City Council Introduction: **Monday**, December 4, 2006
Public Hearing: **Monday**, December 11, 2006, at **1:30** p.m.

Bill No. 06R-231

FACTSHEET

TITLE: **Letter of Appeal** filed by Julie Shipman Burns, appealing Resolution No. PC-01026, approving **SPECIAL PERMIT NO. 06062,** requested by Willard D. Giebenrath, for authority to operate sand, gravel and soil excavation on property located one-quarter mile east of N. 56th Street/Highway 77 between Waverly Road and Mill Road.

STAFF RECOMMENDATION: Conditional approval

ASSOCIATED REQUESTS: County Special Permit No. 06066

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 11/08/06
Administrative Action: 11/08/06

RECOMMENDATION: Conditional Approval (7-1: Carroll, Cornelius, Larson, Strand, Sunderman, Krieser and Carlson voting 'yes'; Esseks voting 'no'; Taylor absent).

FINDINGS OF FACT:

1. This is a request for soil excavation on a 153-acre site located partly within the 3-mile jurisdiction of the City of Lincoln and partly in the Lancaster County jurisdiction, requiring approval of both the City Council and County Board. The associated County Special Permit No. 06066 is scheduled for public hearing before the Lancaster County Board of Commissioners on December 5, 2006.

2. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.8-10, concluding that the proposal is in conformance with the Comprehensive Plan and the City Zoning Ordinance. The conditions of approval limit the proposed special permit to three years, with one-year increments which may be approved by the Planning Director by administrative amendment.

3. The testimony by the applicant's representative, Mark Hunzeker, is found on p.12-13 and 15-16. Mr. Hunzeker clarified that the area to be disturbed is 97 acres and the property will be returned to farming when the excavation is completed.

4. Testimony in opposition is found on p.13-14, the issue being that the outlot upon which the excavation is proposed was to be preserved in the AG community unit plan for farming. Other issues include reclamation to growing crops and enforcement of that reclamation, the existence of a fiber optic cable in the area of excavation, access, dust emissions, and safety with the additional truck traffic on Waverly Road.

5. The applicant's response to the testimony in opposition is found on p.15-16.

6. On November 8, 2006, the majority of the Planning Commission agreed with the staff recommendation and voted 7-1 to adopt Resolution No. PC-01026 (p.3-6), approving the city portion of the special permit, with conditions, as set forth in the staff report dated October 24, 2006 (Esseks dissenting; Taylor absent). See Minutes, p.16. The conditions of approval are found on p.10-11.

7. On November 8, 2006, the majority of the Planning Commission also voted 7-1 to recommend conditional approval of the County portion of this special permit. The public hearing before the Lancaster County Board of Commissioners is scheduled for Tuesday, December 5, 2006, at 9:30 a.m.

8. On November 20, 2006, a letter of appeal was filed by Julie Shipman Burns (p.2). In this case, it is conceivable that if one board approves its portion of the application and the other board does not, the approved portion could be excavated with an administrative amendment to the plan.

FACTSHEET PREPARED BY: Jean L. Walker **DATE**: November 27, 2006
REVIEWED BY:_____ **DATE**: November 27, 2006
REFERENCE NUMBER: FS\CC\2006\SP.06062 Appeal

McCord & Burns Law Firm, LLP

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Lincoln, Nebraska 68528
Phone 402-474-2736 / Fax 402-474-0081
www.mccordburnslaw.com
Fed. Id#47-0768620

Julie Shipman Burns, Attorney
Dan L. McCord, Attorney, Of Counsel

Danielle A. Wren, Legal Assistant
Shauna N. Murray, Legal Assistant

FILED

NOV 20 2006

CITY CLERK'S OFFICE
LINCOLN, NEBRASKA

November 17, 2006

Joan Ross, City Clerk
City of Lincoln-Lancaster County
City Council
555 South 10th Street
Room 103
Lincoln, NE 68508

RE: APPEAL
Special Permit No. 06062 and County Special Permit No. 06066
(Mining Operation/soil extraction N. 56th & Waverly Road)

Dear Ms. Ross:

This letter shall serve as an ***Appeal*** to the City Council of the action taken on November 8, 2006 by the Planning Commission wherein the Commission voted 7-1 to adopt Resolution No. PC-01026 approving that portion located in the city jurisdiction (Special Permit No. 06062), and voted 7-1 to recommend conditional approval of that portion located in the County jurisdiction (County Special Permit No. 06066).

Thank you for your assistance. Please contact me if there are questions or concerns.

Sincerely,

Julie Shipman Burns

cc: Mark Hunzeker, P.O. Box 95109, 68509
Willard Giebenrath, 12755 N. 70th Street, 68517
Tom Keep, 8601 Davey Road, 68517

RECEIVED
NOV 22 2006
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT

PLANNING COMMISSION FINAL ACTION
NOTIFICATION

TO : Mayor Coleen Seng
Lincoln City Council

FROM : Jean Walker, Planning

DATE : November 9, 2006

RE : **Special Permit No. 06062 - Sand, gravel and soil excavation**
(N. 56th Street/Hwy 77 between Waverly Road and Mill Road)
Resolution No. PC-01026

The Lincoln City-Lancaster County Planning Commission took the following action at their regular meeting on Wednesday, November 8, 2006:

> Motion made by Carroll, seconded by Sunderman, to approve **Special Permit No. 06062,** with conditions, requested by Willard D. Giebenrath, for authority to operate sand, gravel and soil excavation on property located one-quarter mile east of N. 56th Street/Highway 77 between Waverly Road and Mill Road.
>
> Motion for conditional approval carried 7-1 (Carroll, Cornelius, Larson, Strand, Sunderman, Krieser and Carlson voting 'yes'; Esseks voting 'no'; Taylor absent).

The Planning Commission's action is final, unless appealed to the City Council by filing a Letter of Appeal with the City Clerk within 14 days of the date of the action by the Planning Commission.

