

# Snell & Wilmer

TABOR CENTER  
1200 SEVENTEENTH STREET  
SUITE 1900  
DENVER, CO 80202  
303.634.2000 P  
303.634.2020 F

Jason B. Brinkley  
(303) 634-2066  
jbrinkley@swlaw.com

## **VIA E-MAIL AND U.S. MAIL**

Archuleta County Development Services  
Planning Department  
Attn: Pamela Flowers  
P.O. Box 1507  
Pagosa Springs, CO 81147  
PFlowers@archuletacounty.org

Archuleta County Planning Commission  
Attn: David Parker, Chair  
P.O. Box 1507  
Pagosa Springs, CO 81147  
PFlowers@archuletacounty.org

Board of County Commissioners, Archuleta County  
Attn: Commissioner Alvin Schaaf  
P.O. Box 1507  
Pagosa Springs, CO 81147  
ASchaaf@archuletacounty.org

January 21, 2022

*Re: Application PLN21-144 for a Major Sand & Gravel Permit at X County Road  
600, Pagosa Springs, Colorado 81147*

Dear Commissioner Schaaf, Chairman Parker, and Director Flowers:

This law firm represents Essex Corporation, Rendezvous Ranch QOZ, LLC, and the Rendezvous Ranch Homeowner's Association. These entities are the owners and representatives of owners of land adjacent to the property in the above-referenced application for a Major Sand & Gravel Permit (the "Application"). The purpose of this letter is to formally request that the public hearings scheduled in connection with the Application, currently set for Wednesday, January 26, 2022 (Planning Commission) and Tuesday, February 15, 2022 (Board of County Commissioners), be postponed until a more thorough review of the proposed project can be completed by the Planning Department, the Planning Commission, Board of County Commissioners, and the concerned public of Pagosa Springs.

According to the notice received by our clients, the property in the Application is zoned as Agricultural Ranching ("AR")—we note that we believe the property is actually zoned Agricultural Estate (which certainly would not permit an activity of this type), but for purposes of this letter we will assume that AR is correct. Operations performed under a Major Sand & Gravel Permit appear to be inconsistent with an AR zoning designation. Archuleta County Land Use Code ("Land Use Code") § 3.1.2.2(3) states that "[l]and use in the AR district is encouraged to provide for the maintenance of agricultural production and preservation of associated life styles . . .

January 21, 2022

Page 2

Commercial uses are generally limited to those associated with Agricultural and Recreational uses.” The permit sought by the Application does not contemplate any use associated with either agricultural or recreational purposes. The Application itself states that the project’s purpose is “to produce construction materials,” including both mining and processing of those materials. *See* Application, Attachment 6, p. 1. It goes on to say that the project is intended to “operate over a period of up to 20 years” and produce approximately “72,000 tons per year of construction materials to be shipped” from the property. *See* Application, Attachment 6. Production will include “[a]ctual mining and haul of material from the site.” *See id.* The Application further indicates that a processing plant used for “crushing and screening” will be located on the property, in addition to other structures, such as above-ground fuel storage and equipment. *See id.* A major mining and processing operation intended to produce construction materials is not consistent with agricultural and recreational use of the land.

Beyond the inconsistencies with an AR zoning designation, Section 9 of the Land Use Code details numerous conditions and limitations concerning the operations under a Major Sand & Gravel Permit. *See* Land Use Code § 9.1.6. These restrictions exist for good reason—as stated by the applicant itself, there “are obviously significant impacts which may occur” as a result of the proposed project. *See* Application, Enclosure 7-D. Some of those potential negative impacts and concerns include but are not limited to the following:

- A substantial increase in industrial traffic through residential, recreational, and commercial areas;
- A substantial increase in harmful and excessively loud industrial noises and vibrations;
- Pollution to the air and nearby waters and lands;
- Encroachment upon neighboring landowners’ views of the Pagosa Springs wilderness and surrounding areas and otherwise harmful effects to the scenic quality of the surrounding area; and
- A substantial increase in unsavory and annoying smells dispersed throughout the surrounding area as a result of the mining, processing, and transportation activities.

These potential impacts and concerns will undoubtedly harm neighboring landowners and the general public of Pagosa Springs. Primarily, health and safety concerns to individuals, cattle, livestock, and wildlife will likely arise due to pollution, excessive noise, and increased industrial traffic. In turn, those problems and concerns will reduce the ability for landowners to engage in agricultural and grazing activities.

