

**FREMONT COUNTY
PLANNING COMMISSION MEETING MINUTES
FEBRUARY 5, 2013**

MEMBERS PRESENT

Byron Alsup, Chairman
Daryl Robinson, Vice Chairman
Mike Krauth, Jr., Secretary
Larry Baker
Dean Sandoval
Joe Lamanna
Larry Brown

STAFF PRESENT

Bill Giordano, Planning Director
Brenda Jackson, County Attorney
Vicki Alley, Planning Assistant

MEMBERS ABSENT

None

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

4. APPROVAL OF MINUTES

- a. January 2, 2013 Planning Commission Meeting

5. UNFINISHED BUSINESS

NONE

6. NEW BUSINESS

a. REQUEST: CUP 12-001 T.H.E. AGGREGATE SOURCE (MAJOR MODIFICATION TO CUP 00-01)

Request approval of a Conditional Use Permit, Department file #CUP 12-001 T.H.E. Aggregate Source (major modification to CUP 00-01), for mining and operation of a granite products mine, including dozing, blasting, crushing, screening, loading and hauling, the operation of a concrete recycling program and operation of an asphalt batch plant, by Aggsource, LLC. The proposed CUP property will be leased from the BLM. The property is located *on the west side of U. S. Highway 50, approximately 0.8 miles north of Tunnel Drive, west of Cañon City*. The property is currently being mined under CUP 00-01 and it consists of approximately 216 acres. With the addition of the proposed 79 acre BLM parcel, the total CUP property will be approximately 295 acres. The existing CUP property is located in the Agricultural Farming & Ranching and Industrial Zone Districts and the proposed CUP property is located in the Agricultural Forestry Zone District.

REPRESENTATIVE: *Kenneth Klco, Azurite, Inc.*

7. ADJOURNMENT

8. MASTER PLAN WORKSHOP

Continue with review of the Master Plan (*if time allows*)

1. CALL TO ORDER

Chairman Byron Alsup called the meeting to order at 4:00 pm.

2. PLEDGE OF ALLEGIANCE

Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

Chairman Alsup asked if there were any changes, additions or corrections to the February 5, 2013 Fremont County Planning Commission Meeting Agenda.

MOTION

Mr. Daryl Robinson moved to accept the February 5, 2013 Fremont County Planning Commission Meeting agenda as written.

SECOND

Mr. Larry Baker seconded the motion.

Chairman Alsup called for a roll call vote, and the motion passed unanimously. (7 of 7)

4. APPROVAL OF THE JANUARY 2, 2013 PLANNING COMMISSION MEETING MINUTES

Chairman Alsup asked if there were any changes, additions or corrections to the January 2, 2013 Fremont County Planning Commission Meeting Minutes.

MOTION

Mr. Larry Brown moved to accept the January 2, 2013 Fremont County Planning Commission Meeting Minutes as written.

SECOND

Mr. Baker seconded the motion.

Chairman Alsup called for a roll call vote, and the motion passed unanimously. (7 of 7)

5. UNFINISHED BUSINESS

The Planning Commission had no unfinished business.

6. NEW BUSINESS

a. REQUEST: CUP 12-001 T.H.E. AGGREGATE SOURCE (MAJOR MODIFICATION TO CUP 00-01)

Mr. Kenneth Klco, Azurite, Inc., was present to request approval of a Conditional Use Permit (CUP), Department file #CUP 12-001 T.H.E. Aggregate Source (Major Modification to CUP 00-01), for mining and operation of a granite products mine, including dozing, blasting, crushing, screening, loading and hauling, the operation of a concrete recycling program and operation of an asphalt batch plant, by Aggsource, LLC. The proposed additional CUP property will be leased from the Bureau of Land Management (BLM). The property is located on the west side of U. S. Highway 50, approximately 0.8 miles north of Tunnel Drive, west of Cañon City. The property is currently being mined under CUP 00-01 and it consists of approximately

216 acres. With the addition of the proposed 79 acre BLM parcel, the total CUP property will be approximately 295 acres. The existing CUP property is located in the Agricultural Farming & Ranching and Industrial Zone Districts and the proposed CUP property is located in the Agricultural Forestry Zone District.

Mr. Klco stated that the granite operation has been in existence here in Cañon City, in the County and in the City limits, for the last fifteen years. It has been thirteen years since the last amendment which amended the acreage. The operation has matured to a point where Tezak Heavy Equipment (T.H.E.) has taken the initiative to develop a plan in conjunction with the BLM to propose an expansion due west of the existing mine operation. This proposal is primarily driven by the fact that acreage will be increased, but as far as operations, there really isn't any change. As far as the scope of the mine, this proposal will work to keep the area being mined as focused as possible. The 79 acres is in close proximity to where the operations are now and would follow through on a mine plan that would keep those operations within that focused zone. Moving to the north or in other directions on the property are possibilities, but this option makes more sense from an economic standpoint, the movement of equipment, and availability of the resource.

