

# Table of Contents

File 1990-0011

Name: Russ Hardin - "Court Case" -755 Struthers Avenue

S c a n n e d	<p>A few items are denoted with an asterisk (*), which means they are to be scanned for permanent record on the in some instances, not all entries designated to be scanned by the department are present in the file. There are also documents specific to certain files, not found on the standard list. For this reason, a checklist has been provided.</p> <p>Remaining items, (not selected for scanning), will be marked present on the checklist. This index can serve as a quick guide for the contents of each file.</p> <p>Files denoted with (**) are to be located using the ISYS Query System. Planning Clearance will need to be typed in full, as well as other entries such as Ordinances, Resolutions, Board of Appeals, and etc.</p>				
X	X	<b>Table of Contents</b>			
		Review Sheet Summary			
		Application Form			
		Review Sheets			
		Receipts for fees paid for anything			
		<b>*Submittal checklist</b>			
		<b>*General project report</b>			
		Reduced copy of final plans or drawings			
		Reduction of assessor's map.			
		Evidence of title, deeds, easements			
		<b>*Mailing list to adjacent property owners</b>			
		Public notice cards			
		Record of certified mail			
		Legal description			
		Appraisal of raw land			
		Reduction of any maps - final copy			
		<b>*Final reports for drainage and soils (geotechnical reports)</b>			
		Other bound or non-bound reports			
		Traffic studies			
		<b>*Petitioner's response to comments</b>			
		<b>*Staff Reports</b>			
		<b>*Planning Commission staff report and exhibits</b>			
		<b>*City Council staff report and exhibits</b>			
		<b>*Summary sheet of final conditions</b>			
		<b>*Letters and correspondence dated after the date of final approval (pertaining to change in conditions or expiration date)</b>			
<b><u>DOCUMENTS SPECIFIC TO THIS DEVELOPMENT FILE:</u></b>					
X	X	Summary of the Russ Hardin Case	X	X	Transcript of Record on Appeal - finding of guilty with conditions to be met - payment of \$300.00 fine and 5 days in jail suspended if conditional use permit is obtained
X		Owner's Policy of Title Ins. from Commonwealth Land Title Ins. Co. - 11/29/88			Field Inspection Record - Department of the Army - unauthorized placement of fill material below the ordinary high water elevation of the Colorado River and in adjacent wetlands - 2/27/85
X		Warranty Deed - Pauline Haller conveys to Jess Haller - 4/10/73	X		Warranty Deed - Velda Lane conveys to Thomas Lewis - 10/16/74
X		Warranty Deed - Martha Arcieri and George Arcieri, Lorraine Arcieri and Martha Arcieri - 3/25/70	X		Warranty Deed - Gena M. Harrison to LeRoy Winters - 12/22/81
X	X	Handwritten Notes to file - 2/8/89	X		Deed of Trust - Leroy Winters and the Public Trustee of Mesa County - 11/16/79
X		Courtesy Warning from Mesa County Animal Control - 5/1/90	X		Warranty Deed - Velda Lane and Thomas N. Lewis - 11/14/74
X	X	Handwritten Summary	X	X	Ordinance No. 1241, 1468, 1482 and 1506 - **
X		Plat of Boundary Line on property	X		Lease Velda Lane and Thomas N. Lewis - 10/5/71
X		Requirements for Conditional Use for Russ Hardin based on the assumption that the salvage yard has been grandfathered into the city - draft - no date	X		Bill of Sale - Thomas N. Lewis to Victor Stajcar - 6/23/87
X	X	Memo from Planning Dept. to G.J. Junk/Salvage Yard Owners and Operators- 3/7/89	X		Flood plain permit - # 8941 poses serious concerns on behalf of the City area is in 100 year flood plain
X	X	Letter from Dan Wilson to Russ Hardin re: removal of junk has not been completed - 5/5/89	X	X	Public Notice - from US Army Corp of Engineers - 4/3/85





City of Grand Junction, Colorado 81501

250 North Fifth St.,

April 11, 1985

Norm

U.S. Army Corps of Engineers  
Sacramento District  
650 Capitol Mall  
Sacramento, CA 95814

RE: Floodplain Permit #8941 - Thomas N. Lewis

Dear Sir:

The notice sent out on April 3, 1985 indicated the applicant proposes to fill the existing grade, close an overflow channel, and use the area for light industrial development.

This poses serious concerns on behalf of the City. The area involved is within a designated 100 year floodway as indicated on the COE Flood Hazard Study for Grand Junction. In addition, the City of Grand Junction's adopted floodplain regulations (Sec. 5-8) do not allow any light industrial development within a designated floodway.

Downstream factors associated with the Rosevale area may be compounded by this, as may the 9th and Struthers area directly upstream.

Enclosed is a letter from the USGS which indicates problems with adjacent properties directly across the river from this site.

The City would strongly recommend a registered engineer do a hydrologic analysis prior to any COE permit or considerations are addressed.

To date, the City of Grand Junction has not received any application for a local floodplain permit which is also required for any construction or modification within a designated floodplain.

Mr. Lewis has also indicated he desires to continue the dike further upstream "in the future" which may also pose a real problem for the area.

At this point in time, the City of Grand Junction will oppose this permit until these issues are addressed and resolved. We hope these concerns can be resolved.

Thank you for the opportunity to respond.

Sincerely,



Bob Goldin  
City Floodplain  
Administrator

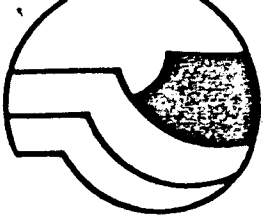
BG/tt

Enclosures

xc: John Kenney, City Public Works Director  
Karl Metzner, Director of Planning  
Keith Corey, County Floodplain Administrator  
Andy Anderson, City/County Building Department  
Mark Eckert, County Administrator

COE Local Office:

Regulatory Unit #4  
U.S. Army COE  
2784 Crossroads Blvd., #207  
Grand Junction, CO 81506-3975



Mesa County  
Engineering  
Department

1000 South Ninth Street  
Grand Junction, CO.  
81501-3830  
(303) 244-1815

U.S. Army Corps of Engineers  
Sacramento District  
650 Capitol Mall  
Sacramento, CA 95814

RE: SPKCO-0 Permit #8941, Thomas N. Lewis

Dear Sir:

The above referenced notice indicates the desire of the applicant is to close and fill an overflow channel and dike an area in the floodway of the Colorado River to prevent high flows from entering onto the property. This location is immediately upstream of an area where Mesa County experienced considerable erosion and the loss of one home into the river in 1984. Also there exists geologic problems directly across the river from this proposed project.

Mesa County is opposed to the granting of this permit until the proper engineering studies are completed to determine the effects of the proposed diking and channel filling. The concerns we have are changes in velocity, downstream effects, changes of direction of flows due to diking, upstream effects of diking and filling of the channel and the effects to the south river bank when flows are forced against it.

Thank you for the opportunity to review this proposed project.

Sincerely,

H. Keith Corey  
Floodplain Administrator

xc: -Mark Eckert, Assistant County Administrator  
-Bob Goldin, EPC  
-COE Local Office  
Regulatory Unit #4  
2784 Crossroads Blvd, #207  
Grand Junction, CO 81506-3975

Don  
Norm



United States Department of the Interior  
FISH AND WILDLIFE SERVICE  
ECOLOGICAL SERVICES  
2060 ADMINISTRATION BUILDING  
1745 WEST 1700 SOUTH  
SALT LAKE CITY, UTAH 84104-5110

g.j.  
Norm

IN REPLY REFER TO:

(ES)

April 19, 1985

Colonel Arthur E. Williams  
U.S. Army Corps of Engineers  
Sacramento District  
650 Capitol Mall  
Sacramento, CA 95814

RE: SPKCO-0, Public Notice No. 8941, Thomas N. Lewis

Dear Colonel Williams:

This letter is in response to Public Notice No. 8941, in which Mr. Thomas N. Lewis has requested a permit to place fill material(s) into the Colorado River, its adjacent wetlands and floodplain near Grand Junction, Colorado. Proposed actions include retention of 1,200 cubic yards of fill which is already in place, placing an additional 1,200 cubic yards of fill and closing off an overflow channel. The purpose of the proposed action is to develop the applicant's property, which is on an island in the Colorado River, for light industrial usage.

The U.S. Fish and Wildlife Service (FWS) does not believe that filling wetlands and floodplain for light industrial development is justified under the 'water dependency test' as published in the 404(b)(1) Guidelines, Federal Register, Vol. 45, No. 249, December 24, 1980. In addition, FWS believes this action, if permitted, would be a clear violation of Executive Order 11988 (Floodplain Management). As evidenced by the previous two years, flooding of the Colorado River can cause serious damage to structures and property located within the floodplain. Additional development within the floodplain, especially on an island, would not be in the best public interest.

Therefore, FWS requests that this permit be denied. Our recommendation for denial is based on the following:

1. Permitting of this action would be in violation of the 404(b)(1) Guidelines;
2. Permitting of this action would be in violation of Executive Order 11988;

3. The probability of this area, and any development thereon being subjected to periodic flooding and erosion damage, is without question. Therefore, permitting this action would not be in the public interest.

These comments are submitted under authority of the Fish and Wildlife Coordination Act (48 Stat. 401 as amended; 16 U.S.C. 661 et seq.) and constitutes the report of the Department of the Interior on this permit application. If FWS can be of further assistance, please contact our Grand Junction office (303/243-2778).