Attachment

cc: Building & Safety
Rick Peo, City Attorney
Public Works
Lyle Loth, ESP, 601 Old Cheney Road, Suite A, 68512
Mark Hunzeker, P.O. Box 95109, 68509
Willard Giebenrath, 12755 N. 70th Street, 68517
Tom Keep, 8601 Davey Road, 68517
Julie Shipman Burns, 12909 N. 70th Street, 68517

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RESOLUTION NO. PC- 01026

SPECIAL PERMIT NO. 06062

WHEREAS, Willard D. Giebenrath has submitted an application designated as Special Permit No. 06062 for authority to operate sand, gravel and soil excavation on property located one-quarter mile east of N. 56th Street/Highway 77 between Waverly Road and Mill Road, and legally described to wit:

> Outlot C, View Pointe North, located in the West Half of Section 9, Township 11 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska;

WHEREAS, the Lincoln City-Lancaster County Planning Commission has held a public hearing on said application; and

WHEREAS, the community as a whole, the surrounding neighborhood, and the real property adjacent to the area included within the site plan for this soil excavation will not be adversely affected by granting such a permit; and

WHEREAS, said site plan together with the terms and conditions hereinafter set forth are consistent with the comprehensive plan of the City of Lincoln and with the intent and purpose of Title 27 of the Lincoln Municipal Code to promote the public health, safety, and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the Lincoln City-Lancaster County Planning Commission of Lincoln, Nebraska:

That the application of Willard D. Giebenrath, hereinafter referred to as "Permittee", to operate a soil excavation be and the same is hereby granted under the provisions of Section 27.63.360 of the Lincoln Municipal Code upon condition that the operation of said soil extraction be in strict compliance with said application, the site plan, and the following additional express terms, conditions, and requirements:

1. This permit approves mining for a soil, sand and gravel excavation operation for a period of three (3) years from the date of approval of this special permit. Additional time, in one year increments, may be granted by administrative amendment by Planning Director.

2. The site plans must be revised to:

   a. Satisfy the requirements of the County Engineer as follows:

      i. Add notes to state applicant will be responsible for any maintenance and repairs required to either Mill or Waverly Roads due to this mining operation.

      ii. Show final contour major elevations on plan.

      iii. Add notes to indicate signing along Waverly Road warning of "Trucks Entering" during excavation operations.

   b. Show Norris Public Power easement along east lot line.

3. A wetland scientist or other knowledgeable person shall look at the site and provide information on wetland status, and if it's a wetland need to avoid, minimize or mitigate to the satisfaction of either the NE Dept. of Environmental Quality or Army Corps of Engineers.

4. Before beginning excavation operations:

   a. The permittee shall have:

      i. Received review and permits, if required, for the Federal NPDES and 404 Permits.

      ii. Any required driveway permits for access onto Waverly or Mill roads shall be approved by the Lancaster County Engineer.

b. The construction plans shall comply with the approved plans.

c. An erosion control plan shall be approved by the Lower Platte South NRD.

5. All privately-owned improvements shall be permanently maintained by the Permittee.

6. This resolution's terms, conditions, and requirements bind and obligate the Permittee, its successors and assigns.

7. The Permittee shall sign and return the letter of acceptance to the City Clerk within 60 days following the approval of the special permit, provided, however, said 60-day period may be extended up to six months by administrative amendment. The City Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the Permittee.

The foregoing Resolution was approved by the Lincoln City-Lancaster County Planning Commission on this 8th day of November, 2006.

ATTEST:

Chair

Approved as to Form & Legality:

Chief Assistant City Attorney

006

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for November 8, 2006 PLANNING COMMISSION MEETING

P.A.S.: City Special Permit #06062

PROPOSAL: A special permit to allow mining/extraction of soil on Agricultural property.

LOCATION: One quarter mile east of N. 56th Street / Hwy 77 between Waverly Road and Mill Road. The area is split by the City's 3-mile Zoning and Subdivision Jurisdiction.

WAIVER REQUEST: NA

LAND AREA: 152.65 acres more or less.

CONCLUSION: In conformance with the Comprehensive Plan and City Zoning.

RECOMMENDATION:	Conditional Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: View Pointe North, Outlot C, located in the W1/2 of Section 9 T11N, R7E of the 6th P.M., Lancaster County, Nebraska.

EXISTING ZONING: AG Agriculture

EXISTING LAND USE: Farming

SURROUNDING LAND USE AND ZONING:

North: Farm land, zoned AG Agriculture
South: Farm land , zoned AG Agriculture
East: South half View Pointe North CUP, 14 acreage lots & outlot, north half agricultural and pasture with one farm house, zoned AG Agriculture
West: Farming, one farmhouse, zoned AG Agriculture

ASSOCIATED APPLICATIONS: None

HISTORY: Changed from AA Rural and Public Use to AG Agricultural in the 1979 zoning update. Approved as an Agricultural Community Unit Plan for 14 Acreage lots and 3 outlots in late 2002 - early 2003. The specific area in this application is shown as Outlot C for agricultural use.

COMPREHENSIVE PLAN SPECIFICATIONS: The Plan shows this as Agriculture. This is inside the Tier III Growth Area.

UTILITIES: none.

TOPOGRAPHY: Rolling, with north and northwest 1/3 draining to the northwest, and east and southeast 2/3 draining to the southeast.

TRAFFIC ANALYSIS: N 56th / Hwy 77 is a four lane divided Federal Highway. Waverly Road is a paved county road and Mill Road is a county gravel road. Waverly Road is shown as a Rural Major Collector in the Comprehensive Plan.

PUBLIC SERVICE: This is in the Raymond Rural Fire District (Basic Life Support 9 miles), Waverly School District #145 and Norris Public Power District.

REGIONAL ISSUES: NA

ENVIRONMENTAL CONCERNS: There are no known Historic resources. There is no FEMA floodplain shown. The soil rating on this land is 5.8 on a scale of 1 to 10 where 1 to 4 are prime soils. This is not prime soil. The National Wetland Inventory identifies a small wetland approximately 1200 feet south of north lot line, and 100 feet east of west lot line. A mid 1850's Mormon Trail generally followed N. 56th at this location. The Lincoln Landfill is one mile south. Sludge from the Theresa Street treatment plant is applied in this general area.

AESTHETIC CONSIDERATIONS: n/a

ALTERNATIVE USES: Farming, there is no density remaining in the Community Unit Plan to allow dwelling units on this land.

<u>ANALYSIS:</u>

1. This request is for soil excavation on a 153 acre site, under the provisions of Article 13.001(14) Mining, extraction of sand, gravel or other raw material and storage and processing thereof in the "AG" and "AGR" Districts, and Chapter 27.63.360 Mining in the “AG” and “AGR” Districts. This property lies partly within the 3-mile extraterritorial jurisdiction (ETJ) of Lincoln and partly in the County jurisdiction, requiring the approval of both city and county governments.

2. County Engineer
   - 2.1 Dust control measures shall be used during operations
   - 2.2 Applicant shall be responsible for repairs of any damages that may occur to Waverly Road pavement at this site, and shall be responsible to maintain Waverly Road free of any debris.
   - 2.3 Applicant shall be responsible for maintenance and any repairs that are caused by haulers to Mill Road.
   - 2.4 Drawing should identify the elevation of the major proposed contour lines.
   - 2.5 Signing should be placed on Waverly Road during hauling operations warning traffic of “Trucks Entering”.