Mr. Klco continued, this is a decision that T.H.E. folks have been looking at for a number of years. It is a big change in that this proposal will also entail the payment of royalties to the BLM for this resource. Up to this point in time, the resource has come from private land. This amendment will step across the boundary into public land. Those lands are open for mineral development and they have been looked at by the BLM for more than a year. The National Environmental Policy Act (NEPA) work has been done, all of the work has been done for right of entry, and T.H.E. is now prepared to engage in the process of leasing of the mineral right for purpose of removal of granite, and a payment to the Royal Gorge Office (*of the BLM*) of a substantial amount every year based on the average number of tons moved from that operation over the last number of years. As far as the area of concern, there really isn't any change in the basic operation. The largest highwall feature that you see now above the mine is located at the western edge of the mining area. The proposed action would be to continue to the west. We looked at some alternative areas as far as the scope of mining and how that would affect visibility, and as mining progresses to the west it will incur a fin of rock, a standing ridge, and as that is mined it will expose the undisturbed ground behind it to the west. To a small degree, it will remove some of the highwall feature. In the original permitted area, the boundary line has formed a corner. Highwalls have developed on both sides. Taking the mining to the west will remove one visible highwall. The viewscape from tunnel drive and some of the other aspects of the mine will actually improve. Over time, we will have more highwalls. In the short term, we will keep the visual impact, as much as possible, to one concentrated area that looks pretty much as it does now, as far as the highwall configuration. One of the changes in the plan for the highwall configuration is that the final highwall in the proposed plan will actually be at the same bench height but more run. Right now there is a forty foot height and a twenty foot bench. The proposal will include a forty foot height and a thirty foot bench. All the highwalls have a 2.5 to 1 run on the vertical pitch, so overall it is a one to one slope. As far as stability, we have very high safety factors which were produced by analysis of the highwall at the forty and twenty pitch, and at the forty and thirty pitch the safety factors are extremely high. We will have a safer overall highwall when completed. The wider highwall benches will allow equipment to move on them easier and safer for maintenance purposes, and the overall risk factor will drop even more than with the original plan. The BLM parcel is about 79 acres. That would be mined from the time of approval and would extend the life of the mine through the operation to about

55 years. It is very difficult to make an approximation of life of mine when it is based on production rates, which have changed dramatically over the last number of years. This particular operation runs from 400,000 to 800,000 tons per year in production volume. Given average consumption rate, we are looking at a very large life of mine.

Mr. Bill Giordano showed a video of the area and summarized the Recommended Conditions, Contingencies, Waiver Requests, and Additional Notifications.

Mr. Dean Sandoval stated that thirteen years ago we heard this permit. The 79 acres (*of BLM property*) is in addition to the 216 acres of the original permit. Who owns the property that the exiting CUP is on?

Mr. Klco answered that there is some discrepancy regarding the original CUP permit acreage because it entails only County jurisdiction, whereas the State mining permit includes the City of Cañon City properties as well. The original CUP is for Tezak-owned land. The primary work area is now in the southern half of that property. The alternatives are to continue to mine the granite area to the north, or to stay in a more focused area and move the highwall to the west. Until this proposal, all of the mining had been done on private land.

Mr. Sandoval noted that there is a border of BLM land to the north and west that is not part of the permit. Even though this is a new application, it piggy-backs on the existing CUP. Why is that? Why isn't this application for a separate CUP?

Mr. Giordano answered that we could have treated it that way. This will basically be a new CUP anyway. If this application is denied, their existing permit stays in place. The process of going through a major modification to a CUP is the same as for a new CUP.

Mr. Sandoval noted the proposed first phase (*of mining*) will have less visual impact because they will be getting rid of that fin which will eventually be mined out, so the mining operation will drop in elevation.

Mr. Klco stated that the mining operation won't drop in elevation. As mining progresses to the west, they will mine the mountainside out. The ridge line is on the west side of the property boundary. As mining progresses to the west, that ridge line will be mined out, exposing the undisturbed ground behind it. As mining continues, ledges will be visible much as they are now. From a visual impact standpoint, from a distance such as Skyline Drive, I'm not sure you could tell the difference because the ledges will be just a little farther away. On the ground, the highwall will migrate slowly to the west over time, about a thousand feet over the entire extent. The highwall will grow in height over time because you are going to higher elevations. We are not talking about going below the lowest elevations of the mine now.

Mr. Sandoval asked the timeframe of the lesser visual impact compared to the anticipated greater impact we will see as the mining operation proceeds.

Mr. Klco said the greatest amount of visual impact would come with movement to the north, if the proposed western movement wasn't an option. If the operator stayed within his land parcel, and mined what he is permitted to mine, that would be the largest exposure of ground because you would have to open the highwall to the north. The proposed option, in a fifteen to twenty year timeframe, keeps the mine operation basically at status quo.

Mr. Sandoval asked if the remaining thirty years would be greater visual impact.

Mr. Klco answered it would become more visual as the highwall grows as mining continues over time. The exposed 79 acres is going to have a highwall feature as the final reclamation feature. It will be similar in appearance to what is there now, just to a larger extent.

Mr. Sandoval asked where the concrete recycling and the asphalt production are going to take place.

Mr. Klco answered both of those operations have taken place in the central pit area.

Mr. Sandoval said there is another area of large disturbance further north at higher elevation. Will that operation continue at the same time that this new CUP will be continuing?

