



Planning & Development Services Division

<http://pwpds.slco.org/agendas/index.html>

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Land Use Hearing Officer

Public Meeting Agenda

Tuesday, March 11, 2014

1:00 P.M.

**THE MEETING WILL BE HELD AT SALT LAKE COUNTY GOVERNMENT CENTER
2001 SOUTH STATE STREET, NORTH BUILDING
PLANNING DIVISION CONFERENCE ROOM, SUITE N3600
ANY QUESTIONS, CALL (385) 468-6700**

REASONABLE ACCOMMODATIONS FOR QUALIFIED INDIVIDUALS MAY BE PROVIDED UPON RECEIPT OF A REQUEST WITH 5 WORKING DAYS NOTICE. PLEASE CONTACT WENDY GURR AT 385-468-6707. TTY USERS SHOULD CALL 711.

The purpose of the Land Use Hearing Officer's Meeting is to allow the Land Use Hearing Officer to hear applicant and public comment, as well as agency and staff recommendations, prior to making a decision on applications filed with Salt Lake County.

The Land Use Hearing Officer shall: act as an appeal authority for zoning decisions applying this title as provided in Section 19.92.050 and conditional use decisions by a planning commission; hear and decide the special exceptions to the terms of the zoning ordinance set forth in Section 19.92.060; hear and decide variances from the terms of the zoning ordinance; and, hear and decide applications for the expansion or modification of nonconforming uses.

PUBLIC HEARINGS

28728 – Robert Poulsen, representing Miller Paving is appealing a Zoning Decision by Salt Lake County directing them to cease operation of their asphalt and concrete recycling business on the subject property on the basis of not having a valid Conditional Use Permit. **Location:** 4186 South Main Street. **Zone:** M-2 (Manufacturing). **Community Council:** Millcreek. **Presenter:** District Attorney's Office

ADJOURN

POULSEN and SKOUSEN, P.C.

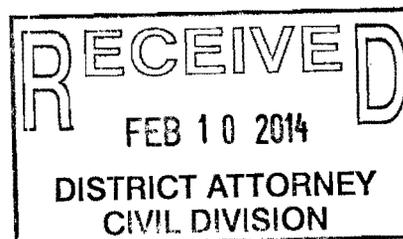
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February 7, 2014

James E. Harward
Administrative Law Judge
Harward & Associates
9350 South 150 East
Suite 740
Sandy, Utah 84070



Re: Miller/Windriver LLC

REPLY TO COUNTY'S RESPONSE TO FORMAL APPEAL

Dear Mr. Harward,

Please find the enclosed Reply to Response in the above-entitled matter. We have not yet received a Notice with a date and time for a hearing. Therefore, we hereby request that a date and time be set to hear this matter. We are happy to provide any additional information or supporting evidence which may assist you in resolving this matter.

Sincerely,

POULSEN and SKOUSEN, P.C.

A handwritten signature in cursive script, appearing to read "Robert J. Poulsen". The signature is written in black ink and is positioned above a horizontal line.

Robert J. Poulsen

cc. Thomas L. Christensen

POULSEN and SKOUSEN, P.C.

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February 7, 2014

James E. Harward
Administrative Law Judge
Harward & Associates
9350 South 150 East
Suite 740
Sandy, Utah 84070

Re: Miller/Windriver LLC

REPLY TO COUNTY'S RESPONSE TO FORMAL APPEAL

Carol Miller and Robert Miller, personally and on behalf of Windriver LLC (hereinafter, "Millers"), by and through their attorneys, Poulsen and Skousen, P.C., hereby reply to the County's Response to their Formal Appeal (hereinafter, "Response"). This reply hereby uses, refers to and incorporates the exhibits contained with the Affidavit of Curtis Woodward, and attached to the Response. In addition, for points of reference, please see the attached zoning map, from the County's website, with added titles.

The Millers' reply as follows:

The County has taken actions against the Millers, which actions are arbitrary, capricious and/or illegal, as defined in 19.84.080 County Ordinance and UCA 17-27a-705.

Among other violations, the County has arbitrarily and capriciously set limits on the Miller's business and then inappropriately changed those limitations.

More specifically, the Millers hereby respond to the County's defenses, Arguments 1-6 in its Response to Formal Appeal, as follows:

1. THE M-2 ZONE EXPRESSLY PERMITS THE MILLERS' CREATION OF PAVING MATERIAL AND PROCESSING OF CEMENT

The County has erroneously maintained that the Miller's "recycling operation is a conditional use" in the M-2 zone in which the Millers operate. The County reaches that determination by leaping to the conclusion that the Millers are performing "rock crushing" coupled with the 'sale of rock, sand, gravel and the like." The Millers are *not* crushing rock, nor are they selling rock, sand or gravel. The County's confusion may have started, or just continued, with the April 24, 2003 document entitled "Staff Recommendations" for the Millcreek Township Planning Commission, marked as Exhibit E in the Affidavit of Curtis Woodward attached to the County's Response. In that document, the County "Staff" did not even address application of the Millers' business to the permitted uses in the M-2 zone. The commission started with the assumption that the Millers were crushing rock, without even acknowledging that the Millers were not dealing in rock, but rather paving materials and cement, which makes a big difference in their business and in zoning application.

Since the county ordinances do not define rock or cement, we are left to the common interpretation of those terms. Rock is commonly defined as "mineral matter formed in masses in the earth's crust" (Webster's New World Dictionary, 1995). Cement is commonly defined as "a powdered substance of lime and clay, mixed with water and sand to make mortar or with water, sand, and gravel to make concrete: it hardens upon drying" (Webster's New World Dictionary, 1995). Based on the common use definitions, and the County's lack of definition for those terms, the Millers were operating a cement-processing business, which should not be confused with a rock-crushing business. And, as such, the Millers were operating under the permitted uses in the M-2 zone.

In fact, and admittedly by the County the Millers are processing old cement. The Millers' operations are most in line with the permitted uses in the M-2 zone, specifically two separate references:

- "Permitted uses in the M-2 zone include:
 - Cement. . .or paving materials central mixing plant; and
 - Manufacture, fabrication, assembly canning, compounding, packaging, processing, treatment, storage and/or maintenance of the following: . . .cast-stone products. . .cement and cinder products. . ." (See Salt Lake County Ordinance 19.68.020)

The Millers' processing of old cement falls within the above permitted uses in the M-2 zone. The Millers' cement must ordinarily be defined as either cement, cement products, cast-stone products or paving materials. The County's determination that the Millers business deals with rock is an illogical conclusion.

The County has defined the Millers' operations as "rock crushing" coupled with the

'sale of rock, sand, gravel and the like." The County never attempts to define the Millers operations as processing cement or road-base, as previously discussed.

The County also argues that the Millers product is not a "cement product" but rather that it is "gravel or road base." The County's attempt to define the Miller's product as "gravel or road base" is interesting since a "paving materials central mixing plant" is actually a permitted use in the M-2 zone. So if, as the County has argued, the Millers are creating gravel or road base, then the Millers' paving materials operation is admittedly permitted.

In addition, the County Ordinance has not defined "Cement," "Cement Product," "Cast-Stone Products," or "Paving Materials." Such dereliction in definition should, when confusion arises, be judged in favor of the non-drafting party, or at least in favor of the party that claims the most relevant definition, which in this case is the Millers. The Millers deal with cement and paving materials, not with rock or rock crushing.

The County's determinations and actions against the Millers are indeed arbitrary, capricious, and not supported by law or ordinance. The County's interpretations violates law because the County ignores a very close definition of the Millers business, and instead adopts a distant definition of the Millers' business. The County's actions are more akin to an eminent domain taking, but without the due process constraints of proper process and providing fair value, etc.

2. THE MILLERS APPEAL IS TIMELY

The County claims that the Millers are too late to appeal the expiration of their Conditional Use Permit.

The Conditional Use Permit has no expiration. Therefore, the Millers have nothing to appeal regarding an expiration on a Conditional Use Permit.

The Millers' Appeal is not arguing reinstatement of a Conditional Use Permit, because their Conditional Use Permit has not expired and is not required in the first place. But rather, the Millers are arguing that the County's directions to stop work are illegal, arbitrary and capricious.

The Millers have been appropriately operating under the permitted uses of the M-2 zone, and if not under the permitted uses, at least under the Conditional Use Permit, which was "granted" by the County, and which contains no expiration. The Millers had no reason to appeal the County's fickle decisions making process, because the County's decisions were arbitrary, capricious and illegal, and required no response until the December 5, 2013 stop work order arrived. The stop work order was mailed by the County on December 5, 2013 to the Millers, in form of the "Second Notice and Order and Commencement of Civil Penalties." It should be noted that the County's Notice was not even signed by the planning commission director or director's designee.

In addition, the County argues that the Millers should have, but did not appeal the

February 22, 2013 letter from Curtis Woodward, and that the Millers appeal is therefore too late. The February 22, 2013 letter from Curtis Woodward did not signify the expiration of a Conditional Use Permit, and could not be appealed, because: 1) the letter did not even purport to be from the planning commission director or director's designee; 2) no conditional use permit was required; 3) the conditional use permit contained no expiration; 4) the February 22, 2013 letter did not contain language regarding rights of appeal; and, 5) without authority, Curtis Woodward arbitrarily, capriciously and/or illegally chose February 28, 2013 as the expiring date of the conditional use permit, which date has no legal bearing.

Therefore, the Millers began their appeal based on the threats in the December 5, 2013 "Second Notice and Order and Commencement of Civil Penalties," which makes the Millers appeal timely and appropriate.

3. EXAMPLES OF THE COUNTY'S ARBITRARY APPLICATION OF LAW

As stated above, a Conditional Use Permit is not required for the Millers operations within the M-2 zone. Even so, in its Response, the County makes two erroneous claims regarding the conditional use permits issued to the Millers: 1) that the *second* conditional use permit is an extension of the *first* permit, and not an independent permit; and, 2) that the County graciously granted the Millers years beyond expiration of the second permit to come into compliance, move, or sell their property. The County's claims are inappropriate.

The County has provided no authority to support its claim that the second Conditional Use Permit (issued March 30, 2005) is subject to extrinsic evidence or dependence upon the first Conditional Use Permit (issued September 4, 1998). In fact, the second permit states in bold capital letters,

THIS LETTER AND THE ENCLOSED APPROVED SITE PLAN CONSTITUTE THE
CONDITIONAL USE PERMIT.

In other words, the first permit is irrelevant to the second permit. The County's wording in the second permit is so important, because it is now claiming that the second permit is somehow an extension of the first permit, and not independent. The County has provided no such evidence, support or authority for this claim.

Secondly, and most interestingly, the County claims that its Planner for this project, Curtis Woodward, "had no authority to waive the Milcreek township Planning Commission's approval" in regard to issuing a Permit for an indefinite period, rather than a three year period (See, Response, argument #3). In other words, the County is saying that Mr. Woodward has no authority to change the Planning Commission's time allocations and directions to the Millers. So, based on the County's argument, and the fact that Mr. Woodward is bound by the Planning Commissions' direction, the following questions then arise:

1) Why did Mr. Woodward provide the Millers a conditional use permit without expiration?

and,

2) Why did Mr. Woodward unilaterally grant a two year extension on top of the three years provided by the planning commission?

Mr. Woodward signed the second conditional use permit (issued March 30, 2005), which permit has no expiration and does not reference back to another permit.

It is an important fact that Curtis Woodward “had no authority to waive the Milcreek township Planning Commission’s approval,” for three years, implying that Mr. Woodward could not grant more or less time for the conditional use permit. However, Mr. Woodward, acting on behalf of the County and commission stated in his January 27, 2012 letter that the Millers were granted five years for their second permit, rather than the three authorized by the Planning Commission. If Curtis Woodward had no authority to grant additional years, than the County and commissions’ representative, Curtis Woodward, provided an arbitrary, capricious and/or illegal alteration for not exactly following the commission’s determination. On the other hand, if Curtis Woodward did have authority to grant an extra two years to the commission’s stated three year limit, than Curtis Woodward also had authority to grant a Conditional Use Permit which does not expire. Either way, Curtis Woodward, either misrepresented the commission and county, or he did wield authority to alter the commission’s determinations and therefore granted a permit without expiration. Such actions, by the county and commission, through Curtis Woodward, are arbitrary, capricious and/or illegal, and should not be used against the Millers.

In addition, the County did not seek to enforce any time limitation provisions until after nine years from the date of the County Commission’s alleged directive (based on the alleged directive occurring in 2003 and Curtis Woodward sending his January 27, 2012 letter).

In other words, Curtis Woodward, a Salt Lake County Planner, expressly, unilaterally and arbitrarily determined that the Millers should be granted a time limitation other than the one authorized by the Planning Commission. The County’s argument hides their arbitrary actions by saying that Curtis Woodward “graciously” afforded the Millers, and granted them, “years beyond the expiration of their [Conditional Use Permit] to come in to compliance or move/sell their site. . .” (See Response, argument #4).

Curtis Woodward’s granting of extra years to comply with the Permit, allegedly in contradiction to the Planning Commission’s three year authorization, is a direct rebuttal to the County saying that Curtis Woodward has no authority to waive the Planning Commission’s approval. Curtis Woodward either has authority to waive the Planning Commission’s approval, or he arbitrarily assumed to have such authority by waiving the Planning Commission’s three year limitation - thereby causing confusion and making arbitrary decisions.

The reason that the above information is important, is because Curtis Woodward granted the second Conditional Use Permit, without time limitation, and despite the Planning Commission’s alleged three-year language. Curtis Woodward then subsequently addressed the issue after seven years, stating that the permit was for five years, rather than without time

restraint as it was actually written, or for three years as granted by the Planning Commission. If this issue has become confusing to the reader, it is confusing because of the arbitrary, capricious, and/or illegal actions by the County or its representatives.

The above confusion, caused by the County's arbitrary, illegal and/or capricious actions, has damaged the Millers. The County's actions, through Mr. Woodward, were wrong, and should be appropriately addressed in favor of the Millers.

4. THE MILLERS ARE BEING TARGETED, RATHER THAN PROTECTED BY THE COUNTY

The County, through conversations with Curtis Woodward, has admitted that the Millers operation is being targeted because of complaints from the encroaching residential developments. The County's targeting is unfair, especially considering that the encroaching residential developments reside on the other side of the dividing border with Murray. The County is caving to complaints from developments in other jurisdictions without protecting the Millers.

In addition, Nelson Contractors, Inc., another business less than 415 feet west of the Millers, (175 W. Central) performs the *exact* same type of cement processing business, and they are not being targeted. Furthermore, the Nelson operation is in the R-M zone which is for non-industrial uses and therefore much less-industrial than the M-2 zone where the Millers operate.

Therefore, the Millers' have no other reasonable conclusion than they are being unfairly targeted. The County should be protecting the Miller's business rather than siding with newer encroaching entities.

In other words, the County is attempting to steal the Millers property without abiding by eminent domain and due process procedures which would protect the Millers rights. Accordingly, the County is attempting to steal the Miller's property rights!

