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**SECRETARY, BOARD OF
OIL, GAS & MINING**

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| BEFORE THE BOARD OF OIL, GAS AND MINING DEPARTMENT OF NATURAL RESOURCES STATE OF UTAH | |
| In the matter of the Request for Agency Action of TREE FARM, LLC for a declaratory ruling regarding (1) the completeness of Tree Farm’s NOI-SMO S/035/0053; and (2) the sufficiency of Tree Farm’s proposed reclamation surety. | DIVISION’S MOTION FOR POLICY GUIDANCE Docket No. 2022-002 Cause No. S/035/0053 |

The Division of Oil, Gas and Mining (“Division”) hereby respectfully submits this Motion for Policy Guidance related to the above captioned Cause. Utah Code Ann. § 40-6-4(1)(b) directs the Board of Oil, Gas and Mining (“Board”) to be “the policy making body” for the Division. While the Division recognizes an alternative solution has been reached in this Cause, similar situations are foreseeable in the future necessitating policy guidance from the Board regarding actions the Division could or should take to anticipate such future situations.

I. Growth in Utah and the Need for Mined Materials

The University of Utah’s Kem C. Gardner Policy Institute has projected the population of Utah will increase by 66% over the next four decades.¹ The mining industry is necessary to

¹ Emily Harris, *Policy Brief: State and County Population Estimates for Utah: 2021* (Dec. 2021), <https://gardner.utah.edu/wp-content/uploads/UPC-Estimates-Dec2021.pdf?x71849>

support this level of growth by providing the materials for roads, homes, parks, utilities and other necessary infrastructure. The price of shipping each ton of sand and gravel doubles at 23 miles, and doubles for crushed stone at 45 miles.² With the recent increase in transportation costs, these figures are likely outdated. Increased distance between where materials are sourced and where materials are consumed increases the cost to build roads, homes, parks, utilities and other necessary infrastructure. As such, the Division anticipates it will receive more Notices of Intention to Commence Mining Operations (“NOIs,” “Small Mine NOIs,” or “Large Mine NOIs”) along the Wasatch Front, close to population centers. As this Cause has demonstrated, there may be policy objectives worth pursuing in the interim to ensure the Division has the tools necessary to process these NOIs when received.

The Division has brainstormed possible suggestions for the Board’s consideration. Of course, these suggestions are non-exhaustive and the Board may or may not agree with some, or any, of them. Additionally, the Board may have other ideas the Division did not consider, or perhaps the Division chose not to include here. Regardless of whether the Division and Board agree on a policy path moving forward, the Division nonetheless appreciates any policy guidance regarding whether the Division should consider legislative or rulemaking changes to anticipate the increased need for mining along the Wasatch Front in the future.

II. Legislative Suggestions

The legislative findings for the Mined Land Reclamation Act (“Act”) identify that mining is necessary, but that it “should be done in such a way as to minimize undesirable effects on the surroundings,” and that “mined land should be reclaimed so as to prevent conditions detrimental

² Gilpin R. Robinson, Jr., and William M. Brown, *Sociocultural Dimensions of Supply and Demand for Natural Aggregate-Examples from the Mid-Atlantic Region, United States*, <https://pubs.usgs.gov/of/2002/of02-350/aggregate.pdf>

to the general safety and welfare of the citizens of the state.” Utah Code Ann. § 40-8-2(2)-(3). While the Division believes the Act generally ensures that mining operations minimize undesirable effects, and that the general safety and welfare of the citizens of Utah are protected from adverse effects of mining, the Division posits that perhaps there should be heightened scrutiny of mining operations in populated areas.

Utah Code classifies counties according to population. Counties with a population of 1,000,000 or more are counties of the first class. Utah Code Ann. § 17-50-501(2)(a). Counties with a population between 175,000 and 1,000,000 are counties of the second class. *Id.* at (2)(b). The counties along the Wasatch Front (Weber, Davis, Salt Lake and Utah) contain 75% of the population of the Utah, and are all either Class I or Class II counties.³

The Act requires the public be allowed to weigh in on all Large Mine NOIs, but not for Small Mine NOIs, regardless of location. It is apparent from the current Cause that many members of the public wish to provide public comment on proposed mining operations, even those operations that would occur under a Small Mine NOI.

The Act requires the Division provide approval of Large Mine NOIs, but arguably does not require approval for Small Mine NOIs. Additionally, the Act requires a detailed reclamation plan for Large Mine NOIs, but only a simple statement that the operator promises to reclaim for Small Mine NOIs, without specific information on how or when the reclamation will be conducted.