Mr. Klco answered that a new CUP was approved last year for the Canyon Quarry operation. The disturbance you may be referring to is primarily the large failure of the mountainside in the original Canyon Quarry work area. This entire area is a historic mining area that has been active at least since 1923 if not before. That central area of the Canyon Quarry is in cessation, and will never be mined. Reclamation work has been done on the floor of the area and you can approach that broken zone, but it is not safe. As far as the area north of there, it is difficult to say if and when that will go back into production.

Mr. Sandoval asked how much more mining is anticipated in the existing CUP. Is that whole area still intended to be approached aggressively as economic conditions warrant?

Mr. Klco answered the area that is permitted could be used for anything that is legally permitted. There are a number of ancillary uses when operating the mine, such as equipment storage, stockpiling, and mining in the future.

Mr. Sandoval asked if the majority of the energy expended to mine will be in the new CUP. Will the existing CUP see a significant decrease in operation?

Mr. Klco answered as far as future disturbance there will be less in the near term versus the effort put into the amended area.

Mr. Sandoval asked if the existing location of the asphalt production and concrete recycling keeps the existing CUP alive.

Mr. Klco answered that both of the areas will be used. The central pit area will continue as it is now. Its proximity to the highwall lends it to be an obvious source of raw material feeding to the existing plants there. Over time the existing plants may move a little bit, but they are not going to move a lot. The primary pit area has the product material stockpiled. The wash plant and all of the facilities in association with the operation will stay where they are. That part of the CUP will continue on.

Mr. Sandoval asked if that would delay any reclamation they are obligated to do as long as there is an operation going on in the existing CUP.

Mr. Klco answered in this particular operation, one of the primary aspects of this mining technique is to construct a stable long-term highwall configuration, so reclamation is being done as the final highwall is being formed. The existing highwall meets the standards of the reclamation plan for the west side of the pit as is. As mining moves to the west, this final highwall configuration, as it approaches the limit on the permit boundary, will have reclamation done by virtue of the mining process. The existing highwall will be replaced by one situated

approximately 800 to 1000 feet west. From the viewpoints on U.S. 50 and Skyline Drive, to look at the operation twenty years from now, it won't look any different than it does right now. Mining won't migrate too much out of this central zone, the pit will stay where it is, the stockpiles and all the facilities will stay there, the highwall itself will simply migrate to the west over time.

Mr. Robinson asked for clarification of the map in the information packet showing the future contours of the bench to the west.

Mr. Klco explained that map is an overlay to show a bird's-eye-view of the downward vertical appearance of the location of the highwalls in relationship to the terrain. As they approach the boundaries, adjustments are made in disturbance so that they don't cross the boundary and they retain the topographical feature they are trying to keep for drainage purposes, so the stormwater is run off to the edges. The bottom elevation is the most important one there. The top elevation is important to view the actual potential for the upper bench and its relationship to the terrain. Those benches have to be formed to the terrain.

Mr. Robinson asked if they would be impacting a significant number of additional ridges in that formation.

Mr. Klco answered the terrain is changed as mining incurs that material and a new terrain is formed at the back side and the north side. They would be benching out that mountain.

Mr. Krauth asked if there are projections for the volume of product that will come out of this CUP.

Mr. Klco answered it is an estimation at this time, in the range of forty to fifty million tons of reserve.

Mr. Joe Lamanna asked if 100% of the material will be used as product. Is there any waste product?

Mr. Klco answered there are fractions of the material that are more marketable than others, but there is no waste product as described right now.

Mr. Lamanna asked where the Division of Reclamation, Mining and Safety (DRMS) permit stands.

Mr. Klco answered these are two parallel tracks that we are on. DRMS has the amendment package before them. They have accepted the package as a complete application as of January 14, 2013. They were looking at the aspect of right of entry as an important factor in going ahead with the consideration of the technical aspects of the permit application. They are doing that now. They will be on the site this week. DRMS is in an active phase. We should be able to respond to any of their technical questions within the next couple of weeks.

Mr. Lamanna asked if DRMS is requiring a geotechnical assessment of the highwall.

Mr. Klco answered an assessment was required in the original application.

Mr. Lamanna stated the existing failure is not part of the granite formation and I think it is part of the other CUP that Mr. Sandoval referred to. Does that dolomite / granite contact cross the highwall boundary anywhere?

Mr. Klco answered that on the property off to the central and north portion there is outcrop of some of the sediments and meta sediments that overlay the granite through this central portion. While historic mining went on with some of these quartzites and dolomites in the past, it was nothing akin to the massive block of rock north of there that CF&I was mining back in the 1970s when that failed. They were mining underneath a massive structure of dolomite. This mining is all being done in the terrain of the granite gneiss.

Mr. Lamanna stated that we are talking about a highwall that will have a visual impact to the area. The last thing Cañon City wants to see is a similar situation like what has occurred at Castle Concrete outside of Colorado Springs. There was a highwall failure up there due to a geotechnical problem. In my opinion, a geotechnical study should be done to ensure that the highwall design is stable. I think that DRMS is going to require that anyway.

