

**BEFORE THE DIVISION OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF:

NOTICE OF INTENTION TO
COMMENCE SMALL MINING
OPERATIONS AT THE I-80 SOUTH
QUARRY (TREE FARM) OF GRANITE
CONSTRUCTION COMPANY

**ORDER ON NOTICE OF INTENTION
TO COMMENCE SMALL MINING
OPERATIONS AND OBJECTIONS**

File No. S/035/0055

APPEARANCES:

Kassidy J. Wallin for Granite Construction Company
Trevor Gruwell for the Division of Oil, Gas & Mining
Michael A. Zody for Salt Lake County
Michael M. Lee for Salt Lake City Corporation
Artemis D. Vamianakis for Millcreek City
Evan S. Strassberg for Richards Family Partnership
Janelle Eurick Bauer for Save Our Canyons

BY THE PRESIDING OFFICER:

John Baza, Director of the Utah Division of Oil, Gas and Mining
Assisted by Elizabeth Harris, Assistant Attorney General

INTRODUCTION

This matter came before the Director of the Division of Oil, Gas and Mining (“Director”) on a Notice of Intention to Commence Small Mining Operations filed by Granite Construction Company on behalf of Tree Farm, LLC and several written objections filed in response to the same. An informal hearing was held on July 13, 2022, where the Director heard oral argument from the parties regarding the Notice of Intention and filed objections.

FACTUAL AND PROCEDURAL BACKGROUND

Original Small and Large Mine Notices of Intent

On November 12, 2021, Tree Farm, LLC (“Tree Farm”) submitted a Notice of Intention to Commence Mining Operations (“NOI”) for both a small and large mine on the same privately owned land within Parleys Canyon, in Salt Lake County, Utah. The Division of Oil, Gas & Mining (“Division”) notified Tree Farm that due to the overlap in proposed operations, the Division was denying the small mine NOI and would focus its efforts on efficiently processing the large mine NOI.

On December 10, 2021, Tree Farm filed a Request for Agency Action (“RAA”) with the Board of Oil, Gas, and Mining (“Board”) seeking a declaratory ruling that Tree Farm’s small mine NOI met the statutory requirements and therefore the Division’s denial of the small mine NOI was improper. Thereafter, several parties—Salt Lake City, Millcreek City, Richards Family Partnership, and Save Our Canyons—successfully moved to intervene in the proceeding.

Prior to the hearing, the Board ordered supplemental briefing on the issue of how Utah Code §§ 40-8-7 and 40-8-13 should be interpreted and reconciled. Before that briefing was completed, the Division and Tree Farm filed a Stipulated Motion to Dismiss the RAA. The Division also filed a Motion for Policy Guidance seeking direction from the Board on future actions the Division should take if ever faced with similar circumstances.

The Board held a hearing on March 23, 2022 to consider the pending motions. On May 23, 2022, the Board issued an Order (1) granting the parties’ Stipulated Motion to Dismiss the RAA and (2) denying the Division’s Motion for Policy Guidance (“Board Order”). In the Order, the Board outlined its interpretation of the interplay between Utah Code § 40-8-7 and Utah Code § 40-8-13 and the Division’s role in reviewing small mine NOIs. The Board noted that while the

legislature clearly intended to encourage an expedited permitting process for small mines, the legislature also provided the Division and Board “with additional mechanisms for regulatory oversight” if warranted by the particular circumstances. The Board further observed that “[b]ased on the proximity of Tree Farm’s proposed mining operations to the citizens of Salt Lake City, the additional protections contemplated by Utah Code Ann. § 40-8-7(1)(j) are likely warranted.” Board Order at 11. Thus, given Tree Farm’s stated intent to refile its small mine NOI, the Board ordered that any future “evaluation of a re-submitted small mine NOI from Tree Farm be performed consistent with [the Board Order].” *Id.* at 13.

