

Objection of Millcreek

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**BEFORE THE DIVISION OF OIL, GAS, AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

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In the Matter of:

NOTICE OF INTENTION TO  
COMMENCE SMALL MINING  
OPERATIONS OF GRANITE  
CONSTRUCTION COMPANY

**MILLCREEK’S OBJECTION TO  
NOTICE OF INTENTION TO  
COMMENCE SMALL MINING  
OPERATIONS OF GRANITE  
CONSTRUCTION COMPANY AND  
REQUEST FOR INFORMAL HEARING**

DOG M File No. S/035/0055

Filing Date: June 27, 2022

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Millcreek, a Utah Municipal Corporation, (“Millcreek”), pursuant to Utah Administrative Code R647-5-104-2.15.114, R647-5-106-4, and R647-5-107-2, hereby submits its Objection to Notice of Intention to Commence Small Mining Operations, S/035/0055 (“Subject NOI”) of Granite Construction Company (“Granite”) and requests an informal hearing before the Division of Oil, Gas, and Mining (“Division”) to address the concerns raised by Millcreek. Millcreek’s legal interests and that of its citizens will be substantially affected by the Subject NOI.

**STATEMENT OF FACTS**

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**I. Underlying Procedural History of Tree Farm’s Simultaneous Small and Large Mine NOIs.**

On November 12, 2021, Tree Farm LLC (“Tree Farm”) submitted to the Division of Oil, Gas and Mining (“Division”) a Notice of Intention to Commence Small Mining Operations, Tree Farm LLC, Silver Mine, S/035/0053 (“Small Mine NOI”) and a Notice of Intention to Commence Large Mining Operations, Tree Farm LLC, Silver Mine, M/035/0054 (“Large Mine NOI”). The proposed mining operations had the same name, “Silver Mine,” and the land affected by the Small Mine NOI was within the larger area of land affected by the Large Mine NOI. By letter dated December 7, 2021, the Division denied Tree Farm’s Small Mine NOI and explained that the “contemporaneous submittal of these NOIs indicates Tree Farm LLC’s long-term intent is to commence operations for a large mine,” and that in “the interest of administrative efficiency . . . [the Division] will turn all focus and attention to the expedient review and processing of Tree Farm LLC’s Large Mine NOI.”

Thereafter, Tree Farm filed a Request for Agency Action, seeking a declaratory ruling from the Board of Oil, Gas, and Mining (“Board”) regarding the completeness of the Small Mine NOI and the sufficiency of its proposed reclamation surety in order to commence operations under the Small Mine NOI. This commenced the Matter of the Request for Agency Action of Tree Farm, LLC for a Declaratory Ruling Regarding (1) the Completeness of Tree Farm's NOI-SMO s/035/0053; and (2) the Sufficiency of Tree Farm’s Proposed Reclamation Surety, Docket No. 2022-002, Cause No. S/035/0053 (the “BOGM Proceeding”). In the BOGM Proceeding, the Board granted the intervention requests of several parties, including Millcreek. *See* Order Granting Intervention. However, before the Board could rule, Tree Farm and the Division filed a Stipulated Motion to Dismiss (“Stipulated Motion”), which stated that Tree Farm would no

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longer contest the Division's denial of the Small Mine NOI, Tree Farm would withdraw the Large Mine NOI, and Tree Farm would re-file a small mine NOI.

Although the Board granted the Stipulated Motion, it continued to address the merits issues regarding the Division's and Board's authority, given the issue Tree Farm had created by filing a small and large mine NOI simultaneously. *See* Combined Order Granting Stipulation and Denying Motion for Policy Guidance ("Board Order"). In the Board Order, the Board affirmed its statutory authority under Utah Code § 40-8-7(1)(j) to require "that mining operations be conducted to minimize or prevent hazards to public health and safety" and that "the approval of any permit that may be required from sister regulatory agencies be of record prior to the commencement of mining operations." *Id.* at 10-11. The Board concluded that "[b]ased on the proximity of Tree Farm's proposed mining operations to the citizens of Salt Lake City, the additional protections contemplated by Utah Code Ann. § 40-8-7(1)(j) are likely warranted." *Id.* at 11. And given Tree Farm's stated intent to refile its small mine NOI, the order required that "any evaluation of a re-submitted small mine NOI from Tree Farm be performed consistent with this opinion." *Id.* at 13.

