



**DEVELOPMENT AGREEMENT
GOVERNING DEVELOPER'S OBLIGATIONS IN**

"WESTERN MOBILE BOULDER OPEN MINING SPECIAL USE REVIEW"

(Boulder County Land Use Docket # SU-96-18)

THIS AGREEMENT is made on the 30 day of June, 1999, by and between the Board of County Commissioners of Boulder County, Colorado ("the County"), and WESTERN MOBILE, INC. ("the Developer").

WHEREAS, the Developer has submitted to the County a special use request to mine, process, and transport sand and gravel, which the County has approved in Land Use Docket # SU-96-18 ("the Docket"), as set forth in County Resolution # 98-32, adopted August 20, 1998, which is attached to and incorporated into this Agreement as Exhibit A (collectively, "the Development") and

WHEREAS, the County has fully considered the Development and the improvement of the land proposed in the Docket, and has made its approval expressly contingent on the Developer's agreement to the matter as set forth below; and

WHEREAS, the County has determined that this Agreement is consistent with the Boulder County Comprehensive Plan, the applicable County regulations, and the County's approval of the Development as set forth in Exhibit A; and

WHEREAS, the County and the Developer acknowledge and agree that the matters set forth herein are reasonable requirements for the County to impose as part of its approval of the Docket, and that such matters are necessary to protect and promote the public health, safety, and welfare,

NOW THEREFORE, in consideration of the mutual covenants herein contained and the County's approval of the Development as set forth in Exhibit A hereto, the Developer and the County agree as follows:

1. Description of Development

In 1973, the County gave special use approval to Developer's predecessor Western Paving Construction Co. to mine, process, and transport sand and gravel pursuant to Docket # 476 (Rockin' W.P.). From the date of this initial approval a number of amendments were approved by the County including but not limited to Docket # SU-92-2 (Western Mobile/Miller



Pit amendment), under which approval Developer currently mines and processes sand and gravel, which is then conveyed to the Rockin' W.P. site for additional processing. Under Docket # SU-96-18 whose approval superseded and replaced all prior County approvals, Developer proposes to continue mining, processing, and conveying sand and gravel from the Miller Pit and to mine, process, and transport sand and gravel from additional lands contiguous to the Miller Pit, the Rockin' W.P. parcel, and adjacent parcels, all as shown on the approved site plan attached to and incorporated herein as Exhibit B. The additional area to be mined is divided into three phases identified as Phase I — West Plant (213 acres); Phase II — East Plant (226 acres); and Phase III — Rockin' W.P. South (208 acres), all of which will be mined and reclaimed over a period of 30 years. Final processing of sand and gravel mined under Docket # SU-96-18 will continue at the existing processing area located at the Rockin' W.P. parcel, all as further described in the official file for this Docket and in Exhibit A, attached hereto. The Development shall comply and be consistent with the terms, conditions, and commitments of record for the Docket, as set forth in Exhibit A.

2. Road Impact Fees

The Developer shall participate in the applicable road impact fee fund if and when the County adopts a county-wide road impact fee system prior to the issuance of building permits pursuant to this Agreement.

3. Building Permits

The County shall not issue any building permits or related land use permits (such as grading permits) for the Development to proceed until the Parties have executed and recorded this Agreement; the Developer has satisfied all conditions of the County's approval of the Development which are prerequisite to work on the Development commencing; and the Developer has met all other applicable requirements of the Boulder County Land Use Code and Building Code for the requested permit.

4. Vested Right

In consideration of the above conditions and covenants, the County agrees to grant a vested property right for the proposed Development to proceed pursuant to the terms of this Agreement. The approval shall extend for a period of five (5) years after the start of mining activities for the West Plant Parcel (Phase I) or five (5) years after January 31, 2003, whichever date is earlier, subject to the provisions for modification and termination contained herein. During the vesting period approved herein, subsequent regulations enacted by the County shall be applicable to the Development if necessary to protect the health and safety of the inhabitants of Boulder County, or if general in nature and applicable to all properties subject to County land use regulation.