Mr. Klco stated that type of study was done in 1998 for the original permit amendment that expanded the pit prior to the 2000 acreage addition. That highwall study was done through the School of Mines. They did try axial compressions on the materials. Those results still should stand in good stead with the results we see in the mine. The proof of the pudding is what we have seen there in the last fifteen years. We have a 400 foot highwall that is behaving pretty much as the projections showed.

Mr. Lamanna said you are talking about moving the wall to the north. There already is an existing failure there. I think it is prudent and wise to have some kind of geotechnical assessment done to ensure we don't have that kind of issue there. It is probably outside the jurisdiction of our area of influence, but we could consider seeing a geotechnical engineered report of the area to ensure the highwall design is within approved factors of safety and that there are no surprises there.

Mr. Krauth stated that would be more applicable if they mine to the north. If they go directly into the proposed Phase 1 mining section of the amendment, right into the highwall (*to the west*), they are going to be in the same granite formation. My guess would be they won't encounter the dolomite or slip feature of the CF&I scar.

Mr. Lamanna said he doesn't know the conditions under which that failure occurred.

Mr. Klco stated I believe it was undermining, and it was a massive sequence of the dolomite dip that was at the very high angle of the dip to begin with.

Chairman Alsup mentioned to Mr. Lamanna that he could add a requirement for a geotechnical report to the contingencies or conditions of the permit.

Mr. Lamanna responded that he thinks this is beyond our ability to police, but we could recommend that the DRMS look at that. That highwall will be there for a long time. When it is finalized, we want to make sure we don't have any issues with it.

Ms. Brenda Jackson noted that the County doesn't regulate reclamation, and DRMS doesn't regulate local issues. The mining operation is within our jurisdiction.

Mr. Krauth said he would hate it if the applicant takes a beating over a slip feature that was caused by mining from the 1920s or 1930s. Yet I understand Mr. Lamanna's point of view. As the mine goes through the process now, we want to make sure that a failure doesn't happen again. There was no history with the previous CUP that would suggest that problem would exist, and you would think that DRMS probably would review it and try to prevent it.

Mr. Lamanna said they probably would, but I don't think there is a guarantee that they would.

Mr. Klco said he has little doubt that DRMS will revisit that aspect and take a hard look.

Mr. Lamanna said from the operator's standpoint, it is a responsible thing to do to have a geotechnical report done of the area.

Regarding outside reviews, Mr. Klco mentioned that the stormwater features and the output numbers were run by a third party engineering hydrologist this last year and we do have a stormwater management plan that is updated. Basically though, the same area that was in the original plan was included in the storm output numbers the first time around since it is in the higher ground adjacent to the mine. In August of 2012, we had a third party hydrologist look at the output numbers, the peak discharge, the volumes of potential stormwaters in a ten-year event and a hundred-year event, and the design of the sediment ponds. In the last fifteen years, we have had a couple of hundred-year events in this area and the sediment ponds have worked quite effectively. The stormwater discharge permit that the operator holds today is valid and operable. It is in a status of changeover administratively on the State level, but we have applied for the modification, which basically is the statement of acreage. The output numbers are in the same range, although they are not exactly what they were. Some acreage was added to the overall watershed. The stormwater issues are well addressed on the site from the standpoint of diversion away from Tunnel Drive, diversion to holding ponds of large enough capacity for the storm flow rates as they are projected.

Mr. Lamanna asked about stormwater management around the highwall.

Mr. Klco answered the site is fairly simplistic as you approach the pit because the pit is the bottom end, so storm flows are routed through ditches in the pit proper and taken to the storm detention ponds. That is a primary feature on site, one that DRMS will be taking a hard look at.

Chairman Alsup quoted the Urban Growth District Strategy A9.1 from the Fremont County Master Plan: "Mineral extraction should only be allowed within the District when the extraction would be for short-term duration and when the reclamation plan provides an enhancement to the District." The Master Plan is a guideline, it is not regulatory. You are asking for Life of the Mine in a district where it should only be for short term duration. How would you respond to that?

Mr. Klco responded life of mine is relative to the timeframe you are talking about. Mining is a relatively short term land use compared to the land uses that existed before and potentially after. Even a fifty year life of mine is still a relatively short period of time in the scheme of things. However, it is a long period of time if you happen to be living in that area. The statement that you made is sometimes very difficult to come to mutual satisfaction on both sides of that statement. This is a land use within a district of historic land use of like kind. The mine is a considerably valuable economic driver for the City and for the County. T.H.E. is one of the largest employers in the County, at last count forty-six full time employees. The mine has made a considerable contribution to the local economy for a long period of time. A very important consideration for planning is to engage with conflicting desires, which is unlikely to satisfy everyone. One of the better negotiated directions for the mine is to see it stay in a focused and more controlled area for as long a period of time as possible.

Chairman Alsup asked about the two fire protection forms included in the application. There was some confusion – one form indicated that there is a 1500 gallon cistern at the mine, but the

other form said there is not a cistern and it is recommended there should be a cistern put in for fire protection.

Mr. Randy DiLuzio, T.H.E. General Manager, responded we do have a 1500 gallon cistern on site that feeds off of a service line that comes off the main on Tunnel Drive, so it is City water, which supplies us with our potable water.