3. Health Department.

3.1 During the mining process, the land owner(s) will be responsible for controlling off-site dust emissions in accordance with Lincoln-Lancaster County Air Pollution Regulations and Standards Article 2 Section 32. Dust control measures shall include, but not limited to application of water to roads, driveways, parking lots on site, site frontage and any adjacent business or residential frontage.

4. Norris Public Power

4.1 There is 12.5 kV overhead line on the north side of Waverly Rd. No grading shall occur within 10 feet of these poles.

5. LES

5.1 There is a 9.1 foot wide utility easement running along the east property line shown on the Preliminary Plat that should be shown on this special permit site plan.

6. Public Works and Utilities - Watershed Management

6.1 The National Wetland Inventory map shows a small wetland in the northwest portion of the site. It's located at and near the location of the proposed sediment basin about 1200 feet south and about 100 feet east of the northwest corner of the site. Need to have a wetland scientist or other knowledgeable person look at the site and provide information on wetland status, and if it's a wetland need to avoid, minimize or mitigate to the satisfaction of either the NE Dept. of Environmental Quality or Army Corps of Engineers.

6.2. Erosion and sediment control will be reviewed as part of the NPDES permit construction site review by LPSNRD (application currently under review).

7. The applicant addressed the listed conditions of the county special permit conditions (Article 13.001 (14)) and the Lincoln special permit application conditions (27.63.360 and 27.63.160) as follows (responses shown in **bold**);

a) **A grading map showing existing and proposed contours is provided showing a general leveling of the land with up to 16 foot cuts, and no fill**. Major elevations of proposed contours should be shown on the map.

b) Effect on groundwater; **General note 9 on erosion control plan states "Soil removal on this site will not alter the groundwater table on adjoining properties**."

c) Vehicle and equipment storage areas; **Equipment storage areas shown on site plan,** vehicle storage not addressed.

d) Erosion controls; **Erosion control notes on site plan and erosion control plan, sheets 1 and 2, address the installation and maintenance of topsoil stockpiling, sediment basins, diversion dikes, silt fence, and seeding.**

e) The surface shall be maintained so surface water is not collected or ponded other then the designed catch ponds. **General notes 5 on erosion control plan states: "During excavation all disturbed areas shall be graded to prevent ponded water."**

f) Topsoil shall be stripped and kept on site for redistribution at the conclusion of the extraction process. **General notes 1 & 4 discuss the storage of topsoil and the intention to not exceed 20 acres stripped at one time**. Redistribution of topsoil at the conclusion is not discussed.

g) Cuts will be returned to a slope of less than 3 to 1 and seeded after extraction. **The scale of the map indicates that slopes will not exceed 3 to 1, most are substantially less, with steeper slopes located on the east and west edges approximately 5 to 1.** Safety screening is not addressed along the outer boundary. Visual screening is not addressed upon the portion of the boundary adjacent to residential property.

h) Soils and topography shall be graded and seeded after extraction. **Applicant states any disturbed area will be seeded, fertilized and mulched if actual earth moving activities are not to be performed on an area for more than seven (7) days. Applicant indicates seed options of oats or NRD cool season #4 grass seed. Applicant indicates the site will be returned to farm use upon completion of mining operations.**

8. A time limit for excavation permits has typically been applied. Three years is recommended for this application.

CONDITIONS:

1. This approval permits mining for a soil, sand and gravel excavation operation for a period of three (3) years from the date of approval of this special permit. Additional time, in one year increments, may be granted by administrative amendment by Planning Director.

Specific:

2. Plans should be revised to:

2.1 Satisfy the requirements of the County Engineer

2.1.1 Notes to state applicant will be responsible for any maintenance and repairs required to either Mill or Waverly Roads due to this mining operation.

2.1.2 Final contour major elevations shown on plan

2.1.3 Notes to indicate signing along Waverly Road warning of "Trucks Entering" during excavation operations.

2.2 Show Norris Public Power easement along east lot line.

2.3 Need to have a wetland scientist or other knowledgeable person look at the site and provide information on wetland status, and if it's a wetland need to avoid, minimize or mitigate to the satisfaction of either the NE Dept. of Environmental Quality or Army Corps of Engineers.

General:

3. Before beginning excavation operations:

3.1 The permittee shall have

3.1.1 Received review and permits, if required, for the Federal NPDES and 404 Permits.

3.1.2 Any required driveway permits for access onto Waverly or Mill roads shall be approved by the Lancaster County Engineer.

3.2 The construction plans shall comply with the approved plans.

3.3 An erosion control plan shall be approved by the Lower Platte South NRD.

STANDARD CONDITIONS:

4. The following conditions are applicable to all requests:

4.1 All privately-owned improvements shall be permanently maintained by the owner.

4.2 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

4.3 The County Clerk shall file a copy of the resolution approving the permit and the letter of acceptance with the Register of Deeds. The Permittee shall pay the recording fee in advance.

Prepared by:

Sara Hartzell
441-6372, shartzell@lincoln.ne.gov
DATE: October 24, 2006

APPLICANT: Lyle Loth, ESP
601 Old Cheney Rd
Lincoln, NE 68512
(402)421-2500

OWNER: Willard D. Giebenrath
12755 N. 70th
Lincoln, NE 68517
(402)466-6811

CONTACT: Lyle Loth, ESP
601 Old Cheney Rd
Lincoln, NE 68512
(402)421-2500

CITY SPECIAL PERMIT NO. 06062
and
COUNTY SPECIAL PERMIT NO. 06066

PUBLIC HEARING BEFORE PLANNING COMMISSION: November 8, 2006

Members present: Carroll, Cornelius, Esseks, Larson, Strand, Sunderman, Krieser and Carlson; Taylor absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

These applications were removed from the Consent Agenda at the request of Tom Keep.

Staff presentation: **Sara Hartzell** of the Planning staff explained that this application requires action by the Planning Commission as well as the County Board because it is in split jurisdiction. It is for soil mining on agricultural property on an outlot for an AG CUP called View Pointe North, consisting of 153 acres in total, with only 93 acres identified for soil removal. The soil is to be removed from the peaks of the ridge. The property is at the top of three different drainage basins. Water drains to the northwest and then to the southeast form the high point. Erosion control measures are in place. She understands that the NRD is currently reviewing the erosion control plan. The County Engineer would like to be certain they have signage on Waverly Road that warns people of trucks entering. He also wants to make sure the applicant understands that damage to Waverly or Mill Road is to be repaired by the applicant.

Hartzell also pointed out that there is a wetland that does show up on the national wetland inventory which will need to be reviewed by an expert to determine whether it needs to be protected.