## **II. Tree Farm's Small Mine NOI Is Refiled Under Granite's Name.**

On June 15, 2022, Granite filed the Subject NOI. The project location for the Subject NOI is the same as for the prior Small Mine NOI filed by Tree Farm. *Compare* Small Mine NOI, at 3-4, *with* Subject NOI, at 3-4. In addition, although the Subject NOI was filed by a different entity, Tree Farm is listed on the Subject NOI as the owner of the land surface and minerals. Subject NOI, at 3. For all intents and purposes, the Subject NOI represents the re-filing of Tree Farm's Small Mine NOI that was at issue in the BOGM Proceeding. Given that Tree Farm candidly acknowledged in the BOGM Proceeding that its long-term intent was to establish a

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large mining operation on the same land, the Subject NOI presents much of the same issues as were present in the BOGM Proceeding.

### **III. Millcreek's Interests in Parleys Canyon.**

Millcreek is a city of more than 63,000 residents located in Salt Lake County. Millcreek borders the mouth of Parleys Canyon, and a significant number of Millcreek's residents live in an area on the south side of the rim of Parleys Canyon as it opens into the Salt Lake Valley, called the Canyon Rim neighborhood. *See* Mayor's Declaration, attached as Exhibit A. Those residents have been adversely impacted by fugitive dust emissions emanating from the existing rock quarry mining operations just across I-80 from the site described in Granite's Small Mine NOI. *Id.* That operation has been cited for excessive dust and other violations of air quality regulations by the Utah Division of Air Quality. *Id.* The dust from the existing quarry contributes to poor air quality in the Salt Lake Valley by introducing particulates in addition to creating nuisance dust on cars, windows, porches, patios, and driveways in Canyon Rim and beyond. *Id.* These fugitive dust emissions are entrained by winds blowing down Parleys Canyon into the Salt Lake Valley and Millcreek community, posing a threat to the health, safety, and general welfare of Millcreek residents. *Id.* The new open pit mining operations proposed by Granite in Parleys Canyon in proximity to Millcreek's municipal boundary will likely cause similar impacts and harms. *Id.*

### **OBJECTION**

Millcreek makes the following objections to the Subject NOI: (1) the Subject NOI and proposed mining operation would have adverse impacts upon the health, safety, and general welfare of Millcreek's community and residents, (2) the Subject NOI seeks to evade Millcreek's

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right to public participation, and (3) the Subject NOI seeks to commence mining operations on July 16, 2022, and prior to obtaining all required regulatory permits.

Applicable regulations permit Millcreek's objection. Under the Utah Administrative Code, a "Notice of Intention to Commence Small Mining Operations" is an "[a]djudicative proceeding which shall commence informally before the Division in accordance with this Rule R647-5." Utah Admin. Code R647-5-101-2. The Code further states that "all adjudicative proceedings that commence in the informal phase shall be commenced by ... [a] Request for Agency Action, if proceedings are commenced by persons other than the Board or Division." Utah Admin. Code R647-5-104-1.12.

On a Request for Agency Action, "any affected person may file with the Division ... a written objection and request for informal hearing before the Division." Utah Admin. Code R647-5-106-4; *see also* Utah Admin. Code R647-5-107-2 ("In any informal proceeding before the Division, there is an opportunity given to request an informal hearing before the Division. If a timely request is made, the Division will conduct an informal hearing and issue a decision thereafter."). The term "person" is defined to include a "political subdivision or its units" or a "governmental subdivision or its units." Utah Admin. Code R647-1-106. "[F]ailure to make such a request may preclude a person from further participation, appeal or judicial review in regard to the subject adjudicative proceeding." Utah Admin. Code R647-5-106-4; *see also* Utah Admin. Code R647-104-2.15.114, R647-5-107-2.

