

STATE OF
COLORADO

Lennberg - DNR, Patrick <patrick.lennberg@state.co.us>

O'Brien Objection Letter

Kent Naughton <knaughton@witwerlaw.com>

Fri, Aug 2, 2024 at 9:46 AM

To: "Patrick.Lennberg@state.co.us" <Patrick.Lennberg@state.co.us>

Patrick,

I have attached an objection letter and Exhibits A-H hereto. We will also mail hard copies.

Thanks,

Kent Naughton

Witwer, Oldenburg, Barry & Groom, LLP

822 7th Street, Suite 760

Greeley, CO 80631

Direct: (970) 313-4779

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9 attachments

**8.2.24 Objection Letter to DRMS.signed.pdf**

386K

**Ex A - L. O'Brien Letter.pdf**

215K

**Ex B - 8.2.24 Giroux Letter.pdf**

146K

**Ex C - Foster Letter - Coulson.pdf**

2310K

**Ex D - USR Findings.pdf**

1207K



Ex E - USR Site Plan.pdf

411K



Ex F - Galloway Letter.pdf

673K



Ex G - Galloway Map.pdf

9415K



Ex. H - Water Rights Dedication.pdf

45K

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August 2, 2024

Mr. Patrick Lennberg
Environmental Protection Specialist
Colorado Division of Reclamation, Mining & Safety (DRMS)
1313 Sherman Street, Room 215
Denver, CO 80203
Patrick.Lennberg@state.co.us

Re: Kirtright Pit – File No. M-1986-123, Coulson Excavating Company, Inc.
Amendment (AM-1)
Kirtright Pit Amendment

Submitted via e-mail and FedEx.

Dear Mr. Lennberg:

I write on behalf of Linda and Kevin O'Brien, both individually and as trustees of The O'Brien Living Trust (collectively "the O'Briens"), to object to the Kirtright Pit Amendment more specifically identified above, which has been submitted by Coulson Excavating Company, Inc. ("Coulson").¹ In addition to this letter, I attach herewith and incorporate herein the comments and objections contained in two additional letters. The first was previously submitted by Linda O'Brien, attempting to explain the impact upon her from a personal perspective. Ex. A, O'Brien Letter. The second is from the O'Briens' consulting engineer, Terramax, Inc., providing an engineering perspective. Ex. B, Giroux Letter.

OBRIEN OBJECTIONS AND COMMENTS

- 1. The Plan improperly depends upon operations at the adjacent Stroh Pit.*

DRMS cannot approve of the current Plan because the applicant does not have the legal right to carry out the Plan. The current plan is dependent upon the importation of 29,000 cubic yards of material from the adjacent Stroh Pit (DRMS Permit No. M-2002-078) in order to backfill Pond 2. See Application Exhibit E – Reclamation Plan. However, neither the DRMS Stroh Permit, nor the

¹ As used herein, the term "Plan" refers to all Kirtright Pit Amendment application materials, as amended and supplemented.

Larimer County Use by Special Review (“USR”) allow Coulson to import these Stroh Pit materials as proposed in the currently-pending Plan.

A brief summary of how this situation developed is illustrative of Coulson’s history of pursuing one set of plans with DRMS and an inconsistent set of plans with Larimer County. DRMS records show that in 2003, Coulson obtained a DRMS Permit to operate the Stroh Pit. Both Coulson’s original application, and the Stroh Pit Permit require mining procedures and processing on-site. However, before legally proceeding with operations, Coulson needed a USR from Larimer County. This USR application, however, generated a great deal of opposition from neighboring homeowners. In 2017, in an apparent attempt to convince the Larimer County Commissioners to approve of its highly-contentious USR, Coulson proposed to lessen the impact upon neighboring homeowners by utilizing a conveyor belt system to process materials on the Kirtright Pit.² This plan was successful, and in 2018, the County Commissioners voted 2-1 in favor of this conveyor belt plan and approved the USR. *See* Ex. D, USR Findings and Resolution, Recorded March 21, 2018; Ex. E, USR Site Plan. However, years of litigation and appeals quickly followed and did not conclude until July, 2023, with the courts ultimately upholding the original conveyor-belt-system USR that the County Commissioners had approved in 2018. But in the meantime, Coulson never obtained DRMS approval for its conveyor-belt plans by amending either its Kirtright Pit Permit or its Stroh Pit Permit. Instead, in connection with its annual reports for the Stroh Pit, Coulson has simply continued to submit its original Permit map as if its mining plans have never changed. *See, e.g.*, DRMS Files, Permit No. M-2002-078, Annual Report Maps filed Jan. 30, 2024 & Jan. 25, 2006. These annual-report maps continue to indicate an on-site asphalt plant, crusher site, and liquid asphalt storage, but give no indication of any conveyor belt system or off-site processing. DRMS records show that its staff has repeatedly warned Coulson that any Stroh Pit operations must be in accordance with its original Stroh Pit Permit, but Coulson has never sought DRMS approval of the conveyor belt system that is clearly required by—and integral to—its USR. And given the extreme opposition faced at the County level, it is far from certain that Coulson would be able to obtain an amendment to its USR that would allow it to legally carry out anything close to the mining plans that DRMS approved for the Stroh Pit (at Coulson’s request).

As a result, DRMS cannot approve of Coulson’s currently-pending Plan because Coulson simply does not have the right to legally carry out this Plan. Instead, the Plan should be revised so that it is not dependent in any way upon activities at the Stroh Pit. Coulson has many other operations nearby and has the resources to obtain the needed materials elsewhere.

² In connection therewith, Coulson’s attorney claimed, incorrectly, that “Coulson also leases property directly west of the [Stroh] Property, described as the ‘Kirtright Pit.’” Ex. C, Aug. 2, 2017 Foster Letter re: USR.

2. *The Seven-year timeline is unreasonable.*

Similarly, the reclamation timetable should be dramatically reduced. At present, Coulson proposes to complete reclamation in approximately seven years. This appears to be a timeframe taken directly from the current USR, which requires that “[a]ll mining and reclamation shall be completed no later than 7 years from the first material hauled from the site.” Ex. D, USR Findings and Resolution, Recorded March 21, 2018. But there is no reason for additional delay. Mining operations last took place on the Kirtright Pit in 2008, yet 16 years later, the O’Briens are still waiting for reclamation to be completed. A review of DRMS records indicates that in annual reports from 1989 through 2001, Coulson consistently reported no seeding of any kind. Nonetheless, in a 2002 inspection report, the DRMS inspector included observations that the northern portion of the permit site had been mined, backfilled and revegetated, and appears to have accepted Coulson’s claim that “this reclamation took place approximately 7-8 years ago.” See DRMS Files, March 27, 2002, Inspection Report. Thus, it would appear that Coulson’s seeding activity was minimal at best, and thus did not comply with the original reclamation plan. See Ex. E to Original Coulson Application, DRMS Files, dated Sept. 2, 1986) (calling for s reseeding with a specific seed mixture). In addition, as described in both the O’Brien and Giroux letters submitted herewith, unfinished and improper reclamation efforts have long forced the O’Briens to live with mosquito-breeding-ground mudflats instead of properly-functioning ponds and grasslands.³ Moreover, it has now been more than ten months since the DRMS Board, following a hearing, ordered Coulson to submit, “within 90 days of the effective date of [its] Order” an amendment application. DRMS Files, Nov. 27, 2023, Findings of Fact, Conclusions of Law, and Order. There is simply no just reason that Coulson should not be required to complete backfilling Pond 1 and Pond 2 so that reseeding and revegetation efforts can commence in the 2025 growing season. O’Brien understands that weed management may take years, as indicated in the Plan, but backfilling and reseeding should be completed in 2025. In addition, given Coulson’s history of failing to follow through with seeding and reclamation requirements, the O’Briens request vigorous and diligent oversight to ensure that the reseeding and weed control plans are properly carried to completion.

3. *The Plan must provide for improved flood protection of the O’Brien property.*

The Plan is also inadequate because it should provide for adequate drainage from O’Brien land after intermittent flooding events. This point is addressed more fully in the Giroux Letter

³ Coulson’s Reclamation Permit Application Form, received by DRMS on February 28, 2024, includes a checked box indicating that the Primary future (Post-mining) land use is Industrial/Commercial(IC). This is inconsistent with Exhibit E to the Plan at subsection (b), which states that this use will be “agricultural and residential.” This appears to be an inadvertent mistake, and if so, the O’Briens ask that it be remedied. Alternatively, if an extent an Industrial/Commercial post-mining use is intended, the O’Briens object.

attached hereto as Exhibit B. I would add, however, that there is good reason to be skeptical of Coulson's suggestion that it was forced to remove a previously-proposed drainage swale because of "wildlife implications if the operator encroaches within 300ft of the Big Thompson River." DRMS Files, May 6, 2024 Wayland Letter at page 4. In 2023, Coulson sought, and obtained, County approval for the installation of underdrains that require installation of pipe outfalls flush with the bank of the Big Thompson River. *See* Ex. F, March 21, 2023 Galloway Letter at page 2; *see also* Ex. G, Galloway Map of Conveyor and Underdrain Systems.

4. *The Plan does not comply with Rule 6.3.12*

The Plan also cannot be adopted as presented because Coulson has not yet complied with Rule 6.3.12 by providing either structure agreements or engineering evaluations. First, it is clear that Exhibit D to the Plan should be amended because the map does not correctly depict all significant structures within 200 feet of the affected lands. At present, Exhibit D appears to be inconsistent with Exhibit E. While not clear on the point, Exhibit E appears to reference topsoil that was previously segregated as soil that will be used in its reclamation efforts under the Plan. In an Inspection Report dated February 15, 2022, DRMS Staff noted that Coulson's actions in dumping about 25 dump trucks full of topsoil near Lacy Lane was not consistent with the existing reclamation plan and must be either removed or incorporated into the surrounding landscape. Coulson has never complied with this request, and indeed has added to the piles in the area. Thus, if Exhibit E is intended to call for these piles of topsoil to be moved and used the reclamation plan, the "affected area" includes the area near Lacy Lane lying south of Pond 2, and Coulson must comply with Rule 6.3.12 with respect to structures owned by significantly more homeowners. Alternatively, if the Plan is intended to leave the 25-plus piles of topsoil untouched, the O'Briens object, since this would clearly be inappropriate and inconsistent with previously-approved reclamation plans.

5. *The Plan should not be approved until bonding is adequate.*

The O'Briens also object to approval of the Plan because adequate bonding is not currently in place to complete reclamation plans if Coulson fails to do so. DRMS files indicate that, because of the high costs of complying with water rights requirements, DRMS sent Coulson a notice in 2019 of a required surety increase. The required increase raised the amount from \$58,400 to \$4,757,390, but Coulson did not comply. Therefore, DRMS issued a Reason to Believe Notice on Oct. 9, 2019. After this notice, however, it would appear that Coulson was able to avoid the security increase by obtaining a Substitute Water Supply Plan ("SWSP") from the Division of Water Resources. *See* DRMS Files, SWSP, filed Nov. 8, 2019. The SWSP, in turn, indicates that it was issued in material part because of a supposed dedication of 6.84 shares of Hill & Brush Ditch Co. to the operation of the SWSP, and a signed copy of a "Dedication of Water Rights" is attached to the SWSP. *See* Ex. H, Dedication of Water Rights. From a review of this dedication, however, it is far from clear that either DWR or DRMS has an adequately-perfected security interest in the referenced 6.84 shares of Hill &

Brush Ditch Co. The standard method of perfecting a security interest in water stock of this sort is to obtain physical possession of the original water stock certificates and ensure that the ditch company is adequately informed of the security interest. Thus, the O'Briens object to approving the Plan unless DRMS either: 1) ensures adequate perfection in the Hill & Brush Ditch Co. shares to facilitate any potentially-necessary DRMS foreclosure in the future; or 2) achieves an increase in the bond amounts to adequately cover the costs of either obtaining a court-approved augmentation plan or otherwise complying with water rights requirements.

Careful attention to this detail is warranted. As mentioned in the September 20, 2023 enforcement hearing before the DRMS Board, Coulson has previously suggested that it may simply walk away from its responsibilities to complete reclamation on the Kirtright Pit. Similarly, in its May 6, 2024, response to Incompleteness Notice No. 1, Coulson again refused to acknowledge its financial responsibility to properly complete reclamation.