Proponents

1. Mark Hunzeker appeared on behalf of **Willard Giebenrath,** the owner of the property. This application was submitted after a request by LaGrande Excavating to remove soil from this 153-acre parcel. The area to be disturbed is about 97 acres. The plan is to simply lower existing contours, and to maintain stormwater flow in the same general direction as exists today. Erosion control and sediment ponds are shown on the plan and the applicant is working with the NRD for approval. The wetland will be inventoried and/or surveyed and, if necessary, the applicant will take whatever precaution is required to avoid damage to the wetland. The access point will be from Waverly Road, which is paved. When they are finished with this excavation, the land will be returned to farming. No more than 20 acres will be disturbed at any given time. Hunzeker agreed with the conditions of approval. The removal will consist of about one million cubic yards.

Opposition

1. Tom Keep, 8601 Davey Road, testified in opposition. Outlot C, the area in question, was part of an acreage used in the Giebenrath Estates agricultural CUP and it is to remain AG as part of that CUP. It currently has been given greenbelt tax status. Removing 16' of soil will severely impact the ability of the tract to act as agricultural land. It is not possible to grow crops once the soil mining occurs. There are several soil mining sites in this vicinity and none have been reclaimed as growing crops, e.g. 40th & Waverly Road has not been reclaimed; Arbor Road and Route 77 has ended up with a 27' straight up and down cut against the interstate right-of-way and is not in any kind of crops. The other soil mining sites are not capable of growing crops. Several of these sites have been declared blighted and TIF has been proposed to turn them into a commercial park area. This site is just north of the area declared as blighted. Is it fair to further enrich a landowner who agreed to maintain this land in a greenbelt condition, and then turn it into another blighted area? If it was supposed to be in greenbelt status, and if it was supposed to remain in AG use, destroying it by mining soil off of it does not appear to be the proper land use.

Keep also pointed out that a review of the site plan and staff recommendation show nothing and make no mention of a transcontinental cable that crosses the middle of the site. It is a fiber optic cable. Soil mining is shown in this area. Certainly this is not possible. The contours of the soil mining show mining in the area where the cable is located. Why is the cable easement not shown? Approval of this site certainly should not be granted until this problem is addressed. Approval of a plan that might cut a cable like this could be a serious liability.

Keep further suggested that, based on previous performance on soil mining sites in the county, it is clear that some type of enforcement of reclamation needs to occur before the city and county approve more. He requested that the Commission deny this application based on its impact on a greenbelt area, potential impact on a fiber optic cable and the need to set up meaningful reclamation requirements.

Esseks inquired whether Mr. Keep has found another area like this which was also an outlot which was supposed to stay in agricultural because the adjoining properties were given higher density. The answer was 'no'.

2. Julie Shipman Burns, 12909 N. 70th Street, testified in opposition. She agreed with the concerns raised by Mr. Keep. However, on a more personal note, she advised that she testified previously on the request to create this outlot and at that time the applicant asked permission to set aside 153 acres so that he could develop and sell 14 home sites. What has not been discussed today is the fact that those 14 homes have been developed and sold. There are families that live right on this property line, including her family. Her concern is that a mining operation is distinctly different from farming. This gentleman asked to set aside this land for farming purposes, and the homeowners were promised that nothing else would happen on this 153 acres, and now this gentleman is asking to create a mining operation, which is significantly worse for the health and safety of her family and her neighbors. The dust emissions are a concern, but yet no one talks about how they plan to control those emissions. Who is going to monitor this? We are talking about hundreds of trucks coming to the site every day. The dust, the noise, and the environmental concerns have not been addressed sufficiently. What about the safety of all of the people who travel on Waverly Road? It is the main access from Hwy 77 to Waverly. Her son travels that road every single day to get to Waverly High School. There are hundreds of children traveling every day. There are hundreds of trucks that would travel Waverly Road every day. She urged that the Commission deny this applicant the opportunity to take back his word.

Larson inquired as to the difference in elevation after the land mining takes place. Burns stated that she only knows that they have indicated they will take off 16'. She also expressed concern about the short notice of this application and hearing. She has not has an opportunity to fully investigate the impact on her property. That 16' is the only buffer that her property has to Hwy 77.

Staff response

Hartzell commented on the blighting at 40th & Arbor Road – that declaration of blight and substandard was not due necessarily to land that had been mined and not returned to agricultural. There were other factors involved in the blight designation.

Hartzell stated that the dust concern has been addressed by the Health Department with standard requirements. It is suggested that they use water to water down any kind of open land or roadways. Any complaints would be addressed by the Health Department.

Esseks noted that this is an agricultural CUP to the east that was developed by this applicant. Did the applicant get a density bonus in the CUP? Hartzell believes that to be true. Esseks believes the density bonus is based upon preserving land in agricultural use. The applicant was allowed to develop this land with more units than if he simply divided the total acreage into two 20-acre tracts. It seems the applicant has already obtained some benefit but the exchange was to preserve this lot as an agricultural use. Is mining an agricultural use? Hartzell confirmed that mining is a special permitted use in the agricultural zoning district. Esseks believes this is a travesty.

Marvin Krout, Director of Planning, suggested that the concept here is that once this subsoil is mined, the topsoil will be regraded onto the site and the land would be put back to farming use. This land is not lost to agricultural use because of a mining operation. Esseks suggested that 20-acre segments could make the mining last a long time. Hartzell pointed out that the conditions limit the permit to three years, with one-year increments added at the discretion of the Planning Director. No more than 20 acres will be bare at one time. Any land that is bare for more than 7 days must be reseeded with either oats or the NRD “cool season #4 grass seed”.

Larson inquired whether the topsoil that is stripped will be set aside. Hartzell noted that there are specific sites on the plan that show topsoil reclamation and the requirement is written that they redistribute the topsoil and return it to farming.

Carroll inquired whether there was a discussion with the County Engineer as far as exiting onto Mill Road as opposed to Waverly Road. Hartzell stated that the County Engineer’s only concern was that the roads be maintained. Mill Road is a gravel road.

With regard to the outlot and the clustering of the units, Sunderman commented that the whole purpose of using the outlots is to cluster the units together so that we do not have 20-acre spots all over the section. The purpose is so that when the city builds toward that area it can “build

through" in an orderly and sufficient manner. Hartzell concurred. This is not the only outlot in this CUP. There is an outlot that includes the pond to the east.

Response by the Applicant

Hunzeker stated that there are two entrances, with the primary one being off Waverly Road, and there is an entrance shown on Mill Road. The applicant agrees to maintain and repair any damage to either of those roads caused by any of the truck traffic.

Hunzeker pointed out that there is a requirement which is specified on the site plan that the topsoil will be removed, stored and replaced on the property to restore it to agricultural use. The depth of the topsoil is hard to measure, but the applicant will remove all the topsoil and store all of it because it is not valuable for the uses of the excavators.