Millcreek is an "affected person" within the meaning of Utah Admin. Code R647-5-106-4 and, thus, submits its objections to the Subject NOI and requests an informal hearing before the Division. Millcreek's legal interests will be impacted if the Subject NOI is approved. These interests include Millcreek's legitimate concerns for the adverse impacts to the health, safety,

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and general welfare of its community and its residents posed by existing and proposed mining operation in Parleys Canyon stated in the Subject NOI, in particular, fugitive dust emanating from those operations and transported by canyon winds into the Millcreek community.

Millcreek's interests also include ensuring its right of public participation in the Division's review of large mining operations provided under the Utah Mined Land Reclamation Act, *see* Utah Code § 40-8-13(6), for review of Large Mine NOIs *prior* to the commencement of any proposed mining operations. Tree Farm, in conjunction with Granite, intends to undertake a large mining operation but to commence mining operations prior to the regulatory and public review required for large mining operations by filing the Subject NOI within the footprint of the Large Mine NOI at issue in the BOGM Proceeding. By doing this, Tree Farm and Granite seek to skirt the statutory and regulatory processes for review and approval of large mining operations.

Both of these interests will be substantially affected by the proceedings on the Subject NOI. These interests are the same interests which the Board found were sufficient to support Millcreek's petition to intervene in the BOGM Proceeding. The Board concluded that "Millcreek has alleged potential injury to Millcreek and its citizens from contemplated mining activities which may have a causal relationship with Tree Farm's challenged action. The relief Millcreek requests may prove likely to redress the injury for which Millcreek seeks intervention." *See* Order Granting Intervention, at 2. Millcreek's interests and the Board's conclusion apply here with equal force.

The Division should strongly consider Millcreek's legal interests that affect public health and safety. As the Board previously ruled on May 23, 2022, based on Utah Code § 40-8-7(1)(j), the Division should consider these public health and safety issues in the renewed small mine

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NOI, which is now before the Division. *See* Board Order, at 9-10, 13. The Division should also strongly consider Millcreek's legal interest in public participation. The Board indicated the BOGM Proceeding "generated significant public comment and opposition" to the point where the Board was "unaware of another matter that has generated that level of public concern or public interest." *See* Board Order, at 2. Foreclosing public comment, where the interest from the public is the highest it has ever been, would deprive the Division of the appropriate considerations to be evaluated on the Subject NOI.

Beyond the interests Millcreek presented in the DOGM Proceeding, Millcreek now has an additional interest in ensuring adherence to the Board Order as applied to the Subject NOI. With respect to public health and safety compliance, the Board also interpreted the Utah Mined Land Reclamation Act, and in particular Utah Code Ann. §40-8-7(1)(j), "as requiring the approval of any permit that may be required from sister regulatory agencies to be of record prior to commencement of mining operations." *See* Board Order, at 11. The Subject NOI does not indicate it has obtained or recorded the required permits or approvals from sister agencies, and it appears Granite may not be able to do so. *See* Salt Lake County's Objections and Request for Hearing, at 4-6. The Division should require record proof of each necessary permit prior to approving the Subject NOI.

Given the above, Millcreek asserts that the proposed mining operations are more appropriately dealt with not in the current Subject NOI, but rather in a large mining notice of intention, which Granite, acting in concert with Tree Farm, has strategically not filed.

Alternatively, Millcreek asserts that it is appropriate to convert the informal proceedings on the Subject NOI into formal proceedings. Doing so is in the public interest and it will not unfairly prejudice the rights of any party. *See* Utah Admin. Code R647-5-105.

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**CONCLUSION**

For the foregoing reasons, Millcreek respectfully requests that the Division consider its objections to the Subject NOI. These objections are precisely the type of health and safety and public participation concerns the Board previously stated should be considered. Furthermore, Millcreek requests the Division set a hearing so Millcreek may be heard on its objections.

