



Community Planning & Permitting

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NOTICE OF TERMINATION OF NONCONFORMING STATUS

March 30, 2023

Colorado Milling Company, LLC
PO Box 1245
Moab, UT 84532

Under Article 4-1003(H) of the Boulder County Land Use Code (the “Land Use Code”), the Director has determined that the right to continue the nonconforming use at 9523 Sunshine Canyon Drive, Parcel #145912000123 (“the Property”), has terminated. The basis for this determination is detailed below.

On February 10, 2023, the Boulder County Community Planning & Permitting Department (CPP) received a notice for referral for an application for milling operations on the Property, associated with permit M-1994-117. This approximately 4.65-acre parcel is in the Forestry (F) District. Deed records show that Colorado Milling Co., LLC acquired the property in 2013.

In 1983, subsurface mining was a use by right in the Forestry Zoning District. Accordingly, no land use approval process was required prior to the issuance of building permits related to subsurface mining in 1983 (BP-83-0777) accessory milling of ore sourced on the Property in 1985 (BP-85-1213).

The Boulder County amended the Land Use Code in 1997 to require Development Plan Review for subsurface mining activities in the Forestry District. The current version of the Land Use Code requires Development Plan Review, Limited Impact Special Review, or Special Review for subsurface mining in the Forestry District, depending on the nature of the activity. (Art. 40408(D)(5)). Because the County has not a development permit under the current provisions of the Land Use Code for mining activities on the Property, the mining and milling activities on the Property were a nonconforming use.

Article 4-1003 Nonconforming Uses, section G states:

- 1 . The right to continue a nonconforming use terminates as soon as the use is abandoned through the discontinuance of the use for an uninterrupted period of six months or more, as a result of causes within the control of the property owner or their agent.
 - a . Discontinuance of the use shall be a complete cessation of all activity on the property related to the use in relationship to the nature and history of the nonconforming use, based upon available public information on the use.

As part of the Department of Reclamation, Mining and Safety's (DRMS) 2014 annual reporting process for Permit M-1994-117, Mark Steen (Colorado Milling Company's predecessor in interest) stated that all excavation, processing, and hauling on the Property ceased in 2008. Based on this statement, it is evident that mining and ore processing activities did not occur on the Property from 2008 to the time of annual reporting in 2014. In addition, DRMS approved a five-year Temporary Cessation request for the Property in June of 2013, indicating that mining and ore processing activities also did not occur on the Property from June of 2013 to June of 2018. Furthermore, the county has not seen any evidence that mining recommenced when the Temporary Cessation expired in June of 2018. As provided for under Article 4-1003 of the Land Use Code, any discontinuance of the mining use for an uninterrupted period of six months or more terminates the right to continue the nonconforming use. Therefore, the Director of Community Planning & Permitting has determined that because mining and ore processing activities have not occurred on the property for at least 14 years, the nonconforming use is terminated under Article 4-1003 of the Land Use Code.

You have 30 days from the date of this notice to provide satisfactory evidence demonstrating that this determination was made in error or to file an appeal of the Director's determination to the Boulder County Board of County Commissioners. You may also file a special use application for the proposed activity, but such activity will not be permitted to commence prior to approval of the application and applicable condition.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Vaughn', followed by a horizontal line.

Andrea Vaughn
Long Range Planner I
On behalf of the Director