Finally, in determining an appropriate size for the bond, additional scrutiny of Coulson's claims regarding the pre-1981 nature of the ponds in the Southwest part of the permit area is warranted. It is far from certain that these ponds will qualify as pre-1981 ponds. Thus, the size of the bond should cover the real possibility a water court decree cannot be obtained without either devoting more water rights to the augmentation plan, lining the ponds, or filling in the ponds. Any of these options would involve significant additional expense.

6. *Additional Objections.*

The O'Briens also object to Exhibit F to the Plan to the extent it calls for a unnecessary oval-like drive or road North and West of their home. This appears to be an inadvertent mistake, left over from a prior map that called for processing on the O'Brien property.

The Plan also cannot be approved at present because Coulson still has not obtained a legal right to enter and conduct the operations that it has planned on the O'Brien property. Thus, the Plan is not yet in full compliance with DRMS Rules.

WITWER, OLDENBURG, BARRY & GROOM, LLP

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Finally, please note that nothing contained herein shall be considered a waiver of any kind whatsoever, and the O'Briens reserve all rights to supplement or modify as future circumstances and developments warrant.

Yours very truly,

WITWER, OLDENBURG,
BARRY & GROOM, LLP

A handwritten signature in blue ink, appearing to read 'Kent Naughton', with a stylized flourish extending to the right.

Kent Naughton

hec



STATE OF
COLORADO

Exhibit A to O'Brien Objections

Lennberg - DNR, Patrick <patrick.lennberg@state.co.us>

Kirtright Pit Reclamation Plans, An Owner's Viewpoint

Linda O'Brien <lindabatesobrien@gmail.com>

Sun, Jun 9, 2024 at 7:33 AM

To: "Lennberg - DNR, Patrick" <patrick.lennberg@state.co.us>

Cc: Kent Naughton <knaughton@witwerlaw.com>, Daniel Giroux <DanGiroux@terramax.us>

Patrick, I know Coulsons are due today to submit a revised reclamation plan for the Kirtright Pit. Attached is a summary of my concerns, as things stand before their documentation is posted.

--

Linda Bates O'Brien

P. O. Box 920/ 6229 Lacy Lane

Johnstown, Colorado 80534

Cell: (970) 218-7326



6-10-2024 Response to DRMS by LDOB.docx

21K

LETTER TO DRMS REGARDING RECLAMATION OF THE KIRTRIGHT PIT

Version: 6-10-2024, by Linda O'Brien

BACKGROUND

On September 20, 2023, I attended a hearing before the DRMS Board where the Board found that Coulsons had mined outside of their pit boundaries, imposed a penalty of \$200,000 (with all but \$4,783.20 suspended), and ordered Coulsons to submit a proposed permit amendment that only updated the reclamation plan. Coulsons did not submit any proposed amendment until February 27, 2024, nearly five months after the DRMS Board Hearing. And even though Coulsons are experienced operators of a large mining company, both their first proposed amendment application and their second proposal (submitted May 6, 2024) failed to comply with various DRMS rules and regulations as indicated by two different incompleteness notices that DRMS had to send out. As a result, it has been well over eight months since the DRMS Board Hearing, and Coulsons still have not submitted anything that can be considered a complete amendment application, and Coulsons still have not complied with the Board's order.

As I understand it, since their application is not considered filed yet, Coulsons should be submitting revisions following DRMS's Second Incompleteness Notice and no deadline for objections has even been established yet. But since my home basically sits in the middle of the Kirtright Pit, I write to try to express my frustrations with the lack of progress and to try to explain the impact of Coulsons' actions upon our family. But since more revisions are coming, I reserve the right to amend and supplement the following objections and comments.

EXPECTATIONS OF LAND OWNERS FOR FINISHING THE KIRTRIGHT PIT

As a homeowner and owner of the O'Brien part of the Kirtright Pit, I am relying on DRMS and Larimer County to adequately oversee the revised reclamation plan. As with all property owners, we need to feel safe from routine flooding and be able to use the property as promised in the original plan for pasture and wildlife (not the newly introduced industrial/commercial). But the land engineer I have had to hire is not convinced the current plan will keep routine, damaging floodwaters from infiltrating the O'Brien property.

HISTORY OF RECENT FRUSTRATIONS WITH THE KIRTRIGHT PIT

For a few years now, I have been very frustrated with Coulsons' responses when I have tried to express my concerns and requests regarding flooding and the state of reclamation on my property. I was never taken seriously by Coulsons, so I hired an expert land engineer and an attorney, both at my own expense, to try to explain my concerns better. An investigation report by Brock Bowles from DRMS in spring of 2022 pressed upon Coulsons to get right-of-entry forms from the land owners and submit new leases for each parcel within the permit boundary by June 20, 2022. Yet until very recently, Coulsons have shown extremely little willingness to talk with me.

In February, 2023, Dick Coulson left me a phone message stating, "We have nothing to talk about." It was only when I agreed to meet with Coulsons... without my representatives... that they hosted a meeting to update me. We had a second meeting in September, 2023, when my land engineer, Dan Giroux, and I met Dick without my attorney (at Dick's insistence). But Dick was quite uninformed about the Kirtright Pit. He falsely told us that the Kirtright Pit encompassed all of the Kirtright/O'Brien acreage. Dick didn't even know Patrick Lennberg's name. He also claimed to be unaware of issues with Larimer County Engineering. Nothing ever came of those meetings with Coulsons and much of what was shared turned out to be unworkable.

In April, 2023, Kirtright dug a ditch 8-10 feet deep that ran from a pond north of the Kirtright house to the boundary of the O'Brien property. I called Ken Coulson that April morning when this ditch was being dug, and Ken said he knew nothing about Randy's digging, but he dismissed my fears of flooding, saying our property would not flood. Ken said he would fix the problem, but he never did. The ditch is still there today. Later, in May of 2023, Dick Coulson and an employee that he introduced as Lonnie stopped to talk to me. During this conversation, Lonnie mentioned that he had been working with large equipment on this ditch in an effort to drain water from the pond north of the Kirtright house onto my property! I do not think there is any justifiable reason for Coulsons to be doing this. In addition, Kenny was wrong about the flooding. About a month later, in June of 2023, the river flooded, and I still have a lot of water on my property to this day that has never fully receded after that flood. One area very close to my house, remains very marshy with large patches that are mudflats. It is effectively a big, unpleasant mosquito breeding area.

In addition, Coulsons seem to be cooperating with Randy Kirtright's plans to build an unauthorized new home on Randy's east property within the Pit. In two 2022 DRMS investigation reports, Coulsons were notified that their piling of over 25 dump truck loads of

apparent topsoil was inconsistent with their reclamation plan and thus needed to be either removed or spread out, incorporated into the soil, and revegetated consistent with the reclamation plan. Yet Coulsons never complied, and instead they added six more dump truck loads in the same area. They appear to be allowing Kirtright to use this topsoil in connection with his plans to build a house for which he has no permit. The County has never approved the building of this new home, and recently Larimer County Engineering reiterated this fact to the builder who contacted them about proceeding with the construction.

ISSUES WITH CURRENT RECLAMATION PLAN (Not Recognized by DRMS in Incomplete Notices)

Current Bond Amount is Inadequate

It is clear that the current bond for finishing the Kirtright Pit is far below what it needs to be. Even the estimate in the May 6th document by Coulsons shows over \$81,000 to execute the current plan. That is significantly greater than the current bond. It is not at all clear at this point that Coulsons will ever be able to mine the Stroh Pit as they apparently plan to do. If the Stroh Pit doesn't happen, they will need to move dirt from Coulson land somewhere else. And if the Reclamation Plan takes longer than expected, Coulsons could try to walk away from the Kirtright Pit as Kenny Coulson had threatened to do already with at least two other outsiders. And what if Coulsons abandon their Coulson Ex business due to financial reasons?

Stroh Pit Mining Plan Has No Agreement with O'Briens

It has recently come to my attention that Coulsons' current plans to mine the Stroh pit rely upon a false assumption that they can use my property to do so. A map attached to the Coulsons' latest response to DRMS's Incompleteness Notice shows a conveyor from the Stroh pit on O'Brien land and a "Pit Run Stockpile from Stroh Pit for Loadout" on O'Brien land. I do not believe Coulsons have any right to do what they are telling DRMS that they are going to do. The O'Briens have never approved or signed any contracts giving Coulsons the right to install conveyor equipment across O'Brien property or use O'Brien property to store and truck materials from the Kirtright Pit. We also are not in favor of fuel tanks being placed within the flood plain or of significantly increased truck traffic on our property.

Yet Coulsons most recent submittals to DRMS are entirely dependent upon their apparent plans to operate the Stroh pit for the next seven years as indicated in the map they submitted.

Coulsons Want Seven Years to Finish Kirtright Pit

This is unacceptable. We disagree that it should take seven years for Coulsons to protect O'Brien property with the new plan. That would be seven springs and seven autumns when the Big Thompson could flood, and we can get torrential rains. When they want to, Coulsons can move quickly. Coulsons filled one pond on Kirtright property within two months in the spring of 2023. They can use plenty of dirt and gravel one mile away to the west. The original contract with Virgil Kirtright was signed in 1986. Thus it has been nearly 40 years and Coulsons have still not finished reclamation on O'Brien property, even though annual reports show that mining ended in 2008. The DRMS regulations require completing the pit within five years of the end of mining, but it has now been seventeen years since the end of mining.

Coulsons Want to Expand the Pit Boundaries to 111 acres from the Original 80 Acres

This is only to accommodate the use of the Stroh Pit for finishing the Kirtright reclamation.

Sixteen Acres in the SW Corner Are Not Pre-1981 Status

The statements about the current state of the 16 acres in the SW part of the Kirtright Pit being similar to pre-1981 levels just isn't true. These ponds were excavated, leveled and completely filled in in the spring of 2023, by Coulson employees for the purpose of filling in the pond north of the Kirtright house. Division of Water Resources have in the past said owners forfeit their pre-1981 benefits if the ponds are disrupted. And these ponds can spawn dangerous mosquito breeding.

Coulsons Need to Finish the O'Brien Property Reclamation First Before the Kirtright Property

We recommend that the work be finished on O'Brien property before they work on Kirtright-owned land, and a partial release can be made to the Coulsons for that work.

After working on Kirtright property for months, and not finishing it, it is time to restore the O'Brien property.

COULSON MANAGEMENT CANNOT BE TRUSTED TO COMPLY WITH REQUIREMENTS

If you would have asked me five years ago that I'd be writing such a letter about Coulson Excavating, I would not have believed it. I always trusted Dick Coulson and thought a lot of their employees. Since management has changed, I believe the corporate values have changed. I have learned that Kenny Coulson does not keep his word, and the company under his leadership does not seem to be able to competently comply with DRMS and DWR regulation requirements. As an example, as discussed above, DRMS has had to send Coulsons two Incompleteness Notices highlighting numerous issues, because Coulsons disregarded DRMS rules and important parts of the Board's Orders.

When Coulsons worked on the area north of the Kirtright house, Kenny admitted to me that he had no idea how much effort it would take to fill in that smaller pond than the one north of the O'Brien home, and that it took much longer than he planned. There were at times 6-8 large pieces of equipment and numerous employees deployed, and for many weeks, into months. Therefore, I have no confidence in the viability of their estimate of what it will take to execute the revised reclamation plan of the Kirtright Pit.

August 2, 2024

Mr. Patrick Lennberg
Environmental Protection Specialist
Colorado Division of Reclamation, Mining & Safety (DRMS)
1313 Sherman Street, Room 215
Denver, CO 80203
Patrick.Lennberg@state.co.us

Re: Kirtright Pit – File No. M-1986-123, Coulson Excavating Company, Inc.
Amendment (AM-1)
Kirtright Pit Amendment

Submitted via e-mail and FedEx.

