

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, JUNE 5 2013

6:35 p.m.

-Consider approval of the minutes for February 27, March 13, and May 15, 2013.

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) Amend zoning regulations to add NanoBrewery as a conditional use permit to the zoning regulations (Linda Finger);
- (c) Consider authorizing the Sheriff to complete the purchase of (1) 2013 Ford Police Interceptor Utility vehicle.(Ken McGovern)

REGULAR AGENDA

- (2) **CUP-13-00126**: Consider an amended Conditional Use Permit for a revised phasing schedule for Big Springs Quarry, located at 2 N 1700 Rd. Submitted by Mid-States Ventures, LLC, for Bonnie M. Nichols, Trustee, and Mid-States Materials, LLC, property owners of record. *Big Springs Quarry was approved with Conditional Use Permit CUP-7-2-90. Mary Miller will present the item.*
- (3) Consider waiving plat access restrictions for Holladay Subdivision, located southwest of N 800/E 1550 intersection (Keith Browning)
- (4) Consider agreement with KDOT for reimbursement of material costs for maintenance of local roads near US-56 highway closure (Keith Browning)
- (5) (a) Consider approval of Accounts Payable (if necessary)
- (b) Appointments
-Douglas County Emergency Management Board 07/13
- (c) Public Comment
- (d) Miscellaneous
- (6) Adjourn

WEDNESDAY, JUNE 12, 2013

6:35 p.m.

Consent: Receive update regarding approval of the new T2040 Metropolitan Transportation Plan. (Todd Girdler is the Planner)

-A Resolution authorizing the construction of capital improvement projects of Douglas County, Kansas: and providing for the payments of the cost therefore.

-CPA-13-00067: Consider Comprehensive Plan Amendment, CPA-13-00067, to Horizon 2020 Chapter 6 Commercial Land Use and Chapter 14 Specific Plans, Revised Southern Development Plan, to expand the S. Iowa Street commercial corridor east along W. 31st Street to include 1900 W 31st Street and identify the area as a Regional Commercial Center. Submitted by Menard, Inc. (Michelle Leinger)

WEDNESDAY, JUNE 19, 2013

6:35 p.m.

-Annual review of the Conditional Use Permit, CUP-11-5-76, for the Hamm/Buchheim Quarry located west of E 550 Road between N 1450 and N 1500 Roads. (Mary Miller)

WEDNESDAY, JUNE 26, 2013

Note: The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:35 P.M. for public items at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.



DOUGLAS COUNTY ZONING & CODES DEPARTMENT
MEMORANDUM

TO: Board of County Commissioners
SUBJECT: Text Amendment to Zoning Regulations for Nanobreweries
DATE: May 30, 2013

The Lawrence-Douglas County Planning Commission held a hearing on this text amendment to the Zoning Regulations on March 25, 2013. The Board of County Commissioners received the Planning Commission's recommendation for approval of the text amendment on April 10th, 2013, at which time they approved the amendment and directed staff to draft a Resolution amending the Zoning Regulations. That Resolution is on the Commission's June 6th, 2013 agenda.

There is a property owner in Douglas County who is interested in pursuing a Conditional Use Permit for a nanobrewery. Upon publication of the approved Resolution, the owner can submit an application to the Planning & Development Services Department at Lawrence City Hall for a Conditional Use Permit.

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS ADOPTING TEXT AMENDMENTS TO THE ZONING REGULATIONS FOR THE UNINCORPORATED TERRITORY OF DOUGLAS COUNTY, KANSAS.

WHEREAS, the Lawrence-Douglas County Planning Commission, after holding a public hearing on March 25, 2013, following due and lawful notice pursuant to K.S.A. 12-757 and the *Zoning Regulations for the Unincorporated Territory of Douglas County, Kansas*, as codified in Chapter 12, Article 3 of the Douglas County Code and as amended (the "Zoning Regulations"), has recommended that the Board of County Commissioners of Douglas County, Kansas (the "Board") make text amendments to the Zoning Regulations, the nature and description of such change being fully set forth below; and

WHEREAS, on April 10, 2013, the Board found that the Zoning Regulations should be amended by adopting the text amendment set forth below.

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

I. Adoption of Text Amendments. The Board hereby finds that the statutory provisions for the amendment of the Zoning Regulations has been fully complied with and hereby adopts the following text amendments (the "Text Amendments") amending the Zoning Regulations as follows:

A. Amending the existing section **12-303 DEFINITIONS** to add a new subsection with the following definition:

12-303-1.94 Nanobrewery.

A Nanobrewery is a small microbrewery that typically makes 3 barrels of beer or less in one session. (One barrel equals about 31 gallons which is approximately 2 kegs or 14 cases of beer). A Nanobrewery is a microbrewery by law and the same federal and state regulations apply. For the purpose of these Regulations, a Nanobrewery is defined as a brewery that produces no more than 1250 barrels of beer in a calendar year. Nanobreweries usually include the sale of beer manufactured by the licensee in the original unopened container to be consumed off the licensed premise and free samples.

B. Adding new subsection **12-319-4.36** to **SUPPLEMENTAL USE REGULATIONS-CONDITIONAL USES-TEMPORARY USES** relating to NANOBREWERIES as follows:

12-319-4.36 Nanobreweries The following standards apply:

a. Commodities grown on site shall be used to the greatest extent possible, with production utilizing crops grown on the same property or in combination with crops grown off-site. A nanobrewery that uses

commodities produced on-site may be permitted with a CUP. A nanobrewery that does not utilize commodities produced on-site is considered a manufacturing activity and requires appropriate zoning.

- b.** Production is limited to no more than 1,250 barrels of beer per year.
- c.** All State and Federal licenses which are required for the use shall be provided prior to the release of the permit for the Conditional Use.
- d.** The nanobrewery may employ up to 3 full-time employees.
- e.** Commercial vehicles for delivery and pick-up of product are limited to light or medium duty trucks; which are defined as trucks with a Gross Vehicle Weight Rating (GVWR) of 16,000 lbs or less.
- f.** Commercial pick-up and deliveries by trucks heavier than 14,000 lbs GVWR shall be limited to three trips (to and from the site) per week.
- g.** Beer sales for on-site consumption are prohibited.
- h.** A tap room is permitted for the tasting of beers produced on-site. No charge may be levied for the use of the tap room or sampling of beers.
- i.** Beer sales for off-site consumption are permitted as well as ancillary retail sales of related items. T-shirts and glasses are examples of items which would be permitted as ancillary retail sales.
- j.** New buildings used in the brewery operation, production, and storage of materials shall be designed and located to maintain the rural character of the area. Existing buildings shall maintain their rural character from the outside.
- k.** No part of the production may result in dispersal of smoke or particulate matter emissions that exceeds federal EPA standards.
- l.** All equipment used in the production shall be located wholly within a building or structure. Any associated noise, light or vibrations from the production operation shall not be perceptible at the site boundary/property lines.
- m.** All products shall be stored within a building or structure.
- n.** All buildings, whether new or existing, which are used for the operation and production of the nanobrewery, warehousing of products, and any areas which will be open to the public such as the tap room and area for ancillary associated retail sales must meet the adopted construction codes (Chapter 13 of the County Code).
- o.** Traffic data related to the project shall be provided with the CUP application. This information will be used by the County Engineer to make a determination regarding the intensity of use which is suitable based on the road network and will include, at a minimum:
 - 1) The number of trips anticipated with the nanobrewery use. This information should be provided for passenger vehicles as well as delivery trucks.
 - 2) The size of the delivery/distribution trucks should be noted as well as the frequency of the trips.
 - 3) The typical route the delivery/distribution vehicles will use to access the property.
- p.** The property shall have direct access to a full-maintenance public road unless access to an existing private road is approved as follows:
 - 1) The County Engineer has made a determination based on the traffic data provided that as to the intensity of use which is suitable based on the configuration and condition of the private road.

- 2) Written approval of other land owners using the private road must be provided.
- 3) A maintenance agreement for the private road must be executed and recorded.

B. Addition to Zoning Regulations. The Text Amendments made by this Resolution shall be included as a supplement to the Zoning Regulations, as codified in Chapter 12, Article 3 of the Douglas County Code.

C. Invalidity. If any section, clause, sentence, or phrase of Resolution or the Text Amendments adopted hereby is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this Resolution or the Text Amendments adopted hereby, as the case may be.

D. Repeal. The Zoning Regulations heretofore adopted that are in conflict with the Text Amendments are amended, repealed or replaced, as the case may be, to be consistent with the Text Amendments adopted hereby.

E. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Board and its publication once in the official County newspaper.

ADOPTED this _____ day of _____, 2013.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS

Mike Gaughan, Chairman

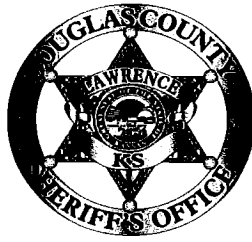
ATTEST:

Nancy Thellman, Member

Jameson D. Shew, County Clerk

Jim Flory, Member

OFFICE OF



THE SHERIFF

Steve Hornberger, Undersheriff
111 E 11th St – Operations
Lawrence, KS 66044
(785) 841-0007, fax (785) 841-5168

Ken Massey, Undersheriff
3601 E 25th St – Corrections
Lawrence, KS 66046
(785) 830-1000, fax (785) 830-1085

KENNETH M. MCGOVERN
Sheriff

MEMORANDUM

To: The Board of County Commissioners
County Administrator Craig Weinauer

From: Sheriff Kenneth M. McGovern 

Date: May 29, 2013

Subject: Consider Recommendation of Vehicle Purchase

The Douglas County Sheriff's Office is requesting authorization to purchase one 2013 Ford Police Interceptor utility vehicle. This purchase would total \$25,263 and is necessary to ensure the continued reliable operation of our vehicles. The funding for this purchase is currently available in the 2013 Sheriff's Office budget in the vehicle equipment reserve line item.

This vehicle would replace one late model and high mileage vehicle that is currently in operation within the Corrections Division. This purchase would be made utilizing the MACPP joint vehicle bid with Shawnee Mission Ford. Shawnee Mission Ford appears to provide this vehicle with the options needed at the lowest cost.

I recommend that the BOCC authorize the Sheriff to complete the purchase of this vehicle. Attached, you will find copies of the MACPP bid price for the vehicle. I will be available to answer any questions you may have.

Attachments

DOUGLAS COUNTY, KANSAS
PURCHASE ORDER NO. 166-05292013-1

Vendor Name/Address:

Shawnee Mission Ford Inc.
11501 Shawnee Mission Parkway
Shawnee, KS 66203-3359
Attn: Jay Cooper

Deliver To:

Douglas County Sheriff's Office
3601 E. 25th Street
Lawrence, KS 66046
Attn: Capt. Wes Houk

Bill To:

Douglas County Sheriff's Office
Attn: Kim Hertach
111 E. 11th Street
Lawrence, KS 66044

Contact: Capt. Wes Houk (785-865-6626)

Date: 05-29-2013

Approved by the BOCC on ****TBA****

FUND	DEPT	ACCT	QTY	DESCRIPTION	UNIT LIST PRICE	UNIT DISCOUNT PRICE	TOTAL PRICE
				Comply w/ MACPP/MARC Specifications and Contract Terms			
100	13000	82000	1	2013 Ford Police Interceptor - Utility (K8A) with specified options listed in bid # 2012-117, Item #37		\$ 25,000.00	\$ 25,000.00
100	13000	82000	1	Decal - Badge delete (16D)		\$ -	\$ -
100	13000	82000	1	Floor Covering - Heavy duty vinyl front and rear (no carpet - delete 16C)		\$ (85.00)	\$ (85.00)
100	13000	82000	1	Handles - Inside rear door inoperative (68G)		\$ 35.00	\$ 35.00
100	13000	82000	1	Handles - Rear window inoperative (18W)		\$ 25.00	\$ 25.00
100	13000	82000	1	Keys - All vehicles keyed alike (code 1284X)		\$ 50.00	\$ 50.00
100	13000	82000	1	Mirrors - Heated (549)		\$ 60.00	\$ 60.00
100	13000	82000	1	Spot Lamp - Driver only LED bulb (51R)		\$ 175.00	\$ 175.00
100	13000	82000	1	Temporary Tag (DI)		\$ 3.00	\$ 3.00
				Exterior Color: Medium Titanium Metallic, Interior Color: Charcoal Black		\$ -	\$ -
				Warranty: 3 Years/36,000 Miles Bumper-Bumper, 5 Years/100,000 Powertrain		\$ -	\$ -
				TOTAL:			\$ 25,263.00

Approved By: _____

Kenneth McGovern, Sheriff

Date: _____

PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item

PC Staff Report
05/20/13

**ITEM NO. 6: AMENDED CONDITIONAL USE PERMIT FOR BIG SPRINGS QUARRY; 2
N 1700 RD (MKM)**

CUP-13-00126: Consider an amended Conditional Use Permit for a revised phasing schedule for Big Springs Quarry, located at 2 N 1700 Rd. Submitted by Mid-States Ventures, LLC, for Bonnie M. Nichols, Trustee, and Mid-States Materials, LLC, property owners of record. *Big Springs Quarry was approved with Conditional Use Permit CUP-7-2-90.*

STAFF RECOMMENDATION:

Staff provides the following list of options for the Planning Commission's recommendation to the Board of County Commissioners based on the findings presented in the staff report:

- 1) Approve the revised phasing to allow the operator to coordinate quarrying activities between the portions of the quarry on each side of the Douglas County / Shawnee County line.
- 2) Deny the revised phasing to maintain the predictability as to the sequencing of the quarrying operations for the benefit of surrounding property owners.

Attachments:

- Attachment A – Applicant's February 4 letter outlining reason for revision.
Attachment B -- Staff Memo and Minutes of March 6, 2013 County Commission meeting.
Attachment C -- All Restrictions of Use and Conditions of Approval to this point.
Attachment D – Communications.

Reason for Request: Applicant's response: *"Mid-States materials, LLC ('Mid-States') is requesting that the Planning Commission and County Commission recognize a revision to the order in which Mid-States intends to quarry in the six phases outlined in the CUP. (See CUP 7-2-90). Mid-States' February 4, 2012 (sic) correspondence, attached hereto as Exhibit 'A', and Planning Staff's March 6, 2013 memorandum, attached as Exhibit 'B', specify in greater detail the nature and reasons for the request.*

Quarrying is complete in Phases I, IA and II. Quarrying is ongoing in Phase III. Mid-States' development plan calls for quarrying in Phase VI next leaving Phases IV and V for later development. Nothing in the present CUP requires that these phases be developed in any particular order."

KEY POINTS

- The Board of County Commissioners considered the request for a revised phasing schedule at their March 6, 2013 meeting and voted to return it to the Planning Commission as they felt the change was significant enough to require Planning Commission's recommendation. The minutes of this meeting are attached with this memo.
- The CUP is regulated by the 22 restrictions of use which were applied to the original permit and subsequent conditions or restrictions which were established with each revision or

amendment to the original CUP. All conditions and restrictions of use which apply to this CUP are included in Attachment C.

- A request that an amendment be initiated to the CUP to revise the setbacks provided for Phase 4 was provided by the attorney representing Lone Oak, LLC, the owners of the Lone Oak hunting facility. This request is included in the communications in Attachment D.

ASSOCIATED CASES/OTHER ACTION REQUIRED

ASSOCIATED CASES

- Conditional Use Permit (CUP-7-2-90) approved by Board of County Commissioners on Dec. 19, 1990 for Martin Marietta Aggregates to operate a 720 acre limestone quarry.
- Conditional Use Permit (CUP-6-6-92) approved by the Board of County Commissioners on Sept. 16, 1992 to include an additional 80 acre tract (Phase I-A) in the overall quarry operation.
- Revision to the CUP (CUP-7-2-90) was approved by the Board of County Commissioners on March 17, 1993 to allow the addition of a shop maintenance facility on the site.
- Conditional Use Permit (CUP-12-09-06) approved by the Board of County Commissioners on July 16, 2007 amended the CUP to allow the transfer of operator to Mid-States Materials and a revision to the landscaping plan.
- Conditional Use Permit (CUP-05-02-08) submitted to amend the CUP. Through the review of the CUP application, possible compliance issues were identified. The CUP was withdrawn and a Consent Decree was executed by the quarry operator and the County Commission on May 27, 2009 to resolve these possible issues. On March 11, 2011 the County Commission received a staff memo noting that the quarry operator had complied with the actions required by the Consent Decree within the specified deadlines.

OTHER ACTION REQUIRED

- Consideration of the CUP amendment request and decision by the Board of County Commissioners.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- 2 communications from Dave Buffo, counsel to Lone Oak, LLC to the County Commission prior to their consideration of the revised phasing request, included in attachment D.
- Several communications from Dave Buffo to the Planning Commission regarding the amended CUP, included in attachment D.
- Communication from Mossy Oak Properties, realtor for Lone Oak LLC, included in attachment D.
- Staff met with Lone Oak, LLC and Dave Buffo on April 26, 2013 to discuss their concerns with the proposed revised phasing.
- Discussion and emails with Bill and Michele Best regarding their concerns with the pre-blast survey to occur before Phase 6 is quarried, notification of blasting and the drainage and reclamation plans for Phase 6.

SUMMARY OF REQUEST

Mid-States Materials has an approved CUP to operate the Big Springs Quarry in western Douglas County. The amendment before the Commission is a revised phasing schedule for the quarry operations. The quarry has moved into Phase 3 and the request has been made to move to the property to the west, Phase 6, when Phase 3 is complete so that quarrying can

occur concurrently with quarrying on the Shawnee County portion of the quarry. With the completion of Phase 6, quarrying would then move into Phase 4 and then Phase 5. (Figure 1)

This report reviews the request with the approval criteria noted in Section 12-319-1.02 and staff provides options for the Planning Commission's recommendation.



Figure 1. Phases 1-6

GENERAL INFORMATION

Current Zoning and Land Use:

A (County-Agricultural); Limestone quarry permitted with a Conditional Use Permit and agricultural uses on portions not being quarried.

Surrounding Zoning and Land Use:

To the west: Land to the west lies within Shawnee County and is zoned RA1 (Rural Agriculture). Limestone Quarry permitted with a Conditional Use Permit, agricultural uses and scattered rural residences.

To the north and east: A (County-Agricultural) District; agricultural uses and scattered rural residences. A hunting/shooting facility is located to the east.

To the south: A (County-Agricultural) and A-1 (County-Suburban Home) Districts; agricultural uses and scattered rural residences. (Figure 2)

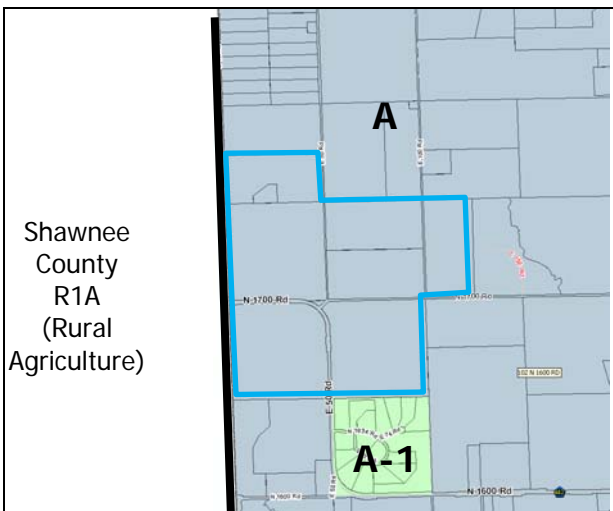


Figure 2a. Zoning of Area. (Quarry property outlined in blue.) Bold line is the Shawnee/Douglas County border.



Figure 2b. Land Use of Area. (Quarry property outlined in blue.)

