



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

April 8, 2022

Bruce Newell
P.O. Box 37
Divide, CO 80814

**RE: Adequacy Review, 110c Construction Materials Application
Wellington Cattle Borrow Pit, File No. M-2021-025**

Dear Mr. Newell,

The Division of Reclamation, Mining, and Safety (Division) has reviewed the content of your 110c Construction Materials Reclamation Permit Application for the proposed operation known as Wellington Cattle Borrow Pit, File No. M-2021-025, and submits the following comments. **The Division is required to make an approval or denial decision no later than May 9, 2022; therefore, a response to the following adequacy review concerns should be submitted to the Division as soon as possible.** If more time is needed to respond to this Adequacy Review, the Division can grant an extension of the decision date following a request by the Applicant. Please respond to this Adequacy Review with the requested information and summarize each response to the numbered items below, in a cover letter titled "Adequacy Review Response; M-2021-025".

The review consisted of comparing the application content with specific requirements of Rules 1, 3, 6.1, 6.2, and 6.3 of the Minerals Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials. Any inadequacies are identified under the respective exhibit.

GENERAL APPLICATION PROCEDURES

1. As required by Rule 1.6.2(1)(g), please submit proof of publication of a public notice in a newspaper of general circulation in the locality of the proposed mining operation.
2. As required by Rule 1.6.2(1)(g), please submit proof that the public notice was provided to all owners of record of surface and mineral rights of the affected land and to the owners of record of all land surface within 200 feet of the boundary of the affected land. Proof of notice may be return receipts of a certified mailing or by proof of personal service.
3. The Division received a comment letter from History Colorado regarding the application. The letter is attached for your review. Please acknowledge and address any comments noted in the letter and make changes to the application as necessary.

GENERAL ADEQUACY ITEMS

4. The application form lists a Permitted Acreage of 9.9 acres on Page 1, Question 3. The Introduction, Exhibit A, Exhibit D, the map titled Exhibit D all state the permit is for 4.9 acres. Please revise the application form or the application materials to accurately reflect the proposed permit acreage.
5. The Application materials contain 4 maps (*Topographic Map, Exhibit A/Exhibit B, Exhibit C, and Exhibit D*). These maps do not comply with the general map requirements of Rule 6.2.1(2) and the specific map requirements for Exhibit A and Exhibit E. The Division could not determine in which specific Exhibit(s) the four provided maps should be in as the titles do not match the appropriate permit exhibits; please title



the revised maps to match the appropriate exhibit. At a minimum, the Application shall provide an Exhibit A Location Map, an Exhibit E Mine Plan Map, and an Exhibit E Reclamation Plan Map. If needed, the Applicant may provide additional maps if a single map becomes too crowded by attempting to provide all of the required information for that specific map (i.e. Exhibit A Location Map 1 and Exhibit A Location Map 2, or Location Map A-1 and Location Map A-2, etc.).

No response needed, please refer to Exhibit A and Exhibit E adequacy items below.

As a reminder, in accordance with Rule 6.2.1(2), all maps submitted must:

- Show name of Applicant;
- Be prepared and signed by a registered land surveyor, professional engineer, or other qualified person;
- Give the date the map was prepared;
- Identify and outline the permit boundary;
- Show the map scale and scale bar. With the exception of the location map, maps shall be prepared at a scale that is appropriate to clearly show all elements that are required to be delineated by the Act and these Rules. The acceptable range of map scales shall not be larger than 1 inch = 50 feet nor smaller than 1 inch = 660 feet; and
- Include an appropriate legend, map title and north arrow.

EXHIBIT A – Legal Description and Location Map (Rule 6.3.1)

6. The Maps titled *Topographic Map*, *Exhibit A/Exhibit B*, and *Exhibit C* contain some but not all of the required information outlined in Rule 6.3.1(2) and Rule 6.3.1(3). Please submit a revised Location Map (a standard USGS topographic quadrangle or equivalent is acceptable) which shows:
 - Information sufficient to determine the location of the affected land on the ground;
 - Existing and proposed roads or access routes to be used in connection with the mining operation;
 - Names of all immediately adjacent surface owners of record;
 - The location of the proposed operation with the mine site name labeled; and
 - The latitude and longitude coordinates of the main entrance to the mine site.