With respect to the photographs shown by Mr. Keep to demonstrate the condition of property which has been mined, the photograph with the vertical cut is one which is on a piece of commercially zoned land, and he believes that the reason for that vertical cut was that it was made in preparation for construction on that site, and when the interstate is widened it is fair to say that that vertical cut will disappear because the NDOR will need all the fill material on the hill side of that vertical cut. Easements are being taken along there to do grading to make sure that transition is smooth. There is another mining permit which was issued immediately to the east of that property which is being farmed. This is done on most of the dirt mining permits that are issued. Another example is east of 84th Street on A Street. That property is being farmed today.

With regard to the fiber optic cable, Hunzeker stated that the applicant is aware of its existence and will be modifying the grading permit to accommodate that and avoid any grading activity that would come close to disturbing that cable.

Hunzeker also pointed out that there is another outlot which provides a fair amount of buffer to a number of the homes in the area. He showed the outlot on the map, which will not be disturbed. There is a pond on the other outlot. He believes that Ms. Burns' home is 800-1000 feet from the east property line of the permit area.

Hunzeker then submitted that mining of dirt is something that is important to the construction and road building industry. These permits are available for a reason. It is an important economic activity in this county and we need to be able to do this in a reasonable way. All of the conditions of approval are monitored by the NRD and NDEQ. All of the regulations that apply to the stormwater, erosion and sediment control, etc., are federal regulations administered by the DEQ and the NRD. The fines and penalties for violations are significant. The dust control is the county's jurisdiction and he does not believe it has been a problem in the past and should not be a problem here.

Carroll inquired whether the majority of dirt will come off the south or the north end of the property. Lyle Loth of ESP came forward and suggested that it would be 50/50 both ways.
Carroll wondered about using Mill Road the majority of the time for the exit and entrance. Loth stated that basically, they would use the road that would be the least hazardous. Not only do they have to have trucks going out to Waverly Road or Mill Road, but they also have to then get on Hwy 77. Waverly Road has a flashing light and truck traffic entering a situation like that would probably be less hazardous. The applicant would be inclined to work with the County Engineer and NDOR to determine the most safe access point.

CITY SPECIAL PERMIT NO. 06062
ACTION BY PLANNING COMMISSION: November 8, 2006

Carroll moved to approve the staff recommendation of conditional approval, seconded by Sunderman.

Carroll commented that this is a soil excavation site. It is not high quality farmable land. He does not believe it will hurt the area. The 20-acres at a time is a good recommendation for control, and it will be returned to crop land. He does not believe it will harm the agricultural area nor the site next door.

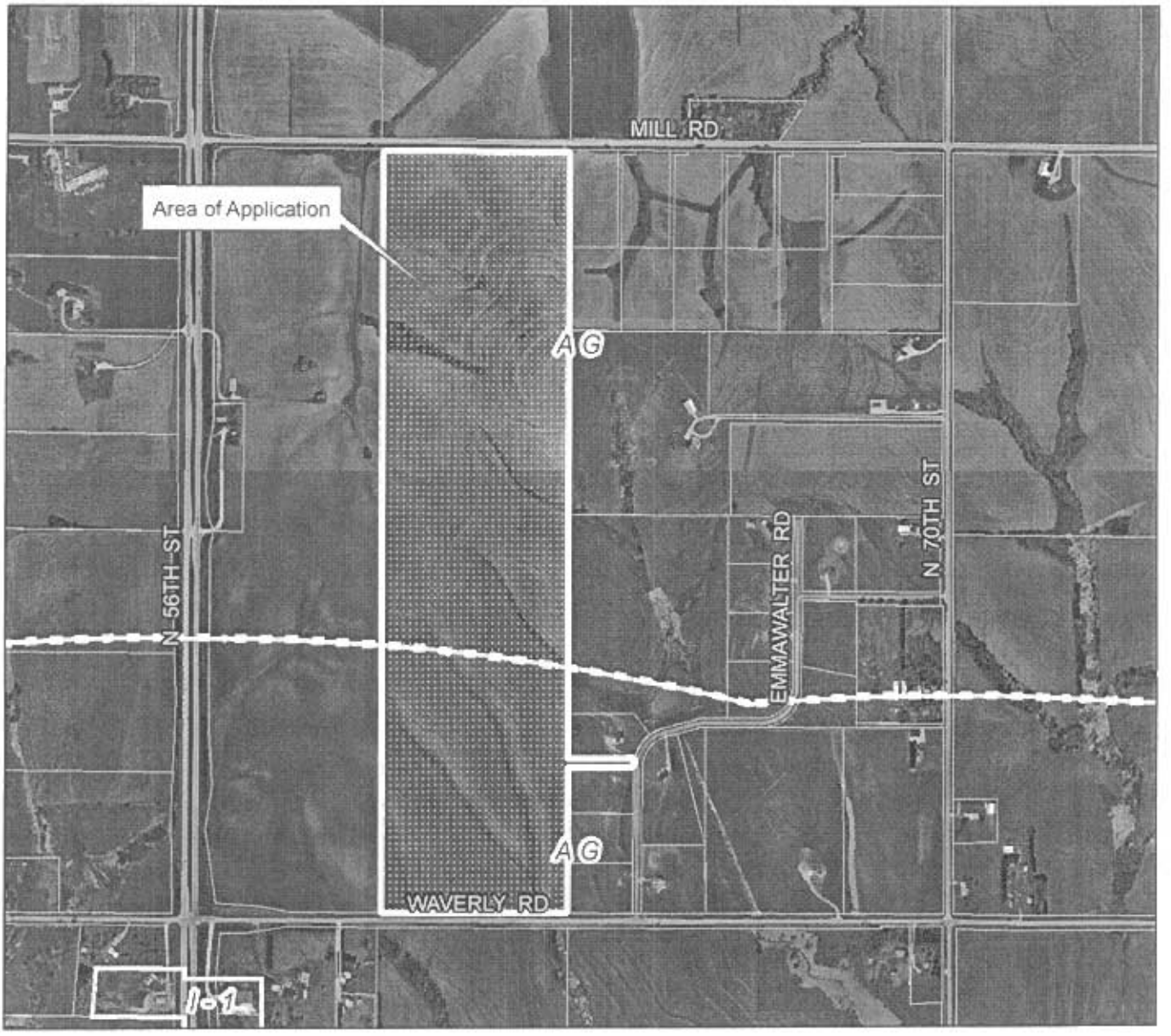
Larson stated that his only reservation is the transition from the CUP land down to the excavated site.

Carlson noted that the applicant has agreed to note the location of the fiber optic cable.

Motion for conditional approval carried 7-1: Carroll, Cornelius, Larson, Strand, Sunderman, Krieser and Carlson voting 'yes'; Esseks voting 'no'; Taylor absent. This is final action unless appealed to the City Council.

