

FACTSHEET

TITLE: SPECIAL PERMIT NO. 08015, requested by Roger Schwisow, for authority to allow mining/extraction of soil on Agricultural zoned property located northwest of the intersection of N.W. 56th Street and West O Street.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 03/12/08
Administrative Action: 03/12/08

STAFF RECOMMENDATION: Conditional Approval.

RECOMMENDATION: Conditional Approval, with amendments: Resolution No. PC-01111 (8-0: Gaylor-Baird, Carroll, Larson, Sunderman, Taylor, Cornelius, Esseks and Francis voting 'yes').

FINDINGS OF FACT:

1. The purpose of this special permit is for soil excavation on a 40.74-acre site, zoned Agricultural and generally located northwest of the intersection of N.W. 56th Street and West O Street. The proposal is to extract 762,232 cubic yards of soil.
2. The staff recommendation of conditional approval for a period of three (3) years, is based upon the "Analysis" as set forth on p.8-9, concluding that the request is in conformance with the Comprehensive Plan and the Zoning Ordinance. The staff presentation is found on p.13.
3. The applicant's testimony is found on p.13-15, including a request to amend the conditions of approval as set forth on p.33 as follows:
 - 2.1.1 Revise the plans to meet the requests of the ~~Public Works and~~ Watershed Management memos.
 - 2.1.2 ~~Revise the plans to show access to the parcel to the east acceptable to Public Works.~~
4. ~~Operating hours shall be limited to daylight hours Monday through Friday only.~~
4. Testimony in opposition is found on p.14-15, and the record consists of the written testimony of Eunice Cernohlavek, 6205 West O Street, in opposition (p.34-35). The concerns of the opposition are health, traffic and safety, aesthetic and mental issues, hours of operation and enforcement.
5. The Planning Commission discussion with staff is found on p.15-16, and the applicant's response to the opposition is found on p.16.
6. On March 12, 2008, the Planning Commission agreed with the staff recommendation and voted 8-0 to approve Resolution No. PC-01111, with conditions, with the amendment to Condition #2.1.1 and the deletion of condition #2.1.2, as requested by the applicant; however, the Planning Commission did not delete the restriction on hours of operation as requested by the applicant. The Planning Commission also added a condition to require annual administrative reviews during the three-year term of this special permit. See Resolution No. PC-01111 (p.3-6) and Minutes (p.17).
7. On March 13, 2008, Mark Hunzeker, on behalf of the applicant, filed a letter appealing Condition #4, which limits the hours of operation to daylight hours only, Monday through Friday (p.2).
8. After the Planning Commission meeting, the staff determined that there was no written response from the Department of Roads accepting this proposal as indicated during the public hearing; however, verbal communication with Gary Prey of the NDOR on March 14, 2008, indicates that there are no apparent circumstances that would prevent the issuance of a permit from NDOR.

FACTSHEET PREPARED BY: Jean L. Preister

DATE: March 17, 2008

REVIEWED BY: _____

DATE: March 17, 2008

REFERENCE NUMBER: FS\CC\2008\SP.08015 Appeal



DONALD R. WITT
M. DOUGLAS DEITCHLER
WALTER E. ZINK II
RANDALL L. GOYETTE
STEPHEN S. GEALY
GAIL S. PRBY
DALLAS D. JONES
JILL GRADWOHL SCHROEDER
DAVID A. DUDLEY

BRENDA S. SPILKER
STEPHANIE F. STACY
W. SCOTT DAVIS
MARK A. HUNZEKER
WILLIAM G. BLANK
PETER W. KATT
CHRISTOPHER M. FERRIGO
DARLA S. IDEUS
JARROD S. BOFFNOTT

TIMOTHY E. CLARK
ANDREW M. LOUDON
CHRISTINA L. BALL*
JENNY L. PANKO
JAMES D. HAMILTON
CAROLINE M. WESTERHOLD
AMANDA A. DUTTON
CYNTHIA R. LAMM
DEREK C. ZIMMERMAN

JOHN J. HRECK
MARK W. BUCKWALTER

OF COUNSEL
ROBERT T. GRIMM
J. ARTHUR CURTISS
DAVID D. ZWART

*ALSO ADMITTED IN KANSAS

March 13, 2008

Ms. Joan Ross
City Clerk
555 South 10th Street, Suite 103
Lincoln, NE 68508

RE: Appeal of Planning Commission Actions, Special Permit No. 08015

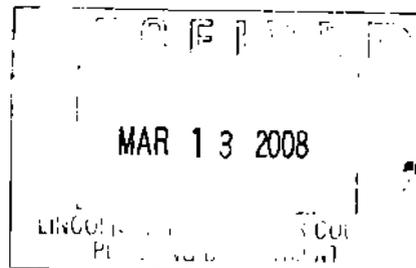
Dear Joan:

Please take notice that the owner appeals the action of the Planning Commission taken March 12, 2008, imposing Condition No. 4 (limiting operating hours to daylight hours Monday through Friday) upon the above-referenced Special Permit. Please notify our office of the date and time of the public hearing on this appeal.

Sincerely,

Mark A. Hunzeker
For the Firm
mhunzeker@baylorevnen.com

c: Roger Schwisow
cc: Jean Priester



208190

**PLANNING COMMISSION FINAL ACTION
NOTIFICATION**

TO : Mayor Chris Beutler
Lincoln City Council

FROM : Jean Preister, Planning 

DATE : March 17, 2008

RE : **Special Permit No. 08015**
(Mining/extraction of soil - N.W. 56th Street and West O Street)
Resolution No. PC-01111

The Lincoln City-Lancaster County Planning Commission took the following action at their regular meeting on Wednesday, March 12, 2008:

Motion made by Taylor, seconded by Larson, to approve **Special Permit No. 08015**, with conditions, as amended, requested by Roger H. Schwisow, for authority to allow mining/extraction of soil on Agricultural zoned property located northwest of the intersection of N.W. 56th Street and West O Street.

Motion for conditional approval, as amended, carried 8-0: Esseks, Cornelius, Taylor, Sunderman, Francis, Larson, Gaylor-Baird and Carroll voting 'yes'.

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.

(Please Note: The applicant has appealed the condition limiting the hours of operation to the City Council. The public hearing before the City Council is scheduled for **Monday, March 31, 2008, at 5:30 p.m.**)

Attachment

cc: Building & Safety
Rick Peo, City Attorney
Public Works
Lyle Loth, ESP, 601 Old Cheney Road, Suite A, 68512
Mark Hunzeker, 600 Wells Fargo Center, 1248 O Street, 68508
Roger Schwisow, 1354 Pelican Bay Place, 68528
Eunice Cernohlavek, 6205 West O Street, 68528
Karen Kurbis, 17500 N. 84th Street, 68517

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RESOLUTION NO. PC- 01111

SPECIAL PERMIT NO. 08015

1 WHEREAS, Roger H. Schwisow has submitted an application designated as
2 Special Permit No. 08015 for authority to allow mining/extraction of soil on Agricultural zoned
3 property located northwest of the intersection of N.W. 56th Street and West O Street, and
4 legally described as:

5 Lot 25 I.T. in the Southwest Quarter of Section 24, Township 10
6 North, Range 5 East of the 6th P.M., Lancaster County,
7 Nebraska;

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

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

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

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

19 That the application of Roger H. Schwisow, hereinafter referred to as
20 "Permittee," to operate a mining/extraction of soil be and the same is hereby granted under the

1 provisions of Section 27.63.360 of the Lincoln Municipal Code upon condition that the operation
2 of said mining/extraction of soil be in substantial compliance with said application, the site plan,
3 and the following additional express terms, conditions, and requirements:

4 1. This permit approves a soil, sand and gravel excavation operation for a
5 period of three years from the date of approval of this special permit with administrative review
6 annually from the date of approval until the expiration of this special permit or completion of the
7 operation, whichever first occurs.