EXHIBIT B – Site Description (Rule 6.3.2)

7. As required by Rule 6.3.2(2), the Applicant must provide a description of the vegetation and soil characteristics in the area of the proposed operation. Within Exhibit B, the Applicant provided a very limited description of the soils and did not address vegetation. Please provide a description of the vegetation and provide additional details regarding the soil characteristics. The local office of the Natural Resources Conservation Service (NRCS) may be able to provide you with this information. The Division suggests you include a soil report map and the soil unit print outs for each soil unit within the proposed permit area within Exhibit B; this information can be obtained for free online at <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.
8. Within Exhibit L, the Applicant has identified two permanent man-made structures within 200 feet of the permit boundary, however Exhibit B only lists the Colorado Natural Gas pipeline. Please revise Exhibit B to include Highway 67 in accordance with Rule 6.3.2(b).
9. Within Exhibit B, the Applicant has indicated there are no water resources within the area of the proposed operation. Please note, the Division considers the “area of the proposed operation” as the vicinity which could receive drainage from the mine and this is not restricted to the area solely within the proposed permit boundary. It appears the site is located between two small drainages which report to an upper tributary of

Fourmile Creek just west of the proposed site. Please revise Exhibit B to reflect this water resource as required by Rule 6.3.2(c). Please also address any known or estimated ground water elevations within the area.

EXHIBIT C - Mining Plan (Rule 6.3.3)

10. In accordance with Rule 6.3.3(a), please specify the estimated dates that mining will commence and end. Please also specify if the operation is intended to be considered intermittent (mining activities will occur less than 180 days per year).
11. Within Exhibit C, the Applicant states topsoil stockpiles will be seeded with a rangeland seed mix or quick oats. Please provide the rangeland seed mix, the type quick oats, and the seeding rates of the mix and the oats. Alternatively, the Division recommends the Applicant commit to utilizing the approved reclamation seed mixture to help establish a beneficial seed bank within the topsoil to aide in revegetation upon topsoil replacement for final reclamation.
12. As required by Rule 6.3.3(d), please specify the thickness of the deposit to be mined. Please note, the Introduction states the depth of the excavation will be 25-30 feet.
13. As required by Rule 6.3.3(f), please specify the approximate dimensions of the excavation. Please also discuss the maximum mining slopes during the operation (e.g. near vertical highwall, a 3H:1V slope which matches the final slope along the eastern boundary or somewhere between).
14. As required by Rule 6.3.3(i), please provide details on how the Applicant will control stormwater to prevent off-site sedimentation. Please note, if the Applicant intends to contain stormwater on-site, it must infiltrate into the ground or be released to its stream system within 72 hours for compliance with Colorado water law, pursuant to Rule 6.3.3(j).
15. In accordance with Rule 6.3.3(i) and 6.3.3(j), please affirmatively state that groundwater will not be exposed by the operation, and in the event that groundwater is exposed, commit to backfilling the exposure to at least 2 feet above the groundwater table.
16. The Applicant states that mine boundaries will be used to minimize the disturbance to the hydrologic balance, prevent off-site damage, and to provide a stable configuration of the reclaimed area. Please provide additional details on what measures will be taken by the Applicant to comply with Rule 6.3.3(l).
17. As required by Rule 6.3.3(m), please state whether or not the deposit will be processed on-site and provide details on how the deposit will be mined.
18. As required by Rule 6.3.3(i), please confirm there will be no incidental materials mined other than the intended construction material proposed for excavation.
19. The Division will calculate a reclamation bond cost estimate based on the responses to this adequacy letter. You will be provided copy of that reclamation cost estimate for review before the decision date.
No further response needed.