Dated: June 27, 2022



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H. Michael Keller  
Tanner J. Bean  
FABIAN VANCOTT  
*Counsel for Millcreek*

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**CERTIFICATE OF SERVICE**

On June 27, 2022, the undersigned caused the foregoing **MILLCREEK'S OBJECTION TO NOTICE OF INTENTION TO COMMENCE SMALL MINING OPERATIONS OF GRANITE CONSTRUCTION COMPANY AND REQUEST FOR INFORMAL HEARING** to be served by email on:

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*Other Known Interested Parties*

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*/s/ Tanner J. Bean* \_\_\_\_\_  
Tanner J. Bean

# EXHIBIT A

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**BEFORE THE BOARD OF OIL, GAS, AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

<p>In the Matter of: Denial of Notice of Intentional to Commence Small Mining Operations, Tree Farm LLC, Silver Mine, S/035/0053, Task ID# 10588, Salt Lake County, Utah</p> <p>Request for Agency Action</p>	<p><b>DECLARATION OF MAYOR JEFF SILVESTRINI IN SUPPORT OF CITY OF MILLCREEK’S PETITION TO INTERVENE</b></p> <p>Docket No. 2022-002</p> <p>Cause No. S/035/0053</p> <p>Filing Date: January 10, 2022</p>
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I, Jeff Silvestrini, being of lawful age, hereby swear and state as follows:

1. I am over 21 years of age.
2. I have personal knowledge of the facts stated herein.
3. I reside in Salt Lake County, Utah.
4. I am serving my second term as the Mayor of the City of Millcreek and as such I have an official concern for the health, safety, and welfare of the residents of Millcreek.
5. Millcreek is a city of more than 63,000 residents, located in Salt Lake County.
6. A significant number of Millcreek’s residents live in the “Canyon Rim” neighborhood located on the south side of the rim of Parleys Canyon as it opens into the Salt Lake Valley.

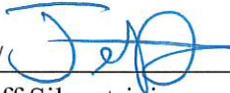
7. Residents of Millcreek’s “Canyon Rim” neighborhood have been adversely impacted by fugitive dust emissions emanating from a limestone quarry operation just across I-80 from the site of the application filed by Tree Farm, LLC.
8. As Mayor of Millcreek, I have received complaints from Millcreek residents about the dust blowing out of Parley’s Canyon. Attached are photographs provided to me by residents showing dust blown out of Parley’s Canyon.
9. It is my information and belief that:
  - a. The existing mining operation has not adequately controlled the fugitive dust from being blown into Millcreek and the Salt Lake Valley;
  - b. The existing mining operation has been cited by the Utah Division of Air Quality for excessive dust and other air quality violations;
  - c. The dust from the existing mining operation contributes to poor air quality in the Salt Lake Valley by introducing additional particulates into the air in addition to creating nuisance dust on cars, windows, porches, patios, and driveways in Canyon Rim and beyond; and,
  - d. These fugitive dust emissions threaten the health, safety, and general welfare of Millcreek residents.
10. I believe that, despite mitigation efforts, a new mining operation in Parleys Canyon in this proximity to Millcreek’s municipal boundary would cause similar harms, particularly when wind speeds exceed 25 mph in Parley’s Canyon, which is frequently the case.
11. Millcreek has a legally protected interest in participating in the public review and comment process provided under the Utah Mined Land Reclamation Act for review of Large Mine Notice of Interest prior to commencement of any mining operations by Tree

Declaration of Mayor Jeff Silvestrini  
January 10, 2022

Farm LLC. Millcreek intends to participate in the public review and comment process for  
Tree Farm LLC's Large Mine Notice of Interest.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

DATED this 10th day of January 2022 in Salt Lake County, Utah.

  
/s/ \_\_\_\_\_  
Jeff Silvestrini