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2. *The Seven-year timeline is unreasonable.*

Similarly, the reclamation timetable should be dramatically reduced. At present, Coulson proposes to complete reclamation in approximately seven years. This appears to be a timeframe taken directly from the current USR, which requires that “[a]ll mining and reclamation shall be completed no later than 7 years from the first material hauled from the site.” Ex. D, USR Findings and Resolution, Recorded March 21, 2018. But there is no reason for additional delay. Mining operations last took place on the Kirtright Pit in 2008, yet 16 years later, the O’Briens are still waiting for reclamation to be completed. A review of DRMS records indicates that in annual reports from 1989 through 2001, Coulson consistently reported no seeding of any kind. Nonetheless, in a 2002 inspection report, the DRMS inspector included observations that the northern portion of the permit site had been mined, backfilled and revegetated, and appears to have accepted Coulson’s claim that “this reclamation took place approximately 7-8 years ago.” See DRMS Files, March 27, 2002, Inspection Report. Thus, it would appear that Coulson’s seeding activity was minimal at best, and thus did not comply with the original reclamation plan. See Ex. E to Original Coulson Application, DRMS Files, dated Sept. 2, 1986) (calling for s reseeding with a specific seed mixture). In addition, as described in both the O’Brien and Giroux letters submitted herewith, unfinished and improper reclamation efforts have long forced the O’Briens to live with mosquito-breeding-ground mudflats instead of properly-functioning ponds and grasslands.³ Moreover, it has now been more than ten months since the DRMS Board, following a hearing, ordered Coulson to submit, “within 90 days of the effective date of [its] Order” an amendment application. DRMS Files, Nov. 27, 2023, Findings of Fact, Conclusions of Law, and Order. There is simply no just reason that Coulson should not be required to complete backfilling Pond 1 and Pond 2 so that reseeding and revegetation efforts can commence in the 2025 growing season. O’Brien understands that weed management may take years, as indicated in the Plan, but backfilling and reseeding should be completed in 2025. In addition, given Coulson’s history of failing to follow through with seeding and reclamation requirements, the O’Briens request vigorous and diligent oversight to ensure that the reseeding and weed control plans are properly carried to completion.

3. *The Plan must provide for improved flood protection of the O’Brien property.*

The Plan is also inadequate because it should provide for adequate drainage from O’Brien land after intermittent flooding events. This point is addressed more fully in the Giroux Letter

3 Coulson’s Reclamation Permit Application Form, received by DRMS on February 28, 2024, includes a checked box indicating that the Primary future (Post-mining) land use is Industrial/Commercial(IC). This is inconsistent with Exhibit E to the Plan at subsection (b), which states that this use will be “agricultural and residential.” This appears to be an inadvertent mistake, and if so, the O’Briens ask that it be remedied. Alternatively, if an extent an Industrial/Commercial post-mining use is intended, the O’Briens object.

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attached hereto as Exhibit B. I would add, however, that there is good reason to be skeptical of Coulson's suggestion that it was forced to remove a previously-proposed drainage swale because of "wildlife implications if the operator encroaches within 300ft of the Big Thompson River." DRMS Files, May 6, 2024 Wayland Letter at page 4. In 2023, Coulson sought, and obtained, County approval for the installation of underdrains that require installation of pipe outfalls flush with the bank of the Big Thompson River. *See* Ex. F, March 21, 2023 Galloway Letter at page 2; *see also* Ex. G, Galloway Map of Conveyor and Underdrain Systems.

4. *The Plan does not comply with Rule 6.3.12*

The Plan also cannot be adopted as presented because Coulson has not yet complied with Rule 6.3.12 by providing either structure agreements or engineering evaluations. First, it is clear that Exhibit D to the Plan should be amended because the map does not correctly depict all significant structures within 200 feet of the affected lands. At present, Exhibit D appears to be inconsistent with Exhibit E. While not clear on the point, Exhibit E appears to reference topsoil that was previously segregated as soil that will be used in its reclamation efforts under the Plan. In an Inspection Report dated February 15, 2022, DRMS Staff noted that Coulson's actions in dumping about 25 dump trucks full of topsoil near Lacy Lane was not consistent with the existing reclamation plan and must be either removed or incorporated into the surrounding landscape. Coulson has never complied with this request, and indeed has added to the piles in the area. Thus, if Exhibit E is intended to call for these piles of topsoil to be moved and used the reclamation plan, the "affected area" includes the area near Lacy Lane lying south of Pond 2, and Coulson must comply with Rule 6.3.12 with respect to structures owned by significantly more homeowners. Alternatively, if the Plan is intended to leave the 25-plus piles of topsoil untouched, the O'Briens object, since this would clearly be inappropriate and inconsistent with previously-approved reclamation plans.

5. *The Plan should not be approved until bonding is adequate.*

The O'Briens also object to approval of the Plan because adequate bonding is not currently in place to complete reclamation plans if Coulson fails to do so. DRMS files indicate that, because of the high costs of complying with water rights requirements, DRMS sent Coulson a notice in 2019 of a required surety increase. The required increase raised the amount from \$58,400 to \$4,757,390, but Coulson did not comply. Therefore, DRMS issued a Reason to Believe Notice on Oct. 9, 2019. After this notice, however, it would appear that Coulson was able to avoid the security increase by obtaining a Substitute Water Supply Plan ("SWSP") from the Division of Water Resources. *See* DRMS Files, SWSP, filed Nov. 8, 2019. The SWSP, in turn, indicates that it was issued in material part because of a supposed dedication of 6.84 shares of Hill & Brush Ditch Co. to the operation of the SWSP, and a signed copy of a "Dedication of Water Rights" is attached to the SWSP. *See* Ex. H, Dedication of Water Rights. From a review of this dedication, however, it is far from clear that either DWR or DRMS has an adequately-perfected security interest in the referenced 6.84 shares of Hill &

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Brush Ditch Co. The standard method of perfecting a security interest in water stock of this sort is to obtain physical possession of the original water stock certificates and ensure that the ditch company is adequately informed of the security interest. Thus, the O'Briens object to approving the Plan unless DRMS either: 1) ensures adequate perfection in the Hill & Brush Ditch Co. shares to facilitate any potentially-necessary DRMS foreclosure in the future; or 2) achieves an increase in the bond amounts to adequately cover the costs of either obtaining a court-approved augmentation plan or otherwise complying with water rights requirements.

Careful attention to this detail is warranted. As mentioned in the September 20, 2023 enforcement hearing before the DRMS Board, Coulson has previously suggested that it may simply walk away from its responsibilities to complete reclamation on the Kirtright Pit. Similarly, in its May 6, 2024, response to Incompleteness Notice No. 1, Coulson again refused to acknowledge its financial responsibility to properly complete reclamation.

Finally, in determining an appropriate size for the bond, additional scrutiny of Coulson's claims regarding the pre-1981 nature of the ponds in the Southwest part of the permit area is warranted. It is far from certain that these ponds will qualify as pre-1981 ponds. Thus, the size of the bond should cover the real possibility a water court decree cannot be obtained without either devoting more water rights to the augmentation plan, lining the ponds, or filling in the ponds. Any of these options would involve significant additional expense.

6. *Additional Objections.*

The O'Briens also object to Exhibit F to the Plan to the extent it calls for a unnecessary oval-like drive or road North and West of their home. This appears to be an inadvertent mistake, left over from a prior map that called for processing on the O'Brien property.

The Plan also cannot be approved at present because Coulson still has not obtained a legal right to enter and conduct the operations that it has planned on the O'Brien property. Thus, the Plan is not yet in full compliance with DRMS Rules.

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Finally, please note that nothing contained herein shall be considered a waiver of any kind whatsoever, and the O'Briens reserve all rights to supplement or modify as future circumstances and developments warrant.

Yours very truly,

WITWER, OLDENBURG,
BARRY & GROOM, LLP

Kent Naughton

hec

August 2, 2017

Via FedEx Overnight and Electronic Mail

Robert Helmick
Senior Planner, Development Planning
Larimer County Community Development Division
PO Box 1190
200 W. Oak Street, Suite 3100
Fort Collins, CO 80524

Re: Supplemental Letter to Application for Use by Special Review – 09-Z1771

Dear Mr. Helmick:

Foster Graham Milstein, & Calisher, LLP (“FGMC”) represents Coulson Excavating Co., Inc. (“Coulson”) regarding its pending application for a Use by Special Review (“USR”) and amendment to an existing Use by Special Review Plan No. 09-Z1771 (collectively, the “Application” or the “Project”). This letter serves to summarize, supplement and support the Application (the “Letter”) and is hereby made a part of the Application.

I. BACKGROUND

A. Subject Property

Coulson owns approximately 133 acres of vacant land described and depicted as the “Stroh Pit” on Exhibit A (the “Property”), upon which Coulson intends to mine approximately 50 acres for sand and gravel and the remaining approximately 83 acres will remain undisturbed and be used for ongoing agricultural purposes. Coulson also leases property directly west of the Property, described as the “Kirtright Pit” on Exhibit A (“Kirtright Property”) which is a reclaimed sand and gravel mine. The Property and the Kirtright Property are both in the FA Farming Zone District. The Application includes Coulson’s use of the Kirtright Property to process sand and gravel mined from the Property.

The Property abuts agricultural land, a reclaimed mine, the Big Thompson River and residential communities. The northern boundary of the Property abuts the Big Thompson River. The Thompson Crossing residential subdivision is north of the Big Thompson River. The northern half of the western Property border abuts the Kirtright Property and the southern half of the western border abuts a portion of the Thompson River Ranch residential subdivision. A

portion of the Thompson River Ranch residential subdivision also borders the southern boundary of the Property. Agricultural land is adjacent to the Property's eastern border.

B. Project Description

Coulson proposes sand and gravel mining from two separate cells on the Property. The western cell will be approximately 35 acres (the "West Cell") and the eastern cell will be approximately 15 acres (the "East Cell", together with the West Cell, collectively, the "Cells"), as depicted on Exhibit A-1. The Cells are separated by a 100-foot wide gas pipeline easement. The West Cell will have a 266-foot setback from the western property line and a 363-foot setback from the southern property line. There is a 300-foot buffer of native vegetation between the northern edge of the Project and the Big Thompson River to avoid encroachment within the floodway that runs along the northern border of the Property and to preserve wildlife habitat.

Coulson anticipates the Project will last approximately five (5) to seven (7) years including reclamation of the mine, depending on market conditions. Mining will commence in the southwest corner of the West Cell and progress northward in 5-acre sections. Coulson will repeat this same pattern of extraction in the East Cell. The minable sand and gravel is located beneath a layer of approximately 6-8 feet of topsoil, silt, clay and other material (the "Overburden"). As the Overburden is excavated, Coulson will use the Overburden to build 10-foot earthen berms along the western and southern portions of the Property to screen mining operations from the adjacent residential uses.

A conveyor belt will transport the sand and gravel produced from each Cell across the Property to the Kirtright Property. Specifically, the conveyor belt will run along the northern edge of each Cell, ending at the Kirtright Property where Coulson will then process the sand and gravel and load it onto trucks for transport off-site.

Full mining operations, including mining the Cells, transporting materials to the Kirtright Property, processing the sand and gravel and hauling out finished products will occur Monday through Friday from 7:00 A.M. to 5:00 P.M. On Saturdays, Coulson will haul processed materials from the Kirtright Property from 7:00 A.M. to 5:00 P.M.; however, there will be no mining or materials processing on Saturdays. On Sundays, there will be no activity on the Property or the Kirtright Property of any kind.

The final step of the Project is mine reclamation. Once the sand and gravel mining is complete, Coulson will reclaim the Property into an aesthetically appealing parcel of land. One option Coulson is considering for the reclamation of the Project is the conversion of each Cell into a clay lined lake, which, as necessary, will be filled with lawfully decreed surface water. Specifically, the West Cell could be converted into a 28.4-acre lake and the East Cell into a 10.5-

acre lake. These lakes would have aesthetic appeal to the surrounding area and could potentially be utilized by area residents as a public open space area with walkways around the lakes and recreational fields. Alternatively, Coulson is considering filling and developing portions of the Property into residential lots.

C. Procedural History

1. Use by Special Review Application

Coulson first purchased the Property in 1993 with the intent of mining for sand and gravel. Coulson submitted its first sketch plan for a sand and gravel mine to Larimer County (the "County") in January 2001 and submitted a formal application for a Use by Special Review in August 2002. Coulson has continually updated the Application since 2002 in order to keep the Application in the public record and to provide constructive notice to property owners in the area of its intended use of the Property. Specifically, from 2004 through 2008, Coulson submitted, and the County honored, regular requests to extend the Application. In 2009, per the County's request, Coulson submitted updated Project documents and paid a new application fee for the Project to keep the Application current and active. Coulson has worked with the County and other interested parties to address various concerns with the Application while waiting for market conditions to justify the cost of mining on the Property.