5. THE COUNTY LACKS JURISDICTION

As argued by the County, the County has received statutory authority to appoint an "appeal authority" to hear "appeals from decisions applying the land use ordinances. . ." and to "act in a quasi-judicial manner. . ." (See Utah Code Ann., Section 17-27a-701(1) and (3)(a)(i)). In other words, the County has *judicial* power to "serve as final arbiter of issues involving the interpretation or application of land use ordinances," which is obviously a judicial function of government. (*id.* (3)(a)(ii)).

In addition to judicial powers, the County has received power to ". . . exercise all *legislative* powers. . ." (See Utah Code Ann., Section 17-53-201). The County has also received power to ". . . exercise all *executive* powers. . ." (See Utah Code Ann., Section 17-53-301). Since the County is "a body corporate and politic," (See Utah Code Ann., section 17-50-101) exercising judicial, executive and legislative powers is a violation of the Constitution of Utah, Article V, Section I. That particular constitutional provision clearly states that "no person

charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others."

The County has legislated (legislative function) its own Land Use Ordinances, attempted to enforce them (executive function), while also seeking to interpret the Ordinances (judicial function). Therefore, although an appeal to an administrative law judge is necessarily prudent to preserve the Miller's rights, the aforementioned violation creates a situation in which the County has no proper jurisdiction and authority to resolve this appeal.

6. THE MILLERS BUSINESS IS NOT IN VIOLATION OF ZONING ORDINANCES

The County has attempted to strip the Millers of their right to conduct business in Utah. The County has attempted, at every turn, to seize more control in determining the future of the Millers property. The Millers began business under the plain assumption that they appropriately conducted business in the M-2 zone as a cement processing/road-paving materials operation. However, the County has repeatedly attempted to infringe on the Millers' rights by requiring compliance with conditions, applications and fees. Currently, the County has refused to issue the Millers a business license because it is conducting the same business it has always conducted, under the M-2 zone. The County's inappropriate behavior needs to end.

7. OTHER DEFENSES

a. Grand-fathered: Even though the Millers' business is appropriately operating under the permitted uses of the M-2 zone, as well as under a perpetual conditional use permit, the Millers operations are also protected under a legal-nonconforming/grand-fathered status. The entity which previously occupied the Millers' lot operated the exact same type of cement processing business. Therefore, in addition to the Millers' already-compliant operations, the Millers' business operations also fall into the protection of a grand-fathered/legal-nonconforming-use category.

b. Statue of Limitations: The County has failed to timely bring its December 5, 2013 stop-work order, in the form of its "Second Notice and Order and Commencement of Civil Penalties." The County's order is based on enforcement of an alleged expiration of its March 30, 2005 Conditional Use Permit, which actually contains no expiration.

Pursuant to Utah Code Ann., §78B-2-115, actions brought by the County are subject to the four-year statute of limitation contained in Utah Code Ann. §78B-2-307(3). More than four years have passed since the County knew or should have known that its Conditional Use Permit was without expiration. And, since the County waited over eight years to pursue this matter, the County is prohibited from enforcing an alleged expiration date which was negligently left out of the Conditional Use Permit.

CONCLUSION

Based on the foregoing, and the fact that the Millers are properly operating within the M-2 zone, as a cement processing/paving materials business, and because the County has been confusing, arbitrary, capricious and illegal in its application of time limitations and law, and because the County's actions are outside the applicable statute of limitations, the Millers therefore request that the County cease intrusion upon the Millers lawful business operations, recompense the Millers for their damage and costs, and determine that the Millers operation is a permitted use within the M-2 zone and a permitted use by the ongoing Conditional Use Permit.

Please contact me with any concerns or additional information you may need.

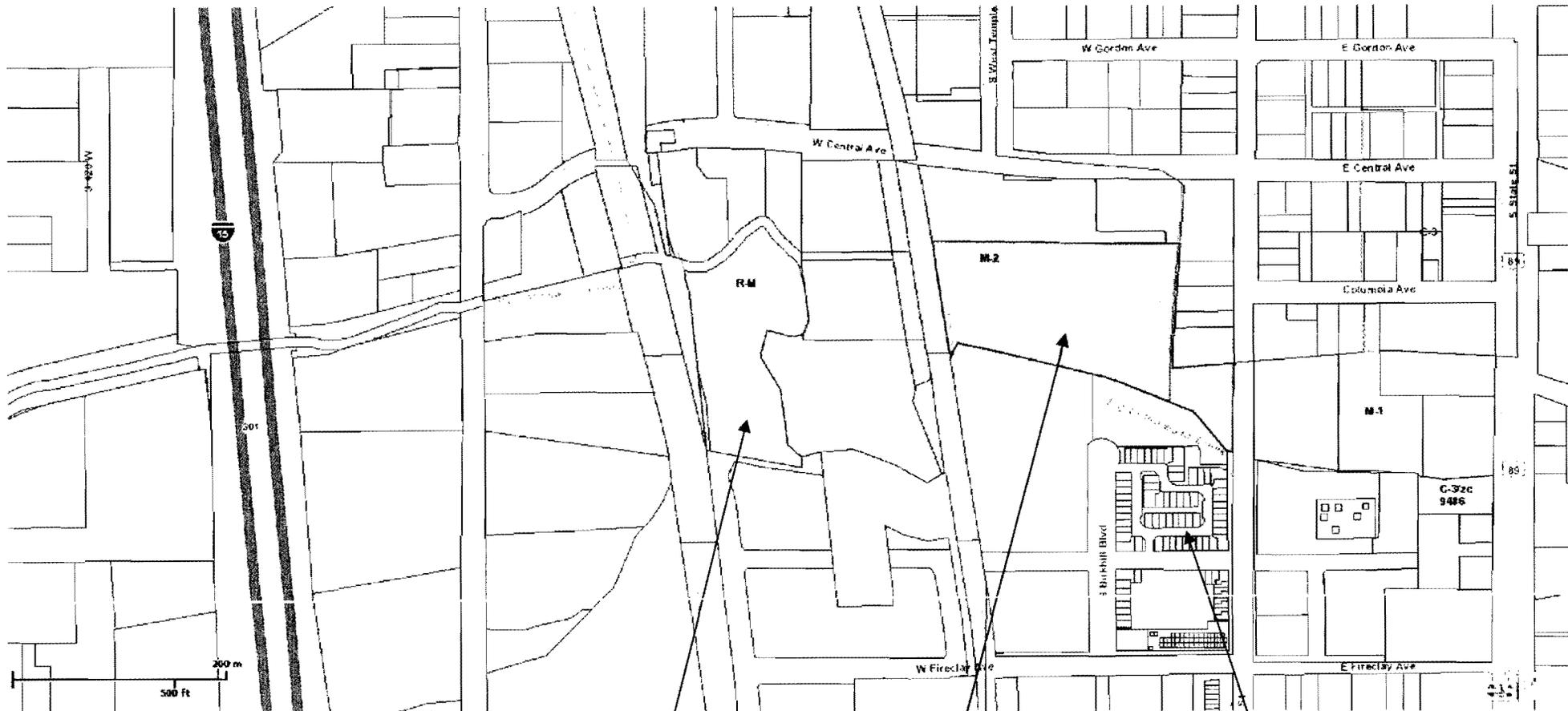
SINCERELY,

POULSEN and SKOUSEN, P.C.

A handwritten signature in cursive script, appearing to read "Robert J. Poulsen", written over a horizontal line.

Robert J. Poulsen

cc. Thomas L. Christensen



Wed Feb 5 2014 01:48:16 PM.

Nelson
Cement Processing Business

Miller/Windriver
Cement Processing Business

Encroaching Residential
Development

RECEIVED

DEC 13 2013

SALT LAKE COUNTY
PLANNING

POULSEN and SKOUSEN, P.C.

ATTORNEYS AT LAW
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South Jordan, Utah 84095-4549

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December 14, 2013

Salt Lake County Development Services Division

Hand Delivered

FORMAL APPEAL

To Whom it May Concern:

Carol Miller and Robert Miller, personally and on behalf of Windriver LLC, herein referred to as the "Millers", by and through their attorneys, Poulsen and Skousen, P.C., hereby formally appeal the attached "Second Notice and Order And Commencement of Civil Penalties" issued to Windriver Investments, 4186 S. Main, Salt lake City, Utah 84107, (Attached as Exhibit A), and request a hearing before the County Administrative Law Judge, pursuant to Salt Lake County Ordinances, 19.92.050(A) and/or 19.84.080, and for the following reasons:

1. The Millers have owned and operated a cement recycling business at 4186 S. Main, Salt Lake City, Utah for many years. Their business includes: receiving old concrete/cement; breaking it into smaller pieces; storing it on their property; and, distributing it to local business, mostly for concrete base purposes. The location of their business is in an M-2 zoning district, which expressly includes the following permitted uses (See Salt Lake County Ordinance, section 19-68-020):
 - a. Cement mixing plant; and
 - b. Manufacture, fabrication. . . compounding. . . processing, treatment, storage
. . . of the following: . . . cast-stone products . . . cement. . .

The Millers are doing nothing more than receiving used cement, recycling it for use as a component of other cement projects, and transporting it to buyers. Another part of the Millers property is zoned as M-1, which is for light industrial use. However,

that portion of the Millers property is not used for the above-stated purposes.

2. Although the Millers have operated appropriately under the authorization of the M-2 zone they were pressured to submit an application for a Conditional Use Permit. In effort to be non-confrontational and accommodating, the Millers submitted application for a conditional use permit, which expressly would allow for the following uses (See Salt Lake County Ordinance, section 19-68-030):
 - a. Building material sales yard, including sale of rock, sand, gravel and the like as an incidental part of the main business;
 - b. Manufacturing compounding, assembling and treatment of articles of merchandise from the following previously prepared materials: . . stone;
 - c. Rock crusher
 - d. Gravel pits, quarries, mines;
 - e. Manufacturing, processing, refining, treatment, distillation, storage or compounding of the following: . . . asphalt;
 - f. Stockyards
3. The Millers applied for and received their first Conditional Use Permit, dated September 10, 1998, which stated that "THIS LETTER AND THE ENCLOSED APPROVED SITE PLAN CONSTITUTE THE CONDITIONAL USE PERMIT" and contained, among other things, an expiration date of five years. The Millers applied for and received a second Conditional Use Permit, dated March 30, 2005, which also stated "THIS LETTER AND THE ENCLOSED APPROVED SITE PLAN CONSTITUTE THE CONDITIONAL USE PERMIT." (See Permits, attached hereto as Exhibit B). The second Conditional Use Permit does not include an expiration date. So, even though the Millers business is appropriately operated under the M-2 zone, they have, just in case, a Conditional Use Permit without expiration that authorizes their business operations. The Permit claims to constitute the whole of terms, and provides no expiration date. The county staff have argued that meetings, other letters and agreements, regarding expiration of the second permit, supercede the language of the Permit, and that an expiration of the permit is enforceable. Such arguments are not valid, and even if they were, the Millers are still appropriately functioning under the permitted M-2 zoning requirements, whereby a conditional use permit is not required.
4. There are other entities within the same zone and jurisdiction which are operating the same type of business, and within a mile from the Miller's property. Those businesses are functioning without having to fight to operate within the zone. Furthermore, the Millers and counsel for the Millers have been told by county staff

and counsel for the county that their business is being targeted based on complaints from neighboring entities. Therefore, by admission, the Millers are being improperly targeted, un-protected by the applicable laws and ordinances, and unfairly treated.

5. The Millers are required to exhaust their remedies by appearing before an administrative law judge to seek protection of their property rights. However, the county's hiring of an administrative law judge to interpret "ordinances" which the county promulgated, and which it thereafter enforces, is in violation of the Utah Constitution, Article 5, Distribution of Powers. Therefore, although an appeal to an administrative law judge is necessarily prudent to preserve the Miller's rights, the aforementioned violation creates a situation in which jurisdiction and authority are not proper to hear this appeal.
6. Since receiving their first notice to cease recycling cement, the Millers have moved their cement recycling machine to another location and have only stored processed and unprocessed cement on their property. The actions of storing cement on their property are well within the permitted uses for the M-2 zone. Even if recycling cement was not an authorized use on their property, the Millers are being improperly penalized, \$100 per day, for those recycling actions which they have already ceased.

Sincerely,

POULSEN and SKOUSEN, P.C.

A handwritten signature in black ink, appearing to read "Robert J. Poulsen", written over a horizontal line.

Robert J. Poulsen

EXHIBIT A

**SECOND NOTICE AND ORDER
AND COMMENCEMENT OF CIVIL PENALTIES**

RECEIVED

December 5, 2013

DEC 07 2013

Windriver Investments
P.O. Box 571039
Murray, UT 84157

Subject Property: 4186 S MAIN, SALT LAKE CITY, UT 84107-0000

Case Number: 17554

Notices and Recent History:

You were previously notified that subject property was in violation of County Ordinance and instructed that the violation must be corrected within 28 days from the date of said notice. In a letter dated June 20, 2013, you were ordered to cease and desist from bringing in new material to this site. The allowed warning period has now expired and a recent inspection of the above property reveals a large amount of new material recently delivered to the site and in close proximity to a stream.

Second Notice:

YOU ARE HEREBY NOTIFIED THAT, AS OF THE DATE OF THIS LETTER, A LIEN/NOTICE OF NONCOMPLIANCE WILL BE RECORDED AGAINST YOUR PROPERTY AND YOU WILL BE ASSESSED \$100 PER DAY IN CIVIL PENALTIES UNTIL CORRECTIVE ACTION IS COMPLETED, AS PROVIDED IN COUNTY ORDINANCE, 19.94.070.

Nature of Violations: Violation of Stop Work Order, No Current Conditional Use Permit, Illegal Use of Land.

Ordinances Violated:

County Ordinance 19.02.090

"The use of the land shall not be commenced or proceeded with except upon the issuance of a written permit for the same by the development services division director or designee."

County Ordinance 19.94.030

"No land, building or structure shall be used for any purpose or use not allowed in the zone in which such land, building, or structure is located."

County Ordinance 19.84.020

"A conditional use permit shall be required for all uses listed as conditional uses."

County Ordinance 19.66.030

"Conditional uses in the M-1 Zone include: building material sales yard, including the sale of rock, sand, gravel and the like, as an incidental part of the main business, but excluding concrete mixing..." "manufacture of brick, and all clay, ceramic, cinder, concrete, synthetic, cast-stone, plastic and pumice stone products...and excluding rock or gravel crushing of raw materials"

County Ordinance 19.68.03

"Conditional uses in the M-2 Zone include: building material sales yard, including the sale of rock, sand, gravel and the like as an incidental part of the main business...rock crusher."

Corrective Action Required:

REMOVE AND LEGALLY RELOCATE ALL MATERIAL BROUGHT TO THIS LOCATION AFTER JULY 20TH 2013, WHICH IS THE DATE OF THE FIRST NOTICE AND ORDER THAT WAS SENT TO YOU. NO CRUSHING IS ALLOWED.

Consequence of Further Violations:

FAILURE TO COMPLY WILL RESULT IN THE FILING OF A CIVIL COMPLAINT IN THIRD DISTRICT COURT SEEKING INJUNCTIVE RELIEF AND CIVIL PENALTIES AND COSTS AS PROVIDED IN COUNTY ORDINANCE, 19.94.070.

