

# BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

## WEDNESDAY, MAY 27, 2009

6:35 p.m. (Commission Chamber)

-Convene

-Consider the approval of the minutes of May 13 and May 20, 2009

## CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders; and
- (b) Consider approval of the Proposed Assessments: Southeast Lawrence Sanitary Sewer Main Benefit District No. 1 – Sanitary Sewer Improvements; Resolution No. 06-30; Southeast Lawrence Sanitary Sewer Main Benefit District No. 2 – Sanitary Sewer Improvements; Resolution No. 06-31; and Southeast Lawrence Sanitary Sewer Main Benefit District No. 3 – Sanitary Sewer Improvements; Resolution No. 06-32; and Approve the following: **(a)** Statement of Final Costs; and **(b)** Notice of Public Hearing and Proposed Assessment Resolution

## REGULAR AGENDA

- (2) Consider approval of Consent Decree with Mid-States Materials, LLC, dealing with Mid-State's quarry in western Douglas County and CUP-7-2-90, CUP-6-6-02, and CUP-12-09-06.
- (3) Other Business
  - (a) Consider approval of Accounts Payable (if necessary)
  - (b) Appointments
  - (c) Miscellaneous
  - (d) Public Comment
- (4) Adjourn

## MONDAY, JUNE 1, 2009

-Consider acquisition of two ambulances (Pam Madl)

-Presentation by the County departments (Sheriff, Emergency Communications and Youth Services) No backup

-Presentation by Courts (District Court, Court Trustee, Community Corrections; Citizen Review Board)

## WEDNESDAY, JUNE 3, 2009

-Discussion of proposal from Lawrence Community Shelter to use the sanctuary portion of the County's building at 13<sup>th</sup> and Massachusetts as an interim overnight homeless shelter for up to 24 months.

## MONDAY, JUNE 8, 2009 (Light Agenda)

## WEDNESDAY, JUNE 10, 2009 (Baldwin City Library)

6:35 p.m. Joint session with Baldwin City Planning Commission, City Council and Douglas County Commission regarding draft Baldwin Zoning and Planning Regulations

- Work session with Baldwin Planning Commission on draft Zoning and Subdivision Regulations [Baldwin City Council also invited to attend]
- Discussion of Hwy 56 corridor study and interests/concerns of this highway improvement on development of Baldwin City

- Discussion of county Zoning Regulations for commercial and industrial development as they would be applied within the Urban Growth Area of Baldwin City
- Discussion of the county Subdivision Regulations, administrative procedures for property divisions that apply within the Urban Growth Area of Baldwin City [sections 20-804 Cluster Development and 20-805 Large Parcel Property Division]

**FRIDAY, JUNE 12, 2009**

12:00-2:00 p.m. – Special lunch session with Planning Commission, City Commission and Board of County Commissions during Planning Commission training (City Hall)

**MONDAY, JUNE 15, 2009**

**WEDNESDAY, JUNE 17, 2009 (LECOMPTON CITY HALL)**

6:35 p.m. -Joint meeting with Lecompton City Council (in Lecompton)

- Trees in the right-of-way at the intersection of Woodson Avenue and 1029
- The ditch just north of the church

**MONDAY, JUNE 22, 2009**

**WEDNESDAY, JUNE 24, 2009**

- Consider approval of CPA 3-2-09 (Dan Warner)
- Consider approval Z-11-19-08 Rockwall Farms (Mary Miller)

**MONDAY, JUNE 29, 2009**

**WEDNESDAY, JULY 1, 2009**

**MONDAY, JULY 6, 2009**

**WEDNESDAY, JULY 8, 2009 (Light Agenda)**

**MONDAY, JULY 13, 2009**

Public Hearing for the annexation of the former Farmland Industries property

**WEDNESDAY, JULY 15, 2009**

Public Hearing for Farmland Annexation

**MONDAY, SEPTEMBER 7, 2009**

-No Commission Meeting in Observation of Labor Day

**MONDAY, SEPTEMBER 21, 2009 (Light Agenda)**

**WEDNESDAY, NOVEMBER 4, 2009**

-Lone Star Weed Discussion

*Note: The Douglas County Commission meets regularly on Mondays at 8:10 A.M. and Wednesdays at 6:35 P.M. at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.*

1(b)

GILMORE & BELL, P.C.  
05/21/2009

**EXCERPT OF MINUTES OF A MEETING  
OF THE BOARD OF COUNTY COMMISSIONERS OF  
DOUGLAS COUNTY, KANSAS  
HELD ON MAY 27, 2009**

The Board of County Commissioners (the "Board") met in regular session at the usual meeting place in Douglas County, Kansas (the "County"), at 6:35 p.m., the following Commissioners being present and participating, to-wit:

Absent:

The Chairman declared that a quorum was present and called the meeting to order.

\*\*\*\*\*

(Other Proceedings)

Thereupon, and among other business, there were presented certain documents relating to the following described improvements heretofore authorized by the Board:

Southeast Lawrence Sanitary Sewer Main Benefit District No. 1 – Sanitary Sewer Improvements Resolution No. 06-30;

Southeast Lawrence Sanitary Sewer Main Benefit District No. 2 – Sanitary Sewer Improvements Resolution No. 06-31; and

Southeast Lawrence Sanitary Sewer Main Benefit District No. 3 – Sanitary Sewer Improvements Resolution No. 06-32

The documents presented are as follows:

- (a) Statement of Final Costs;
- (b) Proposed Assessment Roll; and
- (c) Notice of Public Hearing and Proposed Assessment Resolution.

After full consideration thereof, Commissioner \_\_\_\_\_ moved to take the following action:

1. Approve each of said documents in substantially the form attached hereto;
2. Establish June 17, 2009 at 6:35 p.m. to meet for the purpose of hearing any and all written or oral objections to the respective assessments set forth therein;
3. Cause the County Clerk to publish Notice of Public Hearing and Proposed Assessment Resolution in the official County newspaper not less than 10 days prior to such public meeting date;

4. Mail Notice of Public Hearing and Proposed Assessment Resolution to each and all owners of property affected by such assessments at their last known post office address on the same date as the publication of Notice of Public Hearing and Proposed Assessment Resolution; and
5. File each of said documents of record in the office of the County Clerk and make the same available for public inspection.

The motion was seconded by Commissioner \_\_\_\_\_, and approved by the following roll call vote:

Yes: \_\_\_\_\_.

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

\*\*\*\*\*

(other business)

**CERTIFICATE**

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the Board of County Commissioners of Douglas County, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