COUNTY SPECIAL PERMIT NO. 06066
ACTION BY PLANNING COMMISSION: November 8, 2006

Carroll moved to approve the staff recommendation of conditional approval, seconded by Sunderman and carried 7-1: Carroll, Cornelius, Larson, Strand, Sunderman, Krieser and Carlson voting 'yes'; Esseks voting 'no'; Taylor absent. This is a recommendation to the Lancaster County Board.



Special Permit #06062 & County Special Permit #06066 56th & Waverly Road

2005 aerial

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

m:\planarcview\06_sp\sp06062

One Square Mile
Sec. 9 T11N R07E

N

Zoning Jurisdiction Lines

City Limit Jurisdiction

ESP INC.
ENGINEERING PLANNING
SURVEYING

LYLE L. LOTH, P.E./L.S.

Suite A - 601 Old Cheney Road
Lincoln, NE 68512

Phone (402) 421-2500
Fax (402) 421-7096

Email: lyle@espeng.com

October 03, 2006

Mr. Marvin Krout
Director of Planning
City of Lincoln/ Lancaster County
555 South 10th Street
Lincoln, NE 68508

RE: Viewpoint North Mining Permit

Dear Marvin,

On behalf of Willard Giebenrath, I am requesting a Special Permit for the purposes of soil mining operations. The area is currently being used as farmland and once the proposed mining is complete it shall be returned to its previous use.

Please feel free to contact me if you have any further questions or comments.

Sincerely,

Matt Langston

Enclosures: 8 copies of sheets 1 of 2 and 2 of 2
City of Lincoln Zoning Application
Application fee of $740
8 ½" x 11" Reduced Size Copy of Plans

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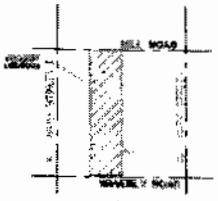
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT



VICINITY MAP

TEMPORARY SEEDING SPECIFICATIONS

	Minimum Purity (%)	Approved Mach. Drill Application Rate In lb. of Pure Live Seed/Acre
ALTERNATE NO. 1		
Oats	90	45
ALTERNATE NO. 2		
MID COOL SEASON #4		30
SEED MIX		
Fawn Fescue	65	
Perennial Rye	65	
Smooth Grama	65	

NOTES: DEVELOPER SHALL HAVE THE OPTION TO USE THE ABOVE NOTED MIXES OR AN ALTERNATE, IF APPROVED PRIOR TO PLACEMENT BY THE LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT.

RECEIVED
OCT - 3 2006
LINCOLN CITY/LANCASTER COU
PLANNING DEPARTMENT

OWNER
[illegible]
[illegible]
[illegible]

ENGINEER
[illegible]
[illegible]
[illegible]
[illegible]

LEGAL DESCRIPTION
[illegible]

EROSION CONTROL NOTES:

1. Area of land disturbance: 97.05 acres, more or less in a site encompassing 192.05 acres, more or less.
2. All erosion control measures as outlined in this plan, as applicable per phase, shall be installed and in operational order prior to the beginning of site grading, unless noted otherwise.
3. When an erosion control structure is dismantled to facilitate orderly construction and/or grading, the entire structure shall be reconstructed and operational before work is detailed on that day.
4. All structures shall be inspected after each rain and repaired as necessary, including but not limited to the removal of excess removal of excess sediment behind. The grading contractor will be responsible for the up keep and inspection of the initial erosion control measures for a period of one year after final seeding has been completed, or approval of the engineer is required.
5. A disturbed area must be seeded, fertilized, & mulched if actual earth moving activities are not to be performed on an area for more than seven (7) days.
6. Upon completion of site grading the entire site shall be left clear of debris, clean graded, fertilized & seeded, be Returned to Farming Operations, or as approved by owner, directed by the Engineer.

PROJECT SCHEDULE

1. The Silt Fence, Construction Entrance, Temporary Diversion Dike, and Sediment Basins shall be installed and in working order prior to all earthwork.
2. Top Soil Stripping and Stock Piling, an area not to exceed 30 acres.
3. Earth Mining.
4. Replacement of Top Soil.
5. Return to Farming Operations.
6. Grants 2 thru 5 to repeat until grading has been completed.
7. Operational Maintenance, Inspection of Practices.
8. Removal of Sediment Controls.

The undersigned certifies this plan has been designed in accordance with the terms of the interlocal agreement for NPDES compliance.

_____ Date: _____

APPROVAL

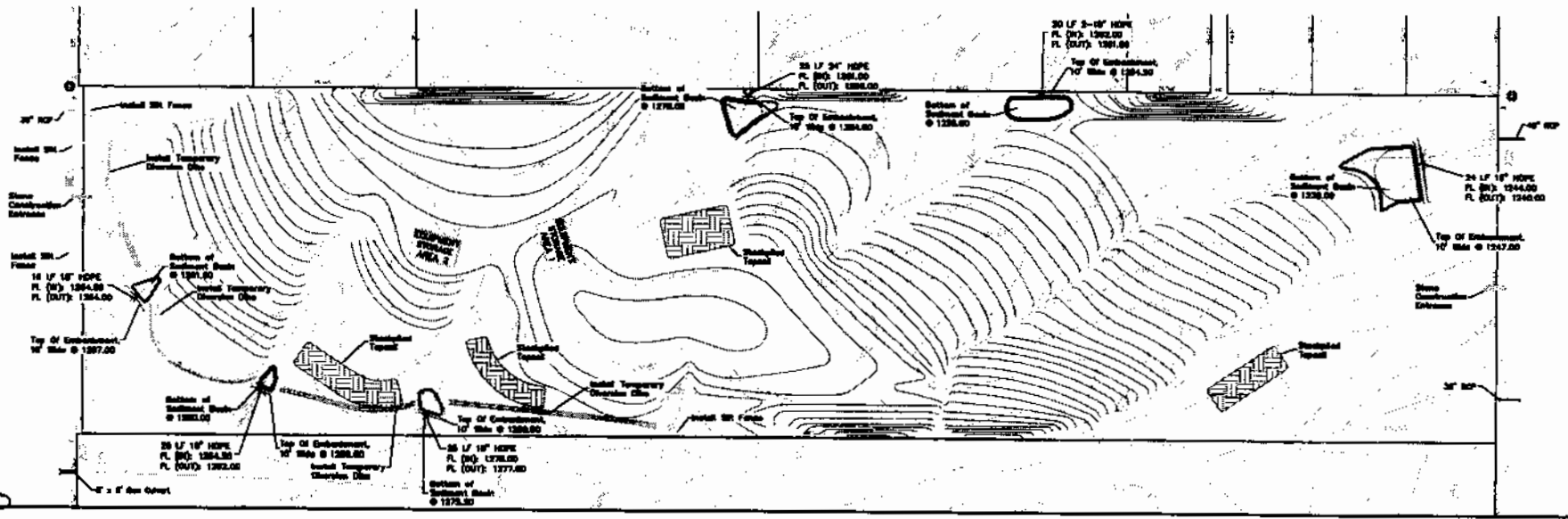
The forgoing plat plan was approved by the Lincoln-Lancaster County Planning Commission on this _____ day of _____, 2006.

