

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Planning and Community Development AF

BOARD AGENDA # *D-1

Urgent

Routine

AGENDA DATE January 24, 2012

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Acceptance of the Emergency Abatement Report by the Department of Planning and Community Development, Building Permits Division Regarding a Hazardous and Unsafe Condition that Existed at 4555 North Star Avenue in the Modesto Area

STAFF RECOMMENDATIONS:

Accept the Emergency Abatement Report by the Department of Planning and Community Development, Building Permits Division regarding a hazardous and unsafe condition that existed at 4555 North Star Avenue in the Modesto area.

FISCAL IMPACT:

Costs associated with the clean-up includes staff time, material testing, asbestos surveys, San Joaquin Valley Air Pollution Control District demolition permitting, and hard costs from the contractor for clean-up and disposal of materials excluding the area that may require special treatment. Staff from the Departments of Planning and Community Development and Environmental Resources spent approximately 121 man hours from October 2011 through December 2011. Staff costs associated with

(Continued on page 2)

BOARD ACTION AS FOLLOWS:

No. 2012-034

On motion of Supervisor Monteith, Seconded by Supervisor Withrow
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST:


CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT: (Continued)

this effort is approximately \$12,334 for the Planning and Community Development Department and \$3,230 for the Department of Environmental Resources. Additional cost for the Stanislaus County Sheriff Department is estimated to be \$4,600 for work which included supervision of County Honor Farm crews cleaning-up sensitive document and on-site security. The cost for title reports, certified mailing costs, and asbestos testing was \$1,625. Total cost to the County Department of Planning and Community Development Dangerous Building Abatement Fund was \$13,959. The fund has approximately \$198,000 in cash available to cover allowable clean-up costs. The Department of Environmental Resources covered associated staffing expenses using existing budgeted appropriations.

The labor and materials cost for contract clean-up activities by Modesto Sand and Gravel was \$23,423.50. This cost was initially funded by the Chief Executive Office County Facilities Budget. An adjustment to the County Facilities Budget may be necessary as part of mid year financial process and Chief Executive Office staff is currently conducting this evaluation. The County Facilities Budget also covered the expenses incurred by the Sheriff's Department.

Remaining costs will be related to staff coordination with the US Environmental Protection Agency and State of California. No additional clean-up costs are anticipated. Stanislaus County has the ability to lien the property in order to recover clean-up costs; however, recovery is unlikely due to the number of other liens already on the property. Total cost to Stanislaus County to date for this cleanup effort is \$45,213.

DISCUSSION:

Pursuant to Section 2.92.095(G) of the County Code, this report informs the Board of Supervisors of actions taken to abate the unsafe condition at 4555 North Star Avenue, the abandoned Indalex Plant, in the Modesto area.

In accordance with Section 2.92.020 of the County Code, regarding nuisance abatement, "the director or his/her designee, shall have the discretion to seek the correction of any violation(s) through the use of administrative citations, abatement, criminal prosecution, or civil litigation, alone or in combination. The Director of Planning and Community Development, through the Chief Building Official, is responsible for abating "dangerous buildings". The Director of Environmental Resources is responsible for abatement of other nuisances. Typically, through the dangerous building or nuisance abatement process, letters are sent to the landowner requesting abatement of the nuisance without the need for government intervention. If the landowner fails to respond, Sections 2.92.030 through 2.92.090 describes the processes by which the County may abate the nuisance and can recover costs associated with the abatement. This process includes issuance of a "Notice and Order to Abate" and presentation of the nuisance before both the Nuisance Abatement Board and the Board of Supervisors. The process normally takes several months to complete.

However, Section 2.92.095(c) states that “if the director or his/her designee reasonably determines that there is no responsible person to whom a notice of unsafe condition can be delivered, the director or his/her designee may waive the ten-day notice and proceed immediately with abatement of the unsafe condition, provided that an affidavit is completed documenting the circumstances and reasons why the service of the notice would be futile. Section 2.92.095(G) provides the director with the authority to: “immediately abate any unsafe condition without prior notice to the owner, lessee, agent or other person having charge or control of the property, if the director or designee find and determine that there exists on the property an extremely hazardous unsafe condition that cannot be permitted to exist for ten days. The director shall report to the Board of Supervisors at the first regular meeting after taking action to abate the unsafe condition explaining all actions taken and justifying the decision to proceed immediately without prior notice. “

BACKGROUND, CIRCUMSTANCES AND REASONS WHY SERVICE OF NOTICE IS FUTILE

Indalex performed custom aluminum extrusion, anodizing, and painting at 4555 North Star Way, Modesto until operations ceased in the Spring of 2009. The company filed for bankruptcy protection in 2009, and in 2010 a bankruptcy court in Delaware allowed it to abandon the property at 4555 North Star Avenue. In 2010, the Federal Environmental Protection Agency (USEPA) and California Department of Toxic Substances Control (DTSC) conducted a clean-up on site to abate toxic liquids left on site after the abandonment. The site was fenced and DTSC provided security patrols. Security patrols were removed in late 2010 after the State and Federal warrants expired.

By 2011, independent scavengers had begun dismantling the facility and removing steel and equipment for salvage. None, we believe were authorized by an existing or previous owner of the site. In late October 2011, the scavengers began removing the supporting superstructure of the building.

In November 2011, the Department of Planning and Community Development Building Permits Division began abatement proceedings under Sections 2.92 and 2.93 of the Stanislaus County Code. Section 2.93 of the County Code regulates abatement of Vacant Structures and authorizes the Chief Building Official to conduct the abatement process.

Additionally, the 2010 California Code of Regulations Title 24, 2010 California Building Code Part 2, Volume 1, Chapter 1 and various sections of the 2006 International Property Maintenance Code authorize the Chief Building Official to take enforcement actions regarding unsafe structures and equipment.

Because the property was abandoned through the bankruptcy, there appeared to be no legitimate owner of the site. County Counsel conducted research through the bankruptcy proceedings and provided a list of nine (9) companies and organizations with possible ownership interest. On November 15, 2011, letters demanding abatement

were sent to each of the nine companies. County Counsel received one response from Sun Capital Finance, who declined to take any responsibility for the site.

On December 9, 2011, County Counsel and the Director of Planning and Community Development requested the Stanislaus County Superior Court to issue an Inspection and Abatement Warrant. Judge Mayhew issued the warrant on December 9, 2011 which was valid for 14 days. The Application, Declaration of the Planning Director in support of the Application, Memorandum of Points and Authorities, and the signed warrant are provided as attachments.

By December 12, 2011, most of the steel and wood structures were gone, and what remained on site was mostly loose insulation and debris which was being blown off site and impacting County roadways and neighboring properties. A portion of one two-story office building and storage tanks also remained.

DETERMINATION

Based on the fact that none of the nine companies contacted had responded with an acknowledgement of responsibility for the site, it was the Director's determination that there is no responsible person to whom a notice of unsafe condition can be delivered, and that service of the notice was futile. The Director waived the ten-day notice and directed the Chief Building Official to proceed immediately with summary abatement of the unsafe condition. The Director further found that based on the presence of loose debris and insulation on site, the presence of unsecured vacant structures, that there exists on the property an extremely hazardous unsafe condition that cannot be permitted to exist for ten more days.

ACTIONS TAKEN

On December 7, 2011, the Chief Building Official and a Senior Buyer with the General Services Agency Purchasing Division issued a request for bids to three contractors. The request included removal, sale, complete demolition, and/or permanent disposal, of all items found upon the premises comprising conditions of non-conformity, exclusive of an area that the Department of Environmental Resources (DER) identified as requiring special treatment because of alkaline conditions.

Additionally on December 7, 2011, the Building Permits Division ordered an asbestos survey of the site by Bovee Environmental to verify that clean-up could occur without the need for special treatment of the debris. On December 8, 2011, the results were returned and showed only a small amount of asbestos on the glue of the floor tiles of one small area of the office. This report was forwarded to the San Joaquin Valley Air Pollution Control District and they have said there is no need for any special treatment of the material.