Subsequent Small Mine Notice of Intent

On June 15, 2022, Granite Construction Company (“Granite”), on behalf of Tree Farm, filed a new small mine NOI regarding planned mining activities on the same privately owned acreage in Parleys Canyon (“Granite NOI”). Shortly thereafter, Salt Lake County (the “County”), Salt Lake City Corporation (“SLC”), Millcreek City (“Millcreek”), Richards Family Partnership (“RFP”), and Save our Canyons (“Canyons”) (collectively “the Objectors”) filed objections to the Granite NOI and requested a hearing before the Division. The Division also received hundreds of comments from members of the public opposing the Granite NOI.

On July 13, 2022, an informal hearing was held in accordance with the requirements of Utah Admin. Code R647-5-106 and 107. Division Director John Baza acted as the Presiding Officer in the matter and was represented by Assistant Attorney General Elizabeth Harris. Granite, the Division, and the Objectors all appeared at the hearing and were represented by counsel as set forth above. Each of the parties presented oral argument regarding the appropriate scope of the Division’s review of small mine NOIs and the various objections filed in response to the Granite NOI.

POSITIONS OF THE PARTIES

At the hearing, Granite argued that Utah Admin. Code R647-3-101 dictates the process the Division must follow when reviewing a small mine notice of intention. As interpreted by Granite, that rule limits the Division's review of a small mine NOI to a two-step process: First, the Division must ensure that any small mine NOI application form submitted to the Division is complete; and second, the Division must approve the form and amount of the required reclamation surety. Granite asserted that any further review by the Division, or additional requirements imposed upon an applicant, would be contrary to the Division's prior practice and long-standing policies as well as a violation of the applicant's equal protection rights. Granite argued that it has met the statutory and regulatory requirements for a small mine NOI by submitting a complete application and providing a surety bond in an approved amount, and therefore is entitled to move forward with its mining operations.

The Objectors argued that the unique setting and proximity of the mine to the Mount Aire community and Salt Lake valley called for a more stringent review of the Granite NOI and that the Division statutorily could, and should, require Granite to supplement its NOI with site-specific information so that the parties could further explore any potential safety hazards and adverse environmental effects of the mine. The Objectors asked the Director to take four specific actions on the Granite NOI: First, convert the Division's review of Granite's NOI to a formal adjudicative proceeding to allow for "additional information and evidence taking, including potential expert evidence... regarding reclamation and operation plan issues." (Transcript 28:2-7.); Second, require Granite to submit a site-specific reclamation plan for the proposed small mining operation; Third, require Granite to submit a site-specific operations plan for the proposed small mining operation;

And finally, order that Granite obtain all other necessary approvals from other state and local agencies before commencing any mining activities.

Responding to the other parties' arguments, the Division argued against converting these proceedings to formal because doing so would not necessarily achieve the Objectors' stated objectives, and because the appeal process to the board already provided an avenue to a formal proceeding. The Division also argued that regardless of Granite's long-term plans for the site, Granite had submitted a small mine NOI and the Division was required to review the NOI under the small mine rules found in Utah Admin. Code R647-3 ("Small Mine Rules"). Those rules require small mines to meet the reclamation requirements set forth in rule; a site-specific reclamation plan is not required. The Division further argued that the reclamation bond Granite had provided was calculated in accordance with the rules and was sufficient to ensure adequate and complete reclamation of the site. Finally, the Division argued that although the Objectors raised very important issues, the Division was not the appropriate regulatory body to address those issues since it lacked both the expertise and authority to interpret and enforce other agencies' statutes and rules.

The Director, having fully considered the Granite NOI, the written objections filed against the NOI, and the arguments presented at the hearing, makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS AND CONCLUSIONS

Findings of Fact

1. On June 15, 2022 Granite Construction Company submitted a small mine NOI regarding planned mining activities on a 20 acre parcel of privately owned land located in Parleys Canyon.

2. The location of the proposed mine is adjacent to Salt Lake City, the largest metropolitan area in Utah.

3. The proposed mine is also immediately adjacent to the Mount Aire community and several recreation destinations in Parleys and Millcreek Canyons.

4. Access to the proposed mine would be via I-80 and the currently existing access road, which is also utilized to access the Mount Aire community.