Hearing/Appeal Rights

If you feel that this NOTICE AND ORDER AND COMMENCEMENT OF CIVIL PENALTIES is in error, you may request an informal hearing before a county hearing officer as provided in 19.94.070(C) or formally appeal this decision to the County ALJ within ten (10) days from this letter as provided in 19.92.050(A) and 19.84.080.

EXHIBIT B

September 10, 1998

Robert C. Miller
P.O. Box 571039
Murray, UT 84157-1039



Salt Lake County
Public Works
Department

Development Services
Division

Randy Horluchi
Salt Lake County
Commissioner

Lonnie L. Johnson
Director of Public Works

J.D. Johnson
Division Director

SALT LAKE COUNTY
GOVERNMENT CENTER
2001 S. State Street
Suite N3600
Salt Lake City
Utah 84190-4050
Tel (801) 468-2000
TDD (801) 468-2877
Fax (801) 468-2169
Printed on Recycled Paper

Re: PL-97-2275 - ROBERT C. MILLER - 4168 SO. MAIN ST. - RECYCLING
ASPHALT AND CONCRETE - M-1 & M-2 ZONES - MILLCREEK
APPROVAL DATE: MAY 20, 1998

THIS LETTER AND THE ENCLOSED APPROVED SITE PLAN CONSTITUTE THE CONDITIONAL USE PERMIT. All improvements which are required by the Salt Lake County development ordinances or County Commission action must be installed or bonded for, prior to the final electrical inspection approval by the Building Inspector (power to panel), or if no electrical inspection is required, prior to the issuance of any Occupancy Permit for the land being developed, or commencement of the approved Conditional Use.

Following is a list of improvements and conditions required by this approval:

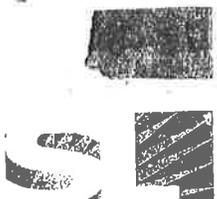
1. High back curb, gutter and sidewalk must be installed along the property lines which abut any public road or street, and are subject to approval by Engineering Services, 468-2448. These improvements must be installed within 60 days of this approval (November 10, 1998).
2. All parking areas and access drives must be hard surfaced with asphalt or concrete, and graded and drained to dispose of surface water as approved by Engineering Services. This condition must be completed within 60 days of this approval (November 10, 1998).
3. Any lighting on the property must be installed so as to deflect light away from residential uses.
4. The following additional conditions are required by the County Commission:
 - A. No signs are approved with this request, they require separate approval.
 - B. Hours of operation are limited to 7:00 a.m. to 6:00 p.m.
 - C. Dust is to be minimized.
 - D. Health ordinance pertaining to noise must be adhered to.
 - E. Use is only approved for five years from the date of approval (May 20, 2003).

THIS LETTER AND ATTACHED APPROVED FINAL SITE PLAN ARE TO BE ATTACHED TO YOUR WORKING DRAWINGS WHEN OBTAINING YOUR BUILDING PERMIT.

Sincerely,

Diana D. Martinez,
Senior Planner

pc: Engineering Services Section
JD Johnson



**SALT LAKE
COUNTY**

March 30, 2005

Robert C. Miller
P.O. Box 571039
Murray, Utah 84157-1039

Re: 20815 - Asphalt & Concrete Crushing and Recycling - 4168 S. Main St. -
Zone: M-2 - APPROVAL DATE: April 24, 2003

THIS LETTER AND THE ENCLOSED APPROVED SITE PLAN CONSTITUTE THE CONDITIONAL USE PERMIT. All improvements which are required by the Salt Lake County development ordinances or Planning Commission action must be installed or bonded for, prior to the final electrical inspection approval by the Building Inspector (power to panel), or if no electrical inspection is required, prior to the issuance of any Occupancy Permit for the land being developed, or commencement of the approved Conditional Use.

The following is a list of improvements and conditions required by this approval:

1. All industrial activity shall be kept a minimum of 30 feet from the bank of Big Cottonwood Creek.
2. The property owner is to have Main Street swept between Central Avenue and the Big Cottonwood Creek bridge at least once per week during the months the business is in operation.
3. An on-site watering system is to be instituted to effectively control dust on the site. All watering of the site for dust control purposes is to be in compliance with water discharge laws and ordinances.
4. All entrance drives and vehicular parking areas must be paved with asphalt or concrete. Parking spaces in parking areas are to be clearly delineated.
5. Front yard landscaping must be installed along the frontage of Main Street in compliance with Ordinance 19.76.150.

**PLANNING & DEVELOPMENT
SERVICES**

John Patterson
Public Works Department Director
jpatterson@slco.org

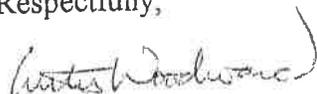
Jeff Daugherty
Planning & Development Services
Division Director
jdaugherty@slco.org

Salt Lake County
Government Center
2001 South State Street
Suite N3600
Salt Lake City, Utah 84190-4050

801 / 468-2000
801 / 468-2169 f

**THIS LETTER AND ATTACHED APPROVED FINAL SITE PLAN ARE TO
BE ATTACHED TO YOUR WORKING DRAWINGS WHEN OBTAINING
YOUR BUILDING PERMIT.**

Respectfully,


Curtis Woodward
Planner

Ralph Chamness
Chief Deputy
Civil Division



Jeffrey William Hall
Chief Deputy
Justice Division

Blake Nakamura
Chief Deputy
Justice Division

DISTRICT ATTORNEY
SALT LAKE COUNTY
SIM GILL

January 23, 2014

James E. Harward
Administrative Law Judge
Harward & Associates
9350 South 150 East
Suite 740
Sandy, Utah 84070

In Re: Windriver LLC

COUNTY'S RESPONSE TO MILLERS' FORMAL APPEAL

Salt Lake County Planning and Development Services, hereinafter referred to as "the County," by and through its Assistant District Attorney, Thomas L. Christensen, hereby responds to the Formal Appeal to the County Administrative Law Judge ("ALJ") brief of Carol and Robert Miller, "the Millers," of the company Windriver LLC.

SUMMARY

The Millers are appealing the County's Second Notice and Order and Commencement of Civil Penalties ("Second Notice," Attachment P). The Second Notice informed the Millers that they are illegally operating a concrete crushing/recycling business without a conditional use permit ("CUP"). Prior to the Second Notice, The Millers were provided an extended time frame to cure the problem/apply for an extension of their prior CUP, but instead rescinded their CUP application and continued to accept a large amount of new material. In the Second Notice, The Millers were ordered to remove and legally relocate the new material and to not commence crushing operations again. The Second Notice also placed a lien/notice of noncompliance against the property, commenced a civil penalty of \$100 per day until corrective action is completed, and threatened the filing of a civil complaint in Third District Court.

In the Millers' Formal Appeal of December 14, 2013, they argue that the Second Notice is invalid because 1) They believe their cement recycling business is a permitted use. 2) They



previously applied for a CUP only to satisfy the County. 3) County Planner Curtis Woodward, in his final acceptance letter of March 30, 2005, did not reiterate the three year time limit in the extension approved by the Milcreek Township Planning Commission ("MTPC"), implying that the CUP was indefinite and not an extension. 4) The Millers are unfairly targeted. 5) The County's Land Use ALJ lacks jurisdiction. 6) The Millers have relocated their cement recycling machine and operation.

BURDEN OF PROOF/STANDARD OF REVIEW

In an appeal of a staff or planning commission interpretation, there is a presumption that the interpretation is valid, and the burden of proof is on the appellant to demonstrate that the County's interpretation is "arbitrary, capricious or illegal" (19.84.080 County Ordinance, 17-27a-705 UCA). An interpretation is arbitrary or capricious if it is not supported by "substantial evidence in the record" [17-27a-801(3)c]. An interpretation is legal if it does not "violate a law, statute, or ordinance in effect" [17-27a-801(3)d]. These are the same standards that would apply in an appeal to district court.

STATEMENT OF THE RECORD

The official documents governing this appeal are the chronological records of the Millers' CUP request/approval/expiration and subsequent enforcement action, as summarized below and authenticated in the affidavits of Curtis R. Woodward and Steven R. Szemerey.

1. The Millers first operated their asphalt and concrete crushing and recycling business prior to 1998 "without a land use permit." Following complaints about the noise and fugitive dust, the Millers were notified by Planning and Development Services that they must obtain a CUP prior to operating in the M-1 and M-2 (manufacturing) zone. The Millers' applied for a CUP. The Planning Commission unanimously denied the Millers' request for a CUP. Planning Commission Minutes of March 10, 1998, Attachment A
2. Two months after the Planning Commission denial, the County Commission heard the Millers' appeal and granted the Millers' a CUP for a 5 year period of time, subject to review. Robert McConnell, representing the Millers, stated that while the other aspects of the operation were more in the nature of permitted uses, the rock crusher aspect of the operation required a CUP. County Commission Minutes, May 20 1998, Attachment B.
3. Approximately five years after the County Commission approved the Miller's CUP, the Millers' sent a letter to the MTPC requesting five additional years to continue their operations on the property. In the letter, Mr. Miller stated that he was "willing to stipulate to a limit of five (5) years..." Robert C. Miller letter of April 23, 2003, Attachment C.

4. The MTPC approved by consent (no hearing) the Millers' request for a CUP extension, subject to a three (3) year limit and staff recommendations. MTPC Minutes, April 24, 2003, Attachment D, Staff Recommendations, Attachment E, Woodward letter to Miller, April 29, 2003, Attachment F.
5. Approximately two years after the approval, Curtis Woodward sent a follow up letter to Miller indicating that his *preliminary* approval would expire in a month and a half (April 24, 2005) unless he submitted a final site plan and demonstrated compliance with conditions 1, 4, and 5. If he submitted and received approval on the required documents, Woodward indicated that he would receive final CUP approval which would expire three years from the date of the preliminary approval or September 4, 2006. Woodward letter of March 7, 2005, Attachment H.
6. Miller submitted the final site plan and compliance documents and received final approval in a letter of March 30, 2005. Woodward informed the Millers of the County's acceptance of their site plan and compliance efforts but did not reiterate the three (3) year limit from the date of the preliminary approval, as he had done in his previous letter. Woodward letter of March 30, 2005, Attachment I.
7. The Millers were informed by Woodward in a letter on January 27, 2012 that they were operating well past the time frame in the three year extension approved by the MTPC and that plans must be submitted to remove and relocate materials and equipment or to close or relocate the business. Woodward letter of January 27, 2012, Attachment J.
8. Following a February 23, 2012 meeting with Miller and legal counsel in which two options were discussed (filing for another extension/permanent CUP or moving to another site), Woodward sent a letter informing Miller that he was observed to be continuing to operate without a permit in violation of county ordinance and the case would be submitted to code enforcement if he did not submit an approved plan or cease his operations. Woodward letter of December 11, 2012, Attachment K.
9. Despite discussions of a compromise plan, the Miller site continued to accept and crush material. Woodward warned that accepting or bringing in new material after February 28, 2013 would result in legal action including assessing civil penalties of \$100 per day, revoking his business license, filing a civil complaint, etc. Woodward letter of February 22, 2013, Attachment L.
10. Miller wrote back to Woodward, attaching a CUP application, expressing surprise over the February 22 letter, stating that he understood that he could keep operating until he bought another property and relocated his business or until "there was significant growth and change in the area." Miller letter of February 27, 2013, Attachment M.
11. Miller withdrew his CUP application on the grounds that his "current conditional use permit is without expiration," he hoped for a "mutually beneficial agreement," he did

not need a CUP “in the first place,” and he requested further contact be directed to his attorneys. Miller letter of June 11, 2013, Attachment N.

12. The County ordered the Millers to cease and desist from bringing in new material to the site in a letter date June 20, 2013, and gave them 28 days to correct the violation. Notice and Order, Steve Szemerey’s Exhibit 2.
13. The County issued a Second Notice and Order and Commencement of Civil Penalties, the subject of this appeal, on December 5, 2013, Steve Szemerey’s Exhibit 4 .

ARGUMENT

1. THE MILLER’S RECYCLING BUSINESS IS A CONDITIONAL USE.

County ordinance 19.84.020 provides that “a conditional use permit shall be required for all uses listed as conditional uses.” The M-2 zone, where most of the material is stored on the Miller property, lists as conditional uses “building material sales yard, including the sale of rock, sand, gravel and the like as an incidental part of the main business” and “Rock crusher” (19.68.030).

The main concern of the County and source of neighboring complaints is the noisy, dusty, crushing operation, which, as quoted above, is a listed conditional use in the M-2 zone. Even Millers’ attorney, Robert C. McConnell, acknowledged before the County Commission when Millers’ CUP was first considered in 1998 that the rock crusher aspect of the operation was a conditional use.

While the Millers cite elements from the permitted use section of the M-2 zone that relate in general to the manufacture of cement, it is a stretch to consider their crushing/recycling operation a “cement central mixing plant,” a “recycling collection center” (which must be within an enclosed building) or a “manufacture, fabrication, assembly, canning, compounding, packaging, processing, treatment, storage, and/or maintenance” plant of “cement products.” If the Millers’ business were, as they argue, a “compounding... processing, treatment, or storage plant,” their product would be gravel or road base, not “cement products.”

Since 1998, when the first CUP was granted the Millers, the County has consistently maintained that the recycling operation is a conditional use. The listed conditional use, “rock crushing” coupled with the “sale of rock, sand, gravel and the like” most closely approximates the Millers’ operation. Such an interpretation of the ordinance does not “violate a law, statute or ordinance in effect” and is supported by “substantial evidence in the record.” The County’s interpretation is thus entitled to deference under the law.

2. IT IS TOO LATE FOR THE MILLERS TO CHALLENGE THE COUNTY'S CUP DETERMINATION

While the Millers may appeal the latest enforcement order, they are too late to appeal the expiration of their CUP. After negotiations failed, Curtis Woodward notified the Millers in writing on February 22, 2013 that their extension had expired and that they would have to obtain a new CUP or cease operations. Under County ordinance (19.84.080), the Millers have ten days to appeal Woodward's determination to the Board of Adjustment (now the ALJ). Rather than file an appeal, the Millers filed a CUP application then withdrew it, continued their operations, and waited 10 months later--after a Notice and Order with civil penalties were assessed--to appeal Woodward's CUP determination.

3. MR. WOODWARD'S FINAL ACCEPTANCE LETTER, GRANTING THE CUP, DID NOT RESCIND THE EXTENSION PERIOD.

The final CUP issued by Mr. Woodward in his letter of March 30, 2005 was for a three year extension of a five year CUP first issued May 20, 1998 and scheduled to expire in May, 2003. It was obviously not an application for a new CUP without time restriction. There can be no reasonable doubt that the extension was for three years recognizing that Miller asked for a time-limited extension (five years), had been informed that he had been approved for three years subject to conditions, and had never received anything but a time-limited CUP in the past. Mr. Woodward reminded him of this fact in his letter of March 7, 2005, issued just three weeks earlier. Even if Miller thought he had been approved for five years, the five years expired in 2008. Mr. Woodward had no authority to waive the MTPC's approval. After the three year time elapsed, Woodward graciously afforded the Millers time to reapply for a CUP, relocate, sell or close the site. There is simply no basis in law or fact for the Millers' claim that the latest CUP extension was actually for a new CUP, with no time limit.