ATTEST: _____
CHAIRPERSON

ACCEPTANCE

The forgoing plat plan was approved and accepted by the City Council of the City of Lincoln, Nebraska by Resolution No. _____ passed this _____ day of _____, 2006.

ATTEST _____
City Clerk



E.S.P.

CONSULTING ENGINEERS

601 OLD CHENEY RD.
SUITE 'A'
LINCOLN
NEBRASKA
68512

VIEW POINT NORTH MINING PERMIT

N 56th STREET & WAVERLY ROAD
LANCASTER COUNTY
NEBRASKA

MINING PERMIT / EROSION CONTROL PLAN

Scale: 1"=200'
Proj: Globenroth \ View Point North /dwg
Dwg: Landbase
Date: 08/28/2006
Revisions:

019

GENERAL NOTES

1. Topsoil shall be removed and stored as shown on the plan, away from any drainage course, as directed by the Engineer.
2. Equipment shall be stored only at the locations shown on the drawing, either area 1 or 2, depending on the progress of grading.
3. Existing roadside ditches shall not be disturbed.
4. The area stripped of topsoil shall not exceed 20 acres and shall not remain in a stripped condition longer than 10 months.
5. During excavation all disturbed areas shall be graded to prevent ponded water.
6. During grading operations, dust control will be provided in accordance with recommendations of the Lancaster County Health Department.
7. Monday through Friday, hours of grading operations shall be from 7:00 am AM to 7:00 PM, and Saturdays from 7:00 AM to 5:00 PM Operations are not permitted on Sundays or Holidays. This does not apply to normal farming operations.
8. No work shall be done in the public Right-of-Way without Lancaster County approval.
9. Soil removal on this site will not alter the groundwater table on adjoining properties.
10. Construction, Use, Repair, Demolition. No person may cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all such reasonable measures to prevent particulate matter form becoming airborne so that it remains visible beyond the premises where it originates. The Director may require such reasonable measures as may be necessary to prevent particulate matter from becoming airborne, including but not limited to paving or frequent cleaning of roads, driveways and parking lots; application of dust-free surfaces; application of water; and the planting and maintenance of vegetative ground cover.
11. On-site toilet facilities shall be provided for the duration of the mining operations in accordance with Chapter 8.10 "Construction Site Toilet Facilities" on the Lincoln Municipal Code.
12. At the completion of the grading operations the site shall be seeded with a cover crop and returned to farming operations.
13. Finished slopes shall not exceed 3:1.
14. Unless otherwise indicated, all vegetative and structural erosion and sediment control practices and storm water management practices all be constructed and maintained according to the minimum standards and specifications of the Lincoln Drainage Criteria Manual, dated August 1999, and approved supplements.
15. All sediment and erosion control practices will be inspected at least once every seven calendar days and after any storm event of greater than 0.5 inches of precipitation during any 24 hour period by responsible personnel. Any necessary repairs or cleanup to maintain the effectiveness of the best management practices shall be made immediately.
16. Following soil disturbance, permanent or temporary stabilization shall be completed within seven (7) calendar days to the surface of all perimeter controls, topsoil stockpiles, and any other disturbed or graded areas on the project site which are not being used for material storage, or on which actual earth moving activities are not being performed.

NOTES:

1. The Filter Fabric shall be purchased in a continuous roll cut to the length of the barrier to avoid the use of joints. Where joints are unavoidable, they shall be spliced together only at a support post with a minimum 6 inch overlap, and securely sealed.
2. The fabric shall extend into the trench a minimum of 6 inches. The fabric shall not be stapled to existing trees.
3. The 4 inch by 4 inch trench shall be backfilled and the soil compacted over the filter fabric.
4. Close attention shall be paid to the repair of damaged silt fence resulting from end runs and undercutting.
5. Should the fabric on a silt fence decompose or become ineffective prior to the end of the expected usable life and the barrier is still necessary, the fabric shall be replaced promptly.
6. Sediment deposits shall be removed after each rainfall. They must be removed when the level of deposition reaches approximately one half the height of the barrier.
7. Any sediment deposits remaining in place after the silt fence is no longer required shall be dressed to conform to the existing grade, prepared, and seeded.

SILT FENCE
NO SCALE

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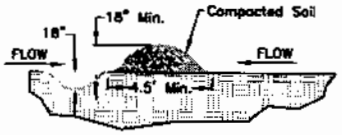
OCT - 3 2006
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT

MAINTENANCE:

The measure shall be inspected after every storm and repairs made to the dike, flow channel, outlet or sediment trapping facility, as necessary. Once every two weeks, whether a storm event has occurred or not, the measure shall be inspected and repairs made if needed. Damages caused by construction traffic or other activity must be repaired before the end of each working day.



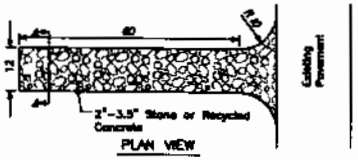
TEMPORARY DIVERSION DIKE
NO SCALE

NOTES:

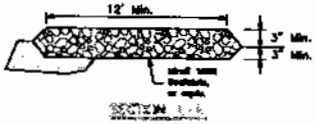
1. The Dike shall be adequately compacted to prevent failure.
2. Temporary or permanent seeding and mulch shall be applied to the dike immediately following its installation.

NOTES:

1. Construction Entrance must extend the full width of the vehicular ingress and egress area.
2. If conditions on the site are such that the majority of the mud is not removed by the vehicles traveling over the stone, then the tires of the vehicles must be washed before entering the public road. Wash water must be carried away from the entrance to an approved settling area to remove sediment. All sediment shall be prevented from entering storm drains, ditches, or watercourses.
3. The area of the entrance must be excavated a minimum of 3 inches and must be cleared of all vegetation, roots, and other objectionable material. The filter fabric underliner will then be placed the full width and length of the entrance.
4. When washing is required, it shall be done on an area stabilized with stone and which drains into an approved sediment trapping device.
5. The entrance shall be maintained in a condition which will prevent tracking or flow of sediment onto public right-of-way. This may require periodic top dressing with additional stone or the washing and resurfacing of existing stone as conditions demand and repair and/or cleanout of any structures used to trap sediment. All materials spilled, dropped, washed, or tracked from vehicles onto roadways or into storm drains must be removed immediately. The use of water trucks to remove materials dropped, washed, or tracked onto roadways will not be permitted under any circumstances.