To be sure, this is not a mere hypothetical exercise—some of these issues have already arisen, as the applicant apparently has already begun mining activities on the property. Water runoff from those activities is running directly from the gravel pit area and into a neighboring landowner’s pond. Noise from the project is also noticeable from our clients’ residences. And

January 21, 2022

Page 3

when the wind shifts in a certain direction, our clients have also been subjected to the distinct smell of exhaust. It is our understanding that no mining permit of any kind has been granted to the applicant. The applicant is thus currently operating without a permit in violation of Colorado state law and the Land Use Code. As a result, we request that the County order the applicant to stop its current mining operations on the property until a permit is obtained.

Ultimately, our review of the Application indicates that it is woefully insufficient and superficial in its analysis of these potential impacts. Enclosure 7-D to the Application, the Mitigation Plan, even goes so far as to say that it “is not always possible to address every potential impact” caused by the project. *See* Application, Enclosure 7-D, p. 2. And when Enclosure 7-D is viewed in conjunction with the Mining and Reclamation Plans, attached as Enclosure 7-A to the Application, it is clear that the few potential impacts that *are* addressed by the Application are only done so in a perfunctory manner. The Application suffers from a serious lack of specificity in this regard and instead relies on broad and vague language, such as “frequently inspecting the perimeter of operations and the property,” and “fixing problems in a timely manner.” *See id.* This clear omission of particularity leads to obvious questions, such as how frequently will the perimeter be inspected, and what standards will be used? Similarly, what problems does the applicant suspect will arise that will require attention in a timely manner? The Archuleta County Development Services Planning Department, Planning Commission, and the Board of County Commissioners should not consider awarding a permit without a more detailed understanding of the applicant’s proposed answers to these questions, among many others.

In addition to these issues, Section 9.1.6 of the Land Use Code details numerous and specific “Performance Standards for All Operations” under a Major Sand & Gravel Permit. *See* Land Use Code § 9.1.6. Here again, the Application either fails to address these standards or only does so in a generalized and cursory manner. The Application fails entirely to address the requirements in § 9.1.6.2, concerning “Air Quality,” § 9.1.6.3, concerning “Visual Amenities and Scenic Quality,” and § 9.1.6.4, concerning the standards for “Crushing, Processing, Batching, and Hot Mix operations.” And while the Application does respond to the requirements in § 9.1.6.1, it does so in an unsatisfactory manner, using the kind of broad and vague language used in the Mitigation Plan. *See* Application, Attachment 6, pp. 2–3.

For all of these reasons, we are requesting that the public hearings scheduled in connection with the Application, currently set for Wednesday, January 26, 2022 (Planning Commission) and Tuesday, February 15, 2022 (Board of County Commissioners), be postponed until the applicant submits the following studies for thorough review and analysis by the Archuleta County Development Services Planning Department, the Planning Commission, the Board of County Commissioners, and any concerned member of the general public:

- A traffic impact study;
- A health and noise study;
- A wildlife impact study; and

January 21, 2022

Page 4

- A water and water rights study.

In addition to these studies, our clients further request that alternative sites are seriously explored and considered prior to any public hearings. In particular, it is our understanding that the applicant is already the record owner of a different parcel, located near the Pagosa Springs Airport. It is also our understanding that this parcel is zoned as Industrial (“I”) under Land Use Code § 3.1.2.8. This parcel thus appears to be far more compatible with operations under a Major Sand & Gravel Permit and should seriously be considered as an alternative location.

To summarize, the Application in its current form presents no realistic or serious way for the Archuleta County Development Services Planning Department, the Planning Commission, the Board of County Commissioners, or any other interested party to thoroughly evaluate the Application. Without a thorough evaluation and analysis, there is no practical way to assess whether the Application or a resulting permit would comply with the Land Use Code and other Colorado law. That assessment is critical and must be based on specific, supporting evidence—a governmental body abuses its discretion under C.R.C.P. 106(a)(4) “when the administrative decision is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority.” *Freedom Colo. Info., Inc. v. El Paso Cty. Sheriff’s Dep’t*, 196 P.3d 892, 900 (Colo. 2008).

Our clients appreciate your consideration and await your decision on the requested postponement of the upcoming hearings. Please contact me at the information above if you have any questions or otherwise wish to discuss this matter further.

Very truly yours,

Snell and Wilmer L.L.P.

A handwritten signature in dark ink, appearing to read "Jason B. Brinkley". The signature is fluid and cursive, with the first name "Jason" being the most prominent part.

Jason B. Brinkley

cc: Nathan Davis (via e-mail)  
Shane O'Connor (via e-mail)

JBB