4. THE MILLERS WERE NOT UNFAIRLY TARGETED.

The County enforced its ordinances consistently. The Millers have proffered no evidence supporting their claim that other similarly situated businesses under the County's jurisdiction in the vicinity were treated differently, i.e. were granted permitted uses. The Millers were afforded every reasonable notice and opportunity to conform. They were granted years beyond the expiration of their CUP to come into compliance or move/sell their site as they had indicated to the County they were going to do. If there is a fault on the part of the County, it is perhaps that it gave the Millers too much time to keep operating while they decided what they were going to do.

5. THE ALJ HAS JURISDICTION TO HEAR THIS APPEAL.

According to state law, Counties have jurisdiction to appoint an “appeal authority,” defined as a “person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.” Last year, the County adopted an ordinance changing the appeal authority from a citizen “board of adjustment” to a law-trained hearing officer/ALJ (see County Ordinance, chapter 19.92). Under state law, the appeal authority has jurisdiction and authority to hear appeals from decisions applying the land use ordinances” [17-27a-701(1)b].

**6. THE MILLERS HAVE CONTINUED TO OPERATE THEIR CRUSHING/RECYCLING OPERATION
DESPITE NOTICES AND ORDERS TO CEASE AND DESIST.**

At the time the Second Notice was issued, the crusher had been removed off site. After filing their appeal, the Millers brought the crusher back and their agents have recently been observed crushing and hauling material to and from the site. As of September 30, 2013, the Millers are also operating without a business license, which will not be issued until they comply with zoning. See December 26, 2013 Pictures, Affidavit of Steve Szemerey, Exhibit 1.



THOMAS L. CHRISTENSEN
Deputy District Attorney
Attorney for Salt Lake County Planning and
Development Services

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing County's Response to Millers' Formal Appeal, Affidavit of Steve Szemerey and Affidavit of Curtis Woodward to the following, postage prepaid this 23rd day of January, 2014:

Robert J. Poulsen
J.M. Skousen
POULSEN & SKOUSEN, P.C.
1108 West South Jordan Parkway
Suite D
South Jordan, Utah 84095-4549

A handwritten signature in black ink, appearing to read "R. Poulsen", written over a horizontal line.

AFFIDAVIT OF STEVE SZEMEREY

In Re: Windriver, LLC

STATE OF UTAH)
 :SS
County of Salt Lake)

Steve Szemerey, being first duly sworn, deposes and states as follows:

1. I have personal knowledge of the matters and things set forth herein.
2. I am a resident of Salt Lake County, I am over the age of twenty-one years, and I am otherwise legally competent to make this Affidavit.
3. I am currently employed as a Code Enforcement Officer for the Planning and Development Services Division of the Salt Lake County Public Works Department.
4. I regularly inspect real property to determine whether the conditions thereon are in violation of Salt Lake County's zoning ordinances.
5. I personally took the photographs of the Windriver, LLC property on December 26, 2013. Copies of the photographs are attached to this affidavit as Exhibit 1.
6. I personally prepared the First Notice of Violation and Order, signed it, and mailed it to Windriver Investments on June 20, 2013, attached as Exhibit 2.
7. I was assisted by Tom Christensen in preparing the Second Notice of Violation and Order for Windriver Investments on November 6, 2013, attached as Exhibit 3.
8. I mailed the Second Notice and Order and Commencement of Civil Penalties to Windriver Investments December 5, 2013, attached as Exhibit 4.

Dated at Salt Lake County, Utah, this 22 day of JANUARY, 2014.



STEVE SZEMEREY

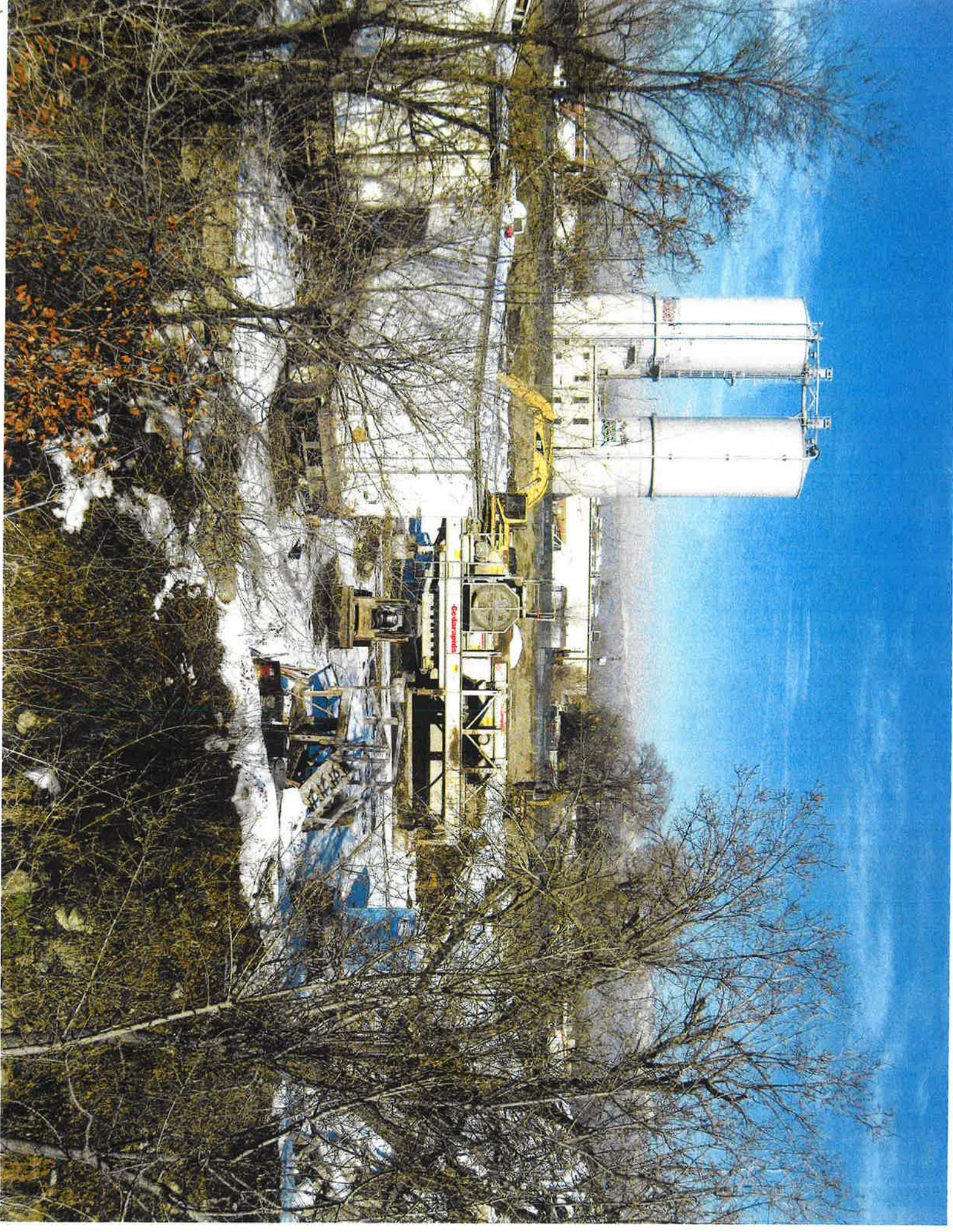
Subscribed and sworn to before me on this 22nd day of January, 2014.

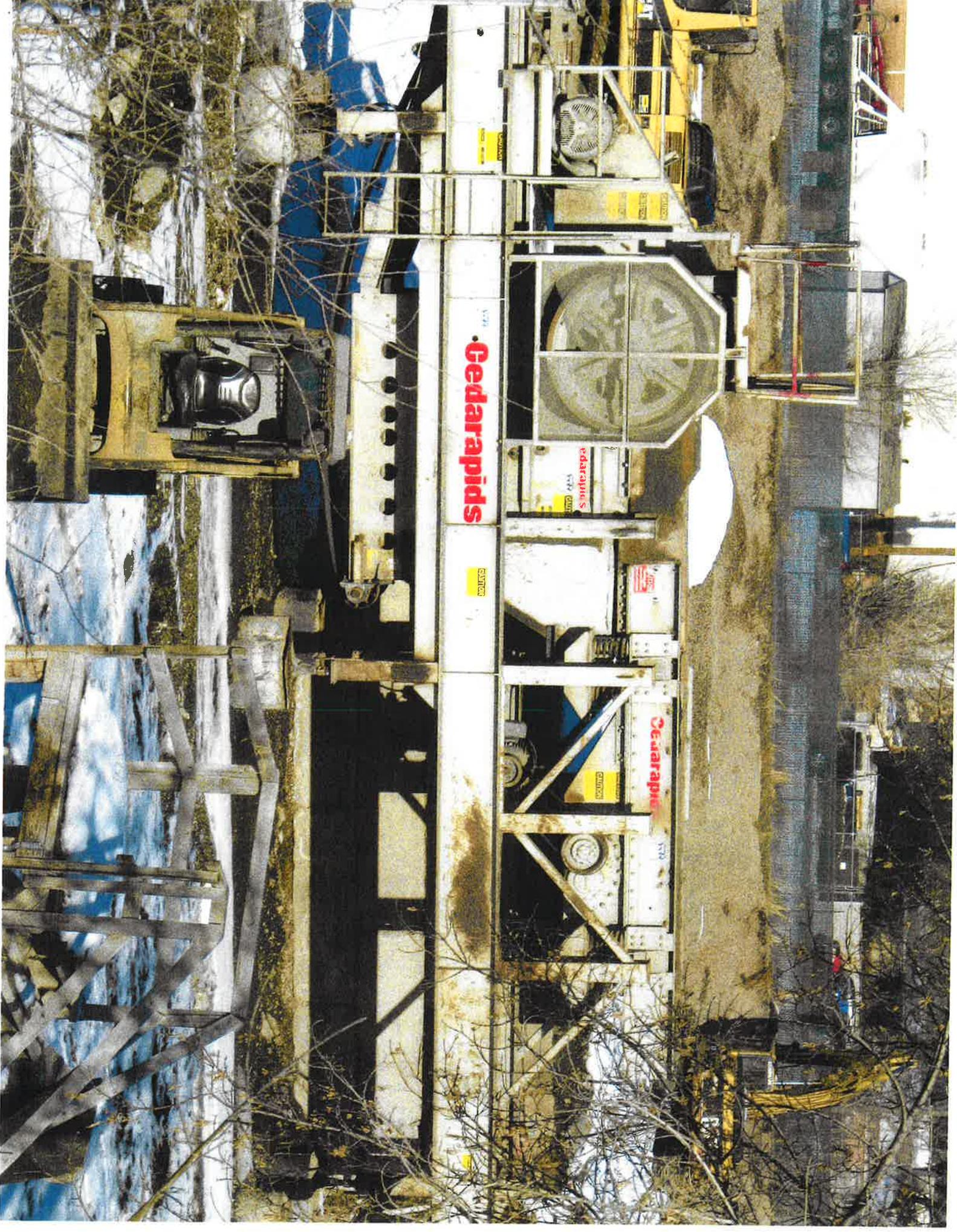


NOTARY PUBLIC
Residing in Salt Lake County, Utah



EXHIBIT 1









Cedarapids

Cedarapids

CAUTION

CAUTION

CAUTION

CAUTION

CAUTION

CAUTION

CAUTION

CAUTION



EXHIBIT 2



**SALT LAKE
COUNTY**

Salt Lake County Public Works Department
Planning and Development Services Division
2001 S. State Street #N-3600 Salt Lake City, UT 84190-4050
Phone: 801-468-2000 FAX: 801-468-2169
<http://www.pwpds.slco.org/>

Certificate of Mailing or Posting

I Steve do hereby certify that a true and correct copy of:

Notice and Order - Civil

As filed with : The Salt Lake County Planning and Development Services Office

Was mailed First class United Postal Service or posted on:6/20/2013

TO Windriver Investments
P.O. Box 571039
Murray, Ut 84157

Subject Property: 4186 S Main , Salt Lake City, UT 84107-0000

Case Number: **17554**

Signed and mailed / posted this June 20, 2013



Steve

Code Enforcement Officer
Salt Lake County
Planning and Development



**SALT LAKE
COUNTY**

Salt Lake County Public Works Department
Planning and Development Services Division
2001 S. State Street #N-3600 Salt Lake City, UT 84190-4050
Phone: 801-468-2000 FAX: 801-468-2169
<http://www.pwpds.slco.org/>

NOTICE OF VIOLATION

June 20, 2013

1st Notice and Initiation of Warning Period

Windriver Investments
P.O. Box 571039
Murray, Ut 84157

Subject 4186 S Main , Salt Lake City, UT 84107-0000

Case 17554

You must bring your property into compliance on or before: July 20, 2013

Failure to comply will result in the commencement of Civil Penalty Fees in accordance with section 19.94.070 of the county ordinance.

You are hereby notified that on June 20, 2013 an Enforcement Officer conducted an inspection of the property identified above and found the following violation(s):

Unauthorized use of property Ordinance references: 19.02.090 and 19.94.030

"The use of the land shall not be commenced or proceeded with except upon the issuance of a written permit for the same by the development services division director or designee." "No land, building or structure shall be used for any purpose or use not allowed in the zone in which such land, building or structure is located."

Corrective Action Required:

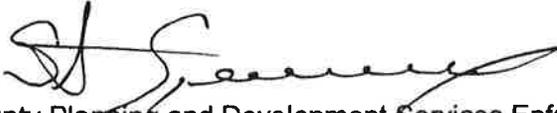
YOU WERE PREVIOUSLY SENT A LETTER ON FEBRUARY 22/2013 INFORMING YOU THAT AS OF FEBRUARY 28TH 2013 THAT YOU WERE NO LONGER TO ACCEPT OR BRING NEW MATERIAL TO THIS SITE.

PLEASE CEASE AND DESIST FROM OPERATING THE CONCRETE CRUSHING AND RECYLING PLANT OR WE WILL PROCEED WITH LEGAL ACTION. SEE THE ATTACHED LETTERS PREVIOUSLY SENT TO YOU.

In order to bring your property into compliance, you are required to complete the Corrective Actions listed above. **IT IS YOUR RESPONSIBILITY TO REQUEST AN INSPECTION AT (468-2176), and obtain a Notice of Compliance from an Enforcement Officer for the entire property.** The Notice of Compliance must be obtained by 7/20/2013. If you fail to have the property inspected and obtain a Notice of Compliance, you will be subject to civil penalty fees as indicated above. The County may also obtain an order to enter your property and remove or remediate the violation(s) at your expense.

If you have any questions, please call Steve at (801)468-2074 or send an email to CodeEnforcement5@slco.org or write to the above address.

Respectfully,



Salt Lake County Planning and Development Services Enforcement

Note: If you no longer own this property, please provide the County with a copy of the documents showing the transfer of ownership. If you believe you have a landuse approval, nonconforming use or a variance which would allow the use to remain on your property, please provide the County with a copy of your supporting documents. Any new application for land use permit must be made before the date in this notice or the penalties will be assessed until a valid application is made or the violation(s) are removed or remediated.