2. Other permits and approvals on the Property

Coulson has already taken several steps to secure the necessary permits required for the Project including, but not limited to: securing approval of a mining and reclamation permit from the Division of Minerals and Geology, now known as the Colorado Division of Reclamation, Mining and Safety, which is included in the Application; submitting a mining operations air pollution emissions notice application to the Colorado Department of Public Health and Environment ("CDPHE"), which is pending approval (See Exhibit B); and submitting a permit application for discharges associated with sand and gravel mining and processing from CDPHE, which is also pending approval (See Exhibit C).

3. Changes to the surrounding area

While the Application was pending, Johnstown initiated annexation of land adjacent to the Property to the north, south and west to facilitate residential development. Coulson formally objected to the annexation and notified Johnstown of its pending Application to mine sand and gravel on the Property. Despite Coulson's objections, Johnstown completed the annexation. Residential development began as two separate developments, Thompson Crossing and

Thompson River Ranch; several years after Coulson first submitted its Application and even after Coulson submitted the updated Project documents in 2009.

In 2002, the County advised Coulson to erect signs on the Property notifying adjacent landowners and the general public that the Property was subject to a pending USR Application for sand and gravel mining. Coulson complied with this request by erecting signs that faced what is now the Thompson River Ranch residential development. Joshua Reeser purchased his home at 3558 Pinewood Ct. in 2010, and attests, in his email to Rob Helmick on October 10, 2016, that Coulson's signs were on the Property and facing into the subdivision at the time he purchased his home and for several years thereafter.

Because the annexation and subsequent residential development has altered the character of the surrounding area, Coulson has actively taken steps to involve the neighbors and address public comments regarding the Project. Specifically, Coulson held a neighborhood meeting on September 14, 2009 and again on October 19, 2016 to present its Project proposal to the residents of the new developments and hear their comments. The primary public concerns expressed at these meetings were: noise, dust, environmental impact, truck traffic and obstruction of views.

Coulson has proactively addressed these concerns and amended the Project and the Application accordingly several times. Updates to the Project to address compatibility with the residential developments have included: repurposing the Overburden to install the berms described above; transporting the sand and gravel to the Kirtright Property for processing via conveyer belt rather than by truck; installing water spray bars at strategic locations throughout the Property to prevent dust from leaving the Property; moving the exact location of the Project farther from the Big Thompson River to increase wildlife habitat preservation; limiting hours and days of operation on the Property and the Kirtright Property; and enhancing the reclamation plans to improve the permanent aesthetic appeal of the Property. Each of these measures and others are described in detail below.

II. ANALYSIS

A. Code Requirements

The Property and the Kirtright Property are zoned FA Farming. Larimer County's Land Use Code¹ (the "Code") permits mining as a principal use in the FA Farming zone district upon approval of a USR application.

¹ Larimer County Land Use Code § 4.1.1(A)(33).

Specifically, the Code permits a USR “if the applicant can demonstrate that the proposed use complies with review criteria in subsections 4.5.3 or 4.5.5.”² The process of approving a USR should consider “the location, design, configuration, intensity, density, natural hazards and other relevant factors pertaining to the proposed use.”³

Section 4.5.3 of the Code identifies the following specific review criteria that the County Commissioners shall consider when approving a USR:

- A. The proposed use will be compatible with existing and allowed uses in the surrounding area and be in harmony with the neighborhood;
- B. Outside a GMA district, the proposed use is consistent with the county master plan. Within a GMA district, the proposed use is consistent with the applicable supplementary regulations to the GMA district, or if none, with the county master plan or county adopted sub-area plan;
- C. The applicant has demonstrated that this project can and will comply with all applicable requirements of this code;
- D. The proposed use will not result in a substantial adverse impact on property in the vicinity of the subject property;
- E. The recommendations of referral agencies have been considered; and
- F. The applicant has demonstrated that this project can meet applicable additional criteria listed in the use descriptions in Section 4.3.

This Letter explains how the Application complies with each of these review criteria.

B. Criteria for Approval

1. The proposed use will be compatible with existing and allowed uses in the surrounding area and be in harmony with the neighborhood.

Coulson recognizes that the existing uses in the surrounding area have changed since its initial Application submittal in 2002. To that end, and as explained above, Coulson has continually updated and enhanced the Project to ensure compatibility and neighborhood harmony. In addition to updating and enhancing the Project, Coulson posted signs on the Property to notify the public of the pending Application so all adjacent property owners were aware of the proposed future use at the Property.

Through neighborhood meetings and the comments submitted during the Application’s public comment period, neighbors have expressed concern over compatibility and neighborhood

² Larimer County Land Use Code § 4.5.1(A).

³ Larimer County Land Use Code § 4.5.1(B).

harmony related to the following primary factors: noise, visibility, dust, truck traffic and impact on the environment. Coulson addresses each of these concerns below:

a) Noise

Several neighbors have identified concerns that mining operations will disturb their day because mining operations produce a high level of noise. Coulson addressed this concern by conducting multiple noise studies to determine the amount and impact of noise generated by mining operations, and by implementing changes to the Application to address noise generation so as to ensure compatibility and neighborhood harmony.

The complete analysis of the noise study results is included in the Application. Colorado Revised Statute § 25-12-103 and Larimer County Ordinance No. 97-03 establish the maximum decibel level (dBA) of noise allowed in residential areas. The Project noise study calculated the current noise levels in the surrounding neighborhoods as well as the projected noise of each stage of the mining process. All stages of the Project will emit less than the maximum level of noise allowed in the residential community.

Even though all stages of the Project are below the maximum decibel level, Coulson identified the noisiest stage of the Project and updated its Application to further reduce noise generated by the Project. Specifically, the original Application contemplated using haul trucks to transport the sand and gravel mined from the Cells to the Kirtright Property processing facility. The noise study revealed that the haul trucks produced the highest decibel levels of the Project. In response, Coulson removed the haul trucks from the Application and will instead use a conveyor belt to transport the sand and gravel from the Cells to the Kirtright Property. This change will result in even lower Project decibel levels, thus improving compatibility and neighborhood harmony.

Additionally, the earthen berm described above will decrease noise in two ways. First, by utilizing the topsoil to construct the berm, the need to remove the topsoil from the Property via haul trucks is eliminated. Second, the earthen berm will itself serve as a noise barrier by reducing the direct line of noise traveling between the Project and the adjacent residential developments.

Lastly, Coulson has altered the Project operation times to best accommodate the surrounding residential area. Coulson will not operate after 5:00 P.M. any day of the week; will limit Saturday operations to only hauling finished product from the Kirtright Property; and will have no any activity on the Property or the Kirtright Property on Sundays. Avoiding evening and weekend operations serves to eliminate noise during the periods where it is likely to have the greatest effect on the most people present at their homes.

b) Visibility

Through the public comment process, neighborhood residents expressed concern that a mining facility is an eyesore and therefore incompatible with the surrounding residential area. Coulson addressed this concern by revising the Application to include the earthen berms discussed above between the Project and the residential developments, thus eliminating the residents' direct view of the ongoing mining operations.

Additionally, the resident's visibility concerns were related to the long-term effect of the Project and its changes to the current aesthetic appeal of the Property. Coulson's reclamation ideas are key to alleviating the long-term visual impact of the Project. As described above, the Project is temporary and Coulson's proposed mine reclamation ideas, include lakes with walking paths, reestablishment of natural and native vegetation and additional residential development. All of these reclamation options ensure that after the completion of the temporary Project the Property will be even more aesthetically appealing than it is currently.

c) Dust

Neighborhood residents expressed concern that the dust from the Project would deteriorate the air quality in their neighborhoods and create health hazards for the nearby residents, thereby making the Project incompatible with the surrounding area. Coulson acknowledges that mining operations create dust and has taken proactive steps to determine and decrease dust impacts on the adjacent properties.

To evaluate the health concerns of dust from the Project, Coulson conducted studies and created a PM₁₀ and Crystalline Silica Air Pollution Dispersion Modeling Report. The entire report is attached to this Letter as Exhibit D. The report found that the average annual crystalline silica exposure at the residential developments adjacent to the Property is six times less than the Environmental Protection Agency's identified level of safe lifetime exposure and therefore, this report concluded that Project dust will not harm nearby residents.

In addition to establishing the lack of health effects from Project dust, Coulson has taken several steps to reduce Project dust. The largest of these efforts is Coulson's use of a conveyor belt to transport the sand and gravel from the Cells to the Kirtright Property – eliminating the dust that haul trucks would produce. In addition to the use of a conveyor belt, the Application defines several other dust-mitigation techniques such as paving the access road; watering any gravel roads; watering the fines stockpiles at the processing plant; installing spray bars on screens and crushers; and revegetating the screening berms. Such mitigation techniques not only further improve the compatibility of the Project with the surrounding area and the overall neighborhood harmony, but also proactively address the neighbor's concerns regarding dust.

d) Traffic/Roads

Access to the Property is via the I-25 Frontage Road ("Frontage Road"), which abuts the Kirtright Property. From the Kirtright Property, Coulson will travel east to access the Property and mine the Cells. Area residents expressed concern that an increase in trucks and equipment entering and exiting the Frontage Road will create an unsafe roadway and thus, be incompatible with the surrounding area.

Coulson hired LSC Transportation Consultants, Inc. to conduct a traffic impact analysis of the Project on the Frontage Road. LSC's complete report ("LSC's Report") is attached to this Letter as Exhibit E. LSC's Report concluded that the Project will not change the current and projected Levels of Service on the Frontage Road.

After considering the results of LSC's Report, however, Coulson proactively decided to change the truck route during peak traffic hours to further accommodate the existing traffic patterns on the Frontage Road. Specifically, during peak morning and evening traffic hours, Coulson's trucks will primarily enter the Kirtright Property from the south and will primarily leave the Property in a southbound direction. Coulson also decreased its maximum expected daily truck trip total to two hundred and twenty (220) one-way trips. This equates to approximately eleven (11) roundtrip truck trips per hour during the peak mining season. Coulson anticipates that this maximum truck traffic is only likely to occur during the busiest summer months, and that in several other months of the year, the daily truck traffic will be far less.

e) Environment/Habitat

Area residents also expressed concern that the Project is incompatible with the surrounding area because the Project would have a variety of negative environmental impacts. Through the referral agency comment period and the engineering reports, Coulson has addressed and resolved any environmental concerns with the Project.

One particular concern was that the Project would negatively impact Preble's meadow jumping mouse ("PMJM") habitat. Along with approving the Application during the initial agency referral phase, the United States Fish and Wildlife Service recently sent a letter to Coulson's environmental consultant, Jerry Powel of Wildlife Specialties, on June 9, 2017 ("USFWS Letter") regarding the PMJM population and habitat on the Property and the effect of the Project on the PMJM. The USFWS Letter concluded that "[g]iven your habitat and project descriptions . . . the impacts resulting from the proposed project are not likely to adversely affect the Preble's meadow jumping mouse." The complete USFWS Letter is attached to this Letter as Exhibit F.

During the agency referral process, Coulson also received concerns about the Project's proximity to the Big Thompson River Floodplain. These concerns are unfounded since the Project does not encroach into the Big Thompson River Floodplain and the local Floodplain Review Board approved the Project on July 28, 2016. The complete meeting minutes of that hearing, which are attached to this Letter as Exhibit G support the fact that the Project is compatible with the surrounding area since it does not encroach within, or negatively impact, the Big Thompson River Floodplain.

A related concern raised by neighbors has to do with whether wetlands exist near the Big Thompson River, which need to be protected. Recently, Rebecca Almon, an attorney representing nearby residents who oppose the Project, wrote a letter to the United States Army Corps of Engineers ("USACE") requesting that USACE require Coulson to apply for a Section 404 Wetlands Permit. Ms. Almon indicated that there is wetland habitat on the Property and therefore a Section 404 Permit is required. Ms. Almon's representations regarding wetlands on the Property are inaccurate. Coulson has worked with USACE to analyze the environmental nature of the Property and USACE concluded that a Section 404 Permit is not required for the Project. In an abundance of caution, however, Coulson elected to move the Project site farther south so as to create an extra natural buffer between the Project and the Big Thompson River. This decision proactively addresses the neighbors' concern regarding any impact to habitat near the Big Thompson River, despite USACE's finding of no impact. Additionally, Coulson, in cooperation with USACE, is in the process of updating its wetland delineation to confirm USACE's earlier determination that a Section 404 Permit is not required.