8 2. Before beginning the excavation operations, the Permittee shall:

- 9 a. Revise the plans to meet the requests of the Watershed
10 Management memo from Edwin Kouma dated February 21, 2008.
- 11 b. Receive review and permits, if required, for the Federal NPDES
12 and 404 Permits.
- 13 c. Receive required permits from the NDOR.
- 14 d. Add a note that soils and topography shall conform to the grading
15 plan.
- 16 e. Post and maintain a 4'x8' sign on the property at the entrance
17 clearly visible and legible to the public showing the special permit
18 number, the name of the permittee and operator and the
19 telephone numbers where the permittee, operator and the
20 Building & Safety Department can be contacted.
- 21 f. Post a \$5,000 performance bond or escrow agreement in a form
22 acceptable to the City Attorney/County Attorney.
- 23 g. Grant an avigation and noise easement to the Lincoln Airport
24 Authority on all or that part of the land located within the Airport
25 Environs Noise District.

26
27 3. The construction plans shall substantially comply with the approved plans.

28 4. Operating hours shall be limited to daylight hours Monday through Friday

29 only

30 5. At the conclusion of the operation, the permittee shall provide to the
31 Building & Safety Department a certificate from an engineer stating that the final grading

1 substantially reflects the finish contours shown on the approved site plan and request a release
2 of the performance bond or escrow agreement.

3 6. The construction entrance shall be closed when not in operation.

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

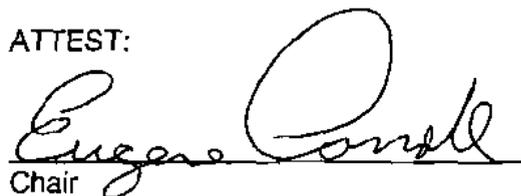
6 8. This resolution's terms, conditions, and requirements bind and obligate the
7 Permittee, his successors and assigns.

8 9. The physical location of all setbacks and yards, buildings, parking and
9 circulation elements, and similar matters must be in substantial compliance with the location of
10 said items as shown on the approved site plan.

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

16 The foregoing Resolution was approved by the Lincoln City-Lancaster County
17 Planning Commission on this 12 day of March, 2008.

ATTEST:


Chair

Approved as to Form & Legality:


Chief Assistant City Attorney

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for March 12, 2008 PLANNING COMMISSION MEETING

****As Revised and Adopted for Conditional Approval by Planning Commission on March 12, 2008, Resolution No. PC-01111****

- P.A.S.:** Special Permit #08015
- PROPOSAL:** A special permit to allow mining/extraction of soil.
- LOCATION:** Northwest of the intersection of N. W. 56th Street and West "O" Street.
- LAND AREA:** 40.74 acres, more or less.
- CONCLUSION:** In conformance with the Comprehensive Plan and City Zoning.

<u>RECOMMENDATION:</u>	Conditional Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 25 I.T. in the SW 1/4 of Section 24 T10N, R5E of the 6th P.M., Lancaster County, Nebraska.

EXISTING ZONING: AG Agriculture

EXISTING LAND USE: farmed land

SURROUNDING LAND USE AND ZONING:

- North: Farm land and I-80, zoned AG Agriculture
- South: Farm land, one farm residence, zoned AG Agriculture
- East: Farm land , zoned AG Agriculture
- West: Farming, Residence, Playmore club, Emerald wells and rail line, zoned AGR Agriculture Residential and AG Agriculture.

ASSOCIATED APPLICATIONS: None

HISTORY: Changed from AA Rural and Public Use to AG Agricultural in the 1979 zoning update. The land abutting to the east had a Change of Zone Application (CZ 05055 AG to I-3), a proposed Annexation (#05012) and Use Permit # 05007-Westview Addition, which is currently in the processes of Expiration of the Application due to inaction.

COMPREHENSIVE PLAN SPECIFICATIONS: The Plan shows this as Industrial. This is in the Tier I Growth Area, Priority B.

UTILITIES: City services planned.

TOPOGRAPHY: Rolling, draining to the south and west.

TRAFFIC ANALYSIS: Access will be to West "O" Street/U.S. Hwy 6.

PUBLIC SERVICE: This is in the Southwest Rural Fire District (Advanced Life Support, about 7 miles from the Yankee Hill and Denton stations), Lincoln School District #1 and Lincoln Electric System.

REGIONAL ISSUES: None

ENVIRONMENTAL CONCERNS: There are no known Historic resources. The soil rating on this land is 3.4 on a scale of 1 to 10 where 1 to 4 are prime soils. This is prime soil. This is located in the Emerald Wellhead Protection zone and care must be taken to protect ground water.

ALTERNATIVE USES: Continued farming, two acreage lots.

ANALYSIS:

1. This request is for soil excavation on a 40.74 acre site, under the provisions of Chapter 27.63.360 Mining in the "AG" and "AGR" Districts.
2. This proposes to extract 762,232 cubic yards of soil. The cuts ranging up to 20 - 24 feet. Final excavation will create a three sided bowl with a rim of 14' to 16' around the east, south and west sides. The applicant notes they will not disturb over 20 acres at a time.
3. The County Engineer memo of February 15, 2008 notes no objection subject to review by the Nebraska Department of Roads (NDOR).
4. Public Works memo of February 22 notes issues of sight distance, elevation/contour errors and the need for NDOR approval and conditions.
5. The Airport Authority notes this land is subject to an aviation easement.
6. Health Department response was:

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. Planting and maintenance of ground cover will also be incorporated as necessary.

7. Watershed Management notes some concerns on elevation and drainage.

8. The NDOR has plans for the improvement of West "O" Street at this location and site grading and access must be coordinated. No response has been received at this time from the NDOR.
9. The applicant addressed the listed conditions of the Lincoln special permit application conditions (27.63.360 and 27.63.160) as follows (responses shown in **bold**);
 - a) Major elevations of proposed contours should be shown on the map. **A grading map showing existing and proposed contours is provided showing a general excavation with up to 24' foot cuts, and little fill.**
 - b) Effect on groundwater; **This was not addressed in the application but there should be little or no effect on the water table. The Emerald well field is just 1/4 mile to the west and this is in the Emerald Wellhead Protection area.**
 - c) Vehicle and equipment storage areas. **Noted on the plan in the NE corner of the parcel.**
 - d) Erosion controls; **Covered in notes and details.**
 - e) The surface shall be maintained so surface water is not collected or ponded other than the designed catch ponds. **There is a sediment basin and over flow riser drain pipe shown.**
 - f) Topsoil shall be stripped and kept on site for redistribution at the conclusion of the extraction process. **Noted and areas of topsoil storage shown .**
 - g) Cuts will be returned to a slope of less than 3 to 1 and seeded after extraction. **The map indicates that slopes will not exceed 3 to 1, most are in the 4 to 1 range. Seeding is noted to be done after 7 days of inactivity.**
 - h) Soils and topography shall be graded and seeded after extraction. **As areas get completed topsoil is redistributed and permanently seeded within seven days.**
10. No duration of operation or hours/days of operation were noted by the applicant in the application.
11. Staff would note that future development of this site and the site to the east (formerly Westview final plat) needs to be provided for, especially since reconstruction of West "O" Street may force joint access to these two parcels. The applicant should show where road connections to the east can be made.

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, with administrative review annually from the date of approval until the expiration of this special permit or completion of the operation, whichever first occurs. (****Per Planning Commission, 3/12/08****)

General:

2. Before beginning the excavation operations:
 - 2.1 The permittee shall
 - 2.1.1 Revise the plans to meet the requests of the Public Works and Watershed Management memos. (****Per Planning Commission, at the request of the applicant, 3/12/08****)
 - ~~2.1.2 Revise the plans to show access to the parcel to the east acceptable to Public Works.~~ (****Per Planning Commission, at the request of the applicant, 3/12/08****)
 - 2.1.3 Receive review and permits, if required, for the Federal NPDES and 404 Permits.
 - 2.1.4 Receive required permits from the NDOR.
 - 2.1.5 Add a note that soils and topography shall conform to the grading plan.
 - 2.1.6 Post and maintain a 4'x8' sign on the property at the entrance clearly visible and legible to the public showing the special permit number, the name of the permittee and operator and the telephone numbers where the permittee, operator and the Building & Safety Department can be contacted.
 - 2.1.7 Post a \$5,000 performance bond or escrow agreement in a form acceptable to the City Attorney/County Attorney.
 - 2.1.8 Grant an avigation and noise easement to the Lincoln Airport Authority on all or that part of the land located within the Airport Environs Noise District.
3. The construction plans shall generally comply with the approved plans.

