalf is terminated.

Further, Affiant sayeth not.

\_\_\_\_\_  
Affiant's Name

\_\_\_\_\_  
Signature

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_) ss.:  
COUNTY OF \_\_\_\_\_ )  
\_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_  
\_\_\_\_\_

An example Structure Agreement which meets the requirements of the Statutes is shown below.

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## **Structure Agreement**

This letter has been provided to you as the owner of a structure on or within two hundred (200) feet of a proposed mine site. The State of Colorado, Division of Reclamation, Mining and Safety (“Division”) requires that where a mining operation will adversely affect the stability of any significant, valuable and permanent man-made structure located within two hundred (200) feet of the affected land, the Applicant shall 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; or
- c) Where such structure is a utility, the Applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have “no negative effect” on their utility. ( *Construction Materials Rule 6.3.12 and Rule 6.4.19 & Hard Rock/Metal Mining Rule 6.3.12 and Rule 6.4.20*)

*The Colorado Mined Land Reclamation Board (“Board”) has determined that this form, if properly executed, represents an agreement that complies with Construction Materials Rule 6.3.12(a), Rule 6.4.19(a), and C.R.S. § 34-32.5-115(4)(e) and with Hard Rock/Metal Mining Rule 6.3.12(a), Rule 6.4.20(a), and C.R.S. § 34-32-115(4)(d). This form is for the sole purpose of ensuring compliance with the Rules and Regulations and shall not make the Board or Division a necessary party to any private civil lawsuit to enforce the terms of the agreement or create any enforcement obligations in the Board or the Division.*

**The following structures are located on or within 200 feet of the proposed affected area:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

*(Please list additional structures on a separate page)*

## CERTIFICATION

The Applicant, \_\_\_\_\_ (print applicant/company name),  
by \_\_\_\_\_ (print representative's name), as \_\_\_\_\_ (print  
representative's title), does hereby certify that \_\_\_\_\_ (structure owner) shall  
be compensated for any damage from the proposed mining operation to the above listed structure(s)  
located on or within 200 feet of the proposed affected area described within Exhibit A, of the Reclamation  
Permit Application for \_\_\_\_\_ (operation name),  
File Number M-\_\_\_\_-\_\_\_\_.

***This form has been approved by the Colorado Mined Land Reclamation Board pursuant to its authority under the Colorado Land Reclamation Act for the Extraction of Construction Materials and the Colorado Mined Land Reclamation Act for Hard Rock, Metal, and Designated Mining Operations. Any alteration or modification to this form shall result in voiding this form.***

**NOTARY FOR PERMIT APPLICANT**

ACKNOWLEDGED BY:

Applicant \_\_\_\_\_ Representative Name \_\_\_\_\_

Date \_\_\_\_\_ Title \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public



**NOTARY FOR STRUCTURE OWNER**

ACKNOWLEDGED BY:

Structure Owner \_\_\_\_\_ Name \_\_\_\_\_

Date \_\_\_\_\_ Title \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_ My Commission Expires: \_\_\_\_\_

Notary Public