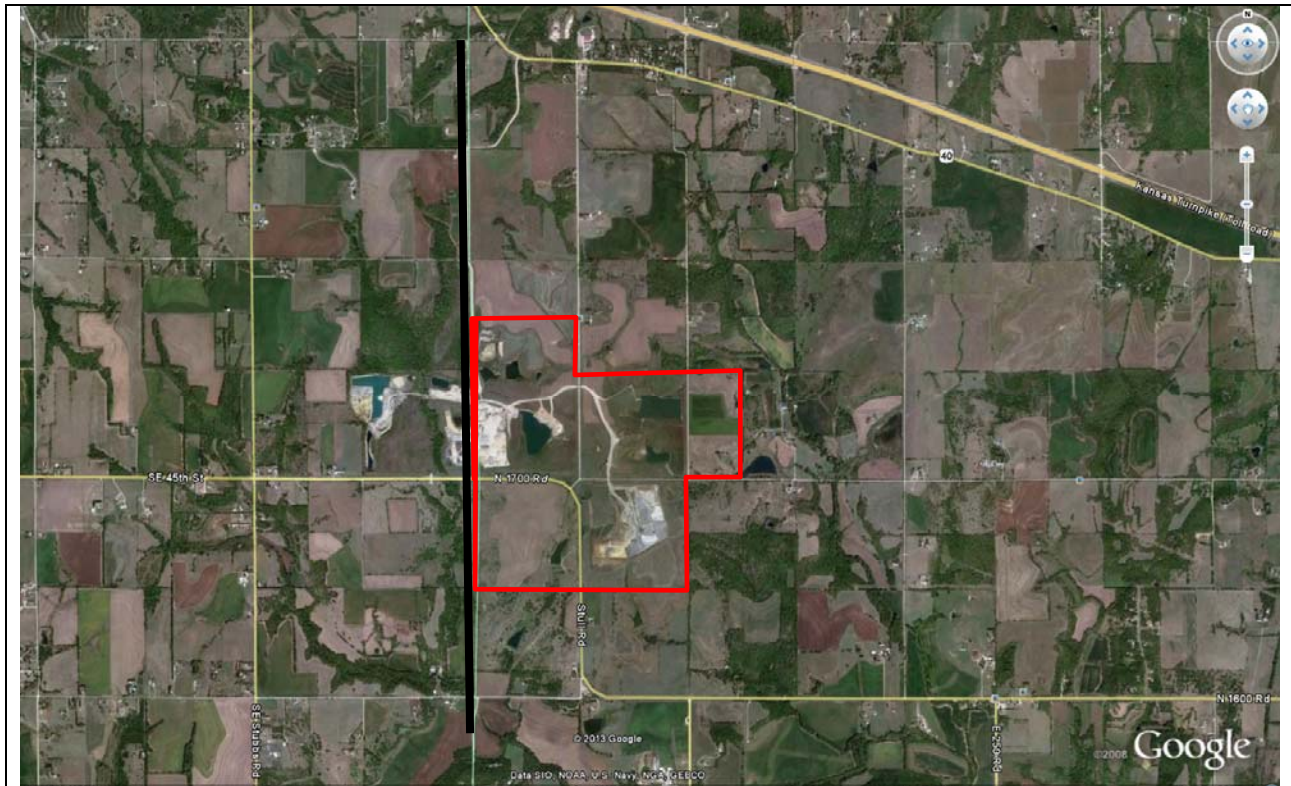


Figure 2c. This aerial photograph from Google Earth is a more current representation of the quarry and surrounding land uses than is available on our GIS maps. As parcel boundaries are not shown on these maps, the approximate quarry boundary is outlined. (Bold line marks the Douglas/Shawnee County boundary.)

I. ZONING AND USES OF PROPERTY NEARBY

The majority of the property in the vicinity of the quarry is zoned A (Agricultural) and agriculture is the principal land use. A hunting/shooting facility is located east of the quarry property. A hunting/shooting facility is considered an agricultural activity per decision of the Court of Appeals of Kansas in *Corbet v Board of Shawnee County Commissioners* and therefore, does not require a CUP. Approximately 156 acres adjacent to the southern border of the quarry is zoned A-1 and contains an 11 lot, residential subdivision which has not yet been developed. The quarry extends across the west Douglas County line into Shawnee County. Land within Shawnee County is zoned RA1 (Rural Agriculture) per the Shawnee County Planning Office and the principal land uses in the area are also agriculture, rural residential, and mining/excavation. (Figure 1)

Staff Finding – Nearby property is zoned A (Agricultural) and is used predominately for agricultural purposes. Other uses in the area include scattered farm/rural residences; a platted subdivision which has not yet been developed, zoned A-1 (Suburban Home); and a hunting/shooting facility to the east, permitted as an agricultural use. The quarry extends into Shawnee County to the west which has similar zonings and land uses. (Figure 1) The quarry is an existing use which is compatible with the development in the area with the conditions and restrictions of use applied to the CUP.

II. CHARACTER OF THE AREA

Staff Finding – The quarry is located in a rural area with predominately agricultural land uses and scattered farm/rural residences. A hunting/shooting facility is located nearby; however, the predominate land use is agricultural grassland and row crops. Hwy 40 and Interstate 70 traverse east/west through the area approximately a mile north of the quarry site. The quarry is an existing use which is compatible with the development in the area with the conditions and restrictions of use applied to the CUP. The proposed revised phasing would not alter the quarry's nature so it would remain compatible with the character of the area.

III. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

Applicant's response:

"The subject property has been a limestone quarry since 1990 and has proven to be a reliable source of quality limestone aggregate."

Staff Finding – A Conditional Use Permit (CUP) does not change the base, underlying zoning. A quarry is a permitted use in the A District when approved through the Conditional Use Permit process. The property is suitable for use as a quarry due to the fact that limestone reserves are present. The request to revise the phasing schedule does not alter the suitability of the property for uses permitted in the A (Agricultural) Zoning District.

IV. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

Staff Finding – County Zoning Regulations were adopted in 1966; this property has been zoned "A (Agricultural)" since that adoption. The Conditional Use Permit for the quarry was approved in 1990. The property is currently being quarried, and has been developed with a rock crushing plant and a shop.

V. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

Applicant's Response:

"Mid-States is not requesting the removal of any restrictions."

Section 12-319 of the County Zoning Regulations states that *"Recognizing that certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district, certain conditional uses listed in Section 12-319-4 below, when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited."* Mining and excavation is listed as Use No. 5 in Section 12-319-4 Conditional Uses Enumerated, of the *Douglas County Zoning Regulations*.

The proposed amendment is a request to revise the phasing schedule of the quarry. The phasing was included in the original submittal application and, while not specifically discussed with the approval of the CUP, is incorporated in the CUP conditions with Condition No. XIX: *Incorporation By Reference: "All of the terms, conditions, plans and restrictions contained in the applicant's bound application submittal and the Planning staff August 22, 1990 report to the Planning Commission, entitled 'Reclamation: The Process and the Plan,' are hereby incorporated by reference as a condition and restriction on this Conditional Use Permit. In any instance in*

which there is a conflict between the terms of these restrictions and the bound submittal or Planning staff report, these restrictions shall control.”

The only condition involved with this amended CUP is the revised phasing schedule. No other changes are being proposed by the applicant at this time. The original bound application submittal explained that the quarrying operations would occur in phases and set out the phasing sequence. As this was a self-imposed condition, staff took the requested revised phasing schedule to the County Commission for consideration.

A Conditional Use Permit is often taken directly to the County Commission with requests for revisions when the request does not include conditions which were specifically required or discussed by the Planning Commission with the consideration of the CUP. Letters were mailed to property owners within 1000 ft of the quarry notifying them of the placement of the revised phasing request on the County Commission's agenda so they would be aware of the proposed change and would have the opportunity to provide input. Staff was contacted by the property owner adjacent to Phase 5, who had no opposition to the revised phasing. Staff recommended approval of the request to revise the phasing schedule as no negative impacts had been identified. Two neighboring property owners expressed concerns with the proposed phasing change at the County Commission meeting and the commission returned the request to the Planning Commission for consideration and a public hearing so they could receive a recommendation from the Planning Commission.

The requested change is a timing rather than a physical change and will not detrimentally affect nearby property, as there will be no change in the quarrying activities. Communications from Dave Buffo, representing Lone Oak LLC who owns property adjacent to Phase 4 to the east, indicate that the revised phasing schedule may have an impact on their plans to sell the property. This will be discussed in the following section of this report.

Staff Finding – The revised phasing schedule should have no negative impact on nearby properties as there are no physical changes being proposed to the quarrying activity.

VI. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE PETITIONER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS

Applicant's Response:

“The gain to Mid-States will be realized through more efficient development of the quarry. Mid-States intends to build one haul road to serve the entire southern portion of the quarry (Phase VI) in Douglas County and the adjacent property in Shawnee County. (See Exhibit 'A'). This will allow the quarry to operate more efficiently by reducing the amount of resources used to build haul roads and by reducing the distance traveled within the quarry by the trucks transporting the raw aggregate to the crushing plant. This obviously reduces wear and tear on equipment and reduces fuel use.

This should not cause any additional hardship to the surrounding neighbors as no additional area will be quarried as a result of this request. All conditions and restrictions will remain in place. Only the order in which the Phases are quarried will change. Nothing about the process of quarrying will change.”

Evaluation of the relative gain weighs the benefits to the community-at-large which would be achieved through the denial of the application vs. the hardship this would cause to the property owners.

PUBLIC

Denial of the proposed amendment would require the quarrying activity to continue in the same order as noted in the original application. This predictability regarding the progress of the quarry may benefit the welfare of nearby landowners. It would provide a means for a property owner to estimate when quarrying would occur near their property as phases were completed; however, it would not provide a timeline for any phase of the quarry as timing is dependent upon the resources and market demand.

The use and enjoyment of one's property can be affected as operations move between phases due to increased noise, dust, vibrations, traffic from the quarrying activity. Additionally, timing of property development and sale may also be affected as neighbors may use the phasing as a factor in such decisions.

Lone Oak, LLC provided a letter from their realtor, Mossy Oak Properties, discussing the impact of the quarry on land prices. (Attachment D) The impact of the quarry, in and of itself, is not a factor in this situation as the quarry had an approved CUP and was in operation prior to Lone Oak, LLC purchasing the adjacent property.

APPLICANT

Denial of the request would require the applicant to move quarrying activities to the east side of the Douglas County portion of the quarry while quarrying is occurring on the west side of the Shawnee County line adjacent to Phase 6. This may result in a less efficient quarrying process. Approval of the request would allow the operator to combine operations on the south part of the quarry and operate more efficiently.

A quarry has a long time frame with the length of a typical CUP being 30 years. An extension may be requested at the end of that time frame, if necessary to complete operations. Given the long time frame, flexibility in the phasing and other operational characteristics is often necessary to respond to changing conditions.

Staff Finding – The denial of the request would maintain the original expectation that surrounding land owners may have planned for relative to the use and enjoyment of their own property. The denial of the request would require the operator to proceed in the phasing sequence established with the original application and would prohibit them from coordinating quarrying activities on both sides of the county line. Approval of the request would result in a more efficient means of operation for the southern portion of the quarry. The comparison is between the loss of efficiency for the quarry operator with denial of the request and the loss of predictability for property owners with approval of the request.

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

The Resource Management Section of Chapter 16, Environment of *Horizon 2020* states: *"This section encourages the responsible use of marketable natural resources within Douglas County, through proper extraction and reclamation methods. They are essential to sustainable development activity, primarily in the form of low cost raw materials, such as sand, gravel, timber, oil, gas, and stone, etc."* The CUP has a list of conditions and restrictions of use to

ensure the responsible use of a marketable natural resource. The change being proposed will not alter the responsible use of these resources.

Staff Finding.

The conditions and restrictions of use associated with the CUP permitting this quarry ensures the responsible use of a marketable natural resource. The change being proposed will not alter the extraction and reclamation methods and is in conformance with the Comprehensive Plan.

STAFF REVIEW

Two property owners expressed concern with the proposed revised phasing schedule at the County Commission meeting. Lone Oak, LLC expressed concern with the proposed phasing change and these concerns were discussed earlier in the report. A couple who had purchased a home south of the quarry were concerned that quarrying would continue in the area. They requested general information which was relayed on to the quarry operator; however, as of the time this report was printed they have not provided any comment regarding the impact of the proposed phasing change on their property.

Conclusion

Quarrying is permitted in Phases 4, 5, and 6 and is expected to occur. Quarrying occurs over a long time frame and some flexibility should be afforded to allow operators to react to changing conditions; however, maintaining the current phasing would maintain the predictability of the quarrying operations for surrounding property owners. There are two options available:

- 1) Approve the revised phasing to allow the quarry to coordinate quarrying activities between the portions of the quarrying on each side of the Douglas County / Shawnee County line.
- 2) Deny the revised phasing to maintain the predictability as to the sequencing of the quarrying operations for the benefit of surrounding property owners.

AMENDMENT REQUESTED

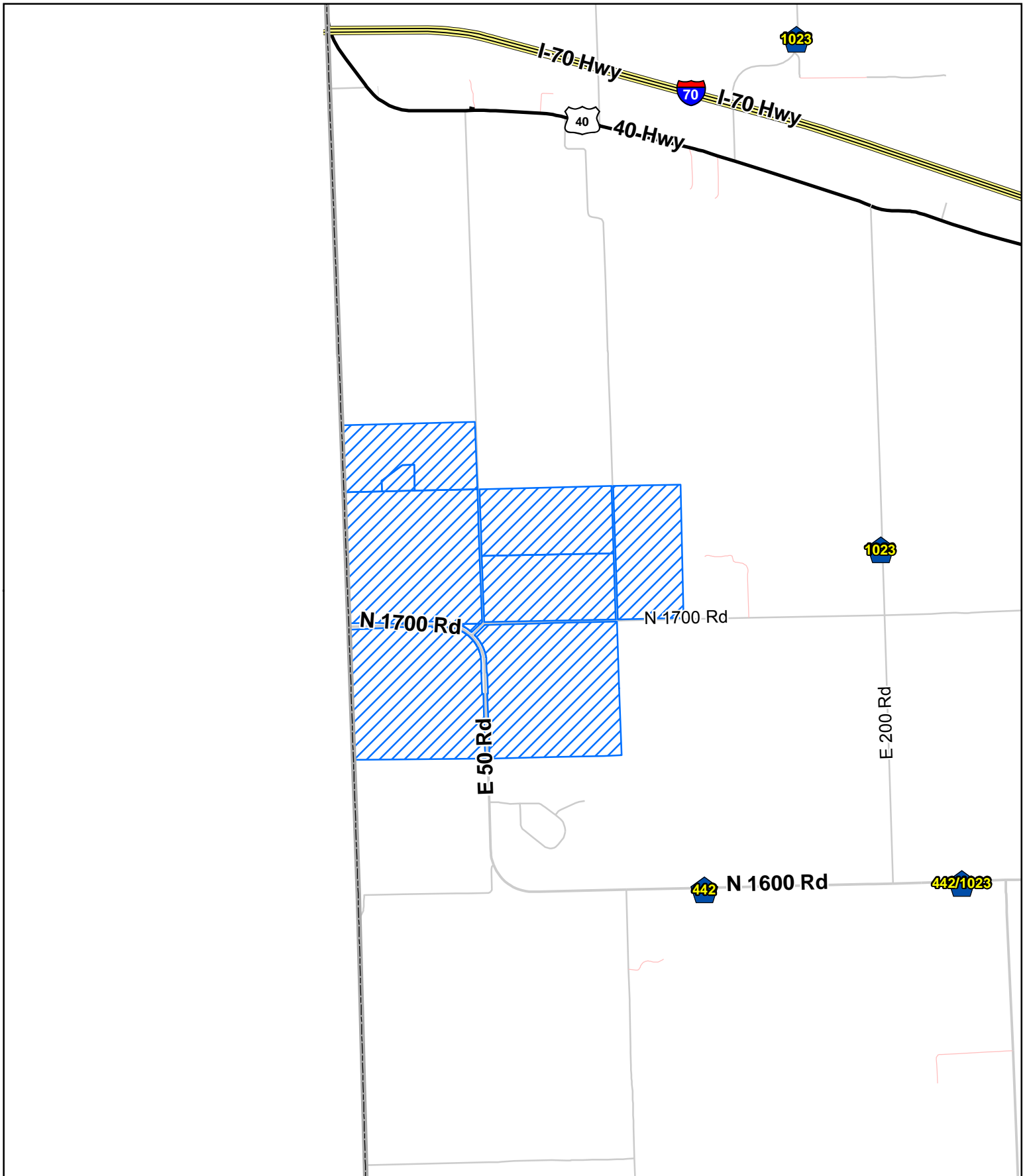
Dave Buffo, attorney for Lone Oak LLC, provided an email dated April 19, 2013 in which he expressed their opposition to the proposed phasing change. The email also included a request for an amendment to the CUP that would revise the setbacks for Phase 4 adjacent to the Lone Oak property. Lone Oak is adjacent to Phase 4 on the east and north sides. The approved CUP requires the following setbacks on these sides:

- East side of Phase 4 --- 100 ft mining and 150 ft blasting setbacks.
- North side of Phase 4 --- 200 ft mining and 500 ft blasting setbacks.

The amendment requests the setback on the east side of Phase 4 be increased to at least 300 ft for mining and 500 ft for blasting.

Per Section 12-319-3, the County Commission has the authority to amend an approved Conditional Use Permit. Upon the Commission's own initiative or through a recommendation of County Staff or the Planning Commission, a public hearing date may be established for the consideration of the proposed amendment.

The Planning Commission may recommend that the County Commission initiate an amendment or take no action on the request to amend the setbacks.



**CUP-13-00126: Conditional Use Permit for Big Springs Quarry
2 N 1700 Rd**





MID-STATES MATERIALS LLC

February 4th, 2012

Mary K. Miller, AICP
City/County Planner
Planning & Development Services
P.O. Box 708
Lawrence, Kansas 66044

Re: Big Springs Quarry
Development Sequence

Mary:

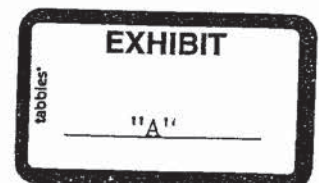
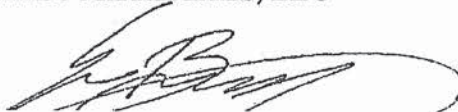
We continue to quarry phase three at the Big Springs Quarry and are currently preparing to move into phase six. Simultaneously with quarry development of phase six in Douglas County we also intend to open and develop quarry activities on adjacent property in Shawnee County, Kansas. Both of these new tracts of property are south of N1700 road and will be served by the same haul road and elevated grade (bridge) crossing. From a development and operational standpoint it is our preference to build one haul road to serve both tracts of property in Shawnee and Douglas County rather than building two haul roads at the same time; one to serve our Shawnee County property south of N1700 road and a second haul road, running east north of N1700 road, to serve phase four in Douglas County.

Our plan is to develop and quarry phase six next in Douglas County and then move to phase four and phase five in Douglas County to continue our limestone quarry operation. Transition time between phases will be governed solely by demand for our products and economic conditions. Please forward notice to surrounding landowners informing them of our continued plans at the Big Springs Quarry.

Please advise me when this case is set to be heard by the Board of County Commissioners and as always contact me if you have any additional questions or comments.

Regards,

MID-STATES MATERIALS, LLC



Memorandum

City of Lawrence – Douglas County Planning & Development Services

TO: Board of County Commissioners

FROM: Planning Staff

Date: For March 6, 2013 County Commission Meeting

RE: Request to revise the phasing schedule for Big Spring Quarry, located at 2 North 1700 Road, Lecompton.

Attachment: Request for revised phasing schedule.

Eric Bettis, owner/operator of Mid-States Materials, submitted the attached request for a revised phasing schedule for Big Springs Quarry to the Planning Office. The phasing was not required as part of the CUP; however, notice was mailed to property owners within 1000 ft so they would be aware of the proposed change.

As the request notes, they are currently quarrying in Phase 3 on the southern portion of the quarry and are requesting a revision to the phasing schedule to allow them to quarry Phase 6 before moving into Phases 4 and 5. The phases are shown in Figure 1.

Mid-States Materials quarries the adjacent land to the west of Phase 6 which is in Shawnee County. Quarrying the 2 properties concurrently would allow them to utilize the same haul road and bridge. This would allow them to operate more efficiently. The change being proposed to the phasing schedule would be that Phase 6 would be moved between Phases 3 and 4. The remaining phase schedule would be 3→6→4→5.