The Developer may request an extension of the vested right approved herein, in accordance with the Boulder County Land Use Code and applicable state law. The vested



property right granted herein shall be terminated if the County determines that Developer is not in good faith compliance with the terms of this Agreement.

5. Amendment/Waiver

This Agreement may be canceled or amended with the mutual consent of the parties or to bring the Development into conformance with federal or state law. The County shall have the right to waive its rights to enforce this Agreement, without obtaining the consent of any other entity or person, provided that any waiver shall be made in writing to be effective. However, any cancellation, amendment, or waiver that represents a material modification of the County's approval of the Development, as set forth in Exhibit A hereto, shall require a public hearing and approval according to applicable County land use regulations.

6. Enforcement

The County may conduct a periodic review of the Development as necessary to assure compliance with this Agreement. This right includes the right to enter upon the property included within the Development at any time, without prior notice, to inspect for compliance with the terms of this Agreement. The County or any purchaser of any land subject to the requirements of this Agreement shall have the authority to bring an action in the Boulder District Court to compel the enforcement of this Agreement and the restrictions and requirements herein provided for, and to seek other relief as may be authorized by law.

7. Transfer of Property/Annexation

This Agreement is intended to provide for the orderly development of the property included in the Docket in accordance with the terms hereof. Those owners of the property or any portion of the property who obtain title subsequent to the date of this Agreement, or persons holding under Developer or subsequent owners, shall be entitled to construct and use the Development by complying with the terms hereof, and shall also be bound by all applicable terms and obligations of this Agreement. If the Development property becomes included within the boundaries of any city or town, the County's right to enforce this Agreement shall automatically pass to the governing body of the city or town.

8. Subordination

Prior to recordation of this Agreement, the Developer shall have obtained the written and notarized agreement of any existing senior mortgagee or lien holder in the property included in the Development, to subordinate their interest in the property to the County's right to retain in effect and enforce this Agreement.

9. Binding Effect

The terms and conditions of this Agreement shall be covenants that run with the lands and inure to the benefit of and are binding upon the heirs, successors in interest, and assigns of the parties to this Agreement.



Exhibit A

RESOLUTION 98-32

A RESOLUTION CONDITIONALLY APPROVING BOULDER COUNTY LAND USE DOCKET #SU-96-18, AND REPEALING DOCKETS #SU-69-476 (ALSO KNOWN AS DOCKET #476), AS AMENDED (INCLUDING DOCKET #SU-84-18), AND DOCKET #SU-80-26, AS AMENDED (INCLUDING DOCKET #SU-92-02) ("WESTERN MOBILE BOULDER, OPEN MINING SPECIAL USE REQUEST"): A SPECIAL USE REQUEST, WITH ASSOCIATED SITE SPECIFIC DEVELOPMENT PLAN, TO ALLOW OPEN MINING, AND REPEAL PREVIOUSLY APPROVED SPECIAL USE DOCKETS, AS AMENDED, RELATED TO THE PROPOSED COMPREHENSIVE MINING OPERATION AND PLAN ON APPROXIMATELY 881 ACRES OF PROPERTY LOCATED EAST OF N. FOOTHILLS HIGHWAY, SOUTH OF UTE ROAD, IN SECTIONS 20, 21, 22, 27, 28 AND 29, T3N, R70W.

WHEREAS, Western Mobile Boulder, Inc., along with the affected subject property owners (Mineral Reserves, Inc.; Western Paving Construction Company; Southdown, Inc.; and Henry Braley) (collectively, "Applicants"), have requested approval for a special use permit, with associated site specific development plan, and associated subdivision exemption request, to conduct an open mining operation on approximately 647 acres within a 881-acre area of property which is located as generally described in the caption to this Resolution, above ("the Subject Property"), in the Agricultural Zoning District in unincorporated Boulder County; and

WHEREAS, the mining work is expected to occur for 30 or more years, in a total of three phases, with each phase mining a number of pods, and with the first phase starting in January of 2003; and

WHEREAS, mining of the land and all necessary reclamation are proposed to be done concurrently, meaning that the pods are to be mined and shaped into their final configuration as one continuous process; and

