

TOWN OF CHESTER  
DEVELOPMENT REVIEW BOARD

In re: Julian Material, LLC (Allstone) Conditional Use Application

**MOTION FOR ISSUANCE OF ORDERS OR SUPBOENAS**

Scott Kilgus and Leslie Thorsen hereby request that the Development Review Board (DRB) utilize the authority granted to it by 24 V.S.A. § 4461(a) to compel the production of persons and documents. That section grants the DRB the power to “compel the attendance of witnesses and the production of material germane to any issue...” The two owners of Julian Materials should be subpoenaed, and the documents listed below.

The **subpoenas to Jason and Andrew Julian** are needed because Mr. Matosky repeatedly stated that he could not answer the Board’s questions about the past activities at the quarries. He has been focused only on future activities and permitting. Julian’s past actions on these sites are highly relevant to whether they qualify for a conditional use permit, and if so on what terms. To cite one obvious example, at the Chandler site they propose to continue the existing use for some period of time. Their past, unlawful use of this site, and the impacts of that use, are highly relevant to whether that use should continue and if so on what terms. To cite another example, the Board needs to know how often the hydraulic hammer has been used, and at what locations—the impacts of which many interested persons have testified about—in order to evaluate how much use of the hydraulic hammer to permit, if any, in the future.

The **documents that should be produced by Julian Materials, LLC** are:

1. All photographs taken during the sound pressure measurements conducted by RSG, whether in Julian’s custody now or in RSG’s custody now.
2. All documents Mr. Matosky relied on in concluding that any of the quarry operations are "grandfathered," as he said.
3. All existing documents in Julian’s possession or control which describe or show the types of extraction equipment used (such as a hydraulic hammer) and/or the type, frequency and duration of noise created, at each of the three quarries in 2014 when the following noise standard was adopted: “Noise levels or frequencies which are not customary in the district or neighborhood or which represent a repeated disturbance to others shall not be permitted.” (That is, the documents that show the noise loudness, duration and/or frequency of noise that is “grandfathered” under the current noise standards).
4. All existing photographs, test results and other documents in Julian’s possession or control which depict, describe or explain the discharges into the brook immediately west of or adjoining the Chandler Road Quarry which have occurred in 2022 and/or 2023, including the nature of the materials being discharged into any stream or river and the quantity, frequency and location of each discharge.

5. All existing documents in Julian's possession or control which depict, describe or explain how each of those discharges will be eliminated going forward, including: a) the date on which the discharges are expected to cease, b) the means or methods that will be used to eliminate the discharges; and c) all permits applied for to authorize any discharge.
6. All existing documents in Julian's possession or control which describe or show how digging down to excavate rock, rather than quarrying rock from the side of a face, will be accomplished at any quarry where Julian seeks permission to dig down to excavate rock rather than to quarry rock from the side of a rock face.
7. All existing documents in Julian's possession or control that describe or show the locations where Julian will be excavating by digging down rather than quarrying rock from the side of a rock face.
8. All existing documents in Julian's possession or control that show the quantity of rock that will be removed by digging down rather than quarrying from the side of a rock face.
9. All existing documents in Julian's possession or control that describe or show the time period during which Julian will be digging down rather than quarrying from the side of a rock face.
10. All existing photographs or engineering plans or other plans in Julian's possession or control for the cutting devices in the storage shed at the Chandler Road Quarry when they were installed, and at present if they have changed.
11. All existing records in Julian's possession or control showing the dust, noise, traffic, water pollution, and other impacts of past use of the cutting devices in the building in the Chandler Road Quarry, and showing the dust, noise, traffic, water pollution and other impacts of proposed future use.
12. All records in Julian's possession or control of all inspections of the each of the quarries, including the buildings, by state, federal or local officials, including but not limited to MSHA (which Mr. Matosky referred to), including but not limited to notices of violations found during inspections.

**Paragraph 1**, seeking photographs taken during the sound measurements, is germane because any photographs (including videos) will show the equipment that was used and how it was used. For example, these may show if the hydraulic hammer was used and where it was used relative to the noise monitors.

**Paragraphs 2-3**, seeking documents pertaining to grandfathering, are germane to one issue that may be relevant. Grandfathering refers, of course, to uses and structures that were lawful at the time a zoning standard was adopted and would be forbidden by that newly adopted standard. Since the quarries are each conditional uses in their districts, no one is arguing that quarrying in general is not allowed in this district.