5. Per the Granite NOI, Granite intends to mine limestone hard rock at the location, and on-site activities will include blasting, crushing, screening, dozing, hauling, and other activities typical to similar surface mine operations.

6. The Division reviewed the Granite NOI upon receipt and determined that the application was complete.

7. The Granite NOI includes a certification that it will complete reclamation of the proposed mine site in accordance with the Utah Mined Land Reclamation Act and Small Mine Rules.

8. Bonds for small mine operations are generally based on a per-acre bond amount which is approved by the Board. The standard per-acre bond amount for a small mine operation of 20 acres is \$200,600 for 3-years or \$219,300 for 5-years.

9. In this case, given additional potential costs based on the prospective mine's location and operations, the Division requested a higher bond amount of \$352,000 for a 5-year escalation.

10. Granite complied with the Division's bonding request and the Division is currently holding a \$352,000 reclamation surety bond.

Conclusions of Law

1. Utah Code § 40-8-13 requires all operators to file a NOI prior to commencing mining operations.
2. As set forth in Utah Code §§ 40-8-4(3)(b) and 40-8-13(5), the Division's approval of a small mine NOI is not required. In other words, under the current statutory framework, the Division does not have discretion to approve or deny a small mine NOI.
3. Instead, as set forth in Utah Code § 40-8-13, the Division is directed by the legislature to review a small mine NOI for completeness and to approve the form and amount of reclamation surety provided by the operator.
4. Having reviewed the Granite NOI, the Director concludes that the NOI is complete and contains all necessary information required by the Division to accurately calculate the appropriate surety bond amount to ensure reclamation of the mined land takes place.
5. The surety bond provided by Granite is sufficient to ensure reclamation of the proposed mine site in accordance with the reclamation standards set forth in statute and rule.
6. Pursuant to Utah Code § 40-8-7(j), the Board and Division are authorized to require that all mining operations, including small mine operations, be conducted to minimize or prevent hazards to public health and safety. Thus, although the Division may not deny a small mine NOI, it may impose reasonable conditions within its jurisdiction on small mining operations to ensure the public health and safety is protected.
7. Through rulemaking, the Board and Division have imposed several standard conditions on small mine operators to protect the public health, safety and welfare. These conditions are found in Utah Admin. Code Rules R647-3-108 through 109.

8. These rules also grant the Division authority to impose additional operating conditions where necessary due to site specific considerations. In this case, given the proposed mine's proximity to residential and recreational areas, the Director concludes that additional protections, as described further below, are necessary to ensure that the public health, safety and welfare are protected.

DISCUSSION

Division's Regulatory Authority Relating to Small Mine NOI'S

As a general rule, an administrative agency may only lawfully exercise those powers expressly or impliedly granted to it by statute. *See Robinson v. State*, 2001 UT 21, ¶ 14, P.3d 396, 400 (“Because the constitution vests the legislative power in the legislature, administrative agencies may only effect policy mandated by statute and cannot exercise a sweeping power to create whatever rules they deem necessary.”) In Utah, the Mined Land Reclamation Act (the “Act”) tasks the Board and the Division with the regulation of the mining industry, which includes the permitting of small and large mines. *See Utah Code § 40-8-13*.

Among other things, the Act grants the Board and Division authority to require operators to file a notice of intention prior to commencing mining operations, to reclaim lands affected by mining operations, and to ensure that mining operations are conducted to minimize or prevent hazards to public health and safety. *See Utah Code § 40-8-7(1)(a), (b) and (j)*. The Board is further granted authority to enact rules that are “reasonably necessary to carry out the purpose of [the Act].” *See Utah Code § 40-8-6(1)*. *See also, Athay v. State, Dep't of Bus. Regul., Registration Div.*, 626 P.2d 965, 968 (“The legislative grant of authority to the administrative agency is necessarily in general language. It is the responsibility of the administrative body to formulate,

publish and make available to concerned persons rules which are sufficiently definite and clear that persons of ordinary intelligence will be able to understand and abide by them.”).