On December 9, 2011, the Building Permits Division contacted ACT Environmental for a cost estimate for clean-up of the area that was excluded from the primary clean-up contract and for handling and disposal of the hazardous waste on site.

Acceptance of the Emergency Abatement Report by the Department of Planning and Community Development, Building Permits Division Regarding a Hazardous and Unsafe Condition that Existed at 4555 North Star Avenue in the Modesto Area

Page 5

Additionally, on December 9, 2011 the Building Permits Division received a Lot Book Guarantee Title Report for the site that included the following liens:

- Current Taxes: 2 payments of \$25,922.36
- Tax Default from 2008/2009/2010/2011: \$253,646.08 (Dec 2011)
- Unknown Supplemental Taxes, CFD Assessments and MID Assessments
- Deed of Trust with JP Morgan Chase Bank as Beneficiary: \$240,000,000
- Second Priority Deed of Trust with US Bank National Association as Beneficiary \$270,000,000

Three bids were received for the primary clean-up and a contract was awarded to Modesto Sand and Gravel on December 12, 2011. Additionally, on December 12, 2011, the Chief Building Official posted the site with a 24-hour notice of execution of warrant and mailed copies to all known interested parties.

On December 13, 2011, the contractor discovered from PG&E that there may still be an active high pressure gas line and other "live" utilities still on site. The Utility Companies had no record of service at 4555 North Star Avenue and instead had a Bangs Avenue address. Underground Service Alert was called and County representatives were on site on December 14, 2011 to evaluate the situation. Staff from the Building Permits Division and from Modesto Sand & Gravel worked diligently with PG&E, MID and AT&T to ensure that these services would be completely shut off or capped.

On December 15, 2011, staff from the Department of Environmental Resources and the Building Permits Division was on site to further verify the locations that may require special treatment because of high acid or alkaline waste material. DER staff sampled newly discovered piles of waste near the paint booth and scheduled a meeting for Monday, December 19, 2011 with the environmental clean-up contractors and other County staff.

The meeting was held on site on December 19, 2011 and DER staff and the potential environmental clean-up contractor tested various piles of debris and other material to ensure that Modesto Sand and Gravel could begin work outside the segregated area without disturbing high acid or alkaline materials or liquids.

On December 20, 2011, DER staff provided verbal assurance that none of the areas outside of the segregated tank areas and near the paint booth showed signs of hazardous waste or high acid or alkaline materials or liquids. The segregated areas were identified on the ground with bright orange paint.

By December 21, 2011, Modesto Sand and Gravel began work to initiate clean-up activities for all non-hazardous waste and material. It was noted that it appeared that a neighboring landowner had pushed some additional brush and debris onto the site to add to the volume of clean-up required.

All refuse and debris had been removed by December 23, 2011. The building remnants had been demolished and the concrete blocks from the building and surrounding wall

had been used to fill the loading dock and other low lying areas. The septic system and grease trap was pumped, collapsed, filled, and removed as necessary.

REMAINING CLEAN-UP REQUIRED

On site, there remain several dip-tanks and storage tanks as well as debris that have tested as potentially hazardous. On December 21, 2011, the California EPA Department of Toxic Substances Control (DTSC) indicated to the County that they would coordinate with Stanislaus County and USEPA to setup a site visit at the Indalex site for either January 4th or 5th, 2012 for the purpose of deciding what additional removal work could be done to mitigate the potential hazards located onsite. Based on what they observed onsite and the assessment work conducted by Stanislaus County, DTSC indicated they could assist with removing the sludge material located at various locations onsite.

On January 5, 2012, the State DTSC and USEPA agreed to finish the clean-up at the Indalex facility. They began sampling on January 12, 2012 to determine what was left out on the site. They agreed to remove all the tanks, clean the dip tanks and have them cut off at grade and filled with concrete. They planned to cap or fill all the secondary containment areas, dispose of the hazardous debris, and do a phase one site assessment (soil borings). This should take care of the remaining issues at the site, and, according to the State and USEPA, could take up to two months to complete.

NEXT STEPS

The Department of Environmental Resources will continue to coordinate with the State DTSC and Federal EPA to finalize clean-up of the tanks and remaining debris.

POLICY ISSUES:

Completion of the Indalex site clean-up supported the Board of Supervisors priorities of providing A Safe Community and A Healthy Community.

STAFFING IMPACTS

Existing staff from the Departments of Planning and Community Development, Sheriff and Environmental Resources, and County Counsel participated in this activity. Contractors were used for the clean-up and asbestos testing. No additional staff was required.

CONTACT PERSONS:

Kirk Ford, Director, Planning and Community Development (209)525-6330
Steve Treat, Chief Building Official, (209)525-6557
Sonya Harrigfeld, Director, Department of Environmental Resources, (209)525-6700
Thomas Boze, Deputy County Counsel, (209)525-6376

Acceptance of the Emergency Abatement Report by the Department of Planning and Community Development, Building Permits Division Regarding a Hazardous and Unsafe Condition that Existed at 4555 North Star Avenue in the Modesto Area
Page 7

ATTACHMENT:

1. Application for Warrant, Declaration of the Planning Director in support of the Application, Memorandum of Points and Authorities, and Warrant.

1 JOHN P. DOERING, County Counsel
2 THOMAS E. BOZE, Deputy County Counsel
3 Bar No. 209790
4 1010 Tenth Street, Suite 6400
5 Modesto, California 95353-0074
6 Telephone: (209) 525-6376

Exempt: Gov. Code §6103

7
8 Attorneys for County of Stanislaus

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF STANISLAUS

11 IN THE MATTER OF THE
12 APPLICATION OF THE COUNTY OF
13 Stanislaus TO ABATE NUISANCE
14 CONDITIONS ON PROPERTY
15 LOCATED AT 4555 NORTH STAR WAY,
16 COUNTY OF STANISLAUS,
17 CALIFORNIA.

Case No. _____

Judge: _____

**APPLICATION FOR INSPECTION AND
ABATEMENT WARRANT;
DECLARATION OF KIRK FORD IN
SUPPORT THEREOF**

(Code of Civil Procedure sections 1822.50-
1822.58.)

18 The COUNTY OF STANISLAUS ("County") hereby applies for an order directed to a
19 County official, commanding him or her to enter upon, conduct an inspection of all property
20 located at 4555 NORTH STAR AVENUE, MODESTO, in the unincorporated area of Stanislaus
21 County, California (the "Property") that is required or authorized by law or regulation relating to
22 building, fire, safety, plumbing, electrical, health or zoning, and to abate all nuisances authorized
23 by law.


24 This application for an inspection and abatement warrant is made pursuant to Title 13
25 (commencing with section 1822.50) of Part 3.5 of the Code of Civil Procedure on the grounds
26 that there is reason to believe that a condition of nonconformity exists with respect to the
27 Property. "[I]n the absence of consent or exigent circumstances, government officials engaged in
28 the abatement of a public nuisance must have a warrant to enter any private property where such

1 entry would invade a constitutionally protected interest." (*Gleaves v. Waters* (1985) 175
2 Cal.App.3d 413, 419.)

3 The County requests that the court authorize entry upon the Property to inspect the
4 Property and to implement emergency nuisance abatement procedures on the Property. The
5 County specifically requests authorization for forcible entry, using reasonable means, if the owner
6 fails to allow permissive entry, and to execute this warrant in the absence of the owner of the
7 Property. This application is based upon the following Declaration In Support Of Application For
8 Inspection Warrant.