Chairman Alsup asked if the cistern is available for fire protection.

Mr. DiLuzio answered it is. We don't have an actual fire hydrant, but we do have water supply there for fire protection, actually up on the hill.

Mr. Sandoval asked if there would be an increase in jobs with this new operation.

Mr. Klco answered this is an alternative that makes economic sense, and so any operation at the maximum economic basis is capable of expansion, of addressing demands. This resource is one that is in demand throughout the Front Range.

Mr. DiLuzio stated that in the last six months, we have seen an increase in inquiries and proposal requests to supply aggregate. One of the bigger ones is for the north I25 project. They are talking somewhere in the neighborhood of 300,000 tons of asphalt to pave that corridor. That would compute back to us to about 200,000 to 220,000 tons of aggregate. We have also put out several other proposals for six figures of tonnage. If half of these proposals hit, we will increase our production by 25 to 30% from the past year. Keep in mind production is already down for economic reasons. As the economy starts ramping back up, it will be a benefit to everybody, but especially to people in this community, because we diligently try to hire locally.

Mr. Sandoval asked for clarification to a sentence in the BLM FONSI (*Finding of No Significant Impact*) document, which says "There will be minor affects to visual resources."

Ms. Stephanie Carter, BLM, stated that the term "visual impacts" is subjective. There is an appendix to the document geared toward trying to quantify the visual impacts that this additional acreage will have with regards to the existing, since the BLM is looking at the existing as the baseline. This assessment was done through a GIS process, looking at different visual cluster perspectives from Dawson Mountain, Highway 50, Skyline Drive, and based on that assessment, even though the GIS was done on kind of a moonscape platform, there is an understanding of the timing of where you are as well as trees and buildings blocking the visual. We try to take out all the pieces and do a moonscape to really see the nuts and bolts of the difference. Based on that, the visual impact has been assessed as not being severe, and being pretty nominal from existing, as the CUP or the current permit is.

Mr. Sandoval asked what an ID Team is.

Ms. Carter answered an ID Team is a group of people at the BLM who are pooled together to review the different project proposals. The team consists of a geologist, a hydrologist, a biologist, fire, air, and all the different specialties which would have input into the review of the document.

Mr. Sandoval asked about "degree to which effects are likely to be highly controversial" in the FONSI. "The potential for controversy associated with the effects of the proposed action on resource values is low. There is no disagreement or controversy among ID team members or

reviewers over the nature of the effects on the resource values on public land by the proposed action.”

Ms. Carter stated this refers to the potential for controversy of the impacts, not necessarily of the proposal. That is where the differentiation is with NEPA. There is no controversy within the ID Team within the resource comparisons, values, or conflicts.

Mr. Sandoval noted in the Decision Record in the Visual Resources Section it says “If applicable, it is recommended that the headwall be colored to better blend with the surrounding natural environment depending upon actual headwall color as it is developed.” Is that an issue for this area?

Ms. Carter answered that within the Visual Section there is a long-shot photograph from east on Highway 50 coming into town, where you can see the whole skyline. That gives a visual platform of the different deposit types in granite and dolomite, and the color contrasts. Based on that and based on the proposal of acreage, the blending of what the highwall finished product is going to look like isn’t going to vary much from what you see now, which is pretty low impact on that horizon. The biggest impact is actually the scar behind the prison. If for some reason there is variation or foliation change as you go to the north when the final highwall design is done, and there is a lighter color or a really stark contrast of color, then coloring the highwall manually to hide that stark contrast would be looked at.

Mr. Sandoval referred to Exhibit C – Pre mining and Mining Plan Map of Affected Lands and Exhibit E – Reclamation Plan in the application. What are the dates on those items?

Ms. Jackson said to consider the date the same date as the application.

Mr. Sandoval asked if these exhibits are presented by the applicant. There is no organization attached to the exhibits.

Ms. Jackson answered the Exhibits reference back to the application and the application references the applicant.

Mr. Sandoval referred to Exhibit E – Reclamation Plan which states “The total area of highwall benches is relatively small acreage vs the rest of the site.” The Azurite letter dated June 12, 2012 states “The estimate is that the pit floor acreage will be in the range of thirty acres and the highwall bench footprint will consume about fifty acres of the BLM leased ground at the final maximum mining buildout.” From a relative point of view as stated in the Reclamation Plan, fifty out of eighty acres for the highwall bench doesn’t appear to be relatively small.

Mr. Klco noted that the reference was to the entire acreage of the site – 50 acres vs. 300 acres. The eighty acre site is definitely a highwall area by virtue of its topography there on the west side of the pit.

Mr. Brown referred to the CUP now in effect. What are the hours of operation?

Mr. DiLuzio stated that the current hours of operation do vary because they are business-driven, but on the norm, we typically are open in the quarry from 6:30 am to 4:30 pm. We have gone down to from 7:00 am to 3:00 pm and currently are working from 6:00 am to 6:00 pm.

Mr. Brown asked why the applicant is asking for hours of operation from 5:00 am to 9:00 pm. That seems like a large period of time.