WHEREAS, the proposed conceptual reclamation plan includes a series of new water reservoirs and numerous wetland areas, resulting in the creation of about 100 acres of open water in the 647-acre mining area, as well as 120 acres of wetlands, 258 acres of dry meadow, and 169 acres of undisturbed area; and



WHEREAS, while the original application also requested approval of concrete and asphalt batch plants on the Subject Property as accessory uses, the Applicants withdrew this part of their mining proposal; and

WHEREAS, to avoid confusion due to the existence of numerous prior mining approvals on the Subject Property (Docket #476, as amended (including Docket #SU-84-18), and Docket #SU-80-26, as amended (including Docket #SU-92-02)), the Boulder County Land Use Department has recommended that these prior approvals all be repealed, and be reenacted in the current Docket to the extent relevant to it, so that any approval granted in the current Docket (#SU-96-18) becomes the sole and complete approval governing mining on the Subject Property; and

WHEREAS, the mining proposal originally included a subdivision exemption request (Docket #SE-96-18) for the recognition of two building lots on the Subject Property, which the Applicant subsequently withdrew as part of this discretionary land use approval process; and

WHEREAS, the above-described request was processed and reviewed as Boulder County Land Use Docket #SU-96-18 ("the Docket"), all as further described in the Boulder County Land Use Department Planning Staff's Memoranda and written recommendations to the Boulder County Board of County Commissioners ("the Board") dated July 1, 1997; October 28, 1997; and January 22, 1998, with their attachments (collectively, "the Staff Recommendation"); and

WHEREAS, on December 18, 1996 and April 16, 1997, the Boulder County Planning Commission ("the Planning Commission") held a duly-noticed public hearing on the Docket, and recommended conditional approval of the Docket (excluding the proposed batch plants, subsequently withdrawn from this application) to the Board; and

WHEREAS, on July 1, 1997; October 28, 1997; and January 22, 1998, the Board held a duly-noticed public hearing on the Docket ("the Public Hearing"), at which time the Board considered the Staff Recommendation and the recommendation of the Planning Commission, as well as the documents and testimony presented by the County Land Use Department Planning staff and several



representatives of the Applicant, and many members of the public expressing their views and concerns regarding the mining proposal; and

WHEREAS, based on the Public Hearing, the Board finds that the Docket meets the criteria for special use approval set forth in Article 4 of the Boulder County Land Use Code ("the Land Use Code"), and can be approved, subject to the conditions stated below, and, further, that the Docket, with the submission of the standard development agreement, meets the criteria in the Land Use Code for a site-specific development plan, also subject to the conditions stated below.

NOW, THEREFORE, BE IT RESOLVED that the Docket is hereby approved, on the basis set forth in this Resolution, above, and subject to the following conditions:

1. All mining allowed by this Docket shall be completed in 30 years, commencing on January 1, 2003. The post-mining reclamation phase of the operation shall be completed in three years (or within such longer time only if expressly authorized or required by the Colorado Mined Land Reclamation Board). The maximum time period for all mining-related activity under this permit shall be 33 years. However, all aspects of Section 4-605 of the Land Use Code, as amended, apply to this Special Use Review.
2. The hours of mining operation and truck hauling at the Western Mobile site for work in phases one, two or three will be limited to Mondays through Fridays; during the period of daylight savings time the hours of operation shall be 8:00 a.m. to 6:00 p.m., and during the period of standard time the hours of operation shall be 8:00 a.m. to 4:00 p.m., or daylight to dark (whichever is more restrictive). Only equipment maintenance, maintenance necessary to ensure compliance with required permits, and hauling will be allowed on Saturdays. The applicant may request that the Board of County Commissioners reconsider these hours of operation at a regularly scheduled public hearing of the Board. In the event of an emergency, such as imminent flooding, fire, etc., the Applicant can operate outside of the allowed time frame, provided the County Land Use Director is immediately notified and the Applicant is instructed to either cease or continue



Boulder County Clerk, CO AG

R 85.00 D 0.00

1956946
Page: 8 of 23
07/02/1999 03:39P

operations based on the emergency situation. Mining and operations existing at the time of this approval may continue under the constraints imposed by the prior special use review.