Sincerely,



Field Supervisor  
Ecological Services

cc: CDOW, Denver; Grand Junction  
CE, Grand Junction  
EPA, Denver (Attn: Brad Miller)  
FWS/HR, Denver  
FWS/HR, Grand Junction; Lakewood



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII  
1860 LINCOLN STREET  
DENVER, COLORADO 80295

MAY 3 1985  
Bo 5

MAY 01 1985

Ref: 8WM-SP

Colonel Arthur E. Williams, CE  
District Engineer  
U.S. Army Corps of Engineers  
Sacramento District  
650 Capitol Mall  
Sacramento, California 95814

Re: Public Notice No. 8941  
Thomas Lewis

Dear Colonel Williams:

We have reviewed the referenced public notice for the placement of fill material in the Colorado River in conjunction with the construction of an erosion protection project in Grand Junction, Colorado.

The public notice states that the purpose of the project is to "fill to an established grade that would close an overflow channel and prevent water above ordinary high water from eroding the land". The public notice goes on to state that "(t)he applicant contemplates eventual use of the property for light industrial development".

The development of light industrial sites is not considered to be a water dependent activity as identified in section 230.10 of the Section 404(b)(1) Guidelines. As such, less damaging alternative sites are presumed to exist unless clearly demonstrated otherwise. The information in the public notice does not present any rebuttal of the presumption of less damaging alternative sites.

It would appear as if there are several alternatives to the proposed project which would protect the area from erosion and which would have less adverse impact. Common riprap, gabion revetment, and deflector structures are just a few structural alternatives which would appear to have less adverse impact.

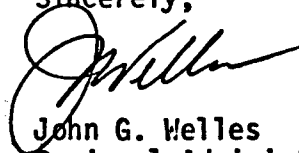
Although there is no reference in the public notice, it is our understanding that this site contains radioactive materials from past milling activities. Although there would be advantages to protecting this area from erosion, we would have to question the wisdom of developing such a site. In evaluating alternatives, there should be consideration of the potential for increased exposure to radioactive materials as a result of the proposed project. The evaluation should consider alternatives which would provide long-term protection of the public from these toxic materials.



In view of the potential for disturbance of radioactive materials, the proposed development of the area, and the absence of discussion of alternative sites for this activity, the Environmental Protection Agency recommends denial of this permit. This recommendation is consistent with section 230.12 (a)(3) of the Section 404(b)(1) Guidelines.

If you have any questions concerning these comments or recommendations, please contact Bradley Miller at (303) 293-1583 or FTS 564-1583.

Sincerely,



John G. Welles  
Regional Administrator

cc: Gary Broetzman, Director  
Water Quality Control Division

Vern Helbig  
U.S. Fish and Wildlife Service

Chuck Grand Pre  
Colorado Division of Wildlife

✓ Grand Junction Regulatory Office  
Sacramento District, Corps of Engineers

# DIVISION OF WILDLIFE

James B. Ruch, Director  
6060 Broadway  
Denver, Colorado 80216 (297-1192)  
711 Independent Avenue  
Grand Junction, CO 81505



April 26, 1985

Colonel Arthur E. Williams  
U.S. Army Corps of Engineers  
Sacramento District  
650 Capitol Mall  
Sacramento, CA 95814

RE: SPKCO-0, 404 Public Notice No. 8941, Thomas N. Lewis

Dear Colonel Williams:

We recommend a 404 permit be denied for this proposal for the following reasons:

- 1) No mitigation is proposed to offset the loss of approximately one acre of wetland.
- 2) Commercial development of this island is inconsistent with good floodplain management. The Colorado River floodplain in the project area vicinity is particularly narrow, with a bluff on one side of the river and residential/commercial development on the other side.
- 3) A portion of the existing 1200 cubic yards of miscellaneous construction waste is junk such as car bodies, stoves, etc. In our opinion this is not clean fill material and should not be used for filling wetlands.

If the 404 permit is denied we recommend the existing 1200 cubic yards of miscellaneous construction waste be removed and deposited in uplands and/or a county approved landfill.

Sincerely,

Perry D. Otson  
Regional Manager

PDO:BE:ch

xc: ~~COE~~, Grand Junction  
EPA, Denver - Brad Miller  
FWS, Golden - Vern Helbig  
Chuck Grand Pre  
Jack Leslie  
Jim Miller  
File - 2

ENVIRONMENTAL ASSESSMENT  
APPLICATION NO. 8941

1. **Project Description:** The applicant, Thomas N. Lewis, applied for an after-the-fact Department of the Army Permit under Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to retain existing and place additional fill material in wetlands adjacent to the Colorado River. The application is to retain approximately 1200 cubic yards of miscellaneous construction waste placed for fill purposes and to place an additional 1200 cubic yards of gravel and fill material to bring the area to grade. The applicant anticipates establishing a grade above ordinary high water to prevent erosion. This includes the filling of an overflow channel crossing the island. The project will impact approximately one acre of wetland. The project site is located on Watson Island, immediately upstream of the U. S. Highway 50 Bridge in Grand Junction, Mesa County, Colorado, and within Section 23, Township 1 South, Range 1 West.

2. **Purpose and Need for the Project:** The purpose of the project is to fill to an established grade that would close an overflow channel, and prevent water above ordinary high water from eroding the land. The applicant contemplates eventual use of the property for light industrial development.

3. **Environmental Impacts of the Proposed Action.**

FACTORS	BENEFITS		DETRIMENTS		CUMULATIVE IMPACTS*
	A	B	A	B	
Conservation	0	0	0	0	
Economics	1	2	0	0	
Aesthetics	0	0	2	3	
General Environmental Concerns	0	0	3	3	*
Wetlands	0	0	3	3	
Cultural Resources	0	0	0	0	
Fish & Wildlife Values	0	0	2	3	
Flood Hazards	0	0	3	3	*
Floodplain Values	0	0	3	3	*
Land Use	1	3	2	3	
Navigation	0	0	0	0	
Erosion & Accretion	0	0	1	3	*
Recreation	0	0	0	0	
Water Supply & Conservation	0	0	0	0	
Water Quality	0	0	1	2	
Energy Needs	0	0	0	0	
Safety	0	0	1	3	
Food & Fiber Production	0	0	0	0	
Mineral Needs	0	0	0	0	
Considerations of Property					
Ownership	2	3	0	0	
Others (Specify)	0	0	0	0	

## Evaluation Value Rankings

	None	Slight	Moderate	Major
A - Spatial Extent & Intensity	0	1	2	3
B - Duration or Persistence	Not applicable	Very short-term	Short-term	Long-term
	0	1	2	3

### DISCUSSION:

The proposed project will have major adverse environmental impacts on wetlands, fish and wildlife values, flood hazards, floodplain values and erosion and accretion. The cumulative impacts on floodplain values, erosion and accretion, flood hazards and general environmental concerns are also considered potentially adverse. A radio-active uranium mill tailings stockpile area is immediately upstream of this location. A report by the Colorado Geological Survey discussed a landslide area along the south side of the Colorado River approximately 1/3 mile upstream of the proposed project site. The report states the toe of the landslide is currently being eroded by the river. The City of Grand Junction is concerned that any change in the floodplain, will increase erosion within this residential development area. Also, it is unknown what downstream impacts may occur in areas where erosion during 1983 and 1984 high water has eroded several hundred feet of riverbank causing a house, several outbuildings and a commercial storage facility to collapse into the river. The applicant has indicated to the city that there may be additional work in this area "in the future". The material presently placed in the area consist of building debris, asphalt and unstable earth material. Continued saturation and inundation of these materials may have adverse water quality impacts.

4. **Coordination:** On October 10, 1984, Corps of Engineers personnel inspected an unauthorized fill site along the Colorado River. By letter dated January 30, 1985, the applicant was issued a cease and desist order and directed to remove the unauthorized material. At the applicant's request, a meeting was held on February 8, 1985, with Corps personnel, the applicant and the applicant's attorney. By letter dated February 27, 1985, the applicant was informed that we would accept an after-the-fact permit application and the application should be submitted on or before March 22, 1985.

A Department of the Army Permit Application was received on March 16, 1985. Additional information completing the application was received on March 22, 1985. A 30-day public notice was issued on April 3, 1985, with an expiration date of May 2, 1985.

c. **Colorado Department of Health (CDOH):** By letter dated May 13, 1985, CDOH denied water quality certification stating water quality impacts would not be in accordance with Section 401 of the Clean Water Act.

b. **Colorado Division of Wildlife (DOW):** By letter dated April 26, 1985, DOW recommended the application be denied as the existing material is not suitable and no mitigation was proposed to offset the loss of wetlands.

c. **U. S. Environmental Protection Agency (EPA):** By letter dated May 1, 1985, EPA recommended denial as not complying with the 404 (b) (1) guidelines and the potential for disturbance of radioactive materials, proposed development of the area and the absence of alternatives for the activity.

d. **U. S. Fish and Wildlife Service (FWS):** By letter dated April 19, 1985, FWS recommended denial as not complying with the 404 (b) (1) guidelines, concerns of floodplain impacts and the probability of flooding of a developed area. By letter dated April 29, 1985, FWS stated they would seek elevation if the Corps decides to issue the permit.

e. **Mesa County Engineering Department:** By letter dated April 17, 1985, Mesa County objected to the proposed permit until proper engineering studies are completed to determine the effects of diking and channel filling. Their concerns included changes in velocity, downstream effects, upstream effects and changes of direction of flows due to the diking.

f. **City of Grand Junction (City):** By letter dated April 11, 1985, the city objected to the proposed project. They were concerned about the applicant's future work in the area, upstream and downstream impacts. They recommend a hydrologic analysis be performed before any permit is issued. They also submitted a report from the Colorado Geological Survey concerning a landslide area upstream and across the river. The toe of the slide is eroding by the river endangering a residential development. Any further hydraulic changes may increase the slide action in this area.

g. **City-County Building Department (Bldg. Dept):** By letter dated April 15, 1985, the Bldg. Dept. supported the city's objection to issuance of a permit until adequate documentation showing no adverse impacts adjacent to or near the project site.

h. **Colorado Department of Highways (Hwy Dept):** By letter dated May 1, 1985, the Hwy Dept. expressed concern of closing an overflow channel above the U. S. Hwy 50 Bridge until their hydraulic unit be given an opportunity to review the details of the work to assure no adverse effect on the bridges or their foundations.