9
10 Dated: December 8, 2011

JOHN P. DOERING
County counsel

11
12 By: 
13 THOMAS E. BOZE
Deputy County Counsel

14 Attorneys for County of Stanislaus

15
16
17
18
19
20
21
22
23
24
25
26
27
28

**DECLARATION OF KIRK FORD,
DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT
IN SUPPORT OF APPLICATION FOR ABATEMENT WARRANT**

I KIRK FORD, declare as follows

1. I am employed by the County of Stanislaus ("County") as Director of Planning and Community Development. In that capacity, my duties include abating violations of the Stanislaus County Code as pertains to nuisances, the 2010 California Building Standards Code (including, the International Property Maintenance Code, the 2010 California Electric Code, and the 2010 California Plumbing Code) and such other statutes and codes that pertain to blight within the County. My duties also include acting as Chief Building Official or designating Chief Building Official duties to staff. I have designated Steve Treat, an employee of the Department of Planning and Community Development as the County's Chief Building Official. The matters stated herein are true of my own personal knowledge, except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.
2. This application pertains to the property located at 4555 NORTH STAR AVENUE, MODESTO, California. The noted property is located in the unincorporated portion of Stanislaus County. As of today's date, there is no known owner of the property.
3. Indalex West Inc., owned and operated an aluminum extrusion manufacturing plant on the property. In June 2008, the Regional Water Quality Control Board (RWQCB) notified Indalex that elevated levels of TCE had been detected in the groundwater at the site. On or about July 30, 2009, the RWQCB issued an order to Indalex requesting submittal of a groundwater report on, or before, September 30, 2009. In July of 2008, the Indalex facility ceased operations.
4. On March 20, 2009, Indalex filed for Chapter 11 (reorganization). The Chapter 11 action was converted to Chapter 7 (liquidation) on October 14, 2009, on the motion of the creditors. The action is on file in the U.S. Bankruptcy Court, District of Delaware, titled In Re: IH 1, Inc., et al., (fka Indalex Holdings Finance, Inc.) Case No., 09-10982 (PJW). The

1 debtors are represented by Ryan M. Bartley Young Conaway Stargatt & Taylor, LLP,
2 address: The Brandywine Building 1000 West Street 17th Fl. Wilmington, DE 19801,
3 phone (302) 571-6600 bankfilings@ycst.com. The trustee is George L. Miller, address
4 1628 John F. Kennedy Blvd., Philadelphia, PA 19103-2110; phone (215) 561-0950,
5 represented by Dillworth Paxton LLP, One Custom House, Suite 500, 704 King Street,
6 Wilmington, DE 19801.

7 5. On or about March 17, 2010, the judge in the Bankruptcy Court granted the Trustee's
8 Motion for Abandonment of the property to debtor under 11 U.S.C §554(a). Under § 554
9 assets abandoned by the trustee are excluded from the Debtor's estate and subject to
10 creditor's actions outside of bankruptcy. However, George L. Miller, the Trustee failed to
11 inform the court that the property contained hazardous materials or that the RWQCB had
12 detected TCE in the groundwater. Under *Midlantic National Bank v. New Jersey*
13 *Department of Environmental Protection*, 474 U.S. 494 (1986), the Trustee should have
14 requested the bankruptcy court to set aside funds from the bankruptcy estate to secure the
15 property and for environmental clean up.

16 6. In August of 2010, a release of hazardous chemicals occurred when a pump servicing the
17 storage tanks for the waste treatment system for the property started leaking and eventually
18 spilled into the northern parking lot area. In September 2010, Cal EPA, Fed EPA and
19 DTSCER inspect the site and began a clean up. The DTSC contractor cleaned up
20 approximately 1,900 gallons of waste. The Federal EPA was unable to locate a
21 responsible landowner or any company that would take responsibility for the site.

22 7. On or about September 15, 2010, the County's Nuisance Abatement performed weed
23 abatement on the property at a cost of approximately \$2,000.

24 8. As of December 23, 2010, the building was boarded up and secure, with 24-hour security
25 provided by the State. However, the security personnel were removed soon thereafter.

26 9. During the summer of 2011, several complaints were filed with the County from
27 neighboring landowners who complained metal scavengers were dismantling the structure
28 and removing steel and equipment from the facility.

- 1 10. Staff from the County Department of Planning and Community Development, Department
2 of Environmental Resources and the Sheriff's Office determined these complaints were
3 valid and scavenging activities were underway.
- 4 11. However, the Sheriff determined that because there was no landowner of record to come
5 forward, that there was no "victim" and as such, he was unable to arrest any of the
6 scavengers for burglary, grand theft or other violations of the criminal code.
- 7 12. Starting on October 12, 2011, the Modesto Bee ran a series of articles in print and online
8 editions of their paper reporting on the scavenging and metal theft occurring at the
9 property, some of which were on the front page of the printed paper. Subsequently, the
10 number of scavengers and the scavenging activities increased so dramatically that by the
11 Thanksgiving weekend of November 2011, virtually all of the metal in the 125,000+/-
12 square foot primary building had been removed. The scavenging story was picked up by
13 KCRA Sacramento on Nov 28, 2011, who published a story with pictures of the empty lot
14 and the remaining wooden structures and posted a video of the story on-line.
- 15 13. As a result of the scavenging the safety of the facility deteriorated so that it was unsafe to
16 enter and in early November 2011, the Department of Planning and Community
17 Development, through the Chief Building Official, red-tagged the building and began
18 nuisance abatement proceedings under Section 2.93 of County Code. During this time the
19 County sought an estimate of the costs to remove the structure and clean up the property.
20 The estimate was approximately \$150,000 to \$200,000.
- 21 14. Because the property was abandoned by the Bankruptcy Trustee, there is no party who has
22 a current possessory interest in the property. County Counsel researched the chain of title,
23 and reviewed the bankruptcy filings and provided staff a list of eight (8) parties with
24 possible interest in the property. On November 15, 2011, letters demanding abatement
25 were sent to each of the eight parties. The letter is attached hereto as exhibit "1". Five of
26 the eight potentially interested parties are the debtor corporations (IH1, IH2, IH3, IH4, and
27 IH5, fka Indalex Holdings Finance, Inc.), who as a result of the Chapter 7 proceedings,
28 longer exist and have not responded. County Counsel has been in contact with the

1 attorneys for two of the potentially interested parties who may have creditor interests, (Sun
2 Indalex Finance, Inc., and Sun Capital Partners Inc.), but they both disclaimed any
3 “ownership” of the property. The last party is the Bankruptcy Trustee and based on
4 previous correspondence wherein he cited to the March 2010, abandonment we do not
5 expect him to claim any interest in property for the bankruptcy estate.

6 15. Since November 15, 2011, additional complaints regarding the property have been
7 received by the County and the San Joaquin Valley Air Pollution Control District
8 concerning scavengers, and the excessive debris and garbage on the site. The complaints
9 include concerns regarding public health and safety related to airborne particles from the
10 debris and insulation blowing off-site onto adjacent properties.

11 16. I have inspected the site on several occasions including most recently on November 28,
12 2011, and have observed that all of the fencing has been removed, damaged and
13 uninhabitable structures remain on the site and loose insulation and debris strewn all over
14 the site some of which has blown into the County road rights of way and to adjacent
15 properties.

16 17. I have also witnessed scavengers continuing to trespass on the property for the purpose of
17 removing materials.

18 18. Stanislaus County Code §2.92.095 provides the procedures the County may take to
19 summarily abate any unsafe conditions”, as defined. This section also provides that notice
20 of the unsafe condition may be waived and the County may proceed to abate the unsafe
21 condition, “[i]f the director or his/her designee reasonably determines that there is no
22 responsible person to whom a notice of unsafe condition can be delivered... provided that
23 an affidavit is completed documenting the circumstances and reasons why the service of
24 the notice would be futile.”

25 19. Based on the fact that none of the potentially interested parties have responded with an
26 acknowledgement of responsibility for the site, and that County Counsel has advised that
27 none of the potentially interested parties have any apparent legal duty to do so, it is my
28 determination that there is no responsible person to whom a notice of unsafe condition can

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

be delivered, and that service of the notice is futile.

20. I further find that based on the presence of loose debris and insulation on site, the presence of unsecured vacant structures on site, and the lack of security to prevent access to the site by the general public, that there exists on the property a condition that is extremely hazardous and unsafe constituting an "unsafe condition" as that term is defined in Stanislaus County Code §2.92.095, subparagraph A, which condition cannot be permitted to exist for ten more days.

21. It is conceivable that the clean-up effort may take longer than 14 days depending upon the results of hazardous materials testing and/or asbestos testing, and if necessary, the County will present the Court with a request for additional time pursuant to Code of Civil Procedure §1822.55.

