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October 4, 2023

VIA EMAIL – zoning@chestervt.gov
Chair, Chester Development Review Board
c/o Preston Bristow
Town Planner & Zoning Administrator
556 Elm Street
PO Box 370
Chester, VT 05143

Re: Response to Request for Subpoena

Dear Chair:

I apologize for the slow response to the request for a subpoena by Mr. Kilgus and Ms. Thorsen. Julian Materials, LLC has attempted to locate and provide such information identified in the myriad of requests as it could voluntarily just to narrow the issues. I note that many of the requests (and the arguments for them) are either heavily rhetorical or more of the nature of very broad discovery requests that are not germane to the zoning application under consideration. *See* 24 V.S.A. § 4461(a). Though § 4461(a) provides authority to the DRB to seek information, that in no way sanctions such extremely wide-ranging discovery requests from party dressed up as a subpoena. Many of the requests relate to information that has already been provided pursuant to a meticulous application that has long been deemed complete.

Julian notes at the outset that § 4461(a) does not mention subpoena power. Nor is there any such authority granted under the Municipal Administrative Procedures Act; or, for that matter, the Chester Ordinance. *See* 24 V.S.A., Chapt. 36; Chester Ordinance § 7.18. In my research, I could not find any court decision supporting such a position. However, § 4461(a) states the DRB has authority "to compel the attendance of witnesses and production of materials germane to any issue under review." While counsel may disagree whether such language equates with subpoena power, Julian of course agrees that the DRB can demand proof of compliance with the ordinance, which includes producing witnesses and documents necessary to prove such compliance. That authority is limited to what the DRB needs. It doesn't sanction wide-ranging fishing expeditions by project opponents, especially those that seem more inclined to pillorying the Julians instead of reviewing the project. As town counsel clearly explained at the last hearing, this is not a zoning enforcement hearing, so what is relevant to the subject under consideration is whether the project, as designed, complies with the bylaw.

To narrow the dispute, I believe we are able to respond to documentary requests:

1. RSG photographs will be provided as a courtesy.

2. Julian is not aware how to respond to this. Both the district Act 250 coordinator and the Chester zoning administrator have both indicated Chandler was a pre-existing quarry, but Julian doesn't understand the relevance. With respect to zoning, the North Quarry would be considered as pre-existing. Chandler Road Zoning Permit #21-065 for Chandler Road dated 9/29/2021 under comments "*The Quarry Operation is an allowed nonconforming use because it existed prior to the adoption of bylaws.*" Letter from Chester ZA Julie Hance to William Dakin Jr. Esq., dated May 7, 2009 North Quarry; Letter from Town of Chester, Town Manager, Prentice Hammond dated 11/26/1986 – *"Please be advised that the Town of Chester considers this a pre-existing operation, as the side of the mountain has been quarried long before the inception of Act 250. The Milligan Mountain Quarry, Inc. does not need a Town of Chester Zoning Permit as it is a pre-existing use…. The continuing operation of the Quarry will have no adverse impact on any services provided by the Town of Chester."*

3. RSG files from the 2005 Act 250 application at the South Quarry are available on the Act 250 online database. Julian is not aware of additional noise studies performed in 2014. Julian notes that both testing in 2005, and more recently, that noise levels rarely exceed the background highway noise levels. These issues will be part of the hearing on October 11, 2023.

4. This is an enforcement issue that is not relevant to the zoning application. TCE has provided great detail on the engineered plan for runoff, which has been delayed by the ANR. So, this has already been responded to in detail.

5. Information regarding control of discharges has already been provided with the application. So far as Julian is aware, no discharges are currently occurring.

6. Julian does not understand this question or the distinction being made, but Mr. Matosky will respond to any questions on this point. This is not a strip mine. Julian's plan calls to lower certain areas for mitigation at the South Quarry and to recapture the North Quarry. All removal is shown in the site plan and cross sections. This information is provided in Exhibits U, X, and Y.

7. See response 6.

8. See response 6.

9. The machines are inside and what they look like or how they are engineered are not germane to the application. Not to mention, the plan is to remove them to another site.

10. Julian is not aware that such events or impacts are caused by cutting devices.

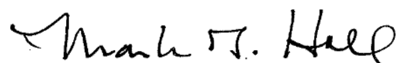
11. This is just a fishing expedition into matters of no relevance to this proceeding.

With respect to items 1-11 alluded to above, Julian anticipates having witnesses available. Mr. Matosky and noise expert Eddie Duncan will be available to respond in detail. This will include past uses and related noise levels to the extent they have been studied. Julian does not, at this time, anticipate calling either Andrew or Jason as their testifying is likely to devolve into emotional discussions of events and activities that have no bearing on the application. Julian Materials, LLC is a company. Companies as a matter of course, law, and right, are allowed to designate those persons that act on their behalf, whether it be a witness in court or a zoning hearing. *See* V.R.C.P. 30(b)(6). In this case, this is an application for a prospective development. The DRB's power to compel witnesses is limited necessarily to obtaining evidence that is relevant to the subject matter at hand. 24 V.S.A. § 4461(a). The company, not opposing counsel, has the full discretionary right to choose what witness is best able to respond to the DRB's inquiries on its behalf. One does not expect owners of companies, whether it be Sam Walton or R.L. Vallee, to be forced to attend and give testimony on a zoning application. In this case, the witnesses best able to respond questions <u>germane</u> to the proceeding are the engineers and specialists that have spent months studying and designing the project. If there is information the DRB wants, Julian will make its best efforts to obtain it. In contrast, the arguments made to mandate Andrew and Jason appear and take the stand are rather weak. Nothing is presented to suggest some other witness could not present the evidence, if the DRB requires it. Given the reasoning behind the subpoena is so thin, I suspect their testifying will just result in exacerbating hostilities the application is intending to remedy.

For the forgoing reasons, Julian asks that the request for a subpoena or order be denied. Julian has, or will be able to, present witness testimony topics germane to the application through witnesses of its own choice, without the need to go through subpoena process.

Cordially yours,

PAUL FRANK + COLLINS P.C.



Mark Hall

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