By letter dated May 7, 1985, letters from DOW, EPA, FWS, Mesa County, the City and Bldg. Dept. were forwarded to the applicant.

No other comments were received.

5. **Alternatives:** There are basically two alternative courses of action available. The first alternative is to issue the permit over the objections of other coordinating agencies and the denial of water quality certification. Corps regulation specifies that a permit will not be issued over denial of water quality certification. Moreover, in view of the FWS's intent to evaluate the decision to issue, higher authority would need to review and concur with this alternative. This alternative would result in the adverse environmental impacts indicated in this assessment.

The second alternative is denial of the permit. Concurrent with denial, this action would require a directive to remove the existing unauthorized material from the wetland area. This action would not cause the adverse impacts on the environment indicated in this assessment and would be in agreement with comments received from other federal, state and local agencies. The applicant could do further studies and analysis which may allay concerns over the project as proposed and then reapply for a permit at a later date.

May 31, 1985

Regulatory Section (8941)

Mr. Thomas N. Lewis  
1337 White Avenue  
Grand Junction, Colorado 81501

Dear Mr. Lewis:

I am writing you regarding your Application Number 8941, for a Department of the Army Permit under Section 404 of the Clean Water Act. I am denying your request for a permit to retain existing material and discharge additional fill material in wetlands adjacent to the Colorado River in Grand Junction, Mesa County, Colorado.

SANDERS

Our evaluation and comments received in response to our public notice indicate your proposal will have adverse impacts on wetlands, fish and wildlife values, floodplain values, water quality and general environmental concerns. The State of Colorado, Department of Health, has denied your request for water quality certification in accordance with Section 401 of the Clean Water Act. For these reasons, I have determined that issuance of a Department of the Army Permit for your proposal is contrary to the public interest.

MCNURE

CHAMP

With the denial of this permit, I must also direct you to remove the existing unauthorized material. The material must be removed and placed in an upland contained area, preventing it from re-entering the waterway or the wetlands. The material must be removed by August 31, 1985. To prevent disturbances to other wetlands in the area, my Grand Junction staff will meet with you to determine the upland sites on your property. Please call Mr. Norm Sanders at the telephone number given below to arrange this meeting.

HELM

BRUBAKER

DENNIS

I am returning your original permit application to you. If you have any questions, you may contact our Grand Junction Office at (303) 243-1199.

Sincerely,

MCCOLLAM

Arthur E. Williams,  
Colonel, Corps of Engineers  
District Engineer

WILLIAMS

Enclosure

September 17, 1986

Regulatory Section (8941)

Mr. Karl G. Metzner  
Director of Planning  
Grand Junction Planning Department  
449 White Avenue, Room 60  
Grand Junction, Colorado 81501-2643

Dear Mr. Metzner:

I am writing you in response to your letter dated September 4, 1986. Your letter requests the status of the removal of unauthorized fill material from Watson Island in the Colorado River in the City of Grand Junction, Colorado.

MCNURE

On July 31, 1986, regulatory personnel from this office conducted an aerial surveillance of the site in question. As a result of this inspection, we have determined that all unauthorized material has been removed from wetlands on Watson Island.

I apologize for the delay in my response. Should you have questions regarding this matter, please contact Gary Davis of my staff at telephone 243-1199.

As part of this process, we are reviewing the status of all riverfront property in this area.

Sincerely,

I hope you can be of assistance in this matter.

Grady L. McNure  
Chief, Regulatory Unit 4  
764 Horizon Drive, Room 211  
Grand Junction, Colorado 81506-8719

cc:  
Opr Br  
Reg Unit 4



February 11, 1987

Regulatory Section (8941)

Mr. Thomas N. Lewis  
1337 White Avenue  
Grand Junction, Colorado 81501

Dear Mr. Lewis:

We recently observed that you are continuing to use Watson Island on the Colorado River near the Fifth Street bridges in Grand Junction as a dumping ground for debris, trash and general construction waste material. As you should know, the Corps of Engineers regulates the discharge or placement of dredged material and fill material in waters of the United States. The lateral limit of our jurisdiction extends to the ordinary high water mark of the Colorado River in the absence of adjacent wetland and includes adjacent wetland where present.

MCNURE

We wish to caution you against placing any of these materials in the river or adjacent wetland without benefit of a Department of the Army permit. Thus far, your disposal operations have been carried out on what we consider non-wetland portions of Watson Island. However, even in these non-wetland areas, unusual flood events could displace many of these wastes causing them to enter the river. We request that you cease using Watson Island for these purposes.

Since you may be violating state and local law, I am furnishing copies of this letter to the State Health Department and the City of Grand Junction.

Sincerely,

Grady L. McNure  
Chief, Regulatory Unit 4  
764 Horizon Drive, Room 211  
Grand Junction, Colorado 81506-8719



**US Army Corps  
of Engineers**

Sacramento District  
650 Capitol Mall  
Sacramento, CA 95814

Public Notice No. 8941

Date: April 3, 1985

In Reply Refer to: SPKCO-O

Comments Due by: May 2, 1985

# Public Notice

**JOINT PUBLIC NOTICE  
U.S. ARMY, CORPS OF ENGINEERS, SACRAMENTO DISTRICT  
AND  
STATE OF COLORADO, DEPARTMENT OF HEALTH**

**TO WHOM IT MAY CONCERN:**

**Subject:** Application for a After-the-Fact Department of the Army Permit under Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to retain existing fill material and discharge additional dredged and/or fill material in the Colorado River and adjacent wetlands, as shown on the attached drawings.

**Applicant:** Thomas N. Lewis, 1337 White Avenue, Grand Junction, Colorado 81501.

**Location:** The project site is located on Watson Island, immediately upstream of the U.S. Highway 50 Bridge in Grand Junction, Mesa County, Colorado, and within Section 23, Township 1 South, Range 1 West.

**Purpose:** The purpose of the project is to fill to an established grade that would close an overflow channel, and prevent water above ordinary high water from eroding the land. The applicant contemplates eventual use of the property for light industrial development.

**Project Description:** The applicant proposes to retain approximately 1,200 cubic yards of miscellaneous construction waste placed for fill purposes. Applicant proposes to grade this material and cover with an additional 1,200 cubic yards of gravel and fill material to bring the area to grade. The applicant anticipates establishing a grade above ordinary high water to prevent erosion. This includes the filling of an overflow channel crossing the island. The project will impact approximately one acre of wetland.

**Additional Information:** The applicant has requested water quality certification from the State of Colorado, Department of Health in accordance with Section 401 of the Clean Water Act. Written comments on water quality certification should be submitted to Mr. Rich Horstmann, Planning and Standards Section, Colorado Department of Health, 4210 East 11th Avenue, Denver, Colorado 80220, on or before the expiration date of this public notice.

Written comments on this permit application should be submitted to the Sacramento District Engineer at the address listed above. Please furnish a copy of your written comments to Regulatory Unit 4, U.S. Army Engineer District, Sacramento, 2784 Crossroads Boulevard, Suite 207, Grand Junction, Colorado 81506-3975.

The latest published version of the National Register of Historic Places and its monthly supplements have been reviewed and there are no places either listed or recommended as eligible which would be affected. Presently unknown cultural resources may be located in the permit area. This activity would not affect any threatened or endangered species or their critical habitat. The District Engineer has made this determination based on information provided by the applicant and on the Corps' preliminary evaluation.

Interested parties are invited to submit written comments on or before **May 2, 1985**. Any person may request, in writing, within the comment period specified in this notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

A permit issued by the Department of the Army does not give any property rights either in real estate or material or any exclusive privileges and does not authorize any injury of private property or invasion of private rights, or any infringement of Federal, State or local laws or regulations, nor does it obviate the necessity of obtaining State or local assent to the work authorized.

April 3, 1985

The decision whether to issue a permit will be based on an evaluation of the impact of this activity on the public interest under authority of **Section 404** of the Clean Water Act (33 USC 1344). Evaluation of the probable impacts, including cumulative impacts, which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, is therefore determined by the outcome of the general balancing process. That decision should reflect the national concern for both protection and use of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and the welfare of the people. For activities involving 404 discharges, a permit will be denied if the discharge does not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria, a permit will be granted unless the district engineer determines it would be contrary to the public interest.