4. Operating hours shall be limited to daylight hours Monday through Friday only. **(**Applicant's request to delete this condition was not granted by Planning Commission**)**
5. At the conclusion of the operation, the permittee shall provide to the Building & Safety Department a certificate from an engineer stating that the final grading substantially reflects the finish contours shown on the approved site plan and request a release of the performance bond or escrow agreement.
- 6 The construction entrance shall be closed when not in operation.

STANDARD CONDITIONS:

7. The following conditions are applicable to all requests:
 - 7.1 All privately-owned improvements shall be permanently maintained by the owner.
 - 7.2 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 7.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 7.4 The applicant 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 applicant.

Prepared by:

Mike DeKalb
441-6370, mdekalb@lincoln.ne.gov
DATE: February 27, 2008

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

OWNER: Roger H. Schwisow, Trustee
1354 Pelican Bay Place
Lincoln, NE 68528
(402) 477-5263

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

SPECIAL PERMIT NO. 08015

PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 12, 2008

Members present: Sunderman, Taylor, Gaylor-Baird, Esseks, Cornelius, Larson, Francis and Carroll.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda at the request of Mark Hunzeker on behalf of the applicant.

Staff presentation: **Ray Hill of Planning staff** presented the request to extract 762,000 cubic yards of soil over a three-year period. The conditions of approval set forth in the staff report are standard, including daylight hours only, Monday through Friday. The staff has found that the application is acceptable if the applicant complies with the conditions of approval as recommended by staff.

Esseks noted that the last three applications that have come before the Planning Commission had a total of five standards which were added and he was hoping they would become part of the precedent. What he sees missing here is the limit of extracting from no more than 20 acres at a time; that the area would not remain open for more than 10 months; and that the seeding would occur in the first growing season after extraction. He thought these were to be used consistently. Hill suggested that the applicant's submittal may have included those conditions. The application and site plan are used for enforcement so if those conditions were included in the application they need not be restated here.

Proponents

1. Mark Hunzeker appeared on behalf of **Schwisow Construction**, the owner. The owner generally has no objection to the conditions of approval; however, Hunzeker proposed the following amendments:

- 2.1.1 Revise the plans to meet the requests of the ~~Public Works and Watershed Management~~ memos. **(**Per Planning Commission, at the request of the applicant, 3/12/08**)**

- 2.1.2 ~~Revise the plans to show access to the parcel to the east acceptable to Public Works.~~ **(**Per Planning Commission, at the request of the applicant, 3/12/08**)**

- 4. ~~Operating hours shall be limited to daylight hours Monday through Friday only.~~

Hunzeker requested that the requirement to comply with the Public Works comments be stricken because the issues of grading and access to West O Street are within the jurisdiction of the Nebraska

Department of Roads (NDOR). Hunzeker believes the NDOR may grant access because they are comfortable with this site plan and grading plan.

In addition, Public Works talks about access to the property to the east. The property to the east is preliminary platted with the idea that Lincoln Poultry would be going out there. As you come off of O Street, the Lincoln Poultry property is basically the same grade and it will also need to be graded down in order to take a good access onto O Street at the time that the state makes the improvements to West O Street. Therefore, Hunzeker requested that the requirement to match the grade at this time be deleted.

With regard to the restriction on hours of operation to daylight hours during the week, Hunzeker suggested that there will not be very much in the way of neighborhood opposition in this area because there are no neighbors and it is a very commercial/industrial type area. Having the ability to move dirt at different times for different projects is important and it does facilitate getting the project completed quicker. The intention is to get this excavation done within the three years allocated by the permit. Hunzeker suggested that the hours of operation is an arbitrary restriction in this situation.

Larson inquired about the southwest corner of the property. Hunzeker advised that there is railroad right-of-way there. The reason that the NDOR is going to drop the O Street grade is to increase the clearance under the bridge. NDOR has indicated that 500' of clearance from that bridge is enough sight distance for access on O Street. The grade of the area being excavated will be a slope that will drop from north to south. When the right-of-way is graded for the road project, that set of contours will go away and it will be a relatively flat contour from this property to O Street.

Opposition

1. Eunice Cernohlavek, 6205 West O Street, testified in opposition and submitted her testimony in writing. She has concerns about health issues, i.e. dust, effects of her asthmatic condition, effects on the grazing of llamas; water holes for mosquito breeding. She also has safety issues – the trucks turning off onto West O Street will slow down traffic and could potentially cause accidents; silt, mud and dirt on the highway will cause slick areas; it will result in additional traffic on O Street. She urged that the applicant must adhere to the hours of operation. There are also aesthetic issues and mental issues, i.e. peace and tranquility. She is concerned about the entrances and exits to the field of operation and air pollution. Seeding needs to occur within 7 days of removal. All inspections must be done on a routine basis. Cernohlavek also suggested that the applicant be assessed \$1.00 per truck load of dirt to help the taxpayer defray the costs of road maintenance.

2. Karen Kurbis, 17500 N. 84th Street, testified in opposition. She does not recall seeing anything on the application that addresses the 20-acre limitation. She also did not see any kind of statement about a contract being signed for repair of any road damage that might occur, which she believes is a fairly normal standard. She suggested that the staff is relatively conservative on the conditions of approval. She disagrees with the amendments proposed by the applicant. She does not believe there is any information from NDOR. This is an ongoing problem. If Mr. Hunzeker has that information, it should be provided.

With regard to the hours of operation, Kurbis also pointed out that Pawnee Lake and Conestoga Lake create a lot of traffic on West O Street on the weekends. The Plamor Ballroom activity includes a lot

of drinking and there need not be nighttime soil excavation to conflict with this. Kurbis also urged that there be a requirement for annual inspections.

Staff questions

Esseks inquired whether staff agrees with the applicant's proposed amendments. Hill explained that the staff was not aware of any opposition until today.

Hill advised that the full set of drawings that were submitted with the application do discuss some of the questions that have been raised. The project schedule does talk about the 20-acre provision. The general notes on the application also include the conditions which Esseks was concerned about not being listed in the staff report.

Esseks inquired about annual administrative reviews. Hill indicated that the staff would not object to making this a condition of approval.

Gaylor-Baird inquired whether staff had any suggestions for improvements to the area in terms of traffic safety. Hill stated that the NDOR recognizes some of the difficulties because of the railroad overpass and that is why they are considering realigning O Street to have a higher separation and also to have better sight. Hill also pointed out that there is a letter from NDOR indicating they have no objections to this application. NDOR was specifically asked about the access issues and they had no objections.

As far as the proposed amendments to Condition #2.1.1 and deleting #2.1.2, Hill believes that the concern is actual control of access to O Street. NDOR has the authority to grant the access – not Public Works. **Dennis Bartels of Public Works** indicated that the NDOR will have to approve the driveway access to O Street. He had raised some of the questions about access in an advisory capacity. He was also concerned about the east side of the project because of the preliminary plat on the east. At the time of that preliminary plat, the engineers for the east property owner had shown a driveway somewhat east of the common property corner. His comments were meant to be advisory to make sure that the applicant had considered these issues. The previous plat had shown two different streets that intersected the common property line, but for this north one, it meets at grade. He is not in a position to make the property to the east lower their property, but he wanted to point it out. As an earth moving operation, Bartels believes that the proposed plan works efficiently. He is not opposed to deleting the conditions because Public Works does not have the authority.

Sunderman inquired about the access that the property has now. Bartels assumed there was a driveway right at the east property line from O Street going to this property. They will have to get approval from NDOR. He does not believe there is access control on O Street at this point in time.

Carroll confirmed that Bartels' concern is not the access to O Street for hauling the soil, but the future development to the east. Bartels agreed – they should not over-excavate and have to come back and fill.

Response by the Applicant

Hunzeker believes the issue about access has been resolved. They have an access on O Street today near the east property line which will be lowered. With respect to access in the future, it appears that

NDOR has said “okay”. Therefore, Hunzeker would appreciate the modification to Condition #2.1.1 and the deletion of Condition #2.1.2.

With respect to hours of operation, Hunzeker submitted that West O Street carries a lot of traffic anyway. There is a need for these kinds of operations because people need to move dirt. Anyone could simply opt to take out a building permit and grade a site for construction, which would not give the Planning Commission the benefit of all of this review. There is no requirement that you actually then build a building. Hunzeker believes that the applicant has addressed all of the concerns relative to dust and environmental regulations in the application submitted.