In keeping with this legislative directive, the Board and Division have enacted several rules relating to the regulation of the mining industry. Of relevance to this proceeding are those rules governing the permitting of small mines found in the Small Mine Rules. Among other things, these rules outline the Division’s application process for small mine permits, identify the information to be included in a small mine NOI, and impose mandatory operations and reclamation practices for all small mines.

As Granite interpreted these rules, the Division’s review of small mine NOIs is basically ministerial, limited to two steps: first, the Division must review the NOI to ensure it is complete; and second it must approve the amount and form of the reclamation surety. Granite pointed to Utah Admin. Code R647-3-101 as support for this conclusion which states, in pertinent part, “[p]rior to commencement of operations, a Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) containing all the required information must be filed with and determined complete by the Division and the Division shall have approved the form and the amount of reclamation surety.”¹ Granite asserted that any deviation from this two-step process by the Division is inconsistent with the Division’s long-standing practice and therefore would violate Granite’s equal protection rights².

The Objectors disagreed that the Division’s role is purely ministerial. Instead, they pointed to Utah Code § 40-8-7(1)(j), and the Board’s interpretation of that section, which states: “[t]he

¹ Granite recognized the rule also requires the Division to approve or disapprove all variances from the rules requested by the operator but clarified that that no such variances have been requested in this case. *See* Utah Admin. Code R647-3-101(3)(3.12).

² Determining the constitutionality of agency action is beyond the scope and jurisdiction of this administrative proceeding. However, as explained more fully above, it has long been the Board and Division’s practice to require operators of small mines to submit necessary information and take various actions to minimize hazards to the public safety and welfare.

board and the division may require... that mining operations be conducted to minimize or prevent hazards to public health and safety.” The Objectors argued this section grants the Division discretion to review a small mine NOI with an eye towards mitigating and/or preventing health and safety hazards. The Director agrees. It would be absurd to read the Act as authorizing hazardous and/or unsafe mining operations so long as those operations only take place on parcels of twenty acres or less. Such a reading would be contrary to public policy and ignore the government’s responsibility to protect the public.

In fact, contrary to Granite’s characterization of the Division’s historical practice, it has long been the Division and Board’s practice to require all small mine operators to conduct mining operations and land reclamation in such a way as to protect the public safety and welfare. For example, Utah Admin. Code R647-3-107 states:

During operations, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare – The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:
 - 1.11 The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;
 - 1.12 The disposal of trash, scrap metal and wood, and extraneous debris;
 - 1.13 The plugging or capping of drill, core or other exploratory holes as set forth in Rule 647-3-108;
 - 1.14 The posting of appropriate warning signs in location where public access to operations is readily available;
 - 1.15 The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

Likewise, Utah Admin. Code R647-3-109 provides:

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare – The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:
 - 1.11 The permanent sealing of shafts and tunnels;
 - 1.12 The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;
 - 1.13 The plugging of drill, core, or other exploratory holes as set forth in Rule R647-3-108;
 - 1.14 The posting of appropriate warning signs in location where public access to operations is readily available;
 - 1.15 The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

These rules, enacted by the Board and Division, require all small mine operators to utilize specific operation and reclamation practices in order to mitigate and prevent public health and safety hazards. The rules also make clear that the Division has discretion to impose additional conditions on operators to minimize hazards specific to particular sites when deemed necessary by the Division. *See Id.* at 1.15 (“Methods to minimize hazards **shall include but not be limited to...** the construction of berms, fences and/or barriers above highwalls or other excavations **when required by the Division.**”)(emphasis added). *See also Salt Lake Citizens Cong. V. Mountain states Tel. & Tel. Co.*, 846 P.2d 1245, 1252 (Utah 1992) (“[W]hile prospective resolution of legal issues by rule making is generally desirable, an agency cannot possibly anticipate all the unresolved legal issues that will arise under the statutes and rules the agency administers. Thus, the agency must be able to resolve interstitial legal issues when they arise in the context of adjudication. In short, an agency must have the power to establish rules of law on a case-by-case basis within the context of its statutory authority”) (internal citations and quotations omitted).

Given the unique geography of the proposed mine and its proximity to the Mount Aire community and Salt Lake Valley, the Director agrees with the Board’s conclusion that additional protections are necessary to adequately mitigate and prevent hazards to the public health and safety.

