

STATE OF  
COLORADO

Gagnon - DNR, Nikie &lt;nikie.gagnon@state.co.us&gt;

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**Response to Citizen Complaint, M-2022-017**

1 message

**Gagnon - DNR, Nikie** <nikie.gagnon@state.co.us>

Wed, May 4, 2022 at 2:14 PM

To: denningte@rtebb.net

Cc: Jason Musick - DNR &lt;jason.musick@state.co.us&gt;

Dear Mr. Denning,

Thank you for contacting the Division of Reclamation, Mining and Safety (Division/DRMS) regarding the unpermitted mining occurring at a borrow pit within Section 3 T1S 63W in Adams County. The Division conducted an inspection on April 25, 2022 and the inspection report is attached.

As noted in the inspection report, based on the history of the existing pit and the amount of material moved by Clayton Homes, the Division will not pursue a violation for mining without a permit at this time. However, the Division informed Clayton Homes and Mr. Huwa, of Turnpike LLC that in the future, if material leaves the site without a mining permit in place, enforcement action will be pursued by the Division.

We appreciate you reaching out to us regarding the illegal mining and the possible agreement between the parties to take material off-site in the future. Please don't hesitate to contact the Division again if you witness material leaving the site. Here is the link to our website to report possible violations: [https://dnrlaserfiche.state.co.us/forms/DRMS\\_Complaint](https://dnrlaserfiche.state.co.us/forms/DRMS_Complaint).

Kind regards,

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Nikie Gagnon

Environmental Protection Specialist

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

P 303.866.3567 x8126 | C 720.527.1640 | F 303.832.8106  
Physical: 1313 Sherman Street, Room 215, Denver, CO 80203  
Mailing: DRMS Room 215, 1001 E 62nd Ave, Denver, CO 80216  
[nikie.gagnon@state.co.us](mailto:nikie.gagnon@state.co.us) | <https://www.drms.colorado.gov>

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**2 attachments****M2022017\_Clayton Homes\_ DRMS Response to Complaint.pdf**  
2400K**IsItMining.pdf**  
601K



## MINERALS PROGRAM INSPECTION REPORT

PHONE: (303) 866-3567

The Division of Reclamation, Mining and Safety has conducted an inspection of the mining operation noted below. This report documents observations concerning compliance with the terms of the permit and applicable rules and regulations of the Mined Land Reclamation Board.

<b>MINE NAME:</b> Clayton Homes Pit	<b>MINE/PROSPECTING ID#:</b> M-2022-017	<b>MINERAL:</b> Sand and gravel	<b>COUNTY:</b> Adams
<b>INSPECTION TYPE:</b> Illegal (Unpermitted Operation)	<b>INSPECTOR(S):</b> Nikie Gagnon	<b>INSP. DATE:</b> April 25, 2022	<b>INSP. TIME:</b> 10:00
<b>OPERATOR:</b> Clayton Homes	<b>OPERATOR REPRESENTATIVE:</b> Mike Jansen	<b>TYPE OF OPERATION:</b> ILL - Illegal	

  

<b>REASON FOR INSPECTION:</b> Citizen Complaint	<b>BOND CALCULATION TYPE:</b> NA	<b>BOND AMOUNT:</b> NA
<b>DATE OF COMPLAINT:</b> April 20, 2022	<b>POST INSP. CONTACTS:</b> None	<b>JOINT INSP. AGENCY:</b> None
<b>WEATHER:</b> Clear	<b>INSPECTOR'S SIGNATURE:</b> 	<b>SIGNATURE DATE:</b> May 4, 2022

### GENERAL INSPECTION TOPICS

This list identifies the environmental and permit parameters inspected and gives a categorical evaluation of each. No problems or possible violations were noted during the inspection. The mine operation was found to be in full compliance with Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials and/or for Hard Rock, Metal and Designated Mining Operations. Any person engaged in any mining operation shall notify the office of any failure or imminent failure, as soon as reasonably practicable after such person has knowledge of such condition or of any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property or to the environment; or any environmental protection facility designed to contain or control chemicals or waste which are acid or toxic-forming, as identified in the permit.

(AR) RECORDS----- <u>Y</u>	(FN) FINANCIAL WARRANTY----- <u>N</u>	(RD) ROADS----- <u>N</u>
(HB) HYDROLOGIC BALANCE----- <u>Y</u>	(BG) BACKFILL & GRADING----- <u>Y</u>	(EX) EXPLOSIVES----- <u>N</u>
(PW) PROCESSING WASTE/TAILING---- <u>N</u>	(SF) PROCESSING FACILITIES----- <u>N</u>	(TS) TOPSOIL----- <u>N</u>
(MP) GENL MINE PLAN COMPLIANCE- <u>N</u>	(FW) FISH & WILDLIFE----- <u>N</u>	(RV) REVEGETATION---- <u>N</u>
(SM) SIGNS AND MARKERS----- <u>N</u>	(SP) STORM WATER MGT PLAN---- <u>N</u>	(RS) RECL PLAN/COMP-- <u>N</u>
(ES) OVERBURDEN/DEV. WASTE----- <u>N</u>	(SC) EROSION/SEDIMENTATION--- <u>Y</u>	(ST) STIPULATIONS----- <u>N</u>
(AT) ACID OR TOXIC MATERIALS----- <u>N</u>	(OD) OFF-SITE DAMAGE----- <u>N</u>	