Lastly, as part of the CDPHE discharge permit application process Coulson hired Weiland, Inc. to prepare a comprehensive Stormwater Management Plan ("SWMP") for the Project, which is attached to this Letter as Exhibit H. The SWMP requires several Project control plans and prevention and mitigation techniques to address potential storm water discharges from the Property to the Big Thompson River.

2. Outside a GMA district, the proposed use is consistent with the county master plan, and within a GMA district, the proposed use is consistent with the applicable supplementary regulations to the GMA district or, if none, with the county master plan or county adopted sub-area plan.

The Property is not within any Growth Management Area (GMA) District of Larimer County. Therefore, Coulson must demonstrate that the Application is consistent with the County's Master Plan of 1997, adopted on November 19, 1997 (the "Master Plan" or the "Plan"). When a property is not within a GMA District of Larimer County, the County assumes projects are consistent with the Master Plan if the project complies with the respective zone district. Here,

the existing zoning is FA Farming, which is a rural district that allows sand and gravel mining with an approved Use by Special Review Permit.⁴ Therefore, since the Application is for sand and gravel mining, which is an allowed use by special review in the FA Farming Zone District, the Project is consistent with the Master Plan if the Application is approved.

The Project, however, accomplishes more than just compliance with the FA Farming zone district. Along with its consistency with the Master Plan, the Project will further goals set out by the County in the Master Plan. Specifically, the Master Plan “states the policy direction for land use decisions in the County[.]”⁵ and the Master Plan identifies “Guiding Principles” and “Implementation Strategies” to provide a framework to apply to future land use decisions.⁶ The Project advances several of the Master Plan’s goals directed at smart and effective growth and development, including but not limited to:

a) Mining is a priority for Larimer County

The Master Plan specifically recognizes the necessity and economic benefits of mineral extraction (mining) activities.⁷ The Master Plan states that the County should “facilitate preservation and protection of the County’s commercial mineral deposits from encroachment by incompatible land uses that would limit the options of future decision makers in considering the demand for aggregate resources.”⁸ Through the continual updating of the Application since the initial submittal in 2002, Coulson has worked with the County to preserve the Property for sand and gravel mining. Coulson’s preservation of the Property for sand and gravel mining further supports the Application’s consistency with the Master Plan.

b) Promoting and enabling local infrastructure projects

Another goal of the County’s Master Plan is encouraging a “balanced, economically feasible multi-modal transportation system for safe and efficient travel in the County” and development of “adequate public facilities and services” to serve new development.⁹ The Plan provides that “vehicular travel, transit systems and the majority of bicycle travel in this area rely heavily on a well maintained and complete roadway system and network.”¹⁰ The Plan also describes numerous capital infrastructure projects, including “structurally deficient and functionally obsolete bridges, unpaved roadways where traffic exceeds County average daily trip (ADT) standards, needed road improvements based on projected roadway needs, re-alignment

⁴ Larimer County Master Plan §3.5.

⁵ Larimer County Master Plan § 1.1.

⁶ Larimer County Master Plan § 1.3.

⁷ Larimer County Master Plan § 6.4.

⁸ Larimer County Master Plan § 6.4.

⁹ Larimer County Master Plan §§ 1.5, 2.2.

¹⁰ Larimer County Master Plan § 5.1.2.

and roadway widening . . . [and] improvements needed on existing roads where travel lanes and shoulders need widening.”¹¹

Sand and gravel is necessary for the maintenance of the County’s transportation system and for support of the capital infrastructure projects identified in the Master Plan. The Project will produce a large quantity of sand and gravel that, when used for these local infrastructure projects, will result in lower costs than if the infrastructure projects had to import sand and gravel from outside the County. Therefore, the Project is not only consistent with the Master Plan, but will also further the goals of the Master Plan by producing materials that will enable cost-savings for the County during completion of the infrastructure projects identified as priorities in the Master Plan.

The Master Plan encourages the extraction of minerals, such as sand and gravel, in Larimer County. For the foregoing reasons, Coulson has, throughout this entire Application process, complied with the Master Plan and can demonstrate that the Project is consistent with the Master Plan.

3. The applicant has demonstrated that this project can and will comply with all applicable requirements of this code.

To determine whether an applicant has demonstrated compliance with all applicable requirements of the Code, the County typically evaluates a project’s compliance with Section 8 of the Code, entitled “Standards for all Development.” Coulson conducted several studies, hired engineers and obtained permits – the results of which are all included in the Application – to demonstrate that the Application complies with all applicable requirements of the Code. In addition to the references within the Application, attached to this Letter as Exhibit I, is a document summarizing the Project’s compliance with the Section 8 Criteria.

4. The proposed use will not result in a substantial adverse impact on property in the vicinity of the subject property.

Coulson recognizes that several neighbors expressed concern that the Project will have an adverse impact on their residential properties. Most of these concerns are addressed above in Section II.B.1 of this Letter.

In addition to the concerns previously addressed, several neighbors expressed concern that the Project will negatively impact their home values, some claiming the impact could be as much as a 40% decline in value. Coulson is sympathetic to the neighbors’ concerns regarding the value of their properties and recognizes that some national studies have found a link between

¹¹ Larimer County Master Plan §§ 2.3.2, 5.1.2.

proximity to a mine and a decline in home values. However, due to a variety of project-specific factors, Coulson is confident that the Application will not have a substantial adverse impact on property values in the vicinity of the Project.

Initially, consideration should be given to the fact that the Property and the neighbors are already adjacent to a reclaimed mine located at the Kirtright Property. Any effect on the neighbor's property values due to proximity to a mine existed prior to the Project and the development of residential areas and could have worked to the benefit of the neighbors when purchasing their homes. The approval of this Application therefore, will not result in a change to the surrounding area; rather, after completion of the Project, there will merely be one more reclaimed mine site in an area that already has a reclaimed mine. Additionally, the Project is temporary and Coulson's reclamation ideas will make the Property even more aesthetically appealing and beneficial to the surrounding area than it is already which could increase the surrounding residential property values.

5. The recommendations of referral agencies have been considered.

Throughout all phases of this Application, Coulson has considered and responded to all referral comments. Coulson has also provided updates to referral agencies throughout the Application regarding Project status and requested additional input, as necessary. All comments, responses and subsequent agency approvals are included in the Application.

6. The applicant has demonstrated that this project can meet applicable additional criteria listed in the use descriptions in Section 4.3.

The Code does not provide additional criteria for mining uses in Section 4.3 of the Code. The only substantive requirement is that on-site processing "must be included in the special review application and reviewed simultaneously with the mining special review application."¹² If approved, the USR sought in the Application would allow for on-site processing activities on the Kirtright Property. Therefore, this review criterion is satisfied by inclusion of the on-site processing activities in the Application.

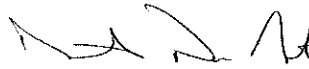
¹² Larimer County Land Use Code § 4.3.7(E)(1).

III. CONCLUSION

For the foregoing reasons, Coulson has demonstrated that the Application complies with the review criteria required for the approval of a Use by Special Review application. Therefore, Coulson respectfully requests your recommendation that the Application be approved by the Larimer County Board of County Commissioners.

Sincerely,

FOSTER, GRAHAM, MILSTEIN & CALISHER LLP

A handwritten signature in black ink, appearing to read 'David Wm. Foster', with a stylized, cursive script.

David Wm. Foster

EXHIBIT A

Stroh Pit and Kirtright Pit Property Depiction

[Attached]

EXHIBIT A

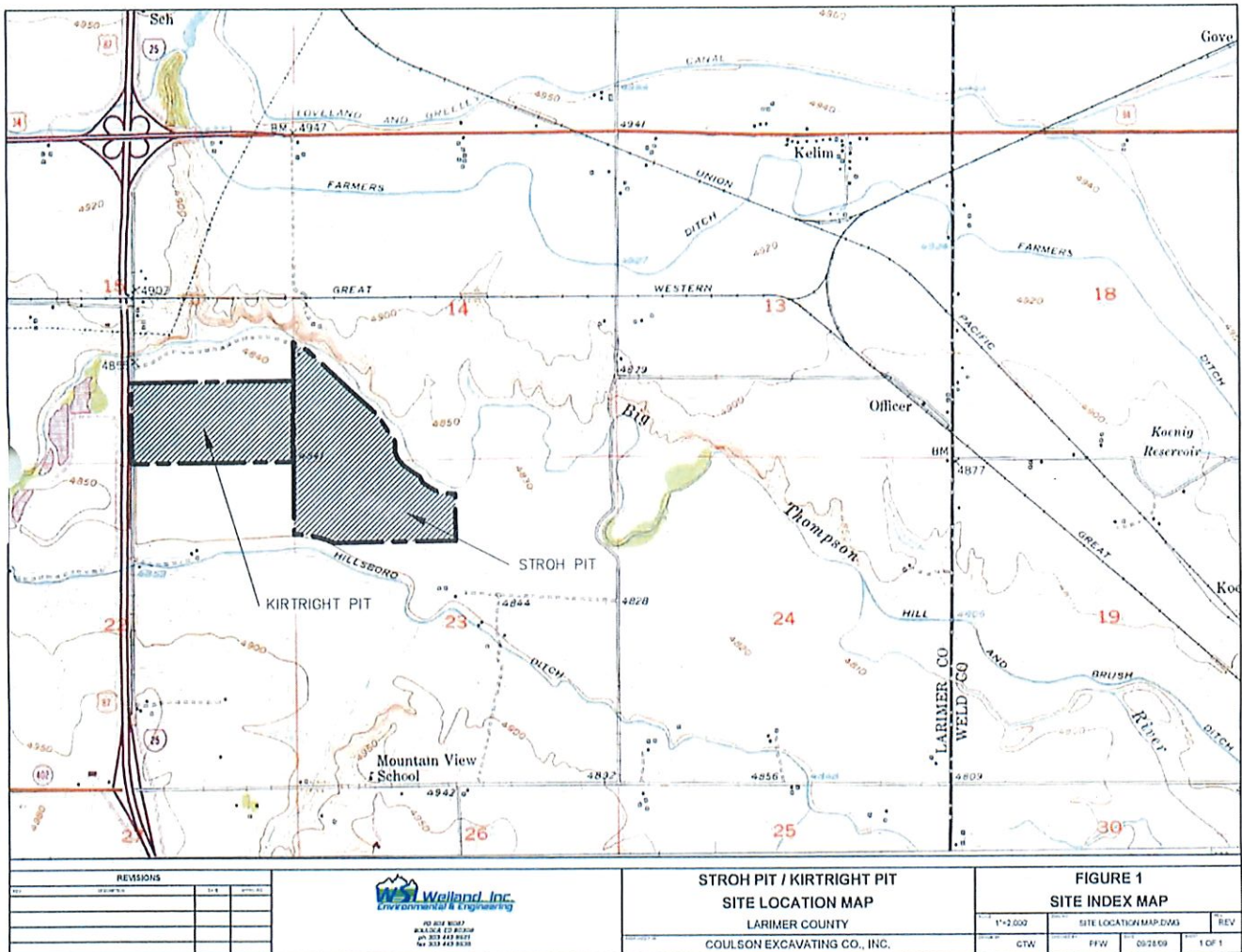
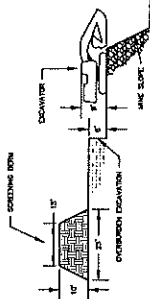


EXHIBIT A-1

Property Site Map

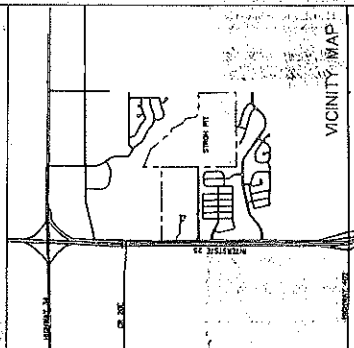
[Attached]

USR 01-Z1379



TYPICAL PIT EXCAVATION CROSS SECTION

1. NAME AND TITLE OF THE INVESTIGATOR NAME: _____ TITLE: _____	2. NAME AND TITLE OF THE COMPANY NAME: _____ TITLE: _____
3. TYPE OF INVESTIGATION TYPE: _____	4. DATE OF INVESTIGATION DATE: _____
5. NAME AND ADDRESS OF THE CLIENT NAME: _____ ADDRESS: _____	6. NAME AND ADDRESS OF THE LABORATORY NAME: _____ ADDRESS: _____
7. NAME AND ADDRESS OF THE ANALYST NAME: _____ ADDRESS: _____	8. NAME AND ADDRESS OF THE REVIEWER NAME: _____ ADDRESS: _____
9. NAME AND ADDRESS OF THE APPROVER NAME: _____ ADDRESS: _____	10. NAME AND ADDRESS OF THE DISTRIBUTOR NAME: _____ ADDRESS: _____

[illegible]

MCINITY, MA

SITE PLAN

**STROH PIT
USE BY SPECIAL REVIEW
LARIMER COUNTY, CO
COULSON EXCAVATING CO., INC.**

MSL Weiland, Inc.
Environmental & Engineering

[illegible]

SCALE	DATE	PROJECT	REV
1"=200'	11-2007	SITE PLAN 9-14-16.DWG	REV
DESIGNED BY:	CHECKED BY:	DATE	SCALE
CTW	PFW	09/14/2016	1 OF 1

Exhibit D to O'Brien Objections

SPECIAL REVIEW

**FINDINGS AND RESOLUTION APPROVING
THE PETITION OF COULSON EXCAVATING COMPANY, INC.**

The Petition of Coulson Excavating Company, Inc. (applicant and property owner) for a sand and gravel mining and processing operation generally known as the Stroh Pit upon the property described on Exhibit "A" attached hereto has been filed with the Board of County Commissioners of the County of Larimer.