OBJECTORS' REQUESTS FOR RELIEF

Having determined that the Division has authority to consider site-specific conditions and impose additional restrictions where necessary to protect the public safety and welfare, the Director considers each of the Objectors' requests for relief in turn.

Request to Treat Granite NOI as a Large Mine NOI

In the written objections filed with the Division, the Objectors ask the Division to treat Granite's NOI as a large mine NOI and require Granite to complete the application process for a large mine permit. The Objectors asserted this treatment is appropriate given Tree Farm's long-term goal of developing a large mine on the same location and argue that Granite is attempting to "skirt the statutory and regulatory processes for review and approval of large mining operations" by filing a small mine NOI.

Regardless of Granite and Tree Farms' long-term intentions for this property, the Granite NOI is an application for a small mine permit and, in compliance with the small mine requirements, only seeks to disturb twenty acres. If at some point Granite wished to mine outside those boundaries, it would be required to submit a large mine NOI to the Division and go through the large mine permitting process. As such, the Director finds the Objectors' request to treat the Granite NOI as a large mine NOI premature and will review the Granite NOI under the small mine requirements.

Request to Convert the Informal Adjudication into a Formal Proceeding

The Objectors jointly requested the Director convert this informal adjudication to a formal proceeding so that the parties may conduct a "robust, on the record, formal hearing to assure the public and interested parties that all appropriate considerations are being addressed." Salt Lake

County's Objection at 11. Conversion of adjudicative proceedings is governed by Utah Admin. Code R647-5-105(1), which states:

- (1) Any time before a final order is issued in any adjudicative proceeding before the Division, the Division Director may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:
 - 1.11 Conversion of the proceeding is in the public interest; and
 - 1.12 Conversion of the proceeding does not unfairly prejudice the rights of any party.

The Objectors asserted that it was in the public interest to convert this proceeding because no other matter before the Division has previously generated this level of public concern or public interest. The Objectors further argue that no party would be unduly prejudiced by converting the proceeding because all parties would have the ability to put on evidence and present information and argument in a formal proceeding. Conversely, Granite argued that converting the proceeding would prejudice its interest by imposing additional delay not contemplated by the Act, which would make the process significantly more expensive and burdensome for Granite. Finally, the Division argued the Director should refrain from converting this proceeding to formal because doing so would not necessarily result in the additional procedures sought by the Objectors and because those procedures would be available through an appeal of the Director's order since further proceedings before the Board would be conducted on a formal basis.

After considering the matter, the Director declines to convert this informal proceeding to a formal adjudicative proceeding. The principal goal of administrative law is to ensure the efficient, economical, and just administration of matters pending before the agency. In this case, it would not be efficient or economical for the parties and the Division to proceed with a full, formal adjudication of these issues before the Director only to then repeat the entire process in a trial de novo before the Board. The Director recognizes the significant interest the public has in the outcome of these proceedings and had the precise outcome sought by the Objectors not already

been provided for in the Division's established procedures, the Director may have considered converting this matter. However, where the parties will have the opportunity, if desired, to formally adjudicate these issues before the Board on appeal, the Director concludes that it would be unfairly prejudicial to Granite to repeatedly delay consideration of its small mine NOI and therefore denies the request to convert these proceedings.

Request for Site-Specific Operations Plan

In their written objections, the Objectors raised valid concerns regarding the proposed mine's potential adverse impacts on water supply, water quality, air quality, wildlife, recreation, and wildfire and rockslide risks. To address these concerns, the Objectors asked the Director to require Granite submit a site-specific operations plan which identifies how Granite will mitigate and prevent adverse effects to the environment and surrounding areas. Although the Director shares the Objectors' desires to mitigate and prevent harm to the environment, the Division has neither the regulatory authority nor the scientific expertise to sufficiently ensure this outcome. Other regulatory agencies have been tasked by the legislature with the protection of these areas and are best suited to ensure that appropriate measures are taken to mitigate harm caused by mining operations.³ The Division would be reaching beyond its regulatory authority and expertise were it to require specific actions be taken to protect these resources. Under Utah law and this Order, Granite is required to obtain all necessary permits and approvals prior to commencing mining operations. *See* Utah Code § 40-8-17(1) ("The approval of a notice of intention shall not relieve the operator from responsibility to comply with all other applicable statutes, rules, regulations, and ordinances, including but not limited to, those applying to safety, air and water pollution, and public liability and property damage.") The Objectors should work