Mr. DiLuzio answered those are the hours in the existing CUP. The reason for that is for future expansion. Rather than buy more equipment, we can put in more hours and get more production done with the same production equipment.

Mr. Brown stated concern with disturbing neighbors at 9:00 at night or 5:00 in the morning.

Mr. DiLuzio stated the truck traffic typically doesn't start until 6:00 am, if that. We have had crushing operation until 9:00 pm. The processing up on the hill would run to 9:00 pm, but not necessarily the truck traffic. We really do try to be very courteous to the neighbors. Some of us also live in that area.

Mr. Brown asked about the truck traffic on Tunnel Drive. He referred to Recommended Condition L "Tunnel Drive shall not be used for purposes of hauling of gravel material from the site except if it is determined by the Board that an emergency exists warranting the use of this roadway."

Mr. Klco stated the original main haul route came from well up Tunnel Drive close to where the T.H.E. shop is located. That was the original entry to the mine and all haulage came out of that gate until 2000 when T.H.E. instrumented the agreement with the City and did what they needed to do to keep the haulage up away from Tunnel Drive. The only Tunnel Drive incursion now is right at the very bottom end, only about 150 feet from the filtration plant entry road. It cost about \$500,000 to do the roadwork to get haulage away from the main impact of the folks living on Tunnel Drive. Since 2000 there hasn't been any haulage of product from the original main entrance out along Tunnel Drive in front of all those residences.

Mr. DiLuzio pointed out during spring, summer, and fall, depending on the weather and runoff, we do get involved in emergency operations, typically the railroad. We were involved briefly with the rock slide on Highway 50. Emergency operations are for things that are damaging to body or material. There was a well being drilled north of Cañon City last year and they were in a flood situation, so we hauled rip rap. One of the bigger businesses we do is rip rap and boulders for erosion and stormwater control.

Mr. Krauth asked if the applicant has responded and remediated any complaints that have come into the Department. Do they have a good track record with the Department?

Mr. Giordano answered that they remediated the complaints by putting in the new road, eliminating the use of Tunnel Drive. After that, we have not had complaints.

Chairman Alsup asked if this application was referred to the City for comment, since this is part of the Urban Growth District.

Mr. Giordano responded that the City got a referral and has not made any comment, other than the letter addressing the access.

Mr. Robinson stated that technically the site is in the Urban Growth Boundary, but this is already an established mine. The concept for that growth area is further north.

MOTION

Mr. Baker made a motion to approve CUP 12-001 T.H.E. Aggregate Source (Major Modification to CUP 00-01), subject to the following:

RECOMMENDED CONDITIONS:

- A. The term of the Conditional Use Permit shall be for life of the mine (*estimated as 55 years*). **The applicant's justification for life of the mine is that the property contains a large rock reserve that will be mined for a relatively long period of time. Additionally, it is difficult to estimate annual consumption due to varying business conditions.**

Note: The existing permit was issued for life of the mine.

- B. The Department shall review the permit annually to determine compliance with the conditions of the permit and forward it to the Board for their review as required by regulations. It shall be the responsibility of the permit holder to provide the Department with copies of other permits, licenses, or other documentation showing compliance with the requirements of any other governmental agency (*to include items such as changes to the documents, updates, renewals, revisions, annual reports*). Further it shall be the responsibility of the permit holder to provide the Department with copies of any documents that would affect the use of the subject property, such as but not limited to updated or renewed leases for use of or access to the subject property. Copies of these documents shall be submitted to the Department prior to the anniversary date of the approval of the use permit each year. If the Department has to notify the permit holder that the anniversary date has passed and / or request said documentation, then a penalty fee shall be charged to the permit holder. If the required documentation and penalty fee are not submitted to the Department within twenty (20) days following notification to the permit holder, then violation procedures may be commenced, which could result in termination, revocation, rescission or suspension of the use permit.
- C. The Applicant shall conform to all plans, drawings and representations submitted with or contained within the application except as may be inconsistent with the other provisions of the permit.
- D. The Applicant shall comply with all laws and regulations of the County of Fremont, its agencies or departments, the State of Colorado, its agencies or departments and the United States of America, its agencies or departments, as now in force and effect or as the same may be hereafter amended.
- E. Applicants shall obtain, prior to operation, and keep in effect, throughout operation, all other permits, licenses or the like, including renewals, required by any other governmental agency and as otherwise may be required by Fremont County and shall provide copies of such to the Department. Revocation, suspension or expiration of any such other permits shall revoke, suspend or terminate the permit authorized hereunder, as the case may be.
- F. If a Conditional Use is abandoned, discontinued or terminated for a period of six (6) months, the approval thereof shall be deemed withdrawn, and the use may not be resumed without approval of a new application. Provided, however, if the holder of the permit intends to or does temporarily cease the conditional use for six (6) months or more without intending to abandon, discontinue or terminate the use, the holder shall file a notice thereof with the Department prior to the expiration of the six-month period stating the reasons thereof and the plan for the resumption of the use. The requirement of a notice of temporary cessation shall not apply to applicants who have included in their permit applications a statement that the use would continue for less than six (6) months in each year and such fact is noted on the permit. In no case, however, shall temporary cessation of use be continued for more than

two (2) years without approval by the Board. **The applicant has not requested a temporary cessation at the time of application.**