\_\_\_\_\_  
County Clerk

**EXHIBIT A**

**DOUGLAS COUNTY, KANSAS**

**SOUTHEAST LAWRENCE SANITARY SEWER MAIN BENEFIT DISTRICTS  
STATEMENT OF FINAL COSTS**

|  | <b>Total<br/>Amount</b> | <b>SE Lawrence<br/>Sewer Dist No. 1<br/>Res No. 06-30</b> | <b>SE Lawrence<br/>Sewer Dist No. 2<br/>Res No. 06-31</b> | <b>SE Lawrence<br/>Sewer Dist No. 3<br/>Res No. 06-32</b> |
|--|-------------------------|---|---|---|
| Total Construction Cost of Project     | \$2,937,030.96          | \$1,819,983.72  | \$534,938.27  | \$582,108.97  |
| Plus: County Administrative Fee        | 5,000.00                | 3,098.34  | 910.68  | 990.98  |
| Plus: County Legal Fee                 | 2,000.00                | 1,239.34  | 364.27  | 396.39  |
| Plus: Estimated Bond Costs of Issuance |                         |   |   |   |
| Bond Counsel Fee                       | 15,000.00               | 9,295.02  | 2,732.04  | 2,972.95  |
| Financial Advisor Fee                  | 7,500.00                | 4,647.51  | 1,366.02  | 1,486.47  |
| Paying Agent Fee                       | 5,000.00                | 3,098.34  | 910.68  | 990.98  |
| Rating Agency Fee                      | 6,500.00                | 4,027.84  | 1,183.88  | 1,288.28  |
| Official Statement Printing Expense    | 2,500.00                | 1,549.17  | 455.34  | 495.49  |
| Publication Expense                    | 1,000.00                | 619.67  | 182.14  | 198.20  |
| State Treasurer Setup Fee              | 300.00                  | 185.90  | 54.64   | 59.46   |
| State Treasurer Registration Fee       | 30.00                   | 18.59   | 5.46  | 5.95  |
| Assessment Notice Mailing Cost         | 200.00                  | 123.93  | 36.43   | 39.64   |
| Transcript Approval Fee                | 250.00                  | 154.92  | 45.53   | 49.55   |
| CUSIP Fee                              | 450.00                  | 278.85  | 81.96   | 89.19   |
| Bond Certificate Printing Expense      | <u>270.00</u>           | <u>167.31</u>   | <u>49.18</u>  | <u>53.51</u>  |
| Total Project Costs                    | \$2,983,030.96          | \$1,848,488.44  | \$543,316.51  | \$591,226.00  |

**EXHIBIT B**

**DOUGLAS COUNTY, KANSAS**

**SOUTHEAST LAWRENCE SANITARY SEWER MAIN BENEFIT DISTRICTS  
PROPOSED ASSESSMENT ROLLS**

[INSERT PIPER JAFFRAY EXCEL SPREADSHEET]

## EXHIBIT C

(Published in *The Lawrence Daily Journal-World*, on June 22, 2009.)

### NOTICE OF PUBLIC HEARING

TO: RESIDENTS OF DOUGLAS COUNTY, KANSAS

You and each of you are hereby notified that the Board of County Commissioners (the "Board") of Douglas County, Kansas (the "County"), will meet for the purpose of holding a public hearing, as provided by K.S.A. 19-27a01 *et seq.*, in the County Commission meeting room at the Douglas County Courthouse, 11th & Massachusetts, Lawrence, Kansas, on June 17, 2009, at 6:35 p.m., or as soon thereafter as the matter can be heard by the Board. Said public hearing is for the purpose of hearing any and all oral or written objections to a proposed Assessment Resolution attached hereto as *Appendix I* in connection with the following described improvements (the "Improvements"):

#### **Project No. 1 – Southeast Lawrence Sanitary Sewer Main Benefit District No. 1**

##### **Resolution No. 06-30**

Construct a sanitary sewer pump station northeast of N 1300 Rd. (31<sup>st</sup> St.) and E 1700 Rd. (Kitsmiller Rd.) and force main from the pump station to existing City of Lawrence pump station No. 25 and related appurtenances. [K.S.A. 19-27a01 *et seq.*]

##### **Property Description**

Set forth in *Section 1(b)* of Resolution No. 06-30, recorded with the Douglas County Register of Deeds at Book 1013, Pages 2121-2124, as modified by platting and divisions of such property.

##### **Method of Assessment**

Per Square foot, as set forth in *Section 1(e)* of Resolution No. 06-30.

##### **Cost of Improvements**

\$1,848,488.44.

#### **Project No. 2 - Southeast Lawrence Sanitary Sewer Main Benefit District No. 2**

##### **Resolution No. 06-31**

Construct a sanitary sewer trunk main from east of E 1700 Rd. (Kitsmiller Rd.) to E 1650 Rd. (Franklin Rd.), with removal of City of Lawrence pump station near Douglas County Jail and related appurtenances. [K.S.A. 19-27a01 *et seq.*]

##### **Property Description**

Set forth in *Section 1(b)* of Resolution No. 06-31, recorded with the Douglas County Register of Deeds at Book 1013, Pages 2125-2128, as modified by platting and divisions of such property.

##### **Method of Assessment**

Per Square foot, as set forth in *Section 1(e)* of Resolution No. 06-31.

##### **Cost of Improvements**

\$543,316.51.

**Project No. 3 – Southeast Lawrence Sanitary Sewer Main Benefit District No. 3**

**Resolution No. 06-32**

Construct a sanitary sewer trunk main from E 1650 Rd. to Fairfield Farms East Addition No. 1, with removal of 2 City of Lawrence pump stations and related appurtenances. [K.S.A. 19-27a01 *et seq.*]

**Property Description**

Set forth in **Section 1(b)** of Resolution No. 06-32, recorded with the Douglas County Register of Deeds at Book 1013, Pages 2129-2132, as modified by platting and divisions of such property.

**Method of Assessment**

Per Square foot, as set forth in **Section 1(e)** of Resolution No. 06-32.

**Cost of Improvements**

\$591,226.

An Assessment Roll prepared in accordance with the referenced Resolution approved by the Board is on file in the office of the County Clerk and may be examined by any interested party. At the conclusion of the public hearing, the Board will consider the proposed Assessment Resolution attached hereto as **Appendix I** levying such special assessments.

A subsequent Notice of Assessment will be mailed to affected property owners at that time indicating that each property owner may pay the assessment in whole or in part on or before July 22, 2009. Any amount not so paid on or before July 22, 2009 will be collected in annual installments over a period of 20 years together with interest thereon at the rate obtained by the County for its general obligation bonds issued to finance the costs of the Improvements.

DATED May 27, 2009.

/s/ Jameson D. Shew, County Clerk



*APPENDIX I*

**PROPOSED ASSESSMENT RESOLUTION NO. 09-\_\_**

**AN ASSESSMENT RESOLUTION LEVYING SPECIAL ASSESSMENTS ON CERTAIN PROPERTY TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN DOUGLAS COUNTY, KANSAS, AS HERETOFORE AUTHORIZED BY RESOLUTION NOS. 06-30, 06-31 AND 06-32 OF THE COUNTY; AND PROVIDING FOR THE COLLECTION OF SUCH SPECIAL ASSESSMENTS.**

**WHEREAS**, the Board of County Commissioners (the "Board") of Douglas County, Kansas (the "County") has heretofore authorized certain internal improvements (the "Improvements") to be constructed pursuant to K.S.A. 19-27a01 *et seq.* (the "Act"); and

**WHEREAS**, the Board has heretofore conducted a public hearing in accordance with the Act and desires to levy assessments on certain property benefited by the construction of the Improvements.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS:**

**SECTION 1. Levy of Assessments - Southeast Lawrence Sanitary Sewer Main Benefit District No. 1.** For the purpose of paying the costs of the following described Improvements:

**Resolution No. 06-30**

Construct a sanitary sewer pump station northeast of N 1300 Rd. (31<sup>st</sup> St.) and E 1700 Rd. (Kitsmiller Rd.) and force main from the pump station to existing City of Lawrence pump station No. 25 and related appurtenances;

there are hereby levied and assessed the amounts (with such clerical or administrative amendments thereto as may be approved by the County Counselor) against the property described on *Exhibit A* attached hereto, which is the same property described in *Section 1(b)* of Resolution No. 06-30, as modified by platting and land transfers. Said amounts were calculated on the basis set forth in *Section 1(e)* of Resolution No. 06-30 of the County.