In light of these statutory provisions, the Division has the following suggestions for possible legislation the Division could pursue to provide the Division with tools for considering future NOIs in population centers:

³ Emily Harris, *Policy Brief: State and County Population Estimates for Utah: 2021* (Dec. 2021), <https://gardner.utah.edu/wp-content/uploads/UPC-Estimates-Dec2021.pdf?x71849>

- (1) Require public participation for Small Mine NOIs in Class I and Class II counties;
- (2) Require Division approval of Small Mine NOIs in Class I and Class II counties;
- (3) Require reclamation plans for Small Mine NOIs in Class I and Class II counties; and
- (4) Reduce the acreage of Small Mine NOIs in Class I and Class II counties from ten (10) acres/incorporated and twenty (20) acres/unincorporated to five (5) acres/incorporated and ten (10) acres/unincorporated, respectively.

Another possible suggestion could incorporate lessons from the Coal Program. Utah's Coal Mining and Reclamation Act has a provision for designating some areas as unsuitable for mining based on numerous considerations, such as the mining is inconsistent with state or local land use plans; the operations would affect fragile or historic lands and could result in significant damage to historic, cultural, scientific and aesthetic values and natural systems; the operations would affect renewable resource lands, reduce water supply or aquifer recharge areas; the area has unstable geology; etc. *See* Utah Code Ann. § 40-10-24. Whether the lands at issue in this Cause would be designated as lands unsuitable for mining is unknown, but there may be some areas along the Wasatch Front that might benefit from such a designation, and the Division invites the Board to consider whether this idea is worthy of pursuing with the legislature.

III. Rulemaking Suggestions

While many of the ideas contemplated by the Division would require legislative updates that may or may not be successful given the legislative climate, the Division did identify other possible ideas that could be achieved through rulemaking. The Division would similarly appreciate guidance on whether the Board would like the Division to pursue any rulemaking to address the future need for mining materials along the Wasatch Front.

The Act and its associated Administrative Code (“Rules”) contemplate two courses of action for a prospective operator. Specifically, the operator may pursue: 1) a small mining operation up to ten (10) acres in incorporated areas and up to twenty (20) acres in unincorporated areas; or 2) a large mining operation over ten (10) acres in incorporated areas and over twenty (20) acres in unincorporated areas. These options are either/or, i.e. the Act doesn’t contemplate the submission of a Small Mine NOI as a way to begin mining while a pending Large Mine NOI is processed. Rather, both the Act and the Rules contemplate that small mines may be converted into large mines as the threshold for a small mine permit boundary is neared. Additionally, both the Act and Rules contemplate that large mines will be converted to small mines as concurrent reclamation occurs and the footprint of the operation is reduced to below the threshold for small mines. The Division could pursue rulemaking that would specify these processes are mutually exclusive, and that absent a previously approved Small Mine NOI, an operator may not seek approval for a Large Mine NOI.⁴ There may even be policy reasons for defining a time frame, perhaps based in materials mined or time required to mine out the permitted acreage, after approval of a Small Mine NOI that an operator must wait prior to filing a Large Mine NOI.

Another area of rulemaking worth considering is the Impact Assessment required for large mines. The Rules require Large Mine NOIs to include “a general narrative description identifying potential surface and/or subsurface impacts,” but it does not provide guidance on when the Division may rely on the Impact Assessment to deny a Large Mine NOI. Utah Admin. Code R647-4-109. For example, the Impact Assessment requires the operator assess how the operation may impact “slope stability, erosion control, air quality and public health and safety.”

⁴ To be clear, an operator would not be precluded from simply filing a Large Mine NOI without first submitting a Small Mine NOI. Rather, if an operator believes the operations will expand quickly beyond the threshold for small mining operations, an operator could skip the Small Mine NOI and simply submit a Large Mine NOI.

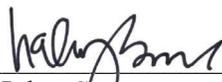
Id. at 109(4). However, the Rules don't provide guidance on when the impacts to air quality must be considered with other mines in the area, or when adverse impacts to air quality should preclude Large Mine NOI approval. Additionally, the Impact Assessment references "public health and safety" but the only applicable Rules on public health and safety refer to plugging drill holes, disposal of trash, etc. *See* Utah Admin. Code R647-4-109(1). Perhaps in Class I and Class II counties, there may be additional "public health and safety" considerations that could or should be covered under the Rules.

IV. Conclusion

The Division believes this Cause has raised novel issues warranting policy guidance from the Board, as the Division's "policy making body," in terms of possible legislative or rulemaking changes the Division should pursue. The Division respectfully requests guidance on whether it should pursue any of the suggestions contained herein, or other alternative suggestions the Board may have, and the Division requests direction to pursue those suggestions.

Respectfully submitted this 17th day of March, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of March, 2022, I caused a true and correct copy of the foregoing **Division’s Motion for Policy Guidance** to be sent electronically to the following:

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