The only issue that remains is the hours of operation. The house across the road does sit considerably above the grade of O Street and thus would not be adversely affected by automobile lights. There will be a certain amount of dust but it is regulated by the Health Department and DEQ regulations. That is part of the permit. Hunzeker does not believe it makes sense to restrict the operation to daylight hours and Monday through Friday because we can't control when it rains and what kinds of projects to which the dirt is being moved. We need to be able to get the dirt out and a restriction on the hours is unreasonable.

Gaylor-Baird inquired whether the applicant would be open to considering a provision that if at some point in the next three years there were complaints investigated, that the city could reschedule a hearing to review the project. Hunzeker agreed that certainly at the end of the three-year period the city has the opportunity to revisit. The applicant would be willing to have it reviewed if it becomes a traffic concern. Yes, there is more recreational traffic on weekends, but there is a lot less normal business traffic during the week. He does not believe there will be a traffic issue.

Gaylor-Baird also observed that there would be a lot of traffic going to the recreational areas during the daylight hours on Fridays, which the hours of operation would not cover.

Cornelius asked what the applicant would propose as an alternative to lifting the hours of operation restriction. Hunzeker suggested that as a practical matter, nobody pays people to work at night if they don't have to. If there is not a construction site or a road construction project that requires work at night, they prefer not to work at night or pay overtime to work at night or on weekends. He does not believe there will be an excessive amount of night or weekend work except when it has been raining or when a road contract might require it.

With regard to deleting the requirement to comply with the Public Works comments, Carroll confirmed that the applicant is not trying to waive the contour issue, but merely to eliminate the Public Works comments. Hunzeker acknowledged that the Public Works memo refers to a contour issue. There is a berm in the O Street right-of-way. When the O Street project is done by the state, that berm will go away and this property's grade will be even with the O Street grade. Bartels added that there was an outlet elevation given for the pipe and Public Works is asking for clarification. Lyle Loth stated that it was basically a typographical error that has since been corrected. They did show the elevation too low and it has been corrected. Bartels stated that he is not terribly concerned about the O Street grades.

ACTION BY PLANNING COMMISSION:

March 12, 2008

Taylor moved to approve the staff recommendation of conditional approval, with the amendments

requested by the applicant, seconded by Larson.

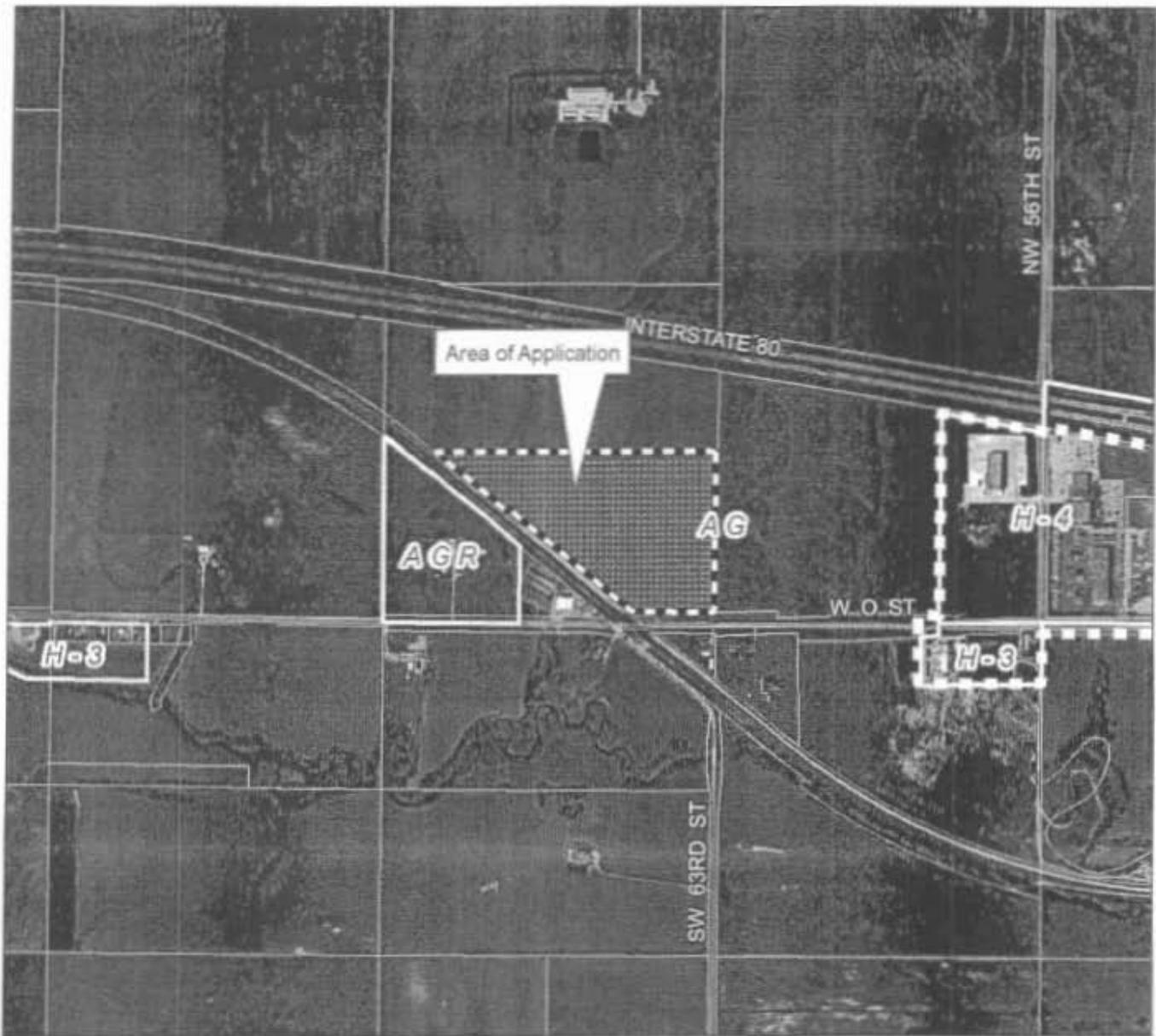
Esseks moved to amend to retain Condition #4 restricting the hours of operation to daylight only, Monday through Friday, and to add a condition requiring annual administrative reviews, seconded by Francis.

Esseks believes that the operating hour limitations are necessary. Such time limits have been imposed on the previous three applications for soil excavation. We need to be consistent. There is in fact a neighbor. There are some real possibilities beyond just nuisance, i.e. asthmatic conditions.

Taylor agreed about the hours of operation since there is a close neighbor.

Motion to amend carried 8-0: Sunderman, Taylor, Gaylor-Baird, Esseks, Cornelius, Larson, Francis and Carroll voting 'yes'.

Main motion, as amended, carried 8-0: Sunderman, Taylor, Gaylor-Baird, Esseks, Cornelius, Larson, Francis and Carroll voting 'yes'. This is final action, unless appealed to the City Council within 14 days.



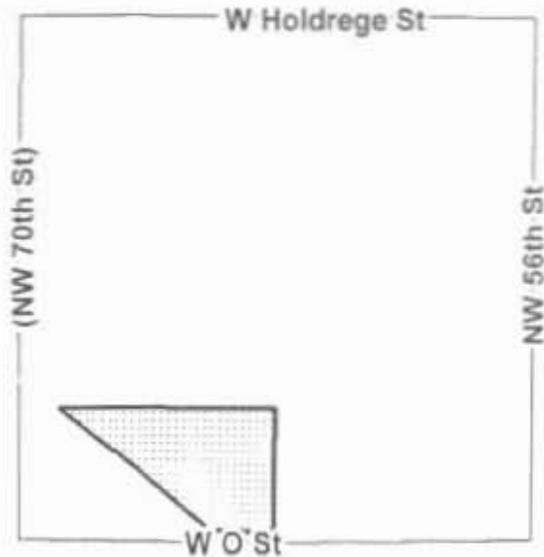
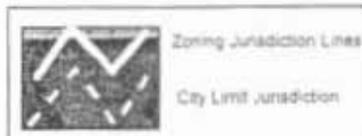
**Special Permit #08015
NW 56th & W O St**

2007 aerial

Zoning:

One Square Mile
Sec. 24 T10N R05E

- R-1 to R-4 Residential District
- AG Agriculture District
- AGR Agricultural Residential 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



E.S.P.
CONSULTING ENGINEERS
801 OLD
CHEYENNE RD.
SUITE 'A'
LINCOLN
NEBRASKA
68512
402-433-0000
421-7088 FAX

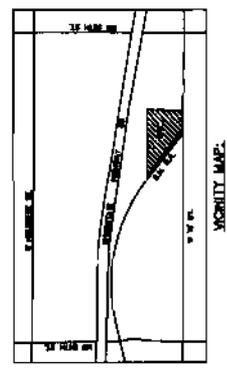
**MINING PERMIT AND
EROSION CONTROL PLAN**
NW 56TH ST. & W O ST.
LINCOLN, NEBRASKA

**EROSION CONTROL
& MINING
PERMIT PLAN**

SCALE: 1" = 100'
DRAWN: J. H. HARRIS
DATE: 08/20/03

REVISIONS:

1 OF 1



OWNER:
CITY OF LINCOLN
1000 N. LINCOLN ST.
LINCOLN, NE 68502

CONTRACTOR:
E.S.P. CONSULTING ENGINEERS
801 OLD CHEYENNE RD.
SUITE 'A'
LINCOLN, NE 68502

PROJECT SCHEDULE:
1. DESIGN: 08/20/03 - 09/15/03
2. PERMITTING: 09/15/03 - 10/30/03
3. CONSTRUCTION: 10/30/03 - 11/30/03
4. COMPLETION: 11/30/03

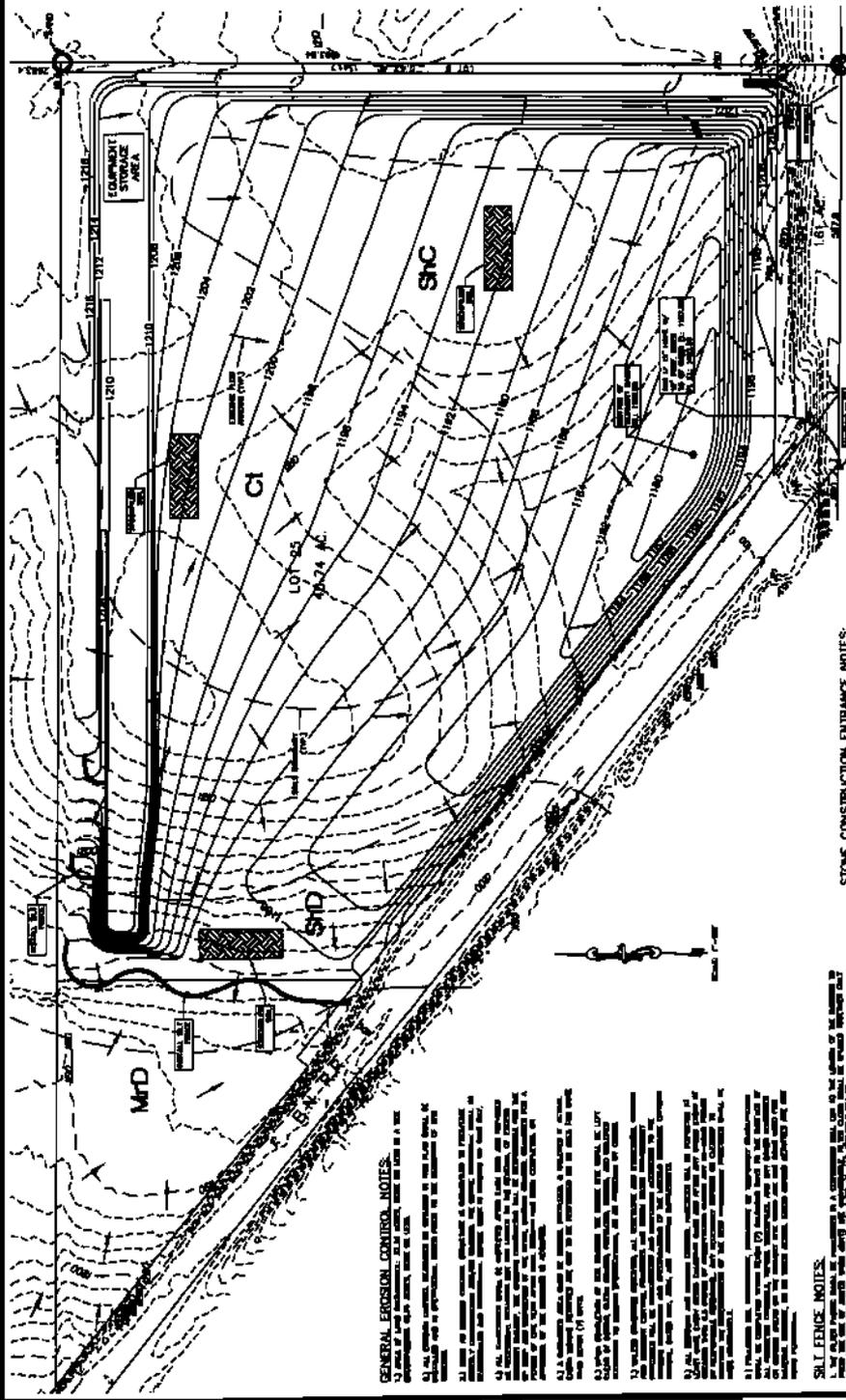
APPROXIMATE ELEVATION VOLUME:
NET FILL: 0.00
NET CUT: 0.00

TEMPORARY SEEDING SPECIFICATIONS:

AREA	SEEDING RATE (LBS/1000 SQ YD)
EROSION CONTROL	10
ROADWAYS	10
STORAGE AREAS	10

PERMANENT SEEDING SPECIFICATIONS:

AREA	SEEDING RATE (LBS/1000 SQ YD)
EROSION CONTROL	10
ROADWAYS	10
STORAGE AREAS	10



STONE CONSTRUCTION ENTRANCE NOTES:

- Entrance shall be constructed with stone masonry.
- Entrance shall be 10 feet wide and 4 feet high.
- Entrance shall be constructed with 1/2 inch crushed stone.
- Entrance shall be constructed with 1/2 inch crushed stone.
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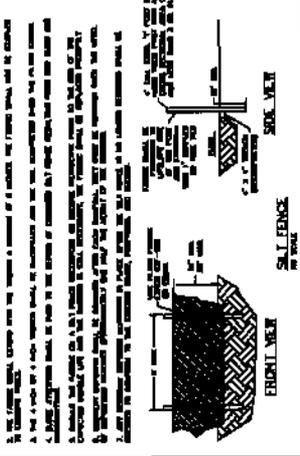


GENERAL EROSION CONTROL NOTES:

- Entrance shall be constructed with stone masonry.
- Entrance shall be 10 feet wide and 4 feet high.
- Entrance shall be constructed with 1/2 inch crushed stone.
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SILT FENCE NOTES:

- Entrance shall be constructed with stone masonry.
- Entrance shall be 10 feet wide and 4 feet high.
- Entrance shall be constructed with 1/2 inch crushed stone.
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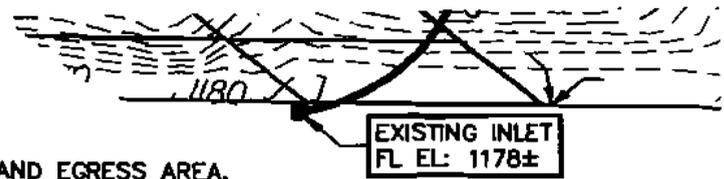


Special Permit #08015
NW 56th & W O St

GENERAL EROSION CONTROL NOTES:

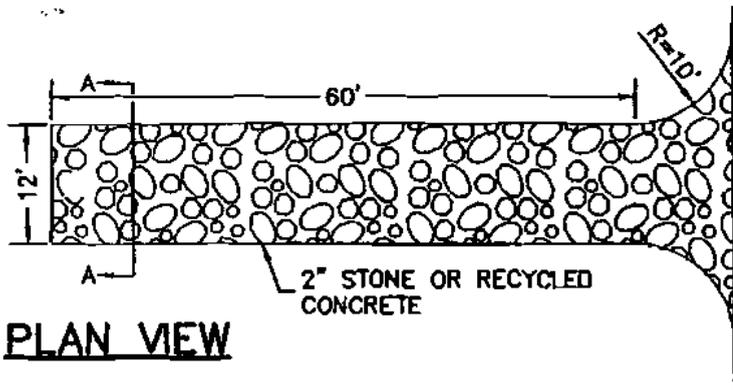
- 1.) AREA OF LAND DISTURBANCE: 37.34 ACRES, MORE OR LESS IN A SITE ENCOMPASSING 40.74 ACRES, MORE OR LESS.
- 2.) ALL EROSION CONTROL MEASURES AS OUTLINED IN THIS PLAN SHALL BE INSTALLED AND IN OPERATIONAL ORDER PRIOR TO THE BEGINNING OF SITE GRADING.
- 3.) WHEN AN EROSION CONTROL STRUCTURE IS DISMANTLED TO FACILITATE ORDERLY CONSTRUCTION AND/OR GRADING, THE ENTIRE STRUCTURE SHALL BE REASSEMBLED AND OPERATIONAL BEFORE WORK IS FINISHED 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 SEDIMENT BUILDUP. 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 ACQUIRED.
- 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, AND MULCHED ACCORDING TO SEEDING SPECIFICATIONS, OR AS APPROVED BY OWNER.
- 7.) UNLESS OTHERWISE INDICATED, ALL VEGETATIVE AND STRUCTURAL EROSION AND SEDIMENT CONTROL PRACTICES AND STORM WATER MANAGEMENT PRACTICES WILL BE CONSTRUCTED AND MAINTAINED ACCORDING TO THE MINIMUM STANDARDS AND SPECIFICATIONS OF THE UNCOLN DRAINAGE CRITERIA MANUAL, DATED MAY, 2004, AND APPROVED SUPPLEMENTS.
- 8.) 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.
- 9.) 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.

**Special Permit #08015
NW 56th & W O St**



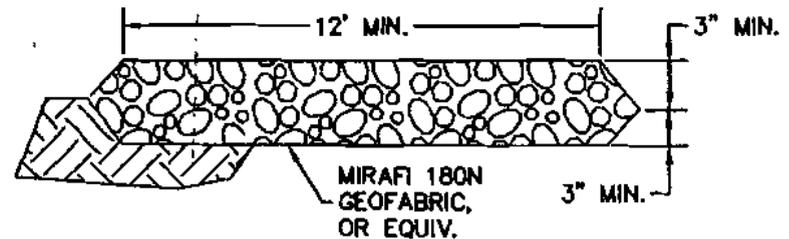
STONE CONSTRUCTION ENTRANCE NOTES:

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 RIGHTS-OF-WAY. THIS MAY REQUIRE PERIODIC TOP DRESSING WITH ADDITIONAL STONE OR THE WASHING AND REWORKING 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

EXISTING PAVEMENT



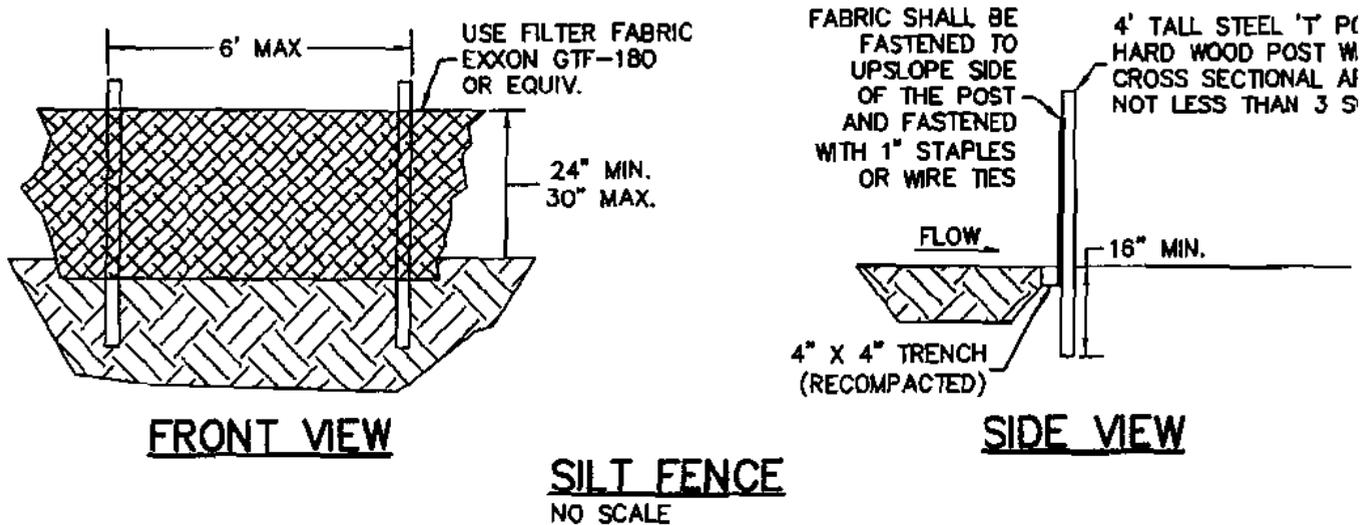
SECTION A-A

STONE CONSTRUCTION ENTRANCE

NO SCALE

SILT FENCE 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. WHEN JOINTS ARE UNAVOIDABLE, FILTER CLOTH 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.



**Special Permit #08015
NW 56th & W O St**



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

Suite A - 601 Old Cheney Road
Lincoln, NE 68512

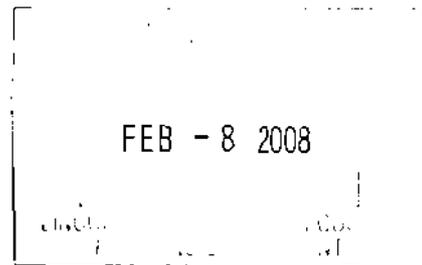
Phone (402) 421-2500
Fax (402) 421-7096

Email: lyle@espeng.com

February 8, 2008

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

RE: Lot 25 I.T., 24-10-05 - Mining Permit



Dear Marvin,

On behalf of Roger Schwisow, 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, the potential exists for commercial development.

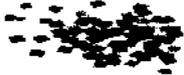
Please feel free to contact me if you have any further questions or comments.

Sincerely,

A handwritten signature in cursive script that reads 'Lyle Loth'.

Lyle Loth

Enclosures: 8 copies of sheets 1 of 1
Special Permit Application
Application fee of \$740
8 1/2" x 11" Reduced Size Copy of Plans



Edwin Kouma/Notes
02/21/2008 04:24 PM

To: Michael V Dekalb/Notes@Notes
cc
bcc
Subject: Schwisow Soil Mining Permit #SP08015

Mike,

I have reviewed the information which was sent on the above permit and have the following comments:

- The bottom of the sediment basin is shown at 1182.0 however the contours show it to be 1180.0
- No calculations are shown for sizing the 12 inch outflow pipe from the sediment basin
- The possible problem of standing water in the sediment basin should be addressed
- The outflow pipe appears to be shown as crossing the railroad right of way but no information is given on permission to do that
- The outflow pipe empties into an existing storm drain inlet but no information is given on the capacity of the inlet.

It is unclear whether these items need to be addressed in order to issue the permit.

If you have questions about this review please give me a call.

Thanks

Ed Kouma
Watershed Division
Public Works & Utilities Dept
901 N. 6th Street
Lincoln NE 68508
402-441-7018



Status of Review: Complete

02/13/2008 7:55:17 AM

Reviewed By Building & Safety

Terry Kathe

Comments: Not in the floodplain.

Status of Review: Active

Reviewed By County Engineer

JIM LANGTRY

Comments:

Status of Review: Approved

02/15/2008 3:15:46 PM

Reviewed By Health Department

ANY

Comments: LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION

TO: Mike DeKalb DATE: February 15, 2008

DEPARTMENT: Planning FROM: Chris Schroeder

ATTENTION: DEPARTMENT: Health

CARBONS TO: EH File SUBJECT: Schwisow Soil Mining

EH Administration SP #08015

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

During the soil 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. Planting and maintenance of ground cover will also be incorporated as necessary.