22. Attached hereto are copies of the following:

- 1. Letter dated November 15, 2011 from Denny Ferriera;
- 2. A map depicting an aerial photograph of the property;
- 3. Photographs depicting current state of the property as of December 1, 2011
- 4. Selected Articles from the Modesto Bee

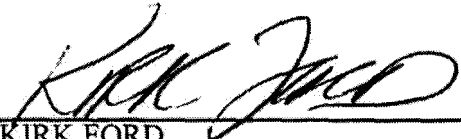
WHEREFORE, I respectfully request issuance of an inspection and abatement warrant pursuant to Code of Civil Procedure Section 1822.50 et seq., to permit an inspection and investigation of the premises named above, as set forth fully in the inspection and abatement warrant, and to authorize abatement between the hours of 8:00 a.m. and 6:00 p.m. A request for Inspection and Abatement Warrant in absence of the owner or occupant pursuant to Code of Civil Procedure Section 1822.56 is hereby made.

/ Signature follows

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: December 8, 2011


KIRK FORD,
Director of Planning and Community Development

SUBSCRIBED and SWORN before me this day ____ month of _____, 2011 in Modesto, County of Stanislaus, California.

Probable cause found for issuance of Inspection and Abatement warrant.

JUDGE OF THE SUPERIOR COURT



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

Building Permits Division

1010 10th Street, Suite 3400, Modesto, CA 95354-0847
Phone: 209.525.6557
Fax: 209.525.7759

November 15, 2011

CERTIFIED MAIL

IH1, IH2, IH3, IH4, IH5
75 Tri-State International, Suite 450
Lincolnshire, IL 60069

Ryan M Bartley, Young Conway Stargatt & Taylor, LLP.
1000 West St 17th Floor
Willmington, DE 19801

Sun Indalex Finance, LLC
c/o Corporation Trust Center
1209 Orange Street
Willmington, DE 19801

Sun Indalex Finance, LLC
5200 Town Center Circle Suite 600
Boca Raton, FL 33486

CT Corporation System
c/o 1200 South Pine Island Road
Plantation, FL 33324

George L. Miller, Trustee
1628 John F. Kennedy Blvd
Philadelphia, PA 19103-2110

Anne M. Aaronson, Dilworth Paxon, LLP
One Customs House, Suite 500
704 Kings Street
Willimington, DE 19801

Sun Capital Partners, INC.
5200 Town Center Circle, Suite 600
Boca Raton, FL 33486

exhibit 7

Sun Capital Partners, INC.
c/o CT Corporation System
818 W. Seventh Street
Los Angeles, CA 90017

Sun Capital Partners, INC.
c/o CT Corporation System
1200 South Pine Island Road
Plantation, FL 33324

SUBJECT: 4555 North Star
APN#: 046-011-002

An inspection was made on the Indalex West Inc. building located at 4555 North Star, Modesto, CA, by a representative of the Stanislaus County Building Permits Division on October 20, 2011.

The conditions found do not meet the minimum health and safety code requirements as set forth in the International Property Maintenance Code, California Plumbing and Mechanical Codes and the California Electrical Code, which are all portions of Title 16 of the Stanislaus County Code.

Portions of the existing structure and equipment are a danger to human life and the public welfare. The structure is not secured against entry and is not being maintained in accordance to the minimum standards set forth in the code

The building was vacant, posted as "UNSAFE TO OCCUPY". A reinspection will be made in thirty (30) days to determine if corrections have been made on the above. For more specific details or further information, please contact this office at (209) 525-6557.

Sincerely,


Denny Ferreira,
Building Inspector III

cc: Kirk Ford, Tom Boze
File:Case # DAD 2011-00009



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

Building Permits Division

1010 10th Street, Suite 3400, Modesto, CA 95354-0847
Phone: 209.525.6557
Fax: 209.525.7759

November 7, 2011

Indalex West Inc
18111 Railroad St
City of Industry, CA, 91748

SUBJECT: 4555 North Star, Modesto, CA 95356
APN#: 046-011-002

An inspection was made of your property located at 4555 North Star, Modesto, by representatives of the Stanislaus County Building Inspection Division on October 20, 2011.

The conditions found do not meet the minimum health and safety code requirements as set forth in the 2006 International Property Maintenance Code, California Plumbing, California Mechanical Codes and the National Electrical Code, which are portions of Title 16 of the Stanislaus County Code.

Portions of the existing structure and equipment are a danger to human life and the public welfare. The structure is not secured against entry and is not being maintained in accordance to the minimum standards set forth in the code.

The building was vacant, posted as "UNSAFE TO OCCUPY", and all utilities have been ordered disconnected. A reinspection will be made in thirty (30) days to determine if corrections have been made on the above. For more specific details or further information, please contact this office at (209) 525-6557.

Sincerely,

A handwritten signature in black ink, appearing to read "Denny Ferreira", is written over a horizontal line.

