



35715 HIGHWAY 40
BUILDING B, SUITE 120
EVERGREEN, CO 80439
MAIN: (303) 289-1837

January 14, 2022

Delivery via Email to bbenning@gilpincounty.org

Brad Benning
Gilpin County Attorney
PO Box 661
203 Eureka St.
Central City, CO 80427

Re: AFS Response to Gilpin Fill NOV Case # CE-21-56

Dear Mr. Benning:

Enclosed please find our response to the Gilpin Notice of Violation to Albert Frei & Sons (AFS) dated December 17, 2021, and responses to the three items raised in the letter from Gilpin County to the Division of Reclamation, Mining and Safety (DRMS) dated December 21, 2021 ("12/21/2021 Gilpin County Letter").

DATE: December 17, 2021

ENFORCEMENT CASE #: CE-21-56

NAME/ADDRESS OF PROPERTY OWNER:

FREI ALBERT & MARY JANE

35715 HWY 40 BLDG B STE 120

EVERGREEN, CO 80439

PROPERTY UPON WHICH VIOLATION EXISTS:

**S: 35 T: 3S R: 72W (MRO) PT OF W 1/2 & (SRO) IN N1/2 IN GILPIN COUNTY
(Schedule #R001485)**

TO THE PROPERTY OWNER ABOVE-NAMED:

**NOTICE IS HEREBY GIVEN THAT THE GILPIN COUNTY BUILDING OFFICIAL IDENTIFIED BELOW
HAS PERSONAL KNOWLEDGE OF THE FOLLOWING VIOLATION OF GILPIN COUNTY
REGULATIONS OCCURRING ON THE ABOVEDESCRIBED PROPERTY.**

VIOLATION: Operating without required Special Use Review Permit

AFS Response:

Albert and Mary Jane Frei Irrevocable Trust (owner) and Albert Frei & Sons, Inc. (operator) are legally operating the Gilpin Fill operation under Special Use Review (SUR) Permit No. 06-03 issued January 16, 2007, by the Gilpin County Board of County Commissioners (Attachment 1).

In addition, below are AFS responses to the three issues raised in the 12/21/2021 Gilpin County Letter:

1. *The Second Amendment Is in Violation of County Zoning Regulations and Cannot Proceed Until the Violations Are Adequately Addressed.*

AFS Response: The Second Amendment or Walstrum Spur Amendment (“Spur Amendment”) is not a violation of the Gilpin County Zoning Regulations as the Spur Amendment is located entirely in Clear Creek County. All of the statutory standards and conditions of the DRMS process were followed and the Spur Amendment was approved by the Mined Land Reclamation Board (MLRB) on November 17, 2021. See Attachment 2 for a copy of the November 19, 2021 MLRB Approval Letter.

2. *Before the Second Amendment Can Move Forward, Specific Notice of the Second Amendment Application to Gilpin County Is Required Based on Use and Proximity of the Waste Fill Site in Gilpin County – Affected Land and Immediately Adjacent Land.*

AFS Response: The issue of notice to Gilpin County was previously raised by Mr. Tim Priester in an email to DRMS on September 13, 2021. DRMS reviewed the Public Notice process AFS followed and concluded that all notice requirements were met. See Attachment 2 for a copy of the MLRB Approval Letter. In addition, AFS sent a 4-page detailed response (Attachment 3) to Mr. Priester and several other Douglas Mountain residents located in Jefferson County on October 6, 2021 addressing their concerns raised in a September 10, 2021, email to DRMS. We also invited 35 Douglas Mountain residents, of which 6 attended, to a meeting on October 13, 2021 to address their concerns.

3. *Environmental Concerns from Impacts to Water, Air, and the Environment.*

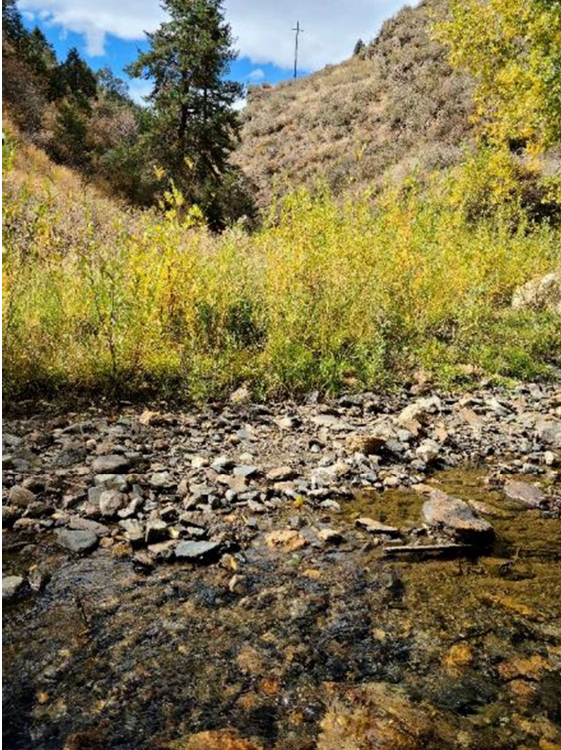
AFS Response: These issues and the accompanying pictures were also raised by Douglas Mountain Jefferson County residents and addressed by DRMS and Colorado Department of Public Health and Environment (CDPHE) during the Spur Amendment permitting process. Excerpts from our October 6, 2021 response to Douglas Mountain (Attachment 3) are included below.