Phasing was provided on the original CUP plan to illustrate how the quarrying operations would occur. Staff does not recommend changing the phase numbers on the plan as many of the conditions are written specific to a particular phase. No negative impacts from the requested change have been identified. The revised phasing schedule will allow quarrying on the south side of the property to be completed before quarrying moves on to the east and then the north sides, rather than quarrying on the south for Phase 3 and then returning years later with Phase 6.

STAFF RECOMMENDATION

Staff recommends approval of the revised Phasing Schedule to allow Mid-States Materials to quarry Phase 6 following Phase 3 and then move on to Phases 4 and 5.

March 6, 2013

Gaughan called the regular meeting to order at 6:35 p.m. on Wednesday, March 6, 2013 with all members present.

PROCLAMATION 03-06-13

Gaughan read and moved to approve a proclamation declaring March 10-17, 2013 as "Ninth Street Missionary Baptist Church Anniversary Celebration Week." Motion was seconded by Thellman and carried 3-0. Pastor Delmar A. White, gave a brief presentation on their upcoming celebration.

CONSENT AGENDA 03-06-13

Gaughan moved approval of the following Consent Agenda:

- ▶ Commission Order Nos. 13-010 and 13-011 (on file in the office of the Clerk); and
- ▶ 2012 Township Annual Reports as required per K.S.A. 80-410 and K.S.A. 80-304;
- ▶ Systems Upgrade Agreement with the University of Kansas as part of the P25 800MHz Radio Project;
- ▶ Site Lease Agreement with TFM Comm Inc. for use of tower and facilities located at the Flair Tower site, 1167 N 1100 Road, Lawrence;
- ▶ Vehicle purchase of six (6) Ford Police Interceptor utility vehicles and one (1) 2013 Ford Expedition in the total amount of \$183,036 utilizing the MACPP joint vehicles bid using Shawnee Mission Ford.

Motion was seconded by Thellman and carried 3-0.

PLANNING 03-06-13

The item **CUP-12-00099** to consider a revised phasing schedule for the Big Springs Quarry, CUP-12-09-06, located at 2 North 1700 Road, Lecompton was tabled and will be heard on March 27, 2013 at 6:35 p.m. in the County Commission chamber of the Douglas County courthouse.

ACCOUNTS PAYABLE 03-06-13

Gaughan moved to approve accounts payable in the amounts of \$104,627.60 to be paid on 03/07/13. Motion was seconded by Flory and carried 3-0.

Gaughan moved to adjourn the meeting; Flory seconded and the motion carried 3-0.

Mike Gaughan, Chair

Nancy Thellman, Vice-Chair

ATTEST:

Jamie Shew, County Clerk

Jim Flory, Member

CUP-7-2-90 RESTRICTIONS OF USE
(As Amended 9-16-92 by County Commission)

I. SETBACKS

Operations setbacks vary around perimeter of the site based on the Exhibit prepared by Brian Kubota for Martin Marietta [and amended in Exhibit "B", as orally revised on 8/26/92, *reflects revised language added in approval of CUP-6-6-92*]. The setbacks shown are and shall be:

- * 50' blasting/mining setback - along the west perimeter of Phases I and V; & along the north perimeter of Phases I, I-A and V;
- * 400' blasting/mining setback - along the west and south perimeters of Phase VI;
- * 160' mining and
260' blasting setbacks - along County Road #442;
- * 100' mining/blasting setback - along Township Roads 050E, 1700N & 100E;
- * 100' mining and
150' blasting setbacks - along the east side of Phase IV;
- * 200' mining and
500' blasting setbacks - along the east side of Phase III, the north & south sides of Phase IV, and along a portion of the east side of Phase V near the NE corner across from the Wulfkuhle residence;
- * 700' blasting/mining setback - along the south perimeter of Phase III; and the area southeast of a line which is 100' northeast of and parallel to the pipeline in Phase III and all of the area to the southeast of the pipeline;
- * a triangular area in the southeast corner of Phase VI, a corner of which is 1,800' north of the south property line of Phase VI along the setback line of County Road #442 and another corner of which is 1,100' west of the right-of-way of County Road #442 along the south setback line of Phase VI; and
- * in the northeast corner of Phase I-A, a rectangular tract the south side of which is 500' south of the north property line of Phase I-A and the west side of which is 500' west of the right-of-way of County Road 100E.

II. OPERATIONS RESTRICTIONS

Methods shall be adopted to minimize dust in staging area as well as along the haul roads.

Quarry operations shall be restricted to:

- a) sale and removal of rock: 6AM - 5:30PM, Monday - Friday;
- b) production and extraction: 6AM - 10PM, Monday - Thursday;
6AM - 5:30PM, Friday;
- c) blasting: 1PM - 5PM, Monday - Friday;
- d) provided, however, that no quarry operations shall take place on the following holidays or the days on which such holidays are observed by Kansas state

government: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; the day immediately following Thanksgiving Day; and Christmas Day.

III. FENCING

The entire site shall be fenced. All existing fencing shall be maintained by the applicant in at least its existing condition and in compliance with the fence laws of Kansas. Where additional fencing is installed by the applicant in compliance with this restriction, it shall consist of a five-strand barbed wire fence and thereafter shall be maintained in compliance with the fence laws of Kansas. Within sixty (60) days after the approval of this conditional use permit, the applicant shall enter into an agreement in which it agrees to maintain all partition fences along adjoining tracts and to indemnify and hold harmless the owners and occupants of said tracts of land from any liability arising from the failure to maintain said fencing as required herein and by the fence laws of Kansas. In the event any livestock is determined to be on the quarry site, the applicant's representatives shall assist the owner thereof or the owner's representative in retrieving the livestock and the applicant shall shut down any operations as necessary to complete the retrieval process.

A security gate and fence shall be placed at the entrance to the quarrying site across the main haul road.

The fence shall be signed periodically along each perimeter stating:

- a) the operator's name, business address and phone number;
- b) Conditional Use Permit Number; and
- c) NO TRESPASSING.

IV. BLASTING

Blasting shall be set only in sequential delays; no single delay to be over 150 lbs. of explosives. All fly-rock shall be removed from adjacent property immediately after a blast. Prior to each blast the applicant shall contact adjoining neighbors who request individual notice of each blast. Further, a signaling system shall be used to alert people in the neighboring vicinity before each blast takes place. Finally, the applicant shall observe the blasting safety precautions described in the paragraph on page 17 of the August 22, 1990 minutes of the Lawrence-Douglas County Metropolitan Planning Commission, beginning with the sentence: "Security is of the utmost importance to the mining operator."

V. AIR QUALITY

The quarry operator shall adhere to air quality standards of KDHE, not to exceed 20% of opacity more than 1 time in a one year period as observed by KDHE observers over a 5 minute period.

VI. OTHER REGULATORY RESTRICTIONS

All applicable regulations of EPA, KDHE, Ks. State Bd. of Agriculture - DWR, and other applicable agencies shall be adhered to and subsequent revisions to these regulations shall apply.

VII. PERFORMANCE BOND FOR RECLAMATION

- (a) A performance bond in the amount of \$100,000.00 with sufficient sureties shall be secured to cover reclamation activities for the plant site as designated on Phase I and shall be filed with the Douglas County Clerk's Office prior to the commencing of any site preparation activities or any other work being done pursuant to the CUP. This performance bond shall remain in place for the entire life of the permit and shall not be subject to release until the plant site has been fully reclaimed and certification thereof shall have been made by the Douglas County Commission.
- (b) In addition to the bond required under paragraph (a) above, a performance bond in the amount of \$400,000.00 with sufficient sureties shall be secured for the first site excavated for extraction purposes in Phase I other than at the plant site and shall be filed with the Douglas County Clerk's Office prior to the commencing of any excavation (including the stripping of top soil) other than at the designated plant site. This bond shall be for an excavation area no larger than 10 acres open at one time and shall remain in place until certified by the Douglas County Commission that reclamation has been completed at the site for which it was obtained.
- (c) For each additional 10 acre site excavated for extraction purposes in any Phase of the quarry operations during the term of the CUP, a performance bond in the amount of \$400,000.00 with sufficient sureties for additional excavation for extraction purposes shall be secured and shall be filed with the Douglas County Clerk's Office prior to the commencing of any such additional excavation (including the stripping of top soil). These bonds shall each be for areas no larger than 10 acres open at one time per excavation and shall remain in place until certified by the Douglas County Commission that reclamation has been completed at each site.
- (d) No more than 30 acres may be open, mined and extracted from at any one time on the quarry site, exclusive of the plant site. No more than 10 acres shall be open, mined and extracted from in a subsequent phase until reclamation is complete on the previous phase. Each of the bonds described above also shall carry provisions which provide additional coverage for any other quarry operations that are carried on at the quarry site during the pendency of the bond until release of the bonds.

VIII. RECLAMATION AND REVIEW

The first year of operation, and every 5 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 indicating the phases of quarry operation; location of stockpile area; estimated volume of material being extracted; and a detailed monitoring and management plan for the areas undergoing reclamation. The Monitoring and Management Plan for the Reclamation Process shall include:

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. The Phase I plan shall be submitted prior to opening of quarrying activities in Phase II, and each subsequent reclamation plan be submitted prior to the opening of the following phase of quarrying activity. 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. [Refer to PC minutes, 9/26/90, pp. 3 & 4.]

IX. PRE-BLAST SURVEY AND HYDROLOGIC STUDY

A pre-blast survey (by an independent seismology firm approved by the applicant and the owners of existing structures within one-half mile of the quarry site) shall be conducted, if the property owners request it, for existing structures within one-half mile of the quarry site to document existing conditions and determine the quantity/quality of water in the wells. The cost of such survey shall be paid by the applicant. Both the property owners and Martin Marietta shall be provided copies of the survey performed to retain for their records.

A hydrologic study of the site shall be completed at the applicant's expense prior to any quarrying operation:

- (a) to provide an inventory of area residential and stock wells and determine their capacities and current volumes/levels of operation; and,
- (b) to determine the impact of quarrying, per phase, based on the depth of mining proposed on the existing water tables which serve these wells.

X. DRAINAGE STUDY

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.

XI. SITE ACCESS AND ROAD RESTRICTIONS

(a) Except for vehicles traveling to and from the site on 45th Street in Shawnee County, the principal access to the site for transport truck traffic and hauling of rock shall be restricted to the use of U.S. Highway 40 from a direct route north of the proposed quarry. The northern access to U.S. Highway 40 shall be accomplished by either a purely private road connecting the site with U.S. Highway 40 or by the extension of Woodring Road to the site and the improvement of Woodring Road and 29th Street in accordance with AASHTO and MUTCD standards. The U.S. 40 intersection improvement for either alternative shall be in accordance with KDOT requirements. The Douglas County Commission prefers the private road alternative, and nothing herein shall be construed as a commitment by the Commission to exercise its powers of eminent domain to extend and improve Woodring Road and 29th Street.

If the applicant chooses the Woodring Road/29th Street alternative, the applicant may be required to acquire all rights-of-way deemed necessary for the project by the Director of Public Works/County Engineer and convey such property interests to Douglas County and Shawnee County without cost to the counties. The cost of all public improvements to Woodring Road and 29th Street, including, but not limited to, engineering services, utility relocation, and construction, shall be paid by the applicant. Douglas County, at its option, may provide construction engineering services and such other services deemed appropriate by the County Commission in connection with the project, and the total direct and indirect cost of such services shall be paid by the applicant. Further, the applicant shall enter into a maintenance agreement with Douglas County to properly maintain the improved public roadway in a manner acceptable to the Director of Public Works/County Engineer.

The northern access to U.S. 40 shall be constructed and available for use no later than twelve (12) months from the date rock crushing activity begins on the proposed CUP site. The County Commission may extend this deadline for a fixed period of time upon a documented showing by the applicant of an unreasonable delay caused by either Douglas County or the Kansas Department of Transportation.

If the composition of the private road alternative described above includes an aggregate surface, "year round" dust control along the roadway shall be maintained by the applicant. If a public road is constructed by the applicant for gaining access to U.S. 40, it shall contain a hard surface of either concrete or bituminous asphalt in accordance with AASHTO standards.

(b) Improvements to Douglas County Route 442 and the on-going maintenance of such improvements shall include the construction or overlay at the quarry entrance on Route 442 and 45th Street (where necessary) of through lanes, acceleration/deceleration lanes (on the north side) and a left turn lane (for traffic approaching from the west in Shawnee County) with shouldering, all in accordance with AASHTO and MUTCD standards. The work shall be planned, permitted and completed within one year of the date on which the CUP is approved. The applicant shall be financially responsible for the cost of such improvements, including, but not limited to, right-of-way acquisition, engineering, and construction. Douglas County, at its option, may provide construction engineering services in connection with such improvement project, and the total direct and indirect cost thereof shall be paid by the applicant.

Except for local deliveries of rock from the quarry site, Route 442 shall not be used by transport trucks to travel to and from the east. The applicant shall post signs and adopt appropriate restrictions on the quarry site, including restrictions on sale of rock where necessary, to ensure strict compliance with this restriction by all transport trucks. In the event the Board of County Commissioners determines, after due notice and hearing, that such restrictions have proven ineffective in prohibiting transport trucks which originate from or travel to the quarry site from using Route 442 east of the quarry entrance in violation of this restriction, the Board may order such improvements to Route 442 as it deems necessary, including, but not limited to, appropriate shouldering, surfacing and signing, and assess such costs to the applicant which shall be paid in a timely manner. In the alternative, the Board may order the applicant to cease operation or order such steps as the Board deems necessary under Section XVII, Inspection/Violation/Revocation.

(c) No township roads shall be used as access to the quarry.

(d) Restrictions which shall be posted at the entrance to the plant, regarding vehicles hauling from the site, are to include:

- no flat bed trucks without sides or tailgates;
- tailgates in place and upright position; and
- all trucks leaving the site must be covered by a tied-down tarp.

(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. The failure by the applicant to clean up spilled aggregate of such roads within a reasonable period of time shall be grounds for action under Section XVII, Inspection/Violation/Revocation.

(f) Weight limitations shall be posted on appropriate roads adjacent to the quarry.

(g) Access points across township roads between phases of operation require prior review and authorization from the Douglas County Public Works Director. Access is restricted to one point of crossing per phase as shown on the applicant's submittal. Access crossings between the phases of the site shall be maintained by applicant at all times.

- (h) During the term of this Conditional Use Permit, the applicant shall not request the vacation of any township roads in the vicinity of the site.

XII. NOISE AND LIGHT POLLUTION

Vehicles used in plant operation (extraction & production) after 6PM shall be equipped with a strobe light in addition to the back-up (audible) signal alarm. During hours when it is permissible to use only a strobe light, the audible signal shall be turned off.

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.

XIII. PERIMETER SETBACK EXCEPTIONS

The perimeter setback along the west shall be eliminated at the time adjoining property in Shawnee County is actively quarried and if the operation is under the same operator. The perimeter setback adjoining any neighboring property shall be modified to a lesser distance than set forth in I, above, down to a minimum of 50' mining/blasting setback, upon filing with the Douglas County Commission of a duly notarized statement by the beneficial owner of such neighboring property evidencing said owner's agreement to modification of the setback; provided that no such modification shall be permitted along the northern boundary of Phase IV or Phase I-A, unless such a statement is filed by all landowners owning property north of and within 1,300' of the northern boundary of Phase IV and the East 1,000' of the northern boundary of Phase I-A. *[language revised as approved September 16, 1992]*

XIV. DEVELOPER'S TRACK RECORD

Because the developer's track record is an important consideration, a change in the quarry operator shall require the Conditional Use Permit to come back to the Planning Commission for review and to the County Commission for reapproval.

XV. FUTURE USE OF THE SITE

The property shall not be used or requested for use as a sanitary landfill within the life of this Conditional Use Permit.

XVI. MONITORING BLASTS

Martin Marietta shall contract with an independent seismology firm to monitor blasts at the commencement of quarrying operations at each residence within 1/2 mile of the blast site to assure that the blast design will not be harmful to any structures or wells and that all associated vibrations are below currently recognized safety levels. A report on the monitoring of initial blasting shall be made available to owners of the residences and such report shall include a full frequency analysis of vibrations.

After the initial blasting, Martin Marietta shall contract for a continuous monitoring program commencing with the start of continuous regular blasting by an independent seismology firm

at stations chosen by the seismology firm. A monthly report which analyzes the impacts of daily blasting will be available at Martin Marietta's offices for inspection. Residents may request positioning of the seismograph to measure the impact at their property; provided, however, the applicant shall not be required to conduct tests in excess of those it determines, based on the professional advice of its independent seismology firm, will provide adequate seismic readings at residents' properties. Any resident desiring to appeal the decision of the applicant concerning this condition may appeal it to the County Commission which may order seismic tests at such locations as it deems appropriate under the circumstances at the expense of Martin Marietta.

XVII. INSPECTION/VIOLATION/REVOCACTION

The Douglas County Commission, or the appointed representative(s) thereof, shall have the right, without advance notice, to enter the premises and inspect any aspect of the quarry operation for compliance with the conditions of this permit. Upon entering the premises, the County shall first request an escort by the applicant's representatives. If no escort is available, the inspection may proceed immediately.

Further, the Douglas County Commission, or the appointed representative(s) thereof, shall be authorized to:

- (a) Order the stoppage of any operation occurring without a permit or in violation of the terms of this permit.
- (b) Order the applicant or its agents and employees to adopt such remedial measures as are necessary to comply with the terms of this permit. In such cases, the applicant shall be given no more than ninety (90) days to rectify any condition of noncompliance.
- (c) Order the immediate suspension of operations if, after due notice and an opportunity to be heard before the County Commission, it is determined by the Board of County Commissioners that the permitted operation is causing, or can reasonably be expected to cause, a significant, imminent danger or threat to the health, safety or welfare of the public or to the environmental quality of the surrounding area.
- (d) In cases such as those described in paragraph (c) that do not pose an imminent threat to the public health, safety and welfare, the applicant shall be given no more than (90) days to rectify the condition. If the condition has not been rectified, the County Commission, after due notice and hearing, may order the suspension of operations and suspend or revoke part or all of the Conditional Use Permit.
- (e) If the applicant, or the agents or employees thereof, fail to comply with a lawful order under this section, or violate any of the restrictions of use enumerated for this permit, the County Commission, after due notice and an opportunity for a hearing, may suspend or revoke part or all of the Conditional Use Permit.

XVIII. BOND TO COVER DAMAGES TO PERSONAL PROPERTY

The applicant shall post with the Douglas County Clerk a cash bond in the amount of \$10,000 to defray the cost of any damages to the personal property of the occupants of residences within one (1) mile of the quarry site perimeter which the Board of County Commissioners, after due notice and hearing, in its judgement determines are due to the activities of the

applicant, its agents or employees. Such cash bond shall be maintained at the \$10,000 level by the applicant during the term of this CUP, and the bond amount shall be refunded to the applicant without interest upon the completion of the 30 year CUP term. Any award or denial of award by the County Commission shall be subject to appeal to the district court.

XIX. INCORPORATION BY REFERENCE

All of the terms, conditions, plans and restrictions contained in the applicant's bound application submittal and the Planning staff August 22, 1990 report to the Planning Commission, entitled "Reclamation: The Process and the Plan," are hereby incorporated by reference as a condition and restriction on this Conditional Use Permit. In any instance in which there is a conflict between the terms of these restrictions and the bound submittal or Planning staff report, these restrictions shall control.

XX. ACKNOWLEDGEMENT

By the signatures of its authorized agents, the applicant acknowledges and agrees to be bound by the provisions of this Conditional Use Permit.

XXI. LANDSCAPING

Landscaping along the road right-of-way are permitted to be clustered in groups which are 200' on center and approximately 40' - 50' between cluster groups. Trees and shrubs are to be shown on the revised landscape plan dated 30 January 1991.

Landscaping shall be phased in accordance with the approved landscape plan which shows three landscape phases. Landscape phase one and two: are along County Rds. 442, 050E, 100E, and 1700N (between 050E and 100E). Planting for these phases of the quarrying operation will be completed by Spring 1993 (which is during the mining operations Phase 1); the third and final landscape phase is along the north side of County Road 1700N, east of County Rd. 100E. This final landscape phase will be activated by the completion of the mining operations Phase 2. [This planting is adjacent to mining operations Phase 4.]