**SECTION 2. Levy of Assessments - Southeast Lawrence Sanitary Sewer Main Benefit District No. 2.** For the purpose of paying the costs of the following described Improvements:

**Resolution No. 06-31**

Construct a sanitary sewer pump station northeast of N 1300 Rd. (31<sup>st</sup> St.) and E 1700 Rd. (Kitsmiller Rd.) and force main from the pump station to existing City of Lawrence pump station No. 25 and related appurtenances;

there are hereby levied and assessed the amounts (with such clerical or administrative amendments thereto as may be approved by the County Counselor) against the property described on *Exhibit A* attached hereto, which is the same property described in *Section 1(b)* of Resolution No. 06-31, as modified by platting and land transfers. Said amounts were calculated on the basis set forth in *Section 1(e)* of Resolution No. 06-31 of the County.

**SECTION 3. Levy of Assessments - Southeast Lawrence Sanitary Sewer Main Benefit District No. 3.** For the purpose of paying the costs of the following described Improvements:

**Resolution No. 06-32**

Construct a sanitary sewer trunk main from E 1650 Rd. to Fairfield Farms East Addition No. 1, with removal of 2 City of Lawrence pump stations and related appurtenances;

there are hereby levied and assessed the amounts (with such clerical or administrative amendments thereto as may be approved by the County Counselor) against the property described on *Exhibit A* attached hereto, which is the same property described in *Section 1(b)* of Resolution No. 06-32, as modified by platting and land transfers. Said amounts were calculated on the basis set forth in *Section 1(e)* of Resolution No. 06-32 of the County.

**SECTION 4. Payment of Assessments.** The amounts so levied and assessed in *Sections 1, 2 and 3* of this Assessment Resolution shall be due and payable from and after the date of publication of this Assessment Resolution. Such amounts may be paid in whole or in part on or before July 22, 2009.

**SECTION 5. Notification.** The County Clerk shall notify the owners of the properties described on *Exhibits A, B and C* attached hereto insofar as known to said County Clerk, of the amounts of their respective assessments; and, said notice shall further state that unless such assessments are paid on or before July 22, 2009, bonds will be issued therefor, and the amount of such assessment will be collected in installments with interest.

**SECTION 6. Certification.** Any amount of special assessments not paid within the time prescribed in *Section 4* hereof shall be certified by the County Clerk, in the same manner and at the same time as other taxes are certified and will be collected over a period of 20 years, together with interest on such amounts at a rate not exceeding the maximum rate therefor as prescribed by the Act. Interest on the assessed amount remaining unpaid between the effective date of this Assessment Resolution and the date the first installment is payable, but not less than the amount of interest due during the coming year on any outstanding bonds issued to finance the Improvements, shall be added to the first installment. The interest for one year on all unpaid installments shall be added to each subsequent installment until paid.

**SECTION 7. Effective Date.** This Assessment Resolution shall take effect and be in force from and after its adoption and publication once in the official County newspaper.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**ADOPTED** by the Board of County Commissioners of Douglas County, Kansas, on June 17, 2009.

(SEAL)

\_\_\_\_\_  
Nancy Thellman, Chairman – 2<sup>nd</sup> District

\_\_\_\_\_  
Mike Gaughan, Commissioner – 1<sup>st</sup> District

\_\_\_\_\_  
Jim Flory, Commissioner – 3<sup>rd</sup> District

ATTEST:

\_\_\_\_\_  
Jameson D. Shew, County Clerk

**CERTIFICATE**

I hereby certify that the foregoing is a true and correct copy of the original assessment resolution; that said Assessment Resolution was passed on June 17, 2009; that the record of the final vote on its passage is found on page \_\_\_\_ of journal \_\_\_\_; and that it was published in *The Lawrence Daily Journal-World* on June 22, 2009.

DATED: June 22, 2009.

\_\_\_\_\_  
Jameson D. Shew, County Clerk

*EXHIBIT A*

**DOUGLAS COUNTY, KANSAS  
SOUTHEAST LAWRENCE SANITARY SEWER MAIN BENEFIT DISTRICTS**

**[INTENTIONALLY OMITTED]**

**CERTIFICATE OF MAILING**

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF DOUGLAS        )

The undersigned, County Clerk of Douglas County, Kansas (the "County"), does hereby certify that on June 22, 2009, I caused to be mailed to each and all of the owners of property affected by construction of sewer improvements in Southeast Lawrence Sanitary Sewer Main Benefit District Nos. 1, 2 and 3, authorized pursuant to Resolution Nos. 06-30, 06-31 and 06-32 of the County, at their last known post office address, a Notice of Public Hearing and Proposed Assessment Resolution.

Copies of said documents are attached hereto.

WITNESS my hand and seal as of June 22, 2009.

(Seal)

\_\_\_\_\_  
Jameson D. Shew, County Clerk













































































Douglas County, Kansas

Southeast Lawrence Sanitary Sewer Main Benefit District No. 3

Resolution No. 06-32

|           | 2010       | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | Totals     |
|-----------|------------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------------|
| Principal | 561,664.70 |      |      |      |      |      |      |      |      |      |      |      |      |      |      | 561,664.70 |
| Interest  | -          |      |      |      |      |      |      |      |      |      |      |      |      |      |      | -          |
| Total     | 561,664.70 |      |      |      |      |      |      |      |      |      |      |      |      |      |      | 561,664.70 |

| Description  | Owner | Pin Number | Per Lot Percentage |        | 2010      | 2011      | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | Totals    |           |
|--|-------|------------|--------------------|--------|-----------|-----------|------|------|------|------|------|------|------|------|------|------|------|------|------|-----------|-----------|
| <b>Unplatted Parcel A</b>                              |       |            |                    | 5.370% | Principal | 30,161.39 | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | 30,161.39 |           |
| GOING SOUTH LLC  |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| 1563 E 650 RD  |       |            |                    |        | Total     | 30,161.39 | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 30,161.39 |
| LAWRENCE, KS 66049                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Unplatted Parcel B</b>                              |       |            |                    | 6.260% | Principal | 35,160.21 | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 35,160.21 |
| DOORES ADDITION INC                                    |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| 741 E 661 DIAG RD                                      |       |            |                    |        | Total     | 35,160.21 | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 35,160.21 |
| LAWRENCE, KS 66047                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 1, Lot 1</b>  |       |            |                    | 0.283% | Principal | 1,590.85  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,590.85  |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| PO BOX 1797  |       |            |                    |        | Total     | 1,590.85  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,590.85  |
| LAWRENCE, KS 66044                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 1, Lot 2</b>  |       |            |                    | 0.210% | Principal | 1,182.24  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,182.24  |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| PO BOX 1797  |       |            |                    |        | Total     | 1,182.24  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,182.24  |
| LAWRENCE, KS 66044                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 1, Lot 3</b>  |       |            |                    | 0.210% | Principal | 1,182.13  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,182.13  |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| PO BOX 1797  |       |            |                    |        | Total     | 1,182.13  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,182.13  |
| LAWRENCE, KS 66044                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 1, Lot 4</b>  |       |            |                    | 0.210% | Principal | 1,182.03  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,182.03  |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| PO BOX 1797  |       |            |                    |        | Total     | 1,182.03  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,182.03  |
| LAWRENCE, KS 66044                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 1, Lot 5</b>  |       |            |                    | 0.210% | Principal | 1,181.93  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,181.93  |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| PO BOX 1797  |       |            |                    |        | Total     | 1,181.93  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,181.93  |
| LAWRENCE, KS 66044                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 1, Lot 6</b>  |       |            |                    | 0.196% | Principal | 1,100.00  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,100.00  |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| PO BOX 1797  |       |            |                    |        | Total     | 1,100.00  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,100.00  |
| LAWRENCE, KS 66044                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 1, Lot 7</b>  |       |            |                    | 0.185% | Principal | 1,036.28  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,036.28  |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| PO BOX 1797  |       |            |                    |        | Total     | 1,036.28  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,036.28  |
| LAWRENCE, KS 66044                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 10, Lot 1</b> |       |            |                    | 0.204% | Principal | 1,145.45  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,145.45  |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| PO BOX 1797  |       |            |                    |        | Total     | 1,145.45  | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 1,145.45  |
| LAWRENCE, KS 66044                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 10, Lot 2</b> |       |            |                    | 0.153% | Principal | 859.09    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 859.09    |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| PO BOX 1797  |       |            |                    |        | Total     | 859.09    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 859.09    |
| LAWRENCE, KS 66044                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 10, Lot 3</b> |       |            |                    | 0.153% | Principal | 859.09    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 859.09    |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| PO BOX 1797  |       |            |                    |        | Total     | 859.09    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 859.09    |
| LAWRENCE, KS 66044                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 10, Lot 4</b> |       |            |                    | 0.153% | Principal | 859.09    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 859.09    |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| PO BOX 1797  |       |            |                    |        | Total     | 859.09    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 859.09    |
| LAWRENCE, KS 66044                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 10, Lot 5</b> |       |            |                    | 0.153% | Principal | 859.09    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 859.09    |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        | Interest  | -         | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | -         |
| PO BOX 1797  |       |            |                    |        | Total     | 859.09    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 859.09    |
| LAWRENCE, KS 66044                                     |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |
| <b>Fairfield Farms East Add No. 1, Block 10, Lot 6</b> |       |            |                    | 0.153% | Principal | 859.09    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    | -         | 859.09    |
| FAIRFIELD INVESTORS LLC                                |       |            |                    |        |           |           |      |      |      |      |      |      |      |      |      |      |      |      |      |           |           |









