Dust: The pictures that you provided showing dust from the Gilpin County fill pile are what we strive to prevent. The pictures appeared to be taken on a very windy day. Any time high winds carry across disturbed areas, windblown dust can occur. There are four measures we take to avoid dust: (i) we don’t haul fines to the fill pile when there are high winds; (ii) we water the top of the fill pile; (iii) we apply a dust suppressant to the top of the fill pile; and (iv) we place growth medium on top of the fill pile. Most days, these measures are effective and little to no dust is visible. In the near future, this area will be reclaimed, which will further reduce dust potential.

Stormwater Discharge: The pictures provided with your letter show an area on North Clear Creek. As you are likely aware, the September 13, 2013 flood was a catastrophic, isolated 100-year flood event, act of nature, that caused catastrophic problems at hundreds of sites across the Front Range including loss of life and damage to property. AFS quickly executed in all its capacity to report, manage, mitigate, and rectify this unique natural disaster. AFS collaborated with Gilpin County, the Clear Creek Watershed Foundation, US Army Corp of Engineers, a Certified Contractor and RMC

Consultants to perform remediation of North Clear Creek. In all, AFS funded this project with no State emergency funding used. The area recovered shortly thereafter.

The April 30, 2015 Post-Construction Summary for Flood Damage Repair following the 2013 flood event was submitted to Tony Petersen, former Gilpin County Community Development Director. This report is included as Attachment 4. All stormwater from the Gilpin Fill is treated by a sedimentation basin prior to discharge to North Clear Creek. The discharge location to North Clear Creek has recovered and today is a healthy, thriving riparian ecosystem. See pictures below.



October 6, 2021 Picture of North Clear Creek Discharge Location (left), looking upstream (right)

In addition, there are a number of items in the 12/21/2021 Gilpin County Letter that merit a response:

a. Performance Bond:

AFS Response: During an audit of our Gilpin County SUR permit in October 2021, AFS discovered that we had no records of a performance bond being in place for the fill as required by the SUR. On October 27, 2021 Joel Bolduc, AFS Land and Environment Manager, sent Brad Benning an email requesting whether Gilpin County had any records of an AFS bond for the fill and if not, whether a cash bond was acceptable. See Attachment 5 for a copy of the email. To date, we have received no response. Further, in accordance with Condition #10 of the SUR Permit, we have prepared a current bond calculation up from the original calculation in 2007 of \$25,285 to \$137,000 for 2021 based upon the Colorado State MLRB formula. However, we are still awaiting a response as to whether a cash bond will suffice or whether another form of bond will be required. AFS will fully comply with this requirement in a timely fashion when directed by Gilpin County on their bond protocols.

b. Fill Volume limit of 5.5 million cubic yards:

AFS Response: Please note that Bob Young, Jr prepared an exhibit for the MLRB hearing in November 2021 that incorrectly tabulated the Gilpin Fill volumes. This may or may not be the erroneous source of data that was cited in the 12/21/2021 Gilpin County Letter. We have tabulated the numbers from our submitted annual reports for the duration of the permit and the reported volume is 5,442,133 cubic yards as shown in the table in Attachment 6. In response to uncertainty around the actual fill volume, in October 2021, we engaged a professional surveyor to conduct an accurate survey of the fill volume. That survey compares 2007 pre-fill topography with current topography and estimates a fill volume of 5,461,535 cubic yards. See Attachment 7 for a copy of the survey. Again, we would like to reiterate that the filling of the Gilpin Fill will be completed by June of 2022 and final reclamation has started and will continue until the completion.

c. Placing of buildings, equipment, vehicles and conducting other mining operations:

AFS Response: These issues were also brought up and addressed during the Spur Amendment permitting process. There are no buildings, mining equipment or vehicles related to extraction in the Gilpin Fill permit area. There are no mining operations in Gilpin County as confirmed by DRMS on several occasions. Please note that fill-related heavy equipment, e.g. water truck, dozer, and fill-related materials will be stored in the Gilpin Fill permit area as needed to complete the fill and reclamation. Upon closure and final reclamation, all equipment and materials will be removed.

d. The fill site is affected area and should be under DRMS supervision:

AFS Response: This is a settled matter. On January 16, 2007, Gilpin County approved the fill activity with SUR No. 06-03 (Attachment 1). On June 12, 2007, Gilpin County submitted a memorandum to DRMS stating the county approved the fill plan (Attachment 8). On July 11, 2007, DRMS issued a Declaratory Order exempting the proposed fill activity from the requirement of obtaining a reclamation permit (Attachment 9).