³ For example, the agencies within the Utah Department of Environmental Quality regulate water pollution and air pollution.

with the agencies and authorities tasked with regulation of these areas to ensure that their concerns are adequately addressed as part of the permitting/approval processes.

Request for Site-Specific Reclamation Plan

The Objectors asked the Director to exercise the Division's authority under Utah Code § 40-8-7(1)(c) to require Granite to submit a site-specific reclamation plan for the proposed small mine. Pursuant to that section, the Division may require the "furnishing and maintenance of reasonable surety to guarantee that the land affected is reclaimed according to approved plans consistent with on-site conditions." The Objectors argued that the legislature's use of the terms "approved plans" and "on-site conditions" indicates that the Division has discretion to require site-specific reclamation plans be submitted and approved for small mines.

The statutory reclamation requirements for small mine operators are set forth, to a limited extent, in Utah Code § 40-8-13(1)(c) which states, in its entirety, "The notice of intention for small mining operations shall include a statement that the operator shall conduct reclamation as required by rules promulgated by the board." This general reclamation requirement stands in direct contrast to subparagraph (d) of that same subsection which states: "The notice of intention for mining operations, **other than small mining operations** shall include a plan for reclamation of the lands affected as required by rules promulgated by the board." *See* Utah Code § 40-8-13(1)(d) (emphasis added).

The Director is sympathetic to the Objectors' concerns related to potential long-term detrimental effects caused by the small mine. However, when drafting the Act, the legislature purposefully chose to exempt small mining operations from the requirement to submit site-specific reclamation plans as part of an NOI. The Division is bound by this legislative directive. *See Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 91 (2002) ("Regardless of how serious

the problem an administrative agency seeks to address...it may not exercise its authority in a manner that is inconsistent with the administrative structure that [the legislature] enacted into law.”) (internal quotations and citations omitted).

In this case, the Granite NOI includes a certification that Granite will conduct reclamation activities as required by Utah Admin. Code R647-3-109 (Reclamation Practices). Accordingly, the Director concludes that Granite’s NOI complies with the reclamation plan requirements set forth in Utah Code § 48-8-13(1)(c).

Request to Review Approved Surety Amount

“Except for the form and amount of surety, an approval of a notice of intention for small mining operations is not required.” Utah Code §40-8-13(5). The Director interprets this subsection as requiring the Division to approve the form and amount of surety provided by a small mine operator prior to that operator commencing mining activities. At the hearing, the Division introduced the Declaration of Kimberly Mary Coburn-Groenewold, a professional engineer employed by the Division who was tasked with reviewing the Granite NOI for completeness and calculating the required bond amount to ensure appropriate reclamation (hereinafter “Division Declaration”). Ms. Coburn-Groenewold indicated that when calculating the bond amount, she utilized a Board approved method of determining a per-acre bond amount and thereafter considered “additional potential costs based on the prospective mine’s location.” *See* Division Declaration at ¶ 5. Ms. Coburn-Groenewold arrived at a total amount after considering “the magnitude, type, and costs of approved reclamation activities planned for the land affected by the proposed small mine.” *Id.* at ¶ 6. She further considered the “nature, extent, and duration of operations contemplated in the small mine NOI.” *Id.* The specific additional costs identified by Ms. Coburn-Groenewold are reflected in the bond calculations included in the

Granite NOI. *See* Bond Calculations attached to Granite NOI at pages 1-6. After conducting this analysis, Ms. Coburn -Groenewold requested, and received from Granite, a \$352,000 bond for a 5-year escalation. *Id.* at 5.