- G. If a Conditional Use Permit is to be transferred it shall comply with all applicable Federal, State and County regulations regarding such transfer.
- H. All loads of material transported from the site shall comply with applicable Colorado Revised Statutes.
- I. The applicant shall provide the Department with a copy of the updated lease when renewed.
- J. Days and hours of operation will be limited to Monday through Saturday, from 5 am to 9 pm except for emergency operation. Emergency operation will be allowed twenty-four (24) hours per day, seven (7) days a week; however emergency operation shall not cumulatively exceed thirty (30) days in any one (1) calendar year. Emergency situations are considered to be a request for product for the purposes of repairing storm event washouts or other immediate public health and safety issues, not production that is merely the result of demand for material beyond which can be produced during the normal stipulated hours and days of operation. The applicant shall notify the Department prior to commencing an emergency operation, if possible, or no later than three (3) days after the emergency operation has taken place.
- K. "Jacob Brakes" shall not be used during the hours of 6:30 pm to 7:00 am either during normal operation or during an emergency operation.
- L. Tunnel Drive shall not be used for purposes of hauling of gravel material from the site except if it is determined by the Board that an emergency exists warranting the use of this roadway.
- M. Prior to operation the applicant shall provide to the Department, documentation from the Fremont County Weed Coordinator that the applicant has in place an acceptable weed control plan, further the applicant shall implement and maintain the plan.
- N. Provide a copy of the following approved permits, licenses or the like, prior to mining of the additional CUP property. *(If not required provide documentation from the listed entity that the following is not required, prior to mining.)*
 - 1. Approved copy of the Colorado Department of Public Health and Environment, Air Quality Control Division, Fugitive Dust Permit and APEN permit(s).
 - 2. Approved copy of the Colorado Department of Public Health and Environment, Water Quality Control Division, Storm Water Management Plan and Discharge Permit.
 - 3. Approved copy of the Colorado Department of Transportation Access permit for the proposed use.
 - 4. A copy of the approved Colorado Department of Natural Resources, Division of Reclamation, Mining and Safety Reclamation Permit.
 - 5. United States Department of Labor, Mine Safety and Health Administration MSHA number.

6. Valid license to store and use explosives from the Colorado Department of Labor & Employment, Division of Oil and Public Safety.
- O. The County shall retain the right to modify any condition of the permit, if the actual use demonstrates that a condition of the permit is inadequate to serve the intended purpose of the condition. Such modification shall not be imposed without notice and a public hearing being provided to the Applicant at which time applicant and members of the public may appear and provide input concerning the proposed modifications to the conditions of the permit.
 - P. Only the named party on the permit shall be allowed to operate this Conditional Use Permit. Board approval shall be required prior to allowing any other person or entity to operate at the site under the conditions of this permit. All persons, entities or others requesting Board approval to operate under this Conditional Use Permit must agree to abide by all terms and conditions of this Permit and shall be required to be named on this Permit as additional parties who are bound by the terms and conditions of this Conditional Review Use Permit.
 - Q. A Conditional Use Permit shall not be modified in any way without Department approval for Minor Modifications or approval of Major Modifications by the Board in accordance with Section 8.14 of the Fremont County Zoning Resolution (*complete reapplication*).

The Planning Commission recommended the following:

RECOMMENDED CONTINGENCIES:

It is recommended that this item be referred to the Board of County Commissioners for scheduling of a public hearing provided the following contingencies are provided within six (6) months after final approval by the Board of County Commissioners:

1. Documentation from the Colorado Department of Transportation that the existing driveway access permit is adequate for the additional mining area acreage.
2. Documentation as to compliance with any requirements of the Fremont County Engineer.

The Planning Commission recommended the following:

ADDITIONAL NOTIFICATION REQUIREMENTS:

In addition to the required notifications, the following shall also be notified, by certified mail, return receipt requested, in accordance with regulations, at least fourteen (14) days prior to the public hearing by the Board of County Commissioners:

1. City of Cañon City, Planning Division
2. Fremont County Sheriff's Office
3. Fremont Historical Society
4. Colorado Parks & Wildlife
5. Colorado State Historic Preservation Office
6. Colorado Department of Transportation
7. Arkansas Headwaters Recreation Area

The Planning Commission recommended waiving the following:

WAIVER REQUESTS:

1. **BUFFERING & LANDSCAPING REQUIREMENTS:** The applicant shall be required to provide screening or a buffering strip, which will act as an opaque visual barrier, unless waived by the Board. Where, in these regulations, any such screening or buffering strip is required to be provided and maintained, such buffering strip shall consist of a row of trees or continuous un-pierced hedge row of evergreens or shrubs of such species as will produce within three (3) years a screen height of at least six (6) feet and shall be of the following minimum sizes at time of installation:

Deciduous shrubs	4' height
Spreading evergreens	30" spread
Tall evergreens	3' height
Screen planting (<i>evergreen</i>)	4' height
Trees	2 and ½" caliper
Ground cover	2 and ½" pot

The entire buffer strip shall be immediately adjacent to the lot line or portion thereof, with consideration given to utility or drainage easements. The remainder of the strip shall be used for no other purpose than the planting of shrubs, flower beds, grass, or a combination thereof. The buffer strip shall be at least eight (8) feet in width and shall be graded and planted with grass seed or sod and such other shrubbery or trees. The entire area shall be attractively maintained and kept clean of all debris and rubbish.