David M. Buffo  
Associate

4801 Main Street, Suite 1000  
Kansas City, MO 64112  
(816) 983-8253  
fax: (816) 983-8080  
david.buffo@huschblackwell.com

May 20, 2009

**VIA E-MAIL: mmiller@ci.lawrence.ks.us**

Mary Miller, AICP  
City/County Planner  
City of Lawrence  
P.O. Box 708  
Lawrence, Kansas 66044

Re: Mid-States / Big Springs Quarry  
Consent Decree  
Our File No. 57441-2

Dear Mary:

We are in receipt of your May 5, 2009 letter attaching the draft consent decree and inviting comments on the draft consent decree by May 20, 2009. As you know, I represent Lone Oak, LLC and two other property owners within 1000 feet of the quarry. Attached hereto is a letter from Robert Prager, P.E. setting forth certain of our concerns with the consent decree. We request that this cover letter and Mr. Prager's letter be provided to the Planning Commission and the County Commissioners in advance of the May 27, 2009 public meeting.

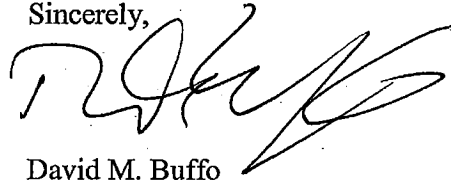
Additionally, as previously discussed, but not fully addressed in the draft consent decree are the overall issues of reclamation of the already quarried areas in compliance with the existing CUP. Lone Oak and the other property owners have always asked for complete compliance (at least for the already quarried phases and phases presently being quarried) with the existing reclamation plan which is part of the CUP.

For example, certain of the water features (ponds), as they currently exist, are not a minimum of 300 feet from the road. As set forth in the existing reclamation plan, the water features are not only required to have sloped banks at a 3:1 ratio, but all water features are to be a minimum of 300 feet from the road. This 300 foot buffer is to be flat terrain which then becomes the 3:1 ratio forming the banks of the water feature. Not only do the existing water features not have the proper banks but they are closer than 300 feet to the roads. As such, any water feature that is not a minimum of 300 feet from the road needs to be modified as part of the consent decree to meet this requirement.

Allowing water features to be closer than 300 feet to the road limits the future use of the property, particularly if the property was to be used for residential homes. Again, as previously expressed, it appears that the quarry operator is setting this property up to be a landfill or a dump after it completes its mining of the land.

If you have any questions, please feel free to give me a call.

Sincerely,



David M. Buffo

DMB

cc: Bart Christian

**Mary Miller**

---

**From:** DAVID HENRY [dk\_henry@sbcglobal.net]  
**Sent:** Tuesday, May 19, 2009 11:12 AM  
**To:** Mary Miller  
**Cc:** Scott McCullough; Rick Henry  
**Subject:** Proposed Consent Decree - Mid-States Big Springs Quarry - Comments  
**Follow Up Flag:** Follow up  
**Due By:** Wednesday, May 20, 2009 1:30 PM  
**Flag Status:** Red  
**Attachments:** Compliance Requirements & Conditions 3-4-09.pdf

Mary --

We wanted to once again express our appreciation for the progress that is being made towards resolving the concerns surrounding the Big Springs quarry. We recognize that substantial progress has been made and appreciate the efforts that all of the stakeholders have contributed to the process. As discussed during our meeting on Friday, we do have a number of comments related to the proposed Consent Decree for further consideration. Those comments follow:

1. Section 1 of the proposed Consent Decree does not appear to address the issues of non-compliance that currently exist in "Phase 1" of the quarry. These issues were brought forward in the meeting of 2/19/09 as well as our written correspondence of 3/4/09. The concerns include the existence of overburden piles, topsoil piles, slopes substantially greater than 3:1, and the use of the established water feature for the disposal of spoils.
2. We believe it is critical that a process be established to provide for public comment on the "detailed reclamation plans" referenced in Section 1 prior to the Planning Department developing and forwarding a recommendation to the County Commission.
3. Section 5 addresses the "Use of Berms". We were not previously aware that the use of berms has been at issue. The issue related to berms that we brought forward in the meeting of 2/19/09 as well as our written correspondence of 3/4/09 relates to the timing of the construction of the berms. The purpose of the berms is to mitigate the impact of quarrying operations on surrounding properties through visual and noise screening of the mining operations. Berms have not previously been constructed prior to mining operations commencing in a given phase as required, this issue must be addressed moving forward.
4. Item 6 of the Consent Decree discusses truck routes and contains the statement, " Mid-States and the Board agree that the CUP does not prohibit or regulate the hours that trucks ... may use U.S. 40 for ingress and egress." We would like to clarify that U.S. 40 does not provide direct access to the Quarry, in fact, the permitted Quarry site is more than 1-1/2 miles south of U.S. 40 via an unregulated private road (a portion of which is in Douglas County). Recent actions in Shawnee County adding asphalt and concrete plants to the quarry site and restricting the use of SE 45th St. (Douglas County Route 442) is projected to greatly increase commercial truck traffic on this unregulated private road. In light of the significantly expanded use of this route to U.S. 40, we respectfully request that appropriate restrictions be considered and established on the private road for the purpose of mitigating it's impact on surrounding properties.

We have attached our comments previously submitted on 3/4/09 and referenced above for your information. Feel free to forward this message as discussed. Please let us know of any questions.