The issue was brought up during the DRMS Spur Amendment permitting process by Douglas Mountain residents and Bob Young, Jr. A response to the Douglas Mountain residents was sent on October 6, 2021 (Attachment 3) and to Bob Young, Jr on September 30, 2021 (Attachment 10). The DRMS also addressed this matter in their Rationale for Recommendation for Approval dated October 29, 2021. See excerpt below and Attachment 11 for the entire Rationale.

“In July 2007, the Board approved the Applicant’s request for a declaratory order exempting the fines storage facility activities located in Gilpin County from the requirement of obtaining a reclamation permit. By granting this exemption, the Board determined that the storage facility did not constitute “affected land”, exempting it from regulation under the Act and Rules and removing it from DRMS/MLRB jurisdiction. The area is covered under a Special Use Review permit issued by Gilpin County, and has been and continues to be regulated by Gilpin County.”

In closing, AFS is disappointed in Gilpin County’s course of conduct after having a good working relationship for the past 15 years. The Frei family is also a significant community citizen and large

landowner in Gilpin County. Issuing a Notice of Violation based on hearsay and no investigation is unprofessional. The NOV is based on a lack of understanding of the DRMS permitting process, lack of understanding of the Gilpin Fill regulatory history and relies on citizen letters riddled with many statements that are categorically false.

It is particularly disheartening to read these false statements, when AFS completed the sediment removal project on North Clear Creek. I, Al Frei Jr, President and Owner, personally supervised the project with sincere remorse and diligent dedication to make this natural disaster-caused event right. Not only did AFS collaborate with professionals to perform that remediation, but I also personally made sure that no expense was spared and that the land was left better than we found it.

Our rock products are not only used to make our lives easier and more comfortable (housing, roads, bridges), but also in hundreds of environmental improvement projects each year such as boulders in Clear Creek in Jefferson County and rip rap along creeks and mine remediation project to reduce erosion and sediment loading to the creek. Most of the rock products in the recently opened Gateway Park at the mouth of Clear Creek Canyon in Jefferson County came from the Walstrum Quarry. The morning following the 2013 flood, Road & Bridge trucks from several surrounding counties were at our gate with emergency Purchase Orders in hand to obtain aggregate to reopen the roads along the Front Range and especially the canyons, Clear Creek, Golden Gate, Coal Creek, Left Hand and Boulder.

Regarding the Gilpin Fill, we will close the fill area no later than June 30, 2022. Final reclamation has begun and will be worked on until it is completed.

At AFS, we take our commitment to environmental compliance seriously and consistently strive to achieve full compliance. Where we fall short, we change and improve. We understand that our quarry has impacts on the surrounding communities. We work hard to minimize those impacts. Our quarry also provides an incredible number of benefits to the Front Range area including Gilpin, Jefferson, and Clear Creek Counties in the form of employment, taxes, community involvement, and rock products. A balanced and reasonable approach is needed here.

We are willing to work with Gilpin County to address any remaining concerns that you have regarding the fill pile and will communicate with Gilpin County during the Clear Creek County land use zoning process for the Spur Amendment. We look forward to your upcoming site visit to our quarry and the fill area.

If you have any questions, please contact me at 303-913-6502 or Joel Bolduc, AFS Land and Environment Manager at 303-913-6583.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Al Frei Jr', is positioned above the printed name.

Al Frei, Jr,
President

Enclosures:

- Attachment 1 – January 16, 2007 Gilpin County SUR No. 06-03
- Attachment 2 – November 19, 2021 MLRB Approval Letter
- Attachment 3 – October 6, 2021 Response Letter to Douglas Mountain Residents
- Attachment 4 – April 30, 2015 Post-Construction Summary for Flood Damage Repair
- Attachment 5 – October 27, 2021 Joel Bolduc email to Brad Benning regarding Performance Bond
- Attachment 6 – 2007-2021 Table of Reported Fill Volumes
- Attachment 7 – October 27, 2021 Gilpin Fill Volume Survey
- Attachment 8 – June 12, 2007 Gilpin County Memorandum to DRMS
- Attachment 9 – July 11, 2007 MLRB Declaratory Order
- Attachment 10 – September 30, 2021 Response to Bob Young, Jr.
- Attachment 11 – October 29, 2021 DRMS Rationale

Cc:

Sarah Baciak, Gilpin County, Paralegal, sbaciak@gilpincounty.org
Tami Archer, Gilpin County, Interim Community Development Director, tarcher@gilpincounty.org