EXHIBIT D – Reclamation Plan (Rule 6.3.4)

20. The Applicant is proposing to mine material from within the permit boundary, leaving a large flat area that will be used for a truck turnaround and hay storage. Although Adequacy Item #25 requires a revised Exhibit

E Reclamation Plan map which will depict the post mining topography, please discuss within Exhibit D which areas will have the 3H:1V final slope and receive topsoil and reseed measures. Please also provide the acreage of both areas (flat agricultural storage area and reclaimed slopes).

21. The Applicant states the expected topsoil replacement depth to be 2 inches based on an anticipated 0-4 inch range in the area of the permit. As the Applicant is proposing to leave a large area that will not receive topsoil replacement, please discuss if all salvaged topsoil will be returned to the reclamation side slopes (likely exceeding the original 4" maximum) or if the Applicant intends to use any of the excess topsoil for other uses.
22. In accordance with Rule 3.1.6(1), please discuss if the large flat area will have a slight slope to allow water to free drain and not pool on the surface following final reclamation.
23. In accordance with Rule 3.1.5(3) and 3.1.6(3), please discuss how the large flat area will be protected and stabilized from erosion.
24. Exhibit D does not address the majority of Rule 6.3.4(1)(c). Please specify the following measures that will be taken to revegetate the areas outside of the large flat agricultural storage area. If needed, the Division recommends you contact the Teller Park Conservation District for assistance with a recommended reclamation seed mixture and any other recommendations for reclamation success.
 - What time of year will the mining site be seeded.
 - Explain how the seedbed will be prepared to eliminate compacted conditions (e.g., plowed, chiseled, disced).
 - State the type, application rate, and soil incorporation methods for any fertilizer, if needed.
 - State the grass, forb, shrub and tree species to be planted and the applicable quantities. Specify the quantity of each grass and forb species as pounds of pure live seed per acre. Please provide the size and planting rates of the shrubs or trees if these are included within the revegetation plan.
 - Specify the application method for grass and forb seeding. If the seed is to be broadcast, the application rate shall be twice the rate required for seed drilling. If the seedbed has not been adequately roughened prior to seeding, the seed shall be raked or harrowed after broadcast application.
 - If a mulch is needed, specify the kind to be used, the crimping method, and rate of application.

EXHIBIT E – Maps (Rule 6.3.5)

25. The Map titled *Exhibit D* contains some but not all of the required information outlined in Rule 6.3.5(3) for the Mine Plan Map. Additionally, there was not a Reclamation Plan Map included in the application materials. In addition to the general map requirements of Rule 6.2.1(2), the Applicant must provide a Mine Plan Map to clearly describe the features associated with the mining plan and must provide a Reclamation Plan Map to depict the components of the reclamation plan. The maps must be drawn to a scale no smaller than appropriate to clearly show all elements that are required to be delineated by the Act and these Rules. At a minimum, maps must include the following information:

Mining Plan Map

- Outline and label the permit boundary;
- Label the names of owner(s) of record of the surface of the affected area and of the land within two hundred (200) feet of the affected area;
- Identify the owner of the substance to be mined;
- Note the location of any significant, valuable, and permanent man-made structures within two hundred (200) feet of the affected area. Label the type of structure and the owners of the structure;

- Outline and label all major surface features to be used in connection with the proposed operation such as: existing and proposed roads, pit boundary, topsoil stockpiles, overburden stockpiles, product stockpiles, waste rock fills, stream channels, buildings, processing plant, underground openings such as adits or ventilation facilities, ponds, impoundments, dewatering pumps, diversions or waste disposal areas;
- Indicate the direction that construction material extraction will proceed;

Reclamation Plan Map

- Show the gradient of all reclaimed slopes (horizontal:vertical) sufficient to describe the post mine topography. It is recommended to depict the anticipated post-mining topography by including appropriate contour lines;
- Indicate where vegetation will not be established; and
- State the average thickness of replaced topsoil.