Denny Ferreira
Building Inspector III

File:DAD2011-00009

FIRST LETTER ADDRESS 2

602
100

650

4550

4500

4412
4400

Bangs Ave

North Star Wy

4535

4335

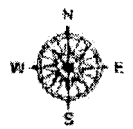


Exhibit 2

Indalex Inc 4555 North Star



Printed: Dec 07, 2011

4555 North Star Way as of 12/01/2011



1 of 9



2 of 9

4553 North Star way as of 12/01/11

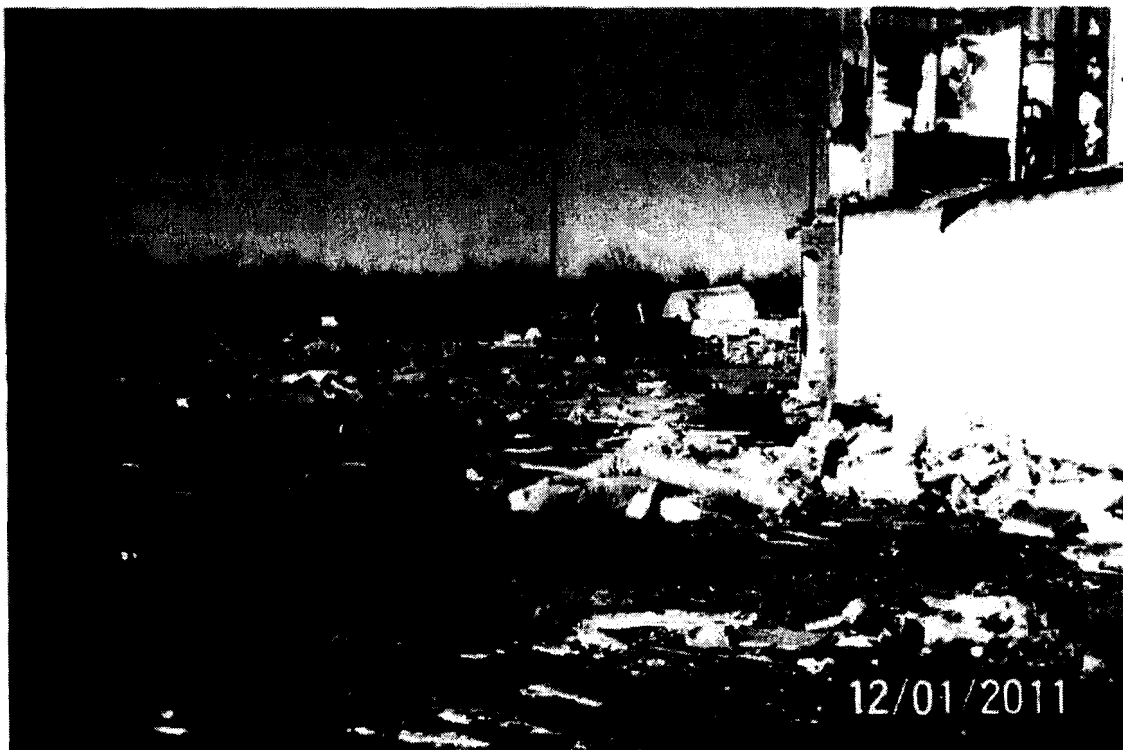


3089



4089

4/555 North Star Way as of 12/01/11

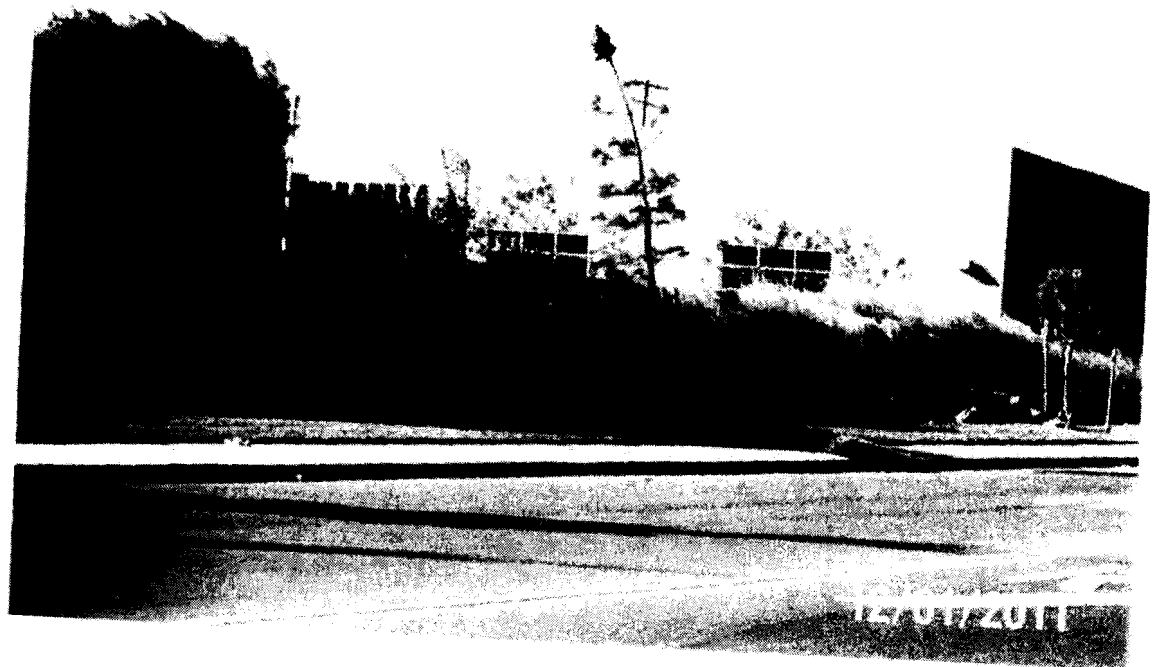


5 of 9



6 of 9

4555 North Star Way as of 12/01/01

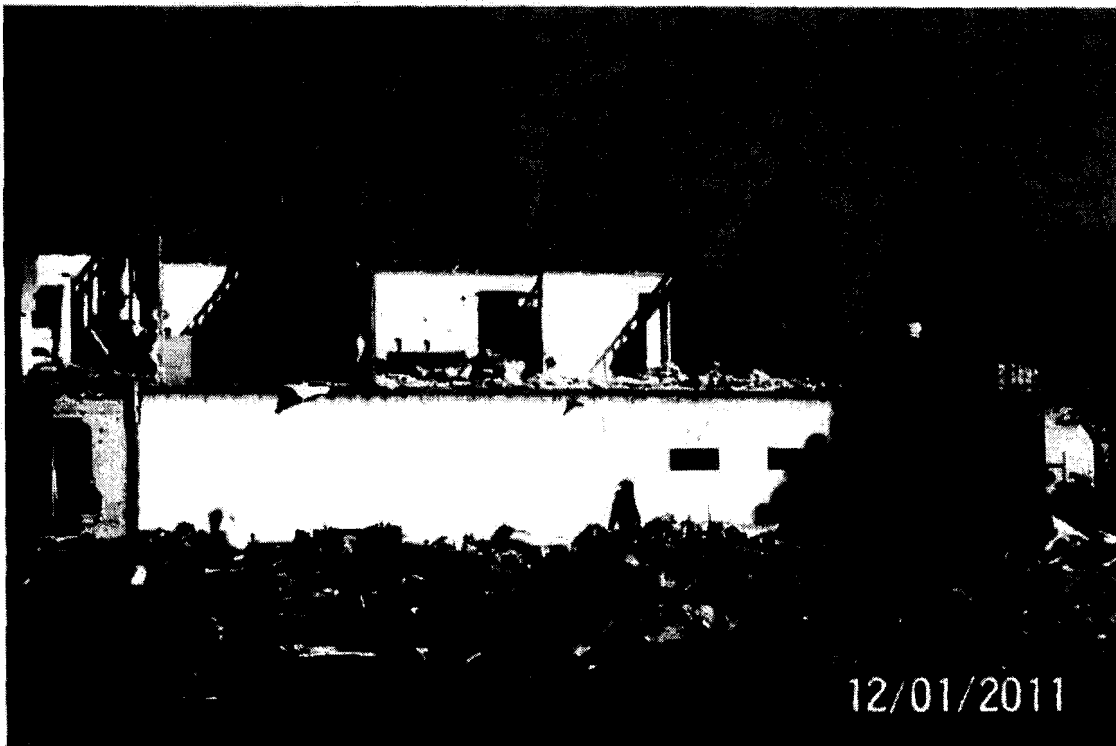


7 of 9



8 of 9

4555 North Star Way as of 12/01/11



12/01/2011

9 of 9
ID

The Modesto Bee

modbee.com

[Print This Article](#)

Posted on Tue, Oct. 11, 2011

Victimless crime? Sheriff's hands tied as scavengers strip abandoned plant

By J.N. Sbranti jsbranti@modbee.com

last updated: October 12, 2011 12:23:18 PM

A dozen or so scrap metal scavengers "go to work" every day at an abandoned north Modesto industrial building, ripping the place apart to harvest the tin, iron, steel and other recyclables for quick cash.

No one stops them.

Because nobody admits owning the 9-acre property, law enforcement officials say there is no victim, so no one can be prosecuted.

The Indalex aluminum manufacturing facility on North Star Way off Bangs Avenue used to be a profitable business, employing 154 unionized workers. Until 2008, it created doors, windows, electrical appliances and other aluminum products, primarily for the construction industry.

But the corporation went bankrupt when the building industry collapsed.

Indalex liquidated its valuable assets, but it abandoned its Modesto property along with 45,000 gallons of hazardous waste — including sodium hydroxide and sulfuric acid.

Last fall, the U.S. Environmental Protection Agency spent \$500,000 in taxpayer funds to clean up Indalex's toxic mess, then fenced off the 125,000-square-foot building and left.

Scrapping crews descended.

"I started scrapping here maybe eight months ago," said Michael Bennett, who uses a blow torch to melt metal pieces off the walls and roof. "I do it to feed my family. I've got two kids."

Bennett said the first guys who ripped into the building got rich removing perhaps \$100,000 worth of copper.

Far less profitable metals remain, but plenty of folks willingly help themselves to what's left.

"We have an average of 10 to 15 guys a day coming out here," said Rueben Zuiderduin, an articulate young man who said he is a trained chef. "The only reason I'm doing this is because I'm out of work."

Zuiderduin labored with a torch much of Monday to dismantle an iron grate, which he reportedly sold for a disappointing \$69. During the last month, he said he hasn't made more than \$1,000 off Indalex scrap.

None of the dismantlers were hiding their activities when The Bee visited the site.

Some reported earning an OK living off the building, and they don't think they're doing anything wrong.

"I'm scrapping it out for my Uncle Sam," said one shirtless man who wouldn't reveal his name. "If Uncle Sam sent people here to demolish this place, they'd be in full hazmat suits and it would cost a fortune."

After spending the day ripping apart the building's siding or other metal pieces, the man said he trucks his cargo to "any number of scrap metal places" that pay him \$100 to \$150 for his haul.