EXHIBIT 3



Salt Lake County Public Works Department
Planning and Development services Division
2001 South State Street, Room N3600 Salt Lake City, Utah 84190-4050
Phone: 801-468-2000 Fax: 801-468-2169
<http://www.pwpds.slco.org/>

SECOND NOTICE AND ORDER AND COMMENCEMENT OF CIVIL PENALTIES

November 06, 2013

Windriver Investments
P.O. Box 571039
Murray, Ut 84157

Subject Property: 4186 S MAIN , SALT LAKE CITY, UT 84107-0000

Case Number: 17554

You were previously given notice that subject property was found to be in violation of Salt Lake County Ordinance and instructed that the violation must be corrected within 28 days from the date of said notice. The allowed warning period has now expired and a recent inspection of the above property revealed that the following violation(s) still exist:

Unauthorized use of property

Ordinance references: 19.02.090 and 19.94.030

"The use of the land shall not be commenced or proceeded with except upon the issuance of a written permit for the same by the development services division director or designee." "No land, building or structure shall be used for any purpose or use not allowed in the zone in which such land, building or structure is located."

Corrective Action Required:

ON JUNE 20TH 2013 WE SENT A LETTER INFORMING YOU TO CEASE AND DESIST FROM BRINGING NEW MATERIAL TO THIS SITE. WE HAVE DETERMINED THAT NEW MATERIAL IS STILL BEING DELIVERED. AS OF TODAYS DATE WE ARE FILING A LIEN AGAINST YOUR PROPERTY AND CHARGING \$100.00 PER DAY IN CIVIL PENALTIES UNTIL YOUR PROPERTY IS BROUGHT INTO COMPLIANCE. PLEASE REMOVE AND RELOCATE ALL MATERIAL BROUGHT TO THIS LOCATION AFTER JULY 20TH 2013 WHICH IS THE DATE OF THE FIRST NOTICE AND ORDER THAT WAS SENT TO YOU.

Pursuant to Section 19.94.070, commencing on 11/6/2013, a penalty of \$100.00 per day will be levied against the owner(s) and/or tenant(s) of this property until the violations are corrected.

You must call 468-2176 as soon as the required work is complete in order to have the daily penalty stop accruing. The accrual of penalties will continue until you call for an inspection.

Salt Lake County may, under Ordinance 19.94.030, criminally prosecute this case if such action is deemed necessary to abate the violation.

Steve at (801)468-2074 or send an email to CodeEnforcement5@slco.org
Code Enforcement Officer
Salt Lake County
Planning and Development Services



**SALT LAKE
COUNTY**

Salt Lake County Public Works Department
Planning and Development services Division
2001 South State Street, Room N3600 Salt Lake City, Utah 84190-4050
Phone: 801-468-2000 Fax: 801-468-2169
<http://www.pwpds.slco.org/>

Certificate of Mailing or Posting

I STEVE do hereby certify that a true and correct copy of:

SECOND NOTICE AND ORDER AND COMMENCEMENT OF CIVIL PENALTIES

As filed with : The Salt Lake County Planning and Development Services Office

Was mailed First class United Postal Service on :11/6/2013

TO: Windriver Investments
P.O. Box 571039
Murray, Ut 84157

Subject Property: 4186 S MAIN . SALT LAKE CITY. UT 84107-0000

Case Number: 17554

Signed and mailed this 11/6/2013

Steve at (801)468-2074 or send an email to CodeEnforcement5@slco.org

Code Enforcement Officer
Salt Lake County
Planning and Development

EXHIBIT 4

**SECOND NOTICE AND ORDER
AND COMMENCEMENT OF CIVIL PENALTIES**

December 5, 2013

Windriver Investments
P.O. Box 571039
Murray, UT 84157

Subject Property: 4186 S MAIN, SALT LAKE CITY, UT 84107-0000

Case Number: 17554

Notices and Recent History:

You were previously notified that subject property was in violation of County Ordinance and instructed that the violation must be corrected within 28 days from the date of said notice. In a letter dated June 20, 2013, you were ordered to cease and desist from bringing in new material to this site. The allowed warning period has now expired and a recent inspection of the above property reveals a large amount of new material recently delivered to the site and in close proximity to a stream.

Second Notice:

YOU ARE HEREBY NOTIFIED THAT, AS OF THE DATE OF THIS LETTER, A LIEN/NOTICE OF NONCOMPLIANCE WILL BE RECORDED AGAINST YOUR PROPERTY AND YOU WILL BE ASSESSED \$100 PER DAY IN CIVIL PENALTIES UNTIL CORRECTIVE ACTION IS COMPLETED, AS PROVIDED IN COUNTY ORDINANCE, 19.94.070.

Nature of Violations: Violation of Stop Work Order, No Current Conditional Use Permit, Illegal Use of Land.

Ordinances Violated:

County Ordinance 19.02.090

“The use of the land shall not be commenced or proceeded with except upon the issuance of a written permit for the same by the development services division director or designee.”

County Ordinance 19.94.030

“No land, building or structure shall be used for any purpose or use not allowed in the zone in which such land, building, or structure is located.”

County Ordinance 19.84.020

“A conditional use permit shall be required for all uses listed as conditional uses.”

County Ordinance 19.66.030

“Conditional uses in the M-1 Zone include: building material sales yard, including the sale of rock, sand, gravel and the like, as an incidental part of the main business, but excluding concrete mixing...” “manufacture of brick, and all clay, ceramic, cinder, concrete, synthetic, cast-stone, plastic and pumice stone products...and excluding rock or gravel crushing of raw materials”

County Ordinance 19.68.03

“Conditional uses in the M-2 Zone include: building material sales yard, including the sale of rock, sand, gravel and the like as an incidental part of the main business...rock crusher.”

Corrective Action Required:

REMOVE AND LEGALLY RELOCATE ALL MATERIAL BROUGHT TO THIS LOCATION AFTER JULY 20TH 2013, WHICH IS THE DATE OF THE FIRST NOTICE AND ORDER THAT WAS SENT TO YOU. NO CRUSHING IS ALLOWED.

Consequence of Further Violations:

FAILURE TO COMPLY WILL RESULT IN THE FILING OF A CIVIL COMPLAINT IN THIRD DISTRICT COURT SEEKING INJUNCTIVE RELIEF AND CIVIL PENALTIES AND COSTS AS PROVIDED IN COUNTY ORDINANCE, 19.94.070.

Hearing/Appeal Rights

If you feel that this NOTICE AND ORDER AND COMMENCEMENT OF CIVIL PENALTIES is in error, you may request an informal hearing before a county hearing officer as provided in 19.94.070(C) or formally appeal this decision to the County ALJ within ten (10) days from this letter as provided in 19.92.050(A) and 19.84.080.

AFFIDAVIT OF CURTIS WOODWARD

In Re: Windriver, LLC

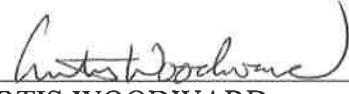
STATE OF UTAH)
 :SS
County of Salt Lake)

Curtis Woodward, being first duly sworn, deposes and states as follows:

1. I have personal knowledge of the matters and things set forth herein.
2. I am a resident of Salt Lake County, I am over the age of twenty-one years, and I am otherwise legally competent to make this Affidavit.
3. I am currently employed as Zoning Administrator for the Planning and Development Services Division of the Salt Lake County Public Works Department.
4. I reviewed the planning application for the Windriver, LLC matter and have attached documents that pertain to Windriver, LLC.
5. The Planning Commission's Minutes of March 10, 1998 are attached as Attachment A.
6. The County Commission Minutes of May 20, 1998 are attached as Attachment B.
7. The April 23, 2003 letter from Robert C. Miller of Windriver Investments is attached as Attachment C.
8. The April 24, 2003 Minutes of the Mill Creek Township Planning Commission are attached as Attachment D.
9. The Staff Recommendations from the April 24, 2003 hearing dated April 17, 2003 are attached as Attachment E.

10. My letter to Robert C. Miller dated April 29, 2003 is attached as Attachment F.
11. My letter to Robert C. Miller dated March 7, 2005 is attached as Attachment H.
12. My letter to Robert C. Miller dated March 30, 2005 is attached as Attachment I.
13. My letter to Robert C. Miller dated January 27, 2012 is attached as Attachment J.
14. My letter to Robert C. Miller dated December 11, 2012 is attached as Attachment K.
15. My letter to Robert C. Miller dated February 22, 2013 is attached as Attachment L.
16. The Land Use & Development Application and the letter from Robert C. Miller dated February 27, 2013 is attached as Attachment M.
17. The letter from Robert Miller dated June 11, 2013 is attached as Attachment N.

Dated at Salt Lake County, Utah, this 22 day of January, 2014.

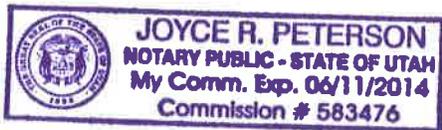


CURTIS WOODWARD

Subscribed and sworn to before me on this 22nd day of January, 2014.



NOTARY PUBLIC
Residing in Salt Lake County, Utah



ATTACHMENT A

Frost seconded, the Planning Commission unanimously approved the motion.

3. CONDITIONAL USE - DECISION - NO ADDITIONAL TESTIMONY IS ALLOWED EXCEPT AS REQUESTED BY A PLANNING COMMISSION MEMBER

3.1 PL-97-2275 - ROBERT C. MILLER - 4168 S. MAIN ST. - RECYCLE OLD ASPHALT & CONCRETE - M-1 & M-2 ZONE - MILLCREEK

Staff does not believe this use is appropriate for this location. The current Millcreek General Plan describes industrial uses proposed for this area as uses such as: "wholesale, fabrication, assembly, food processing,...and similar uses". Asphalt recycling is a much more intense use than these uses listed. The Wikstrom Study does not show this area as industrial, but as commercial and light industrial/business park uses. With the proximity to the railroad tracks, which will be converted to the light rail system, staff believes a use that would complement the light rail would be more suitable for this location. Staff recommends denial of this application.

Ms. Frost asked Mr. Thorpe if approval were given for this application, could a stipulation be made that when light rail comes into the area the condition would have to be changed.

Mr. Thorpe stated you could not make a conditional use permit contingent upon that kind of a circumstance. When a conditional use is approved it lasts as long as the owner wants to continue that use.

Ms. DeLucas asked if this business has been operating illegally.

Mr. Marsh stated it started without a land use permit and therefore was an illegal use.

Mr. Rees asked what brought the illegal use to the Planning Commissions attention.

Ms. Martinez stated it was due to a complaint due to the noise and dust.

Ms. DeLucas motioned to deny this application, Mr. Gust seconded, the Planning Commission unanimously approved the motion.

4. ZONING - DECISION - NO ADDITIONAL TESTIMONY IS ALLOWED EXCEPT AS REQUESTED BY A PLANNING COMMISSION MEMBER

4.1 PL-97-4063 - THE OAKS INVESTMENT GROUP - 6415 S. 3000 EAST - REZONE FROM O-R-D, O-R-D/ZC AND S-1-G TO C-2 ZONE - APPROXIMATELY 1.88 ACRES - HOLL/COTT

Staff stated the Holladay/Cottonwood General Plan shows this area for commercial use. Approving this application will expand the existing commercial zoning to the roads. The proposed zoning is compatible with the general plan. Staff recommends the application be approved. The commercial zoning should stay south of Big Cottonwood Canyon Road even if the road is realigned. That issue can be handled by having the legal description read to the center line of Big Cottonwood Canyon Road as it now exists or as it is realigned in the future.

Ms. Frost motioned to approve this item with staff recommendations, Mr. Gust seconded, the Planning Commission unanimously approved the motion.

4.2 PL-97-4066 - DANIEL R. BILLIS - 4766 S. HOLLADAY BLVD. (2275 E.) - REZONE FROM R-M TO C-1 ZONE - 0.59 ACRE - HOLL/COTT

Staff stated the applicant has amended the application from C-2 to C-1 as suggested by the Community Council. The issues

ATTACHMENT B

Minute Book, Board of County Commissioners, Salt Lake County

Wallace Bindery Sales E614914

Date: W E D N E S D A Y M A Y 20TH, A.D., 1998

three additional conditions, whereupon roll was called and showed the vote to be: Commissioner Overson "Aye," - he appreciates the applicants willingness to work with staff, Commission and community in resolving many of the concerns. There still are some reservations, primarily the climbers and he has a feel for what they are concerned about - his son is a climber. He has a profound respect for private property rights and he thinks the LDS Church has done a great deal towards allowing people to utilize their property for a recreational experience and he hopes that they will continue to do so. He would ask them to continue to work with the rock climbing groups, and if the world-class boulders that are of importance to the community could be preserved. However, he does recognize that it is the church's decision because they are their boulders. If there was a way at some point-in-time, when they are finished extracting this, they would like to sell the property, the county could perhaps make this an official public recreation site. That might relieve a lot of stress for all of them in the future. They have come half-way between what the applicant really wanted and what the community wants, it is a workable compromise. The staff is to work very closely with the experts in this area and that the specifics of the conditions be adhered to so they can make for a safe extraction process.

Commissioner Callaghan "Aye".

Commissioner Horiuchi "Aye" - stated that he has had a number of calls, none from the applicant, because of the nature of the applicant and impact on the community. The one group that has been very active is the climbing community and he does want to say to them that in the past the Mormon Church has been pretty good with regard to access of the property and he thinks that their long standing working with the Forest Service to develop an agreement on that basis is still in good faith and his feeling from the leaders of the climbing community is that they feel that process going forward and he would admonish the applicant that he would like that continued spirit for the climbing and recreational community to be honored. He has been called by Senator Howell, who serves the area as Democratic State Senator and is very protective of his district, who wanted to indicate his support of this application. He has been called by a number of people and having visited the site on two different occasions, the idea of a mine being there is unthinkable, but the idea that mineral extraction occurs on "loose boulders" is more acceptable and this is important. In voting in favor of this proposal, he trusts the staff and Planning Commission with the conditions that have been set forth and he is going to admonish the Planning Commission, staff and geological staff to make certain that all conditions are met to the letter of the law and that they work with them (applicant) closely to mitigate any concerns of the neighbors. He is concerned about the roads, noises, etc., and he wants to make certain that they keep a strong eye on those kinds of things.

♦♦♦ ♦♦♦ ♦♦♦ ♦♦♦ ♦♦♦

PL-97-2275 - An appeal by Robert C. Miller, of the planning commission denial to recycle asphalt and concrete at 4168 S Main Street in the M-1 and M-2 zones.

Mr. Marsh located the property on the imager, stating that the property has frontage on Main Street, goes west on Main Street and opens up into a larger area. There was a complaint filed regarding the stockpiling of material on the property and that is what had the applicant file his application. This is a conditional use application to allow them to recycle asphalt and concrete - it would be put through a crusher and used as road base material. In reviewing this application, the Planning Commission did note that the current Millcreek General Plan describes this area for industrial type uses, however, the staff also reviewed the Wickstrom Study that doesn't show this area for industrial, but for a commercial and light industrial business park type of use. One of the concerns during the review is that light rail is coming through this area, there will be a station not far away from this property on 3900 South. Both the staff and Planning Commission believe that the uses that go into this area should compliment the light rail system and be a more suitable use than this heavy industrial use that has been proposed. The staff recommended denial of the application, the Planning Commission denied the application for the following three reasons: (1) the use is not appropriate at this location, (2) an asphalt recycling use is too intense and (3) a use that would compliment the light rail system would be more suitable at this location. The applicant appealed that denial and the hearing was set for today.