On November 15, 2017, the Larimer County Planning Commission considered the proposed use and recommended approval of the special review subject to various conditions.

On February 26, 2018, in the County Board Hearing Room of the Larimer County Courthouse, Fort Collins, Colorado, the Board of County Commissioners conducted a public hearing on the Special Review. The Board of County Commissioners, having heard the testimony and evidence adduced at said hearing and having considered and carefully weighed the same, now makes the following findings:

1. The Special Review request upon the property described on Exhibit "A" was advertised in a local newspaper of general circulation.
2. Written notice of this hearing was delivered or mailed, first class, postage prepaid, to adjoining landowners of the proposal and all surrounding subdivisions.
3. The general characteristics of the property are as follows:
 - a. Location: South of the Big Thompson River, East of I-25 and adjacent to Thompson Valley Ranches
 - b. Area: 133 acres
 - c. Existing Land Use: Agricultural-grazing
 - d. Proposed Land Use: Mining
 - e. Existing Zoning: FA-Farming
 - f. Adjacent Zoning: FA-Farming
Residential in the Town of Johnstown
 - g. Adjacent Land Uses: Residential, Mining & Agricultural
 - h. Services:
 - Access: Southeast I-25 Frontage Road
 - Water: Well
 - Sewer: ISDS/portable chemical toilets
 - Fire Protection: Loveland Fire Rescue Authority
 - i. No. Trips Generated by use: 220 + ADT

Return to Planning

Findings and Resolution
Stroh Pit Special Review
Page 2

4. Coulson Excavating proposes to mine sand and gravel from the 133-acre site located south of the Big Thompson River, east of I-25 and adjacent to Thompson Valley River Ranches. The site, as noted, is adjacent to residential development and is traversed by a petroleum products pipeline. The proposed mining operation will encompass two areas that total approximately 50+ acres of the site over a period of 7 years. (Applicant stated that if the Board chose to impose a condition that would not allow any further extensions beyond the seven years, applicant would not oppose this condition. The Board has elected not to impose this condition.) The balance of the site will be used for berms and access or will remain undisturbed. Material will be removed from the ground and then conveyed to the northwest to the old/existing Kirtright Pit area where it will be processed. No batch plants are proposed. Material will then be hauled by truck off-site to the Coulson main facility off of Highway 402 or directly to job sites. After 7 years of mining, the site will be reclaimed and will result in two lakes that will be sealed and used for future water storage. The applicant has conducted environmental studies and analysis along with completing the floodplain permitting process. This application has generated significant interest from the general public and surrounding neighbors.

5. In 2001, the site of this application was surrounded by agricultural fields and the Kirtright Pit also operated by the applicant. In the intervening years, the Town of Johnstown has annexed the surrounding area and allowed residential development to occur on essentially all of the area surrounding the applicant's land. There are currently 800+ single-family residential units and more proposed in the immediate area surrounding the site of this application.

6. This application for special review approval for mining was originally submitted in 2001. It remained an active application from filing through 2008 although there were some elements that were not actively pursued. In 2008, the County required the applicant to submit a new application. A new application was received by the County and a neighborhood meeting was conducted. In the fall of 2016, the applicant completed the flood plain analysis and requested that the Community Development Team consider scheduling the application for a hearing. The Community Development Team advised the applicant to conduct another neighborhood meeting. This meeting was held in the fall of 2016. Additional application materials were also submitted.

7. During the public hearing on February 26, 2018, a number of area residents spoke in opposition to the application, generally citing concerns about the compatibility of a sand and gravel operation adjacent to a residential neighborhood, statements by the residential developer and realtors that the subject property was "open space," noise, dust, air quality, and traffic generated by the operation, reduced property values, and possible dangers from mining near a petroleum pipeline.

8. The Board determines that the applicant and property owner have met the applicable Special Review Criteria by a preponderance of evidence as follows:

a. The proposed use will be compatible with existing and allowed uses in the surrounding area and be in harmony with the neighborhood.

Findings and Resolution
Stroh Pit Special Review
Page 3

The mining use of this property will be in proximity to numerous residences in all compass directions. The applicant proposed buffers of 265-365 feet from the property boundary to the actual mining area. Berms are proposed to screen and reduce the noise generated. Conveyors are proposed to move material (as opposed to trucking the material) to reduce noise and dust. The applicant also has water rights available to use in mitigating dust. Applicant anticipates completing the mining operation in seven years.

These are many of the strategies used by and implemented in the Overland Ponds Pit. This Pit was determined to be compatible and approved by special review in 2005 in an area with residences adjacent to one side of the pits and 375-500 feet from the active mining areas. Those pits were approved for a 10-year mining operation and although the economic downturn happened in the midst of that time, the pits were completed within 6 months of the approved timeframe.

As noted, this application was originally submitted before any of the development nearby had been approved. Applicant testified that signs had been posted on the property at least eight times throughout the years stating the property was proposed for mining. Residential neighborhoods have now developed and other areas are also being developed. This development has taken at least 12 years and will continue for some time. These developments also involved and will continue to involve the use of heavy equipment and stripping the ground.

With the mitigation measures proposed by applicant and compliance with the other special review criteria and applicable state and local regulations, the Board determines the operation will be harmonious with the surrounding area.

b. Outside a GMA district, the proposed use is consistent with the County Master Plan. Within a GMA district, the proposed use is consistent with the applicable supplementary regulations to the GMA district, or if none, with the County Master Plan or county adopted sub-area plan.

The site is located in a designated rural area of the County outside any GMA. There is no sub area plan adopted for the area. The site is surrounded by the Town of Johnstown. However, the Town has never requested or initiated any conversation with the County regarding the development of this area or designation as a possible Growth Management Area with an accompanying intergovernmental agreement and development and regulations. The County Master Plan anticipates the development of natural resources as long as the other environmental and land use strategies of the plan can be met. The applicants have avoided the majority of natural resources in this application thus mitigation of impacts is not a concern.

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Stroh Pit Special Review
Page 4

This site is designated on the County Commercial Mineral Plan. The plan requires the Board of County Commissioners act on a mining request prior to allowing any change in zoning. If it is determined that minerals are not economic to extract or do not exist at marketable quantities at the site then the designation could be “overridden” by the Board of County Commissioners. Gravel resources in the northern Front Range are becoming limited. Some suppliers have taken to importing those resources from out of the area and out of state. It should be noted that there is an existing gravel mining operation adjacent to the town limits of Johnstown to the east of CR 3. The applicant is completing the mining of the Bonser Pit across I-25 to the west, which indicates that mining operations are not out of character with existing area uses.

c. The applicant has demonstrated that this project can and will comply with all applicable requirements of this code.

8.1.1 Sewage Disposal Level of Service Standards: The applicant proposes the use of port-a-potties for sewage disposal for the use. The Health Department has noted that the use of the port-a-potties is an acceptable solution.

8.1.2 Domestic Water Level of Service Standards: The applicant proposes to use bottled water on the site, for domestic needs. This is acceptable for mining and/or other interim/temporary uses. The Health Department has noted that this is an acceptable solution.

8.1.3 Drainage Level of Service Standards: The Engineering Department comments address this issue. A State Storm Water Discharge permit will be necessary.

8.1.4 Fire Protection & Emergency Medical Level of Service Standards: The Loveland Fire Rescue Authority provides fire and emergency response to this site. Emergency medical and fire protection in this area will rely on insuring that there are adequate on-site safeguards and provisions for notification.

8.1.5 Road Capacity and Level of Service Standards: The access to this site is from the Frontage Road. The volume of traffic will require a turn lane on the Frontage road which will need to receive a CDOT access permit. The traffic study and the revised traffic plans indicate that the proposed operation is able to operate within the limits and capacities of the existing roadway network. The only allowed direction for haul from this site will be south. The Town of Johnstown has prohibited non-delivery trucks from using the routes north of this site,

Findings and Resolution
Stroh Pit Special Review
Page 5

and the applicant has agreed not to use the CR 20E bridge over I-25 due to turning and width issues. The hauling and construction activities will be coordinated with the impending work on I-25 which includes work on the Hwy 402/I-25 interchange.

Section 8.2 Wetland Areas: County Maps show the site as having wetlands; the plan shows any possible wetland areas will be avoided. The Army Corps of Engineers concurs with this determination.

Section 8.3 Hazard Areas: County Maps show the site as having flood hazards associated with the Big Thompson River. A floodplain development permit has been approved. This floodplain approval will be modified to reflect the conveyor supports which would be located in the floodplain.

Section 8.4 Wildlife: The principle wildlife issue at this site is the identified Preble's Meadow Jumping Mouse habitat. The US Fish and Wildlife Service has cleared the site for conflicts with this habitat. The Development Review Team evaluated the plan for the site and use and no conflicts were identified. No comments were provided by the Colorado Division of Parks and Wildlife.

Section 8.5 Landscaping: Screening of the operation is proposed to be through the construction of 10-15-foot-tall berms that would follow the removal of mining site overburden. The Board finds that these berms will reasonably screen homes from the view of the mine, although some two-story residences will still have some view of the operations. These berms are also proposed for noise mitigation. The reclamation plan, which is regulated and permitted by the State of Colorado proposes to remove the berms, partially fill the excavations and create two lakes as future water storage.

Section 8.6 Off Road Parking Standards: Off road parking is not seen to be an issue with this request.

Section 8.10 Signs: Any proposed signs will require sign permits through the approval of a sign plan, which would occur with the Site Plan Review.

Section 8.11 Air Quality: The applicant submitted air quality information related to the dust potential at this site. An application for an Air Pollutant Emission Notice (APEN) for site disturbance was submitted to the Colorado Department of Public Health and Environment (CDPHE) Air Pollution Control Division (APCD) in July

Findings and Resolution
Stroh Pit Special Review
Page 6

2017. A PM₁₀ and Crystalline Silica Air Pollution Dispersion Modeling Study was conducted for the project and submitted to the Larimer County Department of Health. The findings for silica exposure predicts 6 times less than the EPA recommended exposure limits. An application for a construction APEN will also be needed. The Health Department has evaluated the information provided by applicant and has found that it meets the relevant standards. The Health Department's comments provided a detailed analysis of the report and standards. The PM₁₀ and Crystalline Silica Air Pollution Dispersion Modeling Study was reviewed by Dr. Scott Phillips, M.D. medical toxicologist and Associate Professor at the University of Colorado who found no negative health impact to nearby residents, including sensitive populations. Applicant also testified to basic measures they will implement to meet air quality standards.