Sincerely,

David K Henry

Howard F (Rick) Henry

5/20/2009

**Big Springs Quarry - Compliance Requirements / Current Conditions**  
**March 4, 2009**

In order to fully understand the compliance issues related to the current conditions at the Big Springs Quarry one must gain a thorough understanding of the established Conditional Use Permit Restrictions of Use as well as the additional restrictions established through the documents incorporated in the CUPs by reference. The following table provides references to the applicable CUPs and incorporated documents, the requirements established by such and an overview of the conditions as they currently exist at the quarry site.

| Item #                          | Applicable Sections of CUP & Incorporated Documents  | Established Requirement  | Overview of Current Conditions   |
|---------------------------------|--|--|--|
| 1<br>Sequential Reclamation     | a. CUP 7-2-90 Restrictions of Use (As Amended) - Sections VII(d) & XIX<br>b. Planning Staff 8/22/90 Report – “Reclamation: The Process and The Plan”<br>c. Martin Marietta’s Application Submittal – “Reclamation Plan Data” – Pages 13 – 15, Exhibits 10 – 17 | a. “No more than 10 acres shall be open, mined and extracted from in a subsequent phase until reclamation is complete on the previous phase.” Section XIX incorporates the referenced applicant submittal and staff report<br>b. “The applicants propose to sequentially reclaim the land in each of the six phases of operation.” “Sequential reclamation, as proposed by the applicant, means that each phase will have two workable areas. As one is worked, the other is being filled with overburden and reclaimed.”<br>c. Exhibit 17 - A, C, D, & E  | Reclamation is incomplete in Phase 1 and Phase 1A with more than 10 acres currently open for mining in Phase 2.  |
| 2<br>Phase 1 and 1A Reclamation | a. CUP 7-2-90 Restrictions of Use (As Amended) - Sections VIII, & XIX<br>b. Planning Staff 8/22/90 Report – “Reclamation: The Process and The Plan”<br>c. Martin Marietta’s Application Submittal – “Reclamation Plan Data” – Pages 13 – 15, Exhibits 10 – 17  | a. “The property shall be reclaimed to a state similar to the existing state (or better) with reference to general topography, percent slope, and plant and animal life supported by the established ecosystem.” Section XIX incorporates the referenced applicant submittal and staff report<br>b. “The final reclamation plans call for reshaping and terracing areas to blend in with the existing, adjoining contours. Topography of the existing site will be replicated at the final ground level which is estimated, on an average, to be 15’ lower than existing grade.” “Final site reclamation is proposed to be at an elevation no higher than the surrounding land.” Exhibits 13, 15, 16, & 17 - C, D & E “All finished slopes should have a maximum of 3:1 slope” “In areas along the periphery of the excavation a natural high wall will occur. These should not be left as high walls but graded down to the water level, as illustrated in Exhibit 15.”<br>c. | <ul style="list-style-type: none"> <li>▪ Existence of overburden piles (Phases 1 &amp; 1A)</li> <li>▪ Existence of topsoil pile (Phase 1)</li> <li>▪ Existence of slopes greater than 3:1 (Phases 1 &amp; 1A)</li> <li>▪ Existence of high walls adjacent to water features (Phases 1 &amp; 1A)</li> <li>▪ Use of water feature for spoils disposal (Phase 1)</li> <li>▪ Proximity of water feature to roadway is inconsistent with Exhibit 15 (Phase 1A - E100 Rd)</li> </ul> |

**Big Springs Quarry - Compliance Requirements / Current Conditions**  
**March 4, 2009**

| Item #   | Applicable Sections of CUP & Incorporated Documents   | Established Requirement  | Overview of Current Conditions   |
|--|---|--|--|
| 3<br>Phase 2<br>Reclamation                            | <ul style="list-style-type: none"> <li>a. CUP 7-2-90 Restrictions of Use (As Amended) - Sections VIII, &amp; XIX</li> <li>b. Planning Staff 8/22/90 Report – “Reclamation: The Process and The Plan”</li> <li>c. Martin Marietta’s Application Submittal – “Reclamation Plan Data” – Pages 13 – 15, Exhibits 10 – 17</li> </ul> | <ul style="list-style-type: none"> <li>a. “The property shall be reclaimed to a state similar to the existing state (or better) with reference to general topography, percent slope, and plant and animal life supported by the established ecosystem.” Section XIX incorporates the referenced applicant submittal and staff report</li> <li>b. “The final reclamation plans call for reshaping and terracing areas to blend in with the existing, adjoining contours. Topography of the existing site will be replicated at the final ground level which is estimated, on an average, to be 15’ lower than existing grade.” “Final site reclamation is proposed to be at an elevation no higher than the surrounding land.”</li> <li>c. Exhibits 13, 15 &amp; 17 - C, D &amp; E</li> </ul> | <p>Ongoing operations in Phase 2 do not appear to provide for appropriate reclamation of the mined areas</p> <ul style="list-style-type: none"> <li>a. Proximity of mining area to roadway (N1700 Rd)</li> </ul>                                 |
| 4<br>Perimeter Berms                                   | <ul style="list-style-type: none"> <li>a. CUP 7-2-90 Restrictions of Use (As Amended) – Section XIX</li> <li>b. Planning Staff 8/22/90 Report – “Reclamation: The Process and The Plan”</li> <li>c. Martin Marietta’s Application Submittal – “Reclamation Plan Data” – Pages 13 – 15, Exhibits 10 – 17</li> </ul>              | <ul style="list-style-type: none"> <li>a. Section XIX incorporates the referenced applicant submittal and staff report</li> <li>b. Reclamation is outlined to occur in four steps in each phase. These are: 1. Construct main haul road, 2. Construct and plant perimeter berm...”</li> <li>c. Exhibits 12, 13 &amp; 14 illustrate the construction of the berms</li> </ul>  | <p>Phase 1A and Phase 2 perimeter berms have not been constructed. This has resulted in the creation of large topsoil piles in each of these phases. The resulting topsoil piles are not sloped, terraced, and vegetated to prevent erosion.</p> |
| 5<br>Detailed<br>Operation and<br>Reclamation<br>Plans | <p>CUP 7-2-90 Restrictions of Use (As Amended) - Section VIII</p>   | <p>“The first year of operation, and every five years thereafter, the applicants shall submit a detailed report and plan of quarrying operations to the Planning Office and to the Douglas County Public Works Director...” “Detailed reclamation plans shall be submitted for each phase of the reclamation process for review and recommendation by the Planning staff and approval by the County Commission.”</p>   | <p>Detailed operation and reclamation plans have not been submitted for approval during the 18+ year history of the quarry.</p>  |

**Big Springs Quarry - Compliance Requirements / Current Conditions  
March 4, 2009**

| <b>Item #</b>           | <b>Applicable Sections of CUP &amp; Incorporated Documents</b> | <b>Established Requirement</b>  | <b>Overview of Current Conditions</b>   |
|-------------------------|--|---|---|
| 6<br>Hours of Operation | CUP 7-2-90 Restrictions of Use (As Amended) - Section II       | "II. OPERATIONS RESTRICTIONS<br>Quarry operations shall be restricted to: ...)<br>Note: Previous operator applied to amend CUP to extend "maintenance" hours and was denied by County Comm.   | Operator acknowledges routinely conducting "maintenance" activities outside of permitted hours of operation.                            |
| 7<br>Dust Control       | CUP 7-2-90 Restrictions of Use (As Amended) - Section XI (a)   | "If the composition of the private road alternative above includes an aggregate surface, "year round" dust control along the roadway shall be maintained by the applicant."   | "Year round" dust control along the private access road is inadequate   |
| 8<br>Lighting           | CUP 7-2-90 Restrictions of Use (As Amended) - Section XII      | "Permanent outdoor lighting at the plant area, mining area, and haul roads shall be shielded and directed down with a solid screen to prevent light pollution beyond the site boundaries. Lighting is restricted to low pressure, sodium."                                    | Lighting as installed does not appear to be compliant with requirements and fails to prevent light pollution beyond the site boundaries |
| 9<br>Drainage Study     | CUP 7-2-90 Restrictions of Use (As Amended) - Section X        | "Prior to work progressing in each phase of the quarrying operation, a detailed grading plan showing site runoff and its relationship to the adjoining properties shall be submitted to the Planning Office for review and approval prior to work progressing in each phase." | Detailed drainage studies have not been submitted for review and approval by Planning prior to work progressing in each phase.          |
| 10                      | CUP 7-2-90 Restrictions of Use (As Amended) - Section XI (e)   | "Martin Marietta shall be responsible for spillage and clean up of aggregate within one mile of the plant site. This includes the intersection of access road to the north and U.S. Highway 40."  | Clean up is inadequate, particularly at the private access road and US Highway 40   |
| 11                      | CUP 7-2-90 Restrictions of Use (As Amended) - Section XI (g)   | "Access crossings between the phases of the site shall be maintained by applicant at all times."  | Maintenance of The E1 & E50 access crossings is inadequate  |