Status of Review: Active

Reviewed By Natural Resources District

Any

Comments:

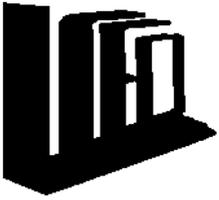
Lancaster
County

DON R. THOMAS - COUNTY ENGINEER

Engineering

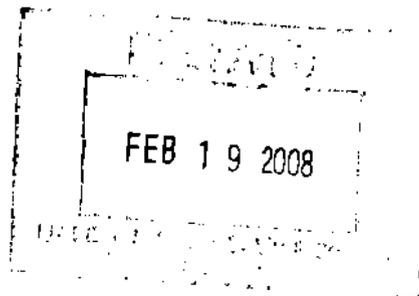
DEPUTY- KENNETH D. SCHROEDER
COUNTY SURVEYOR

Department



DATE: February 15, 2008
TO: Mike DeKalb
Planning Department
FROM: Ken D. Schroeder 
County Surveyor
SUBJECT: SCHWISOW SOIL MINING #SP08015

Upon review, this office has no direct objection to this submittal, subject to review by Nebraska Department of Roads.



Memorandum

To: Brian Will, Planning Department

From: Chad Blahak, Public Works and Utilities

Subject: Schwisow Soil Mining Permit sp08015

Date: February 22, 2008

cc:

Engineering Services has reviewed the submitted plans for the Schwisow Soil Mining Permit, located north of West O Street and west of Northwest 56th Street and has the following comments:

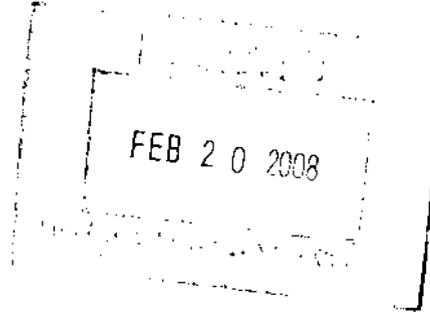
- 1 Due to site distance constraints that result from the proximity of this property to the railroad under pass to the west it is unlikely that this property will be granted access by NDOR for uses other than agricultural uses. If access for future development is not granted from West O Street, this property will likely have to take access through the property to the east which has a preliminary plat associated with it, West View Addition. The proposed grading for the mining permit does not match the proposed plat to the east and seems to limit connection possibilities for future development of this property. Public Works will not support requiring the property to the east to revise existing or proposed grades to facilitate connections for future development of this property.
- 2 The future NDOR project grading for West O needs to be shown on the plans to ensure that the proposed grading is compatible.
- 3 The proposed contours do not match the elevations shown for the sediment basin

C:\My Documents\Reports\pnlkhtsstf4th aa08010.doc

February 15, 2008

Mr. Mike DeKalb, Project Planner
City-County Planning
555 So. 10th
Lincoln, NE 68508

Subject: Lincoln Airport, Lincoln, NE
Schwisow Soil Mining
Special Permit #SP08015



Mr. DeKalb:

After reviewing the Special Permit request we have the following comments:

This area is within the Airport Environs Noise District and subject to the provisions contained in Chapter 27.58 of the Lincoln Municipal Code. This will require an appropriate Avigation and Noise Easement, if there is not already one for this property.

This area is also within a Turning Zone, as defined in Chapter 27.59. Any structures proposed in this area over 75' in height will require a height permit review, per the requirements of the chapter.

If you have any comments or questions, please give me a call.

Sincerely,

AIRPORT AUTHORITY

Jon L. Large, P.E.
Deputy Director of Engineering

JLL/lb

cc: Bill Austin, w/enclosures

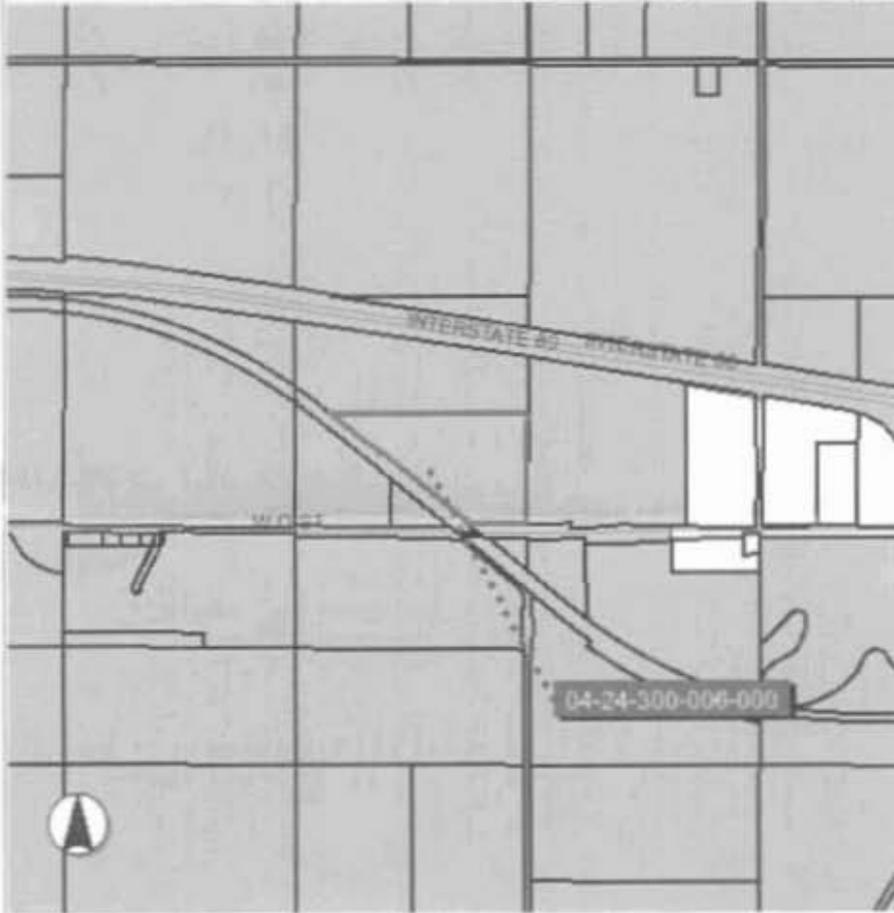


1 INCH EQUALS 2,854,226.355 FEET

Lincoln Airport Authority 023

Lincoln Airport
 FLYING MADE EASY

Lancaster County Parcel Map



Legend

- Lakes/Streams
- Parcels
- Major Streets
- Schools
- Parks
- City Limit
- County

Norman H. Agena

County Assessor/Register of Deeds

555 South 10th Street

Lincoln, NE 68508

402-441-7463

assessor@co.lancaster.ne.us

This map is intended to show as accurately as possible the relationship of parcels, but it is not intended to be construed as survey accurate in any manner

LANCASTER COUNTY ASSESSOR

County Assessor/Register of Deeds

Property Detail Sheet (R16120)

[Home](#)

[General Information](#)

[News](#)

[FAQ](#)

[Searches](#)

[PID](#)

[Owner](#)

[Address](#)

[Advanced Search](#)

Property Data

[Detail Sheet](#)

[Datasheet](#)



[Treasurer Info](#)



[GIS Map](#)



[Datasheet](#)



[Comp Sales](#)

Owner Information

Owner Name: **SCHWISOW, ROGER H TRUSTEE**

Owner Address: **1354 PELICAN BAY PL
LINCOLN, NE 68528**

Property Address:

Parcel Information

Legal Description: **S24, T10, R5, 6th Principal Meridian, LOT 25 SW**

Property ID: **04-24-300-008-000**

Exemption Codes:

Map Page:

Sales History

Instrument #	Sale Date	Sale Price
<u>2006005031</u>	01/31/2006	800,000
<u>2005026521</u>	02/08/2005	NaN
<u>199700 2049</u>	01/06/1997	0

[Click here](#) to view your 2007 certified values and prior history.



* Adobe Acrobat Reader 5.0 (minimum) is required to view pdf documents. Acrobat Reader is a free program available [here](#).