(Approved by Board of County Commissioners of Douglas County, KS on February 27, 1991.)

XXII. ADDITIONAL REQUIREMENTS

Rock extracted from the permitted site shall not be transported to and crushed in Shawnee County during the term of this permit. No more than one portable rock crushing plant shall be operated on the site and its use shall be restricted to the plant site in Phase I. The applicant shall cease the use of the portable rock crushing plant by no later than December 31, 1993. If the "state-of-the-art" permanent, enclosed rock crushing plant proposed by the applicant is not constructed by January 1, 1996, this Conditional Use Permit shall be null and void; provided, however, the County Commission may grant an extension to this deadline upon a documented showing that any delay was beyond the applicant's control.

CONDITIONS OF APPROVAL CUP-6-6-92
Approved September 16, 1992

1. 22 restrictions of use approved by the County Commission as revised on February 27, 1991 for Conditional Use Permit No. 3500; *[revised language provided above]*
2. No additional requests be made by Martin Marietta and/or its heirs during the remainder of Conditional Use Permit No. 3500 and No. 3853 (which expires December 19, 2020) to expand the size of the quarry site;
3. Restriction I - SETBACKS and Restriction XIII - PERIMETER SETBACK EXCEPTIONS shall be modified to reflect the additional setbacks as proposed in Exhibit B-1, dated August 26, 1992, and the additional language as proposed in Exhibit C, dated August 26, 1992; *[revised language provided above]*
4. An amended Proposed Operations Plan shall be submitted which includes the additional acreage; AND
5. Proposed Phase 1-A shall be the only permitted incremental expansion of the quarry CUP.

Added with 1993 approval
of Shop

Attachment C

1. All repair and maintenance activities shall occur in the enclosed shop facility;
2. Repair and maintenance activities shall be limited to service of vehicles and equipment in use at this specific quarry location;
3. Specific landscape improvements associated with the new structures shall be submitted for review by the Planning Staff prior to issuance of building permits;
4. Acquisition Douglas County Health Department permits prior to issuance of building permits for the proposed structures; and
5. Submittal of a revised site plan, to be approved by Planning Staff, indicating the placement of the shop facility near the office/scale house or at an elevation approximately 50' lower than the current ground elevation at the proposed location.

CONDITIONS OF APPROVAL

1. Upon completion of quarry operations of Phase 2, Mid-States shall return the topsoil that is currently located on the approximately ¼ mile boundary between Phase 1A and Phase 2, and, after the topsoil is returned, reconstruct a 5-strand barb-wire fence along the line of the former interior fence between Phase 1A and Phase 2. Upon completion of quarry operations of Phase 5, Mid-States shall reconstruct a 5-strand barb-wire fence along the approximately ½ mile line of the former interior fence between Phase 1 and Phase 5. All of the foregoing fencing shall be in accordance with the requirements of the CUP.
2. Mid-States shall be responsible for reclamation of all quarried land. Prior to commencing quarry operations, Mid-States shall file one or more performance bonds, to ensure reclamation of the Quarry in accordance with the CUP, with the Douglas County Clerk in the initial amount totaling \$1,300,000, and keep the performance bond in effect for the remaining life of the CUP, in such amounts and with such sureties as required by Section VII of the CUP Restrictions of Use. Only upon Mid-States' filing of such performance bonds, will Douglas County release the current performance bonds on file.
3. If Mid-States desires to excavate deeper than elevation 1042 in any Phase, Mid-States must cause a hydrologic study to be completed in accordance with Section IX of the CUP Restrictions of Use, prior to such excavation.
4. The landscaping provisions contained in Section XXI of the CUP Restrictions of Use is varied such that neither Martin Marietta nor Mid-States has an obligation to replant previously planted landscaping which subsequently died, provided, however, that the following landscaping shall be planted:

Area I (South side of Phase I)

On berm on north side of County Road 442 from entry gate to E50:
6 sets of 4 Austrian Pines and 3 Hackberry, total of 42 trees

Area II (Southeast corner of Phase I & Northwest corner of Phase III)

Add to both sides of E50 entry:
4 sets of 3 Austrian Pines and 2 Hackberry, total of 20 trees

Area III (East side of Phase I)

West side of E50 South of haul road crossing, 500 ft. offset from crossing:
4 sets of 3 Austrian Pines and 2 Hackberry, total of 20 trees

Area IV (East side of Phase V)

West side of E50 North of haul road crossing, 500 ft. offset from crossing:
5 sets of 3 Austrian Pines and 2 Hackberry, total of 25 trees

Area V (Northeast corner of Phase III)

Short section on South side West of E100 Rd, approximately 450':
3 sets of 3 Austrian Pines and 2 Hackberry, total of 15 trees

Area VI (East side of Phase II)

West side of E100 Rd. after berm is removed, North approximately 1300':
4 sets of 3 Austrian Pines and 2 Hackberry, total of 20 trees

Area VII (Northwest corner of Phase IV)
 East side of E100 Rd.:
 3 sets of 3 Austrian Pines and 2 Hackberry, total of 15 trees.

The foregoing landscaping shall be planted to incorporate existing trees and, with the exception of the landscaping outlined in Area VI, all landscaping shall be planted on or before December 31, 2007. The landscaping outlined in Area VI shall be planted as soon as practicable, but no later than December 31 of the year in which the berm is removed.

In addition, an agreement shall be obtained with a professional landscaping company for maintenance, including irrigation, of the landscaping for a term of 12 months following planting, and the Zoning & Codes Department shall be provided a copy of such agreement on or before December 31, 2007.

In the event that the landscaping identified above is not planted or evidence of the 12-month maintenance agreement is not supplied on or before the dates specified, Mid-States shall be in material non-compliance with the CUP Restrictions of Use and, upon written notice from the Zoning & Codes Department, shall immediately cease all quarrying and sale activities at the Quarry until such non-compliance is remedied to the satisfaction of the Zoning & Codes Department.

5. Mid-States shall submit its first reclamation report and plan of quarrying operation to the Planning Office and Douglas County Public Works Director by July 31, 2010, to comply with the requirement of Section VIII of the CUP Restriction of Use. The Planning Office will review and make recommendations and submit a report to the County Commission for approval. Every five (5) years thereafter, Mid-States will submit the detailed report required by Section VIII.
6. This Approval to Transfer CUP is supplemental to, and shall become a part of, the CUP. Mid-States and its operation of the Quarry shall be subject to the above requirements and all of the previously approved Conditions of Approval and Restrictions of Use, the same as if the CUP was originally granted to Mid-States, and Mid-States shall sign below to confirm its agreement and understanding of these requirements. Section XIV of the CUP shall continue to apply in the event Mid-States subsequently desires to transfer ownership or operational authority of the Quarry to another person or entity, and references in this Approval to Transfer CUP to Martin Marietta or Mid-States shall apply to the new Quarry owner or operator, as the context requires. This Approval to Transfer CUP shall not prevent the Board or the County Zoning & Codes Department from taking enforcement action in the event that it is later determined that the Quarry is not in compliance with the CUP Restrictions of Use and Conditions of Approval, as amended.

Mary Miller

From: Buffo, David [David.Buffo@huschblackwell.com]
Sent: Friday, April 19, 2013 11:25 AM
To: 'amalia.graham@gmail.com'; 'cblaser@sunflower.com'; 'jonjosserand@gmail.com'; 'laraplancomm@sunflower.com'; 'bculver@bankingunusual.com'; 'rthrd@pihlawyers.com'; 'squampva@aol.com'; 'clay.britton@yahoo.com'; 'chadlamer@gmail.com'; 'bruce@kansascitysailing.com'
Cc: Mary Miller; jhutton@hensonlawoffice.com; Elce@stevensbrand.com
Subject: Mid-States Materials Application to Amend CUP
Attachments: Mid-States-Big Springs Quarry-Lawrence Douglas County Application Form w....pdf; 20130305223545748.pdf; 20130326223730734.pdf; IMG.PDF

Follow Up Flag: Follow up
Due By: Friday, April 19, 2013 4:00 PM
Flag Status: Flagged

Dear Planning Commissioners:

I am counsel to Lone Oak, LLC ("Lone Oak"). We have been informed that an item concerning Mid-States Materials, LLC ("Mid-States") request to change the sequencing of quarrying at the Big Springs Quarry in Douglas County (see attached) has tentatively been set on the Planning Commission agenda for the May 20, 2013 meeting.

We are in the process of scheduling a meeting with Mary Miller to discuss this matter, but we also wanted to contact each of you in advance of the meeting with our concerns. As you may know, this matter was before the Douglas County Board of County Commissioners ("BOCC") on March 27. The BOCC in a 2-1 vote declined to take action on Mid-States' request and suggested that if Mid-States wanted to seek a change to the sequence of the quarrying operations, Mid-States should file an application for an amendment to the CUP. In advance of this matter being taken up by the BOCC on March 27, Lone Oak submitted the attached letters dated March 5 and 26 to the BOCC. The attached letters outline Lone Oak's concerns with Mid-States' request and we would greatly appreciate each of reading and considering the information contained therein.

Additionally, Lone Oak has listed the property for sale with Mossy Oak Properties ("Mossy Oak"). As set forth in the attached letter from Ryan Koelsch with Mossy Oak, the uncertainty that will be created if the County grants the change to the CUP that Mid-States requested will have a negative impact on the market value of Lone Oak's property. Also of concern for Lone Oak and any future owner of the property is the quarrying and blasting setbacks. As it stands right now, the quarrying setback in Phase IV (directly adjacent to Lone Oak) is only 100 ft. and the blasting setback is only 150 ft. As set forth in Exhibit A, pg. 9 to the March 26 letter, "On properties in which dwellings are located, mining should not occur within 300 ft." When the CUP was approved, the structure which is now the lodge on Lone Oak's property was in existence, but for whatever reason only a 100 ft. setback for mining and 150 ft. setback for blasting was put in the CUP. These setbacks are insufficient to protect the lodge and its inhabitants from the dangers of blasting and quarrying. We mention this now because if the CUP is to be amended, at the very least we ask that the County reconsider the setbacks on the east side of Phase IV and require the CUP also be amended to reflect a quarrying setback of at least 300 ft. and a blasting setback of at least 500 ft. By taking this action now, Lone Oak and any future owner will at least have the peace of mind and security that whenever Mid-States decides to quarry Phase IV, at least Mid-States will not be quarrying within 300 ft. or blasting within 500 ft. of the lodge and property.

We thank you in advance for your consideration of this matter and we look forward to presenting this information during the public comment period. If you have any questions, please feel free to contact me.

Sincerely,

Dave

David M. Buffo
Partner

Attachment D

HUSCH BLACKWELL LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112-2551
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David.Buffo@huschblackwell.com
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Any tax advice contained in or attached to this message or email string is not intended or written to be used, and cannot be used to (i) avoid penalties that may be imposed on any taxpayer under the Internal Revenue Code or (ii) promote, market, or recommend to another any transaction addressed herein.

Mary Miller

From: Buffo, David [David.Buffo@huschblackwell.com]
Sent: Tuesday, May 07, 2013 9:32 AM
To: amalia.graham@gmail.com; cblaser@sunflower.com; jonjosserand@gmail.com; laraplancomm@sunflower.com; bculver@bankingunusual.com; rthird@pihhlawyers.com; squampva@aol.com; clay.britton@yahoo.com; chadlamer@gmail.com; bruce@kansascitysailing.com
Cc: Mary Miller; jhutton@hensonlawoffice.com; Elce@stevensbrand.com
Subject: Mid-States Materials Application to Amend CUP

Follow Up Flag: Follow up
Due By: Tuesday, May 07, 2013 4:00 PM
Flag Status: Flagged

Dear Planning Commissioners:

We wanted to follow up on the below e-mail to inquire if there were any questions regarding the information Lone Oak provided to you on April 19. Additionally, we wanted to let you know that we have had further discussions with Mary Miller regarding Lone Oak's position on Mid-States' request. We feel that the discussions with Ms. Miller were very positive and that Ms. Miller has a better understanding of Lone Oak's concerns. Specifically, we feel that Ms. Miller has a better understanding of the negative impact that re-sequencing will have on the value of Lone Oak's property.

During our discussions with Ms. Miller, Lone Oak used the analogy of comparing the value of similar homes being for sale with the difference being one home is located next to a trash dump. It is axiomatic that the homes that are not next to the trash dump will command a higher sale price and in all likelihood will sell before the home located next to the trash dump. To take this analogy a step further, and to make it more like the situation at hand, assume that when the owners of the home next to the trash dump purchased the home they relied upon public information that set forth an end date and reclamation date for the trash dump and relying on this information purchased the home with the plan to own the home and then sell after the trash dump was reclaimed. Under this scenario, the home owner next to the trash dump would have certainty as to when the nuisance would be over and could plan accordingly in order to maximize the market value of the home. However, if the trash dump requested and was granted what amounts to an open ended time frame to close and reclaim the trash dump, the value of the home next to the trash dump will continue to be depressed and, in fact, the value will in all likelihood be even further decreased by the fact that the trash dump will continue in perpetuity.

If the County agrees to the request being made by Mid-States, the reality will be that Mid-States may never come back and quarry Phase IV during the current term of the CUP. Further, and in all likelihood, as the end of the CUP approaches, Mid-States will be back before the County requesting that the CUP be extended (just like Mid-States did in Shawnee County) so that it can continue quarrying in Douglas County.

As we have stated before, the only certainty that Lone Oak has been able to rely upon is the CUP and the documents incorporated by reference into the CUP. It is clear from reading all the documents associated with the CUP that the quarrying was to be done in sequence according to the phases. Mid-States is finishing its quarrying in Phase III and if it elects to continue quarrying in Douglas County, Mid-States should be required to quarry Phase IV next.

We thank you in advance for your consideration of this matter and we look forward to presenting this information during the public comment period. If you have any questions, please feel free to contact me.

Sincerely,

Dave

David M. Buffo
Partner

Attachment D

HUSCH BLACKWELL LLP
4801 Main Street, Suite 1000
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David.Buffo@huschblackwell.com
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From: Buffo, David
Sent: Friday, April 19, 2013 11:24 AM
To: 'amalia.graham@gmail.com'; 'cblaser@sunflower.com'; 'jonjosserand@gmail.com'; 'laraplancomm@sunflower.com'; 'bculver@bankingunusual.com'; 'rhirid@pihhlawyers.com'; 'squampva@aol.com'; 'clay.britton@yahoo.com'; 'chadlamer@gmail.com'; 'bruce@kansascitysailing.com'
Cc: 'Mary Miller'; jhutton@hensonlawoffice.com; Elce@stevensbrand.com
Subject: Mid-States Materials Application to Amend CUP

Dear Planning Commissioners:

I am counsel to Lone Oak, LLC ("Lone Oak"). We have been informed that an item concerning Mid-States Materials, LLC ("Mid-States") request to change the sequencing of quarrying at the Big Springs Quarry in Douglas County (see attached) has tentatively been set on the Planning Commission agenda for the May 20, 2013 meeting.

We are in the process of scheduling a meeting with Mary Miller to discuss this matter, but we also wanted to contact each of you in advance of the meeting with our concerns. As you may know, this matter was before the Douglas County Board of County Commissioners ("BOCC") on March 27. The BOCC in a 2-1 vote declined to take action on Mid-States' request and suggested that if Mid-States wanted to seek a change to the sequence of the quarrying operations, Mid-States should file an application for an amendment to the CUP. In advance of this matter being taken up by the BOCC on March 27, Lone Oak submitted the attached letters dated March 5 and 26 to the BOCC. The attached letters outline Lone Oak's concerns with Mid-States' request and we would greatly appreciate each of reading and considering the information contained therein.

Additionally, Lone Oak has listed the property for sale with Mossy Oak Properties ("Mossy Oak"). As set forth in the attached letter from Ryan Koelsch with Mossy Oak, the uncertainty that will be created if the County grants the change to the CUP that Mid-States requested will have a negative impact on the market value of Lone Oak's property. Also of concern for Lone Oak and any future owner of the property is the quarrying and blasting setbacks. As it stands right now, the quarrying setback in Phase IV (directly adjacent to Lone Oak) is only 100 ft. and the blasting setback is only 150 ft. As set forth in Exhibit A, pg. 9 to the March 26 letter, "On properties in which dwellings are located, mining should not occur within 300 ft." When the CUP was approved, the structure which is now the lodge on Lone Oak's property was in existence, but for whatever reason only a 100 ft. setback for mining and 150 ft. setback for blasting was put in the CUP. These setbacks are insufficient to protect the lodge and its inhabitants from the dangers of blasting and quarrying. We mention this now because if the CUP is to be amended, at the very least we ask that the County reconsider the setbacks on the east side of Phase IV and require the CUP also be amended to reflect a quarrying setback of at least 300 ft. and a blasting setback of at least 500 ft. By taking this action now, Lone Oak and any future owner will at least have the peace of mind and security that whenever Mid-States decides to quarry Phase IV, at least Mid-States will not be quarrying within 300 ft. or blasting within 500 ft. of the lodge and property.

We thank you in advance for your consideration of this matter and we look forward to presenting this information during the public comment period. If you have any questions, please feel free to contact me.

Sincerely,

Dave

Attachment D

David M. Buffo
Partner

HUSCH BLACKWELL LLP
4801 Main Street, Suite 1000
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Any tax advice contained in or attached to this message or email string is not intended or written to be used, and cannot be used to (i) avoid penalties that may be imposed on any taxpayer under the Internal Revenue Code or (ii) promote, market, or recommend to another any transaction addressed herein.



To Whom It May Concern:

My name is Ryan Koelsch, I am the office owner of Mossy Oak Properties Koelsch Outdoor Properties LLC. I am a licensed realtor with many years experience. My employee and I have Lone Oak LLC listed and on the market. We have had several clients interested in purchasing Lone Oak; however the buyers lose interest once they learn that there could be a possible rock quarry close to the Lone Oak property.

In my opinion, as a Kansas licensed real estate sales person, the impact of the rock quarry on the adjoining property has created a substantial decrease in the market value of a property when compared to the same type of property without the impact of a rock quarry. I have marketed a large property for almost 2 years that has a rock quarry currently functioning on it within ¼ mile of the home that is located on the property. I have shown the property over 30 times and everyone loves it, all except for the rock quarry. It is nearly impossible to sell a property at current market value when there is uncertainty of when a quarry will or will not be operating. Potential buyers want certainty in their purchases and investments. With an open time frame on a quarry operation mixed with uncertainty on operation time, not only does it devalue the property, but it puts an uncertainty in the buyers mind.

The operations of a rock quarry have a negative economic impact, especially when the property is a high end residential/recreational property such as Lone Oak. Without certainty as to when the quarry operations will be completed, the market value of Lone Oak will significantly decrease.

Ryan Koelsch

A handwritten signature in black ink that reads "Ryan Koelsch".

Mossy Oak Properties Koelsch Outdoor Properties LLC

307 N Broadway St. John Ks, 67576

HUSCH BLACKWELL

David M. Buffo
Partner

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March 5, 2013

VIA E-MAIL

Mike Gaughan
Chairman
Douglas County Board of Commissioners
1100 Massachusetts, 2nd Floor
Lawrence, Kansas 66044

Re: Mid-States Materials, LLC / Request for Re-Sequencing
Our File No. 57441-3

Dear Mr. Chairman:

We are counsel to Lone Oak, LLC ("Lone Oak").

On February 13, 2013, Lone Oak received a letter from County Planner Mary Miller notifying it of an upcoming meeting of the Douglas County (the "County") Board of Commissioners (the "Commissioners") scheduled for March 6, 2013. The letter states that at the March 6th meeting, the Commissioners are going to consider Mid-States Materials' ("Mid-States") proposed revision to the Phasing Schedule for the Big Springs Quarry that has been in place since 1992. Specifically, Mid-States is requesting that it be granted permission to move from Phase III to Phase VI of its operations, instead of moving from Phase III to Phase IV as contemplated by the CUP, the Landscaping Plan and the Reclamation Plan. Mid-States' request to revise its phasing was original submitted to Ms. Miller in February, 2012.