Y = Inspected / N = Not inspected / NA = Not applicable to this operation / PB = Problem cited / PV = Possible violation cited

## **OBSERVATIONS**

This inspection was prompted by a complaint received on April 20, 2022, by the Division of Reclamation, Mining and Safety (Division/DRMS) indicating that unpermitted mining was potentially occurring at a borrow pit and material was being transported to a new home site nearby to be used as fill. The complaint located the site in Section 3 T1S 63W, one half mile west of Highway 79 on Weld County Road 2. The Division conducted a records search and determined no mining permit exists at this location. Todd Denning, the complainant, is an adjacent landowner concerned about the excavating activity causing severe erosion to the county road and impacting groundwater. Nikie Gagnon and Jason Musick represented the Division during the inspection and were joined by Justin Markwardt, representing Clayton Homes, the company responsible for moving material off site. Todd Denning was present at the start of the inspection to relay his concerns to Mr. Markwardt but did not stay for the duration of the inspection. The weather was clear and sunny.

The Division reviewed Google Earth imagery which shows a borrow pit at this location since the early 2000s. The borrow pit has expanded over the years and the disturbance area is currently 1.21 acres (Photo 1). The Division contacted Richard Huwa of Turnpike LLC, who is listed as the property owner on the Adams County Assessor website. Mr. Huwa stated that he sold the property to Clayton Homes in November 2021. When asked about the borrow pit, Mr. Huwa stated that he routinely excavated material from the pit to fill sprinkler tracks on the property. According to Mr. Huwa, the Division was called out to investigate this practice in the past and determined that he was not mining because excavated material did not leave the property. No records were found in the DRMS permit system to confirm a previous inspection, however, Todd Denning, the adjacent landowner and complainant, acknowledged that the pit has been there for years and previous owners used material from the pit for agriculture practices. Mr. Denning's current concern with the activity is that the material removed from the pit was trucked off-site by the new owner, Clayton Homes, and groundwater could be impacted if Clayton Homes excavated any deeper into the pit. Although Mr. Denning stated in the complaint that the illegal mining of sand and soil is occurring in the West Sand Creek waterway, the Division determined West Sand Creek is approximately 400 feet east of the pit (Photo 2). Imagery of the area shows a ditch that intersects the south highwall of the pit (Photo 2 & 3). During the inspection, there was no evidence of exposed groundwater or stormwater in the pit.

Google imagery from April 20, 2021 and GPS points taken during the inspection shows the boundary of the pit wall has not expanded since Clayton Homes purchased the property in November, 2021 (Photo 1). During the inspection, Justin Markwardt confirmed that Clayton Homes removed ten truckloads of material on one day during the previous week and drove it to a home site approximately 5 miles north of the borrow pit. The fill material was removed from the northwestern side of the pit (Photos 5 & 6). Justin Markwardt estimated that the amount of material was 250 cubic yards (25 cubic yards per truck). Justin Markwardt stated that Clayton Homes was not aware of the requirement for a permit to move material between properties and now that they are informed of the process, the company has no plans to submit a permit application to mine the borrow pit.

Based on the history of the existing pit and the amount of material moved by Clayton Homes, the Division will not pursue a violation for mining without a permit at this time. However, the Division informed Clayton Homes and Turnpike LLC of the requirement to obtain a permit to remove material from the property. If any similar activities are anticipated in the future, it is required that the contractor complete an Is It Mining form (attached) and submit it to our office for an official determination of the proposed activities.

Photographs taken during the inspection are attached.

Please contact Nikie Gagnon (303)866-3537 ext. 8126 or email at [Nikie.Gagnon@state.co.us](mailto:Nikie.Gagnon@state.co.us) if you have any questions regarding this report.

## PHOTOGRAPHS



**Photo 1:** Google earth imagery photo from April 20, 2021. Red boundary shows the current disturbance surveyed on 4/25/2022. For safety reasons, GPS points were taken approximately 5 feet away from the high wall.



**Photo 2:** Google earth imagery photo from April 20, 2021 showing location of West Sand Creek, east of the pit. Arrow points to ditch.





**Photo 3:** Entrance to borrow pit looking south. Photo taken from Weld County Road 2. Red arrow indicates where the ditch enters the pit.



**Photo 4:** Looking south at ditch located on the south side of the pit. Water flows north into borrow pit.



**Photo 5:** Looking southwest from inside the pit. Red circle indicates area where material was excavated and removed from the site.



**Photo 6:** Looking northwest from southern edge of pit. Red circle indicates area where material was excavated and removed from the site.





**Photo 7:** Looking southwest from the road. Stockpiled material along western edge of the pit.



**Photo 8:** Closer view of stockpiled material along western edge of the pit.





**Photo 9:** Looking north at the eastern edge of the pit.



**Photo 10:** Looking east at the southern wall of the pit.





**Photo 11:** Looking east, previous disturbance above southern highwall of the pit.

**Inspection Contact Address**

Mike Jansen, Clayton Homes  
3455 W Service Road  
Evans, CO 80620

Attachment: Need for a State Reclamation Permit: "Is It Mining"

CC: Justin Markwardt, Clayton Homes  
Richard Huwa, Turnpike LLC  
Jason Music, Senior EPS, DRMS