"I treat it like a job. I come in during the morning, work all day, haul off, cash in and go home," the man said. "Nothing here is free. It takes a lot of work to do this."

Zuiderduin also sees his efforts as noble.

"It's a hazardous eyesore, and nobody's doing anything about it but us," Zuiderduin said. "Everybody is happy we're doing this. The companies across the way, the police and the sheriff are fine with this."

He's wrong about that.

Stanislaus County Sheriff Adam Christianson said he has met with angry owners of neighboring properties about the demolition at Indalex, but there's little he can do.



BART AH YOU/bahyou@modbee.com - A man who didn't want to give his name disassembles the old Indalex Inc. aluminum plant in north Modesto for scrap metal, says he can make up to \$150 a day. October 10, 2011 - -

Exhibit 4 P1

"They're taking property that doesn't belong to them. That's a crime, but without a victim, I cannot arrest them and the district attorney cannot prosecute them," Christianson explained.

There's no victim because no one is sure who owns the property.

Plenty of government officials are trying to figure that out, including the EPA, which got stuck with the cleanup bill, Stanislaus County's tax collector, whose agency is owed more than \$245,000 in unpaid property taxes, and county officials who want to rectify a litany of code violations.

"How is it fair to the taxpayers for a company to abandon its property, abdicating its responsibility, liability and accountability?" Christianson asked.

Thomas Boze, one of Stanislaus County's attorneys, is trying to track down the corporate culprits. Boze pieced together this timeline:

- **July 2008:** Indalex closes its Modesto facility.
- **March 2009:** Indalex files for Chapter 11 bankruptcy protection so it can reorganize.
- **July 2009:** Indalex sells its assets to the Sapa Group, an international manufacturer based in Sweden.
- **October 2009:** Indalex files for Chapter 7 bankruptcy liquidation.
- **March 2010:** Indalex's bankruptcy trust abandons the Modesto facility.
- **Sometime in 2010:** Indalex's chief executive officer, Timothy Stubbs, is named president and CEO of the Sapa Group.

Boze wants to determine whether Indalex, the Sapa Group or individual corporate executives can be held financially and legally responsible for the building and debts owed to taxpayers.

But getting a Swedish corporation to care about a Modesto problem isn't easy, Boze said.

The Sapa Group did not respond to e-mails sent by The Bee seeking comment.

Boze said one possible option might be for the county to auction off the building for back taxes. Indalex — or whoever — has not paid property taxes since 2008. It already is in default for \$245,085.35, and an additional \$77,000 in taxes is coming due.

"I think the property is worth about \$2 million," said Boze, who never has visited the place.

The property's value was assessed at more than \$6.7 million in 2010, but a whole lot of building has disappeared since then.

Bee staff writer J.N. Sbranti can be reached at jnsbranti@modbee.com or (209) 578-2196.

This article is protected by copyright and should not be printed or distributed for anything except personal use.
Copyright © 2011, The Modesto Bee, 1325 H St., Modesto, CA 95354
Phone: (209) 578-2000.

Exhibit 4 p. 2

1 JOHN P. DOERING, County Counsel
2 THOMAS E. BOZE, Deputy County Counsel
3 Bar No. 209790
4 1010 Tenth Street, Suite 6400
5 Modesto, California 95353-0074
6 Telephone: (209) 525-6376
7 Fax No. (209) 525-4473
8 Attorneys for County of Stanislaus

Exempt: Gov. Code §6103

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF STANISLAUS

11 IN THE MATTER OF THE
12 APPLICATION OF THE COUNTY OF
13 STANISLAUS TO ABATE NUISANCE
14 CONDITIONS ON PROPERTY
15 LOCATED AT 4555 NORTH STAR WAY,
16 COUNTY OF STANISLAUS,
17 CALIFORNIA.

Case No. _____

Judge: _____

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION FOR INSPECTION AND
ABATEMENT WARRANT**

(Code of Civil Procedure sections 1822.50-
1822.57.)

INTRODUCTION

18 The COUNTY OF STANISLAUS (hereinafter "County") seeks an Inspection and
19 Abatement Warrant to permit entry upon the property located at 4555 NORTH STAR WAY,
20 California (the "Subject Property") by any Officer of the County of Stanislaus and any authorized
21 contractor acting as an agent for the County.

22 The Inspection and Abatement Warrant is sought in order to abate nuisance conditions and
23 activities upon the the Subject Property in violation of the Stanislaus County Code.

STATEMENT OF FACTS

25 Throughout the past several months, various officials from the County of Stanislaus have
26 observed the following nuisance conditions and activities in violation of the Stanislaus County
27 Ordinance Code occurring upon the Subject Property:

- 1 a) Structures that are not secured from access by the general public. This is a violation of
2 §2.92.095 of the Stanislaus County Code.
- 3 b) Open or abandoned excavation (mining shaft, pit, well, septic tank, cesspool or any
4 other open or abandoned excavation) determined by the department director to be in
5 violation of Part 9.5 (commencing with Section 115700) of the California Health and
6 Safety Code. This is a violation of §2.92.095 of the Stanislaus County Code.
- 7 c) The accumulation or storage of waste, refuse, rubbish or debris on property longer
8 than one week, and/or the failure to regularly remove of such material in a manner
9 provided for by law, and/or the failure to properly dispose of such material as required
10 or allowed under applicable laws and regulations. This is a violation of §2.92.095 of
11 the Stanislaus County Code.
- 12 d) Other hazardous conditions that are deemed by the department director to constitute a
13 substantial and imminent threat or risk to the health, safety and welfare of any person
14 or domestic animal. This is a violation of §2.92.095 of the Stanislaus County Code.
- 15 e) Buildings and other structures (1) that is lacking habitual presence of persons who
16 have a legal right to be on the premises or at which substantially all lawful business
17 operations or residential occupancy has ceased; and (2) whose doors, windows or
18 other openings are broken, missing or in such disrepair so as to allow uncontrolled
19 access to the interior or exposure to the elements. This is a violation of §2.93.020 of
20 the Stanislaus County Code.
- 21 f) Unlawful maintenance of property or permitting of property to be maintained in such
22 a manner that one or more of the following conditions are found to exist:
- 23 1. Any vacant structure that is not secured by boarding in compliance with this
24 chapter
- 25 2. Any vacant structure whose interior contains waste, garbage, trash or debris;
- 26 3. Any vacant structure whose premises contain waste, garbage, debris, rubbish,
27 or excessive vegetation;
- 28 4. Any vacant structure whose doors, windows, or other openings are secured by

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

boarding in compliance with this chapter, at any time at which there is no current and valid boarding permit as required by this chapter.

This is a violation of §2.93.040 of the Stanislaus County Code.

- g) Failure to secure a vacant structure. This is a violation of §2.93.050 and §2.93.070 of the Stanislaus County Code.
- h) Unsafe structures found to be dangerous to the life, health, property or safety of the public. This is a violation of §16.25 Stanislaus County Code and § 108.1.1 Unsafe Structures of the 2006 International Property Maintenance Code.
- i) Uses or conditions of Property that is dangerous to human life, unsafe or detrimental to the public health or safety. This is a violation of §2.92.010 of the Stanislaus County Code.
- j) Unlawful accumulations of debris, refuse and rubbish. This is a violation of §9.04.020 of the Stanislaus County Code.
- k) Failure to remove all refuse from premises on a weekly basis. This is a violation of §9.04.040 of the Stanislaus County Code.
- l) Lack of proper/sufficient containers. This is a violation of §9.04.070 of the Stanislaus County Code.
- m) Unlawful accumulations of grass, weeds, and rank growths on the property and adjacent sidewalks. This is a violation of §9.20.040 of the Stanislaus County Code.

In early November 2011, the Department of Planning and Community Development, through the Chief Building Official, red-tagged the building and began nuisance abatement proceedings under Section 2.93 of County Code. On November 15, 2011, letters demanding abatement were sent to each of the eight parties thought to have some ownership interest in the property. Return receipt cards were received from only three of the eight, and none have come forward to accept responsibility for the property.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ARGUMENT

I.