The relevance of grandfathering in this case is whether these quarry operations are grandfathered with respect to the current noise standards in the zoning ordinance. If the quarries were generating noise that exceeded current noise standards at the time those standards were adopted, then Julian could argue that its noise levels are grandfathered. I believe that argument would fail, because noise standards are within a Town's "police power" authority to regulate notwithstanding prior use, but I don't think the Board needs to reach that legal issue. The Board does not need to reach that issue because in fact the quarries did not exceed the current standards until years after the standards were adopted. Therefore, they cannot be grandfathered.

Mr. Matosky appears to believe at least two of the quarries are grandfathered, since that was his testimony. The requested documents consist of the documents that Mr Matosky relied upon in reaching that opinion, and other documents in Julian's control that would prove, or disprove, that its uses are grandfathered with regard to the noise standards that Julian must satisfy in the current ordinance.

**Paragraphs 4-5** pertain to the discharges that have been occurring and, as of the last hearing, according to Mr. Nowak's testimony are still occurring. Mr. Matosky said these are all going to be subject to ANR permits that are awaiting approval. Since the discharges fall within the jurisdiction of the DRB in the permitting process under §3.9, and since neither the written application nor the power point reveal what the discharges have been, are, or will be, and how they will be eliminated, we need to see photographs, test results and other documents which depict and explain the existing discharges, including the nature of the materials being discharged into any stream or river and the quantify, frequency and location of each discharge and documents which depict and describe how each of those discharges will be eliminated going forward. I don't see how any permit can be issued without this information under §3.9. I will want to examine Mr. Matosky about these documents

**Paragraphs 6-9** pertain to strip-mining. Strip mining consists of removing materials from the top down, rather than from a cliff or wall face. Section 3.9 prohibits strip mining and requires submission of evidence of the extent and magnitude of the project, including project phasing. Mr. Matosky, when pressed by members of the Board, agreed that much rock will be excavated by the digging down at both the South Quarry and the North Quarry. He did not appear to know the details.

As we look at the "South Quarry Site Plan," it appears to us that a very large area, perhaps the majority of the proposed excavation area, is proposed to be quarried below the lowest point of the existing site. Some or all of this will need to be quarried by strip mining, which is forbidden. We don't have any description of how digging down to excavate rock will be accomplished or the quantity of rock that will be excavated in that manner, or when.

The application and the documents provided thus far provide no basis upon which a finding could be made that the proposal is not for strip mining. There must be plans already in existence for digging down and removing the rock, and there must be some estimate of how much rock will be produced in that manner. All such documents are properly the subject of a subpoena or an order of the DRB to produce them.

If such documents do not exist, these must be prepared and submitted if Julian is to meet its burden of proof under section 3.9. The extent, magnitude and phasing of the project must be submitted. In this respect, they have not been. Julian cannot reasonably expect to submit plans that involve removing materials from the top down and then refuse to provide any details about how much strip mining will occur, over what time period— and then expect to receive a conditional use permit.

**Paragraphs 10-11** pertain to use of the cutting devices in the building that was permitted solely for storage. Julian seeks permission to continue this use until the cutting devices are moved to the South Quarry, but has provided no information about the devices or their impacts.

**Paragraph 12** pertains to inspections that Mr. Matosky referred to as proof that the existing quarries are well-operated.

Dated at Bristol, Vermont, this 21st day of September, 2023.

SCOTT KILGUS and LESLIE THORSEN

BY:

James A. Dumont

James A. Dumont, Esq.

PO Box 229

15 Main St.

Bristol, VT 05443

[Jim@Dumontlawvt.com](mailto:Jim@Dumontlawvt.com)

[Dumont.vt.@gmail.com](mailto:Dumont.vt.@gmail.com)

**CIVIL SUBPOENA  
STATE OF VERMONT**

**SUPERIOR COURT**

**CIVIL DIVISION**

**Unit**

**Docket No.:** \_\_\_\_\_

<i>Plaintiff(s)</i>	VS.	<i>Defendant(s)</i>
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**CIVIL SUBPOENA**

**In Re:** **JULIAN MATERIALS, LLC, CONDITIONAL USE PERMIT APPLICATION**

Type of Case: *(Check One)*:

- Civil   
 Small Claims   
 Domestic Relations   
 Juvenile   
 Probate

TO: JULIAN MATERIALS LLC 3643 VT RTE 103 NORTH, CHESTER VT

*Name* *Address*

You are directed to appear at the Superior Court:   
 Civil Division   
 Family Division   
 Probate Division

Other: CHESTER DEV. REV. BOARD HEARING ROOM, TOWN HALL located at:

Street Address: ELM STREET Town/City: CHESTER, VT

Date: OCT. 11 2023 Time: 6 pm for a   
 Trial   
 Hearing   
 Deposition

- to attend and give testimony  
 to permit inspection of premises  
 to produce and permit inspection, copying, testing or other sampling of designated electronically stored information, books, papers, documents or tangible things in your possession, custody or control  
 Other: PRODUCE THE DOCUMENTS IN THE ATTACHED LIST

Dated \_\_\_\_\_  
\_\_\_\_\_  
Clerk/Attorney/Magistrate

This subpoena was requested by   
 Plaintiff   
 Defendant   
 State's Attorney   
 Other

If you have any questions, contact KILGUS AND THORSEN c/o JAMES DUMONT, ESQ. at 802 453 7011

*Name of Person Requesting Subpoena* *Phone Number*

Bring a copy of this subpoena to the hearing.  
See Important Notice on the reverse side of this Subpoena.

**RETURN OF SERVICE**

NOTICE: A Subpoena may be served by any person who is not a party and is at least 18 years of age.

On \_\_\_\_\_ I served this subpoena upon \_\_\_\_\_

*Date of Service* *Name*

by: \_\_\_\_\_

at: \_\_\_\_\_ Unit: \_\_\_\_\_

*Location City/Town*

\_\_\_\_\_  
Signature \_\_\_\_\_  
Title

Miles    \$ \_\_\_\_\_  
Reading    \$ \_\_\_\_\_  
Copies    \$ \_\_\_\_\_  
**Total**    \$ \_\_\_\_\_

## V.R.C.P. 45. SUBPOENA

### (c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena: The court for which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(8) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to the requested production or to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court for which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court for which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a resident of this state to travel to attend a deposition more than 50 miles one way unless the court otherwise orders; requires a nonresident of this state to travel to attend a deposition at a place more than 50 miles from the place of service unless another convenient place is fixed by order of court, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(8) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 50 miles one way to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

### (d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(8) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(1). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(8) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

## **LIST OF DOCUMENTS TO BE PRODUCED BY JULIAN MATERIALS, LLC**

1. All photographs taken during the sound pressure measurements conducted by RSG, whether in Julian's custody now or in RSG's custody now.
2. All documents Mr. Matosky relied on in concluding that any of the quarry operations are "grandfathered," as he said.
3. All existing documents in Julian's possession or control which describe or show the types of extraction equipment used (such as a hydraulic hammer) and/or the type, frequency and duration of noise created, at each of the three quarries in 2014 when the following noise standard was adopted: "Noise levels or frequencies which are not customary in the district or neighborhood or which represent a repeated disturbance to others shall not be permitted." (That is, the documents that show the noise loudness, duration and/or frequency of noise that is "grandfathered" under the current noise standards).
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10. All existing photographs or engineering plans or other plans in Julian's possession or control for the cutting devices in the storage shed at the Chandler Road Quarry when they were installed, and at present if they have changed.
11. All existing records in Julian's possession or control showing the dust, noise, traffic, water pollution, and other impacts of past use of the cutting devices in the building in the Chandler Road Quarry, and showing the dust, noise, traffic, water pollution and other impacts of proposed future use.
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CIVIL SUBPOENA  
STATE OF VERMONT

SUPERIOR COURT

CIVIL DIVISION

Unit \_\_\_\_\_

Docket No.: \_\_\_\_\_

Plaintiff(s) \_\_\_\_\_ vs. Defendant(s) \_\_\_\_\_

CIVIL SUBPOENA

In Re: JULIAN MATERIALS, LLC, CONDITIONAL USE PERMIT APPLICATION

Type of Case: (Check One):