1 Encl  
2 Drawings

**ARTHUR E. WILLIAMS**  
Colonel, CE  
District Engineer



**CITY-COUNTY BUILDING DEPARTMENT**  
634 MAIN STREET GRAND JUNCTION, CO 81501 244-1631

April 15, 1985

U.S. Corps of Engineers  
Sacramento District  
650 Capitol Mall  
Sacramento, CA 95815

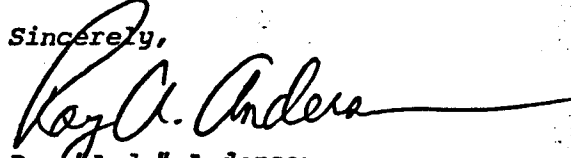
RE: Floodplain Permit #8941 - Thomas N. Lewis

Dear Sir:

I have received a copy of the letter sent to you April 11, 1984 from Mr. Bob Goldin who is the City of Grand Junction Floodplain Administrator (copy enclosed). I can only say that I strongly support his concerns regarding the possible aggravating of an existing situation being experienced by several homes constructed above the Colorado River on the south bank just east of Mr. Lewis' property.

I too oppose the requested permit until such time that adequate documents are submitted to show that there will be no adverse affects on properties adjacent to or near the proposed landfill operation.

Sincerely,

  
Roy "Andy" Anderson  
Chief Building Official

RAA/bc  
cc Bob Goldin



**COLORADO GEOLOGICAL SURVEY  
DEPARTMENT OF NATURAL RESOURCES**

715 STATE CENTENNIAL BUILDING — 1313 SHERMAN STREET  
DENVER, COLORADO 80203 PHONE (303) 866-2611

March 27, 1985

The Honorable J. P. Mike Pacheco  
Mayor, City of Grand Junction  
250 North 5th Street  
Grand Junction, CO 81501

Dear Mayor Pacheco:

Two of the specific statutory charges given the Colorado Geological Survey when it was re-established in 1969 prompt me to write this letter. The first (34-1-103(i) CRS) is "to determine areas of natural geologic hazard that could affect the safety of or cause economic loss to the citizens." The second is (34-1-103 (a) CRS) "to assist, consult with and advise state and local governmental agencies on geologic problems."

When I was in Grand Junction recently discussing geologic problems with the Mesa County Commissioners, the staff took me on a field inspection to view some of their concerns. One of the stops and the subject of this letter is the "settling problem" area in the Lamp Lite Park subdivision on Santa Clara Drive. I am concerned that decision makers in City and County governments and even the homeowners themselves are not fully aware of the underlying cause and growing seriousness of the problem. The terms "sinking," "settling," and "slippage" do not adequately address the problem which is a large, active, and growing landslide.

Conclusions from the brief field investigation were confirmed by reviewing the aerial photos in our files. The landslide was quite apparent on photos flown as early as 1954.

I include a diagrammatic drawing of a typical rotational landslide to aid in my description of the feature. The penciled lines and notations were added to depict how I believe it relates to the area in question. The "settling cracks" in the backyards and even under the foundations of some houses on the north side of Santa Clara Drive are the main or head scarp cracks forming the present southern boundary and head of the landslide. The head of the slide roughly parallels Santa Clara Drive for a few hundred to possibly as much as 1,000 feet. The boundaries are apparent on the ground but were not measured. The toe or foot of the landslide is down slope at or below the level of the river. Apparently the toe of the landslide is currently being eroded by the

G E O L O G Y

STATE OF COLORADO

The Honorable J. P. Mike Pacheco  
March 27, 1985  
Page two

river. As material is removed by the river from the toe or lower part of the slide, the equilibrium is changed and the entire mass slowly slides down the hill. This removes support from the upper part of the slide and from the crown producing additional cracks and allowing the slide to grow in a headward, uphill direction as the mass within the slide actually moves downhill.

The rate of movement of the slide or its rate of southward growth is impossible to predict with data we have. It definitely appears that considerable southward growth took place between the time our November 1954 and our June 1973 aerial photos were taken. The small scale of the photos and lack of definite reference points prevent assigning an actual value to that growth. It would appear that since the houses were built in 1982 the head scarp has migrated southward some 50 feet. It could be argued that high rates of runoff for the Colorado River the past two springs have accelerated the movement of the slide. However, considering the soft character of the broken-up Mancos shale in the slide mass and the geometry of the river at that point, even normal river flows may be sufficient to remove all the slide material that impinges on the river. High water saturation in the slide material will help to move the slide by increasing its weight, decreasing friction, and reducing the internal strength of the material. Again the abnormal precipitation the last two years could be used to argue a faster than normal movement. However, even in dry years seepage from the gravels beneath Orchard Mesa are sufficiently charged with agricultural and lawn irrigation to provide enough water to lubricate the slide.

It appears that most of the homes on the north side of Santa Clara Drive east of those already evacuated may be at risk. Some appear now to be undergoing structural damage. Others may not experience problems for one to three years. If corrective action is not taken, the slide can be expected to progress at least as far south as the street and its underlying water, sewage, and gas lines. Ultimately, it could probably progress even farther south.

I strongly recommend that a knowledgeable engineering geological or geotechnical consulting firm with considerable experience in evaluating and stabilizing major landslides be retained to evaluate the landslide in detail. This would answer the critical questions of exact boundaries, rate of movement, depth of sliding, whether the toe of the slide is at the river's edge or under the river bed, the expectable rate of encroachment into the homes and the street, the major driving mechanism of the slide, and importantly the likelihood that the slide could be stabilized. The second phase would be to design a means and establish the costs of stabilizing the slide. Then depending on the ratio of the stabilization costs to the value of the property at risk, the decision could be made as to entering a third phase of conducting the stabilization phase and then monitoring its effectiveness.

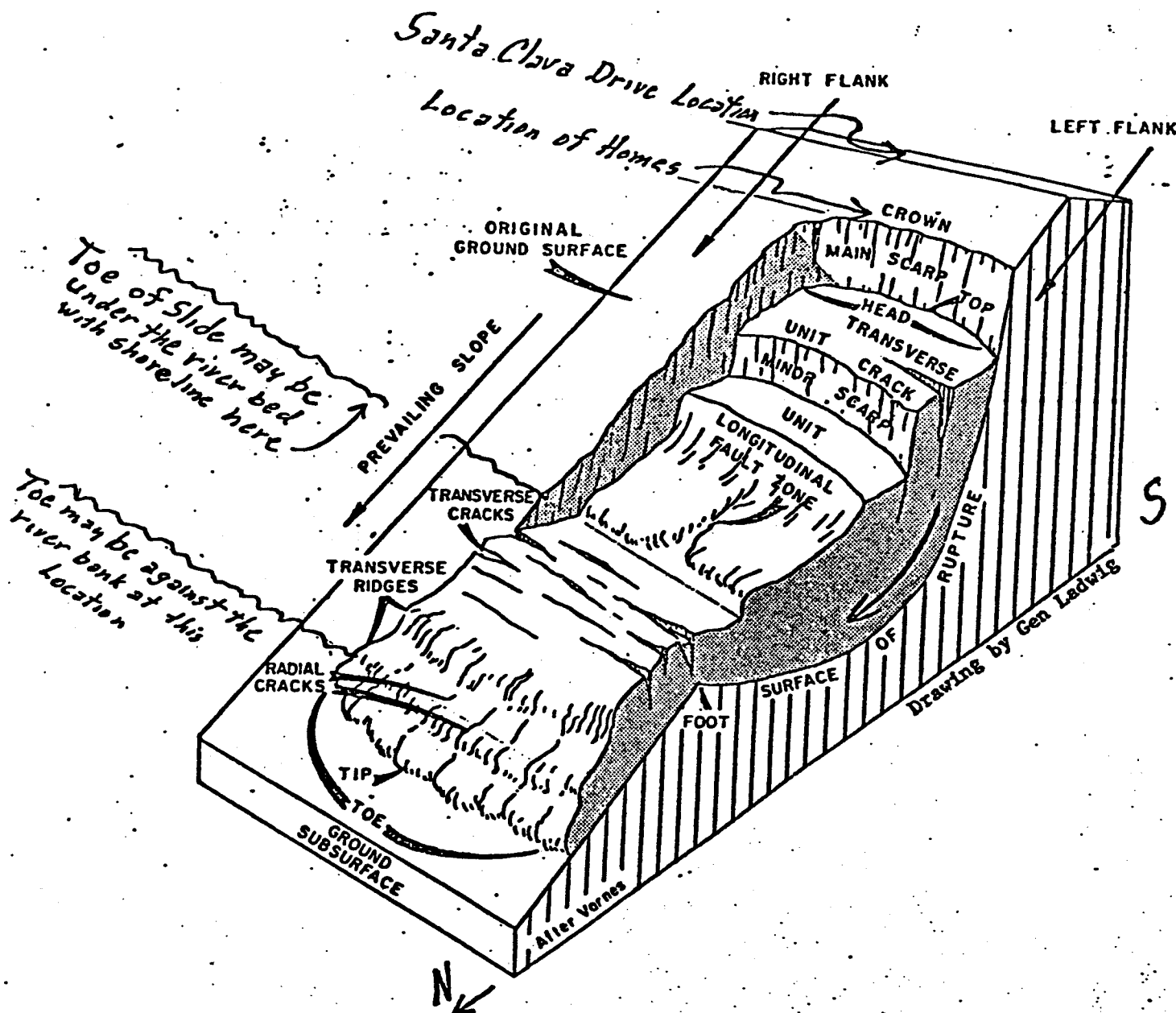


Figure 6. DIAGRAMMATIC DRAWING OF A ROTATIONAL LANDSLIDE

3



**NOT A PERMIT**

City of Grand Junction  
has right of way

City of Grand Junction  
has right of way  
to  
the  
river

Secondary Channel

Overflow Channel

Water Island  
Lot - 2

Colorado River

Line

400'

8'

4'

12'

6.7'

15'

7'