**KENNETH & PATTY O'CONNOR  
149 N. 1700 ROAD  
LECOMPTON, KS 66050  
785-887-6540**

May 20, 2009 - via Email

To: Douglas County Commissioners

From: Kenneth & Patty O'Connor

RE: CUP with Mid-States Materials, LLC

We own land adjacent to the Mid-States Quarry.

We hope that the final reclamation would be as shown in Exhibit 15 and that the all berms be constructed as in Exhibit 14 as agreed in the original CUP (Exhibits attached to this email).

There was no discussion on February 19 meeting or any other public meeting in Douglas County regarding an asphalt plant being operated adjacent to the quarry in Shawnee County. This change in operations needs to go before the Lawrence/Douglas County Planning Commissioners because of the additional uses of the Douglas County portion of the site. There was no discussion of materials being trucked into the quarry. Now we understand old shingles and other materials will be trucked into the Shawnee County portion via the Douglas County entrances. What will keep the operator from dumping these shingles and other materials on the Douglas County quarry?

Please keep all requirements and restrictions as stated in the original CUP – no changes.

Thank you.

# INTUITION & LOGIC

450 N. New Ballas Rd., Suite 264N St. Louis, MO 63141  
314.432.2543 ☎ 314.432.5812 ☎

1306 Autumn Trace Amelia Island, FL 32034  
904.261.5555 ☎

May 14, 2009

Mr. Bart Christian  
Lone Oak, LLC  
1719 East 150 Blvd  
Lecompton KS 66050

Dear Bart,

Thank you for the opportunity to review the Consent Decree. My comments are presented below.

The streams at Lone Oak, LLC were damaged by rapid changes in landform and in the cover of the upstream lands. These changes resulted in excess runoff, changes in the quality, quantity and duration of flows with intermittent pulses of sediment-laden water. These changes in regime of both water and sediment resulted in rapid incision of the streams, followed by widening and detrimental deposition. The streams rapidly changed in cross-section and plan form. Existing pools were filled with sediment while stream banks and the streambed were eroded. Trees collapsed into the stream.

The reclamation of damaged upstream lands must be performed in a manner that will not be detrimental yet again to the streams on Lone Oak, LLC and ultimately to Clinton Reservoir. It is imperative that runoff and sediment be controlled during reclamation. Prior to quarrying, the land was terraced. The land should again be shaped in such a manner as to prevent erosion on long, continuous relatively flat slopes. Terracing or creating complex, rolling landforms would be acceptable; a planar slope is not.

## Page 2, Section 1.

"Appropriate drainage plan" is not defined in this document. We recommend that "appropriate drainage" meet or exceed the requirements of the Kansas Department of Water Resources water appropriation requirements. For a document to be consistent with the term "drainage plan" as that term is commonly used in the engineering profession, the plan must include both detailed hydrologic and hydraulic analyses including computer-based modeling such as HEC-HMS or HEC-RAS in sufficient detail to prove no detrimental effects on receiving streams, lakes or



reservoirs and that dam-break analysis be included as necessary. The analyses must also include a comparison of pre-existing conditions to post-reclamation conditions. Since the receiving streams are spring-fed, any effects on groundwater should be addressed.

The drainage study required for Phases 5 and 6 cannot be independent of other phases since Phases 1 through 4 are the headwaters of the drainage area.

“An established elevation” of the overburden pile does not define the upper elevation or shape of the overburden pile. The required elevation should be at or near the adjacent ground and be contoured similarly to pre-existing conditions.

The water feature is not clearly defined. The document should be revised to clarify that the water feature described on page 2, Section 1 is the quarry pit immediately south of the overburden pile, west of E 100 Road and north of the Phase 2 quarry pit. The fate of the Phase 2 quarry pit is also not clear. Based on Page 2, Section 2, the quarry pits from Phase 1A and phase 2 are combined to form a water feature with slopes no steeper than 3 horizontal to 1 vertical.

A note establishing a sequencing plan is not adequate. A series of drawings is required to adequately display the methodology used to reclaim the site. A detailed construction schedule is also required as a basis for comparison for work actually performed.

Requiring “The approved detailed reclamation plans shall represent the final grading and contouring after mining and reclamation work is complete for each phase.” is not adequate. The plan must also include:

- The sequence of construction that also presents run-off controls and the erosion and sediment controls that shall be installed and maintained for each stage,
- A Storm Water Pollution Prevention Plan (SWPPP) that includes the operation and maintenance and a schedule of maintenance of run-off, erosion and sediment control features. The plan should also include the schedule for removal of temporary sediment control measures.
- A dewatering plan for the quarry pit in Phase 1A that is to be re-graded to 3 horizontal to 1 vertical slopes or flatter,
- A dewatering plan for the quarry pit in Phase 2 that is to be re-graded to 3 horizontal to 1 vertical slopes or flatter,
- A detailed planting plan for the reclaimed areas including plant maintenance activities and schedules for a three-year establishment period.
- And a set of “as-built” drawings that accurately depict the final grading and planting of the site.

The existing quarry pits should be dewatered to facilitate placement of compacted fill to reclaim the steep slopes particularly on the east faces of the pits along E 100

Road. The dewatering plans shall include the rate and duration of discharge and a description based on the results of the drainage study of how these parameters were chosen to limit damage to the receiving stream from accelerated erosion, inundation or deposition of any liberated sediment. The near continuous flow of water at or above the threshold for erosion is obviously detrimental to the receiving stream, water quality and ultimately Clinton Reservoir.

It is reasonable to anticipate that the bottom of the pits will be covered with wet, unconsolidated soil (mud). The manner in which this material is to be handled and dewatered to prevent pollution must be addressed.

Page 2, Section 2.

Page 2, Section 2 is titled "Phase 1A Reclamation" but includes Phase 2 reclamation. Flattening the slopes of the Phase 2 quarry pit to 3 horizontal to 1 vertical or less do not appear to be clearly addressed in this agreement.

It is not clear why the quarry pit in Phase 2 must be disturbed to reduce the slopes to the water features. Filling instead of excavation can reduce the slope to the water feature. It does not appear that excavation can be used to flatten the eastern slope of the Phase 1 A or Phase 2 pit.

Page 7, Exhibit A (Phase 1A Reclamation)

Exhibit A is titled "Phase 1 A Reclamation" but this appears to be an error. The referenced figure does not depict reclamation.

An opportunity for adjacent landowners to review the reclamation plan should be included.

Please contact me if I need to clarify any of my comments.