In their written and oral objections, the Objectors generally claim that the reclamation contract and surety provided by Granite are inadequate to ensure adequate reclamation of the proposed mined area. This objection appears to be based on two misperceptions: first, that under the small mining permit Granite will be allowed to conduct mining operations on the full 634 acres identified in Tree Farm's original large mine permit; and second, that reclamation entails returning mined land to its pre-mining condition. Both conclusions are incorrect.

As discussed above, under this small mine permit, Granite is limited to conducting mining operations on the twenty acre parcel identified in its NOI and therefore is only required to provide reclamation surety to cover that small area. If, at some point, Granite wishes to expand mining operations beyond the permit boundary, it will be required to submit a large mine application and provide additional surety to cover reclamation of the larger area as part of the application process.

Under the governing statutes and rules, an operator engaged in reclamation activities is not required to "restore" mined land to its pre-mining condition. Rather, the operator must meet the dual objectives of "return[ing] mined land to a stable ecological condition compatible with past, present, and probable future local land uses," and "minimiz[ing] or prevent[ing] future hazards to public safety and welfare." *See* Utah Code 40-8-12. The Board has enacted specific reclamation rules applicable to small-mine operators to ensure that these objectives are met. If an operator complies with these rules, they will have successfully reclaimed the land to the extent required by law.

In this case, the Objectors have not provided any specific arguments regarding the sufficiency of the bond calculations that the Director may consider⁴. Therefore, the Director finds that the bond amount is sufficient to ensure complete and adequate reclamation of the site in conformance with statute and rule.

⁴ The Division's bond calculations for the Granite NOI were available for review on the Division's website prior to the written objections being filed.

ORDER

Based on of the Findings of Fact, Conclusions of Law and analysis stated above, the Director orders that:

Granite's Notice of Intention to Conduct Small Mining Operations is deemed complete and the form and amount of surety that has been provided to the Division is hereby approved.

Granite is now permitted to conduct small mining operations on the twenty acres identified in the Notice of Intention subject to the following conditions:

1. Prior to commencing mining operations, Granite shall obtain all necessary permits and approvals required by county, state, and federal regulatory agencies and authorities having jurisdiction over any aspect of Granite's mining operations.
2. In order to protect the public health, safety, and welfare and mitigate potential adverse effects, Granite shall comply with the following when conducting mining operations:
 - a. Granite shall use best practices to fence or secure the mine site from access by persons other than mine employees. Such site security shall include appropriate signage and monitoring of the mine perimeter to prevent unanticipated entry on the mine site;
 - b. Granite shall post appropriate signage warning of industrial traffic on all mine access and haulage roads. Granite shall minimize heavy industrial equipment traffic on I-80 and the access road during periods of high recreational or residential commuting use;
 - c. Granite shall perform all blasting and major excavation activities during daylight hours;
 - d. Granite shall utilize best practices when blasting and shall take precautions to minimize and monitor seismic disturbance to nearby natural landscape features and man-made structures. An example of best practices may be found in Utah Admin. Code R645-301-500;
 - e. Granite shall comply with all fire restrictions imposed by county, state, or federal agencies during periods of high fire danger. Additionally, Granite shall consult with local, state, and federal governmental fire managers to establish a fire prevention and mitigation plan which shall be used in the mining operations; and

- f. Granite shall comply with all other applicable statutes, rules, regulations, and ordinances applicable to its mining operations, including but not limited to, those applying to zoning, safety, air and water pollution, sanitation and waste management, and public liability and property damage.

DATED AND EFFECTIVE this 22nd day of August, 2022

DIVISION OF OIL, GAS AND MINING


John Baza (Aug 22, 2022 15:05 MDT)

John R. Baza, Division Director

RIGHT OF APPEAL

This ORDER may be appealed to the Board of Oil, Gas and Mining in accordance with the procedures set out in R647-5-105(17) and R641-105-100 by filing a written Request for Agency Action with the Board within ten days of receipt of the ORDER.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2022, I caused a true and correct copy of the foregoing **ORDER ON OBJECTIONS TO NOTICE OF INTENTION TO COMMENCE SMALL MINING OPERATIONS** be sent to the following:

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