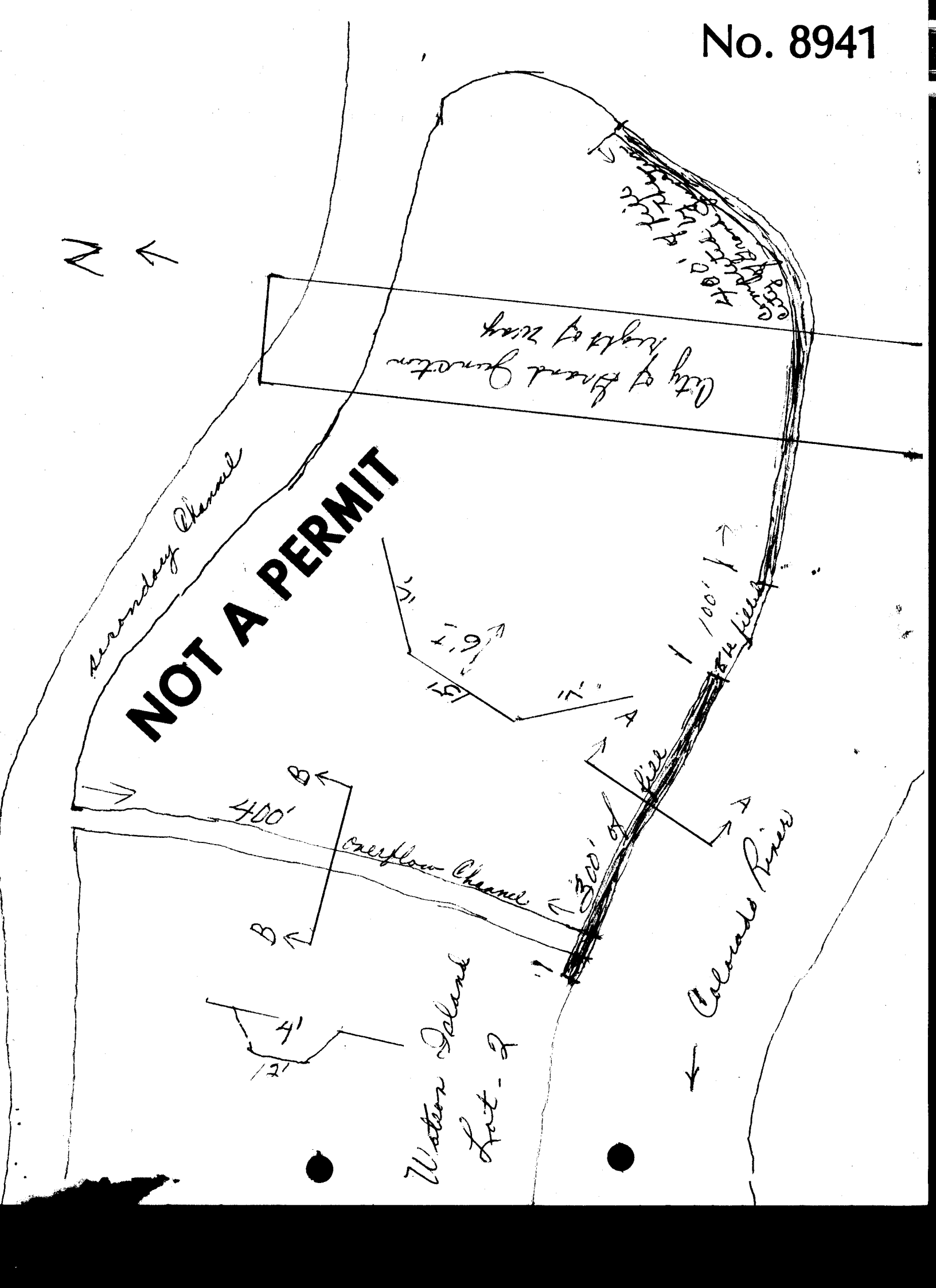
100'

to the river

A

A

1'



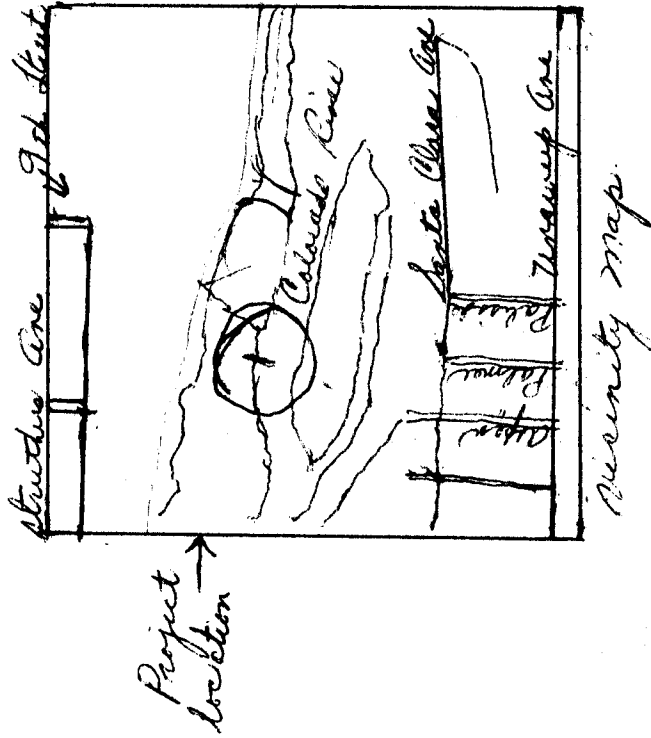


**NOT A PERMIT**

N ↑

Wishes to fill and reclaim land  
and prevent further erosion of the  
land in Mesa County Colorado.

Application by Tom Lewis  
March 20, 1985



The Honorable J. P. Mike Pacheco  
March 27, 1985  
Page four

I would caution you that without the detailed study of the slide, piecemeal efforts to drain the slide or stabilize it by grading, filling, or leveling will be ineffectual and could make the problem worse.

I do not see the role of the Colorado Geological Survey as conducting the detailed phase of the investigation or designing the means of stabilization. That is properly the role of private consultants. We would see our role, however, as serving as advisor to the City in designing the work program of the contract, monitoring the work, reviewing the results to make certain the right questions were asked and answered and helping the City in its deliberations. If you are interested, we could make a preliminary study of the problem, map the current extent of the slide, gather pertinent engineering data, available aerial photographs, and write a preliminary report. This could aid the city in making further decisions, help contractors in bidding the more detailed portion of the study, provide a starting point for contractors, and provide some quick answers to the City and the homeowners. The preliminary study would take two to three weeks and cost \$4,000 to \$6,000 depending on how much information you desired.

As you are probably aware the Colorado Geological Survey for the past two years has been substantially cash funded and is now required to charge for its services to local governmental and other state agencies. Further substantial work on this problem by us would require some means of funding the work. Because of the seriousness of the situation and the fact you did not request the work, you will not be charged for the work to date.

Because of the serious current and probable future financial impact on the homeowners in the neighborhood, I feel they should be notified of the situation. I would have no problem if you wished to distribute this letter to them. I would be willing to meet with you, City Council, Planning Commission, your staff, and the homeowners on the ground at the site to discuss the matter in greater detail. The financial impacts on the homeowners are severe but the uncertainties could be even worse.

I would strongly recommend that if any yet unbuilt sites have been platted in this subdivision along or north of Santa Clara Drive, that the building permits not be issued until a detailed geologic investigation has been conducted and reviewed by this office.

I would further recommend that any future subdivision or construction along these or similar bluffs not be permitted until a careful, extensive geologic investigation is conducted and reviewed by us.

Senate Bill 35 subdivision regulations do not require geologic evaluations within city or town limits but towns and cities do have the authority to

The Honorable J. P. Mike Pacheco  
March 27, 1985  
Page five

require geologic investigations and to request our review of those investigations. Many towns that suspect geologic problems are requiring such investigations and find they benefit the developer, the homebuyer, and the city. Cities and towns under 29-20-104 CRS are given authority "to regulate development and activities in hazardous areas." We are ready and willing to help you in any way we can to carry out that responsibility.

If you have any questions about this subject or any other geologic matter affecting the City, please feel free to contact me or my staff.

Sincerely,



John W. Rold  
Director and State Geologist

JWR/lis

cc: Mark Achen, City Manager  
Karl Metzner, City Planning  
Roy Anderson, Building Inspector, City of Grand Junction  
Mesa County Commission  
Bennett Boeschstein, Mesa County Planning



# COLORADO DEPARTMENT OF HEALTH

Richard D. Lamm  
Governor

Thomas M. Vernon, M.D.  
Executive Director

MAY 23 1985

May 13, 1985

## REGULATORY UNIT #4 - GRAND JUNCTION

Thomas N. Lewis  
1337 White Avenue  
Grand Junction, Colo. 81501

RE: 401/404 Public Notice #8941

Dear Mr. Lewis:

We have reviewed the above-referenced proposal to retain fill and place additional fill in wetlands and an overflow channel adjacent to the Colorado River. Based upon our analyses and comments received from other agencies, the Division is unable to certify that your project would not result in a violation of water quality standards. Specific problems with the project are:

- 1) The lack of a mitigation plan for replacement of water quality control processes occurring in wetlands that would be (or have been) destroyed by the project;
- 2) The fill material already in place consists of waste material that has not been specifically identified;
- 3) The project may result in the introduction of mill tailings into the water column.

We recommend you withdraw your application and resubmit it for public notice after these problems have been addressed and other interested parties' objections, particularly the City of Grand Junction's, have been answered.