Best regards,



Robert Prager, PE, CVS  
Principal River Engineer

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF DOUGLAS COUNTY, KANSAS

In the matter of Conditional Use Permits for )  
Operation of a Quarry: )  
Mid-States Materials, LLC )  
CUP-7-2-90 (No. 3500); CUP-6-6-92 (No. 3853) & )  
CUP-12-09-06 )

CONSENT DECREE

The Board of County Commissioners of Douglas County, Kansas (the "Board") and Mid-States Materials, LLC ("Mid-States") enter into this Consent Decree (this "Agreement") as follows:

RECITALS

- A. Pursuant to Conditional Use Permit-7-2-90 (No. 3500), as amended by Conditional Use Permit-6-6-92 (No. 3853) (collectively the "CUP"), the Board authorized Martin Marietta Aggregates ("Martin Marietta") to operate a quarry in western Douglas County, Kansas through December 19, 2020 (the "Quarry"), all pursuant to and governed by the Restrictions of Use and Conditions of Approval imposed in connection with the Board's granting of the CUP.
- B. On July 17, 2007, pursuant to the provisions of XIV of the CUP, the Board approved and consented to the transfer of the CUP from Martin Marietta to Mid-States, which was assigned Conditional Use Permit-12-09-06 (the "Consent").
- C. At the time of the Consent, the Board made no finding concerning any reclamation deficiencies or that the overburden pile in Phase 1A violated the provisions of the CUP. Mid-States accepted the transfer of the CUP subject to the CUP, pertinent staff reports and Planning Commission minutes, and was of the belief that Martin Marietta's reclamation of Phase 1A was substantially in compliance with the reclamation requirements of the CUP. The Board has now determined that the overburden pile must be reduced to an established elevation and the banks along the water feature in Phase 1A must be recontoured and regraded to reduce the steepness of the slopes. As a representation of good faith, Mid-States enters into this Agreement in an effort to correct these alleged deficiencies that were created by Martin Marietta and which existed at the time of transfer of the CUP.
- D. In an effort to bring clarity to the reclamation issue and to address other matters, Mid-States has filed an application to amend the CUP, which is presently pending before the Lawrence-Douglas County Planning Commission. Mid-States submitted detailed reclamation plans for Phases 1A and 2 with this application.
- E. Mid-States owns and operates the Quarry, and nearby property owners have made allegations and complaints, and the Board has determined, that certain compliance site issues exist at the Quarry, and must be resolved.
- F. The Board and Mid-States enter into this Agreement to document and form a binding agreement between the Board and Mid-States with respect to the matters addressed herein.

## TERMS OF AGREEMENT

NOW, THEREFORE, the Board and Mid-States agree as follows:

1. Reclamation Plans. The Board has never approved any detailed reclamation plans for individual phases of the Quarry pursuant to Section VIII of the CUP. Mid-States agrees to submit a detailed reclamation plan, which shall include an appropriate drainage study, to the Planning Department for Phases 1A, 2, 3 and 4 within 60 days of the date of this Agreement, with such submittals being pursuant to Section VIII and X of the CUP and not part of any amendment to the CUP. (Mid-States understand that the CUP requires it to submit a detailed reclamation plan and drainage study to the Planning Department for Phases 5 and 6 for approval before Mid-States begins quarrying in such subsequent phases.) The detailed reclamation plan for Phase 1A shall provide for the removal of the overburden pile along E 100 Road to an established elevation; shall include the elevation and grade along the banks of the water feature which will be modified to achieve a 3:1 slope or flatter, shall contain a note establishing a sequencing plan necessary to complete the reclamation, and shall provide information on where the overburden material will be used or relocated. Prior to formal submittal of the detailed reclamation plan, Mid-States shall attend a pre-submittal meeting with the Planning Department staff to discuss and to receive staff's comments on Mid-State's proposed reclamation plans. Upon formal submittal of the detailed reclamation plan(s) outlined in this Section, the Planning Department will review and make a recommendation to the Board, and the Board will approve, approve with conditions, or deny the detailed reclamation plan in accordance with Section VIII of the CUP. The approved detailed reclamation plans shall represent the final grading and contouring after mining and reclamation work is complete for each phase. Once the Planning Department has forwarded the detailed reclamation plans for Phases 1A, 2, 3, and 4 to the Board, the Board shall schedule the matter as a regular agenda item and receive, review, and, if the Board determines that the detailed reclamation plans comply with this Agreement and the CUP, approve the detailed reclamation plans as expeditiously as reasonably possible. Barring good cause, the Board shall approve the detailed reclamation plans for Phases 1A, 2, 3, and 4 at the same time. If Mid-States does not submit a detailed reclamation plan for Phase 1A providing for removing, regrading and recontouring of the overburden pile, changing the grade of the banks of the water feature to a 3:1 slope or flatter, and seeding of all disturbed ground, reasonably in compliance with the requirements of this Section such that the Board cannot approve it on or before August 31, 2009, the provisions in Section 8 shall not prohibit the Board from its commencement or continuation of additional enforcement action with respect to the matters addressed in this Agreement.

2. Phase 1A Reclamation. Phase 1A reclamation (which includes removing, regrading and recontouring of the overburden pile, changing the grade of the banks of the water feature to a 3:1 slope or flatter, and seeding of all disturbed ground, all in accordance with the approved detailed reclamation plan for Phase 1A and a portion of Phase 2) shall be completed within 12 months from the date of approval of the detailed reclamation plan (including Phases 1A, 2, 3 and 4). This deadline for reclamation is a strict deadline and not subject to extension without the express written consent of the Board. In order to verify that Mid-States is diligently pursuing reclamation in Phase 1A, a designated representative of Mid-States and of the County shall meet onsite and inspect the progress of reclamation every 3 months until reclamation is complete. As long as Mid-States makes satisfactory progress, according to the County inspections, in reclaiming Phase 1A and Phase 2 in accordance with the approved Phase 1A and Phase 2 detailed reclamation plan and the note to the detailed reclamation plan establishing the sequencing plan, acreage disturbed in Phase 1A and acreage disturbed in the N½ of the SE¼ of the SE¼ of Section 23, Township 12 South, Range 17 East (which is the

northeastern portion of Phase 2, directly south of the Phase 1A water feature and must be disturbed to reduce the slopes to the water feature, as depicted by cross-hatch in Exhibit A) in complying with the detailed reclamation plan of Phase 1A and 2 shall not be counted in the number of open acres as contemplated in Section VII (d) of the CUP. In the event Mid-States fails to complete reclamation of Phase 1A in accordance with the approved detailed reclamation plan by the date specified, Mid-States agrees that the provisions in Section VII(d) of the CUP will require Mid-States to limit quarrying in Phase 3 to 10 acres until County staff confirms in writing that Mid-States has completed reclamation in Phase 1A. In addition, Mid-States understands and agrees that it cannot proceed with quarrying in Phase 4 or any other subsequent phase until the moving of soil, overburden, and other materials as necessary for the reclamation of Phase 1A is complete, according to the detailed reclamation plan. For purposes of this Agreement and for purposes of determining whether reclamation is complete so as to enable Mid-States to quarry in subsequent phases in accordance with Section VII(d) of the CUP, reclamation for each phase shall be deemed completed upon final grading, contouring and seeding, notwithstanding the growth of vegetation or the accumulation of water in planned water features. Notwithstanding the foregoing sentence, Mid-States understands that the reclamation process and the CUP requires revegetation for all Phases, which is the establishment of annual and perennial plant material for long term soil stabilization, and Mid-States agrees to exercise due diligence in proceeding with revegetation of each Phase after final grading and contouring, including reseeding as necessary to reestablish permanent vegetation.

3. Compliance With Approved Reclamation Plans. Upon the Board's approval of the reclamation plans submitted and approved in accordance with Section 1 of this Agreement and Section VIII of the CUP, Mid-States shall comply with the approved reclamation plans, both in accordance with the type and manner of reclamation.