CHARLES THONE
DONALD H. ERICKSON
WM. E. MORROW, JR.
DANIEL B. KINNAMON
THOMAS J. GUILFOYLE
VIROIL K. JOHNSON
CHARLES V. SEDERSTROM
CHARLES D. HUMBLE
ALAN M. WOOD
WILLIAM F. AUSTIN
JOHN C. BROWNTRIGG
THOMAS I. CULHANE
RICHARD J. GILLOON
SAMUEL B. CLARK
RANDY R. EWING
GARY L. HOFFMAN
MARK M. SCHORR
WILLIAM C. NELSON
FERRALD L. RAUTERKUS
WILLIAM T. FOLEY

LAW OFFICES
ERICKSON | SEDERSTROM, P.C.
A LIMITED LIABILITY ORGANIZATION

SUITE 400
301 SOUTH 13TH STREET
LINCOLN, NEBRASKA 68508-2571
TELEPHONE (402) 476-1000
FACSIMILE (402) 476-6167

WRITER'S INTERNET ADDRESS

wangsin@eslaw.com

February 29, 2008

PATRICK R. GUINAN
MICHELLE B. MILLER
TIERNAN T. SIEMS
JASON R. YUNGTUM
PAUL D. HEIMANN
MATTHEW V. RUSCH
JASON L. SCOTT
SARA A. LAMME
FAITH A. PADGETT
BRADLEY B. MALLBERG
KATRINA L. SMELTZER
ADAM R. WHITE

OF COUNSEL

RICHARD P. NELSON
DAVID J. NELSEN
DONALD B. STENBERG

OMAHA OFFICE
10330 REGENCY PARKWAY
DRIVE, SUITE 100
OMAHA, NEBRASKA 68114
(402) 397-2200

COPY

Mr. Lyle Loth, P.E./L.S.
ESP, Inc.
601 Old Cheney Road, Suite A
Lincoln, NE 68512

Re: Schwisow Mining Permit – Avigation and Noise Easement
Our File No.: 24751.52660

Dear Lyle:

Our office represents the Lincoln Airport Authority. The property included within the area of the Special Permit lies within the Airport Environs Noise District as set forth in Chapter 27.58 of the Lincoln Municipal Code. Thus, an Avigation and Noise Easement, which is transmitted herewith, is required by Section 27.58.080 of the Lincoln Municipal Code. After the easement has been fully executed by the Grantors and the lienholder, would you please return the same to me and I will transmit it to the Planning Department, together with the filing fee.

Please feel free to call me if you have any questions or need further information. Thank you for your cooperation.

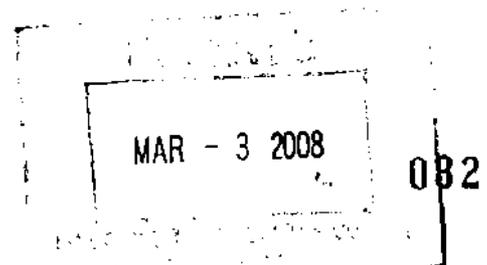
Sincerely,



William F. Austin

WFA:rln
Enclosure

c: Jon Large, Airport Authority
Mike DeKalb, Planning Department



MOTION TO AMEND

SPECIAL PERMIT NO. 08015

I hereby move to amend the conditions of approval of Special Permit No. 08015 as follows:

1. In paragraph 2.1.1 delete "Public Works and";
2. Delete paragraph 2.1.2 in its entirety; and
3. Delete paragraph 4 in its entirety.

Introduced by: _____

207849

Eunice M. Cemohlavek
6205 West O
Lincoln, NE 68528

Response to Special Permit #08015

My concerns and conditions are as follows:

HEALTH ISSUE:

Dust: 1. Evening winds from the North and NW direction enable me to open my windows, shut off my air and enjoy nature's cooling. (Recommended to conserve LES energy)

2. I like to hang out my clothes to dry and eliminate costs of running the dryer when I don't have to. (Recommended to conserve LES energy)

3. Asthmatic health issues may escalate from dust particles constantly in the air we are breathing.

4. Llamas grazing on pasture grasses that are coated with dust may become a health issue for them as well.

5. Water holes for mosquito breeding increasing the West Nile threat to both humans and animals not to mention the annoyance they present. We are the closest so that is where we would be under siege from them everyday and night. Will all standing water areas be treated for mosquito larvae?

SAFETY ISSUE:

1. Trucks turning out onto West O will slow down traffic. Impatient people will try to pass these trucks causing potential accidents.

Note: The previous owner was killed right in front of our driveway when he was driving his tractor heading westbound on West O and turned south into our driveway, a truck passed a row of cars following the tractor and side impacted the tractor killing Ray Smith on the spot.

My husband was rear ended by a Burlington Northern van as he turned from our drive onto West O going east about halfway up the incline. Traffic goes at a fast pace and the distance coming from under the viaduct is quickly covered.

A teacher going to work in Milford flipped her van onto our mailbox.

Will more traffic (turning trucks) on West O, which carries a lot of traffic, now be cause for more accidents?

1. Silt, mud, and dirt on the hwy will create slick areas and clods will be thrown into windshields causing an accident issue.

2. West "O" carries a lot of traffic now, SECC and Milford business's and Crete employ a lot of Lincoln people who drive daily to and back. On Fridays pickups towing boats, camper trailers, campers, cars loaded with kids, motorcycles, bicycles, and runners plus the usual traffic increases ten fold because of the recreational lake areas west of here. Harley Davidson just east a ways creates a lot of motorcycle traffic that wasn't here before. Playmor just on the other side of the tracks has weekend and some weekdays activities that bring a lot of people and traffic to the area. And some of those people may not be on the most sober attitude. Another safety issue with slow trucks on West "O", a miscalculation of distance.

And on Sunday the traffic that left for the lakes starts to come back, so the scenario repeats itself.

Therefore:

OPERATING HOURS – The conditions of operating hours must be limited to daylight hours Monday through Friday (Friday being more recreational traffic and a greater traffic issue) and be strictly adhered to.

ESTATIC ISSUE – Personally as an artist, I find it disturbing to look at and see beauty replaced by earth moving equipment unsettling God's green earth. It will create an unsettling feeling with the neighborhood always in an upheaval stage.

MENTAL ISSUE – I moved out here for peace and tranquility and calm from the stresses of the city. With noise, air pollution, and constant motion, it is a major stress factor.

Drainage onto West "O"

The drain under the overpass fills with water rapidly and a lot of the time cannot get rid of it before it becomes a traffic issue. Vehicles are going through water and at times, it is impassible. Will additional silt and mud cause even more problems and then it becomes an issue for Emerald residents and beyond for emergency vehicles to get to them.

Edwin Kouma's Notes on comments that is included in the special permit literature raises concerns about the outflow pipe from the sediment basin and the possibility of standing water in the basin and that has not been addressed – these are major concerns and the applicant must comply with all rules and regulations pertaining to this where standing water becomes a health issue.

Entrances and exists from the field of operation –

Where will they be placed and also these are a great source of dust and dirt pollution plus traffic safety. It is imperative that the stone construction as stated in the literature provided for the special permit be a condition and that all the dirt and mud is off the trucks before entering Hwy 6 also a condition to be met.

If the fill dirt will be used right east of me on the Schwisow construction site for building up present property – pollutions from dust and standing water not to mention trucks coming off of one property and crossing onto West O and then turning off into the Schwisow property is also an issue.

Let this be a condition to be met by the applicant before you issue a special permit, that the Health Department's Lincoln-Lancaster County Air pollution Regulations and Standards Art 2, Section 32 must be strictly adhered to and inspections a must. Violation of said Regulations and Standards must be addressed immediately and action taken to comply.

Under the general erosion control Note – A disturbed area must be seeded, fertilized and mulched if actual earth moving activities are not to be performed on an area for more then seven (7) days. I want that to be a condition and strictly adhered to. I see no reason to not return an area to a green area as soon as possible. This will eliminate standing water and cut down on dust.

Another condition of the special permit would be that all inspections by the safety engineer, health department, EPA, and NDOR be done on a routine basis (more if conditions due to weather, etc. warrant it), that all violations found be addressed by applicant immediately, and that a comprehensive annual inspection on a yearly basis be done.

Special Permit –

And lastly, I think on a Special Permit that a Special Assessment by NDOR be implemented and that being, assessing a \$1.00 (one USA dollar) per truckload of dirt to help the taxpayer defray the costs to road maintenance (West "O", Hwy 6). due to more usage by applicant then normal.