In required buffer strips where a natural buffer strip is considered to be impractical or inappropriate, an opaque fence may be substituted in whole or in part for a natural buffer provided its specifications are approved by the Board.

The applicant's justification for the waiver request of the buffering and landscaping is that the property is zoned AF, AF&R and I. The existing CUP 00-01 item 1 (c) states "The site is of sufficient size to accommodate the proposed use, together with all yards, open spaces, walls and fences, parking and loading facilities, landscaping and other such provisions required by the resolution." There are no proposed changes to the site plan that will affect buffering and landscaping in this amendment. The mine site is located at an elevation well above neighboring areas such that landscaping or buffering has no effect on visual impact of the site.

2. **Surfacing:** Surfacing for all business, commercial or industrial off-street parking areas shall be graded and surfaced to control dust and provide proper drainage. Spaces shall be asphalt or concrete surface unless waived by the Board. If asphalt or concrete, spaces shall be clearly marked. Curbs or barriers shall be installed to prevent parking vehicles from extending over any lot lines.

The applicant's justification for the waiver request of the hard surfacing of the parking area is that the existing CUP was granted this waiver and that the mine site is a gravel mine where all surfaces are gravel.

3. **Lighting:** All off-street business, commercial or industrial parking spaces may be required to be adequately lighted to protect the safety of the individual using the area. Said lighting shall not cast any glare on the surrounding properties.

The applicant's justification for the waiver request of the lighting of the parking area is that the existing structures provide lighting for the designated parking area as follows: There are light packs mounted on each end of the scale house as well as the west side of the building to light up the parking areas and the weighing scale. All lighting as described is controlled by a timer. There are no proposed changes to the lighting on the property with this amendment. Existing lighting is shown on the site map.

4. **Landscaping:** All parking spaces (areas) used for business, commercial or industrial uses may be required to provide appropriate vegetation designed to break up the expanse of the parking area.

The applicant's justification for the waiver request of the landscaping of the parking area is that due to the nature of the use, a waiver of parking area landscaping is being requested. A waiver was granted under the existing CUP. This amendment does not propose any changes to the site in regard to parking, buffering or landscaping. for an engineered traffic study.

Mr. Lamanna stated that he has a concern from an engineering standpoint about the integrity of the wall, but that falls within DRMS jurisdiction, and I believe they will require Tezak to do a geotechnical assessment on the highwall expansion. It is a granite highwall, and granite has one of the highest compressive strengths out there, but it is also in a geologically diverse area. The DRMS will require you to do a geotechnical assessment to ensure that you are not intersecting some geologic feature that you don't know about right now. I would recommend that you follow through with that.

Mr. Baker said that information is not required for our approval. That requirement will come from someone else, if they so desire. That is why I did not include it in the motion.

SECOND

Mr. Krauth seconded the motion.

Mr. Sandoval made a comment relative to how he will vote on this motion. The operation out there right now seems to be first class. We don't see a lot of dust. Everything seems to be done well. I am proud of the Tezak highway project south of Colorado Springs. I assume some of the aggregate used south of Colorado Springs came from here. I have some reservations about this proposal, philosophical and practical. As Chairman Alsup noted, the Master Plan says mining operations should be relatively short-term. We try to review the Master Plan every ten years. For practical reasons and visionary reasons you can rarely go beyond twenty years in the Master Plan. In the Master Plan world, fifty years is a long time. It is difficult to embrace a life of the mine of fifty years, when the Master Plan is a twenty year aspect. As we work with the Master Plan, we try to keep things relative to the current time, and it is hard to think fifty years out what the impact might be. In the application, you state that reclamation will not begin for several decades. The final pit and highwall buildout is at near end of life of mine, at least fifty years from present. How can we possibly know what the County will need in fifty years? But I am torn because we see these wonderful projects going on, and we know we need the aggregate. It is a great idea, just a bad location. In principle I am not opposed to the project, but in location I am. I don't know how the visual impact can ever be mitigated. Reclamation is not restoration,

not that we expect complete restoration, but reclamation in many ways is a long way from the beginning of restoration.

Chairman Alsup called for a roll call vote.

Mr. Baker	Nay	Aye	Abstain
Chairman Alsup	Nay	Aye	Abstain
Mr. Lamanna	Nay	Aye	Abstain
Mr. Robinson	Nay	Aye	Abstain
Mr. Krauth	Nay	Aye	Abstain
Mr. Sandoval	Nay	Aye	Abstain
Mr. Brown	Nay	Aye	Abstain

Chairman Alsup announced that the motion passed with six Aye votes and one Nay vote.

7. ADJOURNMENT

Chairman Alsup adjourned the meeting at 5:30 p.m.

CHAIRMAN, FREMONT COUNTY PLANNING COMMISSION

DATE