- Civil  Small Claims  Domestic Relations  Juvenile  Probate

TO: JASON JULIAN 3643 VT RTE 103 NORTH, CHESTER VT
Name Address

You are directed to appear at the Superior Court:  Civil Division  Family Division  Probate Division

Other: CHESTER DEV. REV. BOARD HEARING ROOM, TOWN HALL located at:

Street Address: ELM STREET Town/City: CHESTER, VT

Date: OCT. 11 2023 Time: 6 pm for a  Trial  Hearing  Deposition

- to attend and give testimony
 to permit inspection of premises
 to produce and permit inspection, copying, testing or other sampling of designated electronically stored information, books, papers, documents or tangible things in your possession, custody or control
 Other:

Dated \_\_\_\_\_ Clerk/Attorney/Magistrate

This subpoena was requested by  Plaintiff  Defendant  State's Attorney  Other

If you have any questions, contact KILGUS AND THORSEN c/o JAMES DUMONT, ESQ. at 802 453 7011
Name of Person Requesting Subpoena Phone Number

Bring a copy of this subpoena to the hearing.
See Important Notice on the reverse side of this Subpoena.

RETURN OF SERVICE

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On \_\_\_\_\_ I served this subpoena upon \_\_\_\_\_
Date of Service Name

by: \_\_\_\_\_

at: \_\_\_\_\_ Unit: \_\_\_\_\_
Location City/Town

Signature \_\_\_\_\_ Title \_\_\_\_\_

Miles \$ \_\_\_\_\_
Reading \$ \_\_\_\_\_
Copies \$ \_\_\_\_\_
Total \$ \_\_\_\_\_

## V.R.C.P. 45. SUBPOENA

### (c) Protection of Persons Subject to Subpoenas.

(f) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena: The court for which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(8) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to the requested production or to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court for which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court for which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a resident of this state to travel to attend a deposition more than 50 miles one way unless the court otherwise orders; requires a nonresident of this state to travel to attend a deposition at a place more than 50 miles from the place of service unless another convenient place is fixed by order of court, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(8) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 50 miles one way to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

### (d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(8) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(1). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(8) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

**CIVIL SUBPOENA  
STATE OF VERMONT**

**SUPERIOR COURT**

**CIVIL DIVISION**

**Unit**

**Docket No.:** \_\_\_\_\_

<i>Plaintiff(s)</i>	VS.	<i>Defendant(s)</i>
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**CIVIL SUBPOENA**

**In Re:** JULIAN MATERIALS, LLC, CONDITIONAL USE PERMIT APPLICATION

Type of Case: *(Check One)*:

- Civil     
  Small Claims     
  Domestic Relations     
  Juvenile     
  Probate

TO: ANDREW JULIAN 3643 VT RTE 103 NORTH, CHESTER VT

*Name* *Address*

You are directed to appear at the Superior Court:     
 Civil Division     
 Family Division     
 Probate Division

Other: CHESTER DEV. REV. BOARD HEARING ROOM, TOWN HALL located at:

Street Address: ELM STREET Town/City: CHESTER, VT

Date: OCT. 11 2023 Time: 6 pm for a     
 Trial     
 Hearing     
 Deposition

- to attend and give testimony  
 to permit inspection of premises  
 to produce and permit inspection, copying, testing or other sampling of designated electronically stored information, books, papers, documents or tangible things in your possession, custody or control  
 Other: \_\_\_\_\_

Dated \_\_\_\_\_  
\_\_\_\_\_  
Clerk/Attorney/Magistrate

This subpoena was requested by     
 Plaintiff     
 Defendant     
 State's Attorney     
 Other

If you have any questions, contact KILGUS AND THORSEN c/o JAMES DUMONT, ESQ. at 802 453 7011

*Name of Person Requesting Subpoena* *Phone Number*

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On \_\_\_\_\_ I served this subpoena upon \_\_\_\_\_

*Date of Service* *Name*

by: \_\_\_\_\_

at: \_\_\_\_\_ Unit: \_\_\_\_\_

*Location City/Town*

\_\_\_\_\_  
 Signature \_\_\_\_\_  
 Title

Miles      \$ \_\_\_\_\_  
 Reading      \$ \_\_\_\_\_  
 Copies      \$ \_\_\_\_\_  
 Total      \$ \_\_\_\_\_

## V.R.C.P. 45. SUBPOENA

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(8) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(1). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(8) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.