On March 1, 2013, Ms. Miller provided us a copy of Mid-States' February 4, 2012 request, along with a copy of the Planning Staff memo recommending that Mid-States' request be granted. In making its recommendation, the Planning Staff specifically stated, without any explanation or basis, that "no negative impacts from the requested change have been identified."

It appears that although the Planning Staff has been aware of Mid-States' request since February 4, 2012, the property owners were not made aware of Mid-States' request for over one year. Now, with less than three weeks' notice, the surrounding property owners are left to evaluate Mid-States' request and make a determination whether the request does in fact have a negative

HUSCH BLACKWELL

impact on their property without the benefit of information that the County has apparently been considering for over a year.

As the County, the Planning Staff and the Commissioners are aware; when the CUP was originally issued there was significant resistance from the adjacent property owners because of the nuisance created by the operation of a quarry. The CUP, including the phasing concept, was the product of negotiations between the County, the quarry operator and the property owners. Specifically, the concept of phasing was introduced because the property owners wanted to know where and when the quarrying would take place and when reclamation would take place. The property owners had specific concerns because of the negative impact that quarrying has had on their property. They wanted to plan accordingly. As such, the quarry operator agreed to sequence the quarrying in phases (Phases I through VI) and the quarry operator agreed to complete quarrying in twenty years.

Mid-States recent request not only is in contravention of and is a change to the CUP but, more importantly, will have a severe negative impact on Lone Oak's property. Lone Oak's property is adjacent to Phase IV which is the next section to be quarried. Lone Oak has long-anticipated the quarrying in Phase IV and has made long-term plans based on the provisions of the CUP, that indicated that quarrying activities adjacent to its property would be completed in the next few years. The impending quarrying has had a negative effect on Lone Oak's property for many years. With quarrying on Phase IV set to begin shortly, and be completed within the next few years, Lone Oak has begun the process, in reliance on the Phasing Schedule in the CUP, of marketing its property. Now, with Mid-States requesting what amounts to an open-ended timeline on the completion of Phase IV, the negative impact on the value of Lone Oak's property, and that of other surrounding property, will continue indefinitely.

By allowing Mid-States to skip Phase IV and proceed to Phase VI (along with its quarrying operations in Shawnee County) there is no end in sight for Mid-States to complete quarrying in Phase IV. Mid-States indicates as much in its February, 2012 request, noting that the timing of Phases IV and V will be based "solely by demand for our products and economic conditions." As such, Lone Oak is being placed in a position of significant peril because Lone Oak is forced to continue to wait for the quarrying to be completed before it can realize the actual value of its property. Absent an agreement from Mid-States that it will never quarry Phase IV or action by the Commissioners to deny this request, Lone Oak is left with a devalued piece of property that Lone Oak cannot sell because of the unknown and unpredictable actions of Mid-States and the County. Also, by granting Mid-States' request, the Commissioners are setting dangerous precedent because nothing will preclude Mid-States from re-sequencing the phases in the future, which is in direct contravention of the certainty regarding the sequencing of the quarrying that the property owners were given by the CUP.

The revisions to the CUP's phasing plan are, without a doubt, a modification to the CUP. As set forth in *Golden v. City of Overland Park*, one of the factors a zoning body should consider in hearing a request for a change is the extent to which the restriction will detrimentally affect nearby property. See *Golden*, 584 P.2d 130 136 (Kan. 1978). Indeed, the decrease in the value of Lone Oak's property that will result from the Commissioners granting Mid-States' request to re-sequence its quarrying operations is detrimental to Lone Oak. And contrary to the Planning

Staff's suggestion, the re-sequencing of the quarrying does have a negative impact on the adjacent property owners.

In light of *Golden* and the facts set forth above, Lone Oak requests that Mid-States' request for re-sequencing be tabled for at least thirty days to allow Lone Oak sufficient time to fully evaluate this request.

For review during this thirty day period, we hereby request the following information from the County:

(A) Copies of all information provided to the County by Mid-States to support the necessity of its request for re-phasing.

(B) All information relating to the Planning Staff's investigation into the potential negative impacts on surrounding property owners.

(C) All information forming the basis for the Planning Staff's assertion that there are no negative impacts on surrounding property owners or as a result of the change in phasing.

(D) A copy of the Reclamation Report and Plan of Quarrying Operation that was to be submitted by Mid-States prior to July 31, 2010, as well as copies of the prior reports prepared by Mid-States predecessor in interest, each as required by Section VIII of the CUP Restriction of Use.

(E) Copies of any and all notices of violations of the CUP that have been delivered to Mid-States or its predecessor in interest.

Tabling this issue for thirty days will not negatively impact Mid-States in any way. Instead, the additional thirty days will allow for the proper comment and evaluation of this request by the surrounding community.

Our client has requested that we explore alternate methods of gaining the necessary time to review the impact of this request, but we believe that a voluntary, temporary adjournment of this issue would be the most practical resolution for all involved.

Sincerely,



David M. Buffo
Partner

DMB

HUSCH BLACKWELL

Attachment D

cc: Nancy Thellman (via e-mail)
Jim Flory (via e-mail)
Craig Weinaug (via e-mail)
Evan Ice (via e-mail)
Mary Miller (via e-mail)

David M. Buffo
Partner

4801 Main Street, Suite 1000
Kansas City, MO 64112
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Fax: 816.983.8080
david.buffo@huschblackwell.com

March 26, 2013

VIA E-MAIL

Commissioner Mike Gaughan
Chairman
Douglas County Board of Commissioners
1100 Massachusetts, 2nd Floor
Lawrence, Kansas 66044

Re: Mid-States Materials, LLC / Request for Re-Sequencing
Our File No. 57441-3

Dear Mr. Chairman:

On February 4, 2013, Mid-States Materials' ("Mid-States") formally requested that the Board of County Commissioners of Douglas County, Kansas (the "BOCC") permit Mid-States to modify the phasing of its quarry developments set forth in its Conditional Use Permit (the "CUP").

On March 5, 2013, in response to receiving a notice from Douglas County of Mid-States' request, we wrote to the BOCC expressing our concerns regarding this amendment to the CUP. Additionally, we requested that the BOCC table Mid-States' request in order to allow Lone Oak sufficient time to evaluate Mid-States' request and make a determination whether Mid-States' request does in fact have a negative impact on its property. The BOCC agreed to table Mid-States' request until March 27.

As the basis for Mid-States' request to amend the CUP appears to be solely based on cost and convenience, it stands to reason that our client be afforded the opportunity to provide the BOCC with information regarding the effect that the proposed amendment will have on its property. In spite of our best efforts to compile information to present to the BOCC regarding the deleterious effect that Mid-States' operations have had on our client's property, which effects will be exacerbated by the creation of uncertainty by Mid-States regarding the sequence in which its operations will be conducted, we have not been able to conclude our efforts by the BOCC's self-imposed deadline.

Finally, and most importantly, this matter is not properly before the BOCC for consideration. This is an amendment to a conditional use permit that, pursuant to Kansas law, must first be submitted to the Planning Commission for a public hearing following notice and publication of the time and date of such hearing. Only then can an amendment of a conditional use permit proceed to the board of commissioners.

Contrary to the Planning Staff's position that "The phasing was not required as part of the CUP . . ." even a cursory review of the CUP and the documents incorporated into the CUP by reference unambiguously indicate that phasing was in fact part of the CUP. (*See generally* CUP (As Amended 9-16-92) ¶¶ VIII and XXI).

Even more specifically, the original application submitted by Martin Marietta states that "Martin Marietta Aggregates plans on mining the site in phases. Exhibits 4 through 9 illustrate the mining phases" and that the last phase to be quarried is Phase VI. (*See Exhibit A*). Similarly, the detailed reclamation plans for Phases 1A, 2, 3 and 4, as approved by the BOCC on November 11, 2009 (Sheets 2-6) clearly indicate Mid-States' intent to mine and reclaim Phases 1A through 4 in sequence. As such, because the CUP requires the quarrying to be done in phasing, any request by Mid-States to re-sequence the phasing is without a doubt, an amendment of the CUP.

The concept of phasing, in and of itself, indicates an intent to proceed in a sequence and, clearly, Mid-States believes that the phasing is required by the CUP, which gives rise to their request for approval by the BOCC.

Our client has requested that we explore alternate methods of gaining the necessary time to review the impact of this request, but we believe that a voluntary, temporary adjournment of this issue would be the most practical resolution for all involved. If the requested adjournment is not granted by the BOCC and the BOCC approves Mid-States' request, our client has instructed us to move on its behalf for an injunction to preclude Mid-States from quarrying out of sequence.

Sincerely,



David M. Buffo
Partner

DMB

cc: Nancy Thellman (via e-mail)
Jim Flory (via e-mail)
Craig Weinaug (via e-mail)
Evan Ice (via e-mail)
Mary Miller (via e-mail)

Surrounding Land Uses:

The surrounding properties are generally open. To the North of Tract V, is open grassland and a milo field. To the North and East, exist a farmstead off of County Road 050-E, consisting of a dwelling unit and buildings on approximately 5 acres of ground. To the East of Tract V and North of Tract II exist a milo field and grasslands. To the North of Tract IV is a ravine consisting of wooded areas with limited crop farming uses. There exists a farmstead within 1000 feet on County Road 100-E to the North of approximately 12 acres, with buildings on 2 acres. To the East of Tract IV, exists a home under construction, about 350 feet from the property being considered for quarrying. The same owner who owns this property also owns the home and some dwelling units within 1000 feet from this tract. To the South of Tract IV and East of Tract III is all pasture and grasslands. To the South of Tract III and VI exists one residential area on approximately 3 acres of ground, with the remaining ground in agricultural uses; 15% in crops and 85% in pasture and grasslands. To the West is the Shawnee County Line and consists of pasture land.

Mining Plan:

Martin Marietta Aggregates plans on mining the site in phases. Exhibits 4 through 9 illustrate the mining phases. Phase I will occur on Tract I and encompass an area generally bound by Douglas County Road 442 on the South and County Road 050-E on the East, with the Douglas/Shawnee County Line on the West. Included within this phase is the Westerly 25 acres of Tract V. The sequence of mining will generally begin at the Northeast corner of Tract I and progress Easterly to County Road 050-East. Upon the completion of mining in Phase I, the land will be rehabilitated to agricultural uses.



Phase II will occur on what is labeled Tract II and is generally bounded by County Road 050-E, County Road 1700-N and County Road 100-E. The sequence for mining this property will be from West to East.

Phase III moves South of County Road 1700-N into the area in which the Nichols house exists. This tract of land is bounded by County Road 1700-N to the North and County Road 442 to the West. Mining operations will begin on the North side of this property and move South.

Phase IV is bounded by County Road 1700-N to the South and County Road 100-E to the West. Excavation will begin on the Southwest corner, moving North-Northwest.

Phase V is to the North of Tract I and is bounded by County Road 050-E to the East and the Shawnee/Douglas County Line to the West. Mining operations for this property will begin on the South boundary of this Phase, adjacent to Tract I and move Northerly and Westerly.

The last phase is Phase VI and is bounded by County Road 442 on the East and North, with the Shawnee County Line on the West. Mining on this tract of ground will begin to the North and move Southwest.

All six tracts of property, as shown on Exhibit A, are located on high grounds, ridges, and therefore the topsoil varies from 6 inches to one foot, with selective overburden varying from 18 to 65 feet. This topsoil and selective overburden will have to be temporarily removed to mine approximately 18 feet of rock. Given an average of 20% volumetric expansion of excavated soils, there is an anticipation of only 15 feet of drop in elevation to existing ground surfaces. This is computed by adding 5 feet to the 28 feet of overburden for volumetric expansion of excavated soils and then by subtracting 18 feet of limestone to be removed, leaving a negative 15 feet for an average. Due to the excavation occurring on

the higher grounds, it will tend to level this area to an elevation equivalent to that of the surrounding lands at approximately 1085 elevation.

Post-Mining Land Use Concepts:

Presently the intention is to have a post-mining land use that would be agricultural in nature as is the surrounding land uses to the North, East, South and West. This does not preclude other uses such as housing and active and passive recreation uses. Land uses other than agricultural would have to comply with the Douglas County Plan and future market influences.

Reclamation Plans:

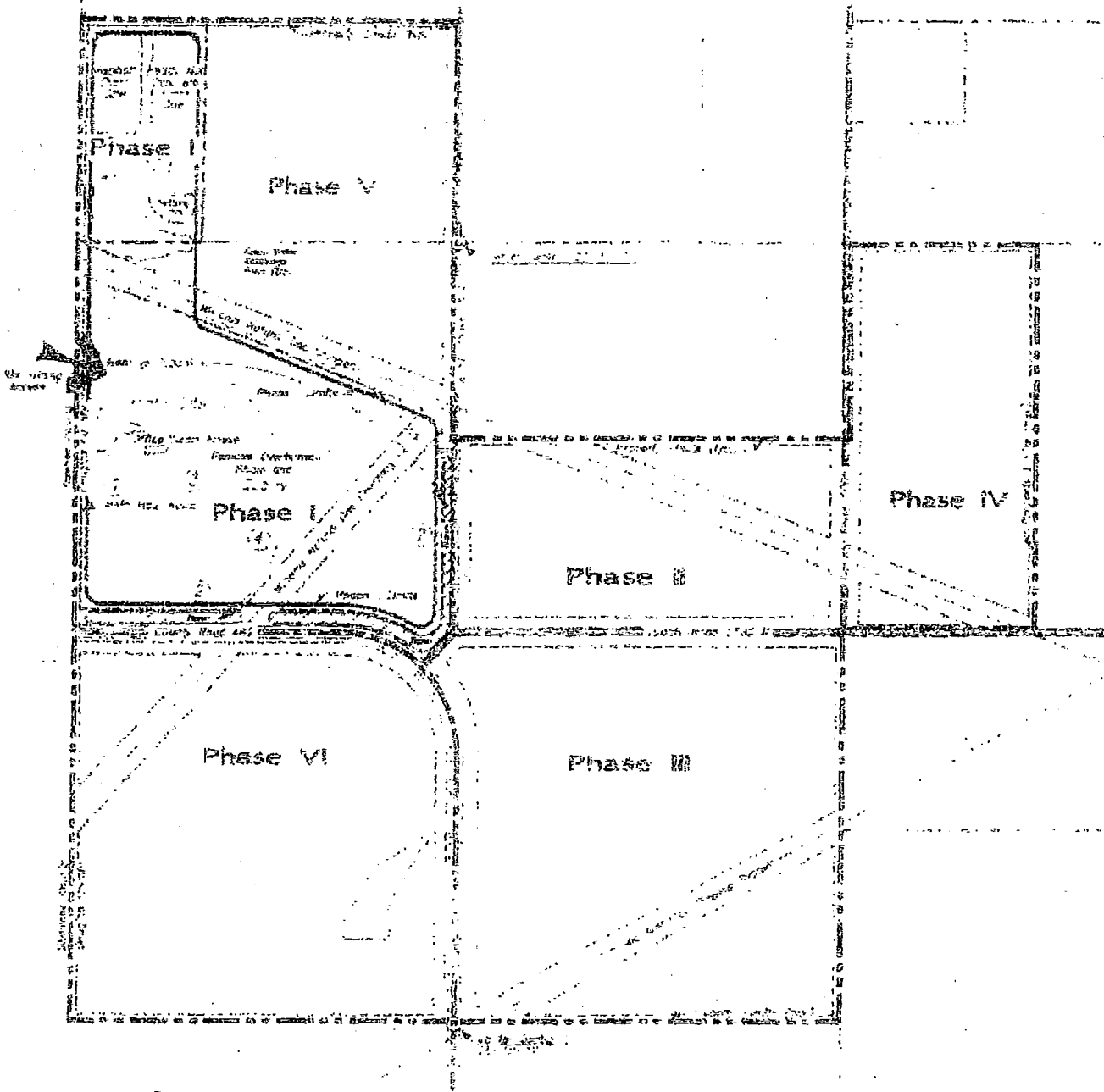
Any reclamation plan should take into account several factors. These include:

- (A) Mitigating measures to insure safe operating conditions during mining operations.
- (B) Mitigating measures relative to post-mining land uses.
- (C) Mitigating measures that insure sound ecological integrity for generations in the future.

Mitigation During Mining Operations:

Of primary concern initially is the protection of adjacent property owners. Major concerns from adjacent property owners will center around visual quality, haul truck traffic, noise and dust. The following are suggestions relating to these concerns:

- (A) A minimum of 50 foot buffer should be designated along all adjacent property lines in undeveloped areas. On properties in which dwellings are located, mining should not occur within 300 feet. Gas lines should have a setback of 100 feet from the gasoline itself. All secondary county roads; i.e., County Road 050-E, County Road 1700-N, and



LEGEND

1. EXISTING QUARRY BOUNDARY

2. PROPOSED QUARRY BOUNDARY

3. EXISTING QUARRY ROAD

4. PROPOSED QUARRY ROAD

5. EXISTING QUARRY INFRASTRUCTURE

6. PROPOSED QUARRY INFRASTRUCTURE

Notes:

1. EXISTING QUARRY BOUNDARY

2. PROPOSED QUARRY BOUNDARY

3. EXISTING QUARRY ROAD

4. PROPOSED QUARRY ROAD

5. EXISTING QUARRY INFRASTRUCTURE

6. PROPOSED QUARRY INFRASTRUCTURE

County Line Quarry Project

Martin Marietta Aggregates

Douglas County, Kansas

Quarry Plan

Page 1

Exhibit 4



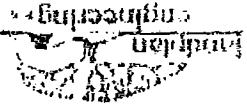
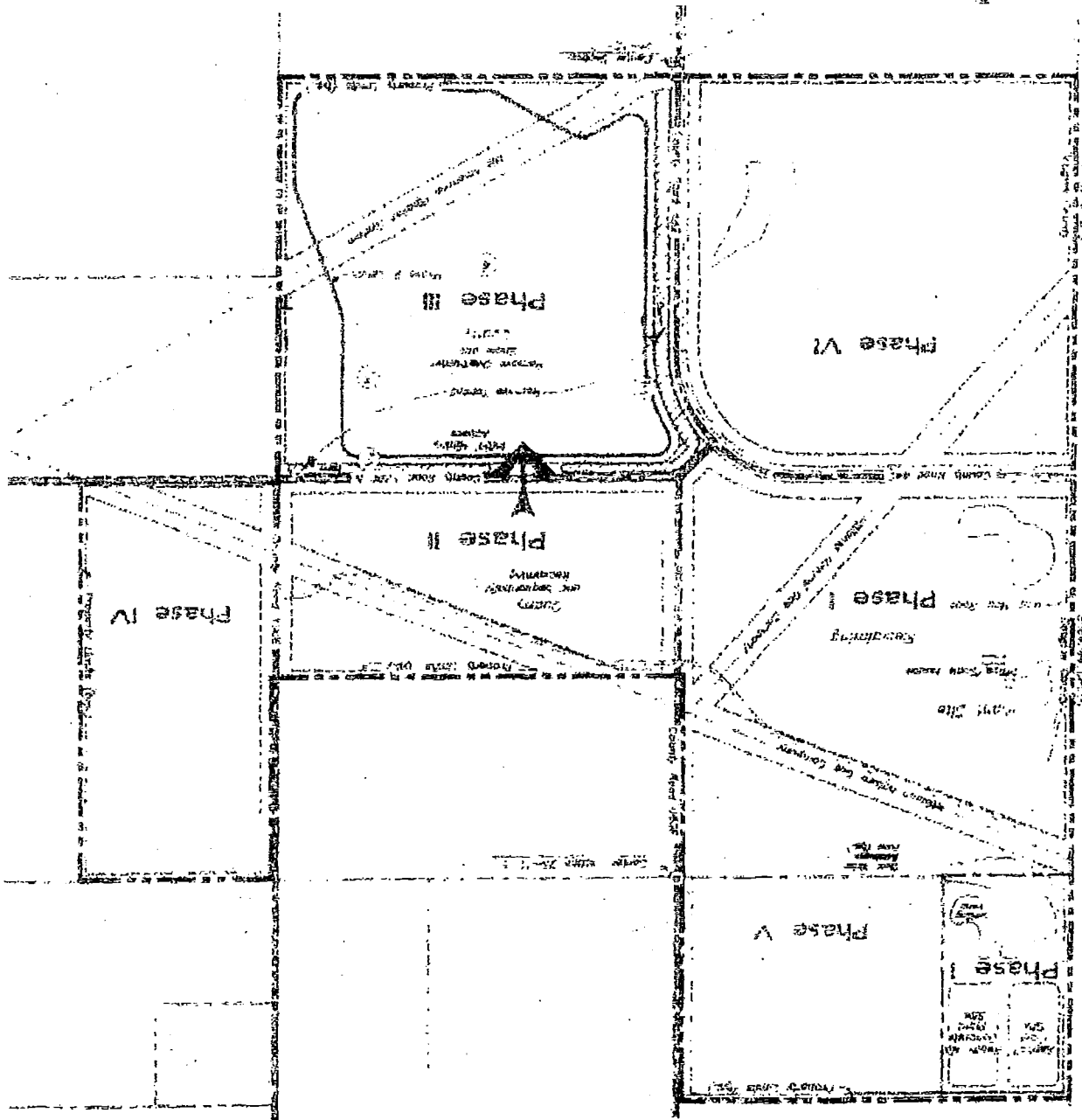