THIS COURT IS AUTHORIZED BY CODE OF CIVIL PROCEDURE SECTIONS 1822.50 THROUGH 1822.57 TO ISSUE AN INSPECTION AND ABATEMENT WARRANT.

Sections 1822.50 to 1822.57 of the Code of Civil Procedure govern the issuance, execution and enforcement of inspection and abatement warrants.

This Court is authorized by Code of Civil Procedure section 1822.50 to issue the County an inspection and abatement warrant. Section 1822.51 requires the issuance of the warrant to be, upon cause, supported by an affidavit particularly describing the place, dwelling, structure or premises to be searched and the purpose for which the search is made, and stating that the consent to the search has been sought and refused. Under section 1822.52, cause exists if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the Subject Property, or there is reason to believe that a condition of non-conformity exists with respect to the property.

If the Court is satisfied that cause exists, the Court shall issue the warrant, particularly describing the dwelling, structures or premises, or vehicles to be inspected and designating on the warrant the purpose and limitations of inspection as required by law. CCP section 1822.54. A warrant authorizing entry by force may be issued under CCP section 1822.56 where sufficient facts are shown to create a reasonable suspicion of building or related code violations which pose an immediate threat to health or safety.

II.

THERE IS REASON TO BELIEVE THAT A CONDITION OF NON-CONFORMITY EXISTS WITH RESPECT TO THE PROPERTY, THEREFORE, CAUSE EXISTS FOR ISSUING AN INSPECTION AND ABATEMENT WARRANT.

Under Code of Civil Procedure section 1822.52, cause exists for the issuance of the warrant if “ . . . there is reason to believe that a condition of nonconformity exists with respect to

1 the particular place, dwelling, structure, premises, or vehicle.”

2 As is more fully detailed in the Declaration of Kirk Ford, the Planning and Community
3 Development Director of the County of Stanislaus and other staff inspected the Subject Property
4 and found multiple nuisance conditions and activities in violation of the Stanislaus County Code.
5 During the summer of 2011, several complaints were filed with the County from neighboring
6 landowners who complained metal scavengers were dismantling the structure and removing steel
7 and equipment from the facility. Staff from the County Department of Planning and Community
8 Development, Department of Environmental Resources and the Sheriff’s Office determined these
9 complaints were valid and scavenging activities were underway. However, the Sheriff determined
10 that because there was no landowner of record to come forward, that there was no “victim” and as
11 such, he was unable to arrest any of the scavengers for burglary, grand theft or other violations of
12 the criminal code. As a result of the scavenging the safety of the facility deteriorated so that it was
13 unsafe to enter and in early November 2011, the Department of Planning and Community
14 Development, through the Chief Building Official, red-tagged the building and began nuisance
15 abatement proceedings under Section 2.93 of County Code. During this time the County sought
16 an estimate of the costs to remove the structure and clean up the property. The estimate was
17 approximately \$150,000 to \$200,000.

18 Because the property was abandoned by the Bankruptcy Trustee, there is no party who has
19 a current possessory interest in the property. County Counsel researched the chain of title, and
20 reviewed the bankruptcy filings and provided staff a list of eight (8) parties with possible interest
21 in the property. On November 15, 2011, letters demanding abatement were sent to each of the
22 eight parties. The letter is attached hereto to Mr. Ford’s Declaration as exhibit “2”. Five of the
23 eight potentially interested parties are the debtor corporations (IH1, IH2, IH3, IH4, and IH5, fka
24 Indalex Holdings Finance, Inc.), who as a result of the Chapter 7 proceedings, no longer exist and
25 have not responded. County Counsel has been in contact with the attorneys for two of the
26 potentially interested parties who may have creditor interests, (Sun Indalex Finance, Inc., and Sun
27 Capital Partners Inc.), but they both disclaimed any “ownership” of the property. The last party is
28 the Bankruptcy Trustee and based on previous correspondence wherein he cited to the March

1 2010, abandonment we do not expect him to claim any interest in property for the bankruptcy
2 estate.

3 Since November 15, 2011, additional complaints regarding the property have been
4 received by the County and the San Joaquin Valley Air Pollution Control District concerning
5 scavengers, and the excessive debris and garbage on the site. The complaints include concerns
6 regarding public health and safety related to airborne particles from the debris and insulation
7 blowing off-site onto adjacent properties.

8 Accordingly, there is ample evidence to support a finding by this Court that there is reason
9 to believe that conditions of non-conformity exist upon the Subject Property.

10 **III.**

11 **ABSENT CONSENT TO ENTER PRIVATE PROPERTY FOR PURPOSES OF**
12 **ABATEMENT, A WARRANT IS REQUIRED TO BE ISSUED BY THE COURT**
13 **AUTHORIZING ENTRY AND ABATEMENT.**

14 In addition to cause, Code of Civil Procedure Section 1822.51 requires that "consent to
15 inspect has been sought and refused" or that "factors or circumstances reasonably justifying the
16 failure to seek such consent." As the declaration of Officer Lial shows, the County has sought
17 permission from the owner to enter, however, the County's request has been ignored.
18 Specifically, on November 15, 2011, letters demanding abatement were sent to each of the eight
19 parties. Five of the eight potentially interested parties are the debtor corporations (IH1, IH2, IH3,
20 IH4, and IH5, fka Indalex Holdings Finance, Inc.), who as a result of the Chapter 7 proceedings,
21 no longer exist and have not responded. County Counsel has been in contact with the attorneys
22 for two of the potentially interested parties who may have creditor interests, (Sun Indalex
23 Finance, Inc., and Sun Capital Partners Inc.), but they both disclaimed any "ownership" of the
24 property. The last party is the Bankruptcy Trustee and based on previous correspondence
25 wherein he cited to the March 2010, abandonment we do not expect him to claim any interest in
26 property for the bankruptcy estate.

27 As of the date of this filing, none of the potentially interested parties have
28 responded with an acknowledgement of responsibility for the site and none of the

1 potentially interested parties appear to have any apparent legal duty to do so. It is
2 apparent that there is no responsible person to whom a notice of unsafe condition can be
3 delivered, and service of the notice is futile. Therefore, an inspection and abatement
4 warrant is necessary in order to gain access to the Subject Property to abate the nuisance
5 conditions.

6 **IV.**

7 **THE APPLICATION IS SUPPORTED BY AN AFFIDAVIT IN CONFORMANCE**
8 **WITH CODE OF CIVIL PROCEDURE SECTION 1822.51.**


9 As is required by Code of Civil Procedure section 1822.51 the County has filed
10 concurrently with this memorandum the Declaration of Planning and Community
11 Development Director Kirk Ford in support of the County's Application for Inspection
12 and Abatement Warrant. Mr. Ford's declaration is made under oath and particularly
13 describes the Subject Property, the purpose for the search, and states that consent has been
14 sought.

15 **CONCLUSION**

16 All the requirements for the issuance of an inspection and abatement warrant
17 have been met in this case. Accordingly, the County respectfully requests that this Court
18 issue the inspection and abatement warrant filed concurrently herewith.

19 Dated: December 8, 2011

JOHN P. DOERING
County Counsel

20
21
22 By: 
THOMAS E. BOZE
Deputy County Counsel

23
24 Attorneys for County of Stanislaus

25
26
27
28



24 HOUR NOTICE OF EXECUTION OF WARRANT

Pursuant to Code of Civil Procedure 1822.56, this notice was posted at 1:30 p.m., on December 12, 2011. Date of Execution: December 13, 2011.

IN RE: 4555 NORTH STAR WAY, MODESTO, CA 95356

NOTICE IS HEREBY GIVEN that on December 9, 2011 the County of Stanislaus was issued a warrant by the Stanislaus County Superior Court for the purpose of conducting an inspection and abatement of nuisance conditions and violations of Stanislaus County Code upon this property.

The warrant was requested and issued because proof, by declaration, having been this day made before me by Kirk Ford, Director of Planning and Community Development for the County of Stanislaus there is reason to believe nuisance conditions ordered to be abated, have yet to be abated. The County of Stanislaus having sought and been unable to obtain permission from the owner to enter the Property.