3. If sustained winds exceed 30 MPH at mining sites, loading and hauling operations will cease until the wind speed drops below 30 MPH. Crushing, conveying, and drilling operations may continue. Wind speed shall be measured at the mine site.
4. The Applicant shall obtain all applicable permits as required and necessary. This includes, but is not limited to: Floodplain Development permits, National Pollution Discharge Elimination System permits, Air Pollution Control Emission permits, Construction Materials Regular Operation (112) Reclamation permits, Water Discharge permits, and any well permits or temporary substitute supply plans required by the State Engineer. The operation of any aspect of this proposal that does not comply with the terms and conditions of all required permits shall be grounds for a revocation hearing before the Board of County Commissioners.
5. This use must comply with all State noise standards and State fugitive dust standards.
6. Special Use Review approval is contingent upon all terms, conditions, and commitments of record being met.
7. Periodic Reviews:

(A) The Special Use Review approval shall be subject to both interim and on-going review and assessment. The cost of studies or data produced by the Applicant as part of the required reviews, as well as of the County Staff's time to process the reviews, shall be borne by the Applicant.

(B) Interim reviews shall occur (as measured from the date in which mining begins in Phase I) at the end of one, three, and five and then occur every five years thereafter. Interim reviews shall be conducted to determine that operations comply with all permits, terms, conditions, and commitments of record. Special interim reviews will be conducted five years prior to the commencement of mining of Phase II and Phase III to determine whether the terms and conditions of approval are

sufficient or require amendments. In the course of these reviews, which shall be conducted as duly-noticed public hearings before the Planning Commission and the Board, new conditions of approval may be imposed and original conditions may be modified, reduced or waived to accommodate changing technology, knowledge of new health concerns, or other new information not available at the time of this approval.

(C) The Applicant shall also submit to the County Land Use Department copies of any annual reports mandated by the Colorado Mined Land Reclamation Board.

8. The perimeter of all new active areas to be disturbed by mining and reclamation operations shall be monumented on the ground for the duration of the mining period. No mining activities shall occur outside of these defined areas. The monuments shall not be removed until reclamation has occurred in accordance with the plans approved by the Colorado Mined Land Reclamation Board.

9. Approval of this application shall not be construed to mean that the County is:

(A) in any way obligated to implement any of the items noted on any of the documents labeled as the "Lyons Site Comprehensive Land Plan" in which references are made to the Historic Bunkhouse, Future Land Use Alternatives, Enhance Gateway Entry, Post-mining Land Use Alternatives, and Potential Regional Trail Linkage; and

(B) bound to approve any of the above referenced elements, or any other elements or uses which are otherwise regulated by the Land Use Code.

10. Outside storage, and the storage of fuel, oil, and grease, as well as the repair of equipment and machinery, and portable offices shall all be considered as accessory uses to this approval, provided that all applicable regulations of Section 4-516 of the Land Use Code, as amended, are met.

11. Staff shall have the opportunity to review, participate in, and make recommendations on all reclamation plans prior to Colorado Mined Land Reclamation Board approval. Weed



management plans shall be completed and incorporated into all reclamation plans. The County reserves the right to consider any future proposed changes to the approved reclamation plan to be substantial changes to this special use approval, to the extent such changes may affect post-mining land use, the visual impacts of reclamation, compatibility of the proposed plan with surrounding land uses, or other land use issues within the zoning jurisdiction of the Board of County Commissioners.