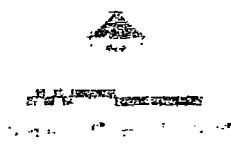
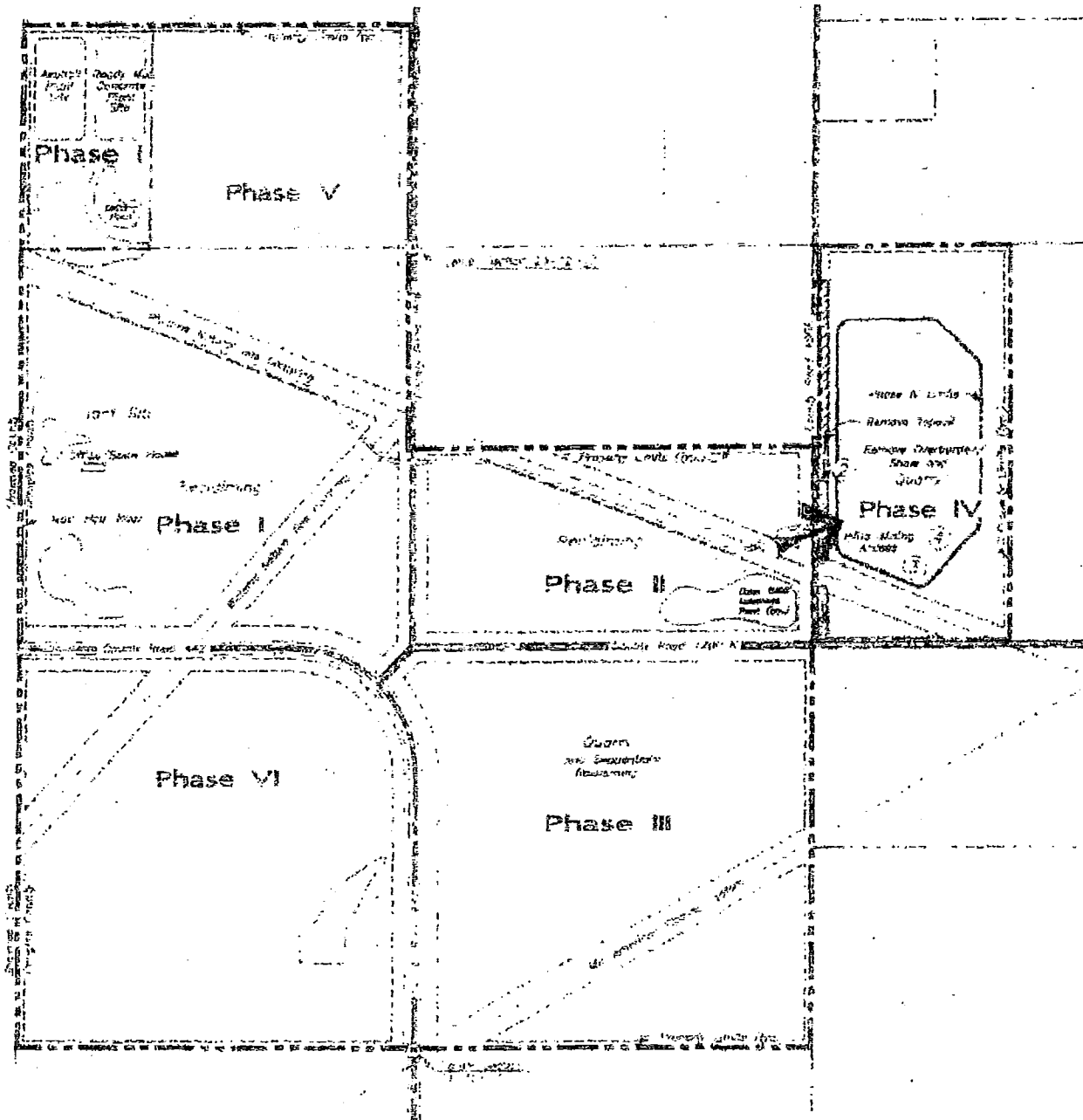
Exhibit 6

Quarry Plan Phase III

Martin Marietta Aggregates
Douglas County, Kansas

County Line Quarry Project





- Notes:**
- 1. Constructed Area
 - 2. Quarry and Support Area
 - 3. Existing Area
 - 4. Proposed Area

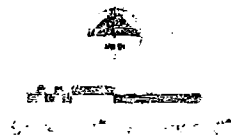
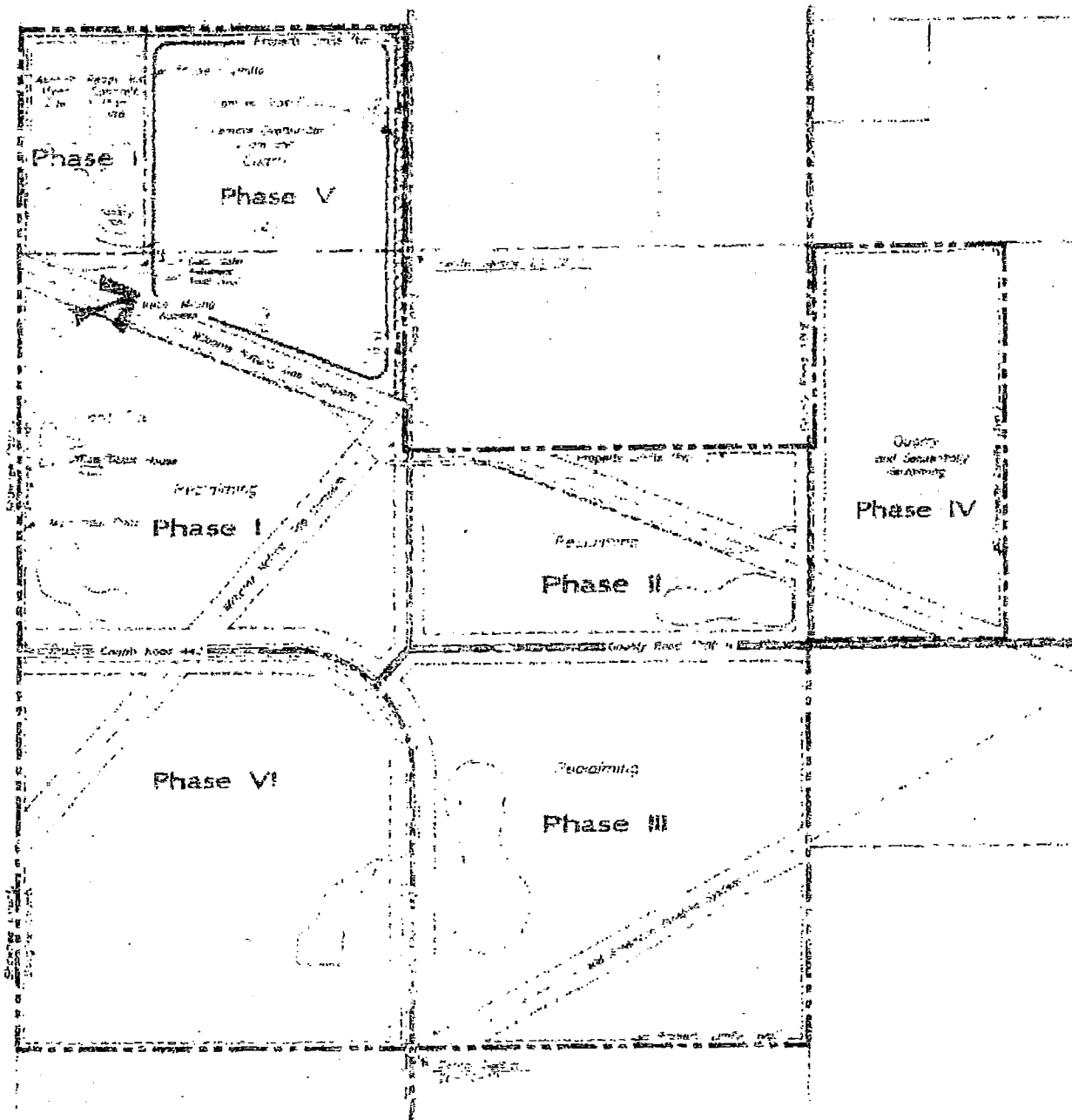
County Line Quarry Project

Martin Marietta Aggregates
Douglas County, Kansas

Quarry Plan
Phase IV

Exhibit 7





- Legend
- 1. Property boundary
 - 2. Quarry boundary
 - 3. Retaining wall
 - 4. Secondary road

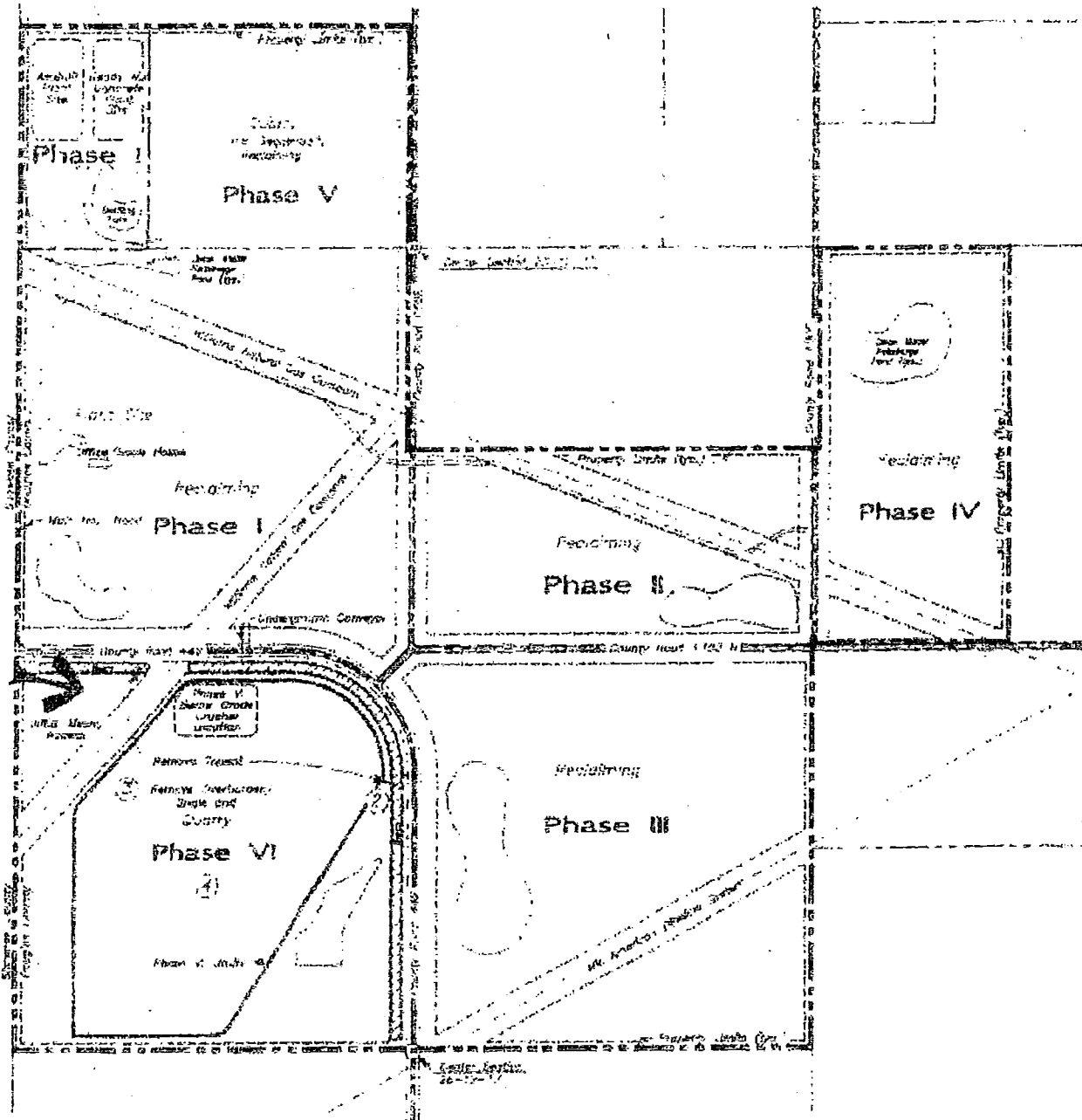
County Line Quarry Project

Martin Manetta Aggregates
Douglas County, Kansas

Quarry Plan
Phase V

Exhibit 8





Notes

- 1. Construct Main and P&S
- 2. Construct & Operate Aggregate Plant
- 3. Reclaim Overburden & Spoil
- 4. Secondary Treatment

County Line Quarry Project

Martin Marietta Aggregates

Douglas County, Kansas

Quarry Plan

Phase VI

Exhibit 9



May 16, 2013

Bill & Michele Best
1607 E 50 Road
Lecompton, KS 66050

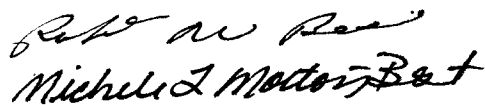
City of Lawrence Douglas County
Planning & Development Services
6 East 6th St
PO Box 708
Lawrence, KS 66044
Attention: Mary Miller, AICP
City/County Planner

Dear Mary Miller & Planning Commission Members,

Our names are Robert and Michele Best; we are the closet neighbors to Phase 6 of the quarry. We purchased the 90 acres and home site of 1607 E 50 Road, Lecompton, Ks in 2010. We were fully aware of the quarry and its plans as was disclosed in paperwork with the sale of the property and home site. We have no problem with the quarry operating as long as it follows the original Conditional Use Permit. The concern we have is any proposed change to the CUP. The phasing of the CUP clearly was originally set up in a numerical order to be followed, which was presented to us in the paperwork at the sale of property and home site. Schedules are made to be followed for a reason, as one phase is completed it is supposed to be reclaimed before moving on to the next numeric phase. If the current phasing numerical order wasn't reflective of how the quarry is to proceed, then why didn't they name the additional added Phase 1A, Phase 7? Clearly, although not legally composed, this was the intent of the original CUP. Letting the quarry be selective of how it wants to schedule which phase it mines next is wrong. It worries us, what changes will be next if this is allowed to continue. Will the quarry operators request not to reclaim the land or let it become a landfill? It was shared at the Douglas County Commission meeting that the quarry would like to move to Phase 6 to use the same haul road as the road in Shawnee County. The quarry will need to build haul roads regardless of what phase they are in. The road they are using for Shawnee County can in fact be used in the future when they reach Phase 6. When we recently went on a tour of the quarry, we were surprised when Cole Anderson the manager could not verbalize why the quarry wanted to move ahead to Phase 6. We believe there is some other reason they want to jump ahead to Phase 6. What that is we do not know. There is enough uncertainty in life, without worrying about what's going to happen next to your home when contracts that you thought were solid and dependable are changed every couple of years. This is our main concern, the uncertainty of the changes we continue to hear about or experience ourselves. Haul roads will have to be built no matter what phase they are in, so we see no reason to jump ahead of the chronological order that is in the current CUP. This proposed change to the CUP has caused us much concern as to how Phase 6 will affect the flow of natural spring water into our pond, which is used for livestock. We requested specific

information in regards to this topic and have not received information as to date. The quarry's response is inadequate because it only addresses the hydrologic study which was completed on area wells and not the effect the blasting will have on our natural springs. We have requested this hydrologic study to be completed prior to any work in phase 6, but have not received any confirmation that this request is being acknowledged. When you research quarry effects on natural springs you quickly see there is reasonable cause for concern in this matter. One example of this would be the Hydraulic Impacts of Quarries and Gravel Pits, prepared by the Minnesota department of Natural Resources, Division of H2O for the Legislative Commission of Minnesota Resources, 2005. We thought we had much longer timeframe as in years, to determine the possible impact of the quarry operations. We feel this change is not in our best interest as responsible land owners who actually live in the area, to proceed forward. We would appreciate the planning commission members understanding of our situation and your support on not revising phasing schedule for Big Springs Quarry located at 2 N 1700 Rd.

Sincerely,

Handwritten signatures of Robert W. Best and Michele L. Morton-Best. The signature for Robert W. Best is written in cursive and is positioned above the signature for Michele L. Morton-Best, which is also in cursive.

Robert W. Best
Michele L. Morton-Best

Mary Miller

From: Buffo, David [David.Buffo@huschblackwell.com]
Sent: Wednesday, May 15, 2013 11:21 AM
To: amalia.graham@gmail.com; cblaser@sunflower.com; jonjosserand@gmail.com; laraplancomm@sunflower.com; bculver@bankingunusual.com; rthird@pihhlawyers.com; squampva@aol.com; clay.britton@yahoo.com; chadlamer@gmail.com; bruce@kansascitysailing.com
Cc: Mary Miller; jhutton@hensonlawoffice.com; Elce@stevensbrand.com
Subject: Mid-States Materials Application to Amend CUP

Dear Planning Commissioners:

In preparation for the upcoming meeting on May 20, Lone Oak wanted to share a few other items for your consideration in deciding whether to approve Mid-States' request to amend its CUP.

As you may be aware, one of the reasons that Mid-States identifies for the need to re-sequence the quarrying in Douglas County is that one haul road can service the southern portion of the Douglas County quarry and the Shawnee County quarry which Mid-States claims is more efficient. Although this may be true, if Mid-States ever intends to come back and quarry Phase IV it will have to build an additional haul road to access Phase IV, perhaps even two haul roads given the location of Phase IV—it is the furthest phase from the rock crusher. In other words, at the very least, Mid-States will have to utilize two haul roads if it ever intends to quarry Phase IV while Mid-States is quarrying in Shawnee County because of the location of Phase IV. As such, it would appear that Mid-States only benefits by building one haul road at this time if Mid-States does not plan on quarrying Phase IV until it finishes quarrying in Shawnee County—which raises another concern. Based on our review of the available information, it appears that Mid-States has at least 600 acres it can quarry in Shawnee County and given that Mid-States has already amended its CUP in Shawnee County for an additional 30 years or until 2050, it would appear that Mid-States intends to be in Shawnee County for a long time and if Mid-States intends to only quarry in Shawnee County for the foreseeable future, there is no telling when Mid-States will resume quarrying operations in Douglas County. Also, the Planning Commission should consider that it has taken nearly 20 years for only 400 acres to be quarried in Douglas County, so it is inevitable that Mid-States will in all likelihood seek an extension of the CUP in Douglas County beyond its current expiration date in order to quarry the remaining acres in Douglas County. As you can see, there is already enough uncertainty with the quarry under the existing CUPs and all Lone Oak is asking that whenever Mid-States decides to continue quarrying in Douglas County, that Phase IV is quarried next.