STANISLAUS COUNTY WILL ENTER THIS PROPERTY ON DECEMBER 13, 2011 AT HOUR OF 8:00 A.M. AND 6:00 P.M., to conduct an inspection and abatement, and everyday thereafter until the nuisance conditions are abated; or, until the expiration of the warrant on DECEMBER 23,2011 (Pursuant to Section 1855.57 of the California Code of Civil Procedure).

Abatement will include the removal, sale, complete demolition, and/or permanent disposal, of all items found upon the premises comprising conditions of non-conformity.

Any costs incurred by Stanislaus County to abate conditions of non-conformity will be charged to the owner(s) and, if not paid, a lien for those costs will be recorded against the property.

You have the right to be present during the execution of the warrant, but are not required to be present. *Any person who willfully refuses to permit an inspection and abatement authorized by warrant is guilty of a misdemeanor pursuant to section 1822.57 of the California Code of Civil Procedure.*

If you have any questions regarding this Notice you may call the County of Stanislaus, Planning & Community Development Department, Building Division at (209) 525-6557.

Steve Treat
Chief Building Official
Stanislaus County

1 JOHN P. DOERING, County Counsel
2 THOMAS E. BOZE, Deputy County Counsel
3 Bar No. 209790
4 1010 Tenth Street, Suite 6400
5 Modesto, California 95353-0074
6 Telephone: (209) 525-6376

Exempt: Gov. Code §6103

7
8 Attorneys for County of Stanislaus

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF STANISLAUS

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

IN THE MATTER OF THE
APPLICATION OF THE COUNTY OF
STANISLAUS TO ABATE NUISANCE
CONDITIONS ON PROPERTY
LOCATED AT 4555 NORTH STAR WAY,
MODESTO, COUNTY OF STANISLAUS,
CALIFORNIA.

Case No. _____

Judge: _____

**INSPECTION AND ABATEMENT
WARRANT**

(Code of Civil Procedure sections 1822.50-
1822.57.)

The People of the State of California to the officers and employees of Stanislaus County, including the Department of Public Works, Department of Environmental Resources, Department of Planning and Community Development, Law Enforcement Officers, and any consultant or contractor so authorized by the County of Stanislaus to carry out the purposes of this Inspection and Abatement Warrant:

Proof, by declaration, having been this day made before me by Kirk Ford, Director of Planning and Community Development for the County of Stanislaus, that there is cause for the issuance of an inspection warrant and abatement warrant, as set forth in the declaration which is made a part hereof as if fully set forth herein, and:

The County of Stanislaus having sought and been unable to obtain permission from the owner to enter the Property:

////

1 THEREFORE, YOU ARE AUTHORIZED TO INSPECT, INVESTIGATE, SEARCH,
2 AND ABATE, WHICH INSPECTION SHALL INCLUDE the observation of physical
3 conditions or processes, taking of photographs, conducting of any tests or sampling, and
4 questioning of or conferring with persons present on the property privately to obtain information
5 bearing on whether the violations of State and/or County Ordinance Code exist; inspection
6 personnel shall not interfere with the property owner(s)' observation of such investigation, tests
7 or sampling nor with like sampling by the property owner if he/she so desires;

8 WHICH ABATEMENT SHALL INCLUDE the removal, sale, or donation, complete
9 demolition, and/or permanent disposal, of all items comprising the following conditions of non-
10 conformity found upon the premises:

- 11 a) Any structure that is not secured from access by the general public. This is a violation
12 of §2.92.095 of the Stanislaus County Code.
- 13 b) Any open or abandoned excavation (mining shaft, pit, well, septic tank, cesspool or
14 any other open or abandoned excavation) determined by the department director to be
15 in violation of Part 9.5 (commencing with Section 115700) of the California Health
16 and Safety Code. This is a violation of §2.92.095 of the Stanislaus County Code.
- 17 c) The accumulation or storage of waste, refuse, rubbish or debris on property longer
18 than one week, and/or the failure to regularly remove of such material in a manner
19 provided for by law, and/or the failure to properly dispose of such material as required
20 or allowed under applicable laws and regulations. This is a violation of §2.92.095 of
21 the Stanislaus County Code.
- 22 d) Any other hazardous condition that is deemed by the department director to constitute
23 a substantial and imminent threat or risk to the health, safety and welfare of any
24 person or domestic animal. This is a violation of §2.92.095 of the Stanislaus County
25 Code.
- 26 e) Any building, dwelling, or other structures (1) that is lacking habitual presence of
27 persons who have a legal right to be on the premises or at which substantially all
28 lawful business operations or residential occupancy has ceased; and (2) whose doors,

1 windows or other openings are broken, missing or in such disrepair so as to allow
2 uncontrolled access to the interior or exposure to the elements. This is a violation of
3 §2.93.020 of the Stanislaus County Code.

4 f) Unlawful maintenance of property or permitting of property to be maintained in such
5 a manner that one or more of the following conditions are found to exist:

- 6 1. Any vacant structure that is not secured by boarding in compliance with this
7 chapter
- 8 2. Any vacant structure whose interior contains waste, garbage, trash or debris;
- 9 3. Any vacant structure whose premises contain waste, garbage, debris, rubbish,
10 or excessive vegetation;
- 11 4. Any vacant structure whose doors, windows, or other openings are secured by
12 boarding in compliance with this chapter, at any time at which there is no
13 current and valid boarding permit as required by this chapter.

14 This is a violation of §2.93.040 of the Stanislaus County Code.

15 g) Failure to secure a vacant structure. This is a violation of §2.93.050 and §2.93.070 of
16 the Stanislaus County Code.

17 h) Any unsafe structures found to be dangerous to the life, health, property or safety of
18 the public. This is a violation of §16.25 Stanislaus County Code and § 108.1.1 Unsafe
19 Structures of the 2006 International Property Maintenance Code.

20 i) Any use or condition of Property that is dangerous to human life, unsafe or detrimental
21 to the public health or safety. This is a violation of §2.92.010 of the Stanislaus County
22 Code.

23 j) Unlawful accumulations of debris, refuse and rubbish. This is a violation of §9.04.020
24 of the Stanislaus County Code.

25 k) Failure to remove all refuse from premises on a weekly basis. This is a violation of
26 §9.04.040 of the Stanislaus County Code.

27 l) Lack of proper/sufficient containers. This is a violation of §9.04.070 of the Stanislaus
28 County Code.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

m) Unlawful accumulations of grass, weeds, and rank growths on the property and adjacent sidewalks. This is a violation of §9.20.040 of the Stanislaus County Code.

AND THIS INSPECTION AND ABATEMENT shall be conducted within fourteen (14) days of the date hereof and reasonably conducted between the hours of 8:00a.m. and 6:00 p.m. and so as to effect as minimal an intrusion as possible on the normal operations of the property;

AND THIS INSPECTION AND ABATEMENT shall be from property boundary to property boundary for the premises.


THE PREMISES located at 4555 North Star Way, Modesto, California unincorporated area of the County of Stanislaus, State of California, further described as: Assessor Parcel Number 046-011-002. Parcel contains the remnants of a 125,000+/- square foot steel manufacturing building and accessory structures, pits, tanks and other facilities.

If necessary, entry onto the Property to conduct the inspection and abatement authorized by this warrant may be made by forcible entry, using reasonable means, if the owner fails to provide permissive entry. The owner or the occupant of the Property or any of the structures or buildings located on the Property do not have to be present during the inspection, provided, however, that on the day preceding the inspection, or earlier, a copy of this warrant is served upon the occupants of any structures or buildings located on the Property, if any, or, if no occupant is present, a copy of this warrant is posted upon the exterior of such structure, property or building to be inspected and/or abated.

One or more peace officers may accompany the execution of the Warrant in order to keep the peace. Any person who willfully refuses to permit the abatement authorized by this Warrant is guilty of a misdemeanor.

IT IS SO ORDERED

Dated 12/09/11

By: 
Judge of the Superior Court
County of Stanislaus