Very Truly Yours,

  
Jon Scherschligt  
Section Chief  
Planning and Standards Section  
Water Quality Control Division

RH:JS:njf



110-88

Grand Junction Planning Department  
250 North Fifth Street  
Grand Junction, Colorado 81501-2668  
(303) 244-1430

October 27, 1988

AA Auto Salvage  
755 1/2 Struthers Avenue  
Grand Junction, CO 81501

CERTIFIED

Gentlemen:

On May 10, 1988 you received notice of a zoning violation concerning the operation of an illegal salvage yard. Mr. Russ Harden subsequently called this office and indicated that the operation was legal, since it had been in existence for many years.

We have just recently been able to check the history of the salvage operation at your location, and a chronology of that history is attached for your reference.

In summary, this chronology shows that your operation is, indeed, illegal according to the zoning and floodplain regulations of the City of Grand Junction. Under these regulations, junk and salvage yards have been prohibited in the 100-year floodplain since 1974. Our information also shows that a salvage operation at your location did not occur until some time between 1977 and 1983.

Unless information can be provided that shows that a salvage yard existed at your site prior to January 16, 1974, we must require compliance with city regulations.

This letter shall serve as notice that clean-up and removal of all junk and salvage from your site must begin within 30 days of receipt of this notice, and must be completed within six months.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karl G. Metzner".

Karl G. Metzner  
Director of Planning

KGM/tt

xc: Dan Wilson

Attachment

November 23, 1988

AA Auto Salvage  
755 1/2 Struthers Avenue  
Grand Junction, CO 81501



City of Grand Junction, Colorado  
81501-2668  
250 North Fifth Street

Dear Sir:

As of this date, you have not responded to our letter dated May 10th. During a periodic review of our records, we have found that you are still operating your business without a sales tax license!

Enclosed is an application for a sales tax license. There is a \$10.00 application fee that must be paid with this application. There is also a cash bond which is required in the amount of \$131.46. The \$141.46 must be paid when you file your application.

Also, please find enclosed a Notice of Final Determination, Assessment and Demand For Payment in the amount of \$2,446.81. This amount is due and payable in 10 days. Since you have continued to operate your business illegally, you have been assessed for the past three years.

Your license was revoked for failure to file your taxes in June of 1985. You are required by City ordinance to have a sales tax license when engaged in retail sales of tangible personal property. The remedies allowable in the ordinance include the following:

Court action which can result in a fine of up to \$300 or imprisonment up to 90 days for each violation (each 24 hour period of continued violation is a distinct violation),

Fraud carries a penalty of 100% of the deficiency plus 3% per month from the date the return was due,

Negligence carries a penalty of 10% plus interest at the statutory rate.

Amounts due the City can be obtained by seizure and auction of the assets of the business (and personal assets if "a proprietorship"). This entails taking control of the premises, changing the locks, inventorying the assets and eventually selling the assets at public auction. Bank accounts can also be garnished.

The revocation of a license normally results in the discontinuance of the business. The City has the option of simply enforcing that discontinuance by closure of the business until such time as deficiencies are paid and the proper license obtained.

The enclosed assessment is calculated from comparable business operations. Failure to respond to the assessment with correct actual returns within ten days will allow the assessment to become the legal liability for the periods assessed.

Again, you have 10 days to respond to this letter and assessment. If you fail to do so, I have the duty to enforce City ordinances and will have to select one of the alternatives noted above to obtain compliance.

If you have any questions concerning this, please feel free to contact me at 244-1515.

Sincerely,

Allen R. Sartin  
Finance Director

ARS/rb  
Enc.



Grand Junction Planning Department  
250 North Fifth Street  
Grand Junction, Colorado 81501-2668  
(303) 244-1430

MEMO

TO: DAN WILSON  
FROM: LINDA WEITZEL *lw*  
DATE: DECEMBER 6, 1988  
RE: DOUBLE A AUTO SALVAGE, RUSS HARDIN

Mr. Hardin stopped by the Planning Department before and after his meeting with Allen Sartin. Mr. Hardin requested a legal description for his property. I gave him his tax schedule number and referred him to the Assessor's office. Mr. Hardin was concerned about access into his parcel. It appears that he has none. Also the owner (Mrs. Arcieri) of the property to the north complained to him about his junk cars on her property.

I gave him a copy of the letter that he never received and the attachment. He inquired about uses in the I-2 zone, so I gave him a copy of the Use/Zone Matrix and the Flood Plain Regulations. Mr. Hardin did say that his lawyer his Mr. Tucker. They will probably ask for an extension on the Municipal Court date of December 15, 1988.

xc: Karl Metzner  
File

MEMO

TO: FILE  
FROM: LINDA WEITZEL  
DATE: FEBRUARY 8, 1989  
RE: PRE-TRIAL CONFERENCE, AA AUTO SALVAGE

Attending this meeting were the following: Russ Hardin, Harry Tucker, Dan Wilson, Karl Metzner, Chuck Cole, Chris Mack and Linda Weitzel. The purpose of this meeting was to discuss the "Not Guilty" plea and the disposition of the case.

There was discussion about the present zoning in that area and the allowed uses. Since salvage yards are a conditional use in the heavy industrial zone, there is a possibility that Mr. Hardin's operation could meet the requirements that a conditional use permit could impose.

FEMA regulations state that salvage yards are not allowed in the flood fringe zone, however, there is a provision to allow a continued use if the salvage yard were grandfathered into the City. Staff felt that FEMA would not dispute a determination to allow the continuation of a "grandfathered" salvage operation as long as the City had made a good faith effort to support its findings.

Harry Tucker and Russ Hardin maintained that the area was part of Tom Lewis's salvage operation prior to 1973, the time that the land was annexed into the City. Mr. Hardin stated that Tom Lewis stored many of the "junk cars" under the trees. Mr. Hardin stated that he had an affidavit from Tom Lewis confirming that the site was a salvage yard prior to 1973.

Karl Metzner showed the various airphotos that had been used to make the determination that no salvage business existed in 1973. These maps were dated 1959, 1965, 1975, 1977 and 1980. Mr. Hardin was insistent that there had been a salvage operation on that parcel during 1973.

Another meeting was planned for March 8, 1989 to discuss this matter further. Mr. Tucker agreed to sign an agreement to waive a speedy trial in order to examine the data collected during the month between meetings.



## SUMMARY OF THE RUSS HARDIN CASE

In the Spring of 1988, activity of a salvage yard, Double A (aka Triple A) was noticed at 755 Struthers Avenue by Planning Department staff. After researching planning records, police records, sales tax records and air photos, it was determined that this was an illegal salvage yard. There was no conditional use for this operation on file.

The owner of the property was listed in the Mesa County Assessor's Office as Victor Stajcar of Lakewood, Colorado. The bond from the Police Department was made out to Russ Hardin. Mr. Hardin was operating the salvage operation in 1988 and throughout this process.

The first notice of violation was sent by certified letter on May 9, 1988. "R. Hardin" signed the return receipt on May 10, 1988. Mr. Hardin made no attempt to contact the Planning Department. Another certified letter was sent on October 27, 1988 but was returned unclaimed to the Planning Department. Consequently, on November 15, 1988, a summons was issued to Mr. Hardin to appear in Municipal Court on December 15, 1988.

This summons cited Mr. Hardin for running a salvage yard without a conditional use permit and violating the Floodplain Regulations. Linda Weitzel, Planning Technician, issued this summons. She was accompanied by Officer Ron Maez of the Grand Junction Police Department.

The Sales Tax Department sent Mr. Hardin a letter about operating a business without a sales tax license on November 23, 1988. On December 6, Mr. Hardin spoke with Alan Sartin (former Finance Director) about the sales tax. Mr. Hardin stopped at the Planning Department and requested the legal description of his property. He was referred to the Assessors's office.

Upon request of Harry Tucker, Mr. Hardin's attorney, the court date of December 15, 1988 was moved to a later date. A pre-trial meeting was held on February 6, 1989. Mr. Hardin; Mr. Tucker; Dan Wilson, City Attorney; Chuck Cole, Assistant City Attorney; Karl Metzner, Planning Director; Chris Mack, Zoning Enforcement Officer; and Linda Weitzel were present to discuss the "Not Guilty" plea. During this meeting, Mr. Hardin stated that Tom Lewis had been using the property prior to 1973 for salvage storage. Mr. Hardin spoke of an affidavit, but had no written proof with him.

Mr. Metzner showed the group air photos of the subject area that had been taken at different time periods, the earliest was dated in the 1960's and the most recent was 1986. Mr. Tucker asked staff for the requirements to open a new salvage yard under the current code.

On March 3, 1989, a draft copy of requirements for opening a new salvage operation was sent to Mr. Hardin and Mr. Tucker. The Planning Department received no comments from Mr. Hardin or Mr.

Tucker.

At some point in this time frame, a waiver for a speedy trial was signed by the defendant. The City had to keep reminding Mr. Tucker that this was necessary. The case could have been thrown out of Court had it not been signed. There is a three month time limit from the time of the summons to the actual hearing.

On May 5, 1989 Mr. Wilson sent a letter to Mr. Hardin concerning junk vehicles allegedly belonging to Mr. Hardin stored on the former Lewis property. These vehicles were now on City property and were considered in trespass.

The next action was in Municipal Court. After several attempts to establish a trial date, a jury trial began on November 3, 1989 in Judge David Palmer's court. The six member jury consisted of the following people: Marilyn Baxter, Betty Dickens, Josephine H. Liebelt, John Miller, John King and Deborah Monroe.