Finally, it would appear from Lone Oak's observations that Mid-States has a large stockpile of rock, perhaps more than at any time it has operated the quarry—which begs the question, why does Mid-States need to operate two quarries in two counties when it appears that Mid-States can meet its demand requirements from one quarry. Again, all Lone Oak is asking is that the Planning Commissioners consider all of the facts and the ultimate consequences of granting Mid-States' request to re-sequence the phasing of the Douglas County quarry.

Although on its face Mid-States' request appears benign, once the request is fully analyzed and all the negative consequences and impacts are considered, it only makes sense to require Mid-States to abide by the current quarrying sequence set forth in the CUP which requires the next phase quarried in Douglas County to be Phase IV.

Thank you again for your consideration of this matter.

Dave

David M. Buffo
Partner

HUSCH BLACKWELL LLP
4801 Main Street, Suite 1000

Kansas City, MO 64112-2551
Direct: 816.983.8253
Fax: 816.983.8080
David.Buffo@huschblackwell.com
huschblackwell.com
[View Bio](#) | [View VCard](#)

Any tax advice contained in or attached to this message or email string is not intended or written to be used, and cannot be used to (i) avoid penalties that may be imposed on any taxpayer under the Internal Revenue Code or (ii) promote, market, or recommend to another any transaction addressed herein.

From: John Hutton [<mailto:jhutton@hensonlawoffice.com>]

Sent: Monday, May 20, 2013 9:31 AM

To: Buffo, David; amalia.graham@gmail.com; cblaser@sunflower.com; jonjosserand@gmail.com; laraplancomm@sunflower.com; bculver@bankingunusual.com; r hird@pihhlawyers.com; squampva@aol.com; clay.britton@yahoo.com; chadlamer@gmail.com; bruce@kansascitysailing.com

Cc: Mary Miller; ELce@stevensbrand.com; Eric Bettis (ebettis@bettisasphalt.com)

Subject: RE: Mid-States Materials Application to Amend CUP

Dear Planning Commissioners:

I represent Mid-States Materials, LLC concerning the matter coming before the Planning Commission during its May 20, 2013 meeting. My client is requesting that Douglas County recognize its proposed sequencing of operations at the Big Springs Quarry. My usual practice is to let our application and its supporting documents speak for themselves and then answer questions or provide additional materials as requested by the Planning Commission during the meeting. However, in this case, Lone Oaks' lawyer, David Buffo, has provided several pieces of e-mail correspondence to the Commission that require some response.

The tracts/phases of the Big Springs Quarry in Douglas County are denominated using the Roman numerals I through VI. This denomination was established by Mid-States' predecessor in interest, Martin Marietta, over 20 years ago when the initial application was submitted. It is well established that quarries, especially large quarries like Big Springs, are more easily mined and reclaimed if they are broken up into smaller tracts or phases. In essence, it is more practical for the operator and more environmentally friendly to mine and reclaim a small portion of land than it is to open the entire quarry up at once and then wait to reclaim the whole quarry after the decades-long process is complete.

At the request of Planning Staff, Mid-States Materials chose to approach the County Commission about moving from Phase III where quarrying is presently taking place directly into Phase VI and quarrying Phases IV and V at a later date. This was brought before the County Commission and now before the Planning Commission out of an abundance of caution, not because there is any requirement in the Conditional Use Permit that mining occur in any particular order within the quarry.

Although Mr. Buffo and his client disagree, Mid-States' decision to move from Phase III to Phase VI is not taken lightly and is based upon six years of experience with this property. As has been stated numerous times, Mid-States Materials can realize significant operational efficiencies by mining Phase VI in Douglas County and the adjoining phase in Shawnee County essentially simultaneously, or in very close sequence, and hauling the material from both phases across 45th Street in Shawnee County on a bridge built by Mid-States Materials for that purpose. This is not only more efficient, but it also prevents Mid-States from having to cross county roads in Douglas County to haul material to the crushing plant to the north.

Mr. Buffo is correct that in the future when Phase IV is quarried, an existing haul road will need to be extended to the east to allow the material to be hauled to the rock crushing plant. However, Mr. Buffo also makes some assumptions that have no basis in fact. He mentions the number of acres available to quarry in Shawnee County and his opinion that Mid-States will be in Shawnee County for a "long time" and there is "no telling" when Mid-States will be back in Douglas County. First, Mr. Buffo's assumption that just because Mid-States is quarrying in Shawnee County it won't be quarrying in Douglas County is false. Second, his assumptions about the inevitability of Mid-States seeking an extension of the CUP in Douglas County has nothing whatsoever to do with the issue before the Planning Commission presently. These are "straw man"

arguments designed to promote general uncertainty about the future of the quarry which have no bearing on the issue before the Planning Commission.

Mr. Buffo and his client continually discuss "uncertainty" associated with my client's quarrying in the property covered by the CUP. It must be remembered that the CUP was issued for a term of 30 years and there was never any guarantee or, in fact, any statement or representation in the CUP about when particular portions of the quarry would be mined. The CUP grants my client the ability to mine at whatever pace it determines is in its best interest within the term allowed by the CUP. Mr. Buffo speaks as if there is some absolute certainty in the *status quo* about when mining will start and finish in the quarry. This is simply not the case with any quarry. Market demand determines when and at what pace the quarry is mined – not some arbitrary schedule.

Mr. Buffo and Lone Oak also claim to observe "a large stockpile of rock" (another straw man argument). They also speculate that this stockpile is larger than it has been at any time since the quarry has been operating. First, both of these assumptions are either incorrect or exaggerated. Second, even if they were correct, what bearing does it have on the issue before the Planning Commission?

Finally, Mr. Buffo discusses the "negative consequences" which apparently result from my client's proposed mining plan. Interestingly, other than an alleged "uncertainty" which has always been the case, he has not specified what those negative consequences are. The bottom line is that, in actual fact, there are no negative consequences to my client's mining plan. It should be remembered that Lone Oak, who, by the way, purchased its property well after the quarry had started development, has never been told through the Conditional Use Permit or otherwise, exactly when Phase IV will be mined. This "uncertainty", if you will, has been a reality for all involved, including Mid-States Materials, from the beginning. Again, the only factor that controls the speed at which the quarry is developed is market demand.

Mid-States Materials' revised development plan has no negative consequences. It has only positive consequences, including increased efficiency, decreased use of fossil fuels and enhanced public safety. Your vote in favor of this request would be appreciated.

John H. Hutton
Henson, Hutton, Mudrick & Gragson, LLP
100 SE 9th Street, 2nd Floor
Topeka, KS 66612
(785) 232-2200 (office)
(785) 232-3344 (fax)
jhutton@hensonlawoffice.com

May 20, 2013

Lawrence Douglas County Planning Commission

RE: Request for Amended Conditional Use Permit for Big Springs Quarry

Dear Commissioners;

I am unable to attend tonight's Meeting due to illness and wanted to provide my input on Mid-States Materials request to amend the Conditional Use Permit for the Big Springs Quarry. Please accept this communication in my absence.

I own the property immediately adjacent to Mid-States property north of Phase 5 (Mid-States adjacent property is not currently included in the CUP).

I have been involved in the planning process for the Big Springs Quarry since 1990 and have attended numerous meetings with the Planning Commission, County Commission, Planning Staff and County Staff regarding the quarry over the past 23 years. My wife and I are currently preparing to construct a home on the family farm (north of Phase 5) to enjoy and spend our retirement years. These plans have been based on the long established phasing schedule which would result in the near-term completion of quarrying in Phase 5. The requested revision would delay quarrying in Phase 5 for an undetermined period and be a serious disruption to our long-planned relocation to our 5th generation family farm.

I respectfully request that you reject the request that is before you and recommend the current phasing schedule as established in 1990 be maintained.

Sincerely,

David K Henry
4311 SE 24th CT
Tecumseh, KS 66542

AD - Crabtree, Robin

From: AD - Crabtree, Robin on behalf of AD - Weinaug, Craig
Sent: Monday, June 03, 2013 3:31 PM
To: AD - Crabtree, Robin
Subject: FW: Lone Oak with David Henry Attachment

From: Don Craig [mailto:toprow1@hotmail.com]
Sent: Monday, June 03, 2013 12:17 PM
To: mikegauhan@gmail.com; nthellman@gmail.com; County Commissioner - Flory, James
Cc: mmiller@lawrenceks.org; Elce@stevensbrand.com; AD - Weinaug, Craig; jhutton@hensonlawoffice.com
Subject: Lone Oak with David Henry Attachment

Dear Commissioners:

In preparation for the meeting on June 5, and the consideration of amendments (including Lone Oak's request for revised setbacks) to the CUP governing the Big Springs Quarry (the "Quarry"), Lone Oak, LLC ("Lone Oak") feels that it is necessary that the Commissioners be provided additional background information and a history of the Big Springs Quarry (the "Quarry") in order to fully understand the issues that will be presented at the meeting.

Lone Oak purchased the property adjacent to Phase 4 of the Quarry in early 2003. Lone Oak was aware of the Quarry, but after conducting its due diligence on the property and reviewing the CUP and the documents incorporated by reference into the CUP, Lone Oak had the understanding that there were sufficient measures in place to protect Lone Oak from the nuisance caused by the Quarry and the potential dangers associated with living and operating a business next to a Quarry. However, within a year after purchasing the property, Lone Oak began to notice damage occurring on its property. Specifically, the creek on Lone Oak's property was being destroyed by the discharge and runoff from the Quarry.

After discovering the damage, Lone Oak reviewed the drainage study and the hydrology study that were required by the County prior to the Quarry opening.

Lone Oak learned from its research that the hydrology study that was filed by Martin Marietta was inaccurate and based on misinformation. The hydrology study stated that the closest well to the Quarry was Kenny O'Connor's well—which was over a half mile away and too far from the Quarry for Martin Marietta to have any hydrology concerns. Furthermore, the hydrology study stated that there was no ground water and, therefore, no damage would occur to the surrounding properties. This area is aptly called Big Springs, Kansas where early settlers and covered wagons stopped to get water on their westward treks to the West Coast. Moreover, where homes were built, wells had been dug where ground water had been located in order for the early settlers to survive. All homes built before rural water came about in the 1960's had to dig wells for ground water.

The County accepted the hydrology study prepared by Martin Marietta to be true and accurate. Lone Oak realized that the hydrology study was incorrect, so Lone Oak hired an independent hydrologist at Lone Oak's expense to find out what wells and ground water really existed. Lone Oak's hydrology study states that numerous ground water springs were located, that ground water is definitely present, and that the wells and ground water will definitely be damaged if the quarry operator does not stay an adequate distance from the ground water sources. Importantly, the Douglas County Planning Staff has a copy of those documents.

The Planning Staff did say to Lone Oak a week ago "Buyer Beware! It's a Quarry! You should have done your due diligence on the setbacks. We did our due diligence; however the due diligence was based on the false and inaccurate documentation that was accepted by the county in 2003. Lone Oak's stand is, "Mid-States Beware! You bought the

quarry while it was in a federal lawsuit when the documents were in question. Since Martin Marietta no longer owned the Quarry, Lone Oak could not correct or change the falsified documents that the County Commissioners had already approved. Mid-States, Beware!"

The Planning Staff subsequently asked the State of Kansas to determine the actual facts of both hydrology studies. The State agreed with the findings of the hydrologist hired by Lone Oak. The State then advised Mid-States to stay a minimum one quarter mile from Lone Oak's wells. The State advised that Mid-States could probably quarry the west eighty acres of the 160 acres the Quarry designated as Phase 2A (Not Phase 7 where the quarry does own that 160 Acres). Why would Lone Oak not get the same protection on the south side from Phase 4? After all, these studies were required before the Quarry ever opened in the first place.

In light of the ground water issues, Phase 4 should never have been approved by the County, if a proper hydrology study had been performed and accurate information had been provided to the County. The CUP states in short that the Quarry cannot cause damage to surrounding property nor have an adverse effect on such. Why would the County and more particularly you, the Commissioners continue to make Lone Oak fight the Quarry over an obviously inaccurate decision by a prior Commission?

These documents accepted by the former Commissioners as true and accurate should be considered to be perjury—the documents even "under oath by law to be perjury if falsified or untrue." Notice the Drainage Study for 004 stating, "We (the quarry) own or lease all land above and below 004; therefore, we cannot do any damage." Commissioners, that was a blatant and intentional misrepresentation— the quarry owned no land and leased no land below 004. Boy, did they create damage! Literally hundreds of thousands of tons of damage to date!

The Quarry and the CUP have created and still create perils for landowners around the Quarry; this must stop! To date, Lone Oak has incurred hundreds of thousands of dollars in attorney fees and expert fees to stop this atrocity. If it is customary to grant a 500 foot setback for livestock, trees, fields, crops, etc., why would you not grant the same setback for a human on a mower or a kid on a quad who might not hear a whistle blow or even be seen by someone watching a blast site? Why do you as commissioners wish to continue this liability?

It was amazing how Mid-States' lawyer blatantly stated to the Planning Commission how setbacks have "NEVER BEEN AN ISSUE" and that they (the quarry people) were amazed that it only came up now and that it was "THE FIRST TIME THEY EVER HEARD OF THIS WAS JUST NOW!" Mid-States' lawyer then so innocently suggested that "MAYBE THIS JUST CAME UP NOW BECAUSE THE QUARRY WANTS TO CHANGE THE CUP." Families like ours, the O'Connors, the Henrys, the Schaetzels, etc. and hopefully now you, our Commissioners know that these setbacks have been questioned for the last 9-10 years. Also, as you may recall, when we were here before to discuss Mid-States' request to amend its CUP, Mid-States' attorney stated that the Henrys had no objection to Mid-States' request to change the sequencing of the Quarry. Again, as set forth in the attached letter that David Henry submitted to the Planning Staff prior to the Planning Commissioners, Mid-States' attorney provided the Commissioners with inaccurate and misleading information. The Henrys clearly oppose Mid-States' request. When is "enough" ENOUGH? The O' Connors have fought this quarry for their own home for over 20 years. Isn't that ENOUGH? Please make the Quarry follow the phasing of the CUP; please do not disrupt the lives of all of us again.

The Quarry continues to make misleading and untrue statements that have been accepted and sometimes even believed by the County. One such statement is that "The Move to Phase 6 would be more efficient. That is not true and let me explain why it is not true. Martin Marietta was working on Phase 2 when Mid-States purchased the Quarry. Mid-States then asked to add more land that they owned to the CUP; they planned to name it 2A and do it next, after 2. Mid-States reasoned that this would be better and more efficient property usage. They lost that battle and went to Phase 3. In the meantime, while doing Phase 3 and completing Phase 2, Mid-States built a bridge over 45th Street, purchased another 160 acres attached to the west side of Phase 6. What is amazing is that they now want to go to Phase 6 and quarry in Shawnee County where they now own the property and avoid paying royalties to another property owner. Apparently the real reason for the request to re-sequence the phasing has nothing to do with "efficiency" but everything to do with quarrying the land they own. Just maybe it is much easier to put a trash dump on land they own in Shawnee County.

Shawnee County has already set precedence for the quarry operator to isolate a specific parcel of land inside their CUP and re-zone it for something other than a rock quarry.

Additionally, Mid-States stated at the Planning Commission meeting that they wish to move material from one site in Douglas County to one site in Shawnee County which is a violation of the CUP. Commissioners, this move is not more efficient. If Mid-States moves to Phase 6 instead of Phase 4, they still have the same process of building a haul road and location of overburden. If they do Phase 4 next, they will not have to re-disturb the O'Connors or Lone Oak. The O'Connors have lived here long before the Quarry came into existence. The only so-called "efficiency" is whatever Mid-States thinks is best for Mid-States without any regard for the neighboring property owners.

Please do your due diligence now. Please verify that everything I have said is factual and if you have any questions, please feel free to contact Lone Oak's attorney David Buffo at 816-983-8253.

Thank you in advance for your consideration.

Bart Christian

May 20, 2013

Lawrence Douglas County Planning Commission

RE: Request for Amended Conditional Use Permit for Big Springs Quarry

Dear Commissioners;

I am unable to attend tonight's Meeting due to illness and wanted to provide my input on Mid-States Materials request to amend the Conditional Use Permit for the Big Springs Quarry. Please accept this communication in my absence.

I own the property immediately adjacent to Mid-States property north of Phase 5 (Mid-States adjacent property is not currently included in the CUP).

I have been involved in the planning process for the Big Springs Quarry since 1990 and have attended numerous meetings with the Planning Commission, County Commission, Planning Staff and County Staff regarding the quarry over the past 23 years. My wife and I are currently preparing to construct a home on the family farm (north of Phase 5) to enjoy and spend our retirement years. These plans have been based on the long established phasing schedule which would result in the near-term completion of quarrying in Phase 5. The requested revision would delay quarrying in Phase 5 for an undetermined period and be a serious disruption to our long-planned relocation to our 5th generation family farm.

I respectfully request that you reject the request that is before you and recommend the current phasing schedule as established in 1990 be maintained.

Sincerely,

David K Henry

4311 SE 24th CT

Tecumseh, KS 66542

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer

Date : May 31, 2013

Re : Consider waiving access restrictions on Holladay Subdivision plat

Holladay Subdivision was platted in 1983, and is located in the southwest quadrant of N 800 Road/E 1550 Road in Palmyra Township. The plat (attached) includes access restrictions requiring shared entrances onto E 1550 Road between Lots 2 & 3, Lots 4 & 5, and Lots 6 & 7. Lots 3, 5, and 7 currently have individual residential entrances. Lot 6 was divided between Lots 5 & 7 in 1997. The owner of Lot 4 now requests an individual residential entrance.

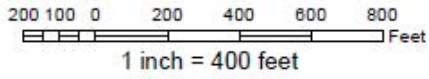
The existing entrance for Lot 5 is approximately 20' south of the common property line between Lots 4 & 5. It could be modified to accommodate a shared entrance for Lots 4 & 5 if additional right-of-way is dedicated from Lot 5. Construction of a shared entrance on the common property line between Lots 4 & 5 would require eradicating at least a portion of the existing Lot 5 entrance. Either modifying the existing Lot 5 entrance to a shared entrance to serve Lots 4 and 5, or constructing a new shared entrance on the common lot line, would require relocating an apparent water valve assembly currently situated just north of the Lot 5 entrance.

All lots meet the current frontage requirements for individual residential access onto E 1550 Road (a Local road requiring 250' frontage). Lot 4 has approximately 332' frontage. Adequate sight distance is available along most of the Lot 4 frontage. Lot 2 has approximately 525' frontage along E 1550 Road.

The county counselor has indicated the BOCC may modify the plat condition regarding access as it is purely a road issue under purview of the County.

Given that the existing lots meet current access management regulations for individual residential entrances, it is recommended the BOCC modify the plat access conditions to allow individual entrances onto E 1550 Road for Lots 2, 3, 4, 5, and 7.

Action Required: Consider approval of a resolution modifying access restrictions on the plat for Holladay Subdivision and allowing individual entrances for Lots, 2, 3, 4, 5, and 7.



DISCLAIMER NOTICE
 The map is provided "as is" without warranty or any representation of accuracy, timeliness or completeness. The burden for determining accuracy, completeness, timeliness, merchantability and fitness for or the appropriateness for use rests solely on the requester. The City of Lawrence makes no warranties, express or implied, as to the use of the map. There are no implied warranties of merchantability or fitness for a particular purpose. The requester acknowledges and accepts the limitations of the map, including the fact that the map is dynamic and is in a constant state of maintenance, correction and update.

Date: 5/29/2013



NOTES

- 1. ACCESS TO ROAD 51-F SHALL BE LIMITED TO THE FOLLOWING THREE ENTRANCES:
 - a) ALONG COMMON LINE OF LOTS 2 & 3.
 - b) " " " " " " " " 4 & 5
 - c) " " " " " " " " 6 & 7
- 2. COVENANTS PERTAINING TO THE MAINTENANCE OF THE ABOVE DESCRIBED ENTRANCES ARE ON FILE AT THE REGISTER OF DEEDS OFFICE, DOUGLAS COUNTY, KANSAS.
- 3. ACCESS SHALL BE PROHIBITED FROM LOT 2 ONTO ROAD 455.

DESCRIPTION

A tract of land described as follows:

The East half of the Northwest Quarter of Section 8, Township 14 South, Range 20 East of the Sixth Principal Meridian, less the South half of the South half of the Southeast Quarter of the Northwest Quarter of said Section 8-12-20.