Section 8.12 Water Quality: The applicant has submitted information with respect to the needed discharge permits. Drainage Plans were conducted in 2009 and approved by Larimer County Engineering. A Colorado Department of Public Health and Environment Discharge Permit and Stormwater Management Plan was submitted by the applicant to the State in July 2017. A final permit will be issued prior to beginning earthwork. Additionally, stormwater and dewatering outfalls will be sampled as part of the state Discharge Monitoring Report requirements. Water pumped from the pit will be routed through the Kirtright pond to allow settling of sediment before discharging to the river. All fuel storage will occur outside of the floodplain and a Spill Prevention control and Countermeasure Plan (SPCC) will be implemented. A rapid re-vegetation of disturbed areas will be implemented thereby reducing exposed sediment.

Section 8.16 Fences: Any perimeter fencing for the project will be required to comply with the requirements in Section 8.16.2.

Section 8.15 Site Lighting: Any site lighting will be required to comply with the provisions of this section and the standards.

d. The proposed use will not result in a substantial adverse impact on property in the vicinity of the subject property.

The application referrals have noted the potential for impacts of noise, air and water quality. Air and Water Quality have been considered and addressed as stated above. Compliance with the Larimer County Noise Ordinance is required and the applicant has shown they can meet the technical requirement. Noise is unwanted sound

Findings and Resolution
Stroh Pit Special Review
Page 7

so additional noise may be perceived as an impact. Applicant updated its professional noise study in February 2018 to add significantly more detail and acoustical data to the analysis as well as additional mitigation to insure all noise generated from the mining operation will be less than 55 dba at any surrounding residential property line. Applicant's noise engineer testified that in measuring noise to determine that noise created only by the mining operation, ambient noise is measured and eliminated from the determination using a scientific calculation. The County Health Department representative confirmed this. Ambient noise is not added to the noise generated by applicant in determining whether applicant exceeds the 55 dba limit. Further review of the application indicated the technical standards required for the approval of this application and demonstrated that it will not result in a substantial adverse impact. Applicant stated that it will mitigate noise by designing the site with large setbacks, installing 10-1-5 foot berms around the pit areas, positioning stockpiles to shield noise, installing a conveyor system, using white noise backup alarms, and implementing noise monitoring.

As to concerns about mining near a petroleum pipeline, applicant noted that there is a steel 8" pipeline that runs north/south and bisects the project. The pipeline has been an integral part of the engineering planning of the project from the beginning. Applicant noted it will take great measures to protect the safety of this pipeline, including construction of soil cement slope stabilization to the adjacent pit slopes to protect from erosion if flooding were to occur. This specification was reviewed and approved by the Larimer County Flood Review Board. Applicant will stake out and not work within the agreed-upon the 100 foot easement as shown in the site plan.

In further addressing impacts on properties and their values, the Board notes that the request is a temporary use (7 years) and will, upon completion of mining, result in lakes/water storage with the potential for enhanced view sheds and wildlife habitat which may increase property values. Absent the mining operation, a potential, if not likely, use of this property will be further residential development. The immediate area has been under development for the past 12 years and will continue to develop for several more. The impacts from development are noise, dust and heavy truck traffic—i.e., many of the same adverse impacts complained about by persons opposing the mine.

e. The recommendations of referral agencies have been considered.

Referral agency comments were included in materials appended to the Development Services Team Staff Report. The need for air and water quality controls, noise mitigation, safety and integrity of water impoundments, drainage and other issues have been identified, incorporated in the evaluation of the special review application and addressed satisfactorily by the applicant.

Findings and Resolution
Stroh Pit Special Review
Page 8

Citizen comments, concerns and arguments, both written and verbal, have been given due consideration and found either to have been adequately addressed/mitigated by applicant and/or found not to be persuasive warranting a denial of the application.

f. The Applicant has demonstrated that this project can meet applicable additional criteria listed in Section 4.3 Use Descriptions.

There are no special criteria or standards listed for mining.

RESOLUTION

WHEREAS, the Board of County Commissioners has made its findings upon the petition and upon the recommendation of the Larimer County Planning Commission, which findings precede this resolution, and by reference are incorporated herein and made a part hereof; and

WHEREAS, the Board of County Commissioners has carefully considered the petition, evidence and testimony presented to it, and has given the same such weight as it in its discretion deems proper, and is now fully advised in the premises;

NOW, THEREFORE, BE IT RESOLVED that the Coulson Excavating Company, Inc. (applicant and property owner) for a sand and gravel mining and processing operation generally known as the Stroh Pit upon the property described on Exhibit "A" be and the same hereby is granted upon the following conditions:

1. This Special Review approval shall automatically expire without a public hearing if the use is not commenced within three years of the date of this Findings and Resolution.
2. The Site shall be developed consistent with the approved plan and with the information contained in the Stroh Pit Special Review File # 09-Z1771 except as modified by the conditions of approval or agreement of the County and applicant. The applicant shall be subject to all other verbal or written representations and commitments of record for the Stroh Pit Special Review.
3. Failure to comply with any conditions of the Special Review approval may result in reconsideration of the use and possible revocation of the approval by the Board of County Commissioners.
4. The County shall provide an initial draft Development Agreement for review and approval by the applicant prior to approval by the Board of County Commissioners. Board of County Commissioners approval of the Development Agreement shall occur no later than 90 days from the date on which this Findings and Resolution is approved by the Board of County Commissioners.

Findings and Resolution
Stroh Pit Special Review
Page 9

5. In the event the applicant fails to comply with any conditions of approval or otherwise fails to use the property consistent with the approved Special Review, applicant agrees that in addition to all other remedies available to County, County may withhold building permits, issue a written notice to applicant to appear and show cause why the Special Review approval should not be revoked, and/or bring a court action for enforcement of the terms of the Special Review. All remedies are cumulative and the County's election to use one shall not preclude use of another. In the event County must retain legal counsel and/or pursue a court action to enforce the terms of this Special Review approval, applicant agrees to pay all expenses incurred by County including, but not limited to, reasonable attorney's fees.

6. County may conduct periodic inspections of the property and reviews of the status of the Special Review as appropriate to monitor and enforce the terms of the Special Review approval.

7. This Findings and Resolution shall be a servitude running with the Property. Those owners of the Property or any portion of the Property who obtain title subsequent to the date of recording of the Findings and Resolution, their heirs, successors, assigns or transferees, and persons holding under applicants shall comply with the terms and conditions of the Special Review approval.

8. The applicant shall pay the Transportation Capital Expansion Fees (TCEF) within 120 days following the date on which this Findings and Resolution is recorded.

9. Operation hours shall be limited to the hours of 7am-5pm Monday through Friday. Hauling may occur additionally on Saturday from 7am-5pm

10. An access permit including all required improvements shall be obtained from CDOT. All improvements shall be constructed and approved prior to any hauling from the site.

11. All mining and reclamation shall be completed no later than 7 years from the first material hauled from the site. Applicant shall provide written notice of this event to the County.

12. Prior to mining of the West Pit, berms shall be constructed adjacent to the active mining area. Prior to mining of the East Pit, berms shall be constructed adjacent to the active mining area. A grass or other cover shall be installed upon completion of any berm and maintained throughout the life of the Special Review Use. As the residential development to the east of the mining property becomes occupied, the County may require construction of additional berms in this area for dust and noise mitigation, if the noise levels exceed allowable levels. In the event noise from haul trucks entering and exiting the processing plant area exceeds allowable levels, the County make require construction of additional berms along the access road.

13. The applicant must have a construction permit issued by the Air Pollution Control Division prior to starting construction of the berms.

Findings and Resolution
Stroh Pit Special Review
Page 10

14. The applicant shall implement a public information website and provide quarterly briefing to the HOAs of the surrounding developments. An advisement of the meetings shall be provided to the County. The website shall provide contact information for residents to report complaints or ask questions. The applicant must develop a plan to respond to citizen complaints.

15. The applicant shall develop a noise monitoring plan, to include when and how noise and baselines will be reviewed and established, how results are reported and what the response to noise complaints will be. This plan shall be submitted, reviewed and approved by County staff prior to commencement of any mining activity.

16. The applicant shall hire a sound consultant in the first two weeks of processing activity to measure sound levels and provide additional conditions for sound mitigation as needed. The study shall be submitted to the County for review to determine if the operation is in compliance with the noise ordinance and the original sound study.

17. Dust water trucks shall be maintained on site and used. In hot, dry and windy conditions, water shall be applied regularly except on Sundays when the plant is not allowed to operate. Stockpile sprinkler systems will operate autonomously and shall be triggered by either a moisture sensor or timer. Stripping and mining shall not be permitted in 35 mile per hour winds as indicated on the Air Pollution Control Division's construction permit. The operation must adhere to all the controls required by the State issued construction permit.

18. An electric line or generator powered conveyor shall be installed and routinely maintained to mitigate noise.

19. All internal excavating and construction equipment owned by the applicant must have white noise backup beepers installed.

20. The access road shall be paved prior to any material hauled off site.

21. The internal dirt access road proposed around the processing plant for incoming customer trucks and other internal haul roads between the pits and the processing plant, shall be chemically stabilized to reduce dust.

22. Speed limit signs shall be posted along the access road and other internal haul roads for noise and dust mitigation. Traffic signs for one-way traffic around the processing plant shall also be installed to mitigate noise from customer vehicles.

23. Emergency maintenance shall be allowed at any time. Normal maintenance may not occur in the quarry area unless during normal working hours.

24. Stock piles of pit run material shall be in place prior to operation of the processing plant for the purpose of noise suppression as indicated in the sound study.

Findings and Resolution
Stroh Pit Special Review
Page 11

25. The Larimer County Environmental Health Department has the right to enforce the County noise ordinance and the controls required by the Air Pollution Control Division's air construction permit and will require additional controls if noise and dust/emissions are found to be in violation.

26. Trucks hauling material may only go south on the Frontage Road.

27. No haul truck from this site shall use the County Road 20 E Bridge, unless such County Road 20 E Bridge is improved to support such use. If such County Road 20 E Bridge is improved to support such use, the County reserves the right to require the approval by CDOT for such use.

28. No trucks are allowed north beyond CR 20E due to Johnstown restrictions for non-delivery truck traffic on Ronald Reagan Boulevard and Thompson Parkway.

29. No parking, loading or unloading of any vehicles will be allowed within the County right-of-way or State Highway right-of-way.

30. Trucks shall not back onto or use the County Road or State Highway for a turnaround.

31. Applicant is responsible for prompt, complete removal of material spilled onto the County roadway or State Highway.

32. In the event the haul route changes due to reconstruction of CR 20E, the County reserves the right to require approval by CDOT of any changes to the Property access due to such change in the haul route. The applicant shall submit to the County all applicable, final and approved, copies of permits from other jurisdictions.

33. The final groundwater report must be signed, stamped and dated by a professional engineer prior to applicant commencing operations

34. Prior to applicant commencing operations, applicant must obtain Flood Review Board approval for the conveyor belt and perimeter drain systems to be located within the flood plain. If the Flood Review Board determines that alternate methods of construction or conveyor locations are needed, applicant shall comply with the Flood Review Board determination.

35. Applicant must obtain a Larimer County Floodplain Development Permit prior to commencing any grading on the property. As part of the permit, the site must be reclaimed per the Flood Review Board approved reclamation plan and a Letter of Map Revision must be completed and approved by FEMA prior to the termination of the Floodplain Development Permit. A recorded easement and permanent maintenance agreement for the permanent perimeter drain system shall be recorded within 90 days of approval.

Findings and Resolution
Stroh Pit Special Review
Page 12

36. As-built plans and a certification letter signed and stamped by a professional engineer must be submitted within 90 days of installation of the drain.

37. No bulk storage of diesel fuel, gasoline, solvents, or other potentially hazardous materials are permitted in the Floodplain limits.

Commissioners Donnelly and Gaiter voted in favor of the Findings and Resolution, and the same were duly adopted. Commissioner Johnson voted against the Resolution. The Resolution was duly adopted.

DATED this 20th day of March, 2018.