12. A final site plan and landscape plan shall be reviewed and approved by the Board of County Commissioners at a regularly scheduled business meeting, and without a Special Use Review amendment for: 1) the proposed office/scale house, and 2) the proposed landscape buffer by the processing site. The purpose of the plans shall be to fix and describe final floor areas, operational areas, parking areas, and plant species and locations, all in accordance with applicable requirements of the Land Use Code.
13. Any exterior lighting or signs associated with this use must be in compliance with applicable provisions of the Land Use Code, as amended.
14. This approval recognizes the uses represented in this application, as well as prior open mining and attendant accessory uses previously approved and amended through prior actions. This includes up to 200 average daily trips, not to exceed 240 trips per day; the accessory use of a portable crusher and screen, and accessory processing of sand and gravel including crushing, screening, washing, and stockpiling; the use of the Burlington Northern Railroad for the purpose of hauling sand and gravel; the installation of a low water crossing of St. Vrain Creek, the use of a gravel scale, access and use of State Highway 66 as a haul route; the transfer of sand and gravel from the Miller (Gregory) Pit to the existing aggregate processing area; and the use of existing gravel silos and loading areas.
15. The Applicant shall submit a final Development Plan, and a Development Agreement, both in conformity with this approval, for County staff review and approval prior to recordation.



- 16. In accordance with the recommendations of *A Class III Cultural Resource Inventory of Western Mobile's Proposed Lyons Sand and Gravel Operations Boulder County, Colorado, November, 1997*, the mining pod adjacent to site 5BL7045 shall be revised to avoid disturbance of the site. All other sites which are listed in the above mentioned report as eligible for inclusion in the National Register of Historic Places, and which are impacted by mining operations shall be documented in accordance with all applicable provisions of National Register Bulletins prepared by the National Park Service, U.S. Department of the Interior.
- 17. To the extent possible, measures shall be taken to insure that winter water draw downs do not negatively impact wetland vegetation of fisheries in reclamation ponds.
- 18. Final mining boundaries in the West Plant parcel shall preserve the wetland area known as "14 A." Final mining boundaries of the area adjacent to wetlands known as "11. A" in the West Plant parcel shall be determined after a new assessment of the wetlands is reviewed by the County Parks and Open Space Department. The new assessment shall be conducted one year prior to any mining in this area.
- 19. Adverse impacts on vegetation and neighboring wells caused by de-watering or other mining operations that result in lower ground water levels outside of mining boundaries shall be mitigated.
- 20. Surface irrigation shall be used to establish native grasses when beneficial. All reclaimed areas shall be left free from grazing until vegetation has successfully established.
- 21. The Applicant shall follow the management recommendations established in the following reports prepared by Mr. Steve Jones: *Habitat Use by Breeding Birds on Western Mobile, Inc. Lyons Property, August 1, 1997*, and *Habitat Conservation for Birds of Prey on Western Mobile Boulder, Inc. Lyons Property, August 30, 1997*. The Applicant agrees to update the above cited studies within one year prior to any mining activity in each mining phase to determine if conditions have changed and whether management practices should be adjusted accordingly.



1956946

Page: 12 of 23

07/02/1999 03:39P

Boulder County Clerk, CO AG

R 85.00 -D 0.00

22. The mined portion of any mining pod in any phase shall be limited to 20 acres; if mining is underway in more than one pod at a time, the combined mining area shall not exceed 35 acres. For purposes of interpreting this condition, "combined mining area" shall mean any area that has been disturbed in preparation of mining, or in which mining is underway, or in which reclamation is underway.
23. Any increase of more than 10% in existing traffic on any haul route used by Western Mobile shall require a meeting between Western Mobile and County staff to determine if new traffic mitigation measures are warranted. Mitigation measures may include, but are not limited to a pro-rata share of the costs of any new climbing lanes, turning lanes, pavement rehabilitation, traffic control devices, and other measures necessary to correct adverse impacts to committed local or state capital improvement programs.
24. Western Mobile shall obtain written consent from the City of Longmont prior to crossing (either above or below ground) any existing Longmont water lines.
25. Any relocation of any ditch shall require the prior written consent of the ditch company.
26. Any new facilities located within the City of Longmont's electric service territory must comply with all applicable City regulations.
27. Any highway improvements required by the Colorado Department of Transportation shall be implemented in accordance with all applicable statutes.
28. With the exception of local deliveries, the Applicant agrees to prohibit operators of its trucks from using downshifting braking techniques (also known as "Jake-braking") whenever trucks are traveling more than 25 miles per hour, or are within a one-mile radius of any residential area.