Tom Lewis and Russ Hardin testified for the defense, Harry Tucker was the attorney. Chuck Cole was the attorney for the City. Linda Weitzel and Randy Booth, City Comptroller, testified on behalf of the City. The jury determined that Mr. Hardin was guilty. Judge Palmer's disposition was as follows:

\$300.00 fine, suspended \$150.00.  
5 days in jail, suspended 5 days.  
A Conditional Use Permit shall be applied for within 60 days.  
By January 31, 1990, 1/4 of the junk is to be removed.  
By June 30, 1990, 1/2 of the junk is to be removed.  
By November 30, 1990, 3/4 of the junk is to be removed.  
By January 1, 1991, all junk removed from the property.  
There are 10 days to appeal.

Since Municipal Court is not a court of record, a brief summary of the testimony follows. Ms. Weitzel was put on the stand. The prosecution attempted to submit an air photo of the subject property taken in October of 1973, just prior to when the area was annexed into the City. It was determined that she was not an expert in the air photo field, nor could she state that the photo was a true and accurate representation of the area in 1973; therefore the evidence was not allowed.

A brief history of the City's attempt to have Mr. Hardin comply with the code was given. The amount of research that had been done prior to the summons was also discussed. Upon cross-examination, there were questions regarding nonconforming uses and grandfathered uses.

Mr. Lewis was called to the stand for the defense. He said that he bought the subject property some time in the 70's but couldn't remember exactly when. Mr. Lewis stated that he had used the subject property as a salvage yard. Mr. Hardin was next to take the stand. He said that he had use the property continuously since sometime in early 1980's as a salvage yard.

The prosecution requested that Mr. Booth be called to the stand to testify regarding an affidavit Mr. Hardin had signed regarding sales tax. Mr. Booth identified the document and explained briefly what it was about. The affidavit stated that Mr. Hardin had not been doing business at 755 Struthers from November 1, 1985 through March 31, 1987.

Both attorneys had strong closing arguments. Mr. Tucker referred to Grand Junction as Craig twice during his closing. The jury then retired and considered the evidence prior to making their guilty decision.

The case was appealed to County Court by the defense. There was some confusion about what monies had to be paid prior to the appeal. The amount of money necessary to file the appeal to County Court was all that was required. The fine remained unpaid.

On January 2, 1990, the prosecution requested that the case be taken back to Municipal Court for a "Show Cause" hearing. The prosecution stated that no action for the removal of the junk had occurred. There was confusion about when 1/4 of the junk was to be removed. Judge Palmer ruled that the defendant had until January 31, 1990 to do this, therefore Mr. Hardin was still in compliance with the Court order.

#### COUNTY COURT

The hearing was schedule for County Court on January 4, 1990, Judge David McKinley presiding. Prior to the beginning of the hearing, approximately 6 men came in together. Mr. Tucker stated that one or two men from this group would testify for the defense.

Mr. Cole requested that the hearing be closed to the witnesses. No witness was allowed to remain in the court room before he/she testified, with the exception of Mr. Hardin and Ms. Weitzel.

The City's first witness, Judy Spann from Air Photo Survey, testified as to the authenticity (date and that Air Photo Survey took it) of an air photo that was submitted to the court as Exhibit B. After some intense cross examination by Mr. Tucker, it was determined by the Court that Ms. Spann did not qualify as an expert witness and was unable to make any judgements as to what was shown in the air photo.

Ms. Weitzel was put on the stand next. A certified copy of Ordinance 1468 was presented as Exhibit A. This ordinance made salvage yards a Conditional Use in the Heavy Industrial (I-2) Zone. Judge McKinley asked for proof that this ordinance was in each subsequent code. The City was unable to verify that at this time. Mr. Cole requested that since the hour was late, the trial be carried over to another date. After much discussion, the trial date was set for January 30, 1990.

\* \* \*

On January 30, 1990, the City began with testimony from Mr. Merritt Dismant of Intermountain Technical Services. Mr. Dismant was the photogrammetrist for Air Photo Surveys in 1973 (the date of the air photo). Mr. Cole asked Mr. Dismant about his formal training and experience as a photogrammetrist. Mr. Tucker did not challenge Mr. Dismant's expertise. Mr. Dismant was considered an expert witness by the Court.

Mr. Dismant testified that he had taken the photo marked as Exhibit B and it was a true and accurate representation of the area at the time. He further described what he saw in the photo. Mr. Tucker cross-examined, then Mr. Dismant was excused.

Neva Lockhart, City Clerk, appeared but did not have to testify. Mr. Cole, Mr. Tucker and Ms. Lockhart discussed how Ordinance 1468 had been carried to the present code. Mr. Tucker was satisfied with Ms. Lockhart's explanation. In order to save Court time, there was no need for testimony from Ms. Lockhart.

Ms. Weitzel was again called to the stand. General questions pertaining to the amount of research done prior to citing Mr. Hardin were asked. Questions regarding the location of the Hardin property using the air photo were also asked. Ms. Weitzel outlined the subject property in yellow on the air photo. There was no cross-examination.

At this time the prosecution rested. Mr. Tucker requested an acquittal. Judge McKinley wanted to review the ordinances and the codes first. There was not enough time remaining that morning to start calling witnesses for the defense. The Court recessed until afternoon.

Mr. Tucker called Mr. Lewis to the stand. Mr. Lewis had owned the property since 1974 before selling it to Mr. Hardin. Mr. Lewis had a lease agreement with Velda Lane, the prior owner, in 1971. Mr. Lewis testified that he had used that property as a salvage operation continuously since 1971.

Mr. LeRoy Winters was next on the stand. He testified that he had purchased the property in question and other properties from Mr. Lewis in 1979. Mr. Winters operated a salvage yard continuously from 1979 to 1981 when the property went back to Mr. Lewis. Mr. Winters was asked to take the stand twice by Mr. Tucker.

Mrs. Hardin was the last person to be called to testify. She explained that Mr. Stajcar is acting as a trustee for the property. The current deed shows Mr. Stajcar as the owner of the property. She stated that she and Mr. Hardin bought the property in part as security for their children. Mrs. Hardin testified that they had operated a business at 755 Struthers from 1987 to the present. She stated that prior to 1987, they had occupied land east of the subject property for their salvage business.

After the closing arguments, Judge McKinley ruled in favor of the defendant. This decision was based on the looseness of the definition of "junkyard" and the lack of a definition for "junk" in the 1971 Code. Because this code was in effect at the time of annexation, Judge McKinley felt that Mr. Lewis's testimony showed a "grandfathered" use prior to annexation in 1973. By definition, the area was a "junkyard". Off the record, the Judge stated that he was not totally convinced beyond a reasonable doubt that the area had been used as a salvage yard since 1971. Historic cases like this are difficult to decide. Mr. Lewis served as the only historian, and there was no testimony to contradict him.

\* \* \* \*

For the preparation of this case it was important to examine many areas. Some of these are listed below:

1. Police Department for bonding information. See City Ordinances under Article IV. Junk and Junk Dealers, 17-55.
2. Sales Tax has information about businesses. Are they paying sales tax? Does Sales Tax need to be informed?
3. Air photos for comparisons of then and now. Check through Planning Department records and other sources, such as Air Photo Survey, Soil Conservation Service, etc.
4. Check through Planning Department records for annexation information, zoning changes, conditional use permits or any other activity on subject property or near by properties.
5. Check on appropriate past Codes and ordinances.
6. Check on past County zoning and regulations with County Planning.
7. For Municipal Court, have sufficient copies of any documents used for evidence made for the Judge, defendant, prosecution and self.
8. For County Court, have all Ordinances that will be used as an Exhibit certified by the City Clerk. Other evidence may require certification or notarization. Check with the attorney about this. It is good to have copies for the Court, the defense, prosecution and self. Anything that is submitted as evidence will be held by the court for a minimum of 30 days. A written request is required to have materials returned.
9. Expert testimony is very important. Quiz the potential witnesses carefully.
10. Timing is also crucial. If delays are foreseen, have the defense sign a waiver for a speedy trial. Delaying tactics are used often to get the case thrown out of Court.
11. Be prepared! And don't take anything said in Court as a

personal affront.



Grand Junction Planning Department  
250 North Fifth Street  
Grand Junction, Colorado 81501-2668  
(303) 244-1430

TO: Grand Junction Junk/Salvage Yard Owners and Operators

DATE: March 7, 1989

RE: Proposed Regulations Regarding the Operation of Junk/Salvage  
Yard Operations Within the City of Grand Junction

The City of Grand Junction is considering revisions in the standards for operating junk and salvage yards within the city limits. A copy of the proposed regulations is attached for your review. Comments or questions should be directed to this department not later than March 21, 1989.

KM/tt

Attachment

Dunne  
Van Gundy  
Loren  
Lewis  
~~Sawyer~~  
Husin



City of Grand Junction, Colorado  
81501-2668  
250 North Fifth Street

May 5, 1989

Mr. Russ Hardin  
P.O. Box 584  
Grand Junction, CO 81502

CERTIFIED

Dear Mr. Hardin:

You are aware that junk cars and other salvage materials owned by you are stored on the former Tom Lewis property now owned by the City of Grand Junction. We discussed this situation at the meeting we had with you on March 10, 1989, and you gave us verbal assurance that the cars and other material would be removed within two weeks. We have visually inspected the property and found that, as of this date, the removal has not been completed.

This letter constitutes official notice that any cars or other material remaining on City of Grand Junction property on May 15 will be considered abandoned and will be removed by the City or its agent.