Mr. Robert McConnell, representing the applicant, stated that they have already reviewed the reasons for denial, but they believe that the denial is inappropriate for a number of reasons. The fundamental premise would be that they believe that this application should be reviewed and considered on the basis of existing land use regulations governing the property. The majority of this property is zoned M-2 and the operations, which are conducted on the property, are primarily, if not exclusively limited to the M-2 zone portion of the property. The M-1 portion of the property fronts onto Main Street, the vehicles

Minute Book, Board of County Commissioners, Salt Lake County

Wallace Hinderly Sales E614914

Date: W E D N E S D A Y M A Y 20TH, A.D., 1998

for the four employees who will work there may be parked there and then there is an access road back to the M-2 portion of the property. The M-2 zoning permits heavy industrial uses. An asphalt recycling plant is not a specific permitted use within the M-2 zone; however, there are a number of uses that are similar to what is being placed on this property that are permitted uses and the one aspect of the operation that requires conditional use permit approval would be the rock crusher. They understand that the county has conducted a study (Wickstrom Study) and that in the future this property may be more desirably used in another use that is more transportation oriented or an office park. That is all well and good, but they view this as the ideal interim use - they are able to operate on the property without building any structures and they don't invest millions of dollars of improvements into the structure that would prohibit them, five years down the road, to say that the character of this neighborhood has changed and they can change with it. This operation is beneficial to the community in general - it is a recycling operation. If they drive, they will note the numerous construction projects that involve taking up old asphalt and concrete and if not recycled, it is deposited into a landfill somewhere. They take that material, crush it, reuse it, and prepare road base that is used in projects throughout the county. The light rail project itself, as the road bed is being prepared, the contractor brings them their material, they grind it up and then it is used for the track bed. Will this use be ideal forever, probably not. They have asked for a seven year limit and then to reconsider the project then. If there is an incentive for the owner of the property to change the use, it will be done, but they have asked for the seven year time.

Mr. Thorpe stated that generally, the conditional use ordinance doesn't allow for short-term or temporary conditional uses. However, in certain industries, such as mineral extraction, etc., Courts have held that it is permissible to put specific limitations in time on those types of uses.

Mr. McConnell stated that if they have read the staff reports, there is a lot of emphasis on future land use documents and on light industrial uses. This exhibit was prepared in order to show that the uses surrounding the property are not what they would characterize as light industrial uses. To the north there are more light industrial uses, steel plants in the area, chemical production facilities, to the south are high stacks of pallets for a pallet operation, and stacks of used tires that are being sent off for recycling. Another point in the staff recommendation was the traffic issue, that the infrastructure wasn't designed for a semi-truck hauling gravel and cement products. Did they mean to say semi-trucks in general or trucks handling the concrete and gravel products - if its the latter, it seems inappropriate and if the former, it seems inconsistent with a number of uses around the property, including trucking operations.

Commissioner Horiuchi asked about other uses in the M-1, M-2 zone. Is a rendering plant in the M-2 zone.

Mr. Marsh stated that the rendering plant would be in the M-2 zone.

Mr. Bill Gibbons, Gibbons Realty Company, stated that they own the property to the south. He isn't certain that they would argue the use, but would request that if they are granted a permit, that they have some sort of plan of operation approved that would limit hours of operation, set some sort of standard for noise level at boundary lines and what method of dust control.

Commissioner Callaghan stated that they already have two ordinances - the Health Department dictates noise and the new fugitive dust control requirement for this type of operation. They can set the hours.

Commissioner Horiuchi asked the applicant to submit a plan.

Mr. Gibbons stated that the zoning allows the operation, so he doesn't argue that. Their concern is the nuisance to their property.

Mr. Cal Schneller, Planning Division Director, stated that they have been working with the community on their general plan. When they look at the area it is a dumpy area, and he thinks the Planning Commission looked at it and said "are you sure, this is kind of a bad area, is this going to be a bad use". The staff is saying that at some point, if they want to look at doing something different with the area, they are going to have to say "no" to some of the uses that could have an effect on other uses going on in the area. If Millcreek Community wants to see some residential located down there along the Jordan River, do something with the light rail and draw upon the use of that, at some point they are going to have to say "no." The other point that wasn't raised is that the ordinance does say that a conditional use should follow or must follow the general plan and he doesn't think that this proposed use does.

Commissioner Horiuchi stated that he understands that the Community Council approved this. This seems to be an interesting thought.

Minute Book, Board of County Commissioners, Salt Lake County

Wallace Bindery Sales 641-9114

Date: W E D N E S D A Y M A Y 20TH, A.D., 1998

Mr. Schnelller stated that this is the dichotomy that they deal with consistently with the Community Councils.

Commissioner Horiuchi stated that this is a Community Council that has been pretty intense about both its use and adoption of the new general plan.

Commissioner Callaghan stated that maybe they knew about the seven year offer.

Mr. Schnelller stated that he wasn't at the Community Council hearing so he doesn't understand what their discussion was. Having worked on the plan and knowing their concerns, it was confusing to him as well.

Commissioner Callaghan made a motion to close the hearing and approve the application, but that the applicant work with the staff to stipulate which hours the operation would occur and they would have to abide by the new State Administrative Rule - Fugitive Dust and the County Health Department noise levels. This area is in transition, but they haven't approved the plan yet and it is improper to limit property owners until they know what the plan is and then they can make the transition. For that reason, she recommends that this be approved for five years and then they can review it again.

Roll was called approving the motion, showed the vote to be: Commissioner Overson "Aye," Commissioner Callaghan "Aye" and Commissioner Horiuchi "Aye."

♦♦♦ ♦♦♦ ♦♦♦ ♦♦♦ ♦♦♦

#PL-97-9092 - Western Development & Construction, located at 2288 East 6450 South - 808 hearing/2 lots. Reconsider denial of 808 hearing.

Mr. Marsh located the property on the imager and stated that this was denied at the last meeting and the applicant has submitted a letter asking for reconsideration. What the Commission needs to do is decide whether they are going to reconsider it - if they are they need to set a hearing date and if they don't, that would be the only decision.

Commissioner Callaghan asked Mr. Thorpe where they were with the neighbors filing regarding their covenants.

Mr. Thorpe stated that Commission Callaghan is referring to a pending lawsuit between Mr. Drew Menlove and the other residents of the subdivision. That lawsuit has to do with certain restrictive covenants, deed covenants, that may or may not restrict the building of the type of buildings that Mr. Menlove wants to build on these lots. That is still pending.

Mr. Doug Tingey, representing the applicant, stated that he couldn't answer that because he is handling it. The reason this happened is because Mr. Howell walked over to Mr. Menlove in a meeting and said that if he tries to build, he would sue him because of the covenants. Mr. Menlove comes to him and asks what the deal is and he (Mr. Tingey) does research on it. The laws says that under these circumstances where he walks over and says he is going to sue them, they have to take it to Court and let them decide, this is what the law says - it is called declaratory judgement action, they send it into Court and ask the Judge what it means.

Commissioner Callaghan stated on the covenant.

Mr. Tingey stated that there were several interesting depositions where several of the people who are opposing this have admitted violating these covenants for more than forty years.

Commissioner Callaghan asked him if he had any estimated time of judgement.

Mr. Tingey stated that no, it was hard to guess, somewhere between six weeks and six months, if they have a trial. He thinks that it will be much sooner than this, because they have understood that their position is not tenable.

Commissioner Callaghan asked if there was any way, given this condition as occurring and it may supersede anything the county does, to hold off or continue and revisit it after the Judge makes a decision.

Mr. Thorpe stated that the county isn't a party to the lawsuit, so it won't supersede anything it does. If they determine that this may effect the Board's decision, that would be a different matter. The statutory manner for a subdivision amendment, which they are required to follow in these 808 hearings, Section 17.27.810, and the standard the county has to apply is if the responsible body (county) is satisfied that neither the public or any person will be

ATTACHMENT C



April 23, 2003

Millcreek Township Planning Commission

Re: Conditional Use application of Robert Miller (Windriver Investments) – 4186 S. Main Street (the "Property") – Concrete and Asphalt Crushing / Recycling.

We respectfully request approval of the Conditional Use application for a additional five years, allowing Mr. Miller to conduct his operation on the Property for the following reasons, each of which is discussed in detail in Appendix A attached hereto.

1. The Staff's written Recommendation on the Application characterized the Property as "light industrial." This characterization is inaccurate, as approximately 6 of 7 acres comprising the Property, and all of Mr. Miller's rock crushing and stock piling operations, are located within the M-2 Zone and are specifically zoned for "heavy industrial use."
2. The use outline in the Application is consistent with the character of the surrounding neighborhood, which includes land uses such as cement storage silos, steel manufacturing plants, pallet recycling and storage, used tire storage, and several storage lots of various sizes utilized by construction and mining companies for storage of both active and inactive machinery and equipment.
3. The application and the land use applied for therein satisfies the standards for issuance of a conditional use permit.
4. Mr. Miller has begun implementing the conditions recommended by the Millcreek Community Council.

Mr. Miller is willing to stipulate a limit of five (5) years during which he may continue to conduct his operation on the Property. The additional time is needed to pay the debt on the property and build up the capital needed to develop the Property into a project that does comply with the "Proposed Mixed Use" designations on the general plan.

Given the underlying M-2 zoning of the Property, the compatibility with the surrounding land uses, the implementation of the Community Council's conditions, and the future plans to develop the Property, the Application should be approved. Absent the approval, the commission will visit an extreme hardship upon Mr. Miller that is entirely unjustified under the present circumstances.

Sincerely,

Robert C. Miller
Windriver Investments

ATTACHMENT D

April 24, 2003

MILL CREEK TOWNSHIP PLANNING COMMISSION

CONSENT ITEMS (NO HEARING)

- 1.1 SALE OF 1,519 SQ. FT. OF LAND AT 4190 SOUTH 380 EAST, SALT LAKE COUNTY, (A PART OF PARCEL NO. 16-31-455-005) BY SALT LAKE COUNTY TO J.A. GUSTAFSON - MOTION TO APPROVE MADE BY TONY GODFREY AND SECONDED BY JOAN HAVEN
- 1.2 20158 - BRADY ACRES (2 LOTS) - 2391 E. FISHER LANE - STREET DEDICATION - R-1-8 ZONE - MOTION TO APPROVE MADE BY TONY GODFREY AND SECONDED BY JOAN HAVEN
- 1.3 20797 - BILL PEPPERONE (LAKELINE DEV.) - 4596 SOUTH 900 EAST - 72 UNIT TOWNHOUSE DEVELOPMENT (AMENDED) - R-M & C-2 ZONE - MOTION TO APPROVE WITH STAFF RECOMMENDATIONS, WITH THE UNDERSTANDING THAT THE APPLICANT WILL WORK WITH THE NEIGHBOR TO THE SOUTH REGARDING A SHARED FENCE MADE BY RONALD JOHNSON AND SECONDED BY TONY GODFREY
- 1.4 20876 - WILLIAM MC GRATH - 2697 SOUTH 2000 EAST - EXCEPTION TO CURB, GUTTER AND SIDEWALK - R-1-10 ZONE - MOTION TO RECOMMEND APPROVAL OF DELAY AGREEMENT MADE BY RONALD JOHNSON AND SECONDED BY CHRIS GOSDIS
- 2.1 20463 - B & G PROPERTIES - 1136 EAST 3300 SOUTH - REQUEST FOR FOURTH STORY (PREVIOUSLY APPROVED APARTMENT BUILDING) - C-2 ZONE - MOTION TO CONTINUE FOR MAY 20, 2003 MEETING MADE BY JOAN HAVEN AND SECONDED BY RONALD JOHNSON
- 2.2 20579 - REID SCHOOL - 2965 EAST 3435 SOUTH - MULTI-PURPOSE ROOM ADDITION - R-1-8 ZONE - MOTION TO CLOSE PUBLIC DISCUSSION MADE BY JOAN HAVEN AND SECONDED BY TONY GODFREY - MOTION TO CONTINUE FOR MAY 20, 2003 MEETING MADE BY TONY GODFREY AND SECONDED BY JOAN HAVEN
- 2.3 20790 - JEFF BLAIR - 859 EAST WHITE MAPLE WAY - FOUR FAMILY DWELLING - C-2- ZONE - MOTION TO CONTINUE FOR MAY 20, 2003 MEETING MADE BY JOAN HAVEN AND SECONDED BY RONALD JOHNSON

- 2.4 20816 - ROBERT MILLER (WIND RIVER INVESTMENTS) - 4186 S. MAIN STREET
CONCRETE CRUSHING/RECYCLING - M-2- ZONE - MOTION TO APPROVE FOR
3 YEARS WITH STAFF RECOMMENDATIONS 2 THRU 6, WITH INSTRUCTIONS
TO THE APPLICANT TO BE MINDFUL OF FUTURE DEVELOPMENT PLANS FOR
THIS AREA MADE BY JOAN HAVEN AND SECONDED BY RONALD JOHNSON
- 2.5 20852 - ROBERT ARRINGTON (CLC ASSOCIATES) - 4621 SOUTH 900 EAST -
RETAIL SHOPPING CENTER - C-2 ZONE - MOTION TO CONTINUE FOR MAY 20,
2003 MEETING MADE BY JOAN HAVEN AND SECONDED BY RONALD
JOHNSON
- 3.1 20794 - ROBERT 7 LARENE BAUTNER - 3460-3520 SOUTH 900 & 888 EAST
SCOTT AVENUE - FROM R-1-8 ZONE TO C-1 ZONE - MOTION TO CONTINUE
FOR MAY 20, 2003 MEETING MADE BY JOAN HAVEN AND SECONDED BY
RONALD JOHNSON
- 4.1 20829 - CHINLI FAN - 3484 S. WESTWOOD DRIVE - VACATION OF A 2 FOOT
STRIP OF RIGHT-OF-WAY - R-1-8 ZONE - MOTION TO RECOMMEND
APPROVAL WITH STAFF RECOMMENDATIONS MADE BY CHRIS GOSDIS AND
SECONDED BY RONALD JOHNSON

STAFF IN ATTENDANCE

CURTIS WOODWARD
DEL SWENSEN
ANGEL CALACINO
ANDREA PULLOS
LINDA KINGSLEY
ANDY AAAGARD

MILL CREEK PLANNING COMMISSIONERS IN ATTENDANCE

JOAN HAVEN
TONY GODFREY
DANA DICKSON
RONALD JOHNSON
CHRIS GOSDIS

ATTACHMENT E



STAFF RECOMMENDATIONS

Hearing Body:	Millcreek Township Planning Commission	Agenda Item:	2.3
Hearing Date:	April 24, 2003	File Number:	20815
Request:	Cement crushing/recycling plant		
Staff Recommendation:	See Below		
Planner:	Curtis Woodward		
Community Council:	(Millcreek) Approve with conditions		
Report Preparation Date:	April 17, 2003		

BACKGROUND INFORMATION

Why is this on the agenda? This application is for a cement crushing/recycling operation at 4186 S. Main Street. The bulk of the site is in an M-2 zone, in which uses such as "Rock Crusher" and "Gravel Pit" are listed as conditional uses. The operation was approved in 1998 for a five year period by the Planning Commission. The original "temporary" approval is due to expire this year, and the property owner has applied to have the use approved on a permanent basis.