PLAN VIEW



SECTION A-A
STONE CONSTRUCTION ENTRANCE
NO SCALE

E.S.P.
CONSULTING ENGINEERS

601 OLD CHENEY RD.
SUITE 'A'
LINCOLN
NEBRASKA
68512

VIEW POINT NORTH MINING PERMIT

N 56th STREET & WAVERLY ROAD
LANCASTER COUNTY
NEBRASKA

MINING PERMIT / EROSION CONTROL PLAN

Scale: 1"=200'
Proj: Gleborrath \ View Point North /dwg
Dwg: Landbase
Date: 08/28/2006
Revisions:

020

NORRIS PUBLIC POWER

AREA 2
SERVICE CENTER

R.R. 1 BOX 56
ROCA, NEBRASKA 68430
402/423-3855
FAX 402/423-8090

RECEIVED
OCT 18 2006
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT

October 17, 2006

Sara Hartzell, Project Planner
555 S. 10th St. #213
Lincoln, NE 68508

RE: View Pointe North Mining Permit

Dear Sara,

I have reviewed the subject plat. On the north side of the Waverly Rd., we have a 12.5 KV overhead line. As long as no grade is changed within 10' of these poles we have no issues.

I can be reached at 423-3855 if there are any questions.

Sincerely,

Rick Volmer

Rick Volmer, Staking Engineer

Lancaster County Engineering Department

DON R. THOMAS - COUNTY ENGINEER

DEPUTY- LARRY V. WORRELL
COUNTY SURVEYOR

RECEIVED
OCT 18 2006
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT

DATE: October 17, 2006

TO: Sara Hartzell
Planning Department

FROM: Larry V. Worrel
County Surveyor

SUBJECT: VIEW POINT NORTH MINING PERMIT

Upon review, this office has no direct objections, subject to the following:

1) General Notes are acceptable except *General Note 6* which has extra wording at the end.

2) Dust control measurers shall be used during operations.

3) Applicant shall be responsible for repairs of any damage that may occur to Waverly Road pavement at this site, and shall be responsible to maintain Waverly Road free of any debris.

4) Applicant shall be responsible for maintenance and any repairs that are caused by haulers to Mill Road.

5) Drawings should identify the elevation of the major proposed contour lines.

6) Signing should be placed on Waverly Road during hauling operations warning traffic of Trucks Entering.

LVW/DP/pb
Phyllis/Special Permits & Other/View Point Mining Permit

022

FAX # (402) 441-8692 444 CHERRYCREEK ROAD, BLDG C LINCOLN, NEBRASKA 68528 (402) 441-7681

Review Comments for
Application #: SP06062
VIEW POINTE NORTH MINING PERMI

Comments as of: Tuesday, October 24, 2006

Status of Review: **Approved** 10/23/2006 10:24:15 AM
Reviewed By SARA HARTZELL
Comments: See Office link

Status of Review: **Active**
Reviewed By Alltel ANY
Comments:

Status of Review: **Complete**
Reviewed By Building & Safety Terry Kathe
Comments:

Status of Review: **Approved** 10/19/2006 1:29:26 PM
Reviewed By Health Department ANY
Comments: LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION

□□ TO:□Sara Hartzell□□□DATE:□□October 19, 2006

DEPARTMENT:□Planning□□□FROM:□□Chris Schroeder
□□□□□□ □□□□
□ATTENTION:□□□□ □DEPARTMENT:□Health

CARBONS TO:□EH File□□□SUBJECT:□□View Point North
□□□EH Administration□□□□Mining Permit
□□□□□□□□□SP #06062

The Lincoln-Lancaster County Health Department has reviewed the special permit application with the following noted:

□During the mining process, the land owner(s) will be responsible for controlling off-site dust emissions in accordance with Lincoln-Lancaster County Air Pollution Regulations and Standards Article 2 Section 32. Dust control measures shall include, but not limited to application of water to roads, driveways, parking lots on site, site frontage and any adjacent business or residential frontage.

023

Status of Review: Complete 10/23/2006 10:45:58 AM

Reviewed By Lincoln Electric System JIM HENNESSY

Comments: Sent via email 10-16-06 by Sharon Theobald

Nebraska Public Power District has a
high voltage transmission line that would run along or very near the east side of the project location. We believe their easement should be identified on the plans...

Any questions....please contact me. Thank you...

Sharon Theobald
stheobald@les.com
467-7640

Status of Review: Active

Reviewed By Natural Resources District Any

Comments:

Status of Review: Approved

Reviewed By Parks & Recreation ANY

Comments:

Status of Review: Routed

Reviewed By Planning Department COUNTER

Comments:

Status of Review: Complete

Reviewed By Planning Department SARA HARTZELL

Comments:

Status of Review: Complete

Reviewed By Planning Department RAY HILL

Comments:

Status of Review: Active

Reviewed By Planning Department SARA HARTZELL

Comments:

Status of Review: Active

Reviewed By Public Works - Development Services ANY

Comments:

024

Status of Review: **Active**

Reviewed By: **Public Works - Long Range Planning** ANY

Comments:

Status of Review: **Complete** 10/23/2006 10:32:45 AM

Reviewed By: **Public Works - Watershed Management** NCSSXH

Comments: Comment received 10-19-06 via email from Ben Higgins

Sara

Watershed Management Division has the following comment on View Point North Mining Permit (special permit 06062).

1. The National Wetland Inventory map shows a small wetland in the northwest portion of the site. It's located at and near the location of the proposed sediment basin about 1200 feet south and about 100 feet east of the northwest corner of the site. Need to have a wetland scientist or other knowledgable person look at the site and provide information on wetland status, and if it's a wetland need to avoid, minimize or mitigate.

2. Erosion and sediment control will be reviewed as part of the NPDES permit construction site review by LPSNRD.

Thanks

Memorandum

To: Sara Hartzell, Planning Department

From: Chad Blahak, Public Works and Utilities

Subject: View Point North Mining Permit sp06062

Date: October 31, 2006

cc:

Engineering Services has reviewed the submitted plans for the mining permit in Outlot C of View Point North special permit, and has the following comments:

1 There appears to be a future road connection from Outlot C to existing Emmawalter Road in the View Point North acreage subdivision. The proposed grading for this application does not accommodate the future road connection. The proposed grading should be revised to accommodate the future road.

\\CEIS\SYS\FILES\SIECEB\WP\PRE-PLAT-MEMOS\VWPNTNRTH MNING SP06062.DOC