Further, this letter constitutes notice pursuant to Section 19-25 of the Code of Ordinances of the City. Failure to remove all of the encroaching personal property by the 15th of May will subject you to the filing of a criminal trespass complaint.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dan E. Wilson", is written over the typed name.

Dan E. Wilson  
City Attorney

DEW/tt

xc: Harry Tucker  
Chuck Cole  
File



COUNTY COURT, MESA COUNTY, COLORADO

Case No.

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**NOTICE OF APPEAL FROM GRAND JUNCTION MUNICIPAL COURT**

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THE CITY OF GRAND JUNCTION,  
By and on Behalf of:  
PEOPLE OF THE STATE OF COLORADO,

Appellee,

vs.

RUSSELL DALE HARDEN,

Defendant - Appellant.

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COMES NOW the Defendant-Appellant, Russell Dale Harden, by and through his attorney, HARRY A. TUCKER, JR., and submits the following Notice of Appeal.

1. Name and address of Appellant:

Russell Dale Harden  
755 Struthers Avenue  
Grand Junction, Colorado 81501

2. Name and address of Appellant's Attorney:

Harry A. Tucker, Jr. (7397)  
634 Main Street, Suite 1  
Grand Junction, Colorado 81501  
Tele: (303) 243-9294

3. Offense of which Appellant was convicted:

Use Zone Matrix, Grand Junction Zoning and Development  
Flood Plane, Use Zone Matrix, Grand Junction Zoning and Development

4. Statement of Judgment

Appellant found Guilty  
Date: October 3, 1989  
Sentence: Fine \$300.00

\$150.00 suspended on condition that  $\frac{1}{4}$  of personal property removed from property by January 31, 1990,  $\frac{1}{2}$  of personal property removed by April 30, 1990,  $\frac{3}{4}$  of property removed by June 30, 1990 and all of property removed by September 30, 1990.

5. The Appellant appeals from said judgment of conviction.



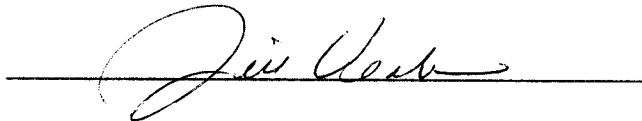
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Harry A. Tucker, Jr. (7397)  
634 Main Street, Suite 1  
Grand Junction, CO 81501  
(303) 243-9294

**CERTIFICATE OF MAILING**

I hereby certify that on the 13 day of October, 1989, a true and correct copy of the above and foregoing was placed in the United States Mail, postage prepaid, addressed to the following:

Charles Cole  
Assistant City Attorney  
Municipal Court  
520 Rood Avenue  
Grand Junction, CO 81501



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On May 4, 1990, I went to AAA Auto Salvage, 755 Struthers, to give a dog at large warning as a citizen had requested.

Initially I spoke with Kathy Harden. There was a white w/black spots <sup>(small spots)</sup> female pit bull and a dark grey terrier mix (small) with her as we spoke. I told her the complaint I'd received involved 2 white pit bulls and a black one. She agreed that they did have two white (or primarily white) pits but not a black one. She said they used to have a black pit but had given it away. I asked if she had any other dogs that could meet that description and she said that they had a white/Blk female pit that had had pups 3 wks ago and a Cairn Terrier. It was determined that the pit bull with pups, the Cairn Terrier, and the Terrier mix did not have licenses and I told her that in addition to the dog at large warning (#6419), I was going to issue a ticket for 2 dogs with no license (not charging her for the 3rd dog to somewhat alleviate expense). At that point she told me to give her the warning and "get the fuck off the property" and I could leave the ticket in the mailbox. She walked away to the house.

I left, called for assistance, and a GCPD officer arrived.

He and I drove onto the property and this time a man who later identified himself as Russell Harden held up his hand for me (us) to stop and we did so. We got out and Mr Harden requested that the Animal Control truck be removed from the property so I backed it out and returned on foot.

I asked Mr. Harden if he wanted to take responsibility for the dogs, the warning, and the ticket and he said he did. I explained to him why I had arrived (regarding the warning) and why I was issuing a no license/no rabies ticket. Mr Harden said we had record of their licenses and I told him that the dispatcher hadn't been able to find licenses for all the dogs.

When I asked for identification, he objected to that but did finally read his driver's license number to me. The height/weight info was also verbally given to me by him (NOTE: he gave his height as 6'3" and weight as 170 but

on another ticket, height was listed as 6'0" and weight as 150 lbs, which appears to be more correct. Also, I did not ask his age and birthdate but the prior ticket lists his birthday as 6-15-34 which would make him 55 which appears correct.)

I wrote the ticket out on the white/black pit with puppies and another white pit that was being taken into the house when I returned from leaving the truck on the road

I told Mr Hardin that he ought to consider getting all the dogs properly licensed because if I had fined him for each dog that was apparently not done, it would have been more expensive.

Mr Hardin told me he didn't have any dogs anymore because he was going to take them out and shoot them. I replied that no one is required to have dogs and that they were his responsibility. He repeated that he was going to shoot them and then lay them on our doorstep.

Lisa J. Amos

134

5-10-90



Grand Junction Planning Department  
250 North Fifth Street  
Grand Junction, Colorado 81501-2668  
(303) 244-1430

August 14, 1990

Mr. Roy Gamble  
Colorado West Outdoor Advertising  
P.O. Box 2906  
Grand Junction, CO 81502

Dear Roy:

The City has completed its research regarding the deed submitted for the proposed off premise sign for Double A Auto Salvage (AKA Triple A Auto Salvge) and found it to be unsatisfactory. The deed states that there is a 12 foot easement granted for road purposes. The ownership of this 12 foot strip is not clear. Based on this, we are denying the application to have a sign placed on or near this easement.

We have discussed the possibility of an off premise sign for Double A Auto Salvage. If an adjacent property owner is willing to allow an off premise sign and the location can be shown on a map, then we are willing to review that application.

Thank you for your cooperation in this application. If you have questions you can call John Shaver at 244-1506 or me at 244-1437.

Sincerely,

*Linda A. Weitzel*  
Linda A. Weitzel  
Planning Technician

xc: John Shaver, Ass't City Attorney  
File

REQUIREMENTS FOR CONDITIONAL USE FOR RUSS HARDIN  
BASED ON THE ASSUMPTION THAT THE SALVAGE YARD  
HAD BEEN GRANDFATHERED INTO THE CITY

DRAFT

1. Any new structures shall meet FEMA regulations.
2. The salvage operation shall be screened by a privacy fence of sufficient height to screen the salvage operation from adjacent properties or rights of way. The screening fence shall be constructed in a professional manner and maintained in good condition.
3. Legal access to the salvage operation is required.
4. By 1990, all the existing vehicle bodies shall be removed. All existing and salvage materials shall be stripped of usable parts. These parts shall be warehoused. Any materials not warehoused shall be disposed of on a regular basis. There shall be no accumulation of vehicle bodies } or other unusable salvage, trash or  
outside  
OR  
uncovered junk.
5. All waste fluids or hazardous materials, such as gas, oil, radiator fluid, batteries, shall be disposed of in accordance with Federal, State and local regulations.
6. Existing trees and vegetation shall be maintained.
7. Regular hours of operation shall be established.

around }

8. As the number of junk vehicles are reduced, the area will be prepared for site reclamation in accordance with a reclamation plan approved by the City. (At the time of amortization), the area will be <sup>may</sup> inspected by the EPA and other appropriate agencies for evidence of hazardous materials. If hazardous materials are found, it will the responsibility of the owner or occupant to properly remove and dispose of such materials.

9. Meet the Code requirements as they pertain to ~~amortization of~~ salvage operations.

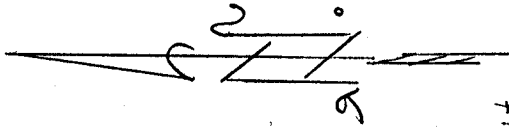
10. Remove all personalty from City Property

SURVEY OF Lewis Properties to City of Gt. Prop. Cor Loc. INDEX PAGE

SURVEY BY T.G. Gram & M. Grizenko & K. Phelps.

JOB NO. SURVEY NOTES 6/21/90

Inst. used: leitz Set 3



Struthers Ave.

Arcieri Sub.

North Channel

2945231-00 01'

2945234-00 008

2945234-00 94:1

1040<sup>83</sup>N  
1317<sup>26</sup>E

500°28'00"W 8<sup>19</sup>Plat.

1027.94N  
1217.06E

N 82°39'56"E 213<sup>35</sup> Plat.

1000N  
1000E

Fd mon  
e prop Cor

Fd mon.  
e prop Cor.

N 15°17'08"W  
102'3 calc. tie  
102'4M

N 56°22'30"W  
N 58°14'40"E  
N 64°21'52"E

N 77°47'50"E 102<sup>58</sup> Plat.  
1019.15N  
1217.00E

1027.94N  
1217.06E

901<sup>52</sup>N  
1026<sup>35</sup>E

Field 7°51'18" (calc.)  
Field 6°07'14" (calc.)  
42°05'07" Field  
(42°06'02" Calc.)

Fd mon  
e prop Cor.

239<sup>30</sup> Plat  
239<sup>24</sup>M

N 73°32'04"W

893.67N  
1056<sup>41</sup>E

All references to Found Prop. Cor. are from Plot of Boundry lines of City Properties in Lot 2 Sec 23 T1S/R1W,UM. By Udell, William

drilled shot holes, set monument caps