What criteria do we use in deciding whether to approve or deny the application? The criteria listed under ordinance 19.84.090 (conditional uses). Staff will analyze the application using these criteria as we make our recommendation.

COMMUNITY COUNCIL REVIEW

The Millcreek Community Council recommended approval of the application, subject to the following conditions:

1. Main Street and Central Avenue should be swept on a weekly basis.
2. A better and more extensive watering system should be installed on the site.
3. Air quality monitoring to be done on a quarterly basis.

STAFF REVIEW/PROJECT SUMMARY

The Millcreek Community general plan has designated the area in which this proposal falls as "Light Industry," which is defined in the plan as: Warehousing, neighborhood storage, production, fabrication, light manufacturing, research & development park. It is also contained within a larger "Proposed mixed-use study area." The study area is further defined as: Transit oriented developments including a compatible & appropriate mix of residential, neighborhood commercial and office." When this use was first proposed on the site, staff did not feel it met the intent of the general plan. It was approved by the County Commission, however, as an appropriate interim use (thus, the five year limit). Staff feels that the proposed use does not comply with either the "Light Industrial" or "Proposed Mixed Use" designations on the general plan. Staff feels the properties in the immediate vicinity, as well as the Millcreek Community in general, are better served by this property being developed into an appropriate mixed-use development.

Findings as to conditional use criteria are listed below:

<i>STAFF RECOMMENDATIONS FOR FINDINGS</i>		
<i>YES</i>	<i>NO</i>	<i>The Planning Commission may approve a conditional use permit only if (19.84.090):</i>
	X	<p><i>A. The proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood and the community.</i></p> <p>While recycling concrete rather than taking it to a landfill is a good cause, this location is not one at which the proposed use would benefit the neighborhood and the community. With Main Street on the east, Big Cottonwood Creek on the south, and the Trax line running nearby to the west, this site can and should be developed into a functional property that enhances the look of the entire area.</p>
	X	<p><i>B. Such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.</i></p> <p>While measures can be taken to control the dust and thus limit health hazards, staff feels that the proposed use cannot be one that positively affects property values in the area. As long as an outdoor, heavy industrial use occupies this property, it will negatively impact the surrounding properties.</p>
X		<p><i>C. The proposed use will comply with the regulations and conditions specified in this title for such use.</i></p> <p>If the project is approved, conditions can be set to monitor airborne particles, etc. Full improvements to public streets, paved parking areas, and landscaped areas should also be required to fulfill this requirement.</p>
	X	<p><i>D. The proposed use will conform to the intent of the county master plan.</i></p> <p>As stated above, this proposal does not conform to the intent of the county plan, which calls for lighter industrial uses, as well as special consideration for mixed use and transit oriented development.</p>

STAFF RECOMMENDATIONS

Staff's recommendation is for denial. However, if the Planning Commission wishes to approve the application, the following conditions, as a minimum, should be set:

1. Curb, gutter, and sidewalk shall be installed in the proper alignment for the property's entire frontage of Main Street (where it does not presently exist).
2. All industrial activity shall be kept a minimum of 30 feet from the bank of Big Cottonwood Creek.
3. The property owner is to have Main Street swept between Central Avenue and the Big Cottonwood Creek bridge at least once per week during the months the business is in operation.
4. An on-site watering system is to be instituted to effectively control dust on the site. All watering of the site for dust control purposes is to be in compliance with water discharge laws and ordinances.
5. All entrance drives and vehicular parking areas must be paved with asphalt or concrete. Parking spaces in parking areas are to be clearly delineated.
6. Front yard landscaping must be installed along the frontage of Main Street in compliance with ordinance 19.76.150.

ATTACHMENT F



SALT LAKE
COUNTY

NANCY WORKMAN
SALT LAKE COUNTY MAYOR

SALT LAKE COUNTY
PUBLIC WORKS DEPARTMENT
PLANNING AND DEVELOPMENT
SERVICES DIVISION

F. DAVID STANLEY
DEPARTMENT DIRECTOR

JEFFREY B. DAUGHERTY
DIVISION DIRECTOR

SALT LAKE COUNTY
GOVERNMENT CENTER
2001 S. STATE STREET, N3600
SALT LAKE CITY, UTAH 84190
TEL (801) 468-2000
FAX (801) 468-2169

April 29, 2003

Robert C. Miller
P.O. Box 571039
Murray, Utah 84157-1039

Re: 20815 - Asphalt & Concrete Crushing and Recycling - 4168 S. Main St. - Zone: M-2 - APPROVAL DATE: April 24, 2003

THIS IS NOT A CONDITIONAL USE PERMIT. Upon completion of the following conditions you will receive the conditional use permit which consists of a letter of final approval with an approved site plan.

On April 24, 2003, the Millcreek Township Planning Commission granted preliminary approval of your request for a period of up to three years from the date your current approval expires (September 4, 2003) subject to the following conditions:

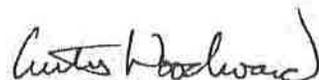
1. All industrial activity shall be kept a minimum of 30 feet from the bank of Big Cottonwood Creek.
2. The property owner is to have Main Street swept between Central Avenue and the Big Cottonwood Creek bridge at least once per week during the months the business is in operation.
3. An on-site watering system is to be instituted to effectively control dust on the site. All watering of the site for dust control purposes is to be in compliance with water discharge laws and ordinances.
4. All entrance drives and vehicular parking areas must be paved with asphalt or concrete. Parking spaces in parking areas are to be clearly delineated.
5. Front yard landscaping must be installed along the frontage of Main Street in compliance with Ordinance 19.76.150.

NOTE: You must obtain the final conditional use and a building permit within 24 months of the date of the Planning Commission action or this approval will expire.

In order for a conditional use permit to be issued, a site plan will need to be submitted to show compliance with conditions 1, 4, and 5. (Note: It is the applicant's responsibility to follow up with the various other government agencies to complete their specific requirements.)

For future questions regarding your file status, please call me at 468-2080. I will need the application number (20815) to provide information.

Sincerely,


Curtis Woodward

Planner

ATTACHMENT H



March 7, 2005

Robert C. Miller
P.O. Box 571039
Murray, Utah 84157-1039

Re: 20815 - Asphalt & Concrete Crushing and Recycling - 4168 S. Main St. -
Zone: M-2 - APPROVAL DATE: April 24, 2003

On April 24, 2003, the Millcreek Township Planning Commission granted preliminary approval of your request for a period of up to three years from the date your current approval expires (September 4, 2003) subject to the following conditions:

1. All industrial activity shall be kept a minimum of 30 feet from the bank of Big Cottonwood Creek.
2. The property owner is to have Main Street swept between Central Avenue and the Big Cottonwood Creek bridge at least once per week during the months the business is in operation.
3. An on-site watering system is to be instituted to effectively control dust on the site. All watering of the site for dust control purposes is to be in compliance with water discharge laws and ordinances.
4. All entrance drives and vehicular parking areas must be paved with asphalt or concrete. Parking spaces in parking areas are to be clearly delineated.
5. Front yard landscaping must be installed along the frontage of Main Street in compliance with Ordinance 19.76.150.

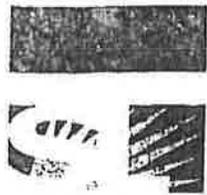
Included in the preliminary approval was a notice that you must obtain the final conditional use and a building permit within 24 months of the date of the Planning Commission action or the approval would expire (as required under Salt Lake County Ordinance 19.84.130). In order for a conditional use permit to be issued, a site plan will need to be submitted to show compliance with conditions 1, 4, and 5.

To date, no site plan has been submitted to show compliance with the Planning Commission's conditions of approval. If the conditional use permit is not issued by April 24, 2005, the planning commission's preliminary approval will expire, and further operation of the crushing and recycling operation will be dealt with by our enforcement officers as a zoning violation. Please call me at 468-2080 if you have any questions.

Respectfully,

Curtis Woodward
Planner

ATTACHMENT I



SALT LAKE COUNTY

March 30, 2005

Robert C. Miller
P.O. Box 571039
Murray, Utah 84157-1039

Re: 20815 - Asphalt & Concrete Crushing and Recycling - 4168 S. Main St. -
Zone: M-2 - APPROVAL DATE: April 24, 2003

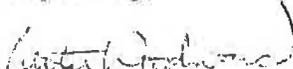
THIS LETTER AND THE ENCLOSED APPROVED SITE PLAN CONSTITUTE THE CONDITIONAL USE PERMIT. All improvements which are required by the Salt Lake County development ordinances or Planning Commission action must be installed or bonded for, prior to the final electrical inspection approval by the Building Inspector (power to panel), or if no electrical inspection is required, prior to the issuance of any Occupancy Permit for the land being developed, or commencement of the approved Conditional Use.

The following is a list of improvements and conditions required by this approval:

1. All industrial activity shall be kept a minimum of 30 feet from the bank of Big Cottonwood Creek.
2. The property owner is to have Main Street swept between Central Avenue and the Big Cottonwood Creek bridge at least once per week during the months the business is in operation.
3. An on-site watering system is to be instituted to effectively control dust on the site. All watering of the site for dust control purposes is to be in compliance with water discharge laws and ordinances.
4. All entrance drives and vehicular parking areas must be paved with asphalt or concrete. Parking spaces in parking areas are to be clearly delineated.
5. Front yard landscaping must be installed along the frontage of Main Street in compliance with Ordinance 19.76.150.

THIS LETTER AND ATTACHED APPROVED FINAL SITE PLAN ARE TO BE ATTACHED TO YOUR WORKING DRAWINGS WHEN OBTAINING YOUR BUILDING PERMIT.

Respectfully,


Curtis Woodward
Planner

PLANNING & DEVELOPMENT SERVICES

John Patterson
Public Works Department Director
jpatterson@slco.org

Jeff Daugherty
Planning & Development Services
Division Director
jdaugherty@slco.org

Salt Lake County
Government Center
2001 South State Street
Suite N3600
Salt Lake City, Utah 84190-4050

801 / 468-2000
801 / 468-2169 f

FILE COPY

ATTACHMENT J



January 27, 2012

Windriver Investments
c/o Robert Miller
PO Box 571039
Murray, Utah 84157-1039

PETER M. CORROON
Salt Lake County Mayor

Re: 4186 S. Main Street

Patrick Leary
Public Works Department
Director

Mr. Miller,

**PLANNING &
DEVELOPMENT
SERVICES**

Rolen Yoshinaga
Planning & Development
Division Director

Salt Lake County
Government Center
2001 South State Street
Suite N-3600
Salt Lake City, UT 84190-
4050

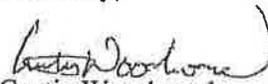
As you may recall, the Millcreek Township Planning Commission heard and approved your request for a 5 year time extension for the temporary asphalt and concrete recycling operation at 4186 S. Main Street April 24, 2003. This action was necessary because the original 5 year approval (dated September 4, 1998) was about to expire. As part of that application, you stated to the Planning Commission that the operation needed to remain in place for another 5 years in order to "pay the debt on the property and build up the capital needed to develop the property into a project that does comply with the 'Proposed Mixed Use' designations on the general plan." The Planning Commission's approval was finalized by staff on March 30, 2005.

801 / 468-2000
801 / 468-2169 fax

Based on the above history, operation of the concrete recycling business should have ceased by March 30, 2010. The continued operation of the business past the authorized time frame is in violation of the Planning Commission's approval, and must be rectified as soon as possible. Because the removal or relocation of materials and equipment from the site is a process that will need to be accomplished over time, it is imperative that we discuss your plans for the property as soon as possible. If you would like assistance in identifying possible alternative locations for the business, our staff will assist you in reviewing the zoning maps to find suitable vacant industrial properties.

In order to resolve this matter and prevent action by our code enforcement officers, I need to receive a response from you concerning your plans for this property within the next 30 days. Please contact me at 801-468-2080 or cwoodward@slco.org if you have questions or would like to discuss your options.

Sincerely,


Curtis Woodward
Zoning Administrator

ATTACHMENT K



December 11, 2012

Windriver Investments
c/o Robert Miller
PO Box 571039
Murray, Utah 84157-1039

PETER M. CORROON
Salt Lake County Mayor

Re: 4186 S. Main Street

Patrick Leary
Public Works Department
Director

Mr. Miller,

**PLANNING &
DEVELOPMENT
SERVICES**

Rolen Yoshinaga
Planning & Development
Division Director

In January of this year, a letter was sent to you regarding the concrete crushing/recycling business at 4186 S. Main Street in Salt Lake County. At that time, we informed you that the approval granted April 24, 2003 by the Millcreek Township Planning Commission had expired, and the continued operation of the business in violation of the time frame established by that approval needed to be rectified. On February 23, 2012, we met (along with with Spencer Sanders, the County Planner assigned to the Millcreek Township, and Scott Sabey, your legal counsel) to discuss your options.

Salt Lake County
Government Center
2001 South State Street
Suite N-3600
Salt Lake City, UT 84190-
4050

The two options identified during the meeting were: 1) apply for conditional use approval for an either an extension of time or for a "permanent" permit; or, 2) move the operation to another site (in which case we would be open to approval of a "relocation" time line). As of today's date, we have received neither an application nor a proposed relocation plan; yet indications are that the operation (including bringing new materials to the site) continues.

385 / 468-6700
385 / 468-6674 fax

Based on the above history and the current status of the site, it is apparent that the property is currently in violation (see sections 19.94.030.B and 19.94.070) of the County Zoning Ordinance. The case will be submitted to our code enforcement officers for action to resolve the matter.

Sincerely,

Curtis Woodward
Zoning Administrator

ATTACHMENT L



BEN MCADAMS
Salt Lake County Mayor

Patrick Leary
Township Executive

**PLANNING &
DEVELOPMENT
SERVICES**

Rolen Yoshinaga
Planning & Development
Division Director

Salt Lake County
Government Center
2001 South State Street
Suite N-3600
Salt Lake City, UT 84190-
4050

385 / 468-6700
385 / 468-6674 fax

February 22, 2013

Windriver Investments
c/o Robert Miller
PO Box 571039
Murray, Utah 84157-1039

Re: 4186 S. Main Street

Mr. Miller,

On February 23, 2012, we met (along with Spencer Sanders and Scott Sabey) to discuss your concrete crushing/recycling operation at 4186 S. Main Street in Salt Lake County. At that time, we informed you that the approval granted April 24, 2003 by the Millcreek Township Planning Commission had expired, and the continued operation of the business in violation of the time frame established by that approval needed to be rectified. At that time, the two options identified to resolve the violation were to: 1) apply for conditional use approval for an either an extension of time or for a "permanent" permit; or, 2) move the operation to another site (in which case we would be open to approval of a "relocation" time line).