Containing 70.22 acres, all in Douglas County, Kansas.

DEDICATION

BE IT KNOWN TO ALL MEN BY THESE PRESENTS THAT WE THE UNDERSIGNED OWNERS OF THE ABOVE DESCRIBED TRACT OF LAND, HAVE HAD CAUSE FOR THE SAME TO BE SURVEYED AND PLATTED UNDER THE NAME OF "HOLLADAY SUBDIVISION" AND HAVE CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS AND STREETS AS SHOWN BY THIS PLAT AND FULLY DEFINED ON THIS PLAT ALL STREETS, DRIVES, ROADS, ETC. SHOWN ON THIS PLAT AND NOT HERETOFORE DEDICATED TO PUBLIC USE ARE HEREBY SO DEDICATED. AN EASEMENT IS HEREBY GRANTED TO DOUGLAS COUNTY AND PUBLIC UTILITY COMPANIES TO ENTER UPON, CONSTRUCT AND MAINTAIN UTILITIES UPON, OVER, AND UNDER THOSE AREAS OUTLINED ON THIS PLAT AS "UTILITY EASEMENT" OR "U/E".

WARNE FLORY _____ HAROLD E. ALLER _____ JOHN L. WAISNER _____
 LOIS W. FLORY _____ BARBARA JANE ALLEN _____ CHARLOTTE J. WAISNER _____

ACKNOWLEDGEMENT

STATE OF KANSAS
 COUNTY OF DOUGLAS

BE IT REMEMBERED, THAT ON THIS 25th DAY OF May, 1983, BEFORE ME THE UNDERSIGNED, A NOTARY PUBLIC, IN AND FOR SAID COUNTY AND STATE, CAME

WHO ARE PERSONALLY KNOWN TO ME TO BE THE SAME PERSONS WHO EXECUTED THE FOREGOING INSTRUMENT OF WRITING AND DULY ACKNOWLEDGE THE EXECUTION OF THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY SEAL ON THE DAY AND YEAR LAST WRITTEN ABOVE.

NOTARY PUBLIC _____ MY COMMISSION EXPIRES _____

ENDORSEMENTS

RIGHTS OF WAY ACCEPTED AND EASEMENTS APPROVED FOR PUBLIC PURPOSES BY THE COUNTY COMMISSION DOUGLAS COUNTY, KANSAS

APPROVED BY LAWRENCE DOUGLAS COUNTY PLANNING COMMISSION DOUGLAS COUNTY, KANSAS

CHAIRMAN _____ DATE May 25, 1983
 COUNTY CLERK _____ DATE _____

FILING RECORD

STATE OF KANSAS
 COUNTY OF DOUGLAS

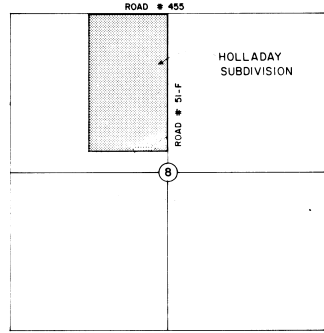
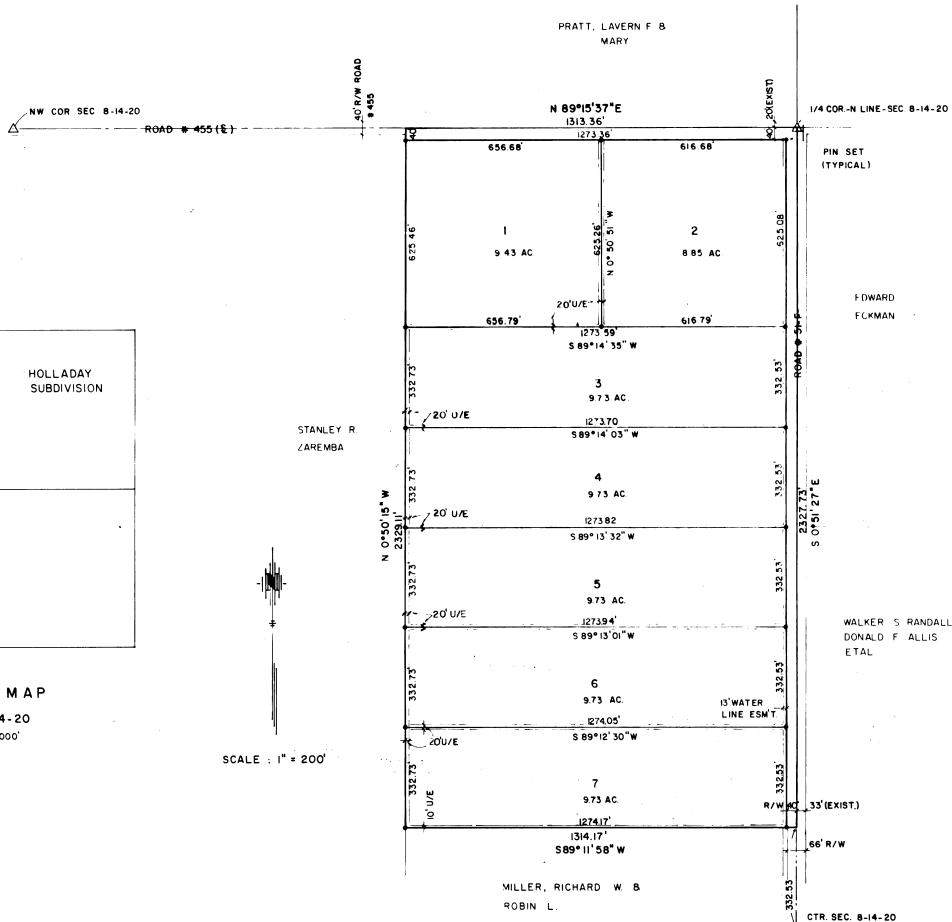
THIS IS TO CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN THE OFFICE OF THE DOUGLAS COUNTY REGISTER OF DEEDS ON THIS 25th DAY OF January, 1984, AND IS DULY RECORDED AT 1:15 P.M., BOOK 115, PAGE 76.

REGISTER OF DEEDS _____

CERTIFICATION

I HEREBY CERTIFY THAT THE PLATTED AREA AND THE LOCATION MAP HEREOF SHOWN ARE THE TRUE AND ACCURATE RESULTS OF A FIELD SURVEY AND THAT THE PLAT IS A CLOSED TRAVERSE.

PLAT PREPARED _____



LOCATION MAP
 SECTION - 8-14-20
 SCALE: 1" = 5000'

SCALE: 1" = 200'

A FINAL PLAT OF
 HOLLADAY SUBDIVISION
 DOUGLAS COUNTY, KS.

MILLER, RICHARD W. B.
 ROBIN L.

Indian Engineering

Holladay Subd.

History of Holladay Subdivision Plat & Access Restriction -

The preliminary and final plats of Holladay Subdivision came to the Planning Commission in 1983, as a result of a two acres land division that removed the then property owner's ability to further divide the property using the 5 acre exemption section of the then applicable Subdivision Regulations.

The Planning Commission had several current or former township trustees on it at the time [Dean Harvey and Richard Ice] and the issue of multiple road cuts was beginning to be discussed openly by Townships, the County Public Works Director (Mike Dooley), and planning staff and commissioners.

Minutes from the 05-25-83 Planning Commission meeting show there was considerable discussion about how the 5 acre exemption section. This discussion was typical of planning commission meetings in that era, as both staff and Commissioners were beginning to see the actual problems created by the Subdivision Regulations exemption section, not only in how it fragmented land parcels, but in the issues it created for townships and the Public Works in road maintenance and long-term planning for the use of future roads for access throughout the County.

In a closing comment made by Chairman Ann Victoria (Vickie) Thomas of the Planning Commission, she asked the Commission not to penalize the few to make an example for others. She also stated that a balance needed to be found and suggested there was a trade-off possible in the case of the Preliminary and Final Plats for Holladay Subdivision, in the Commission's approval of the plat and rezoning subject to access restrictions on the plat.

The minutes for the 05-25-83 planning commission meeting are attached.

The Planning Commission recognized Comm. von Achen and Comm. McKinney for their diligent years of service and thanked them for their dedication to the Commission.

NON-PUBLIC HEARING ITEMS

ITEM NO. 4: PRELIMINARY & FINAL PLATS OF HOLLADAY SUBDIVISION

A. SUMMARY

Preliminary and final plats of Holladay Subdivision, seven lot plat, containing approximately 70.22 acres. The property is located in Palmyra Township approximately one mile west of County Road 1055 along Township Road #51-F. Submitted by Landplan Engineering for Wayne Flory, John L. Waisner, Ann Colebank, Barbara J. Allen and Brett S. Howard.

B. STAFF REVIEW

The staff reviewed the staff report.

C. PLANNING COMMISSION/PUBLIC DISCUSSION

Comm. Harper asked if Palmyra Township Board had considered the suggestions of the County Public Works Director.

David Guntert said it had been discussed with Max Moore, one of the officers of the Township and that he was very supportive of shared entrances.

John Lungstrum, representing the applicant, said he wanted help in solving the problem that the current owners did not create.

Mr. Lungstrum then reviewed the history of the land.

He said there were several options in solving the problem and the most practical one was to plat and rezone this property. The owners asked that the plat be approved for the following reasons:

1. There had not been another subdivision of the property since 1978;
2. No further subdividing could occur without platting and zoning;
3. There had not been a scheme to avoid the subdivision regulations, just lack of information;
4. There was no way anyone in the buying chain could have protected themselves;

5. If the two acre tract had not been disposed of six years earlier, there would not have been a problem;
6. The purchasers wanted to avoid litigation; and,
7. Owners got caught in "loophole" and should not be treated as if they were intentionally doing something illegal.

Mr. Lungstrum said the owners did not want to share entrances because the traffic flow would not be extensive and if the two acre plat had not been sold, each would have had their own access. The owners did not want a frontage road.

Comm. Harvey voiced his concerns about increased traffic on the township roads and said there were potential problems with it. He also asked about the Health Department needing more information on waste disposal and water sources.

Mr. Lungstrum said these matters should be discussed when the zoning was considered.

Comm. Harvey asked why we would improve another subdivision when there were others in the immediate area that were not filled.

Mr. Lungstrum replied this was not a new subdivision. The owners just wanted to build on property they bought in good faith a few years ago.

Comm. Harvey said yes, but it would still be a rural subdivision.

Mr. Lungstrum said in regard to the access problem that there could have been five acre tracts instead of ten, causing a need for more accesses to the road. He explained the owners wanted to be treated as if the two acre deed never happened, that it was not part of an overall scheme to avoid the zoning and subdivision process.

Comm. von Achen stated he was sensitive to the problem, however, he believed the consensus of the Planning Commission was that if it was a new development they would not approve it as designed. He asked Mr. Lungstrum how the community could protect itself from this type of thing happening again. What should we have done back then to protect ourselves?

Mr. Lungstrum thought the split was a reasonable interpretation of the ordinance and that he didn't think they should be here at all. He thought the ordinances were fair as they were and gave ample protection. He added that this problem was not a scheme to develop a rural subdivision.

Comm. von Achen asked if the title insurance or the abstract people were the ones at fault since they should have been aware of the ordinances and the transfer of the two acre parcel since the deed was filed.

Mr. Lungstrum said it was possible that not all transactions would show up in a title search and possibly the abstractors were not aware of the subdivision regulations at the time.

Comm. von Achen felt the title insurance company was wrong. They should have checked it out more thoroughly. He said he was concerned the same thing might occur again.

Mr. Lungstrum said all he was trying to do was solve the existing problems and the present owners were blameless.

Comm. Miller asked if Mr. Lungstrum or the developer had contacted Mr. Zaremba, the property owner to the west, about joining into the request.

Mr. Lungstrum said yes, that Mr. Zaremba had no plans to develop his property. He intended to keep it in agriculture only.

Comm. Miller asked Mr. Lungstrum if his objection was to limiting access on all the roads.

Mr. Lungstrum said it was.

D. PLANNING COMMISSION DISCUSSION

Comm. Rader said that the owner's choice of house placement on the lot might make it impractical to share access, or that someone might want to share on the other side. He said it made it more difficult and he was opposed to shared access.

Comm. McKinney said one of the main concerns of the Planning Commission was the elimination of the 5 acre exemption in the Subdivision Regulations because it created this kind of unplanned development along existing roads and the associated problems that went with it. She said there was some legitimacy in approving the plat but that access should be limited as this was the compromising point.

Comm. Harvey said the township had the authority to say how many entrances there would be and where they should be located. The Trustee of a township had the authority over all.

Comm. Bahnmaier said he agreed with limiting the access but said it could be a problem in the future.

Comm. Harper asked Mr. Harvey to explain further how the township could control the entrance locations.

Comm. Harvey said the road cut belonged to the township because it was in the road right-of-way, but that the drive placement was up to the owner.

Comm. Rader asked if the township could still dictate where the access was placed.

Comm. Harvey said yes.

Comm. Rader thought that the decision should then be left to the township board.

Comm. Harvey said the township did not know all the laws because they were relatively new to the job.

Chrm. Thomas asked if the Planning Commission should give guidance to them in this case.

Comm. Harvey said yes.

Comm. Harper said she was bothered by the agricultural land to the west. She thought the owner might be pressured to turn it into a rural subdivision if the request was approved. She did not want however, to penalize the owners of the property in question. She did not think the owners were adequately protected by the title abstractors or lawyers in this case. She said she did not want to force litigation but also did not want to have to continue solving problems that should never have occurred.

Comm. Ice agreed with Mr. Harvey on access and on keeping the sewer lines clean. He said it would take a lot of taxpayer money to keep them going because their taxes would not be sufficient to cover the cost for gravel, drainage tubes, etc. that they would need. He asked if this land were platted whether anyone could sell 5 acres.

David Guntert said yes, that if the property were platted it could be lot split.

Comm. von Achen stated they would need ratification from the Planning Commission to do that.

Comm. Ice said the county had lost a lot of agricultural land by the 5 acre exemption provision and that it could be stopped somewhere. He said the county needed stricter zoning regulations.

Comm. Miller said he was concerned they were planning to use the township roads instead of a new access road for the lots.

Chrm. Thomas said it was important to remember that it was not a planned subdivision. She thought if it was a proposed rural subdivision the Planning Commission would not approve it. She asked if the Commission was going to penalize as few as an example for others or respond to individual needs. They needed to balance the needs of individuals with the welfare of the community. She said maybe in this situation the trade off would be to approve the plats and rezoning but with restricted access.

Preliminary plat:

It was moved by Comm. von Achen, seconded by Comm. Miller, to approve the preliminary plat subject to three conditions:

- 1) A note be placed on the preliminary plat that would limit the number of entrances along road 51-F to three to be located along common lot lines of Lots 2 and 3, Lots 4 and 5 and Lots 6 and 7;
- 2) A note be placed on the plat to indicate the existence of covenants on file at the Register of Deeds' Office for the maintenance of said common entrances; and,
- 3) A note be added to the plat prohibiting access for Lot 2 onto road 455.

The motion carried 5 - 4 with Comms. Bahnmaier, Rader, Ice and Harvey voting against.

Final plat:

It was moved by Comm. von Achen, seconded by Comm. Miller to approve the final plat and forward it to the Board of County Commissioners for acceptance of rights-of-way and approval of easements subject to four conditions:

- 1) Limiting the number of access entrances;
- 2) Limited access from Lot 2 to Road #455;
- 3) That a note be placed on the plat to indicate the existence of covenants on file at the Register of Deeds' Office for the maintenance of said common entrances; and,
- 4) Pinning of the lots.

The motion carried 6 - 3 with Comms. Ice, Harvey and Bahnmaier voting against.

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer

Date : May 31, 2013

Re : Consider agreement with KDOT for reimbursement of material costs
Maintenance of local roads near US-56 highway closure

The attached agreement stipulates KDOT will reimburse material costs for work to prepare and maintain local roads in the vicinity of the current US-56 highway closure for replacement of three bridges. Palmyra Township incurred costs to add asphalt millings and replace narrow culverts on several local roads near the closure. Douglas County incurred costs to apply dust palliative to the same roads.

The agreement stipulates maximum reimbursements of \$6,300 for road rock, \$4,158 for culvert costs, and \$34,420 for dust control. Upon execution of the attached agreement, KDOT will reimburse costs to Douglas County. We will reimburse Palmyra Township for their road rock and culvert costs.

Action Required: Approval of the attached agreement stipulating KDOT will reimburse Douglas County for material costs incurred for preparing and maintaining local Palmyra Township roads near the US-56 highway closure between US-59 highway and Baldwin City.

PROJECT NUMBERS: 56-23 KA 0032-01, 56-23 KA 0033-01 and 56-23 KA 2294-01
UNOFFICIAL DETOUR

AGREEMENT

THIS AGREEMENT entered into this _____ day of May, 20___, by and between the Secretary of Transportation of the State of Kansas, hereinafter referred to as “Secretary,” and Douglas County, Kansas, hereinafter referred to as “County,” collectively referred to as the “Parties.”

WHEREAS, Secretary desires to close US-56 to construct tied KDOT Projects 56-23 KA 0032-01, 56-23 KA 0033-01, 56-23 KA 2294-01, hereinafter referred to as “Project,”

WHEREAS, Secretary desires to detour traffic from the Project location using [US-59](#) north/south, I-35 east/west and K-33 north/south in Douglas and Franklin Counties hereinafter referred to as “Detour.” Due to the length of the Detour it is anticipated the County road system may experience increased vehicular traffic;

WHEREAS, US-56 traffic may opt to use multiple routes including but not limited to E1400 Rd, N400 Rd, E1500 Rd, E1600 Rd and N200 Rd, hereinafter referred to as the “Routes;” and,

WHEREAS, County desires to provide and maintain reasonably safe conditions on these Routes,

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

THE SECRETARY AGREES:

1. To reimburse County for the purchase of road surfacing aggregate, dust control and metal culverts for use on E1400 Rd, N400 Rd, E1500 Rd, E1600 Rd and N200 Rd. Secretary shall reimburse County for the purchase of 840 tons of road rock up to \$6,300, replacement culvert costs of \$4,158.38 and 37,700 ln ft of dust control up to \$34,420. Secretary agrees to make partial payments to County for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing.

THE COUNTY AGREES:

1. To provide maintenance and grading as required to provide Routes with County forces in a reasonably safe condition for all of the traveling public, including those persons using the Routes in lieu of the Detour.
2. To defend, indemnify, hold harmless, and save Secretary and authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the County, the County’s employees, agents, or subcontractors. The County shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or its authorized representatives or employees.

THE PARTIES MUTUALLY AGREE:

1. This Agreement shall be in full force and effective the date written above and shall continue until such time the Project no longer restricts the flow of traffic on US-59.
2. Nothing in this Agreement shall be construed as a warranty by Secretary that the Routes are suitable for travel. County has responsibility for the Routes used by the travelling public, for monitoring the condition of the Routes, providing the Routes, and for maintaining the Routes in a reasonably safe condition. Secretary has no duty to maintain the Routes, inspect the Routes, or advise County as to appropriated maintenance or inspection of the Routes. This Agreement is not intended to nor does it create any duties on the part of Secretary in regard to the Routes.
3. The Special Attachment No. 1 attached hereto, pertaining to the implementation of the Civil Rights Act of 1964, is hereby made a part of this Agreement.
4. The provisions found in the Contractual Provisions Attachment (Form DA-146a, Rev. 10-11), which is attached hereto, are hereby incorporated in this Agreement and made a part thereof.
5. This Agreement and all contracts entered into under the provision of this Agreement shall be binding upon Secretary and County and their successors in office.
6. It is further agreed this Agreement precludes County claims for any other costs incurred on the County Roads, including the Routes.
7. No third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized officers on the date and year first above written.

ATTEST:

COUNTY OF DOUGLAS, KANSAS

COUNTY CLERK (Date)

CHAIRMAN

MEMBER

MEMBER

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

By: _____ (Date)
Jerome T. Younger, P.E.
Deputy Secretary and
State Transportation Engineer