Boulder County Clerk, CO AG

R 85.00

1956946
Page: 13 of 23
07/02/1999 03:39P
D 0.00

29. The Applicant agrees to establish the water quantity and quality of wells of all adjoining property owners within 1,500 feet of the east boundary of the project perimeter prior to commencing operations of any new mining pod. In the event that mining operations cause a reduction by more than 10% in water quality or quantity, the Applicant agrees to take whatever measures are necessary to provide water equal or better in quantity and quality to the original conditions. In fulfilling this condition, the Applicant shall be responsible for conducting industry recognized water quality/quantity analyses on at least an annual basis.
30. This use is limited to an annual average of 200 daily truck trips, not to exceed a maximum of 240 trips on any single day. Once the site is fully operational, the Applicant may apply to request a larger number of truck trips. To accommodate deliveries to nearby public improvement projects, the Board Of County Commissioners may grant a temporary increase to these trips at a regularly scheduled public hearing of the Board.
31. Use of rail hauling shall be limited to no more than 6 daily trips (3 in and 3 out), with no more than 35 cars per trip, and scheduled to occur only during non-peak traffic periods. The Applicant shall be responsible for improving any at-grade rail crossings, including but not limited to traffic control devices, that are impacted by this project. Any such impacts shall be evaluated and upgraded in accordance with County Transportation Department standards prior to any use of rail haul routes.
32. The Applicant shall ensure that all sand and gravel loads hauled from the Lyons site in any applicant owned or leased trucks or by haulers contracted to the Applicant shall be covered with tarps to prevent fugitive dust and gravel from escaping during hauling.
33. Any and all successors, heirs, and assigns shall be subject to all terms and conditions of this Special Use review, including any and all amendments subsequent to the original date of approval of this Special Use.



1956946
Page: 14 of 23
07/02/1999 03:39P

Boulder County Clerk, CO AG

R 05.00 D 0.00

34. The Board, at its sole discretion, may require intermittent or continuous consultant services or other arrangements for establishing existing conditions and to observe, detect, and record the operations of this use to ensure and demonstrate compliance or noncompliance with any and all applicable regulations, commitments of record, federal or state permits, and these conditions of approval. Any costs for these services and any equipment costs shall be borne by the Applicant.

35. No later than January of 2003, the Applicant shall establish a community advisory committee which shall meet at least twice annually for the purpose of providing recommendations and feedback to the applicant, staff and the Board of County Commissioners. At least 60% of the committee's membership shall consist of residents who reside within one mile of the site. The committee's recommendations shall be made available to the staff in the reviews described in condition number seven above. The committee shall continue to meet throughout the duration of the mining of the site, or until such time as 75% of its members decide that the committee's usefulness has ceased.

Recorder's Note: 7-2-99
Portion of document
is a photocopy.



1956946
Page: 15 of 23
07/02/1999 03:39P
D 0.00

A motion to approve the Docket, as stated above, following a motion and vote at the January 22, 1998 Public Hearing to approve the Docket in concept subject to final Board action on specific conditions as set forth in this Resolution, above, was made at a regularly convened and duly noticed public business meeting of the Board held on AUGUST 20th, 1998, by Commissioner DANISH, seconded by Commissioner MENDEZ, and passed by a 3-0 vote.

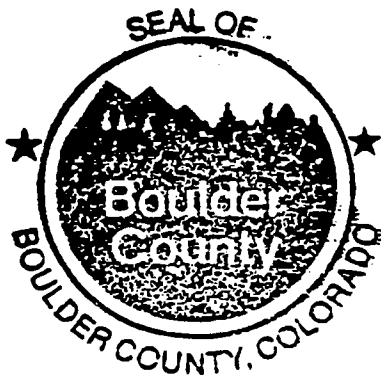
ADOPTED this 20th day of AUGUST, 1998.

BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:

Ronald K. Stewart
Ronald K. Stewart, Chair

Jana L. Mendez
Jana L. Mendez, Vice Chair

Paul D. Danish
Paul D. Danish, Commissioner



ATTEST:

Michael Ryder Deputy
Clerk to the Board