EXHIBIT F – List of Other Permits and Licenses Required (Rule 6.3.6)

26. Within Exhibit F, the Applicant indicates there are no other applicable permits, licenses, or approvals for the proposed operation. In accordance with Rule 6.3.6, please demonstrate that a Stormwater Management Plans (SWMP) from the Colorado Department of Health and Environment – Water Quality Control Division and a Special Use Permit from Teller County are not needed for this proposed operation or commit to obtaining the necessary authorizations from these agencies.

EXHIBIT H – Municipalities Within a Two-mile Radius (Rule 6.3.8)

27. Within Exhibit H the Applicant provided a list of utilities/structures instead of identifying any municipalities (towns with municipal governments). Please confirm there are no municipalities within 2 miles of the operation.

EXHIBIT I - Proof of Filing with County Clerk (Rule 6.3.9)

28. Any changes or additions to the application on file with the Division, must also be reflected in the public review copy. Please submit proof that the public review copy has been updated or a copy of the response to this adequacy letter has been added to it.

EXHIBIT L – Permanent Man-Made Structures (Rule 6.3.12)

29. Within Exhibit L, the Applicant has identified two structures (gas pipeline owned by Colorado Natural Gas, Inc. and Highway 67 owned by CDOT) within 200 feet of the proposed permit boundary and indicated the agreements would be sent when they are obtained by the Applicant. On March 3, 2022, the Division received the agreement between the Applicant and Colorado Natural Gas, Inc. Please submit the missing agreement with CDOT in accordance with Rule 6.3.12.
30. Upon review of the structure agreement between the Applicant and Colorado Natural Gas, Inc., the Division requires additional information regarding the proposed permit operation.
- Within Section 1 – Grant of Encroachment, the agreement states the Applicant will only use a Mack Midliner 600 tandem dump truck for ingress and egress on the easement area and that any other vehicles are not permitted within the easement area. As proposed, the operation is accessed by driving down the gas pipeline easement, approximately 1,000 feet from the driveway access off of Highway 67. It appears the Applicant will need to either modify the proposed operation or obtain a

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revised agreement that includes all of the other equipment which will be used during the mining and reclamation phases of the operation.

- Within Section 2 - Performance of Work, the agreement states that the Applicant will be conducting operations not less than 200 feet outside of the easement areas. The Division doesn't understand how the operation can proceed as proposed with this 200-foot required buffer. Current disturbances, which the MLRB has required to be permitted are located immediately adjacent to the gas pipeline easement. It appears the Applicant will need to either modify the proposed operation or obtain a revised agreement. Please note, all current disturbances will need to be included within the proposed permit boundary, however, activities could be limited to "reclamation only" if a buffer must remain. Additionally, please include the gas pipeline easement and the buffer area on the Exhibit E mine Plan Map.

This concludes the Division's adequacy review of this application. This letter shall not be interpreted to mean that there are no other technical deficiencies in your application; other issues may arise as additional information is supplied. Please be advised the permit application may be deemed inadequate, and the application may be denied on May 9, 2022, unless the above mentioned adequacy review items are addressed to the satisfaction of the Division. **If more time is needed to complete the reply, the Division can grant an extension to the decision date. This will be done upon receipt of a written waiver of the Applicant's right to a decision by May 9, 2022, and the request for additional time. This must be received no later than the deadline date.**

If you need additional information or have any questions, please contact me at Division of Reclamation, Mining and Safety, 1313 Sherman Street, Room 215, Denver, CO 80203, by telephone at **303-866-3567 x8132**, or by email at elliott.russell@state.co.us.

Sincerely,



Elliott R. Russell
Environmental Protection Specialist

Enclosure: Comment Letter - History Colorado M2021025

cc: Nikie Gagnon, Division of Reclamation, Mining & Safety
Jason Musick, Division of Reclamation, Mining & Safety