(SEAL)

ATTEST:

[Signature]
Deputy Clerk

BOARD OF COMMISSIONERS OF
LARIMER COUNTY, COLORADO

By:

[Signature: Steve Johnson]
Chair

DATE: 3/15/18
APPROVED AS TO FORM:
[Signature]
COUNTY ATTORNEY

13

EXHIBIT A

FROM THE WEST 1/4 CORNER SEC. 23, T5N, R68W 6TH PM FOUND 2 1/2" ALLOY CAP STAMPED LS 12374 THEN S00°06'50"W 1320.18FT TO THE TRUE POINT OF BEGINNING (NW 16TH SEC 23 T5N, R68W 6TH PM SET #6 REBAR WITH CAP STAMPED PLS 37552), THEN N89°43'49"W 2626.31 FT, THEN N00°01'13"E 1323 21FT, THEN S89°38'48"W 736 7FT, THEN N48°05'05"W 1 67.94FT, THEN N07°57'24"W 331.17FT, THEN N53°27'00"W 206.55FT, THEN N26°11'40"W 421 .8FT, THEN N85°18'04"W 1 15.62FT, THEN N60°19'27"W 119.15FT, THEN N24°45'25"W 170 30FT, THEN N41°10'59"W 420.50FT, THEN N38°44'32"W 252 18FT, THEN N68°31'13"W 635.00FT, THEN N39°01'22"W 66.33FT, THEN N00°12'08"W 1974.64FT, THEN N00°06'50"W 1320.18FT

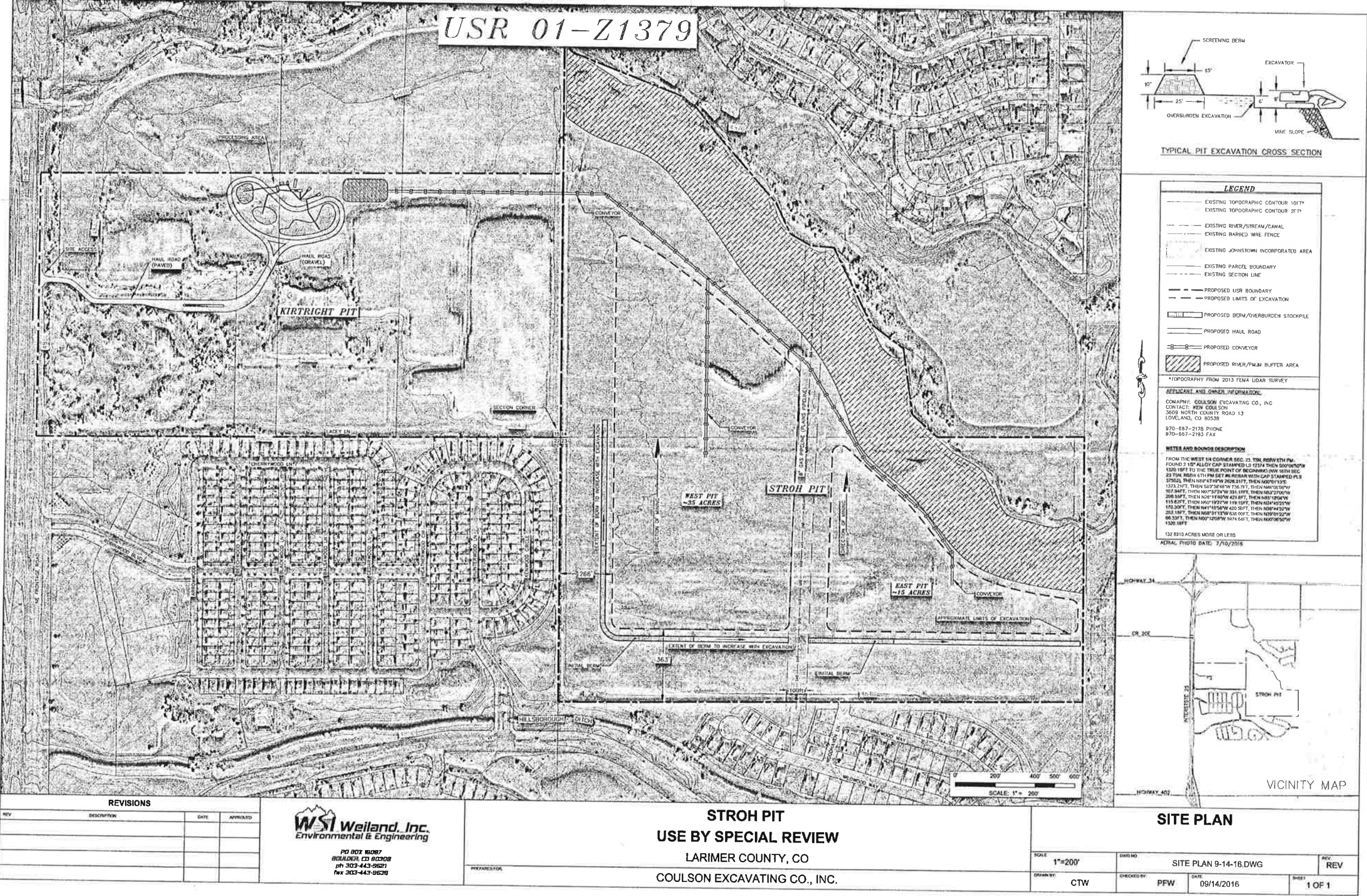


Exhibit F to O'Brien Objections

March 21, 2023

Ms. Caryn Nezat
Larimer County Engineering Department
200 W Oak Street, Suite 3000
Fort Collins, CO 80521

RE: Floodplain Development Permit for Stroh Pit
[Galloway Project No. CEX01]

Caryn,

With this letter, we are requesting approval of a floodplain development permit (FDP) (See Attachment A for the application form) for the placement of a temporary conveyor belt, underdrains, and a berm on the Stroh Pit site within the Big Thompson River (BTR) floodplain. The project site is located along the right (south) bank of BTR on the east side of I-25. The main location of the site, berms, drains, and conveyor are located in the SW quadrant of Section 14 and NW quadrant of Section 23. So this includes parcels 8514000009, 8514000007, and 8523000004. The conveyor then extends up and into the SE quadrant of Section 15, which includes parcels 8515000003 and 8515000029. The conveyor belt will be located centrally in the site moving north through the West Pit and then west to the Material Processing Plant. The underdrains are proposed to run along the south, west and east Stroh Pit property boundary and outfall into the BTR channel in the north at two locations. The berm will run along the southern perimeter of the site and then north halfway up the western perimeter, which will be placed as part of the mining operation in the Stroh Pit site. A vicinity map displaying the approximate location of the site is provided in Attachment B. A map of the area to be disturbed by the proposed activities is provided as Attachment C. The preliminary FIS/FIRM information and models are utilized as the basis of this application.

Proposed Activities in the Floodplain and Floodway

The proposed activities will be located east of I-25 and south of the BTR, and will be placed within the effective floodplain and floodway in Stroh Pit site. Only the conveyor belt and a portion of underdrains will be located within the effective floodway and the remaining improvements will be located in the floodway fringe. The area within the floodplain that will be disrupted by the proposed activities is approximately 5 acres. In order to place the underdrains, trenches will be excavated. After the installation of the underdrain pipes, the trenches will be refilled to match the existing grade. Since the trenches for underdrains will be refilled to match the existing grade, no hydraulic modeling is needed for this work even with the work being located in the effective floodway. The placement of the temporary conveyor belt structure will, however, introduce obstructions within the effective floodway that was modeled to perform a no-rise analysis for the 1% annual chance (1-PAC) flood based on the effective model from the preliminary FIS (see Attachment D for excerpts from FIS & FIRM). The obstructions are located in cross sections 104063, 103233, 102588, and 101840. There are also excavations/cuts of existing surface under and along the conveyor alignment, measuring around 20-30 feet wide and half-foot deep. The resulting water surface elevations from the no-rise model are shown in comparison to the effective water surface elevations in the table below. Elevations from the effective model result from HEC-RAS, version 5.0.1, whereas water surface elevations from the No-Rise analysis come from HEC-RAS, version 6.3.1. Transition to a newer version of the program was done for efficiency and the analysis was performed in both version 5.0.1 and 6.3.1 to ensure that the results remained accurate.

Water Surface Elevation (WSEL) Comparison of No-Rise to the Effective Analysis for 1-PAC Flood

Cross Section	Effective WSEL (NAVD 88)	No-Rise Analysis WSEL (NAVD 88)	Difference in WSEL (ft)
106435	4845.99	4845.99	0.00

105621	4,845.50	4845.5	0.00
104990	4,845.13	4845.13	0.00
104063	4,844.13	4844.13	0.00
103233	4,842.12	4842.12	0.00
102588	4,840.41	4840.41	0.00
101840	4,839.07	4839.07	0.00
101140	4,838.05	4838.05	0.00
100479	4,837.18	4837.18	0.00
98201	4,834.98	4834.98	0.00

From the table above, it is shown that there are no rises in WSELs to within 0.00 ft for the 1-PAC storm event for all cross sections. The initial no-rise model considered only the obstructions, resulting in slight increases in the WSELs. To ensure that the no-rise condition is achieved, the no-rise model was revised by modifying the ground surface to incorporate lowering in elevation beneath the obstructions. The conveyor head section will be mounted on concrete spread footers and the tail pulley section will be anchored onto precast concrete blocks (see Attachment I for conveyor belt details) to hold the conveyor belt in place during flood events. An electronic copy of the hydraulic models is included in Attachment K.

The area that will be disturbed by the obstructions of the conveyor belt, cut along the conveyor, excavation of trenches, and placement of the underdrain pipes can be seen in the disturbance limits map in Attachment C. The certified construction plans for the conveyor belt along with cut, underdrains, and berm can be seen in Attachment E. The property ownership documentation is included as Attachment H.

Underdrain Outfall Riprap & Scour Analysis

There are two underdrain outfalls, one upstream at cross section 104063 and the other at the downstream cross section 100479. They will outfall to the right bank of BTR with the end of the pipes being flush with the bank, which will be restored to its pre-project configuration. Both outfalls will be located at straight sections of the channel. Scour calculation was performed in HEC-RAS model to determine the maximum depth of scour that may occur at the outfalls. The size of riprap protection for the pipe outfalls were also determined using HEC-RAS model. At both outfalls, the riprap size was determined to be $d_{50}=6$ inches with riprap thickness of 12 inches. The riprap aprons will extend minimum 3 feet below the channel thalweg elevation to protect against the scour at the channel bottom since the scour depths were calculated to be approximately 1.7 feet. Please see Attachment J for scour and riprap design calculations.

Conclusions

In conclusion, the proposed construction activities for the Stroh Pit site that are located within the Big Thompson River floodplain will not cause rise in the 1-PAC flood WSELs. The "No-Rise" certification is included in Attachment F and the certification of "No Adverse Impact" is included in Attachment G. Due to no rise and the conveyor belt being temporary, we are requesting that the FDP for the Stroh Pit site be approved. If you have any questions or concerns with the proposed activities and their documentation, please feel free to contact me at your convenience.

Sincerely,



GALLOWAY

Suleyman Akalin, PE, CFM
Water Resources Project Manager
SuleymanAkalin@GallowayUS.com

cc: Ms. Tina Kurtz, CFM, Larimer County

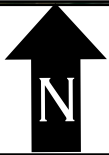
Attachments:

- A. Floodplain Development Permit Application Forms
- B. Vicinity Map
- C. Disturbance Limits Map
- D. Excerpts from FEMA Preliminary FIRM and FIS
- E. Stroh Pit Certified Construction Plans
- F. "No Rise" Certification
- G. "No Adverse Impact" Certification
- H. Property Ownership Documentation
- I. Conveyor Belt Details
- J. Underdrain Outfall Riprap & Scour Analysis Results
- K. Electronic Hydraulic Models

Document Path: H:\Coulson Excavating\CO Johnstown CEX01 - Stroh Pit FP Permitting\QWTR\4-GIS\CEX DisturbanceMap.mxd



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Original Scale: 1" = 500'
0 125 250 500 750 1,000
Feet

DRAWN BY: AMM	PROJECT NUMBER: CEX01.25
DESIGNED BY: AMM	PROJECT FILE: CEX_DISTURBANCEMAP.MXD
CHECKED BY: SA	DATE: 03/09/23

STROH PIT
FDP

DISTURBANCE
LIMITS

ATTACHMENT
C

DEDICATION OF WATER RIGHTS

I Kenneth Coulson, do hereby dedicate 6.84 shares of Hill & Brush Ditch Co. to the operation of the Temporary Substitute Water Supply Plan for the Kirtright Pit (M-1983-123). Coulson Excavating owns 19 shares of Hill & Brush Ditch Co.

Signature



Date

10-14-19