4. Fence Repair. Mid-States acknowledges Section III of the CUP requires that the Quarry site be fenced and the fences be maintained in accordance with Kansas fence laws, with new fencing consisting of five-strand barbed wire fence. On or before July 1, 2009, Mid-States shall (i) either replace the two-strand wire gate at the southeast corner of Phase 2 with a five-strand barbed wire fence or gate that complies with Kansas fence laws, and (ii) fix all missing fencing and fencing with a single strand of barbed wire along Douglas County Route 442 (the west side of Phase 3), either by repair of existing fencing or installation of new fences that comply with Kansas fence laws.

5. Use of Berms. Mid-States acknowledges that the berms around the Quarry were built, in part, to shield neighboring properties from noise and activity of the Quarry. As such, Mid-States agrees not to use the berms as vehicular drives to get to different locations of the Quarry. The foregoing, however, shall not prohibit Mid-States from driving vehicles on the berms in connection with installation of silt fencing and other berm maintenance and berm construction activities.

6. Approved Truck Routes; Truck Requirements. Mid-States acknowledges that Section XI of the CUP provides approved truck routes and imposes certain requirements and prohibitions on loaded trucks leaving the Quarry. Mid-States understands and agrees that the principal truck entrance and exit, whether unloaded or loaded with rock or other materials, is U.S. 40, and that, except for local deliveries (which the parties agree is limited to traveling to and from the Quarry and property in Kanwaka Township and Clinton Township that is west of E 550 Road), all trucks leaving or entering the Quarry to or from County Route 442 are prohibited from traveling to or from the east. Mid-States further acknowledges that the exit from the

Quarry onto Douglas County Route 442 (which turns into 45<sup>th</sup> Street in Shawnee County) is on the Douglas County side of the county line and, as such, agrees that use of this exit is subject to the terms and conditions of the CUP, including covering loads and following permitted truck routes (even if the truck is carrying rock or other materials originating on the Shawnee County side of the county line); provided that, if Mid-States has the consent of Shawnee County, Mid-States and the Board agree that the CUP does not prohibit or regulate the hours that trucks (other than those carrying rock from the Douglas County portion of the Quarry) may turn west on Douglas County Route 442 and travel into Shawnee County; provided further that, if and to the extent done in compliance with all other applicable governmental rules and regulations, Mid-States and the Board agree that the CUP does not prohibit or regulate the hours that trucks (other than those carrying rock from the Douglas County portion of the Quarry) may use U.S. 40 for ingress and egress. With respect to a road project in Douglas County, if and to the extent that the Board or the Director of the Douglas County Department of Public Works specifically consents, Mid-States and the Board agree that the CUP does not prohibit or regulate the hours that trucks (other than those carrying rock from the Douglas County portion of the Quarry) may use Douglas County Route 442 for ingress and egress. Mid-States agrees to use its best efforts to require all trucks leaving the Quarry (even if carrying rock or other materials originating on the Shawnee County side of the county line) to comply with the approved truck routes and truck loading requirements. Mid-States agrees to provide periodic letters to all of its regular customers, not less than annually (within 30 days of the date of this Agreement and thereafter on or about March 1 of each year), informing them of the approved truck routes and the truck loading requirements, shall retain copies of such letters for a period of two years, and shall permit representatives of Douglas County to view such letters upon request. Furthermore, Mid-States shall prohibit its employees from giving weight tickets to drivers of trucks that are (i) flat bed trucks without sides or tailgates, (ii) do not have tailgates in place and in upright position; or (iii) have loads that are not covered by a tied-down tarp.

7. Shop Maintenance Facility and Hours of Operation. Mid-States acknowledges that when Martin-Marietta applied for an amendment to the CUP to permit construction and use of the shop maintenance facility, Martin-Marietta requested expanded hours to permit maintenance activities beyond 6AM-10PM, Monday–Thursday and 6AM-5:30PM, Friday. Specifically, Martin-Marietta requested that maintenance hours be extended until 9:00PM, Friday, and also be permitted from 6AM-5PM, Saturdays. Although the Board amended the CUP to permit construction and use of the shop maintenance facility, the Board denied the request for extended maintenance hours. As such, at the time the CUP was amended to permit construction and use of the shop maintenance facility, the intent and understanding of Martin-Marietta, the Planning Department, Lawrence-Douglas County Planning Commission, and the Board was that hours for maintenance operation would remain limited to 6AM-10PM, Monday–Thursday and 6AM-5:30PM, Friday. Absent an amendment to the terms and conditions of the CUP, Mid-States agrees to comply with these times. In addition, Mid-States acknowledges that the Board placed two additional ongoing conditions upon its amending the CUP to permit construction and use of the shop maintenance facility: (1) all repair and maintenance activities shall occur in the enclosed shop facility; and (2) repair and maintenance activities shall be limited to service of vehicles and equipment in use at this specific Quarry location. The parties acknowledge that some equipment, including but not limited to, the crushing plant, is too large and immobile to be serviced in the shop facility. Accordingly, such equipment may be serviced in its present location outside the shop facility.

8. Suspension of Formal Enforcement Action. Provided Mid-States complies with the terms and conditions of this Agreement, including compliance with the approved detailed reclamation plans, the Board will suspend formal enforcement action with respect to the matters

addressed in this Agreement. In the event Mid-States fails to timely comply with any provisions or requirements of this Agreement, the Board will immediately exercise any and all legal enforcement actions, including but not limited to those provided for in Section XVII of the CUP, Article 24 of the Douglas County Zoning Regulations, and K.S.A. 12-761.

9. Other CUP Requirements and Conditions. Nothing in this Agreement overrules or supersedes the various requirements and conditions imposed upon Martin Marietta pursuant to the CUP and assumed by Mid-States pursuant to the Consent, and Mid-States agrees to comply with all such requirements and conditions. By entering into this Agreement, the Board is not limiting or suspending its right to enforce the various requirements and conditions of the CUP that are not expressly addressed in this Agreement.

10. Pending CUP Amendment. Mid-States has filed a CUP application, seeking to make various amendments to the terms and conditions of the CUP, which is currently pending before the Lawrence-Douglas County Planning Commission. By signing this Agreement, Mid-States hereby withdraws such application. Although the Board cannot prohibit Mid-States from filing a new application earlier, Mid-States recognizes that the Board anticipates that Mid-States will wait until it has completed removal of the overburden pile from Phase IA before filing a new application.

11. Binding Effect and Condition. This Agreement shall be binding upon and inure to the benefit of the respective parties, and their successors and assigns, except as otherwise expressly provided herein.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

13. Governing Law. This Agreement shall be interpreted and governed by the laws of the State of Kansas.

14. Severability. Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

15. Modifications. This Agreement may not be amended, altered, modified or otherwise changed except in writing executed by all parties hereto and expressly stating that it is an amendment to this Agreement. The undersigned hereby acknowledge and agree that they, and each of them, will make no claim, and hereafter waive any right that they now have or they hereafter have, based upon any alleged oral alteration, oral amendment, oral modification or other changes based upon any alleged oral warranty, representation or promise except as set forth expressly in this Agreement.

IN WITNESS WHEREOF, this Agreement is approved and effective on this \_\_\_\_\_ day  
of \_\_\_\_\_ 2009.

**BOARD:**

Board of County Commissioners of Douglas  
County, Kansas

**ATTEST:**

\_\_\_\_\_  
Jameson D. Shew  
Douglas County Clerk

By: \_\_\_\_\_  
Nancy Thellman, Chair

**MID-STATES:**

Mid-States Materials, LLC  
a Kansas limited liability company

By: \_\_\_\_\_  
Eric H. Bettis, Managing Member



Exhibit A  
[Phase 1A Reclamation]