Yesterday, I observed that operation continues on the property in spite of the fact that you do not have a conditional use permit to do so. Since no application has been submitted for conditional use approval, the property is currently in violation (see sections 19.94.030.B and 19.94.070) of the County Zoning Ordinance.

This letter is to serve notice that accepting or bringing new material to the site after February 28, 2013 will result in legal action by Salt Lake County. You are further put on notice that failure to remove all materials and equipment from the site by August 31, 2013 will also result in legal action by the Salt Lake County. Legal action may include any or all of the following:

1. Assessing civil penalties of \$100.00 per day,
2. Recording a notice of non-compliance against the property,
3. Filing a criminal complaint in Justice Court,
4. Revoking the business license,
5. Filing a civil complaint in state district court to obtain a judgment for civil penalties and enforcement costs and to order the closure of the facility.

Sincerely,

Curtis Woodward
Zoning Administrator

ATTACHMENT M



Salt Lake County Public Works Department
Planning and Development Services Division
 2001 S. State Street #N-3600, Salt Lake City, UT 84190-4050
 Phone: 801-468-2000 FAX: 801-468-2169
 Visit our web site: <http://www.pwpds.slco.org>

File # 28322

Land Use & Development Application

- FCOZ
 RCOZ
 DWSP
 Watershed
 Over Pressure
 Magna Main
 Natural Hazards
 Other _____

Zone: M-2 Community Council: Mudcreek Planner: _____
 Parent File # 20815 Date: 2/20/2012

Property Address: 4186 SOUTH MAIN SALT LAKE Parcel #: 2101228015

Name of Project: WIND RIVER INVESTMENTS Acreage: 7.05

Please describe your request:
Continue to use for Recycle ASPHALT & CONCRETE

<p>New Development:</p> <p><input checked="" type="checkbox"/> Use and / or Site Plan Approval</p> <p><input type="checkbox"/> Subdivision # lots: _____</p> <p><input type="checkbox"/> PUD #lots: _____</p> <p><u>CONDITIONAL</u></p>	<p>Modify an Existing Development:</p> <p><input type="checkbox"/> Change Conditions of Approval</p> <p><input type="checkbox"/> Change the Site Plan</p> <p><input type="checkbox"/> Change the Use</p> <p><input type="checkbox"/> Condo Conversion</p> <p><input type="checkbox"/> Lot Consolidation</p> <p><input type="checkbox"/> Lot Line Adjustment</p> <p><input type="checkbox"/> Mobile Store</p> <p><input type="checkbox"/> Signs</p>	<p>Other:</p> <p><input type="checkbox"/> Board of Adjustment Review</p> <p><input type="checkbox"/> Exception Request</p> <p><input type="checkbox"/> Non-Conforming</p> <p><input type="checkbox"/> RCOZ Appeal (Option C)</p> <p><input type="checkbox"/> Research Request</p> <p><input type="checkbox"/> Re-zone</p> <p><input type="checkbox"/> Vacate a Street</p>
---	---	--

Is a key or gate code required to access the property? Yes No If yes, code: _____ (or provide key)

Driving Directions to Property:

*note: all correspondence will be sent to the applicant's address:

Applicant(s):

Robert C. Miller - (Home)

Address:

3073 S Dimple Hill Cir

City, State, Zip:

Sandy Utah 84092

Phone Number(s):

801-403-8622

e-mail: BMiller@millerpaving.com

Property Owner(s):

ROBERT C. Miller

Address:

P.O. Box 571039

City, State, Zip:

MURRAY, UTAH 84157

Phone Number(s):

801-403-8622

e-mail: bmillere@millerpaving.com

Tom Fox 801-403-8619

DUSTIN Miller 801-403-8639

Professional(s): Engineer

Architect

Other

Company:

SAME

Contact:

Address:

Phone Number(s):

e-mail:

To facilitate Salt Lake County's land use notice and review process, the undersigned hereby authorize the County to reproduce this application and all documents attached to the application for staff, officials, and the interested public:

Applicants Signature

2-26-13

Date

Office Use Only

Dead Box # _____

Fees Due:

Application Fee.....\$ _____

Fire Department.....\$ 75.00

Geology Initial Site Assessment.....\$ 75.00

Health Department\$ 50.00

Initial Engineering Checking Fee.....\$150.00 or \$90.00 per lot (\$180 min) for subdivisions

Cashier: _____



Salt Lake County Public Works Department
Planning and Development Services Division
 2001 S. State Street #N-3600, Salt Lake City, UT 84190-4050
 Phone: 801-468-2000 FAX: 801-468-2169
 Visit our web site: <http://www.pwpds.slco.org>

AFFIDAVIT – Property Owner

STATE OF UTAH }
 } SS
 COUNTY OF SALT LAKE }

I (we) Robert C. Miller being duly sworn, depose and say that

I (we) am (are) the owner(s) of the property(s) located at:

4186 So main

My (our) signature below attests that I (we) have reviewed the proposal by myself Robert C. Miller requesting review and approval of Continental use Permit

and that I (we) consent to the statements and information provided in the attached plans and exhibits and that all information presented is true and correct to the best of my (our) knowledge.

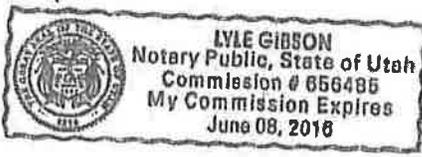
Property Owner [Signature]

Property Owner _____

Subscribed and sworn to me this 26 day of FEBRUARY, 2013.

[Signature]

(Notary)



Residing in Salt Lake County, Utah

My commission expires: 6/08/2016



**MILLER
PAVING** INC.

February 27, 2013

Salt Lake County
Planning and Development Services
ATTN: Curtis Woodward
2001 South State Street, Suite N-3600
Salt Lake City, UT 84190-4050

RE: 4186 S. Main Street – WIND RIVER INVESTMENT

Dear Curtis,

First of all, thank you for helping me yesterday with my application to reapplying for a conditional use permit for our WindRiver property.

I was very surprised to receive your letter dated February 22, 2013 and its directives. I thought that we decided in our first meeting that I would look for a piece of property to eventually relocate my business, which I have and finalized the purchase in November, 2012. Then we would discuss the next step.

Then after our meeting in January with Spencer Brimley, Paul Bringham and you, we decided we would all work together towards the future development of my property and the surrounding properties. We agreed that I would list my property for sale with my realtor, Commerce Properties, who found the new property for me to relocate to in the future. Commerce Properties has since listed the property and contacted the surrounding neighbors regarding listing theirs also. Rusty Bollow, of Commerce Properties, has been in contact with the neighbors to the north to see if they would be interested in selling their parcel along with the sale of my property. Rusty Bollow and Spencer Brimley have talked about the future sale of these properties and their planning.

I felt that we agreed that the recycling plant could remain in operation until there was significant growth and change in the area and be an aid to the development of the area until it was purchased by others. I hope we can proceed to work together as a team in the development and future of this area.

I filed the application yesterday for the conditional use permit and understand that WindRiver Investment can continue to operate until we hear further. Thank you again for your help and I will wait until I hear from you.

Sincerely,

Robert C. Miller - President
WindRiver Investment

ATTACHMENT N



Salt Lake County Public Works Department
Planning and Development Services Division
c/o Curtis Woodward

Salt Lake County Government Center
2001 S. State Street, N3600
Salt Lake City, Utah 84190

June 11, 2013

Re: Robert Miller/Windrivier LLC Withdrawal of Request for Continuance for a
Conditional Use Permit

To Whom it May Concern:

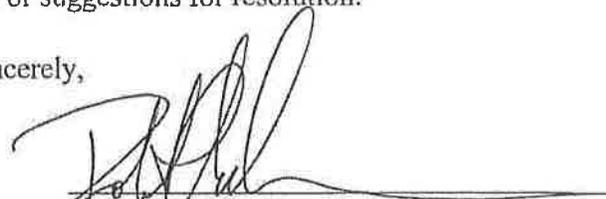
Robert Miller, personally and on behalf of Windrivier LLC (hereinafter "Millers"), hereby formally withdraw their application requesting continuance for a conditional use permit, based on the following reasons:

1. Any additional authorization for continuance of the conditional use permit is unneeded since the current conditional use permit is without expiration;
2. The Millers believe that they can achieve an agreement with Salt Lake County regarding the use of the Miller's property, which will be mutually beneficial with Salt Lake County;
3. Since the Miller's activities are compliant with the permitted uses on their properties, a conditional use permit was not even needed in the first place.

We encourage and hope for a mutually beneficial resolution, while also protecting our due process and property rights. Please contact us, through our attorneys at Poulsen and Skousen, P.C. (801-253-7900), with any offers or suggestions for resolution.


Robert Miller, on behalf of Windrivier, LLC

Sincerely,


Robert Miller, personally

ATTACHMENT P



Salt Lake County Public Works Department
Planning and Development services Division
2001 South State Street, Room N3600 Salt Lake City, Utah 84190-4050
Phone: 801-468-2000 Fax: 801-468-2169
<http://www.pwpds.slco.org/>

SECOND NOTICE AND ORDER AND COMMENCEMENT OF CIVIL PENALTIES

November 06, 2013

Windriver Investments
P.O. Box 571039
Murray, Ut 84157

Subject Property: 4186 S MAIN , SALT LAKE CITY, UT 84107-0000

Case Number: 17554

You were previously given notice that subject property was found to be in violation of Salt Lake County Ordinance and instructed that the violation must be corrected within 28 days from the date of said notice. The allowed warning period has now expired and a recent inspection of the above property revealed that the following violation(s) still exist:

Unauthorized use of property

Ordinance references: 19.02.090 and 19.94.030

"The use of the land shall not be commenced or proceeded with except upon the issuance of a written permit for the same by the development services division director or designee." "No land, building or structure shall be used for any purpose or use not allowed in the zone in which such land, building or structure is located."

Corrective Action Required:

ON JUNE 20TH 2013 WE SENT A LETTER INFORMING YOU TO CEASE AND DESIST FROM BRINGING NEW MATERIAL TO THIS SITE. WE HAVE DETERMINED THAT NEW MATERIAL IS STILL BEING DELIVERED. AS OF TODAYS DATE WE ARE FILING A LIEN AGAINST YOUR PROPERTY AND CHARGING \$100.00 PER DAY IN CIVIL PENALTIES UNTIL YOUR PROPERTY IS BROUGHT INTO COMPLIANCE. PLEASE REMOVE AND RELOCATE ALL MATERIAL BROUGHT TO THIS LOCATION AFTER JULY 20TH 2013 WHICH IS THE DATE OF THE FIRST NOTICE AND ORDER THAT WAS SENT TO YOU.

Pursuant to Section 19.94.070, commencing on 11/6/2013, a penalty of \$100.00 per day will be levied against the owner(s) and/or tenant(s) of this property until the violations are corrected.

You must call 468-2176 as soon as the required work is complete in order to have the daily penalty stop accruing. The accrual of penalties will continue until you call for an inspection.

Salt Lake County may, under Ordinance 19.94.030, criminally prosecute this case if such action is deemed necessary to abate the violation.

Steve at (801)468-2074 or send an email to CodeEnforcement5@slco.org
Code Enforcement Officer
Salt Lake County
Planning and Development Services



Salt Lake County Public Works Department
Planning and Development services Division
2001 South State Street, Room N3600 Salt Lake City, Utah 84190-4050
Phone: 801-468-2000 Fax: 801-468-2169
<http://www.pwpds.slco.org/>

Certificate of Mailing or Posting

I STEVE do hereby certify that a true and correct copy of:

SECOND NOTICE AND ORDER AND COMMENCEMENT OF CIVIL PENALTIES

As filed with : The Salt Lake County Planning and Development Services Office

Was mailed First class United Postal Service on :11/6/2013

TO: Windriver Investments
P.O. Box 571039
Murray, Ut 84157

Subject Property: 4186 S MAIN . SALT LAKE CITY. UT 84107-0000

Case Number: 17554

Signed and mailed this 11/6/2013

Steve at (801)468-2074 or send an email to CodeEnforcement5@slco.org

Code Enforcement Officer
Salt Lake County
Planning and Development

**SECOND NOTICE AND ORDER
AND COMMENCEMENT OF CIVIL PENALTIES**

December 5, 2013

Windriver Investments
P.O. Box 571039
Murray, UT 84157

Subject Property: 4186 S MAIN, SALT LAKE CITY, UT 84107-0000

Case Number: 17554

Notices and Recent History:

You were previously notified that subject property was in violation of County Ordinance and instructed that the violation must be corrected within 28 days from the date of said notice. In a letter dated June 20, 2013, you were ordered to cease and desist from bringing in new material to this site. The allowed warning period has now expired and a recent inspection of the above property reveals a large amount of new material recently delivered to the site and in close proximity to a stream.

Second Notice:

YOU ARE HEREBY NOTIFIED THAT, AS OF THE DATE OF THIS LETTER, A LIEN/NOTICE OF NONCOMPLIANCE WILL BE RECORDED AGAINST YOUR PROPERTY AND YOU WILL BE ASSESSED \$100 PER DAY IN CIVIL PENALTIES UNTIL CORRECTIVE ACTION IS COMPLETED, AS PROVIDED IN COUNTY ORDINANCE, 19.94.070.

Nature of Violations: Violation of Stop Work Order, No Current Conditional Use Permit, Illegal Use of Land.

Ordinances Violated:

County Ordinance 19.02.090

“The use of the land shall not be commenced or proceeded with except upon the issuance of a written permit for the same by the development services division director or designee.”

County Ordinance 19.94.030

“No land, building or structure shall be used for any purpose or use not allowed in the zone in which such land, building, or structure is located.”

County Ordinance 19.84.020

“A conditional use permit shall be required for all uses listed as conditional uses.”

County Ordinance 19.66.030

“Conditional uses in the M-1 Zone include: building material sales yard, including the sale of rock, sand, gravel and the like, as an incidental part of the main business, but excluding concrete mixing...” “manufacture of brick, and all clay, ceramic, cinder, concrete, synthetic, cast-stone, plastic and pumice stone products...and excluding rock or gravel crushing of raw materials”

County Ordinance 19.68.03

“Conditional uses in the M-2 Zone include: building material sales yard, including the sale of rock, sand, gravel and the like as an incidental part of the main business...rock crusher.”

Corrective Action Required:

REMOVE AND LEGALLY RELOCATE ALL MATERIAL BROUGHT TO THIS LOCATION AFTER JULY 20TH 2013, WHICH IS THE DATE OF THE FIRST NOTICE AND ORDER THAT WAS SENT TO YOU. NO CRUSHING IS ALLOWED.

Consequence of Further Violations:

FAILURE TO COMPLY WILL RESULT IN THE FILING OF A CIVIL COMPLAINT IN THIRD DISTRICT COURT SEEKING INJUNCTIVE RELIEF AND CIVIL PENALTIES AND COSTS AS PROVIDED IN COUNTY ORDINANCE, 19.94.070.

Hearing/Appeal Rights

If you feel that this NOTICE AND ORDER AND COMMENCEMENT OF CIVIL PENALTIES is in error, you may request an informal hearing before a county hearing officer as provided in 19.94.070(C) or formally appeal this decision to the County ALJ within ten (10) days from this letter as provided in 19.92.050(A) and 19.84.080.